



## Request consultation notice due to existence of a practical refusal reason under section 24AB of the *Freedom of Information Act 1982*

Practical Refusal Consultation Notice of Jo (Position Number 62210326), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

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**Applicant:** Mr Alan Ashmore

**Decision date:** 2 August 2019

**FOI reference number:** FOI 29696

**Sent by email:** [foi+request-5502-bd7fe075@righttoknow.org.au](mailto:foi+request-5502-bd7fe075@righttoknow.org.au)

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Dear Mr Ashmore,

### Freedom of Information Request: FOI 29696

#### Purpose of this notice

1. The purpose of this notice is to advise you (as required under section 24AB of the *Freedom of Information Act 1982* (**FOI Act**)) that I intend to refuse your request on the basis that a practical refusal reason exists, as defined by section 24AA of the FOI Act.
2. Based on the terms of your request, and from initial searches undertaken to respond to your request, I am of the view that a practical refusal reason exists because:
  - a. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

#### Authority to make decision

3. I, Jo (Position Number 62210326), Assistant Director, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department, in accordance with section 23(1) of the FOI Act.

## Scope of your request

4. On 7 July 2019 you made a request for access to documents in the possession of the Department. Your request sought access to:

- External legal costs associated with veteran appeals to the Administrative Appeals Tribunal for each of the following years, 16/17, 17/18 and 18/19. This is to be broken down into the following:
  - Name of legal firm.
  - Total amount paid to each legal firm, by financial year.
  - Total number of cases by each legal firm, by financial year.
- Number cases by each legal firm, by financial year.
  - Won by the Repatriation Commission and MRCS.
  - Won by the veteran.
  - Settled by consent in the Repatriation Commission and MRCS favour.
  - Settled by consent in the veterans favour.
  - Withdrawn by the Repatriation Commission and MRCS and
  - Withdrawn by the veteran.

## Power to refuse a request

5. 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.
6. However, before I make a decision to refuse your request 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 at pages 5-6.

## When does a practical refusal reason exist (section 24AA of the FOI Act)

7. The practical refusal reason applicable to your request is that:
- a. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

8. Under section 24AA(2) of the FOI Act, the agency must have regard to the resources that would have to be used for:
- identifying, locating or collating the documents within the filing system of the agency;
  - 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 examining the document or consulting with any person or body in relation to the request);
  - making a copy or an edited copy, of the document; and
  - notifying any interim or final decision on the request.
9. Further, the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**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; and
  - other steps taken by an agency or minister to publish information of the kind requested by an applicant.
10. I consider that all of the above factors have a bearing on your request. The reasons why a practical refusal reasons exists in relation to your request are set out below.

### **Why I intend to refuse your request**

#### *Request is substantial*

11. Section 24AA(1)(a) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.
12. Following initial enquiries, I estimate that **155 hours** of processing time is required to deal with this request. The reasons for this are as follows:

- Much of the information you are requesting is not readily available and will require extensive manual review of spreadsheets and databases in order to collate it. The Department will be required to create a document to effectively respond to your request.
- In particular, information relating to part two of your request (number of cases per law firm based on outcome for the 2016/17, 2017/18 and 2018/19 financial years) is not held in a dedicated case management system. Obtaining this information will require a number of officers to review spreadsheets and a separate database for each financial year to identify which matters went to the AAT, which law firm they were allocated to and the outcome. If the outcome is not listed in the spreadsheets, officers will then need to review each individual file to ascertain the outcome.
- Given that obtaining this data is a highly manual process, a quality assurance process will need to be undertaken by a more senior officer to confirm the accuracy of the data.
- Further work will also be required to collate relevant information once it has been identified so that access can still be provided under the FOI Act.
- In total, the above processes are estimated to take approximately 153.5 hours and require the resources of six officers.
- Further to the previous point, a Statement of Reasons will still need to be provided to you. I anticipate that it would take approximately 1-2 hours to draft the Statement of Reasons and prepare the Schedule of documents for this decision, noting that any exemptions to be applied will need to be detailed.
- For clarity, please note that part one of your request (for law firm name, total amount paid to each law firm, and number of cases per law firm for the 2016/17, 2017/18 and 2018/19 financial years) on its own would not represent a substantial and unreasonable diversion of the Department's resources.

13. Taking these factors into account, I have concluded the request as it currently stands is substantial.

*Request is unreasonable*

14. For the purpose of providing this notice, I have considered whether the substantial resource burden would be unreasonable having regard to the following:

- 135 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business area to undertake their designated duties.

- The Litigation Team responsible for collating this information is a small team and processing your request in its current form would divert the team's resources from instructing on other active litigation matters.
- Your request spans a number of financial years, and due to the specific nature of your request, data is not readily available.

15. Taking the above factors into account, I have concluded the request as it currently stands is unreasonable, as well as substantial.

### **Ways you can revise the scope of your request**

16. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.

17. 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.

18. For example, you may want to consider:

- Reducing the scope of your request to part one only, specifically:

*For the 2016/17, 2017/18 and 2018/19 financial years:*

- *Name of law firm*
- *Total amount paid to each law firm for each financial year and*
- *Total number of cases by each law firm by each financial year*

- Reducing your request to the 2018/19 financial year only as data is more readily available for this timeframe.

19. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24AA may still exist and/or the Department may need further time to process your revised request. This will depend on the revision you agree to make. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

### **Next steps**

20. Before the end of the consultation period (which is 14 days from receiving this notice), you must do one of the following, in writing:

- withdraw the request;

- make a revised request; or
- indicate that you do not wish to revise the request.

21. During this period, you can ask me 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.
22. If you do not respond in one of these ways within 14 days (by **16 August 2019**), the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on the grounds that processing your request will result in a diversion of the Department's resources under section 24(1) of the FOI Act.
23. If you need more time to respond, please contact the Information Law Section via the below contacts, within the 14 day period to discuss your need for an extension of time.

### **Suspension of processing time**

24. Please note under section 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above.
25. An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

### **Contact us**

26. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

**Post:** Legal Services and Audit Branch, Department of Veterans' Affairs  
GPO Box 9998, Canberra ACT 2601

**Facsimile:** (02) 6289 6337

**Email:** [Information.Law@dva.gov.au](mailto:Information.Law@dva.gov.au)

Yours sincerely,

**Jo (Position Number 62210326)**

Assistant Director

Information Law Section | Legal Services and Audit Branch

Integrity, Assurance and Communications Division

2 August 2019



## Schedule of relevant provisions in the FOI Act

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### 15 Requests for access (as related to the requirements for requests)

#### *Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

#### *Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

### 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.