



22 November 2019

Our reference: LEX 48935

Mr Ben Fairless

Only by email: foi+request-5845-56334372@righttoknow.org.au

Dear Mr Fairless,

Your Freedom of Information Request – Consultation

I refer to your email dated 5 November 2019 to the Department of Human Services (**department**), in which you requested access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to over 200 of the department's Operational Blueprints.

A copy of your request is provided at **Attachment A**.

We note that your request provided:

'Please initially consider this an administrative request for access to documents. If you aren't able to treat it this way, please consider it a request for documents under the Freedom of Information Act and the Information Publication Scheme.'

Publicly available material and informal consultation

On 18 November 2019, the department acknowledged your request and noted that the majority of documents you have requested are publicly available on the department's Operational Blueprint Webpage, at the following address:

<http://operational.humanservices.gov.au/public/Pages/SiteMap/debts.html>

The department asked you to confirm whether you wished to revise the scope of your request to:

'Operational Blueprints that are not already publicly available from the list contained on the following URL:

<http://operational.humanservices.gov.au/public/Pages/SiteMap/debts.html>'

To date, the department has not received a response to this communication.

Consultation - your request gives rise to practical refusal reasons

I am consulting with you because processing your request is likely to result in a substantial and unreasonable diversion of the resources of the department.

I am asking you to narrow your request so that it is not too large for the department to process.

This letter is giving you an opportunity to provide us with specific information about the documents you need. Providing this additional information will assist the department in processing your request.

If you decide not to provide further information or revise your request, I will have to refuse your freedom of information request as a 'practical refusal reason' exists.

For a more detailed explanation of what this means, including some suggestions on what to consider when revising your request, please see **Attachment B**.

How to send us a 'revised request'

Before I make a final decision on your request, you can submit a revised request.

Within the next 14 days (consultation period) you must do one of the following, in writing:

- withdraw the request;
- make a revised request; or
- tell us that you do not want to revise your request.

If you do not contact us during the consultation period, we will assume you do not want to continue with your request. See **Attachment C** for relevant sections of the FOI Act.

If you decide to make a revised request you should be specific about what documents you actually want. This could help the department find the documents.

We have 30 days to give you a decision about your request, however the time taken to consult with you now is not included in this 30 day time period.

Contact officer

I am the contact officer for your request. During the consultation period you are welcome to ask for my help in revising your request. You can contact me:

- in writing to the address at the top of this letter; or
- via email to FOI.LEGAL.TEAM@humanservices.gov.au

Note: When you contact us please quote the reference number **FOI LEX 48935**.

If no response is received within the next 14 days, your request will be taken to have been withdrawn, pursuant to the operation of the FOI Act.

Further assistance

If you have any FOI questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely,

Riley

Authorised FOI Decision Maker
Freedom of Information Team
Employment Law and Freedom of Information Branch | Legal Services Division
Department of Human Services



Attachment B

Your request is voluminous - section 24(1)(a)(i)

Processing your request is likely to result in a substantial and unreasonable diversion of the department’s resources. Because of the amount of work involved for the department, under sections 24AA(1)(a)(i), 24 and 24AA(2) of the FOI Act I intend to refuse your FOI request as a 'practical refusal reason' exists.

You have requested access to over 235 of the department’s Operational Blueprints. The department has identified that 60 of the requested Operational Blueprints are not publically available.

Based on a preliminary sample of documents, the average operational blueprint is between 10-15 pages. Accordingly, the department estimates that there are over 2350 pages of documents that would fall within the scope of your current request.

Unless you narrow the scope of documents sought, a very large amount of material would likely be in scope, the processing of which would require an unreasonable diversion of the department’s resources from its other operations.

To provide a preliminary estimate of the amount of time required to process your request, the department consulted with the Debt Management Branch and the Seniors, Carers and International Branch in relation your request (**relevant Branches**). As a result of this consultation, I am satisfied that a substantial time would be required to undertake a full search and retrieval process, review the sensitivities contained within the documents and undertake consultation with other affected internal stakeholders.

I estimate that it would take over 325 hours in processing time. This includes the search and retrieval time for Operational Blueprints that are both publicly and not publicly available and decision making time on the Operational Blueprints which are not publicly available, including time to consider redactions under the FOI Act. I consider that these preliminary consultations provide a fair estimate of how long each Branch would take to search and retrieve documents within scope.

Amount of time to process your request

I have calculated the number of hours it would take to process your request, based on the preliminary consultation conducted to date.

Search and retrieval of documents (both publicly available and non-publicly available material)	220 hours
Examine non-publicly available material for decision making purposes at an average of 3 minutes per page (based on approx. 600 pages)	30 hours
An additional time of 3 minutes per page for pages that may need redaction (based on approx. 500 pages)	25 hours
Write statement of reasons for decision (regarding administrative	50 hours

release and release of documents under the FOI Act)	
Approximate total	325 hours

I note the commentary of Senior Member Puplick in *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 (17 December 2018) regarding the extent of the burden that must be established under s 24AA(1)(a)(i)

[101] What constitutes valid practical refusal grounds is thus agency specific and resource dependent. Nevertheless for any agency, a burden in excess of 200 hours would almost certainly make the threshold of a rational and objective test. As is illustrated above (at [97]), burdens as (relatively) small as 74 hours have been so characterised.

....

[103] The clear responsibility of this Tribunal is to assess the claims made by the ATO based on the objective material before it and make a balanced judgement whether or not the potential burden meets to section 24AA(1)(a)(i) threshold – not whether the burden is “overwhelming” but that it is “substantial and unreasonable.”

Accordingly, I consider that 325 hours of estimated processing time would be an unreasonable diversion of the department’s resources.

I am providing you with an opportunity to revise your request in order to narrow the scope of documents you are seeking and remove any practical refusal reasons that exist in the processing your request.

Please note that the FOI Guidelines do not allow the department to undertake ‘part processing’ of an FOI request. Even if some parts of your request are clear or not considered voluminous, the department must consider your request in its entirety and cannot process any part of your request, while a practical refusal reason exists.

Revising the scope of your request

Should you wish to continue with your FOI request, you may wish to consider:

- a) reducing the number of documents you are requesting; or
- b) withdrawing part of your request.

Please note that even if you do provide a revised scope, one or more practical refusal reasons may remain if the revised scope is still too large to be processed. You will need to take this into consideration when revising the scope of your request.

Relevant sections of the *Freedom of Information Act 1982*

Section 24(1) of the FOI Act provides that an agency may refuse to give access to documents in accordance with an FOI request if:

- a practical refusal reason exists in relation to the request; and
- following a request consultation process under section 24AB of the FOI Act, the agency is satisfied that the practical refusal reason still exists.

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to a FOI request if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

Section 24AA(2) of the FOI Act sets out certain factors which the department must consider when determining whether providing access in relation to a request would substantially and unreasonably divert the department's resources. The department must specifically have regard to the resources that would have to be used for:

- identifying, locating or collating the documents within the department's filing system;
- 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 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.

Section 24AB(6) provides that the applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- withdraw the request,
- make a revised request, or
- indicate that the applicant does not wish to revise the request.

Section 24AB(7) of the FOI Act provides that the request is taken to have been withdrawn at the end of the consultation period if:

- the applicant does not consult the contact person during the consultation period in accordance with the notice, or
- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.