



Our ref. 177/2020

2 March 2020

Brenda Barton  
[foi+request-6094-992bd08b@righttoknow.org.au](mailto:foi+request-6094-992bd08b@righttoknow.org.au)

Dear Brenda,

1. I refer to your application dated 24 January 2020 to the Digital Transformation Agency (DTA) seeking access under the *Freedom of Information Act 1982* (FOI Act) to:

*Under the Freedom of Information Act, I write to request copies of any emails, briefing notes, Requests for Quote or procurement probity advice sent from or to the following staff members:*

- 1) the Chief Executive Officer*
- 2) the Chief Digital Officer*
- 3) the Chief Operating Officer*
- 4) the Chief Financial Officer*
- 5) the Head of MyGov / Head of Government Digital Experience*

*in relation to the engagement of suppliers for delivery or consulting services related to Services Australia.*

*This includes but is not limited to:*

- a) the creation of the 'Services Australia Vision' video - as available on the DTA's YouTube channel: [https://www.youtube.com/watch?v=-NqxcNoT\\_kE](https://www.youtube.com/watch?v=-NqxcNoT_kE)*
- b) the development of Services Australia prototypes, proofs of concept, pilots, apps, websites or platforms*
- c) related strategies, audits, reviews and business cases*

*Documents are only requested for the time period between 20 May 2019 and 24 January 2020.*

2. On 28 January 2020 we informally consulted with you and you revised your scope to request:

*Under the Freedom of Information Act, I write to request copies of any emails, briefing notes, Requests for Quote or procurement probity advice sent from or to the following staff members:*

- 1) the Chief Executive Officer*
- 2) the Chief Digital Officer*
- 3) the Chief Operating Officer*

- 4) the Chief Financial Officer
- 5) the Head of MyGov / Head of Government Digital Experience

*in relation to:*

- a) the creation of the 'Services Australia Vision' video - as available on the DTA's YouTube channel: [https://www.youtube.com/watch?v=-NqxcNoT\\_kE](https://www.youtube.com/watch?v=-NqxcNoT_kE)
- b) the delivery of a prototype demonstrating system integration approaches for, and capabilities of, a digital experience platform
- c) related strategies, audits, reviews and business cases

*Documents are only requested for the time period between 20 May 2019 and 24 January 2020.*

3. On 19 February 2020, the DTA wrote to give you notice of an intention to refuse your request under s24AB(2) of the FOI Act and to give you the opportunity to consult with DTA to revise your request to remove the practical refusal reason.
4. On 23 February 2020 you further revised your request to include emails sent and received by the Chief Digital Officer between 20 May 2019 and 24 January 2020 using the search term 'DXP'.
5. In accordance with s 23(1) of the FOI Act, I am authorised to make a decision regarding access under the FOI Act.

#### ***Decision***

6. I have decided to refuse access to the documents you have requested under s24(1) of the FOI Act because I am satisfied that a 'practical refusal reason' still exists under s24AA of the FOI Act.
7. The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of the DTA from its other operations as specified in s24AA(1)(a)(i) of the FOI Act.

#### ***Material taken into account***

- The terms of your request as currently amended
- The searches we have conducted
- Advice provided by officers who conducted those searches
- Advice provided by the officers with relevant business knowledge
- Relevant provisions of the *Freedom of Information Act 1983*
- Guidelines issued by the Office of the Information Commissioner

#### ***The request consultation process***

8. In DTA's letter to you dated 19 February, you were given written notice of our intention to refuse access to documents on the basis that a practical refusal reason existed in relation to your request. This correspondence advised you should contact Morgan to discuss your request to consult with a view to removing the practical refusal reason.
9. You did not contact the contact officer on the phone number provided to discuss your request but you did respond to the notice by email and reduced the scope.

#### ***Reasons for my decision***

##### ***Practical refusal reason***

10. Section 24AA provides that a *practical refusal reason* exists in relation to a request for a document if the work involved in processing the request would 'substantially and unreasonably divert the resources of the agency from its other operations'.

The word 'substantial' has been interpreted to mean severe, of some gravity, large or weighty or of considerable amount and not insubstantial or of nominal consequence. The use of the word 'unreasonable' has been interpreted to mean that a weighing of all relevant considerations is needed, including the extent of the resources needed to meet the request and considerations.

In determining whether processing the request would substantially and unreasonably divert DTA's resources, s 24AA(2) requires me to have regard to the resources that would be needed to:

- Identify, locate or collate the documents within the filing system of DTA
- Decide whether to grant, refuse or defer access to a document including resources used for examining the document and consulting with any person or body in relation to the request
- Make a copy or an edited copy of the document, and prepare a decision on the request.

11. The reasons for my decision, including consideration of the factors I am required to take into account in s24AA(2), are outlined below.

***Request is substantial***

12. Following our initial electronic searches of documents and emails within the date range and a combination of search terms including "DXP", I estimate that there are approximately 200 documents totalling 1300 pages relevant to your request as presently framed. I estimate that the work involved to search for and retrieve these documents would require 7 hours.
13. The documents captured by the scope of your request contain deliberations, consultation and opinion, and are likely to include sensitive third party commercial information and legal advice. Review of the documents would require a number of DTA officers with subject matter expertise to assess the documents and identify if any documents, or parts of documents, should be exempt from disclosure.
14. In addition to the significant volume of material that would need to be reviewed, the inherent complexity of the material will require a detailed and careful analysis and review to make a decision. I estimate 2 minutes per page would be required for document review and decision making.
15. I also estimate that consultation with up to 7 third parties would be required and would take 7 hours. It is also reasonable to expect that a significant amount of material might require redaction to exclude exempt parts and would require a further 2 minutes per page. Further time would be required to prepare a decision and statement of reasons and reflect this in a schedule of documents.
16. In total, I estimate this would require over 80 hours of processing time to deal with this request. In other words, if one person were to dedicate themselves to processing this request full time, it would take them over two weeks. Accordingly, for the reasons above, I am satisfied that this request would substantially divert the resources of DTA from its other operations.

***Request is unreasonable***

17. The Administrative Appeals Tribunal in *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 (17 December 2018) about the threshold for a practical refusal reason where SM Puplick commented that:

*[100] The Information Commissioner has noted in relation to the other element of the test that, “whether or not disclosure would be “unreasonable” is a question of fact and degree which calls for a balancing of all the legitimate interests involved.”*

*[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, burdens as (relatively) small as 74 hours have been so characterised.*

18. In balancing the legitimate interests involved, I have considered that the substantial resource burden would be unreasonable having regard to:
- The number and content of the emails held by the DTA identified in your request is significant. The work involved in processing your request will require DTA staff to be taken away from their usual duties for a substantial period of time.
  - The way your request is worded and the nature of searching in agency emails would mean that there will likely be a large number of irrelevant and duplicated pages in the results generated. There is no way of knowing the extent of the duplication or irrelevance save for downloading and analysing each electronic document against other electronic documents and the paper documents on file.
  - The correspondence is to and from a Senior Officer of the agency, which would require the specialist attention of a senior officer to spend considerable time in examining the documents to make a decision on release.
  - The DTA is a small agency with limited resources with an Average Staffing Level of 217 people, and four senior officers suitable to review the information.
19. I also acknowledge that in the process of making this request you have co-operated with us to try and reduce the scope and that there may be value in this information being released to the public. However, a request of this nature which asks for email correspondence is highly likely to produce large numbers of emails, despite the narrower search terms you agreed to.
20. In my view, the above factors satisfy a conclusion that the processing of your request would substantial and unreasonably divert the resources of DTA from its other operations.
21. I am satisfied that a practical refusal reason still exists in relation to your request and have decided to refuse it under s 24 of the FOI Act on the basis that a practical refusal reason exists.

### ***Review rights***

22. If you are dissatisfied with this decision, you have certain rights of review available to you.
23. Firstly, under section 54 of the FOI Act, you may apply to DTA for an internal review of the decision. Your application must be made by whichever date is the later between:
- 30 days of you receiving this notice; or
  - 15 days of you receiving the documents to which you have been granted access

24. An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

foi@dta.gov.au

25. If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

***Review by the Australian Information Commissioner***

26. Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.
27. The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).
28. You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commission at:

Director of FOI Dispute Resolution  
GPO Box 5218  
SYDNEY NSW 2001

***Complaints to the Australian Information Commissioner***

29. You may complain to the Australian Information Commissioner about action taken in relation to your request.
30. Your enquiries to the Australian Information Commissioner can be directed to:
- Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
31. There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the DTA as the relevant agency.

***Contacts***

32. If you have any queries about this notice, please contact the FOI team by email [foi@dta.gov.au](mailto:foi@dta.gov.au).

Yours sincerely,

Jonathon Thorpe  
a/g Chief Strategy Officer