



Australian Government
Attorney-General's Department

Our ref: FOI19/009; CM19/211

21 January 2019

Posty

BY EMAIL: foi+request-5193-e2a0dc6e@righttoknow.org.au

Dear Posty

Freedom of Information Request FOI19/009 – Request Consultation Process

The purpose of this letter is to seek information from you about access to documents that you requested under the *Freedom of Information Act 1982* (the FOI Act).

Your Request

On 1 January 2019, you requested access to:

All documents as is (that is, redacted or unredacted) from all previously made decisions on your department's FOI log that are currently not available for download direct from the website.

The total of the number of times any member of the public has asked for access to each non-website published successful documents on the FOI disclosure log other than the original successful applicant.

On 11 January 2019, the Attorney-General's Department (the department) acknowledged your request.

On 11 January 2019, you clarified that the second part of the request did not need to be responded to if the documents that are not currently available for download were made available for download.

Practical Refusal Reason

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

I have decided that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this department from its other operations due to its size. Section 24AA of the FOI Act refers to this as a 'practical refusal reason' (copy at **Attachment A**).

The department's disclosure log dates back to 2011, with more than 200 requests where documents have not been published. In response to your FOI request, the departmental resources required to identify, locate and collate all documents within the scope of your request, and decide whether to

grant, refuse or defer access to each of those documents would divert the resources of department from its other operations.

Request Consultation Process

Before I make a decision to refuse access to the documents you requested, section 24AB of the FOI Act provides for a 'request consultation process' (copy at **Attachment A**). This means you have 14 days in which to respond to this notice revising your request in one of the ways described below.

If you would like to proceed with your FOI request, you must make a revised request, in writing, within 14 days of the date your receive letter.

In your request you provided an alternative request if the department was considering a practical refusal. Please let the department know if you would like to confirm that the scope of any revised request be for:

Any documents that your department holds relating to the decision to include test on your freedom of information disclosure log similar to "contact us for access to this document".

Revising your request can also 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 or limit the timeframe of your request.

During the consultation period, you are welcome to seek assistance from the contact person listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, the department will recommence processing it. Please note that the time taken to consult you about the scope of your request is not included in the 30 day time limit for processing your request.

If you do not wish to proceed with your FOI request, you may either withdraw your request or advise the department that you do not wish to revise your request. If you do not revise your request within the 14 day consultation period, your FOI request will be taken to have been withdrawn.

Publication of Information in Accessed Documents

As an alternative to a revised FOI request, I note that the department publishes all decision and documents on its disclosure log in accordance with section 11C of the FOI Act (copy at **Attachment A**). Where documents have not been published, the department has included the statement 'the document is available on request to the Freedom of Information and Parliamentary Section of the department at foi@ag.gov.au.' This statement meets the requirement set out in section 11C of the FOI Act.

You may request access to the documents that have this statement in place. Due to the size of a majority of the documents they will have to be placed on a disc and sent via post. This will require a postal address from you and a timeframe for delivery that can be managed within the FOI team's resources.

I encourage you to telephone the contact person detailed below, to discuss your request and the various options available to you.

Review Rights and Questions

Your review rights under the FOI Act are set out at **Attachment B** to this letter.

If you wish to discuss this decision, the FOI case officer for this matter is Jon, who can be reached on (02) 6141 6666 or at foi@ag.gov.au.

Yours sincerely



Katrina Fairburn
Director, Freedom of Information and Parliamentary Section

Attachments

Attachment A: Sections 11C, 24AA and 24AB of the FOI Act

Attachment B: Review Rights

Attachment A

11C Publication of information in accessed documents

Scope

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
 - (a) personal information about any person, if it would be unreasonable to publish the information;
 - (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
 - (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;
 - (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).
- (2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

Publication

- (3) The agency, or the Minister, must publish the information to members of the public generally on a website by:
 - (a) making the information available for downloading from the website; or
 - (b) publishing on the website a link to another website, from which the information can be downloaded; or
 - (c) publishing on the website other details of how the information may be obtained.
- (4) The agency may impose a charge on a person for accessing the information only if:
 - (a) the person does not directly access the information by downloading it from the website (or another website); and
 - (b) the charge is to reimburse the agency for a specific reproduction cost, or other specific incidental costs, incurred in giving the person access to that particular information.
- (5) If there is a charge for accessing the information, the agency or Minister must publish details of the charge in the same way as the information is published under this section.

Section 24AA of the FOI Act: 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.

Section 24AB of the FOI Act: 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.

Attachment B

Review Rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter. Applications for internal review must be lodged by email or post.

email: foi@ag.gov.au

post: Freedom of Information and Parliamentary Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and can be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>

email: enquiries@oaic.gov.au

post: GPO Box 5218, SYDNEY NSW 2001

in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website.

Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>

