



By email: foi+request-5194-95f59680@righttoknow.org.au

Dear Posty

Request Consultation Process

I refer to your request received by the Department of Education and Training (the department) on 1 January 2019, in which you requested access under the *Freedom of Information Act 1982* (FOI Act) 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”. [Part A]

“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”. [Part B]

Part A of your FOI request

Disclosure log requirements in the FOI Act

The department publishes all information that has been released in response to an FOI access request for documents held by the department, in compliance with section 11C of the FOI Act.

Subsection 11C(3) of the FOI Act sets out three options available to agencies for publishing information on the disclosure log, as follows:

11C Publication of information in accessed documents

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.*

Where the department has not published documents on its disclosure log, the department has included the statement *‘If you would like to request a document from the department’s disclosure log, please email foi@education.gov.au. Please ensure to include the document’s TRIM reference and Title in your request’* as an alternative means for members of the public to access that information on the disclosure log. This approach meets the requirement set out in subsection 11C(3)(c) of the FOI Act, and the department processes such requests for the relevant disclosure log publication in a timely manner (usually within 24 to 48 hours of receipt).

Consultation process

The department's disclosure log dates back to 2011 when the requirement to maintain a disclosure log was legislatively introduced. The disclosure log currently contains content relating to both the Department of Education (now referred to as the Department of Education and Training) and the Department of Employment (now referred to as the Department of Jobs and Small Business). These two departments were created on 18 September 2013 out of the former Department of Education, Employment and Workplace Relations. As such, as at the date of your FOI request the department's disclosure log contained approximately 157 separate publications, where documents consisting of several thousand pages are available on request in accordance with subsection 11C(3)(c) of the FOI Act.

I have considered the volume of the documents captured by the scope of your FOI request in its current form. In my view, the departmental resources required to identify, retrieve, collate, cross-reference, and decide whether to grant access to each of those documents, within in the strict processing timeframes under the FOI Act, would amount to a substantial and unreasonable diversion of the department's resources.

Given the above, it is my intention to refuse your FOI request under section 24 of the FOI Act, because I am satisfied that a practical refusal reason exists under subsection 24AA(1)(a)(i), in that processing your request in its current form, would substantially and unreasonably divert the resources of the department from its other operations, including processing FOI requests for other applicants within the statutory timeframes of the FOI Act.

Before making a refusal decision, I am initiating a request consultation process under section 24AB of the FOI Act to provide you with an opportunity to make a written submission in support of your request as currently worded, or to revise the scope of your request so that the practical refusal reason no longer exists.

Information to assist with revising your request

To narrow the scope of your FOI request, as a starting point, you may wish to consider:

- limiting your request to disclosure log publications within a specific period of time;
- identifying specific disclosure log publication(s) which you are interested in by their title or TRIM number (i.e. document number); or
- some other way of identifying particular documents.

Alternatively, in your FOI request you said that if the department is considering a practical refusal, you would like to make an alternative request for:

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

With respect to the above, please confirm if you wish to revise the scope of your request to that of your alternative request.

You have **14 days** from the day you receive this letter to contact me and do one of the following, in writing:

- (a) withdraw your request;
- (b) make a revised request; or
- (c) indicate that you do not wish to revise the request.

Once you undertake one of the above actions, the consultation period will conclude and the department will then proceed to make a decision in relation to your request.

You can contact me by sending an email to foi@education.gov.au.

If you do not contact the department within this period, please note that your FOI request will be taken to have been withdrawn under subsection 24AB(7) and will not be dealt with any further.

Part B of your FOI request

Your FOI request also requests *"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."*

This is a request for information rather than documents. Section 11 of the FOI Act provides applicants with a right to obtain access in accordance with the FOI Act to documents, not to information. In any event, the department does not record the information you are requesting nor is it required to do so under the FOI Act.

Should you have any questions, please do not hesitate to contact me via email at foi@education.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Rushil', written over a horizontal line.

Rushil
Senior Government Lawyer
Schools, Child Care and Corporate Legal Branch
24 January 2019