



Australian Government
Department of Employment

Mr Jackson Gothe-Snape

By email: foi+request-3002-1b508b21@righttoknow.org.au

Dear Mr Gothe-Snape

1. I refer to your correspondence received by the Department of Employment (the Department) on 31 January 2017 in which you requested access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

Records as defined in the Commonwealth Procurement Rules clause 7.2 relating to the tender referenced by the CN ID of CN3174232.

Background

2. As an initial step in processing your original request, the Information Law Team liaised with officers in the Providers and Purchasing Branch, within the Department's Quality and Integrity Group, regarding the nature and number of documents held by the Department which were likely to be relevant to your request.
3. On the basis of information provided by the Providers and Purchasing Branch and my preliminary consideration of documents within the scope of your request, I estimated that it would take over **200 hours** to process your request, including time for examination of documents for decision making and for preparing the Department's decision and documents for release. This preliminary consideration also indicated that the Department would be required to consult a significant number of third party organisations to provide them with an opportunity to contend that certain information was exempt from release under the FOI Act, and to have regard to any submissions.
4. The Department notified you on 24 February 2017 of its intention to refuse your request on the grounds that a practical refusal reason existed, i.e. processing the request would substantially and unreasonably divert the resources of the Department. In that notice, we provided you with an opportunity to revise the scope of your request so that the practical refusal reason no longer existed.
5. On 2 March 2017, you revised the scope of your request as follows (as formatted by the Department):
 - *A list of tenderers by region and tender subcategory (employment provider services etc);*
 - *The outcome of each region and subcategory under the tender, ie the preferred tenderer by region and subcategory along with the contract value; and*
 - *For the region and subcategory with the highest contract value in which Sarina Russo Job Access (Australia) Pty Ltd was the preferred tenderer, records required to be kept under the Commonwealth Procurement Rules clause 7.2 for 'how value for money was considered and achieved', and 'relevant decisions and the basis of those decisions.'*

6. On 3 March 2017, the Department indicated by email that your revised request did not provide enough information for the Department to identify the documents to which you were seeking access, and provided you with another opportunity to revise the scope of your request. We also indicated that, once you had revised the scope of your request in light of the fact that the Department does not calculate 'contact value' at a regional level, and that the tender process for Employment Services did not select 'preferred tenderers', the Department would be able to consider your revised request.
7. On 6 March 2017, you revised the scope of your request as follows:
 1. *A list of tenderers by region and tender subcategory (ie employment provider services, Work for the Dole, New Enterprise Incentive Scheme);*
 2. *For the Sydney Greater West region, records required to be kept under the Commonwealth Procurement Rules clause 7.2 for 'how value for money was considered and achieved', and 'relevant decisions and the basis of those decisions' in relation to the successful tender from Sarina Russo Job Access for Employment Provider Services and the New Enterprise Incentive Scheme.*

Decision on access to documents

8. As an authorised decision-maker pursuant to subsection 23(1) of the FOI Act, I have decided to refuse your request under subsection 24(1) of the FOI Act because I am satisfied that a practical refusal reason still exists under section 24AA of the FOI Act in relation to your request. The practical refusal reason is that the work involved in processing your request would substantially and unreasonably divert the resources of the Department from its other operations.
9. The evidence upon which I have based my decision is:
 - correspondence received from you on 31 January 2017, outlining the particulars of your original request;
 - the notice issued by the Department under section 24AB of the FOI Act on 24 February 2017;
 - your correspondence of 2 March 2017 revising the original scope of the request;
 - the Department's correspondence of 3 March 2017 providing you with a further opportunity to revise your request;
 - your correspondence of 6 March 2017 further revising your request;
 - consultations with Departmental officers about:
 - the number and nature of the documents in your original and revised requests;
 - the Department's operating environment and functions;
 - factors relevant to assessing the time and resources involved in processing your request;
 - factors relevant to the assessment of whether processing your request would involve an unreasonable diversion of the Department's resources;
 - the FOI Act; and
 - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for decision

Substantial diversion of resources

10. While your revised request has removed a number of documents from scope, such as documents concerning specific employment regions, it has not removed from scope documents of a broader nature. Your revised request still captures documents which cover multiple regions, and which cover categories of employment services as a whole. Further, the part of your request concerning 'relevant decisions and the basis for those decisions' necessarily captures documents which consider the tender process, and Sarina Russo's response to the request for tender, as a whole. For this reason, and for the reasons outlined below, your revised scope has not reduced the time or resources required to process your request.
11. Even in its revised form, your request captures over **900 pages** of documents. This is a conservative estimate which has not taken into account some documents owing to uncertainty as to their exact size. For example, we are advised by the Providers and Purchasing Branch that certain relevant documents currently in spreadsheet form may run to **1795 pages** depending on how they are formatted. Were these documents to be included in our estimate as to the number of pages falling within the scope of your request, it is reasonable to assume that the amount of time required to process your request would be significantly larger.
12. Section 27 of the FOI Act relevantly provides that if a requested document contains business information about an organisation and it appears to an agency that the organisation might reasonably wish to make a contention that the document is exempt under section 47 (trade secrets) or conditionally exempt under section 47G (business information), then the agency must not decide to give access to the document unless the organisation has had a reasonable opportunity to make submissions in support of the exemption contention and the agency has had regard to any submissions.
13. Your revised request has not had the effect of reducing the number of third parties to be consulted under section 27 of the FOI Act. Our section 24AB notice dated 24 February 2017 indicated that '**at least 30**' third party organisations would need to be consulted. I am satisfied, having had further time to consider the documents falling within the scope of your request, that the Department would be required to consult with **over 50** third party organisations in order to provide them with an opportunity to contend that certain material is exempt from release under the FOI Act.
14. Based on a conservative estimate of 2 hours for each third party, I estimate that it would take Department staff approximately **100 hours** to undertake consultation with affected third parties. This includes time for identifying the material for consultation and an appropriate contact, preparing an edited copy of the documents and covering letter, following up responses and answering any enquiries. Further, given the commercially sensitive nature of the relevant documents, it is reasonable to anticipate that significant time would be required to read and consider submissions by these third parties.
15. Factoring in time for examining relevant documents for decision making (**78 hours**), consultation with third party organisations (**100 hours**) and preparing a decision on access and the documents for release (at least **18 hours**), as well as five free hours of decision making time, I have estimated that the total time for processing your revised request would be approximately **191 hours**. On this basis, I am satisfied that the work required would substantially divert the resources of the Department from its other operations.

The diversion would be unreasonable

16. In addition to being a substantial diversion of the Department's resources, I am satisfied that processing your revised request would be an unreasonable diversion of the Department's resources.
17. The Providers and Purchasing Branch is responsible for providing operational support to the Delivery and Engagement Group and to program and policy areas within the Department's National Office in relation to:
 - Deed and Contract Advice (for all employment services such as jobactive, Work for the Dole Coordinator Services, Youth Programs, Transition to Work etc);
 - Employment Services contract and performance management advice;
 - Complaints management, including support for complaints received via the National Customer Service Line, Ministerial correspondence and the Commonwealth Ombudsman;
 - Employment purchasing - for all employment programs; and
 - Financial Viability assessments for the Department and other government departments.
18. There is compelling public interest in the work performed by the Providers and Purchasing Branch, and processing your request would divert the resources of the team from their ordinary duties.
19. Processing your request would also require a significant amount of work from the Information Law Team, who not only process FOI requests but also provide legal advice to the Department on a range of matters. At any given time, the Information Law Team is responsible for managing a large number of FOI requests, including requests from individuals seeking access to documents containing their personal information, and requests made by other interested parties seeking access to other information. It is important that other FOI requests made to the Department continue to be processed in accordance with the statutory requirements set out in the FOI Act. Processing your request would hinder the Department's ability to process other FOI requests in accordance with statutory timeframes, thereby disadvantaging those applicants.
20. Accordingly, I consider that the work required to process your request would substantially and unreasonably divert the resources of the Department from its other operations. I am satisfied that a practical refusal reason still exists in relation to your request and have decided to refuse it on that basis.

Rights of review

21. I have set out your rights to seek a review of my decision at **Attachment A**.
22. Should you have any enquiries concerning this matter, please do not hesitate to contact me via email at foi@employment.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Ramsay', written in a cursive style.

James Ramsay

Government Lawyer

Information Law Team

Information Law, Practice Management and Corporate Advising Branch

9 March 2017

Your rights of review

Internal Review

Section 54 of the FOI Act gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post: The FOI Coordinator
 Department of Employment
 Location Code: C12MT1-LEGAL
 GPO BOX 9880
 CANBERRA ACT 2601

Email: foi@employment.gov.au

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC or Commonwealth Ombudsman about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

We are advised by the AIC that applications for review or complaint must be lodged with the AIC in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218
 SYDNEY NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street
 SYDNEY NSW 2000

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.