



21 September 2017

Our reference: LEX 32102 and 32103

Danielle

Only by email: foi+request-4095-03834c14@righttoknow.org.au and foi+request-4094-f29a3713@righttoknow.org.au

Dear Danielle

Your Freedom of Information request

I refer to your request, dated 15 September 2017 and received by the Department of Human Services (the **department**) on the same day (**LEX 32102**), for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

'Can I please request any internal advice or instructions provided to the FOI Team about the use of names in FOI related correspondence.'

In addition to this request, I also refer to your request dated, 15 September 2017 and received by the department on the same day (**LEX 32103**), for access to the following documents under the FOI Act:

'Can I please request any legal advice that has been provided to the FOI Team on the use of names in FOI related correspondence.'

I have decided to treat the above two requests as a single request under section 24(2) of the FOI Act (**combined request**) as I am satisfied that the requests relate to documents, the subject matter of which is substantially the same.

Your request gives rise to practical refusal reasons

I am writing to seek clarification on the documents you are seeking as your request does not provide sufficient information to enable the department to reasonably identify the documents sought.

We are asking you to revise your request to give us more specific details about the information you are after, so that an FOI Officer is reasonably able to identify the documents.

If you decide not to make any revisions, I will have to refuse your FOI request as 'practical refusal reasons' exist in relation to it.

For a more detailed explanation of what this means, and guidance on how you can revise your request, see **Attachment A**.

How to send us a 'revised request'

Before I make a final decision on your request, you can narrow the size of your original request and submit a revised request.

Within the next 14 days, you must do one of the following, in writing:

- withdraw the request;
- make a revised request; or
- tell us that you do not want to revise your request.

If you do not contact us during the 14-day consultation period, we will assume you do not want to continue with your request. See **Attachment A** for relevant sections of the FOI Act.

If you decide to make a revised request, you should be more specific about what documents you actually want. This could help the department find the documents in less time and use fewer resources to process them.

We have 30 days to give you a decision about your request, however the time taken to consult with you now is not included in this 30 day time period.

Contact officer

I am the contact officer for your request. During the consultation period you are welcome to ask for my help in revising your request and filling out the form. You can contact me:

- in writing to the address at the top of this letter; or
- via email to FOI.LEGAL.TEAM@humanservices.gov.au

Note: When you contact us, please quote the reference number **FOI LEX 32102 and LEX 32103**

Your response will be expected by **COB 4 October 2017**. If no response is received, your request will be taken as withdrawn.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Chelsea
Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division
Department of Human Services
FOI.LEGAL.TEAM@humanservices.gov.au

What you requested

Your combined request is for the following documents:

'Can I please request any internal advice or instructions provided to the FOI Team about the use of names in FOI related correspondence.'

Can I please request any legal advice that has been provided to the FOI Team on the use of names in FOI related correspondence.'

Interpretation of the scope of your request

The scope of your request can be interpreted a number of ways as it is currently framed:

- a) 'FOI related correspondence' may refer to FOI correspondence between the department and FOI applicants including decision letters, notices and email communications, internal emails sent by the FOI team to relevant stakeholder line areas or other internal communications relating to FOI matters including briefs for the Executive or Minister;
- b) Your request seeks internal advice, instructions and legal advice 'provided to the FOI team'. This could be interpreted to mean advice that the FOI Team has sought from an external stakeholder (such as a law firm), advice that has come from the Executive or Minister to the FOI team or advice that has come from within the FOI team, from senior members of the team to junior members; and
- c) 'Internal advice or instructions' may refer to formal directions from senior members in the department or in the FOI team, or may capture informal communications between members, at various levels, of the FOI team as they discuss their day to day work.

Consequently, your request is broad and its scope is uncertain. It does not enable a responsible officer of the department to identify the documents being sought by your request and the department is unable to conduct reasonable searches of the documents you are seeking. Depending on the scope of your request, different documents may fall within that scope.

Therefore, in order for the department to continue processing your request, can you please provide more specific details about the documents you are after, by revising the scope of this request to provide more specific information about the documents you are seeking.

If you decide not to provide this detail, I will have to refuse your FOI request as a 'practical refusal reason' exists under sections 24AA(1)(b) and 24 of the FOI Act. Under the Act, the practical refusal reason is that your request does not satisfy the requirements in paragraph 15(2)(b) (identification of documents).

Your request may be too large for the department to process

In addition, the broad scope of your current request is likely to encompass a range of documents, such that to process the request in full may be a diversion of resources for the department.

This is because:

- a) Your request does not provide any date range or time frame, therefore the FOI team would be required to search for historical advices and instructions; and
- b) Your request is not limited to the FOI Legal Team (as a number of your other current requests are) therefore, the department would have to search for documents that could be described as 'advice or instructions' among all members of the department's FOI unit (totalling over 30 people). Noting the questions raised above as to what constitutes an 'advice or instruction'.

Even if the department were able to identify relevant documents in scope of your request, there is manifest voluminosity associated with the search, retrieval, and processing of such a quantity of documents.

Because of the amount of work involved for the department to identify all of the documents involving potentially spanning a long period of time and impacting a number of departmental officers, under sections 24AA(1)(a)(i), 24 and 24AA(2) of the FOI Act, I intend to refuse your FOI request as a 'practical refusal reason' exists. Under the Act, the practical refusal reason is that processing your request 'would substantially and unreasonably divert the resources' of this agency.

Assistance to revise your request

To assist you to revise your request and remove the practical refusal reason, you might consider making one or more of the following revisions to your combined request:

- Identifying, with greater specificity, what the terms of your request mean, including 'internal advice and instructions', 'provided to the FOI team' and 'FOI related correspondence'; and/or
- Providing a date range for the documents in scope.

Relevant sections of the *Freedom of Information Act 1982*

Section 15(2)(b) of the FOI Act provides that a request must provide such information as is reasonably necessary to enable the agency to identify the documents that are being requested.

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

Section 24AA(1)(b) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy the requirement in section 15(2)(b) of the FOI Act.

Section 24AA(2) of the FOI Act sets out certain factors which the department must consider when determining whether providing access in relation to a request would substantially and unreasonably divert the department's resources. The department must specifically have regard to the resources that would have to be used for:

- identifying, locating or collating the documents within the department's filing system;
- 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 examining the document or consulting in relation to the request;

- making a copy, or an edited copy, of the document; and
- notifying any interim or final decision on the request.

Section 24AB(6) says that the applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

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

Section 24AB(7) of the FOI Act provides that the request is taken to have been withdrawn under at the end of the consultation period if:

- the applicant does not consult the contact person during the consultation period in accordance with the notice; or
- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.