



3 October 2017

Ms Margaret Anderson

BY EMAIL: foi+request-4106-ed62dd63@righttoknow.org.au

In reply please quote:

FOI Request: FA 17/09/00969

File Number: ADF2017/102556

Practical refusal notice - *Freedom of Information Act 1982*

Dear Ms Anderson,

I refer to your email dated 24 September 2017 in which you request access to documents held by the Department of Immigration and Border Protection (Department) under the *Freedom of Information Act 1982* (the FOI Act).

I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its broad nature, size and complexity. This is called a 'practical refusal reason' (section 24AA).

On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Scope of Request

You have requested access to documents held by Department that relates to:

'All documents relating to the USA and Australia agreement for USA to accept persons currently in immigration detention on Nauru and Manus Island between 1 October 2016 and 30 August 2017.'

In order for your request to be valid it must not substantially and unreasonably divert the resources of the Department from its other operations.

Practical Refusal

Please note that a request for 'any/all documents' concerning a particular subject will likely attract refusal under section 24AA of the FOI Act because, it would not be possible for the decision maker to certify that he or she has located every copy of every single document in the Department's possession, which falls within the scope of the request, without conducting a search of every hard copy file and all individuals electronic communication records in the agency.

The Department would be required to divert significant resources from its current operations in order to identify, locate and collate the documents held within the agency. In addition, significant resources would be required to decide whether to grant, refuse or defer access to the large number of documents to which your request relates. Or to grant access to edited copies of such documents, including resources that would have to be used to examine the documents, or to consult with any person or body in relation to the request, and to make copies, or edited copies, of the documents, and to notify you of any interim or final decision on the request.

This diversion would result in a significant drain on the resources of the area within the agency that would be required to process this request. To process the request would require a complete diversion from that area's ability to carry out their normal functions and activities.

Therefore, I do not consider it would be possible for the decision maker to certify that he or she has located every copy of every single document in the Department's possession, which falls within the scope of your request as it currently stands.

How the size of the request could be reduced

In order to make the request a manageable size I recommend that you consider limiting the scope of the documents to final versions of documents, a selection of representatives, for example, correspondence to or from Senior Executive Level staff of the Department, or Talking Points or Briefing Notes used in corresponding with members of the Trump Administration or US Government Officials, as well as, limiting the time frame of your request to a shorter timeframe.

I regret that the Department is not in a position to divert resources to prepare a listing of the documents that could potentially be within scope of the request.

Request Consultation Process

You now have an opportunity to revise your request to enable it to proceed.

Under section 24AB of the FOI Act, you have 14 days to respond to this notice in writing and advise me whether:

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

Suspension of processing time

Please note that s.24AB(8) of the FOI Act provides that the legislated processing time for your request is 'suspended' until you have either:

- revised the request;
- advised that you do not intend to revise the request, or
- withdrawn your request.

In addition, if you do not contact me in writing before the end of the consultation period your request will be deemed to be withdrawn in accordance with s.24AB(7) of the Act. The relevant legislation is attached to this notice.

Contact

Should you wish to revise your request or have any questions in relation to this process, please do not hesitate to contact me at foi@border.gov.au.

Yours sincerely,

Helen Simons
Freedom of Information Section
Department of Immigration and Border Protection
Email: foi@border.gov.au

Attachment

- ✓ Attachment A - Extract of relevant legislation



Attachment A

Extract of relevant legislation

24 Power to refuse request—diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
 - (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24AA When does a *practical refusal reason* exist?

- (1) For the purposes of section 24, 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; or
 - (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have 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.
- (3) 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.

24AB What is a *request consultation process*?

Scope

- (1) This section sets out what is a ***request consultation process*** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the ***contact person***) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the ***consultation period***) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), ***reasonable steps*** includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.