



29 November 2016

In reply please quote:

FOI Request FA 16/11/00182
File Number: ADF2016/65888

Mr Ben Fairless

Sent via email: foi+request-2546-5797f979@righttoknow.org.au

Practical refusal notice - *Freedom of Information Act 1982*

Dear Mr Fairless,

I am writing to you in relation to your request under the *Freedom of Information Act 1982* (the Act) on 2 November 2016 for:

I would like to see all internal correspondence within the department regarding the processing of FOI requests.

I'm only interested in documents that relate to the internal processing of FOI requests, not FOI requests themselves. I don't consent to the redaction of departmental employee names or positions, but feel free to redact contact numbers.

Please limit the time period to the last 12 months, and exclude FOI requests for personal information.

On 11 November 2016 you provided the following clarification:

My request is for documents addressed to the FOI section, and documents internally within the FOI section, that relate to the processing of all requests or a group of requests by a specific subject (for example FOI requests on Nauru).

I don't require anything related to a request for personal information unless it's part of a group of requests being processed in a specific way. Personal information of members of the public are explicitly excluded.

I note that your request is currently due on 2 December 2016.

Purpose of this notice

The purpose of this notice is to advise you (as required under s.24AB of the Act) that I consider that a *practical refusal reason* exists under s.24AA of the Act and that I am considering refusing access to the requested documents, under s.24 of the Act. My reasons are set out in this notice. This notice sets out the actions required from you in order to ensure that no 'practical refusal reason' applies to your request.

Advice regarding practical refusal reasons

The Act contains two practical refusal reasons. The first is that processing the request *would substantially and unreasonably divert the resources of the agency from its other operations* (s.24AA(1)(a)). An agency may also refuse an FOI request if the agency is satisfied that the request does not *provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify the document in question* (s.24AA(1)(b)).

It is the Department's view that where it appears that a request under the Act for access to documents is likely to take more than 40 hours to complete, the request should be assessed under s.24AA(1) of the Act to determine whether a practical refusal reason exists in relation to the request. This balances the right of applicants to seek information under the Act with the Department's need to appropriately allocate resources to its functions.

Application of s.24AA of the FOI Act to your request

In the 12 months prior to the date you lodged your request (3 November 2015- 2 November 2016) the Department received 27,325 FOI requests. 557 of these were requests for information other than personal information.

To calculate the amount of time that your request is likely to take to process, I have estimated that each request contains an average of 10 emails (two pages per email), and involves an average of six employees in the document retrieval and decision making stages.

Based on the above estimate, the Department would hold an estimated 11,140 pages relevant to the scope of your request. At five minutes per page, this would take more than 928 hours to process.

Additionally, you have specifically requested details of all involved employees. Before releasing the details of employees, I consider it appropriate to consult with these employees to give them the opportunity to identify harm that release of their details would cause them. At six employees per request, and an hour per consult, I estimate that this process would take 3,342 hours to complete. I note that while many of these individuals would be common to multiple requests, it is not possible to more accurately calculate this number without processing your request.

In light of the above, I am satisfied that your request would substantially and unreasonably divert the resources of the Department from its other operations and that a practical refusal reason applies to your request as it currently stands. Therefore, I am required to consult with you under s.24AB of the Act regarding the scope of your request.

Consultation over scope

You may consult with me on the scope during the *consultation period* which is from the date this notice until close of business **Tuesday 13 December 2016**.

You may request that I extend the consultation period if you wish, by writing to me before the end of the consultation period at foi@border.gov.au. The requirements for the consultation period are contained in s.24AB(5).

Suspension of processing time

Please note that s.24AB(8) of the FOI Act provides that the legislated processing time for your request is 'suspended' until you have either:

- revised the request; or
- advised that you do not intend to revise the request.

In addition, if you do not contact me in writing before the end of the consultation period (to either withdraw your request, revise or affirm the scope of your request, or ask for an extension of time to respond to the s.24AB notice) your request will be deemed to be withdrawn in accordance with s.24AB(7) of the Act. The relevant legislation is attached to this notice.

Yours sincerely

Brad Collins
Freedom of Information Section
Department of Immigration and Border Protection
Email: foi@border.gov.au

Attachment

- ✓ Attachment A - Extract of relevant legislation

Attachment A – Extract of relevant legislation

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.