



Australian Government
Department of Agriculture
and Water Resources

Ref: FOI 2017/18-88

Mr Shane Townsend

via email: foi+request-4651-fb4922ad@righttoknow.org.au

Dear Mr Townsend

I refer to your revised request dated 18 June 2018 and received by the Department of Agriculture and Water Resources (the department) on 18 June 2018 for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

All video footage of animals on board live animal export ships that departed Australia between 1 April and 4 May 2018.

My decision

I have decided to refuse your request under section 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations as specified in section 24AA(1)(a)(i) of the FOI Act.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

Review rights

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@agriculture.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Contact details

Should you wish to discuss any issues arising from this letter, please contact the FOI team on (02) 6272 3933 or email foi@agriculture.gov.au.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

What you originally requested

All video footage of animals on board live animal export ships that have departed Australia since 1 November 2017.

What I took into account

In reaching my decision I took into account:

- Your original request dated 4 May 2018 and your revised request on 18 June 2018;
- The documents that fall within the scope of your request;
- Consultations with departmental officers about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**);
- The FOI Act.

Request consultation process

On 13 June 2018, the Department of Agriculture and Water Resources (the department) wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request was too big to process. The department gave you an opportunity to revise your request so as to remove the practical refusal reason.

You initially sought to revise your request to a date which post-dated your original request, which the department advised you was not possible.

Subsequently, on 18 June 2018, you revised your request to be for:

All video footage of animals on board live animal export ships that departed Australia between 1 April and 4 May 2018.

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations. The reasons for my decision, including consideration of the factors I am required to take into account in section 24AA(2), are outlined below.

Practical refusal reason

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

The word 'substantial' has previously been interpreted to mean severe, of some gravity, large or weighty or of considerable amount, real or of substance and not insubstantial or of nominal consequence. The use of the word 'unreasonable' has been interpreted to mean that a weighing of all relevant considerations is needed, including the extent of the resources needed to meet the request.

In determining whether processing the request would substantially and unreasonably divert the department's resources, section 24AA(2) requires me to have regard to the resources that would have to be used for the following:

- identifying, locating or collating the documents within the filing system of the department;
- deciding whether to grant, refuse or defer access to a document including resources used for examining the document and consulting with any person or body in relation to the request;
- making a copy or an edited copy of the document; and
- notifying of any decision on the request.

In accordance with section 24AA(3), I did not consider your reasons for requesting access to the documents.

Why your request is substantial

The department's searches and enquiries identified approximately 33.5 hours of video footage and 870 video files relevant to your revised request.

I have estimated the time to process your request would be over 877 hours, as follows:

Copying the video files into video editing system (15 minutes per video file)	217.5 hours
Processing (30 minutes per video file)	435 hours
Exporting video files onto recording media (15 minutes per video file)	217.5 hours
Consult with third parties	4 hours
Draft statement of reasons	3 hours
Total	877 hours

Your request contains information related to monitoring activities on board live export voyages. This information was obtained under the *Export Control Act 1982* in accordance with a direction issued by the Secretary to an Authorised Officer. Inspection and examination of the footage, consideration of relevant exemption provisions and editing of the footage would take a significant amount of hours.

The video files contain a substantial amount of sensitive information. A number of redactions will be required on many video files to remove sensitive information including personal information of third parties and business information of third parties.

I am satisfied that I would have needed to consider applying the following redactions under FOI Act:

- a. section 37(1)(a) to material which could prejudice the enforcement, or proper administration, of the law;
- b. section 45(1) to material obtained in confidence;
- c. section 47F(1) to third party personal information; and
- d. section 47G(1) to third party business information.

The video files contain information that is not publicly available in relation to at least two third parties. Consideration would need to be given to consulting with all of those parties prior to releasing material related to them. This consultation would involve providing a copy of the video files to each third party seeking their comments regarding release; and then considering these comments prior to making a decision.

I am satisfied that the time taken to properly consult all the individuals would be in excess of 4 hours (allowing 2 hours per consultation per party). I have made this assessment on the basis that the department would only consult each party once regardless of circumstances where they may appear more than once.

I have estimated that to copy the video files into a video editing system, process each video file, export the video files onto recording media, consult with third parties and prepare a statement of reasons it would take a decision maker approximately 877 hours. While the copying and exporting process may be conducted in conjunction with other duties, the actions required as part of this process is likely to limit the amount of other work that can be undertaken during this amount of time. This calculation does not include the time that would be spent consulting on sensitivities with business areas within the department.

Why your request is unreasonable

For the purposes of deciding whether your request would unreasonably divert the resources of the department from its other operations, I considered whether the substantial resource burden would be unreasonable having regard to the following:

- One individual processing your request would be required to spend over 23 weeks processing your request.

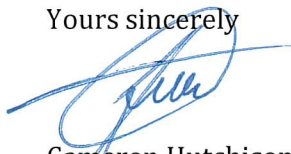
At the present time, the FOI team within the department is comprised of two staff. If one of the staff members was required to work on your request it would significantly divert the resources of the team.

Conclusion

In summary, I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations, namely the processing of other FOI requests and the delivery of agricultural services more broadly.

I have found that a practical refusal reason exists in relation to your request for access to the documents. Accordingly, I have decided to refuse your request under section 24(1) of the FOI Act.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Hutchison', written over the closing 'Yours sincerely'.

Cameron Hutchison
Assistant Secretary
Live Animal Exports Branch
Exports Division

17 July 2018