



Australian Government

Department of Communications and the Arts

Mr Jackson Gothe-Snape
Right to Know
via email: foi+request-3796-775560ff@righttoknow.org.au

Dear Mr Gothe-Snape

Freedom of Information Request 18-1718

I refer to your email dated 22 August 2017, seeking access under the *Freedom of Information Act 1982 (FOI Act)* to:

“...the budgets, menus, expenses, invoices, receipts, credit card statements and reimbursements for the most expensive event attended by a Minister or Assistant Minister in your Department's portfolio area in 2016-17. 'Most expensive event' shall be determined only by expenses paid - directly or through reimbursement - by the Department...”

Notice of intention to refuse

I am writing pursuant to subsection 24AB(2) of the FOI Act to notify you of my intention, as an authorised decision-maker under section 23 of the FOI Act, to refuse your FOI request on the basis that I am satisfied that a practical refusal reason under subsection 24AA(1) exists.

As currently framed, your request has not met the formal requirements under paragraph 15(2)(b) of the FOI Act, of providing such information as is reasonably necessary to enable a responsible officer to identify documents within the scope of your request.

Reasons for my intention

In making my decision I have had regard to the:

- provisions of the FOI Act and case law considering those provisions;
- the *Information Commissioner's FOI Guidelines* issued under section 93A of the FOI Act;
- the Department's *FOI Policy*; and
- information and advice from the Departmental officer responsible for the processing of FOI requests.

Subsection 24AA(1) of the FOI Act states that a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:

- (a) the work involved in processing the request:
 - (i) in the case of an agency – would substantially and unreasonably divert the resources of the agency from its other operations;
 - (ii);
- (b) The request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

Paragraph 15(2)(b) provides that the request must 'provide such information concerning the document as is reasonably necessary to enable a responsible office of the agency...to identify it...'

Your request in its current form is unclear in its terms and is too broad in relation to the type of information sought. For these reasons, the request does not satisfy the formal requirements under paragraph 15(2)(b) of the FOI Act.

Your request describes the documents you are seeking access to as documents relating to "...the most expensive event attended by a Minister or Assistant Minister in your Department's portfolio...[as] determined only by expenses paid - directly or through reimbursement - by the Department..." The formulation of the request for access to documents relating to the 'most expensive event', as defined in your request is too unclear to be processed. In order to process an FOI request, the wording of the request should enable a responsible officer to identify documents that can reasonably be taken to be included within the description used. The request as formulated captures a large volume and range of documents, including information and documents which the Department does not have in its possession and would require the collation of several documents and creation of new documents.

The provisions of the FOI Act do not give rise to a right to the creation of new documents except for under limited circumstances in accordance with section 17 of the Act.

Furthermore, as previously advised in our email of 16 August 2017, the Minister and the Department are treated as separate agencies under the provisions of the FOI Act; and expenditure in relation to events attended by the Minister for Communications and the Arts is the responsibility of the Minister's office rather than the Department.

The request as formulated is therefore not able to be processed.

Consultation process

In accordance with paragraph 24AB(2)(e), the consultation period during which you may consult with me to revise the scope of your request is 14 days after the day you are given this notice and therefore your response is due by 3 October, 2017.

Please note that if you do not take this opportunity to consult, in accordance with paragraph 24AB(7)(a), your request will be taken to have been withdrawn under subsection 24AB(6).

In order to provide you with information to assist you to revise your request, you may wish to consider:

- providing a more specific description of the information sought and confining your request to documents relating to the precise kind of information sought;
- reframing the request such that it captures documents already in existence and would not require the creation of new documents by the Department, or documents not held by the Department.

It is advised that you refer to the Summary of Parliamentary Expenditure for the Minister for Communications and the Arts which is published on the Department of Finance website at:

<http://www.finance.gov.au/publications/parliamentarians-reporting/parliamentarians-expenditure-P39/>

The Department's FOI Coordinator, phone (02) 6271 1277, is available to provide you, so far as is reasonably practicable, with any information to assist you in amending your request under the FOI Act.

Any submissions should be sent in writing either by email to (foi@communications.gov.au) or by ordinary post:

FOI Coordinator
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

I have attached a copy of sections 24, 24AA and 24AB of the FOI Act for your information.

Yours sincerely

Legal Director
Position Number 111069
Office of the General Counsel
19 September 2017