



Office of the Attorney-General

Mr Ben Fairless
Right to Know

By email: foi+request-2353-6d23c514@righttoknow.org.au

Dear Mr Fairless

Freedom of Information Request AGO-FOI 2016/28

I refer to your email of 19 October 2016 in which you made a request to the Attorney-General under the *Freedom of Information Act 1982* (the **FOI Act**) in the following terms:

a copy of all inbound and outbound chats in the 7 days prior to this request that was sent or received from the minister using any of the below applications:

- *WhatsApp*
- *Facebook Messenger*
- *Signal*
- *Telegram*
- *Grindr*
- *Scruff*
- *Tinder*
- *Email Accounts without a .gov.au email address*

I am an officer authorised to make decisions under s 23(1) of the FOI Act.

Notice of practical refusal reason

Subject to any change to the terms of your request, I have determined that a ‘practical refusal reason’ exists under the FOI Act, and I propose to refuse the request on that basis.

Pursuant to s 24AA of the FOI Act, a practical refusal reason will exist where it would substantially and unreasonably interfere with the performance of the Minister's functions. To make that determination, I may have regard to the resources that would be required to locate and identify documents, as well as resources that would have to be used to examine relevant documents and consult with any person or body in relation to the request.

Under s 24AB of the FOI Act, you have the opportunity to revise your request. This is called a ‘request consultation process’ as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Reasons for intention to refuse your request

Processing your request would involve a number of steps, and consultation with a potentially large number of people. I consider that, in order to respond to the request, this Office would be required to undertake at least the following:

- determine whether the Minister has used any or all of the applications set out in your request in the 7 days prior to the request being made;
- assess every communication across each of the platforms identified above;
- determine which communications are official documents of the Minister under the FOI Act;
- determine whether any refusal reason exists in relation to those communications subject to the FOI Act; and
- to the extent the communications are considered not to be otherwise exempt from disclosure, consult the other party or parties involved.

The processes of identification and consultation alone would require a considerable amount of time to complete, and I accordingly consider that effort required would be a substantial and unreasonable diversion of the Minister's resources.

While the processing of requests for access to documents is a legitimate part of a Minister's functions, it is not possible to reasonably divert resources to process your request.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed. Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the specific documents you wish to access.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request;
- make a revised request; or
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and will start on the day after you receive this notice. I am the relevant person for you to contact for the consultation process.

If you were to revise your request in a way that adequately addresses the practical refusal grounds outlined above, we would recommence processing it. Please note that the time taken to consult with you regarding the scope of your request is not taken into account for the purposes of the time limit for processing your request.

If you do not do one of the three things listed above during the consultation period or you do not consult with me during this period, your request will be taken to have been withdrawn.

I note that according to your email of 22 November 2016, you consider that the Minister is deemed to have refused your request. Given your stated intention to appeal that deemed refusal, I considered it appropriate to respond in the above terms.

Should you wish to discuss any aspect of your request, please contact this office.

Yours sincerely



James Lambie
Chief of Staff

23 NOV 2016