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Canberra ACT 2601

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Our ref: #1002676
Contact officer: Sonya Petreski
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27 February 2018

www.accc.gov.au

M Pool

Via email to: foi+request-4378-c3a858c0@righttoknow.org.au

Dear M Pool

Notice of intention to refuse access to documents requested

I refer to your email of 15 February 2018 in which you request access, under the *Freedom of Information Act 1982 (Cth)*, to:

'access to email correspondence between the Chairman of the ACCC, Mr Rod Sims, and the Australian Public Service Commissioner, Mr John Lloyd (in his capacity as Public Service Commissioner or otherwise), between the period of 8 December 2014 to the date of this application.'

The ACCC is considering refusing your request, as currently framed, under s.24 of the Act. This is because the work involved in processing the request would substantially and unreasonably divert the ACCC's resources from its other operations.

Your request, as currently framed, is too large for the ACCC to process. Before we refuse access to the documents you requested, we are giving you the opportunity to revise your request. This is called the 'request consultation process'. 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. Before the end of the consultation period you must either: revise your request, tell us that you do not wish to revise your request or withdraw your request.

We are seeking your response by **13 March 2018**.

Practical refusal reason

We must notify you if we intend to refuse access to the documents because a 'practical refusal reason' exists under s.24(1) of the Act. This gives you an opportunity to revise your request so it can be processed.

The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of the ACCC from its other operations.

In deciding that this practical refusal reason exists, I have given consideration to how the ACCC could proceed to process your request, and the time and resources that would be involved in doing so. Estimates provided by members of staff in the relevant area of the ACCC assists me in determining an estimate of the probable resource demands of your FOI request.

On advice from the relevant line area your request, as it currently stands, would capture approximately 38 documents, 500 pages of material and over 6 hours of staff time would be required to draw together the relevant documents. I must have regard to this under s.24AA(2)(a).

In addition, I consider that 131 hours of staff time would be required for tasks including examination of documents, consultation, copying of documents and notification of decision. I must have regard to these under s.24AA(2)(b), (c) and (d).

The resource demands identified above would fall upon me and other staff from various areas of the ACCC. This includes an estimated 41 hours of a staff member with FOI expertise determining whether or not we can release the documents. Due to the relatively small size of the ACCC, we are not able to provide staff with the appropriate skills from other areas to undertake these tasks. Nor is it practicable to provide those skills from outside the ACCC.

Processing this request would, in my view, be a substantial diversion of the ACCC's resources within the meaning of s.24AA(1). To place the estimate above in context, if one person were dedicated to processing your FOI request, working 5 days a week, the person would require 4 weeks to complete your request. Due to the above and the amount of FOI requests currently on hand at the ACCC, processing your request would be a substantial diversion of the ACCC's resources.

What should you do

I am the ACCC officer to contact to try to remove the ground for refusal. Please contact me on (02) 6243 1244. We are happy to provide you with further information to assist you in revising your request in such a way that removes the practical refusal ground.

Even if you modify your request, the practical refusal reason may still exist or we may need further time to process your revised request. This will depend upon the terms of your final request.

It would assist us if you were able to identify the specific documents you are after, or clarify what information you are seeking. For example, I note that your request is particularly wide in scope and captures many documents. Revising your request to a certain category or further limiting the specific date range could possibly remove the practical refusal ground.

When to respond by

You have 14 days from the date of this notice (i.e. by **13 March 2018**) to either:

- withdraw the request
- make a revised request
- advise that you do not wish to revise the request.

If you do not respond in one of these ways within 14 days, your request is taken to be withdrawn. If you indicate you do not wish to revise your request, I will decide whether to refuse the request on resource grounds under s.24(1).

If you need more time to respond, please contact me within the 14 day period to discuss your need for an extension of time.

During this period of consultation, the statutory timeframe for the processing of your request is on hold.

I have attached a copy of s.24AB of the FOI Act for your information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sonya Petreski', written in a cursive style.

Sonya Petreski

FOI Administration Assistant
ACCC Legal Group

Sent by email 27/02/2018

ATTACHMENT A

Extract from the Freedom of Information Act

SECT 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.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

SECT 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.

SECT 24AB What is a request consultation process?

(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.