



Our reference: FOIREQ18/00211

O Wendell

By email to: foi+request-5173-e337a22a@righttoknow.org.au

Dear O Wendell

Freedom of Information request – Notice of intention to refuse request

I refer to your request for access to documents, made under the *Freedom of Information Act 1982* (Cth) (FOI Act), received by the Office of the Australian Information Commissioner (OAIC) on 21 December 2018.

You are seeking access to any briefing notes, questions and answers and talking points prepared for OAIC witnesses for the purposes of the Australian Senate's Legal and Constitutional Affairs Legislation Committee hearing on 22 October 2018 (the hearing).

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests.

I am writing to tell you that I believe that the work involved in processing your request in its current form will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope. This is called a 'practical refusal reason' (under s 24AA of the FOI Act).

On this basis, I intend to refuse access to the documents you have requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under s 24AB of the FOI Act. You have **14 days** to respond to this notice in one of the ways set out at the end of this letter.

Why I intend to refuse your request

Calculation of the processing time

I estimate it will take the OAIC at least **105 hours** to process your FOI request in its current form.

There are 58 documents that were prepared for the OAIC witnesses for the purposes of the hearing. The documents are complex and are sourced from various sections of the OAIC. In those 58 documents there are, collectively, approximately 700 pages.

To calculate the processing time I have taken the following factors into account:

- To convert to PDF and collate 58 documents relevant to your request will take approximately **1 hour**.
- I estimate it will take one hour per 20 documents to prepare a document schedule listing the document number, date, number of pages and a description of each document. I therefore estimate it will take approximately **3 hours** to prepare a schedule for 58 documents.
- The documents relate to at least one third party who would need to be consulted in relation to the request under s 27 of the FOI Act. I estimate that it will take **4 hours** to prepare and send a consultation notice and consider the entity's response.
- Based on a sample of five documents and the complexity of each document, I estimate it will take 8 minutes to examine each page to decide whether it can be released or whether it will be subject to an exemption (either in full or in part), and prepare an edited copy of the documents. On the basis that there will be at least 700 pages within the scope of the request this task will take at least **93 hours**.
- To update the schedule to record the FOI decision and write a decision statement for the FOI applicant will take approximately **4 hours**.

I have therefore calculated it will take at least **105 hours** to process your FOI request.

Diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a **practical refusal** reason exists. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to *unreasonably* divert an agency's resources from its other functions before it can be refused under s 24.

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

- the staffing resources available to the agency for FOI processing
- the impact that processing a request may have on other work in the agency, including FOI processing
- whether an applicant has cooperated in framing a request to reduce the processing workload
- whether there is a significant public interest in the documents requested
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The OAIC is a small agency, employing approximately 85 (head count) staff. Processing a request of this size would substantially impact on the OAIC's operations because of the

limited number of people the OAIC has available to process FOI requests. This makes it likely that staff will be diverted from their other work in the OAIC, including

- undertaking regulatory functions in both FOI and privacy
- undertaking activities set out in the OAIC's 2017/2018 Corporate Plan such as:
 - supporting compliance with the Australian Government Agencies Privacy Code
 - conducting targeted assessments in priority areas in order to monitor and improve privacy practices
 - reviewing the administration of the Information Publication Scheme and disclosure logs by agencies and ministers, and
 - monitoring agencies' compliance with the statutory decision making timeframes, as set out in the FOI Act.

Request consultation process

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

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. For example, by providing more specific information about exactly what documents you are interested in, we will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice. Therefore you must respond to this notice by **Friday 1 February 2019**.

During this period, you can ask the contact person (see below) for help to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the agreed 60 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Ways you can reduce the scope of your request

There are a number of ways that you can reduce the scope of your request to enable us to process it without unreasonably diverting our resources from our other operations. These include limiting the scope of your request to documents that were prepared for the witnesses in relation to a specific topic or that exclude a number of topics.

The transcript of the hearing may provide information to assist you to limit your request to a particular subject or to exclude topics from your request. The transcript can be found at: https://www.aph.gov.au/Parliamentary_Business/Hansard/Estimates_Transcript_Schedule.

Similarly, I have attached a document that outlines the topic of the questions taken on notice during the hearing. This may also assist you in limiting the subject matter of your request.

Contact officer

If you would like to revise your request or if you have any questions, you can contact John Molloy on (02) 9284 9833 or by sending an email to John.Molloy@oaic.gov.au.

Yours sincerely

Amanda Nowland
Senior Lawyer
Legal Services

18 January 2019