



Our reference: FOIREQ19/00116

Mr Roger Sparrow

By email: foi+request-5455-0fb67cb6@righttoknow.org.au

Freedom of Information Request

Dear Mr Sparrow,

I refer to your request for access to documents, made under the *Freedom of Information Act 1982* (Cth) (the FOI Act), dated 1 June 2019 and received by the Office of the Australian Information Commissioner (OAIC) on the same date.

In your FOI request you are seeking access to:

- copies of any documents that relate to any representative complaints made or expected under section 36 of the Privacy Act 1988 (Cth), including documents relating to:
 - any past, pending or expected representative complaints (whether the complaint was investigated by the Office of the Australian Information Commissioner or not)
 - any documents relating to possible representative actions in relation to Facebook, Inc (in relation to Cambridge Analytica, as investigated by the OAIC (per statement of 5 April 2018)), and
 - any documents relating to possible representative actions in relation to Avid Life Media, Inc (in relation to the Ashley Madison data breach, investigated by the OAIC (per statement of 25 August 2015), to the extent that those documents are not already available on the OAIC's website.

From 1 November 2010 to 1 June 2019.

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 **6200 hours** to process your FOI request in its current form.

In the period between 1 November 2010 and 1 June 2019, the OAIC accepted eight (8) representative complaints.

Each representative complaint has a number of class members. For example, one representative complaint received notifications from 1749 individuals with each file estimated to hold four documents per notification with the representative complainant file consisting of some 182 documents.

I have estimated that your whole request would cover approximately 9600 documents. We have estimated that on average there are 6 pages per document. Therefore, I estimate that your request covers approximately **57,000 pages**.

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

- To locate, convert to PDF and collate 9591 documents from the OAIC's database will take approximately **240 hours**.
- I estimate it will take one hour per 30 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 at least **1150 hours** to prepare a schedule for 9600 documents.
- The documents relate to a number of third parties who would need to be consulted in relation to the request under s 27 of the FOI Act. On the face of it, it appears that there are at least 1900 complainants involved (this does not include consultation with the respondents to the representative complaints or other third parties). I estimate that it will take one hour to prepare and send a consultation notice and consider the entity's response. On this basis, consultation will take a minimum of **1900 hours**.
- On the basis that at least half the consulted entities will object to disclosure of the requested information, and that preparing an access grant decision, as required by s 27(6) of the FOI Act, will take approximately one hour per party, I estimate that drafting decisions for the affected third parties will take at least **970 hours**.

- I estimate it will take one minute 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 57,546 pages within the scope of the request this task will take at least **950 hours**.
- To update the schedule to record the FOI decision and write a decision statement for the FOI applicant will take approximately **920 hours**.

I have therefore calculated it will take at least **6200 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 along with undertaking activities set out in the OAIC's [2018/2019 Corporate Plan](#).

I have calculated it will take **6200 hours** to process your FOI request. This equates to approximately 155 working weeks.

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 **Thursday 27 June 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 30-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 can include reducing the number of notifications requested by, for example:

- specifying a shorter timeframe, or
- requiring only a specified sample of the representative complaints.

Contact officer

If you would like to revise your request or if you have any questions, you can contact me on

(02) 9284 9646 or by sending an email to Amanda.nowland@oaic.gov.au.

Yours sincerely

Amanda Nowland
Senior Lawyer
Legal Services

14 June 2019

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Heading 2

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 - Bullet level 2
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Heading 3

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1. Number list level 1
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¹ Footnotes

² Footnotes