



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2017/123

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Alan Cole

DECISION BY: Mr Gerard Martin
Assistant Secretary
Ceremonial and Hospitality Branch

The FOI request

In an email dated 22 July 2017 to the Department of the Prime Minister and Cabinet (the Department), Mr Alan Cole (the applicant) made a request under the *Freedom of Information Act 1982* (the FOI Act). The applicant subsequently revised the FOI request on 7 August 2017 to the following:

Responding to your refusal to provide the information I will narrow the request from all functions to x2 functions. The lunch for the Prime Minister of Singapore in the Great Hall and the lunch for the Prime Minister of Israel at the international convention centre.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision

I have decided to refuse the request under section 24(1) of the FOI Act.

Reasons for decision

Legislation

Section 24(1) of the FOI Act provides that if an agency is satisfied when dealing with a request for a document that a practical refusal reason exists in relation to the request, the agency:

- must undertake a request consultation process (see section 24AB of the FOI Act); and
- if, after the request consultation process, the agency is satisfied that the practical refusal reason still exists—the agency may refuse to give access to the document in accordance with the request.

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

Section 24AB(9) of the FOI Act provides that an agency is only obliged to undertake a request consultation process once for any particular request.

The request consultation process

By letter dated 7 August 2017, the Department notified the applicant of the Department's intention to refuse the request for a 'practical refusal reason' under section 24(1) of the FOI Act. The Department's letter advised that a practical refusal reason existed under section 24AA of the FOI Act. The Department's letter initiated the request consultation process (section 24AB of the FOI Act) as required by section 24(1)(a) of the FOI Act. The Department's letter included suggestions on how the FOI request might be revised to potentially remove the practical refusal reason.

By email dated 7 August 2017, the applicant revised the FOI request in the terms quoted above.

Substantial and unreasonable diversion of the Department's resources

I am satisfied that the work involved in processing the applicant's FOI request would amount to a substantial and unreasonable diversion of the Department's resources from its other operations.

As indicated in the table below, the total number of attendees for these two functions is 846. If the request were to proceed in its current form, we estimate that up to 1692 hours would be required to consult all attendees. It is possible that one or more attendees may have attended more than one event, in which case the time required for consultation might be less.

Table: Two official functions hosted by the Prime Minister

Date	Function	Location	Acceptances
12 October 2016	Luncheon in honour of His Excellency Lee Hsien Loong, Prime Minister of the Republic of Singapore, and Mrs Lee Hsien Loong	Great Hall, Parliament House, Canberra	492
22 February 2017	Luncheon in honour of His Excellency Benjamin Netanyahu, Prime Minister of the State of Israel, and Mrs Sara Netanyahu	International Convention Centre, Sydney	354
			Total acceptances: 846

Ordinary hours of work for full-time employees in the Department are 38 hours per week.¹ Having regard to the estimate of time required for consultation, this means it would take one officer more than 8 weeks to undertake consultations. The further tasks of deciding whether to grant access to documents, redacting copies of documents, and preparing and notifying a decision would only add further time to the estimate of time to process the FOI request.

The 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*' state that other matters that may be relevant in deciding if a practical refusal reason exists include:²

- the staffing resources available to an agency for FOI processing; and
- the impact that processing a request may have on other work in an agency, including FOI processing.

As noted in the Department's letter dated 7 August 2017, the Department has some specialist staff resources dedicated to FOI processing. The Department received 209 FOI requests in 2013-14 and 241 request in 2014-15. The FOI requests received by the Department are typically complex and cover sensitive matters. The combined effect of numbers of FOI requests, complexity and sensitivity means that the ability of the Department to fairly allocate its specialist FOI resources to processing other FOI requests would be substantially impaired if this FOI request were to be processed. Further, processing this FOI request would represent a not insignificant call on the limited staff resources of the relevant policy area (the Ceremonial and Hospitality Branch).

I acknowledge that the processing of requests for access to documents is a legitimate part of each agency's functions, and that FOI requests may require reallocation of resources within an agency. However, the Department could not reasonably divert resources to assist in processing the request. In reaching this view, I have had regard to the public interest in access to information held by the Department but consider the public interest in access is outweighed by the competing public interest in the ability of the Department to undertake its ordinary functions without substantial impairment, including the processing of other FOI requests.

¹ Department of the Prime Minister and Cabinet, *Enterprise Agreement 2017-2020*, [22.1].


² 'Part 3 – Processing and Deciding on Requests for Access' (Version 1.5, October 2014), [3.103].

Review rights

Information about the applicant's rights of review is attached to this decision.

Complaint rights

The applicant may make a complaint to the Information Commissioner about the Department's actions in relation to this decision. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/foi-complaints>.



Gerard Martin
Assistant Secretary
Ceremonial and Hospitality Branch

18 August 2017



Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see [How do I make an FOI complaint?](#)

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.


Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

online: www.oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001
fax: +61 2 9284 9666
email: enquixxx@xxxx.xxv.au
in person: Level 3
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: xxxxxxxxx@xxxx.xxx.au

write: GPO Box 5218, Sydney NSW 2001
or visit our website at www.oaic.gov.au