



Australian Government
Department of Immigration and Citizenship

5 July 2013

File ref ADF2013/20185
FOI ref FA 13/07/00163

Dear Applicant

Advice under s.24(2) and notice under s.24AB of the *Freedom of Information Act 1982*

I am writing to you in response to your request under the *Freedom of Information Act 1982* (the Act) seeking documents about incidents in immigration detention.

This request is one of 21 valid requests received by the Department of Immigration and Citizenship (the department) between 24 June and 5 July 2013 seeking access to documents about incidents in immigration detention. If duplicate requests for these documents about incidents in immigration detention are removed the number of unique requests totals 19.

Purpose of this notice

There are two purposes of this notice.

The first purpose is to advise you that, in accordance with s.24(2) of the FOI Act, the department is treating the 19 requests for documents about incidents in immigration detention as a single request as the requests relate to documents, the subject matter of which is substantially the same.

The second purpose is to advise you that I consider that the work involved in processing this request in its current form would substantially and unreasonably divert the resources of the department from its other operations due to the size of the request. This is called a practical refusal reason (s.24AA)

On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

Advice concerning the treating of the requests as a single request

Section 24 provides for agencies to combine requests where '*the requests relate to documents, the subject matter of which is substantially the same*' if, once combined, a practical refusal reason exists. It is my view that the subject matter of documents about incidents in immigration detention is substantially the same.

I note that Section 24 does not differentiate between requests received from a single applicant and those received from a number of applicants.

people our business

The request consultation period, which is outlined below, requires the applicant to interact with the department in order to progress the request. To assist in this process you may wish, in agreement with the other applicants, to appoint a representative to correspond with the department on your behalf.

Why I intend to refuse your request

The request, as combined, seeks access to a total of 19 documents about incidents in immigration detention. The Act contains two 'practical refusal reasons'. The relevant one for the purposes of this notice is that processing the request *'would substantially and unreasonably divert the resources of the agency from its other operations'* (s.24AA(1)(a)(i)).

It is my view that the request, as it currently stands, satisfies this practical refusal reason because it would take an unreasonable amount of time to finalise the decision on the requested documents.

As advised, I have identified a total of 19 unique requests for documents about incidents in immigration detention. Based on the department's previous experience assessing documents about incidents in immigration detention of taking an average of three (3) hours to locate, assess and prepare documents and a decision per report, I estimate that, at a minimum, it would take the department approximately 57 hours to process this request.

It is the department's view that requests under the FOI Act for access to documents should take no more than 40 hours to complete. Our position is that requests requiring more than 40 hours to complete are an unreasonable and substantial diversion of the department's resources. This balances the right of applicants to seek information under the FOI Act with the department's need to appropriately allocate resources to its functions. There will be instances where, due to the nature of the request, it may be appropriate to allocate more resources to an FOI request. I am, however, satisfied that in this case such circumstances do not exist.

FOI resources in agencies are finite, as most staff in agencies are not trained to make decisions under the FOI Act. The other staff of the department are employed to undertake specific functions other than to make FOI decisions. It is not feasible to remove untrained staff from their other duties to meet voluminous FOI requests. Even if it were feasible, diverting those staff from their normal duties would have a detrimental impact on the other services normally delivered by those staff. Unless there were compelling public interest factors in the release, this would be a substantial and unreasonable diversion of DIAC's resources.

As a result, I am satisfied that your request as it currently stands *would substantially and unreasonably divert the resources of DIAC from its other operations*. I am therefore unable to progress your request until I have consulted with you on its scope.

Advice concerning the documents in scope

The documents within the scope of this request consist of documents about incidents in immigration detention. They cover topics such as self-harm (threatened, attempted and actual), the use of force, voluntary starvation and a major disturbance.

The department recognises that there is a significant public interest in the welfare of clients in immigration detention. This, however, needs to be balanced against other public interests including, but not limited to, the expectation of all clients (and their families), including those individuals in immigration detention, that their personal information will be protected. There is also the need to protect the secure operation of immigration detention facilities and the proper and efficient conduct of the agency.

Given the material already in the public domain, including the incident 'spreadsheets' (from which the scope of this request was originally extracted), published transcripts of parliamentary hearings, reports on immigration detention by the Commonwealth Ombudsman and the Australian Human Rights Commission, information accessible on www.immi.gov.au, information available through media releases and media reports, as well as court proceedings, the public interest in disclosure of information regarding the welfare of clients in immigration detention is already largely filled without further disclosure.

Consultation over scope

You now have an opportunity to revise your request to enable it to proceed.

You may consult with me either directly, or through a representative, on the scope during the **consultation period** which is from the date of this notice until close of business **Friday 19 July 2013**.

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@immi.gov.au. (s.24AB(5)).

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:

- withdrawn the request, or
- revised the request, or
- advised me that you do not wish to revise the request.

In order for your request to be revised in such a way as to progress your request, you will have to reach an agreement with the department on a scope that would not meet the practical refusal reason; in other words, the scope would no longer be considered to be a substantial and unreasonable diversion of the agency's resources.

As there are multiple applicants who have a stake in this request, in order for the request to be adequately revised, or for you to advise that you do not intend to revise the request, **we will require agreement from each individual** with a stake in the request. As advised above, you may wish to appoint a representative to consult with the department on your behalf. Most of the applicants have lodged their requests via the publicly available Right to Know website, and the department can facilitate contact with those applicants who have not used this route if requested.

If I am not contacted by each individual, or by someone representing each individual (including yourself), before the end of the consultation period with an agreed position (to either revise or affirm the scope of your request, withdraw 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.

How to make a complaint about the handling of your FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

I look forward to hearing from you shortly.

Yours sincerely



Linda Rossiter
Director
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