



Australian Government

Department of Infrastructure, Transport,  
Regional Development and Communications

MR20/00161

Via email: [foi+request-6747-11a37f0e@righttoknow.org.au](mailto:foi+request-6747-11a37f0e@righttoknow.org.au)

Dear Requester

**Decision made under the *Freedom of Information Act 1982* – Access refusal**

I refer to your request to the Department of Infrastructure, Transport, Regional Development and Communications (**department**) received on 1 January 2020 via the Right to Know website for access to documents under the *Freedom of Information Act 1982* (**FOI Act**).

Your request sought access to classification material related to approximately 20 online games and films and related documents including notes, reports, emails and attachments to/from/cc applicant and staff, screen shots showing data extracts from the database, application and its supporting material/attachment excluding the game, video or film.

On 8 January 2020, the Department wrote to you and advised you that your request did not meet the requirements of the FOI Act and sought clarification from you in order to allow your request to proceed. You responded only by forwarding the identical scope, without the clarification requested or any additional comments. The action officer reassessed your request as continuing to be invalid and no further action was taken.

On 20 February 2020, you sought Information Commissioner Review on the basis that you believed a deemed decision had been made in relation to your invalid request.

On 3 November 2020, the department again wrote to you and set out in more detail that in addition to being invalid, on the information at hand if your request were to be processed it would involve a very large number of documents, that a practical refusal reason existed and that your request would likely be refused. This letter would, if it were sent within a valid request time period, meet the requirements of a section 24AB (of the FOI Act) consultation process.

In response to the section 24 AB consultation process, you refined your request in the following terms:

*I revise the request to classifier note, classification report, screenshot showing data from the database, application for content classification and its supporting material/attachment excluding game or film for*  
*HUNT: SHOWDOWN (2019, Multi Platform),*  
*GEARS 5 (2019, Multi Platform),*  
*PLANETSIDE ARENA (2019, Online),*  
*APEX LEGENDS (2018, Multi Platform),*  
*ARMA 3 (2013, Multi Platform),*  
*PLANETSIDE 2 (2012, Multi Platform),*  
*CRYSIS 3 (2012, Multi Platform),*

*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).*

On 7 December 2020, the department again wrote to you to advise that your request in its current form was considered to be voluminous, that a practical refusal reason existed, and asking that you refine the scope of your request in order to proceed. The department suggested that you limit the scope of your request to the decision reports.

By way of a response, you advised the department as follows:

*That's fine. Will continue with the Information Commissioner Review.*

This response, advising the department that you did not wish to revise your request, would if it was within a valid consultation period, bring an end to the consultation period. In accordance with section 55E (2) of the FOI Act, the Information Commissioner may require the department to provide an adequate statement of reasons, and has requested that the department provide you with a decision on your request. The purpose of this letter is to provide you with the department's decision and statement of reasons, as requested by the IC. The relevant decision and statement of reasons follows.

### **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.

### **Decision**

I have made a decision to refuse access to the documents the subject of your request in accordance with sections 24, 24AA and 24AB of the FOI Act, on the basis that a practical refusal reason exists.

### **Reasons for decision**

In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to refuse access follows.

I have taken the following material into account in making my decision:

- the content of the documents that fall likely would fall within the scope of your request;
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);

- sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth;
  - *Section 24*                *Power to refuse – diversion of resources etc.*
  - *Section 24AA*        *When does a practical refusal reason exist?*
  - *Section 24AB*        *What is a request consultation process?*

### Statement of reasons

I have decided to refuse access to documents within the scope of your request, on the basis that a practical refusal reason exists.

Section 24 of the FOI Act provides that if an agency is satisfied that a **practical refusal reason** exists, an agency must undertake a consultation process set out in section 24AB of the FOI Act and if, following this process the **practical refusal reason** still exists, the agency may refuse to give access.

Section 24AA of the FOI Act also sets out the circumstances in which a practical refusal reason exists:

- (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
  - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

In deciding whether a practical refusal reason exists, the FOI Act provides that 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, or the office of the Minister; and deciding whether to grant, refuse or defer access to document to which the request relates, or to grant access to an edited copy of such a document.

I firstly note the correspondence sent to you on 8 January 2020 by the department (referred above) in which you were advised that the request did not meet the requirements of a valid FOI request in accordance with section 15(2) of the FOI Act, including that your request did not provide enough information to identify the documents you were seeking. In accordance with section 15(2) of the FOI, I note that you were given an opportunity to assist in the processing of your own request by refining your request and revising the scope however, you chose not to do so. Without this information the department was unable to identify the relevant documents and considered that a practical refusal reason existed in accordance with section 24AA of the FOI Act which prevented any further processing of your request.

I have also considered that the work involved in processing your request would substantially and unreasonably divert the resources of the agency from its other operations. Your reduced scope was interpreted to apply to over 60 documents relating to 17 Classification titles. We note from a recent FOI matter processed by the Department, for which you were the applicant, that the work involved in processing a similar request for one (1) classification title to the extent that you have requested, was approximately 17 hours due to the number of in scope documents, third party consultation required, decision making time and redactions required etc. This process is sufficiently representative of the work involved and would be a reasonable sample for the purposes of

assessment of the work involved in this request. Processing the current request subject to the IC review would require in excess of 250 hours. As such, I consider this to be a voluminous request.

I have also had regard to the resources available to process this request. I am advised that the department's FOI team is comprised of two staff members and the line area subject matter experts are also a very small team. Both areas are fully utilised and additional resources are not available at this time. Processing this request is reasonably expected to divert resources from the processing of valid FOI requests and impact the timeframes by which other applicants may expect decisions in relation to their valid requests, as well as divert the classification branch from their regular work. I note that the FOI team suggested the provision of the classification reports in the first instance as a way to satisfy your FOI request to a workable extent but that you declined this approach.

Whilst I accept that disclosure may promote the objects of the FOI Act, disclosure would not inform debate on a matter of public importance, would not promote effective oversight of public expenditure nor would it allow a person to access his or her own personal information. Accordingly I have decided, following the request consultation process, a practical refusal reason exists and I have decided to access to the documents.

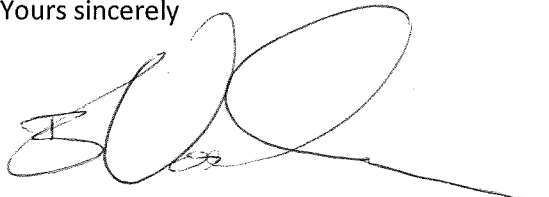
#### **Review rights**

You have already exercised your right to seek external review by the Information Commissioner (MR20-00161). I consider that this statement of reasons satisfies the onus of establishing that the decision in respect to your request is justified in accordance with section 55DA of the FOI Act.

#### **Contacts**

If you wish to discuss this matter, please contact the department's FOI Coordinator on 6274 7393 or via email at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

Yours sincerely



Barbara Vosoba  
A/g Assistant Secretary  
Classification Branch

21 December 2020