



Australian Government

Department of Communications and the Arts

Anonymous
Right to Know

(Via email: foi+request-2989-be194f3b@righttoknow.org.au)

Dear Applicant

Freedom of Information Request 20- 1617

I refer to your email sent to the Department on Friday 27 January 2017, seeking access under the *Freedom of Information Act 1982 (FOI Act)* to:

"...a document or documents that detail:

- total monies paid by the Department of Communications and the Arts (or its predecessors) (the Department) to Richard Cobden SC in respect of his provision of legal advice to the Department in the three years prior to the day that Angela Flannery commenced her employment at the Department (some time in 2013 I believe);*
- total monies paid or otherwise owing by the Department to Richard Cobden SC in respect of his provision of legal advice to the Department from the day Angela Flannery commenced her employment at the Department to the date of this application; and*
- total monies paid or otherwise owing by the Department to senior lawyers who have been awarded the title of Senior Counsel (post-nominal: 'SC') or Queen's Counsel ('QC') in respect of their provision of legal advice to the Department from the day Angela Flannery commenced her employment at the Department to the date of this application..."*

Notice of intention to refuse

I am writing pursuant to subsection 24AB(2) of the FOI Act to notify you of my intention, as an authorised decision-maker under section 23 of the FOI Act, to refuse your FOI request on the basis that I am satisfied that a practical refusal reason under subsection 24AA(1) exists.

Please note that normally, in circumstances such as these, the Department would have contacted you by telephone, to discuss the scope of your request informally. However, as you have opted to make the application anonymously and have not provided the Department with any telephone or a personal email contact, we have not been able to do this.

Reasons for my intention

In making my decision I have had regard to the:

- provisions of the FOI Act and case law considering those provisions;
- the Information Commissioner's FOI Guidelines issued under section 93A of the FOI Act;
- the Department's FOI Policy;
- information and advice from the Departmental officer responsible for the processing of FOI requests;
- information and advice from the Departmental officers responsible for the processing of payments relating to the procurement of external legal services; and
- publicly available material on the Australian Government's AusTender website, relating to the Department's procurement of external legal services, including information about Departmental Contract Notices, specifically in relation to Mr. Richard Cobden, SC.

Relevant law

Subsection 24AA(1) of the FOI Act states that 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;
 - (ii);
- (b) The request does not satisfy the requirement in paragraph 15(2)(b)(identification of documents).

Subsection 15(2)(b) of the FOI Act states that in making a FOI request, the request must provide such information concerning the document as is reasonably necessary to enable a responsible officer of the Agency, or the Minister to identify it.

Consideration

I consider that your request does not satisfy the requirements of subsection 24AA(1), and in particular would substantially and unreasonably divert the resources of the agency from its other operations.

In forming this view, I have taken into account advice from relevant staff within the Office of the General Counsel that it is not possible to undertake an electronic search of the Department's financial systems to identify amounts paid to legal practitioners generically described as Senior Counsel or Queen's Counsel, during the period encompassed by your request (being the period commencing on the day of Ms Flannery's employment by the Department and ending on the date of your request).

I have also taken into consideration that while it may be possible to generate a financial report in order to identify total amounts paid to external legal service providers during the relevant period, the resources that would be required to then:

- (i) identify the total payments made to legal service providers designated as Senior Counsel or Queen's Counsel (from which it would not be obvious from the financial system whether their services were used, or whether they were indeed Senior or Queens Counsel); and
- (ii) then determine if the identified Senior Counsel and Queen's Counsel were also designated as Senior Counsel and Queen's Counsel during the specified period;

would substantially and unreasonably divert the resources of the agency in accordance with subparagraph 24AA(1)(a)(i).

In forming my decision above, I have taken into consideration that:

- (a) the FOI Act does not require the Department to create a new document containing the information sought;
- (b) there is only one Departmental officer assigned to FOI processing and that processing of your request would impact the processing of other FOI requests and other work undertaken by that officer;
- (c) information about the Department's procurement of external legal services (above the contract threshold of \$10,000) and the amounts of total monies paid to specific legal practitioners (including those who are designated as Senior Counsel or Queen's Counsel), is publicly accessible (at no charge) on the Australian Government's AusTender website (<https://www.tenders.gov.au>); and
- (d) the amount of 'total monies paid by the Department to Mr. Richard Cobden SC' during the period between the commencement of Ms. Flannery's employment with the Department and the date of your request, is publicly available (at no charge) on the Australian Government's AusTender website (<https://www.tenders.gov.au>)

Consultation process

In accordance with section 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 and therefore your response is due by 7 March, 2017.

Please note that if you do not take this opportunity to consult, in accordance with section 24AB(7)(a), your request will be taken to have been withdrawn under section 24AB(6).

In order to provide you with information to assist you to revise your request, you may wish to consider confining your request to capture only those documents not containing publicly available information.

The Department's FOI Coordinator, Felicia Nevins, phone (02) 6271 1277, is available to provide you, so far as is reasonably practicable, with any information to assist you in amending your request under the FOI Act.

Any submissions should be sent in writing either by email to (foi@communications.gov.au) or by ordinary post:

FOI Coordinator
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shireen Sekhon', with a horizontal line extending from the end of the signature.

Shireen Sekhon
Legal Director
Office of the General Counsel
21 February, 2017