



Australian Government

Department of Finance and Deregulation

Reference: FOI 13/10
Contact: FOI team
Telephone: (02) 6215 3267
e-mail: FOI@finance.gov.au

Ms Margo Kingston

foi+request-42-ab598d35@righttoknow.org.au

Dear Ms Kingston

Freedom of Information Request – FOI 13/10

I refer to your email dated 11 January 2013 to the Department of Finance and Deregulation (the Department) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

All correspondence to or from P Slipper between April 2012 – January 2013 concerning travel costs incurred by Slipper AND

All documents in relation to requests to repay travel costs deemed outside entitlement in accordance with what is described as “the Minchin Protocol.”

On 13 January 2013, you clarified that:

Re the second leg of my request, I only want MP docos for the last five years.

The statutory period for processing your request commences from the day after Finance received your request. Your request was received by Finance on 11 January 2013.

The purpose of this letter is to provide you with a notice of intention to refuse your request under subsection 24AB(2) of the FOI Act.

Assessment of the volume of material that may be relevant to your request

In considering your request, the Department acknowledges that the processing of requests for access to documents is a legitimate part of each agency’s functions and FOI requests may require reallocation of resources within an agency.

The decision-maker has identified a large amount of material relating to the subject-matter of your request (estimated at over 800 documents). The relevant documents also contain the personal information of a large number of third parties, and consultation with these third parties would be required. It has been estimated that processing this request would take in excess of 950 hours.

In considering your request, the decision maker has also given careful consideration to the public interest in access to information held by the Department and the resources which would need to be employed to provide access in accordance with your request.

In light of the Department having identified a large amount of documentation relating to the general subject-matter of your request, which would require significant third party consultation, the decision maker has concluded that identifying, consulting on and assessing the documents sought would involve a very considerable amount of work. This work would unreasonably interfere with the performance of the functions of the department, a practical refusal reason in terms of subparagraph 24AA(1)(a)(i) of the Act. I enclose the relevant provisions of the FOI Act at Attachment A.

Clarifying the terms of your request in such a way that it might reasonably be managed by the office

When a request involves a practical refusal reason, an unreasonable diversion of resources, the department discusses the request with the applicant in order to clarify its terms and, where appropriate, to refine its scope.

It may be that there are specific elements of the subject-matter of the request that you are particularly interested in that could be isolated with a view to narrowing the terms of the request. The decision maker notes that the second part of your request refers to *all documents in relation to requests to repay travel costs deemed outside entitlement in accordance with what is described as "the Minchin Protocol (my emphasis)*. You may wish to narrow this part of your request to specific documents that you are particularly interested in, such as correspondence with the subject of the matter considered under the Minchin Protocol, by limiting the request to only the first part.

Additionally, as noted above, the documents identified as within the current scope of your request contain the personal information of a large number of third parties, including the subject of matters considered under the Minchin Protocol, and other persons (such as staff of Parliamentarians). To reduce the amount of third party consultation required, you may wish to limit your request to only include the personal information of persons you are interested in, such as the subject of matters considered under the Minchin Protocol.

'Personal information,' under the FOI Act, includes information where the identity of the person is apparent, or can reasonably be ascertained from the information. As such, excluding the names of persons from the scope of the request would not necessarily result in the removal of the third party consultation requirement. For example, if a person's name was excluded from the scope (and therefore redacted), other information in a document may enable a reader to identify the person. In that case, the decision maker would be required to undertake third party consultation with the person who could reasonably be identified. However, the decision maker will not know how many third party consultations may be required until she inspects the documents more closely.

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

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, our agency will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

Before the end of the consultation period (refer section 24AB), you must do one of the following, in writing:

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

The consultation period runs for 14 days and starts on the day after you receive this notice.

If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request).

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Way Forward

To assist the Department in the processing of your request, could you please consider the scope of your request and consider my suggestions. We would appreciate a response by **COB 12 February 2013**.

Further Assistance

For assistance with narrowing the terms, or to discuss any other aspect of your request, please contact me on (02) 6215 3267.

Yours sincerely

A handwritten signature in black ink, appearing to be 'L. Grant', written in a cursive style.

FOI Administrative Assistant/Paralegal

Legal Services Branch

30 January 2013

Relevant provisions of the FOI Act**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.

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.