



18 February 2019

Nishadh Rego

**BY EMAIL:** [foi+request-5237-b1070f2f@righttoknow.org.au](mailto:foi+request-5237-b1070f2f@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 19/02/00923

File Number: OBJ2019/7400

Dear Nishadh

I refer to your email dated 31 January 2019, in which you request 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:

*Any departmental guidelines, directives, briefing papers, decision records, email correspondence, or other forms of internal communication which include reference to or pertain to the International Treaty Obligations Assessment (ITOA).*

**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 either (or both) of 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
- (b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to provide such information concerning the document you are seeking access to, to enable the Department to be able to identify it.

## **Reasons for practical refusal**

Your request does not seek access to a specific existing document and therefore does not satisfy the requirements of section 15(2)(b) of the FOI Act.

A request for “all” or “any” documents held by the Department concerning a particular subject will likely attract refusal under section 24AA of the FOI Act because it would not be possible for the decision maker to certify that he or she has located every copy of every single document in the Department’s possession, which falls within the scope of the request, without conducting a search of every hard copy file and all individuals electronic communication records in the agency.

The Department would be required to divert significant resources from its current operations in order to identify, locate and collate *any* documents held within the agency that would be captured by your 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 the circumstances, at the present time, I do not consider it would be possible for the decision maker to certify that he or she has located every copy of every single document in the Department’s possession, which falls within the scope of your request as it currently stands, without conducting a search of every hard copy file and all individuals' electronic communication records across the Service.

## **Request Consultation Process**

To enable the Department to consider your request for access under the FOI Act, the agency will require sufficient information concerning the specific existing document(s) you are seeking access to, so as to enable the agency to identify the document(s).

If you wish to revise your request to specify the document(s) you are seeking access to, the agency may be able to process your request and consider whether it holds any relevant documents.

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.

### **Factors for consideration**

The Department publishes a large number of policy documents on [LEGENDcom](#). Details on how to obtain access to LEGENDcom can be located [here](#). You may wish to consider, in the first instance, what information you are able to locate using that resource. I note that documents which are made publicly available as reference material are not documents for the purposes of section 4 of the FOI Act.

You may also wish to consider limiting the scope of your request to a narrow range of documents. At the present time, your request captures all decisions and correspondence on all files relating to individuals where an International Treaty Obligations Assessment (ITOA) may have been considered. This generates a number of issues for the Department. Firstly, the Department is unable to identify which individual files may have reference to an ITOA, and it would have to search every single individual's file that might possibly relate. This has the potential to capture a very large number of files that will need to be assessed for relevance. Secondly, any files that are identified as being relevant would contain the personal information of private individuals for which you do not appear to hold authority to act. The Department is committed to complying with its obligations under the Privacy Act 1988, and very careful assessment would need to be made of any such information, and regard had to section 47F of the FOI Act, prior to any decision on access being finalised.

Finally, we note that you have not provided a timeframe around your request, and ultimately, your request potentially captures documents across a very broad timeframe.

Noting the above, you may wish to consider:

- limiting the scope of your request to documents for a particular timeframe
- limiting the scope of your request to documents which are not already available for reference purposes on LEGEND.com.
- limiting the scope of your request to specific documents, such as briefs to Departmental SES officers and/or Ministers regarding non-personal matters concerning the International Treaty Obligations Assessment (ITOA).

## Contact

Should you wish to revise your request or have any questions in relation to this process, please do not hesitate to contact us at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).



Alison Smith

Assistant Director | Freedom of Information Section

FOI and Records Management Branch

Productivity and Compliance Division | Corporate and Enabling Group

Department of Home Affairs