



## Request consultation notice due to existence of two practical refusal reasons under section 24AB of the *Freedom of Information Act 1982*

Consultation notice of Julie (Position Number 62212962), Information Law Section, Legal Services and Assurance Branch, Department of Veterans' Affairs

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**Applicant:** Julie (via Right to Know)  
**Notice date:** 17 December 2018  
**FOI reference number:** FOI 25907  
**Sent by email:** [foi+request-5111-31c4a5f4@righttoknow.org.au](mailto:foi+request-5111-31c4a5f4@righttoknow.org.au)

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Dear Julie

### **Freedom of Information (FOI) request: FOI 25907**

I refer to your request, made under the *Freedom of Information Act 1982 (FOI Act)*, dated 15 November 2018, for access to documents in the possession of the Department of Veterans' Affairs (**Department**). Your request was made in the following terms:

*Department prepared a series of briefs and talking point packages for those appearing to refer to, and quote from, during proceedings*

*I request, under FOI, copy of these briefs. While some of the contents would have been repeated by those subject to questioning by the Senate Estimates Committee, not everything briefed on gets said, as it is decided by what the Committee members ask, not what those being questioned wish for.*

*I note that as briefing material for Senate Estimates is all prepared on the basis it may be stated during these public proceedings, clearance for FOI release should be reasonably straightforward, and given the recency of Senate Estimates, should be able to be quickly located.*

I, Julie (Position Number 62212962), Legal Officer, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the Department's possession in accordance with section 23(1) of the FOI Act.

This is a notice of an intention to refuse your request, under section 24AB(2) of the FOI Act, because it gives rise to the following practical refusal reason:

- Your request does not provide such information as is reasonably necessary to enable the Department to identify the documents you are requesting (section 24AA(1)(a)(i) of the FOI Act).

### **When does a practical refusal reason exist (section 24AA of the FOI Act)**

Section 24(1)(b) of the FOI Act provides that:

- (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 requirements in paragraph 15(2)(b) (identification of documents).

### ***Why I intend to refuse your request***

#### *Identification of documents*

Section 15(2)(b) of the FOI Act requires that a FOI request must provide such information concerning the documents sought as is reasonably necessary to enable a responsible officer of the Department to identify those documents.

Your request does not provide such information as is reasonably necessary to enable to the Department to identify the documents you are seeking.

After consulting with the line area, they have advised me that it is unclear what documents you are seeking to access when you broadly refer to "briefs". This broad term may be expected to capture the package of briefs prepared by the Department for use by Senior Executive Service officers, but may also capture 'back pocket briefs' prepared by each line area for their First Assistant Secretary.

#### *Substantially and unreasonably divert the resources of the Department*

To the extent that some documents can be identified from your request, processing your request would substantially and unreasonably divert the resources of the Department from its other operations.

The guidelines provided by the Office of the Australian Information Commissioner, at 3.54, provides that:

*A request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used.*

Given the breadth of the scope of your request as it currently stands, it would require seemingly all business areas of the Department to undertake searches on all systems used across the Department, to identify any documents that may fit the broad scope of your request for “briefs.”

Preliminary consultations with the relevant line area indicates there are at least 40-50 documents that may fall within the scope of your request. These documents are likely to involve substantial third party consultations in accordance with sections 27 and 27A of the FOI Act. The following is a conservative estimate of the time it will take to process your request, in its current form.

- I conservatively estimate there are approximately 500 pages falling within the scope of your request, estimating there are 10 pages per document.
- The documents will need to be reviewed and a decision made before they can be released to you. To examine the relevant pages for decision making will take 25 hours and a further 1.67 hours to redact any exempt information.
- Due to the complexity involved, the documents are likely to involve substantial third party consultations in accordance with sections 27 and/or 27A of the FOI Act. These consultations would take 10 hours in total.

Due to the broad scope of your request, additional time would be required to identify and retrieve further documents that may fall within the scope of your request to possibly also include ‘back pocket briefs.’

### **What you should do?**

You can revise the request in a form that would remove the ground for refusal. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24 of the FOI Act may still exist or the Department may need further time to process your revised request. This will depend on the terms of your final request. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

If you are able to pinpoint the specific documents within your request, or clarify more particularly the information you are seeking, that would assist.

Please note you have **14 days (by close of business 31 December 2018)** from the date you receive this notice to either:

- withdraw the request;

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

If you do not respond in one of these ways within 14 days the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse under section 24 of the FOI Act.

If you need more time to respond, please contact the Information Law Section via the below contacts, within the 14 day period to discuss your need for an extension of time.

Please note under section 24AB(8) of the FOI Act, the time for processing your FOI requests is suspended from the day you receive this notice until the day you do one of the things listed above.

An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

#### **Contact us**

If you would like to revise your request or have any questions, please contact me using the details listed below:

**Post:** Legal Services & Assurance Branch, Department of Veterans' Affairs  
GPO Box 9998, Canberra ACT 2601  
**Facsimile:** (02) 6289 6337  
**Email:** [information.access@dva.gov.au](mailto:information.access@dva.gov.au)

Yours sincerely

**Julie (Position Number 62212962)**

Legal Officer

Information Law Section | Legal Services & Assurance Branch

Legal Assurance and Governance Division

17 December 2018



## Schedule of relevant provisions in the FOI Act

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### 15 Requests for access (as related to the requirements for requests)

#### *Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

#### *Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

### 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.