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Australian Government
Australian Taxation Office

FOI Applicant John Lloyd

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Our reference: 1-KWNNC17
Contact officer: L Carley
Email: foi@ato.gov.au

Date: 30 April 2020

Dear John Lloyd

Notice of intention to refuse your Freedom of Information request

I refer to your request of 8 March 2020 for access to documents under the *Freedom of Information Act 1982* (FOI Act).

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

Thank you for agreeing to extend the timeframe for the ATO's FOI decision by 30 days.

However, I am writing to tell you that I believe the work involved in processing your request in its current form would substantially and unreasonably divert the resources of the ATO from its other operations. This is called a 'practical refusal reason' (section 24AA).

On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out in section 24AB of the FOI Act. You have **14 days** to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

The terms of your FOI request are that you seek copies of the following documents:

All emails and replies sent during his tenure as Commissioner from Chris Jordan's individual ATO email address and any email address with a KPMG domain.

I have decided that a practical refusal reason exists for the following reasons.

Your request would require searches of all emails sent by the Commissioner of Taxation (the Commissioner) during his tenure as Commissioner (seven years and three months at the time of your request).

The bodies of emails that would need to be searched to identify documents within the scope of your request are email archives held by the Commissioner. They are accessible only to the Commissioner and his Executive Adviser.

The Commissioner has important functions to fulfil in administering taxation laws and leading the operations of the ATO. These functions are particularly pressing in the current context of high priority work being undertaken by the ATO to implement ATO measures and tailored support during COVID-19 (novel coronavirus). The Commissioner's Executive Adviser is fully engaged in supporting the Commissioner in this work.

The relevant email archives (in 87 separate folders which can be searched only individually and manually) were sampled to assess what work would be required to search the archives in full. Searching a sample of 10 folders (11% of the whole) to identify emails sent to any email address within the relevant domain took over an hour. Based on this sample, a search of the balance of the folders would take a further 8 hours.

The sample searched resulted in the identification of 43 emails, some with attachments. The total number of emails that could be expected to be identified from all 87 folders could therefore be extrapolated from the sample to approach 400 emails, some of which would contain attachments.

In addition to the work of identifying emails, processing your request as you have expressed it would then involve me as FOI decision-maker:

- Assessing each email to identify any material to which FOI exemptions could apply. I conservatively estimate that this process could take 2 minutes per email – a task approaching, on the basis of the sampled folders, 13 hours of work. This estimate does not include the time required to assess any attachments to the emails.
- Conducting consultations under sections 27 and 27A of the FOI Act with persons who it would appear to me might reasonably wish to contend that documents should be exempt because of business information or personal information relating to them.
- Considering consultation submissions made under sections 27 and 27A.
- Converting the emails and attachments into pdf format, making any exemption decisions, applying resulting redactions, and preparing a statement of reasons.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

The following are examples of ways you may narrow your request to make it more manageable:

- provide a limited time period for which you seek emails (for example, a particular period of no more than 3 months);
- exclude personal information of third party individuals;
- limit copies of email chains to the last chain containing all proceeding emails;
- excluding attachments to emails;
- excluding emails that concern administrative matters only that have no substantive content;

Please note that even if you agree to all of these suggestions they may not, by themselves, sufficiently reduce the scope of your request so as to remove the practical refusal reason.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request, or
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice. During this period you are welcome to seek assistance from me, the contact person for the purposes of this request consultation process. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, I will recommence processing it. Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the statutory time limit for processing your request.

If you do not do one of the three things listed above during the consultation period, or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

If you need more time to respond to this notice, please contact me within the 14 day consultation period to discuss your need for an extension of time.

Contact person

If you would like to revise your request or have any questions, I am the contact person for your request:

L Carley
Principal Lawyer
ATO General Counsel
Email: foi@ato.gov.au

Lastly, I give you notice that I am seeking an extension of time from the Office of the Australian Commissioner under section 15AB of the FOI Act, so that if you notify the ATO of a revised scope for your request on which we then proceed make an FOI decision, we would have time to complete that work.

Yours sincerely

L Carley
Principal Lawyer
ATO General Counsel