

Reply to: GPO Box 4889 Sydney NSW 2001



Australian Government
Australian Taxation Office

Mr John Lloyd

Sent to: foi+request-6203-4da1ee2c@righttoknow.org.au

Our reference: 1-MH4FLFK
Contact officer: R Rutten
Email: foi@ato.gov.au

Date: 19 August 2020

Dear Mr Lloyd,

Notice of intention to refuse your Freedom of Information request

I refer to your request dated 29 July 2020 for access to documents under the *Freedom of Information Act 1982* (FOI Act).

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

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 you access to the documents 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 scope of your FOI request is as follows:

"... I request all emails and replies sent during his tenure as Commissioner from Christopher Jordan's individual ATO email address and any email address with a KPMG domain ... I would expect an organisation like the ATO has adequate capability to search through its own email systems with minimal effort ... All modern email systems provide functionality to search for specific terms, including domain names..."

I note that the scope of this request is identical to your request lodged on 08 March 2020. Your March request was deemed withdrawn after you chose not to respond to the notice of intention to refuse sent to you on 30 April 2020 by my colleague, L Carley. In making your new request, you have not considered the suggestions made to reduce the scope of documents sought so that your request would not attract a practical refusal reason.

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

Your request would require searches of **all** emails sent by the Commissioner of Taxation (the Commissioner) during his tenure as Commissioner to identify those emails falling within the scope of your request. This is a period of more than seven years.

I note your contention that searching for emails by domain name should be relatively simple, but this does not account for the fact that the email archives that would need to be searched to identify relevant

documents are held by the Commissioner, and are only accessible to the Commissioner and his Executive Adviser. It also does not recognise that identifying relevant emails is only the first step in processing your FOI request.

As you will appreciate, the Commissioner has significant and important functions and duties to fulfil in administering taxation laws and leading the operations of the ATO. These functions and duties are particularly pressing in the current context of high priority work being undertaken by the ATO to implement ATO measures and tailored support during the COVID-19 pandemic. The Commissioner's Executive Adviser is fully engaged in supporting the Commissioner in this work. To divert either the Commissioner or his Executive Adviser from their usual duties in order to conduct the searches necessary to process your FOI request in its current form would, in my opinion, be substantial and unreasonable.

The following sampling was conducted by my colleague, L Carley, in April 2020 and I note that the number of emails to be searched and considered will have only increased over the past few months:

"...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 relevant emails, processing your request as you have expressed it would then involve me as FOI decision-maker to:

- assess each email to identify any material to which FOI exemptions could apply. I conservatively estimate that this process could take 2 to 3 minutes per email and does not include the time required to assess any attachments to the emails (approximately 400 emails x 2.5 minutes equals almost 17 hours);
- conduct consultations under sections 27 and 27A of the FOI Act with persons who might reasonably wish to contend that documents should be exempt because of business information or personal information relating to them;
- consider consultation submissions made under sections 27 and 27A; and
- convert the emails and attachments into pdf format, making any exemption decisions, applying resulting redactions, and preparing a statement of reasons.

This work is likely to be extensive and, given the likely nature of the emails (being either personal or related to the tax affairs of third parties), may not result in very much information being released to you.

As such, I consider that processing your request would require a substantial and unreasonable diversion of ATO resources from its other operations.

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 specific period of no more than 1 to 3 months);
- narrow the scope of your request to emails about a specific issue/s or topic/s;
- exclude personal information of third party individuals from the scope of your request;
- exclude information relating to the tax affairs of third party entities from the scope of your request;

- limit copies of email chains to the last chain containing all proceeding emails;
- exclude attachments to emails; and
- exclude emails that concern administrative matters only and 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, please contact me by email: foi@ato.gov.au

Extension of time request

Should you respond to this notice with a revised scope that would not require an unreasonable diversion of ATO resources to process, I will need further time to then process it.

As such, I seek your consent to a 30 day extension of time pursuant to section 15AA of the FOI Act. If you agree, please advise by email to foi@ato.gov.au by **Wednesday 26 August 2020**. If you do not agree, I will approach the Office of the Australian Information Commissioner for an extension of time.

Yours sincerely

R Rutten
Senior Lawyer
ATO General Counsel