



28 November 2013

File: ER2013/04411
FOI ref: 1430

Mr Brendan Molloy
Councillor
Pirate Party Australia

foi+request-471-bb0595e0@righttoknow.org.au

Dear Mr Molloy

FREEDOM OF INFORMATION REQUEST

I refer to your email of 12 November 2013 in which you sought access to documents under the *Freedom of Information Act 1982* (the Act), in particular:

- (a) *Documents relating to negotiating positions regarding the e-commerce chapter of the Trans-Pacific Partnership Agreement; and*
- (b) *Any other documents relating to the Trans-Pacific Partnership Agreement held by Treasury.*

I am an authorised decision maker under section 23 of the Act. I am intending to refuse your request because under section 24AA of the Act:

- (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

Our initial searches suggest that a large number of documents could fall within the scope of your request. I believe that processing your request in its current form would be a substantial and unreasonable diversion of departmental resources under section 24AA of the Act.

If you wish to discuss your request further, please contact Ms Neena Pai, Senior Adviser, Parliamentary and Legal Services on (02) 6263 2800 or at FOI@treasury.gov.au within the next 14 days from the date of this letter. Alternatively, if you do not wish to discuss your request further, we will deem it withdrawn after 14 days (pursuant to section 24AB).

A copy of sections 24AA and 24AB are at **Attachment A**. Your rights of review are at **Attachment B**.

Yours sincerely



Deidre Gerathy
Chief Adviser
Foreign Investment and Trade Policy Division

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 include 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.

RIGHTS OF REVIEW — ACCESS REFUSED
INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

Application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

Application for a review of the decision should be addressed to:

The Secretary
 The Treasury
 Langton Crescent
 PARKES ACT 2600
 Attention: Parliamentary and Legal Services Unit

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

Applications for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
 Office of the Australian Information Commissioner
 GPO Box 5218
 SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
 Office of the Australian Information Commissioner
 GPO Box 5218
 SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.