

Our Ref: CRM 2017/276

21 December 2016

HW Right to Know  
By Email: [foi+request-2855-6aa610e0@righttoknow.org.au](mailto:foi+request-2855-6aa610e0@righttoknow.org.au)

Dear HW,

**Freedom of Information Request - Section 24AB(2) Notice**

I refer to your application dated 15 December 2016 under the *Freedom of Information Act 1982* (the Act) seeking access to:

*"Please disclose the number and nature of all previously investigated complaints of homophobia against the Australian Federal Police between 2000 and present. All personal identifiable information, should be redacted from the documents."*

**Notification**

1. At this time, the AFP is satisfied that it is unable to comply with section 17(1) of the Act and provide a list as stipulated by your request. Section 17 of the Act states:

**Requests involving use of computers etc.**

*"(1) Where:*

- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;*
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and*
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and*
- (c) the agency could produce a written document containing the information in discrete form by:*
  - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or*

*(ii) the making of a transcript from a sound recording held in the agency;*

*the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.*

*(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations."*

2. Notice is hereby given under section 24AB(2) of the Act of an intention to refuse to grant access to the documents sought, pursuant to section 24AA(1) of that Act.

3. I am the agency internal review officer with whom you may consult with a view to making the request in such a form that would remove the ground for refusal. I may be contacted on (02) 6131 6131.

4. The following information is provided to assist you in making a request in such a form that the grounds for the section 24AA refusal are removed.

### **Scope of the Request**

5. Enquiries with the relevant line areas have indicated that the AFP databases do not capture the information in the way you have requested due to the way in which the data fields are coded and would require manually searching personnel records to match potential code of conduct classifications.

6. There is no requirement for the AFP to create a new document utilising computer systems unless a document can be produced in a discrete form. In its current form, it is not possible to produce the information you are seeking without extensive interrogation and manually checking of records. Professional Standards alone would be required to manually search each record to create a list of the information you have requested. The AFP is therefore of the view that this is a burden in terms of resources and is made relevant to a section 24AA(1) decision by virtue of sections 24AA(2)(a), (b), (c) and (d).

### **Revising the scope of your request**

7. If you wish to revise the scope of your request you might consider reviewing the list of conduct breaches that are outlined on page 132 of the AFP Annual report.

8. Under sub-section 24AB(6) of the Act, you are required within the 14 day period to do one of the following:

1. withdraw the request;
2. make a revised request; or
3. indicate that you do not wish to revise the request.

9. As noted above, I would of course be available to discuss the matter. Should you not avail yourself of this opportunity to consult within 14 days of the date of this letter, notice will be given of a decision to refuse access on the basis stated above.

10. An extract of sections 24AA and AB of the Act is attached for your information.

Yours sincerely,



Nathan Scudder  
Coordinator  
Freedom of Information  
Australian Federal Police

## 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 [section] 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.