



11 April 2017

In reply please quote:

FOI Request FA 17/02/00489

File Number: ADF2017/20704

Louise Staden

Sent via email: foi+request-3000-58adc415@righttoknow.org.au

Dear Ms Staden

Notice under s.24AB of the *Freedom of Information Act 1982*

I am writing to you in relation to your request under the *Freedom of Information Act 1982* (the Act) on 31 January 2017 for:

List of medical conditions that required a referral to the Ministry of the Commonwealth that were ultimately awarded Visas in year 2015 - 2016. No patient details are required or details of any medicals undertaken. Just the name of the condition for each referred applicant that were granted a 189, 190 and 489 visa

I note that your request was due on 1 April 2017.

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 documents in the form requested, as provided under s.24 of the Act. My reasons are set out in this notice. You are invited to contact me to alter or narrow the scope of your request to ensure that no '*practical refusal reasons*' apply.

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 operation*' (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 if a practical refusal reason exists in relation to the request. This balances the rights of applicants to seek information under the Act with the Departments need to appropriately allocate resources to its functions.

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

The FOI section has consulted with the relevant business area against the current scope of your request. I am satisfied the Department does not hold any discrete documents (electronic or hard copy) that fall within the scope of your request.

Furthermore, the relevant business area has advised that it would take several hundred hours of work to create discrete documents to meet your request by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating the stored information (s.17(1)(c)(i) of the Act.). The reason for this is the business area would need to manually analyse every visa application which was referred to a Medical Officer of the Commonwealth (MOC).

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.

Possible ways to reduce Scope

In order to reduce the scope of your request you may wish to consider changing the scope of your request to one that can be readily reported. The business area has advised that a list of top health conditions referred to a MOC resulting in 'meeting' or 'not meeting' the health outcome could be provided.

Consultation over scope

You may consult with me on the scope during the consultation period which is from the date of this notice until close of business **25 April 2017**.

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).

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

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

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.

I look forward to hearing from you shortly.

Yours sincerely

Renata Buchanan

Authorised FOI Decision Maker
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.