



22 November 2018

Mr T Singleton Norton
BY EMAIL: foi+request-4826-a7f8c60a@righttoknow.org.au

In reply please quote:

FOI Request: FA 18/09/01316
File Number: ADF2018/200349

Dear Mr Singleton Norton

I refer to your email dated 21 September 2018 in which you requested access to documents held by the Department of Home Affairs (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

I am writing to tell you that I intend to refuse your request on the basis that a practical refusal reason exists. However, before I make a final decision to do this, you have an opportunity to revise your request to remove the practical refusal reason. This is called a '*request consultation process*'. You have 14 days to respond to this notice in one of the ways set out below.

Scope of Request

You have requested access to the following:

I am writing under the provisions of the Freedom of Information Act to request the documents relating to submissions received as a result of the public consultation of the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018.

This consultation closed on 10 September 2018 and whilst I acknowledge that a small number of submissions have been published on the consultation website, I request that all submissions supplied as a result of this consultation be released under FOI.

On 15 October 2018, the Department advised you that approximately 350 submissions had been published on the Department's website, and you were provided with a link to those submissions. The individuals and entities that provided these submissions provided their express consent for the Department to publish their submission. The Department sought your agreement to close your FOI request in the light of above information.

On 21 October 2018 you inquired about the number of submissions that have not been published due to privacy or other reasons. As such, the Department has interpreted the scope of your request now to be for the following:

All unpublished submissions received as a result of the public consultation of the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018.

Power to refuse request

Section 24 of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.

Practical refusal

A *practical refusal reason* exists if the following applies:

- (a) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations

Reasons for practical refusal

The Department has identified 455 documents consisting of 740 pages that fall within the scope of your request. These documents consist of submissions made by third parties (individuals or organisations) to the Department.

Of these, 24 submissions were made by third parties on an expressly confidential basis.

The remaining 431 documents are submissions made where either there is no express consent to publish or the consent is not unequivocal. These submissions contain personal information relating to third parties.

Some personal information is limited to names and personal contact details. However, some personal information includes identifiable background information of the individual making the submission – for example, study history and employment history. This information is personal information for the purposes of section 4 of the FOI and section 6 of the Privacy Act. In addition to this, the submissions, by their very nature, include the personal views of individuals.

Section 27 of the FOI Act states that where a document contains personal information, and the Department believes that the relevant individual might reasonably wish to make an exemption contention under section 47F of the FOI Act, the Department must consult that affected individual. The Department must not decide to give access to the document unless the affected third party has been given a reasonable opportunity to make submissions in support of an exemption contention, and the Department has had regard to any submissions made by that affected third party.

This means that the Department must consult 431 affected individuals before making any decision on access to these submissions under the FOI Act.

I believe that an estimate of at least 1 hour is reasonable to conduct each consultation. This would include preparing and sending correspondence to each of the individuals, the managing of any query that arises from that individual in relation to the consultation, and tracking, receiving and collating submissions received from each individual.

As such, I estimate that it would take the Department. **431 hours** to complete the consultation stage of this request. This equates to 57 working days. Noting that the FOI Act provides a statutory processing timeframe of 30 calendar days to complete an FOI request, I do not consider that time required to process these consultations would be reasonable.

In the event that the Department were to proceed with the request, once the consultations are complete, a decision maker would then be required to assess each document against the provisions of the FOI Act, together with the submissions received from third parties. The decision maker would need to review, consider the relevant third party submissions and assess whether access can be granted to each particular submission. Having regard to similar previous assessments, I consider that 3 minutes per page would be a reasonable estimate of the time required to undertake this task. The 455 submissions to be assessed consist of 740 pages. Based on this assessment, I estimate it would take a decision maker **37 hours** to complete a decision on access to these documents.

I consider that the Department would be required to divert significant resources from its current operations in order to finalise the processing of this FOI request. This diversion would result in a significant drain on the resources of the area within the agency that would be required to process this request. To process the request would require a complete diversion from that area's ability to carry out their normal functions and activities.

In light of the above, I am satisfied that your request would substantially and unreasonably divert the resources of the Department from its other operations and that a practical refusal reason applies to your request as it currently stands. Therefore, I am required to consult with you under s.24AB of the Act regarding the scope of your request.

Request Consultation Process

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

Under section 24AB of the FOI Act, you have 14 days to respond to this notice in writing and advise me whether:

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

If you do not do one of the three things listed above during the consultation period (14 days) or you do not consult the contact person listed below during this period, your request will be taken to have been withdrawn in accordance with section 24AB(7) of the FOI Act.

Contact

Should you wish to revise your request or have any questions in relation to this process, please do not hesitate to contact me at foi@homeaffairs.gov.au.

FOI Case Officer | Freedom of Information
FOI and Records Management Branch
Productivity and Compliance Division | Corporate and Enabling Group
Department of Home Affairs