



Australian Government

Department of Communications and the Arts

Mr Richard Smith

(via email: <mailto:foi+request-4016-a21c3fdb@righttoknow.org.au>)

Dear Mr Smith

Freedom of Information Request 17-1718
Notice of intention to refuse

1. I refer to your email dated 10 August 2017, seeking access under the *Freedom of Information Act 1982 (FOI Act)* to:

"...a) Documents detailing any correspondence received within the period between 1 Jan 2015 and 10 August 2017 from Foxtel Cable Television Pty Limited (including its owners, agents and/or contractors) to the Department of Communications and the Arts requesting the payment of moneys (either compensation or grants or funding) by the Commonwealth to Foxtel Cable Television Pty Limited;

b) Documents detailing any correspondence received within the period between 1 Jan 2015 and 10 August 2017 from Austar Entertainment Pty Ltd (including its owners, agents and/or contractors) to the Department requesting the payment of moneys (either compensation or grants or funding) by the Commonwealth to Austar Entertainment Pty Ltd;

c) Documents detailing any correspondence sent within the period between 1 Jan 2015 and 10 August 2017 from the Department to Foxtel Cable Television Pty Limited (including its owners, agents and/or contractors) concerning the payment of moneys (either compensation or grants or funding) by the Commonwealth to Foxtel Cable Television Pty Limited;

d) Documents detailing any correspondence sent within the period between 1 Jan 2015 and 10 August 2017 from the Department to Austar Entertainment Pty Ltd (including its owners, agents and/or contractors) concerning the payment of moneys (either compensation or grants or funding) by the Commonwealth to Austar Entertainment Pty Ltd; and

e) Documents relating to the Commonwealth Department of Communications and the Arts's consideration and decision, including any directions to Department staff from the Minister of Communications and the Arts, within the period between 1 Jan 2015 and 10 August 2017 to make a payment of moneys (either compensation or grants or funding) to either Foxtel Cable Television Pty Limited or Austar Entertainment Pty Ltd, including to the owners of the two respective companies.

For the avoidance of doubt, my request for Documents above also includes copies of any correspondence described in each of my requests a) through e)..."

2. You specified further that the request is for:

"...a list of every piece of correspondence the Department of Communications and the Arts has received from Foxtel Cable Television Pty Limited ("Foxtel") or Austar Entertainment Pty Ltd ("Austar") where either company has requested funding or grants from the Commonwealth..."

3. 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.

Reasons for my intention

4. In making my decision I have had regard to:
- your emails of 10 August 2017 and 29 August 2017;
 - provisions of the FOI Act and relevant 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.

Relevant law

5. 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:

- the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations;
- the request does not satisfy the requirement in paragraph 15(2)(b) (that paragraph provides that in making a FOI request, the request must provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify it).

6. Your request, in its current form, is unclear in many aspects of its terms, and too broad in relation to the type of information sought. The particular form and kinds of documents requested also pose processing difficulties.

7. In order to process your request in its current form, a responsible officer must be able to identify all documents relating to the subject matter of, and containing information on, "*...correspondence the Department of Communications and the Arts has received from Foxtel Cable Television Pty Limited ("Foxtel") or Austar Entertainment Pty Ltd ("Austar")...*" and the payment of money, grants or compensation during the specified period. This also extends to any other documents that could reasonably be taken to be included within the description. The request as formulated captures a large volume and range of documents.

8. Processing the request further requires a responsible officer to review and tag each document to determine whether the document is within scope and to undertake an analysis of the information contained within each document. It also potentially requires the analysis of documents and/or information not held by the Department. The information is not able to be produced or assessed without undertaking these steps manually and cannot be completed by a computer functioning independently. Furthermore, your request for "...a list of every piece of correspondence..." is not able to be generated from a database or prepared without undertaking the steps outlined, and requires the creation of new documents.

9. Furthermore, 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 subsection 17(1) of the Act. For these reasons, I consider that the request does not satisfy the formal requirements under paragraph 15(2)(b) of the FOI Act.

Consultation process

10. In accordance with paragraph 24AB(2)(e), the consultation period during which you may consult with the Department's FOI Coordinator to revise the scope of your request is 14 days after the day you are given this notice. Accordingly, your response is due by **4 October 2017**.

11. Before the end of the consultation period, you must:

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

12. Please note, 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).

13. In order to provide you with information to assist you to revise your request, you may wish to consider providing a precise description of the specific documents sought and confining your request to a particular category of documents in order to narrow the type of documents captured by the scope of the request and including date ranges.

14. The Department's FOI Coordinator (phone (02) 6271 1277) is available to provide you, so far as is reasonably practicable, with 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

15. Attached is a copy of sections 24, 24AA and 24AB of the FOI Act for your information.

Yours sincerely



Legal Director
Position Number 111070
Office of the General Counsel

20 September 2017

