



9 September 2020

Mr E Ross

BY EMAIL: [@](#)

In reply please quote:

FOI Request: FA 20/09/00113

File Number: OBJ2020/28445

Dear Mr Ross

I refer to your email dated 2 September 2020 in which you request access to documents held by the Department of Home Affairs (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

I am writing to tell you that I intend to refuse your request on the basis that a practical refusal reason exists. However, before I make a final decision to do this, you have an opportunity to revise your request to remove the practical refusal reason. This is called a '*request consultation process*'. You have 14 days to respond to this notice in one of the ways set out below.

Power to refuse request

Section 24 of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.

Practical refusal

A *practical refusal reason* exists if either (or both) of the following applies:

- (a) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations
- (b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to provide such information concerning the document you are seeking access to, to enable the Department to be able to identify it.

Scope of Request

You have requested access to the following:

Please provide the Individualised Assessment Obligations File Notes, Individualised Assessment Protection File Notes, Enhanced Screening Protection File Notes and interview transcripts which were conducted for the purposes of individualised assessment of Australia's non-refoulement obligations for the following instances:

- *During the Operations Sovereign Borders reporting period 01 July 2019 to 31 July 2019 when 5 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *During the Operations Sovereign Borders reporting period 1 May 2019 to 31 May 2019, when 20 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *During the Operations Sovereign Borders reporting period 1 December 2017 to 31 December 2017, when 29 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *During the Operations Sovereign Borders reporting period 1 June 2017 to 30 June 2017, when 6 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *During the Operations Sovereign Borders reporting period 1 March 2017 to 31 March 2017, when 25 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *During the Operations Sovereign Borders reporting period 1 August 2016 to 31 August 2016, when 6 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *During the Operations Sovereign Borders reporting period 1 June 2016 to 30 June 2016, when 12 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *During the Operations Sovereign Borders reporting period 1 February 2016 to 29 February 2016, when 5 Sri Lankan nationals were intercepted by the Australian Government at sea.*
- *On 19 May 2013 when 86 passengers were intercepted by Australian authorities near the Cocos (Keeling) Islands.*

Reasons for practical refusal

The Department has made a preliminary assessment of the documents that would be captured by your request.

It is noted that you have requested access to Individualised Assessment Obligations File Notes, Individualised Assessment Protection File Notes, Enhanced Screening Protection File Notes and interview transcripts in relation to 194 individuals. On the basis that each individual had each of these documents, the Department estimates that it would hold up to 776 documents relevant to your request. It is further noted that the Department has recently processed a request from you for similar documents relating to 13 individuals, which consisted of 26 documents, comprising a total of 139 pages. The scope of that request did not include transcripts of interviews. As such, the Department estimates that it holds up to 776 documents may be captured by your request.

Whilst the Department has identified that it may hold 776 potentially relevant documents in its electronic systems, it would take the Department an average of 30 seconds per document to actually search for and retrieve each of those relevant documents. As such, I estimate that it would take the Department an estimated **6.5 hours** to search for, identify and retrieve the 776 potentially relevant documents from its electronic systems.

In the event that all these documents would actually be relevant to your request, based on an average of 1 minute per document, a further **12 hours** would be required to collate and create a schedule of the 776 potentially relevant documents.

In the event that the Department was to continue to process your request, a decision would need to be made on access to those documents. I have based my estimate on the previous request processed for the same type of documents, and have assessed that each document would be consist of an average of six pages, and that the decision maker would require at least five minutes to review and assess each page for relevant exemptions. It is noted that the documents contain extensive personal information, along with sensitive operational information and the assessment would require considerable attention to detail. As such, I estimate that it would take at least **388 hours** to complete a decision on access to the documents relating to interview transcripts only.

As such, a minimum total estimated time in excess of **400 hours** would be required to process your request. This does not account for the time it would take to complete a decision on access to the documents relating to the other parts of your request.

I note that in *VMQD and Commissioner of Taxation* [2018] AATA 4619 (17 December 2018) Commissioner, SM Puplick commented that:

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.

I am satisfied that the Department would be required to divert significant resources from its current operations in order to identify, locate and collate the documents held within the Department, and to make a decision on access to those documents. This diversion would result in a significant drain on the resources of the area within the Department that would be required to process this request.

I consider that this would result in this request imposing both a substantial and an unreasonable diversion of resources of the Department from its other operations and that a practical refusal reason exists in relation to this request.

Request Consultation Process

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

Under section 24AB of the FOI Act, you have 14 days to do one of the following:

- withdraw your request;
- make a revised request;
- indicate that you do not wish to revise your request.

If you do not do one of the three things listed above during the consultation period (14 days) or you do not consult the contact person listed below during this period, your request will be taken to have been withdrawn in accordance with section 24AB(7) of the FOI Act.

Contact

Should you wish to revise your request or have any questions in relation to this process, please do not hesitate to contact Alison Smith at foi@homeaffairs.gov.au.



Alison Smith
FOI Officer | Freedom of Information Section
FOI and Records Management Branch
Data Division | Strategy & Law Enforcement Group
Department of Home Affairs