



Office of The Hon Alan Tudge MP

Minister for Human Services

3 April 2017

Our reference: LEX 27836

Mr Justin Warren

By email: foi+request-3172-d6b023bb@righttoknow.org.au

Dear Mr Warren

Decision on your Freedom of Information request

I refer to your revised request, dated 24 March 2017 and received by the Minister's Office on the same date, for access under the *Freedom of Information Act 1982* (the **FOI Act**). Your revised request is on the following terms:

'I am happy to limit the scope of my request to formal meetings only.

The items listed in my request are aimed at defining the documents for the same set of meetings, rather than each item referring to a different set of meetings.

By referring to "diary extracts" I am referring to a printout of calendar data similar to Calendar Details Style in Outlook 2013 (<https://support.office.com/en-us/article/Print-a-calendar-showing-appointments-and-meetings-ad03c408-1607-4a24-8b35-2c9f46930760>)

By 'minutes' I mean the subsequent documentation that formally records the proceedings, discussions, outcomes, etc. of the meeting. Minutes is a commonly used term, but may also include other attachments or notes that form part of the formal record of the meeting. I expect that, in general, formal minutes would be produced. The formal record will be sufficient to fulfil the scope of my request.

I note, however, that handwritten notes by staff were used by Attorney-General Brandis as part of the formal record of his discussions with the then Solicitor-General Justin Gleeson in his submission to a Senate Inquiry (http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/SolicitorGeneralOpinion/Submissions). If such notes exist and capture important information not included in the formal minutes, then those notes would fall within the scope of this request'.

My decision

I have decided to refuse your request under section 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied under section 21AA(1)(b) that your request does not provide sufficient information to enable me to identify the documents you are seeking, as required by section 15(2)(b) of the FOI Act.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

You can ask for a review of the decision

If you do not agree with my decision, you may apply to the Information Commissioner for a review of the decision. I have attached an information sheet that explains your rights of review under the FOI Act (**Attachment B**).

Further assistance

If you have any questions please email me at minister@humanservices.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Asten', with a long horizontal flourish extending to the right.

Andrew Asten
Authorised FOI Decision Maker



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Minister for Human Services

Attachment A

REASONS FOR DECISION

What you requested

- '1. Diary extracts listing the date, time, and duration of any and all meetings held with the Department of Human Services between 1 Jan 2016 and 31 Dec 2016, inclusive.
- 2. Meeting agendas for any and all meetings held with the Department for Human Services between 1 Jan 2016 and 31 Dec 2016, inclusive.
- 3. Minutes, and other notes for any and all meetings held with the Department for Human Services between 1 Jan 2016 and 31 Dec 2016, inclusive'.

Request consultation process

On 23 March 2017, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request did not clearly identify the documents you were seeking access to. I gave you an opportunity to consult with this office to revise your request so as to remove the practical refusal reason. Specifically, I suggested that you limit your request to be for formal minutes only.

On 24 March 2017, you revised your request to be for the following:

I am happy to limit the scope of my request to formal meetings only.

The items listed in my request are aimed at defining the documents for the same set of meetings, rather than each item referring to a different set of meetings.

By referring to "diary extracts" I am referring to a printout of calendar data similar to Calendar Details Style in Outlook 2013 (<https://support.office.com/en-us/article/Print-a-calendar-showing-appointments-and-meetings-ad03c408-1607-4a24-8b35-2c9f46930760>)

By 'minutes' I mean the subsequent documentation that formally records the proceedings, discussions, outcomes, etc. of the meeting. Minutes is a commonly used term, but may also include other attachments or notes that form part of the formal record of the meeting. I expect that, in general, formal minutes would be produced. The formal record will be sufficient to fulfil the scope of my request.

I note, however, that handwritten notes by staff were used by Attorney-General Brandis as part of the formal record of his discussions with the then Solicitor-General Justin Gleeson in his submission to a Senate Inquiry (http://www.apph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/SolicitorGeneralOpinion/Submissions). If such notes exist and capture important information not included in the formal minutes, then those notes would fall within the scope of this request'.

What I took into account

In reaching my decision I took into account:

- your original request dated 27 February 2017 and your revised request on 24 March 2017;
- consultations with ministerial staff about:
 - the nature of the requested documents; and
 - the Minister's Office operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**);
- the FOI Act.

Reasons for my decisions

I am authorised to make decisions under section 23(1) of the FOI Act.

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that you have not provided sufficient information to identify the requested documents. The reasons for my decision are outlined below.

Practical refusal reason

Section 24AA of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy the requirement in section 15(2)(b) of the FOI Act (identification of documents).

Section 15(2)(b) of the FOI Act provides that a valid FOI 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'.

Why your request does not satisfy the requirement in section 15(2)(b)

Your revised request identifies formal meeting minutes, agendas, and extracts from the Minister's diary as falling within the scope of your request. In isolation, documents satisfying these three aspects of your request may be identifiable.

However, you have also requested handwritten notes by staff that form part of a formal record of discussions between this office and the Department of Human Services (the department). Specifically, you state that, 'if such notes exist and capture important information not included in the formal minutes, then those notes would fall within the scope of this request'. This is a broad statement that may capture a wide range of documents. It would not be appropriate for a ministerial staff member to make a subjective determination on which handwritten notes, if any, are of sufficient importance to fall within in scope of your

request. For this reason, I am unable to reasonably identify all of the documents you are seeking in your request.

Conclusion

In summary, I am satisfied that your request does not satisfy the requirement in section 15(2)(b) of the FOI Act, in that it does not provide sufficient information to enable me to identify the documents you are seeking.

I have found that a practical refusal reason exists in relation to your request for access to the documents. Accordingly I have decided to refuse your request under section 24(1) of the FOI Act.



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Minister for Human Services

Attachment B

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Application for review of decision

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision by the Information Commissioner (see section 54L).

Applying for review by the Information Commissioner

If you do not agree with my decision, you can ask the Information Commissioner to review the decision.

You will have 60 days to apply in writing for a review by the Information Commissioner.

You can **lodge your application for review**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at **www.oaic.gov.au**.
- If you have one, you should include with your application a copy of the decision on your FOI request.
- Include your contact details.
- Set out your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by a Minister in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are provided above.

Commonwealth Ombudsman

You may also complain to the Ombudsman concerning action taken by a Minister in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.