



Australian Government
Department of Finance and Deregulation

Reference: FOI 13/10
Contact: FOI team
Telephone: (02) 6215 1783
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 (Finance) 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 purpose of this letter is to provide you with my decision.

Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

I have decided to refuse the request under paragraph 24(1)(b) of the FOI Act.

Reasons for Decision

In making my decision, I have had regard to the following:

- the scope of your FOI request and the volume of material that would need to be reviewed to determine if there were potentially relevant documents;
- communications with you both before and during the request consultation process (see below);
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (Guidelines).

Request consultation process

In accordance with the requirements of subsection 24AB(2) of the FOI Act Finance wrote to you on 30 January 2013 advising you of the decision maker's assessment in terms of the resources required to process your request and giving you notice under paragraph 24(1)(a) of the FOI Act of the decision maker's intention to refuse access to the requested information on the basis that the work involved in processing the request would be a substantial and unreasonable diversion of the resources of the department. You were advised:

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.

You were invited to revise the scope of your request in order to remove the practical refusal reason and a 14 day request consultation process commenced. Before the end of the consultation period, you were advised that you must do one of the following, in writing (refer subsection 24AB(6)):

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

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period or you did not consult the contact person during this period, your request will be taken to have been withdrawn.

On 12 February 2013 you advised Finance:

In response to your email, I narrow my request as follows:

- *All correspondence to or from P Slipper between April 2012 – January 2013 concerning travel costs incurred by Slipper;*
- *All correspondence to or from any Member of Parliament in relation to requests to repay travel costs deemed outside entitlement in accordance with what is described as "the Minchin Protocol" between January 2008 to January 2013;*
- *All documents relating to the decision not to request from P Slipper repayment of travel costs deemed outside entitlement in accordance with "the Minchin Protocol" between January 2010 to January 2013.*

In considering your revised 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.

I have identified a large amount of material relating to the subject-matter of your request (estimated at over 200 pages). The relevant documents also contain the personal information of a 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 50 hours.

In considering your request, have 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, I have decided to refuse access to your FOI request under paragraph 24(1)(b) of the FOI Act, on the grounds that, after having undertaken a request consultation process, I am satisfied that the practical refusal ground on which we consulted still exists. That being, the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

Review and Appeal Rights

You are entitled to request a review of my decision. Your appeal rights are set out in Attachment A.

Further Assistance

Should you have any queries concerning this matter, please do not hesitate to contact the FOI team on the above contact details.

Yours sincerely



Suzanne Pitson
Assistant Secretary
Entitlements Policy Branch
Ministerial and Parliamentary Services

22 February 2013

Relevant provisions of the FOI Act

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.

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance and Deregulation (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information
Commissioner
GPO Box 2999
CANBERRA ACT 2601

Email: enquiries@oaic.gov.au

Fax: 02 9284 9666

In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint.](#)

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is currently \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601

Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal Services Branch
Department of Finance and Deregulation
John Gorton Building
King Edward Terrace
PARKES ACT 2600

Phone: 02 6215 1783

Email: foi@finance.gov.au

Website: www.finance.gov.au/foi/foi.html