



Australian Government
Attorney-General's Department

Our ref: FOI19/263; CM19/10398

4 December 2019

Chris H

By email: foi+request-5911-3774a8e0@righttoknow.org.au

Freedom of Information Request FOI19/263 – Request Consultation Process

The purpose of this letter is to seek information from you about access to documents that you requested under the *Freedom of Information Act 1982* (the FOI Act).

Your Request

On 15 November 2019, you requested access as follows:

I would like to request documents or any relevant information that suggest that not all trials require a jury.

Or, provide any documents that overrule or suggest that section 80 of the 'Commonwealth of Australia Constitution Act 1900' is invalid.

The 'Commonwealth of Australia Constitution Act 1900' states:

Section

80 Trial by Jury

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.'

On 21 November 2019, the Attorney-General's Department (the department) acknowledged your request.

Practical Refusal Reason

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

I have decided that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this department from its other operations due to its broad scope. Section 24AA of the FOI Act refers to this as a 'practical refusal reason' (copy at **Attachment A**).

A preliminary search of the department's holdings indicates the department holds up to 36,000 documents relevant to the terms of your request. The departmental resources required to identify, locate and collate all documents within the scope of your request, and decide whether to

grant, refuse or defer access to each of those documents would unreasonably divert the resources of the department from its other operations.

Request Consultation Process

Before I make a decision to refuse access to the documents you requested, section 24AB of the FOI Act provides for a 'request consultation process' (copy at **Attachment A**). This means you have 14 days in which to respond to this notice revising your request in one of the ways described below.

If you would like to proceed with your FOI request, you must make a revised request, in writing, within 14 days of the date you receive this letter.

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 or material you are interested in, the department may be able to identify the documents more quickly and avoid using excessive resources to process documents that are not of interest to you. You could also limit the scope of your request to certain types of documents or exclude certain types of documents, or limit the timeframe of your request (for example, requesting documents created only after a specified year).

During the consultation period, you are welcome to seek assistance from the contact person listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, the department will recommence processing it. Please note that the time taken to consult you about the scope of your request is not included in the 30 day time limit for processing your request.

If you do not wish to proceed with your FOI request, you may either withdraw your request or advise the department that you do not wish to revise your request. Your request will be withdrawn if you do not contact us or provide written notice of the revised scope of your request within 14 days from receipt of this notice.

Further information: section 80 of the Constitution

The Australian Government does not provide or release legal advice to the public. However, the following general comments may be of assistance.

Section 80 of the Constitution provides, in part, that the 'trial on indictment of any offence against any law of the Commonwealth shall be by jury'. The requirement in section 80 thus applies to Commonwealth offences, not to State offences. It follows that section 80 would not apply, for example, to a trial on indictment for an offence under a State criminal code. Additionally, section 80 only applies to a 'trial on indictment'. Some offences, typically described as 'summary offences', are not tried on indictment. These are generally less serious than 'indictable offences'. A trial for a Commonwealth offence not 'on indictment' (a summary offence) will also not engage section 80, and a jury will not be required by section 80.

A proposal to alter the Constitution to extend the right to trial by jury to offences created by laws made by State Parliaments that are tried on indictment was defeated at a referendum in 1988.

Review Rights and Questions

Your review rights under the FOI Act are set out at **Attachment B** to this letter.

If you wish to discuss this decision, the FOI case officer for this matter is Fiona, who can be reached on (02) 6141 6666 or at foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Lewis', with a stylized flourish at the end.

David Lewis
Acting General Counsel (Constitutional)
Office of Constitutional Law

Attachments

Attachment A: Sections 24AA and 24AB of the FOI Act

Attachment B: Review Rights