



**Australian Government**  
**Department of Agriculture**  
**and Water Resources**

Ref: FOI 2016/17-59

Mr Richard Smith

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

Dear Mr Smith

I 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'.*

On 24 March 2017, the department sent you a request consultation notice under s24AB of the FOI Act, because your request did not provide sufficient information to enable requested documents to be identified. (**Attachment A**). The consultation notice explained that this is a practical refusal reason and you had 14 days within which to consult with the department on the revision of your request.

On 29 March 2017, you emailed a response to the request consultation (**Attachment B**). I have considered your comments that you did not consider the request required revision, and responses to parts of the request.

## Decision on access to documents

I am authorised to make decisions under the FOI Act and my decision is set out below.

The department has undertaken a request consultation process and taken reasonable steps to assist you to revise your request to address the requirement to provide sufficient information concerning the documents as is reasonably necessary for the agency to identify them.

The request consultation notice explained that the words '*Documents relating to...*' in parts a) and c) of your request do not provide sufficient clarity about the documents you are seeking. Your response did not meaningfully clarify part a) of the request and did not address part c) at all.

Your response to clarification of parts d) and e) starting with the wording '*The number of documents...*', does not allow any documents to be identified. The department does not hold any such documents containing the final sums of such documents for all requests over the operation of the legislation. This information is not required to be held, nor is the department required to produce documents as the information is not able to be produced as a report from a database or stored information.

Having considered your response, I am satisfied that the practical refusal reason remains. Therefore, I have decided to refuse access to your request under s 24(1) of the FOI Act.

## Review rights


If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au).

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website [www.oaic.gov.au](http://www.oaic.gov.au) or phone the OAIC on 1300 363 992.

## Contact details

Should you wish to discuss any issues arising from this letter, please contact FOI Officer Melissa Nickols by telephone on 02 6272 3537 or email [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au).

Yours sincerely



Wayne Terpstra  
Assistant secretary  
Compliance Division

20 April 2017



**Australian Government**  
**Department of Agriculture  
 and Water Resources**

Ref: FOI 2016/17-59

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

**From:** [Richard Smith](#)  
**To:** [Foi](#)  
**Subject:** Re: Your FOI request - Section 24AB Notice - FOI2016/17-59 [SEC=UNCLASSIFIED]  
**Date:** Wednesday, 29 March 2017 7:12:12 PM

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Dear Ms Nolte-Crimp,

RE: FOI 2016/17-59

Thank you for your response of 24 March 2017 regarding my recent request for Government Information under the Freedom of Information Act 1982.

I do not agree with the decision-maker's proposition in your letter that my FOI request of 19 March 2017 did not provide sufficient information for a responsible officer of the Department to identify the document(s) I am requesting be released.

I will address each part of my request in turn, with respect to the requirements of s15(2)(b) of the Act, below:

My request in a) is very specific. This request is in 2 parts and specifically asks for:

1. the document(s) where Department's executive decision making organ, for example what is commonly referred to as the "Senior Management Team" or "Executive Leadership Team", discussed applying for access to Telecommunication Data prior to access being first granted. These documents would usually take the form of meeting minutes where the issue is discussed, and considered. It could also be a discussion paper or briefing note/minute where the issue is described and a recommendation is made; and
2. the document(s) showing when the Department's executive decision making organ made the decision. Again this would normally be expected to be meeting minutes where the result of the decision is described and the resulting actions are listed such as drafting a letter to the Attorney-General requesting access to Telecommunications Data.

My request as made does indeed therefore satisfy section s15(2)(b) of the Act in that it does "provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it".

It would be a reasonable assumption that the officer responsible for discharging the Freedom of Information function of the Department would be able to identify the minutes or briefing paper relating to the departmental decision making in which the Department decides to request sensitive information under an additional power under Telecommunications Interception legislation.

My request in b) is also very specific. This request specifically asks for a list of every date that the Department of Agriculture and Water Resources requested access to Telecommunications Data.

Again I take the view that it is a reasonable assumption that the officer responsible for discharging the Freedom of Information function of the Department would be able to easily identify and collate the dates of official communications with the Attorney-General requesting access to sensitive Telecommunication Data.

The antithesis of this situation would be to suggest that Departmental requests for access to Telecommunication Data from the Attorney-General happen so frequently and at such an informal level that it is hard to identify such requests. I do not think it is reasonable to assume this state of affairs exists.

My request in d) is a specific request to collate the number of documents obtained through access to Telecommunication Data and provide me with a document listing the final sum. It is a reasonable assumption that the Department has sufficient record keeping of sensitive data that this exercise should be a trivial one.

Following that, my request in e) is a specific request to collate the number of documents that have been destroyed, having been originally obtained through access to Telecommunication Data and provide me with a document listing the final sum of documents destroyed. Again the Department's record keeping should allow a quick summation of this information.

The timeframe relating to my requests d) and e) follows logically to be from the date of the granting of the Department's initial request as identified in a) up to and including the 19 March 2017.

I do acknowledge that I have made a typing error in e) which you have identified in your correspondence. Accordingly, please substitute "that the Department" for the words "that Council" to correct this minor error.

In summary, my FOI requests a) through e) go to the Department's handling of very sensitive information and thus the standard of record keeping should be commensurate with the sensitivity of the information. Accessing and reporting on this information should therefore not require substantial and unreasonable diversion of departmental resources.

Considering that I have illustrated above that all parts of my request, as they were made and without modification, are for specific Government Information that it can be reasonably assumed can be readily identified, I am of the opinion that a practical refusal reason does not exist under s24AA(1)(a)(b) of the Act.

It follows then that s24AB of the Act does not yet apply to this request and I therefore expect my request of 19 March 2017 for Government Information to be actioned by the Department of Agriculture & Water Resources, according to the initial timeframe applying to my request. i.e. I am expecting a reply within 30 days of 19 March 2017.

If this is not the case, considering the public interest importance of this information, I would be amenable for the Department to request an extension to supplying information via a request under s15AA of the Act.

I await your response

Yours sincerely,

Richard Smith

-----Original Message-----

Dear Mr Smith

Please find attached a section 24AB Notice in relation to your FOI request.

Regards,

Marianne Nolte-Crimp

Government Lawyer | Freedom of Information and Privacy Team, Office of the General Counsel

Email [1][email address]

Department of Agriculture and Water Resources [2]www.agriculture.gov.au

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#### References

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1. [mailto:\[email address\]](mailto:[email address])
2. <http://www.agriculture.gov.au/>

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