



Administrative Appeals Tribunal

Principal Registry

Our ref:

2020/0144; 2020/0145;
2020/0146; and 2020/0147

Your ref:

foi+request-6164-1a188eb5@righttoknow.org.au;
foi+request-6169-8a1a2095@righttoknow.org.au;
foi+request-6165-a9f85a8a@righttoknow.org.au;
foi+request-6167-08890064@righttoknow.org.au

24 December 2020

Mr John Smith
foi+request-6164-1a188eb5@righttoknow.org.au

Dear Mr Smith

Re: Your Freedom of Information requests – 2020/0144; 2020/0145; 2020/0146 and 2020/0147

I am writing to you about the above requests made under the *Freedom of Information Act 1982* (FOI Act), received on 14 December 2020.

The Administrative Appeals Tribunal (AAT) is considering making an application to the Information Commissioner for a declaration under section 89K of the FOI Act that the AAT not be required to process these requests, or any future requests that you may make in relation to labour hire, without the permission of the Commissioner.

The AAT places importance on its responsibilities under the FOI Act and does not consider making such an application lightly. However, we note the following:

- The new requests no's. 2020/0144, 2020/0145, 2020/0146 and 2020/0147 are identical to 4 of the requests made by you on 17 February 2020, which were combined by the AAT into request no.2020/0016.
- Request no.2020/0016 concerned information about procurement of labour hire services.
- On 18 March 2020 the AAT sent you a request consultation letter under section 24AB of the FOI Act in relation to request no. 2020/0016.
- On 18 May 2020 the AAT sent you a notice of its decision to impose a processing charge in relation to request no. 2020/0016.

- Request no. 2020/0016 was withdrawn by you on 18 May 2020.
- You subsequently made requests on the following dates for information relating to labour hire procurement: 19 May 2020, 29 May 2020, 18 June 2020, 24 June 2020, 30 June 2020, 22 July 2020, 3 August 2020, 18 August 2020, 20 August 2020, 25 August 2020, 29 August 2020, 18 September 2020 and 3 November 2020. On some dates you made multiple requests.
- You also made internal review requests on 17 August 2020, 8 September 2020, 28 September 2020 and 19 October 2020.
- As exemplified by the assessment of charge notice sent to you on 18 March 2020 in relation to request 2020/0016, processing these requests requires the section of the AAT responsible for procurement to devote several hours to scoping and retrieving what, if any, documents it holds that fall into the scope of your requests *before* the FOI section can assess them. The high volume of requests has disproportionately affected the capacity of the procurement team to perform its usual work.
- While you have made requests about labour hire to several Australian government agencies, it appears that no other agency has been the recipient of the high volume of requests that you have made to the AAT.

For the purposes of section 89L of the FOI Act and based on the above, it is our view that you have repeatedly engaged in access actions and that the requests of 14 December 2020, in combination with your previous actions, unreasonably interfere with the operations of the AAT, including its procurement team.

It would assist the AAT in its consideration if you could advise whether you intend to withdraw or revise the requests dated 14 December 2020. I would be grateful for your advice by close of business 4 January 2020 by email to foi@aat.gov.au.

Please note that the AAT may also consider whether a practical refusal reason exists, whether or to combine the requests and/or whether or not a charge will be applied to the requests received on 14 December 2020.

A copy of the relevant provisions of the FOI Act is attached.

Yours sincerely,

Sandra Koller
Director, Legal and Policy

Relevant provisions of the Freedom of Information Act 1982

Division 1—Vexatious applicants

89K Vexatious applicants—declaration

- (1) The Information Commissioner may, by written instrument (a *vexatious applicant declaration*), declare a person to be a vexatious applicant.

Note 1: Section 89L sets out the grounds on which a declaration may be made.

Note 2: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Information Commissioner may make a declaration:
 - (a) on the application of an agency or Minister; or
 - (b) on the Information Commissioner's initiative.
- (3) If an agency or Minister has applied for a declaration, the agency or Minister has the onus of establishing that the Information Commissioner should make the declaration.
- (4) The Information Commissioner must, as soon as practicable, give written notice to the person in relation to whom the vexatious applicant declaration is made.

89L Vexatious applicants—grounds for declaration

- (1) The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:
 - (a) that:
 - (i) the person has repeatedly engaged in access actions; and
 - (ii) the repeated engagement involves an abuse of the process for the access action;
 - (b) a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;
 - (c) a particular access action in which the person engages would be manifestly unreasonable.
- (2) A person engages in an *access action* if the person does any of the following:
 - (a) makes a request;
 - (b) makes an application under section 48;
 - (c) makes an application for internal review;
 - (d) makes an IC review application.
- (3) The Information Commissioner must not make a declaration in relation to a person without giving the person an opportunity to make written or oral submissions.

(4) In this section:

abuse of the process for an access action includes, but is not limited to, the following:

- (a) harassing or intimidating an individual or an employee of an agency;
- (b) unreasonably interfering with the operations of an agency;
- (c) seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.

89M Vexatious applicants—effect of declaration

- (1) A vexatious applicant declaration has effect in accordance with the terms and conditions stated in the declaration.
- (2) Without limiting subsection (1), a vexatious applicant declaration in relation to a person may provide that:
 - (a) an agency or Minister may refuse to consider any of the following if made by the person without the written permission of the Information Commissioner:
 - (i) a request;
 - (ii) an application under section 48 (amendment of records);
 - (iii) an application for internal review; and
 - (b) the Information Commissioner may refuse to consider an IC review application made by the person.
- (3) If a decision is made as mentioned in subsection (2), the agency, Minister or the Information Commissioner (as the case requires) must, as soon as practicable, notify the vexatious applicant of the decision.

89N Vexatious applicants—review by Tribunal

An application may be made to the Tribunal for a review of a decision under section 89K of the Information Commissioner to make a vexatious applicant declaration.

Note 1: An application for the review of a decision may be made by a person whose interests are affected by the decision (see section 27 of the *Administrative Appeals Tribunal Act 1975*).

Note 2: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets out the time within which the application for review must be made.

Note 3: Section 30 of the *Administrative Appeals Tribunal Act 1975* sets out who the parties are to a proceeding before the Tribunal.