



Guido Orefice

Via email: foi+request-5447-39fb3526@righttoknow.org.au

Dear Guido Orefice

I refer to your request under the Freedom of Information Act (FOI Act) dated 27 May 2019 as follows:

Radioactive waste is currently stored at over 100 sites across Australia. A 2016 parliamentary briefing acknowledged "Many organisations are using storage areas that were not designed for long term storage of radioactive waste."

I am seeking access under the Freedom of Information Act 1982 (FOI Act) to all inspection reports for facilities storing radioactive waste from 1 January 2000 to the present.

I understand that the name and location of the facility may need to be redacted for security purposes.

I, Gemma Larkins, legal officer in the Office of the General Counsel, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

The purpose of this notice is to advise you (as required under section 24AB of the FOI Act) that I consider that the work involved in processing your request would substantially and unreasonably divert the resources of this agency from its other operations due to its complexity and breadth.

This is called a *practical refusal reason* under section 24AA of the FOI Act.

On this basis, I intend to refuse access to the documents you requested. However, before making a final decision, you have the opportunity to revise your request. This is called a 'request consultation process' as set out in section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Advice regarding practical refusal reason

You are seeking access to:

To all inspection reports for facilities storing radioactive waste from 1 January 2000 to the present.

Radioactive waste is material with a content or concentration of radioactive substances over a certain predefined level for which no further use is foreseen. Waste is generated by any dealing with unsealed sources and includes disused sources.

ARPANSA has a number of licence holders who deal with radioactive material and store radioactive waste. To process your request, ARPANSA would be required to divert significant resources from its current operations to carry out the following:

- (1) identify exactly which licence holders are currently storing or have in the last 19 years stored radioactive waste and the applicable licence and the location of the radioactive waste;

- (2) for each of the locations of radioactive waste identified in 1 above, a search of the records for the last 19 years to identify the relevant inspection reports.
- (3) Once the inspection reports have been identified, extracted and collated, consultation with the licence holders in relation to the release of any inspection reports predating 2015 (which is when ARPANSA started publishing reports on-line).
- (4) Review each inspection report to identify any security sensitive information.
- (5) Index and if necessary redact the inspection reports and make a decision on the release of the inspection reports.

It is estimated and that this process would exceed 40 hours and would require a considerable degree of involvement of the regulatory inspectors to assist the FOI department in identifying the relevant licences, the location of the waste and the relevant inspection reports. It would also involve specialist knowledge to identify any security sensitive material. This would substantially and unreasonably divert the resources of the agency from its other operations.

How the size could be reduced?

In order to make the request a more manageable size, you could consider reducing the date range of your request from 19.5 years to the last 5 years and limiting the scope of your request to report of inspections of radioactive waste stores of the following licence holders which would cover most of the Commonwealth radioactive waste:

1. Australian Nuclear Science and Technology Organisation
2. Commonwealth Scientific and Industrial Research Organisation
3. Australian Radiation Protection and Nuclear Safety Agency
4. Department of Defence
5. Australian National University

Request Consultation Process

You now have the 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 you do not wish to revise your request, or
- Withdraw your request

Suspension of processing time

Please note that section 24AB(8) of the FOI Act provides that the legislated processing time for your request is 'suspended' until you have either:

- Revised the request
- Advised that you do not intend to revise the request, or
- Withdrawn your request

If you do not contact me in writing before the end of the consultation period your request will be deemed to be withdrawn in accordance with section 24AB(7) of the FOI Act. The relevant sections of the FOI Act are extracted below.

Contact

Feel free to contact me on foi@arpansa.gov.au or +61 2 9541 8311 if you have any questions.

Yours sincerely

Gemma Larkins

Gemma Larkins (Position Number 13529)

Legal Officer

Office of the General Counsel

24 June 2019

EXTRACT OF THE RELEVANT SECTION OF THE FOI ACT

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.