



**Australian Government**  
**Department of Infrastructure, Transport,  
Regional Development and Communications**

FOI reference number: MR20-00161 (OAIC ref)

Via email: [foi+request-6044-423dddfd@righttoknow.org.au](mailto:foi+request-6044-423dddfd@righttoknow.org.au)

Dear Requester

I refer to your request to the Department of Infrastructure, Transport, Regional Development and Communications (**the department**) received on 1 January 2020 for access to documents under the *Freedom of Information Act 1982 (FOI Act)*. Your request reads as follows:

*note, report, email and its attachment to/from/cc applicant and staff, screenshot showing data from the database, application and its supporting material/attachment excluding game*  
*NEED FOR SPEED HEAT (2019, Multi Platform)*  
*CALL OF DUTY: MODERN WARFARE (2019, Multi Platform)*  
*HUNT: SHOWDOWN (2019, Multi Platform)*  
*GEARS 5 (2019, Multi Platform)*

*note, report, screenshot showing data from the database, application and its supporting material/attachment excluding game and video*  
*PLANETSIDE ARENA (2019, Online)*  
*APEX LEGENDS (2018, Multi Platform)*  
*BATTLEFIELD V (2018, Multi Platform)*  
*ARMA 3 (2013, Multi Platform)*  
*PLANETSIDE 2 (2012, Multi Platform)*  
*CRYSIS 3 (2012, Multi Platform)*

*note, report, screenshot showing data from the database, application and its supporting material/attachment excluding film*  
*THE NUTCRACKER AND THE FOUR REALMS (2019, Blu-Ray)*  
*THE NUTCRACKER AND THE FOUR REALMS (2018, DCP)*  
*BATTLE LOS ANGELES (2011, 35 mm)*  
*BATTLE LOS ANGELES (2011, Blu-Ray + DVD)*

*decision report*  
*SORRY TO BOTHER YOU (2018, DCP)*  
*HOBO WITH A SHOTGUN (31 May 2011, DVD)*  
*HOSTEL PART II (2007, DVD for 35mm)*  
*SAW 3D (2010, 35 mm)*  
*ZERO DARK THIRTY (2013, DCP)*  
*A CURE FOR WELLNESS (2016, DCP)*

*The applicant details for Hunt: Showdown might be Jens Schäfer, [jens@crytek.com](mailto:jens@crytek.com), 49692197766. The applicant details for Battlefield V might be Missy Bedio, [mbedio@ea.com](mailto:mbedio@ea.com). Some of the names appearing in email for Call of Duty: Modern Warfare might be Allen Corona,*

*Ben Perry, Chris Wilson, Eden Millard, Henry Zurawski, Jack Kleckner, Jeremy Anderson, Miles Winzeler, Misty Noor, Paul Virgin, Todd Mueller, William Cranmer.*

*Personal information of junior ministerial staff and Departmental officers below the Senior Executive Service (SES) level, mobile phone numbers and signatures of Departmental SES officers are not excluded from the scope of this request. Unsigned duplicates are fine for films I want only decision report of if it is faster to search and retrieve them.*

*Try not to redact the first 6 digits (or the BIN) of the credit card number, country code of the phone number, domain of the e-mail address.*

*Screenshot showing data from the database means the image of the application displaying information about the film or game. It has more information than what is publicly accessible at [www.classification.gov.au](http://www.classification.gov.au). Some of the texts might be hidden, those texts can be given separately. There may be links to other documents, those documents can be given separately.*

On 8 January 2020 the FOI Coordinator responded to your message advising the following:

*Dear Requester*

*Thank you for contacting the Department. Currently your request does not meet the requirements of the FOI Act as the documents you are requesting are not clearly identified. Please provide the Department with clear descriptions of the information you wish to access and describe the documents with full sentences.*

*For example, 'note, report, email and its attachment to/from/cc applicant and staff, screenshot showing data from the database, application and its supporting material/attachment excluding game' does not read clearly, and as such does not clearly indicate what you want to access.*

*Please also carefully consider the amount of material you would like to access. We note that you are interested in many different games and films. If we were to interpret your request as being for every document in relation to the below list, the request would be too large for the department to process, and/or would result in the imposition of significant charges.*

*In relation to classification decisions, the Department is able to provide access to reasonable requests for decision reports at no cost, outside the FOI Act. If you would be satisfied with receiving these, please let us know.*

In response to this message you responded by resending your original message as follows:

*Note, report, email and its attachment to/from/cc/bcc applicant and staff, screenshot showing data from the database, application and its supporting material/attachment excluding game for NEED FOR SPEED HEAT (2019, Multi Platform), CALL OF DUTY: MODERN WARFARE (2019, Multi Platform), HUNT: SHOWDOWN (2019, Multi Platform), GEARS 5 (2019, Multi Platform).*

*Note, report, screenshot showing data from the database, application and its supporting material/attachment excluding game and video for PLANETSID ARENA (2019, Online), APEX*

*LEGENDS (2018, Multi Platform), BATTLEFIELD V (2018, Multi Platform), ARMA 3 (2013, Multi Platform), PLANETSIDE 2 (2012, Multi Platform), CRYISIS 3 (2012, Multi Platform).*

*Note, report, screenshot showing data from the database, application and its supporting material/attachment excluding film for THE NUTCRACKER AND THE FOUR REALMS (2019, Blu-Ray), THE NUTCRACKER AND THE FOUR REALMS (2018, DCP), BATTLE LOS ANGELES (2011, 35 mm), BATTLE LOS ANGELES (2011, Blu-Ray + DVD).*

*Decision report for  
SORRY TO BOTHER YOU (2018, DCP),  
HOB0 WITH A SHOTGUN (31 May 2011, DVD),  
HOSTEL PART II (2007, DVD for 35mm),  
SAW 3D (2010, 35 mm),  
ZERO DARK THIRTY (2013, DCP),  
A CURE FOR WELLNESS (2016, DCP).*

As this did not appear to alter the substance of your previous message the department did not respond. The department understands that you then submitted a request for Information Commissioner review. The Office of the Australian Information Commissioner (OAIC) advised the department on 29 October 2020 that to progress the review, they support the department sending a formal notice to you to confirm that your request is not currently able to be processed as it is unclear.

#### **Authority**

I am an officer authorised by the Secretary to make decisions about access to documents in the possession of the department in accordance with s 23(1) of the FOI Act.

#### **Practical refusal reasons**

Under s 24AA(1)(a)(i) of the FOI Act, a *'practical refusal reason exists if ... the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents)'*. Under s 24 of the FOI Act, an agency may also refuse an FOI request if a practical refusal reason exists in relation to a request after a request consultation process.

Under s 15(2)(b) of the FOI Act, a request must *'provide such information concerning the document as is reasonably necessary to enable the responsible officer of the [department] to identify it.'* As currently worded, your request does not do this. Where a request does not satisfy the requirements of s 15(2)(b) of the FOI Act, a practical refusal reason exists.

I am of the view that your request is unclear. Although I acknowledge that you have identified the various games/films you are interested in there is a general level of confusion with how elements of your request have been presented. The reasons for this are described in the email to you from the department of 8 January 2020, copied above. As is also mentioned in the message of 8 January 2020, some of the elements of your request may be available outside the FOI process. To resolve this matter you can engage with the message of 8 January 2020 and clearly identify the documents you would like to access.

I also note that if your request covers a large amount of documents about multiple games/films, this would potentially require the department to retrieve a large amount of documents and consult with every applicant behind these games/films. As such, I suggest you narrow your request to confirm only

the information you actually want and are willing to pay for. This will avoid a refusal due to the request being too large, or charges that you consider excessive.

If a practical refusal reason remains in relation to a request after this request consultation process, I intend to refuse your request under s 24 of the FOI Act. However, before I make a final decision to do this, you have a formal opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

### **Time for consultation**

You have 14 days, from the receipt of this notice, to consult with the department concerning your request.

Under sub-section 24AB(6) of the FOI Act, you are required within the 14 day period to:

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

If you consult with the department within the next 14 days, the department will assist you to revise your request.

If you do not consult with the department or do one of these things within the next 14 days, your request will be taken to have been withdrawn.

Even with consultation, if the scope of your request cannot be sufficiently revised, the request may be refused.

Please note that the time period for making a decision in response to your request is suspended until the conclusion of the consultation process described in this letter.

### **Contacts**

If you wish to consult with the department, please contact Melissa of the FOI Team on (02) 6271 1219 or via email at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you wish to discuss your OAIC review request, please contact the OAIC directly.

Yours sincerely



Aaron O'Neill  
Assistant Secretary  
Classification Branch

3 November 2020