



Australian Government
Department of Immigration and Border Protection

24 March 2014

Ms Asher Wolf
Right to Know

Sent by email to: foi+request-546-4b10f1b7@righttoknow.org.au

In reply please quote:

FOI Request FA 14/03/00153
File Number ADF2014/7565

Dear Ms Wolf

Request consultation notice - Practical refusal reason

I am writing to you in relation to your request under the *Freedom of Information Act 1982* (the FOI Act) of 27 February 2014, seeking access to:

... documents including CCTV footage from any premises either run by or otherwise provided to or managed under contract on behalf of the Department of Immigration and Border Protection (DIBP) or any other government department that reports to or is otherwise related to DIBP on Manus Island from 16 to 20 February, 2014.

The current due date for your request is Saturday, 29 March 2014.

Purpose of this notice

The purpose of this notice is to advise you (as required under s.24AB of the FOI Act) that I consider a *practical refusal reason* exists under s.24AA of the FOI Act. I am considering refusing access to the requested documents, under s.24 of the FOI Act. My reasons are set out in this notice.

This notice sets out the actions required from you in order to ensure that no *practical refusal reason* applies to your request.

For your information extracts of the relevant legislation are attached to this notice.

people our business

Advice regarding practical refusal reasons

The Act contains two practical refusal reasons. The first is that processing the request *would substantially and unreasonably divert the resources of the agency from its other operations* s.24AA(1)(a). An agency may also refuse an FOI request if the agency is satisfied that the request does not *provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify the document in question* s.24AA(1)(b).

Generally, it is the department's view that where it appears that a request under the FOI Act for access to documents will take more than 40 hours to complete, the request must be assessed (under the 'practical refusal reason' provisions in the FOI Act) to determine whether processing the request will be a substantial and unreasonable diversion of the department's resources. This balances the right of applicants to seek information under the FOI Act with the department's need to appropriately allocate resources to its functions.

Application of s.24AA of the FOI Act to your request

It is my view that the request, as it currently stands, satisfies the first practical refusal reason because it would take an unreasonable amount of time to process the request.

Although the time range is defined (*16-20 February 2014*), the request is too broad. The term 'document' is very broadly defined in section 4 of the FOI Act to include any record of information.

'Documents' include (but are not limited to) any of or any part of the following:

- Any paper or other material on which there is writing,
- Each hard copy of a document,
- Electronic documents – including emails, each electronic version of a document and databases,
- DVDs and video tape of rille recordings,
- Sound recordings,
- Photographs and drawings,
- Maps, plans and diagrams,
- Transcript of sound recording or shorthand notes,
- Mobile phone SMS (text) messages,
- Any copy, reproduction or duplicate of such thing,
- Any part of such copy, reproduction or duplicate,
- Any article on which information has been stored or recorded, either mechanically or electronically.

To date I have identified over 160 documents, totaling approximately 900 pages, within the scope of your request.

The documents include:

- Email correspondence,
- Ministerial Briefs,
- Talking Points,
- SitReps,
- Tables,
- Handwritten logs,

- Spreadsheets,
- Work orders,
- IHMS documents,
- Officer Reports (including photographs),
- Incident Reports,
- Client Security Risk Assessments,
- Intelligence Assessments,
- Operations Meeting Minutes.

There is a significant amount of personal information relating to transferees' in the documents (i.e. names, dates of birth, country of origin/nationality, boat ID and, in some cases, photographs). I would have to consider each piece of personal information for release under the FOI Act. This adds considerably to the processing time.

Using routine departmental procedures, I estimate that it would take the department over 160 hours to process this request.

This amount exceeds 40 hours. As a result, I am satisfied that your request *would substantially and unreasonably divert the resources* of the department *from its other operations* and that a *practical refusal reason* may apply to your request as it currently stands, therefore I am required to consult with you on its scope.

You may accordingly wish to refine the scope of your request to only 'reports' (incident reports and the like) and exclude all email correspondence. You may also consider removing personal information of transferees from the scope of your request, which will reduce the processing time.

Consultation over scope

You may consult with me on the scope during the *consultation period* which is from the date of this notice until close of business **Monday, 7 April 2014**.

You may request that I extend the consultation period if you wish, by writing to me before the end of the consultation period at foi@immi.gov.au. The requirements for extending the consultation period are contained in s.24AB(5).

Suspension of processing time

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

- revised the request or
- withdrawn the request or
- advised me that you do not intend to revise the request.

If you do not contact me in writing before the end of the consultation period (to either withdraw your request, revise or affirm the scope of your request, or ask for an extension of time to respond to the s.24AB notice) your request will be deemed to be *withdrawn* in accordance with s.24AB(7) of the FOI Act.

I look forward to hearing from you shortly.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. Nolte-Crimp', is positioned above the typed name.

Marianne Nolte-Crimp
Authorised FOI Decision Maker
FOI and Privacy Policy Section
Department of Immigration and Border Protection

Email foi@immi.gov.au

Attachment

Extract of relevant legislation

Extract of relevant legislation

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.

Extract of relevant legislation continued

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).

Extract of relevant legislation continued

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.