



## **Statement of reasons made under the *Freedom of Information Act 1982***

Decision and reason for decision of Alex Foulds Executive Director, Surface Transport Policy

---

**Applicant:** Australian Imported Motor Vehicle Industry Association  
**Decision date:** October 2017  
**FOI reference number:** 18-27  
**Documents:** Motor Vehicle Standards Act review data

### **Contents**

Summary .....	2
Authority to make this decision .....	2
Background .....	2
Decision .....	2
Reasons for decision .....	3
Statement of reasons .....	3
Your rights of review .....	4
<i>Internal Review</i> .....	4
<i>Information Commissioner Review</i> .....	5
Contacts .....	5
Schedule of relevant provisions in the FOI Act .....	6

## Summary

1. I have made a decision to refuse access to the documents relevant to your revised request.

## Authority to make this decision

2. I, Alex Foulds, Executive Director, Surface Transport Policy, am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 12 September 2017 you made a request for access to documents in the possession of the Department. Your request was received in the following terms:

*Minister Paul Fletcher recently announced proposed changes to the Specialist and Enthusiast Vehicle Scheme (SEVS), scheduled to come into effect on 1 January 2019. The Motor Vehicle Standards Act review team subsequently released the revised SEVS criteria, along with proposed thresholds for each criterion. AIMVIA requests all supporting research data collected by the Department (including its own data and data supplied to the Department by third parties), which the MVSA review team has subsequently used to formulate the proposed SEVS criteria and thresholds*

4. On 6 October 2017 the Department advised you that the preliminary search for relevant documents had identified 1699 documents in the relevant time frame containing the search terms "SEV" and "criteria", which constitute more than 500,000 pages. This constituted a practical refusal reason. The department sought to assist you to revise the scope of your request by advising that to allow your request to proceed, you could reduce the scope of your request by:

- *Reduce the time frame (which is currently almost four years-worth of documents)*
- *Providing keywords to narrow the search parameters, such as "data used in assessing changes in vehicle numbers" or "industry viability"*
- *By reducing the classifications of documents (such as by excluding emails).*

5. On 20 October 2017, you responded to the Department' practical refusal notice by revising your request to be for:

*any correspondence between any member (past or current) of the Motor Vehicle Standards Act Review team and the Federal Chamber of Automotive Industries and its representatives during the review period. Correspondence that is already in the public domain (such as submissions already publicly available on the MVSA webpage) can be excluded from the search.*

## Decision

6. I have made a decision to refuse access to the documents relevant to your revised request.

## Reasons for decision

7. In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to refuse access follows.
8. I have taken the following material into account in making my decision:
  - sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth.
  - the correspondence and assistance provided as part of the s24AB consultation process;
  - your response to that correspondence and assistance;
  - section 24 (power to refuse request – diversion of resources) of the FOI Act;
  - section 24 AA (When does a *practical refusal reason* exist?) of the FOI Act;
  - section 24 AB (What is a request consultation process) of the FOI Act;
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
9. An extract of FOI Act provisions used to make my decision is provided in Schedule 1.

## Statement of reasons

10. I have decided that following a request consultation process, a practical refusal reason still exists in relation to your request. Accordingly, I have decided to refuse access to documents within the scope of your revised request on the basis that the work involved in processing the request would substantially and unreasonably divert the resources of the Department from it's other operations.
11. Section 24AA (2) sets out that in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used:
12. I have had regard to the resources that would have to be used for the following:
  - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
  - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
    - (i) examining the document; or
    - (ii) consulting with any person or body in relation to the request;
  - (c) making a copy, or an edited copy, of the document;
  - (d) notifying any interim or final decision on the request.
13. In having regard to the resources required at paragraph (a) identifying, locating or collating the documents, which I consider to be the first step, I have considered the following:
  - The review period is taken to be four and a half years;

- The Motor Vehicle Standards Act Review team members (past or current) is taken to be 16 people;
  - The preliminary estimate of potentially relevant documents within the department's records system, email systems and archives or relevant files has identified nearly 5000 potentially relevant documents.
14. To properly assess each potentially relevant document, assuming 5 minutes per each whole document (not per page) would require over 415 hours of staff resources. 415 hours equates to roughly 11 weeks of a departmental resource solely on this first stage of your request. Given that this part must be undertaken prior to the other decision making processes, the total resources required to process your revised request would reasonably be substantially larger than 415 hours.
  15. I have had regard to whether there is a public interest in the release of the material that would be captured in processing your request that might outweigh the significant cost. On balance find that the public interest does not support the commitment of the resources required, to the detriment of ordinary operations.
  16. Section 24AA(3) sets out that in deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
    - (a) any reasons that the applicant gives for requesting access; or
    - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
    - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.
  17. I have not had regard to any irrelevant factors.
  18. I am satisfied that the Department has met the obligations under s24AB (request consultation process) and the record of this process is set out at paragraph 4 and 5. I note that ss24AB(9) sets out that no more than one request consultation period is required, therefore no further consultation will be undertaken within this request.
  19. I am satisfied that that, having accurately identified the existence of a practical refusal reason, the department has properly conducted the necessary practical refusal consultation process, and that on the assumptions in paragraph 13 and the facts in paragraphs 15 and 16 (drawn from consideration of your revised request), that a practical refusal reason still exists.
  20. Accordingly I have decided to refuse your request on the basis that the work involved in processing the request would substantially and unreasonably divert the resources of the Department from its other operations.

## **Your rights of review**

21. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).

### ***Internal Review***

22. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless

the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Infrastructure and Regional Development  
GPO Box 594, Canberra ACT 2601  
**Fax:** (02) 6275 1347  
**Email:** [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

### ***Information Commissioner Review***

23. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
24. You can ask the OAIC to review the Department's decision. You do not need to seek an internal review from the Department before seeking a review from the OAIC. However, going through the Department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
25. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
26. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: [www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights).

### **Contacts**

27. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 6495 or via email at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).



Alex Foulds  
Executive Director  
Surface Transport Policy

27 October 2017



## **Schedule of relevant provisions in the FOI Act**

---

### **3 Objects—general**

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### **11 Right of access**

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

### **11A Access to documents on request**

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

**Note:** Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

***Mandatory access—general rule***

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

***Exemptions and conditional exemptions***

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
  - (a) a conditionally exempt document; and
  - (b) an exempt document:
    - (i) under Division 2 of Part IV (exemptions); or
    - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

**26 Reasons and other particulars of decisions to be given**

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
  - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
  - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:
  - (i) his or her rights with respect to review of the decision;
  - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
  - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an

application for internal review (Part VI) and IC review (Part VII) may be made.

- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.  
(see section 11A).