

Confidential

Mr Peter Demmery
By email to foι+request-58-
38b09bd7@righttoknow.org.au

4 April 2013

Dear Mr Demmery

Request for access to documents held by Australian Hearing Services

On 6 February 2013 you made a request for access to documents. On 7 March 2013 Australian Hearing made a decision in relation to your request, in part refusing you access to documents. On 7 March 2013 you made a request for an internal review of that decision. The purpose of this letter is to let you know that Australian Hearing has, pursuant to your request for internal review, identified further documents that may fall within the scope of your request and in doing so has further examined the scope of your original request. Following that review, Australian Hearing is now considering refusing your request for access to documents, in part, and to provide you with an opportunity to revise your request so that Australian Hearing does not refuse it.

1. Practical refusal reason

1.1 Australian Hearing has decided that your request for access to documents does not contain enough information to enable the Agency to identify the documents which fall within the scope of your request. This is called a '*practical refusal reason*'. We have attached Australian Hearing's decision that a practical refusal reason exists in relation to your FOI request.

1.2 The attached draft decision means that Australian Hearing is intending to decide to refuse your request for access to documents, subject to the process discussed below.

2. Request consultation process

2.1 Before Australian Hearing makes a decision to refuse your request for access to documents, s 24AB of the FOI Act requires us to undertake the request consultation process. That process is designed to allow you an opportunity to revise your request so that a practical refusal reason no longer exists.

2.2 Australian Hearing notes that in order to assist you in revising your request so that a practical refusal reason may not arise, you may wish to consider a revision of your request along the following lines:

1. *Documents stating the number of adult clients of Australian Hearing with complex needs over the age of 26 who have cochlear implants and the number of all clients of Australian Hearing over the age of 26 who have cochlear implants as at 6 February 2013.*
2. *Documents created in the month of February 2013 showing the cost to Australian Hearing (or to the government) for each cochlear implant speech processor provided to clients under the age of 26. For the purposes of this part of the request, I am not seeking access to personal information or individual purchase orders or invoices. To avoid doubt, I am seeking access only to those parts of the documents that show the cost to Australian Hearing (or to the government) for each cochlear implant speech processor provided to clients under the age of 26.*
3. *Documents created for the period 7 February 2012 to 6 February 2013 showing the total number and cost of speech processors provided each year.*

4. *Documents comparing the cost to Australian Hearing (or to the government) of speech processors and hearing aids created for the period 7 February 2012 to 6 February 2013.*

- 2.3 Within the next 14 days, you may contact Jim Brown, whose details are at the end of this letter, to discuss your request and whether your application could be further refined to focus on the documents required.
- 2.4 Please note that any revised request made by you would remain to be considered by Australian Hearing's internal reviewer and Australian Hearing reserves the right to exempt any documents requested on grounds available under the FOI Act.
- 2.5 At the end of the 14 day request consultation process, you must notify us which of the following three things you would like to do:
- (a) withdraw the request;
 - (b) make a revised request; or
 - (c) indicate that you do not wish to make a revised request.
- 2.6 If you do not do not contact us or do one of the above three things within the 14 day period, your request is taken to have been withdrawn in accordance with the terms of section 24AB(7) of the FOI Act and will not be dealt with any further.

Yours sincerely



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DRAFT PRACTICAL REFUSAL REASON

Freedom of Information Act 1982, s 24

On 6 February 2013, Peter Demmery applied for access to documents under the *Freedom of Information Act 1982 (the FOI Act)*. On 7 March 2013 Australian Hearing made a decision to refuse, in part, Mr Demmery's request for access to documents. On 7 March 2013 Mr Demmery made a request for internal review of that decision. I am authorised to make decisions about Mr Demmery's request in accordance with arrangements under s 23 of the FOI Act.

Under s 24AA(1)(b) of the FOI Act, a "practical refusal reason" exists if, relevantly, the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations. I have decided that a practical refusal reason exists in relation to Mr Demmery's request.

Mr Demmery's request dated 6 February 2013 was in the following terms:

- 1. Documents stating the number of adult clients of Australian Hearing with complex needs over the age of 26 who have cochlear implants and the number of all clients of Australian Hearing over the age of 26 who have cochlear implants.*
- 2. Documents showing the cost to Australian Hearing (or to the government) for each cochlear implant speech processor provided to clients under the age of 26 and the total number and cost of speech processors provided each year.*
- 3. Documents comparing the cost to Australian Hearing (or to the government) of speech processors and hearing aids.*

While the original decision attempted to respond to Mr Demmery's request by providing some information and examining a number of documents, the internal review process has now identified that potentially the scope of Mr Demmery's request is much broader than originally thought. Further searches have now been conducted with this broader scope being considered, however it has not been possible to advance those searches due to the unclear nature of the request. In particular, the following concerns have arisen in relation to the scope of Mr Demmery's request:

- (a) Australian Hearing has identified approximately 5000 documents which potentially fall within the scope of the request. However, given the breadth of the request it is likely that there may be numerous other documents that may address Mr Demmery's request, in particular Part 2 of his request which on its face requests every document Australian Hearing has about the cost of each cochlear implant to anyone under the age of 26. A particular difficulty arises because Mr Demmery has not identified the timeframe in which these documents may have been created, such that Australian Hearing is unable to identify the period within which to search for these documents.
- (b) Concerns also arise due to the potential nature of some of the documents that may fall within the scope of the request. For example, part 2 of Mr Demmery's request gives rise to the potential for individual invoices (containing an amount and personal information as well as some business details) to fall within the scope of the request. Invoices and individual documents associated with each purchase comprise a large group of documents and would undoubtedly require consideration for redaction under section 47F and 47G and 47 of the FOI Act, due to the personal and business information that is contained on each document.

- (c) While the original decision addresses a particular final version of a current contract with a provider of cochlear implants (which the original decision maker decided was exempt under sections 47 and 47G of the FOI Act), the request does not in fact identify whether documents within the scope are limited to final versions created or relevant to a particular timeframe. This lack of limitation potentially gives rise to numerous drafts and versions falling within the scope of the request over an extensive period of time. Australian Hearing has not undertaken a detailed analysis of the quantity of documents that might fall within the scope of such a request, but notes with concern that a conservative estimate over the last 12 months gives rise to over 200 pages that would need to be considered alone.
- (d) Australian Hearing has not undertaken detailed searches of email files, but expects that further documents falling within part 2 of Mr Demmery's request alone would be likely to be significant.

In these circumstances, I am satisfied that Mr Demmery's request does not provide enough information to enable the Agency to identify, with specificity the documents sought. I am also satisfied that the work in collating and finding any further documents will be considerable. The Agency has already spent considerable time and resources in identifying the documents it has found and the quantity of documents and consultations required in assessing those and further documents for release would involve a considerable diversion of the Agency's resources. Therefore, I have decided that a practical refusal reason exists in relation to Mr Demmery's request. I propose to refuse Mr Demmery's request for access to documents, subject to undertaking the request consultation process set out in s 24AB of the FOI Act.

Stephen Patterson

Chief Operating Officer and Company Secretary

Australian Hearing