



**Australian Government**

**Department of Foreign Affairs and Trade**

File Number: 12/16586

10 December 2012

Mr Brendan Molloy  
Secretary  
Pirate Party Australia

Dear Mr Molloy

Thank you for your email dated 21 November 2012, seeking access under the Freedom of Information Act 1982 (the FOI Act) to:

- (a) the portions attributed to the Australian delegation of the most recent draft or negotiating text of the Trans-Pacific Partnership Agreement - Intellectual Property chapter; and*
- (b) documents relating to the positions of the Australian delegation regarding the Intellectual Property chapter.*

As currently framed, DFAT intends to refuse the request, on the grounds that the work involved in processing it would substantially and unreasonably divert DFAT's resources from its other operations.

**Practical refusal reason**

Notice is hereby given under s24AB(2) of the FOI Act of an intention to refuse to grant access to the documents sought. The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of DFAT from its other operations.

In deciding that this practical refusal reason exists, I have had regard to the following matters. I have given consideration to how DFAT could proceed to process your request, and the time and resources that would be involved in doing so. I have been assisted in this task by estimates provided by members of staff in the Office of Trade Negotiations (OTN) within DFAT to determine an estimate of the probable resource demands posed by your FOI request.

**Consultation**

In preparing the below calculations, I have been advised that DFAT would need to consult with all of the other parties to the Trans-Pacific Partnership Agreement, in addition to nine

other Commonwealth agencies. It is also clear from the searches conducted by OTN that an inordinate number of documents fall within the scope of your request and it is too large for processing.

**Time required to process your request**

On advice from the relevant line area, your request as it currently stands would capture thousands of pages of material held in OTN alone. I must have regard to this under s. 24AA(2)(a).

Processing this request would, in my view, be a substantial and unreasonable diversion of DFAT's resources within the meaning of s.24AA(1).

**Consultation process**

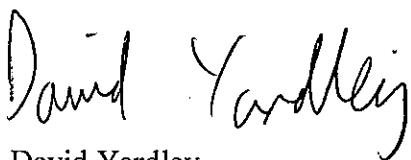
I am the DFAT officer with whom you may consult if you wish to revise the request to a narrower scope such that it could in fact be processed. I may be contacted on 02 6261 2948 and I am happy to provide you so far as is reasonably practicable with any information that I can to assist in amending your request under the FOI Act.

In accordance with s. 24AB(2)(e), the consultation period during which you may consult with me to revise the scope of your request is 14 days after the day you are given this notice. Please note that if you do not take this opportunity to consult, in accordance with s. 24AB(7)(a), your request will be taken to have been withdrawn under s. 24AB(6).

Please note that during this period of consultation, the statutory timeframe under section 15(5) of the FOI Act for the processing of your request is on hold (see section 24AB(8) for details).

I have attached a copy of sections 24, 24AA and 24AB of the FOI Act for your information.

Yours sincerely



David Yardley  
Director  
Freedom of Information and Privacy Law Section

## Attachment A

### 24 Power to refuse request—diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
  - (a) must undertake a request consultation process (see section 24AB); and
  - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
  - (a) the requests relate to the same document or documents; or
  - (b) the requests relate to documents, the subject matter of which is substantially the same.

### 24AA When does a *practical refusal reason* exist?

- (1) For the purposes of section 24, a *practical refusal reason* exists in relation to a request for a document if either (or both) of the following applies:
  - (a) the work involved in processing the request:
    - (i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or
    - (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;
  - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
  - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
  - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
    - (i) examining the document; or
    - (ii) consulting with any person or body in relation to the request;
  - (c) making a copy, or an edited copy, of the document;
  - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
  - (a) any reasons that the applicant gives for requesting access; or
  - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
  - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

## 24AB What is a *request consultation process*?

### *Scope*

- (1) This section sets out what is a *request consultation process* for the purposes of section 24.

### *Requirement to notify*

- (2) The agency or Minister must give the applicant a written notice stating the following:
  - (a) an intention to refuse access to a document in accordance with a request;
  - (b) the practical refusal reason;
  - (c) the name of an officer of the agency or member of staff of the Minister (the *contact person*) with whom the applicant may consult during a period;
  - (d) details of how the applicant may contact the contact person;
  - (e) that the period (the *consultation period*) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

### *Assistance to revise request*

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), *reasonable steps* includes the following:
  - (a) giving the applicant a reasonable opportunity to consult with the contact person;
  - (b) providing the applicant with any information that would assist the applicant to revise the request.

### *Extension of consultation period*

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

### *Outcome of request consultation process*

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
  - (a) withdraw the request;
  - (b) make a revised request;
  - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
  - (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
  - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

### *Consultation period to be disregarded in calculating processing period*

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

*No more than one request consultation process required*

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.