



Mr Richard Smith

By email: [foi+request-3261-33f970bc@righttoknow.org.au](mailto:foi+request-3261-33f970bc@righttoknow.org.au)

Dear Mr Smith

### FOI request consultation

We refer to your request of 19 March 2017 for access under the *Freedom of Information Act 1982* (FOI Act) to,

- a) Documents relating to the Commonwealth Department of Agriculture's consideration and decision to apply for ongoing access to Telecommunications Data as per the *TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979*;
- b) The date of each Application made by Commonwealth Department of Agriculture for access to Telecommunications Data under the *TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979*;
- c) Documents relating to how Commonwealth Department of Agriculture deals with the privacy of data obtained through access to ongoing access to Telecommunications Data as per *TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979*, including how the data received is obtained, assessed, stored and ultimately destroyed;
- d) The number of documents containing data obtained by the Commonwealth Department of Agriculture through its ongoing access to Telecommunication Data; and
- e) The number of documents containing data obtained by the Commonwealth Department of Agriculture through its ongoing access to Telecommunication Data that Council has determined are not likely to be required for a permitted purpose and therefore has destroyed, for the period of time from since the commencement of ongoing access to the data was granted until 17th March 2017.

Under s 24AA(1)(a)(b) a practical refusal exists where a request does not satisfy the requirements of s 15(2)(b) of the FOI Act to provide sufficient information concerning the documents reasonably necessary for the agency to identify them. As worded, the decision-maker considers your request does not satisfy the requirements of s 15(2)(b).

The wording in parts a) and c) for '*Documents relating to...*' does not provide sufficient clarity about the documents you are seeking. Where your request refers to '*The date of each Application....*' In part b), it is not clear whether you are seeking a list of date information on its own or to include information about any such requests. Where your request refers to '*The number of documents ....*' in parts d) and e) it is not clear whether you are requesting the documents that contain the specified information or a document summarising a count of the number of such documents. Without a

specified date range it is unclear what period of time your request is intended to cover. Further, you will need to clarify which body you are referring to in referring to '*that Council*' in part e) of your request.

Without clarification there is insufficient information to enable the department to identify the documents. Unless this scope issue is resolved, the decision maker intends to refuse your request. However, you have an opportunity to revise your request to address the practical refusal reason before a final decision is made. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

### **Consultation process**

You have 14 days, from the receipt of this notice, to consult with the department concerning your request.

Under sub-section 24AB(6) of the FOI Act, you are required within the 14 day period to:

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

If you do not consult with the department or do one of these things within the next 14 days, your request will be taken to have been withdrawn. Even with consultation, if the scope of your request cannot be sufficiently revised to provide clarity and be processed without requiring a substantial and unreasonable diversion of departmental resources from its other operations, the request may be refused. You should also be aware that the right of access to documents in the FOI Act is to existing documents and only requires agencies to produce documents in limited circumstances.

Please note the time period for making a decision in response to your request is suspended until the conclusion of the consultation process described in this letter.

### **Contact details**

Should you wish to discuss any issues arising from this letter, please contact the department by email to [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au).

Yours sincerely

[by email]

Charine Bennett  
Principal Government Lawyer  
Office of the General Counsel

24 March 2017