



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Our ref: #1004609
Contact officer: FOI Team
Contact phone: 02 6243 1244

tel: (02) 6243 1111
fax: (02) 6243 1199

10 August 2020

www.accc.gov.au

Sent via email to: foi+request-6538-ac4a1c84@righttoknow.org.au

Dear Posty

Notice of intention to refuse access to documents requested

I refer to your FOI request of 28 July 2020 in which you request access to documents.

The ACCC is considering refusing your request, as currently framed, under s.24 of the Act because the request is unclear.

Your request does not provide enough information to enable the ACCC to locate the documents you are seeking. Before we refuse your request, we are giving you the opportunity to revise it to make clear what documents you are seeking. This is called the 'request consultation process'. Before the end of the consultation period you must either:

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

We are seeking your response by **24 August 2020**.

Practical refusal reason

We must notify you if we intend to refuse access to the documents because a 'practical refusal reason' exists under s24(1) of the Act. This gives you an opportunity to revise your request so it can be processed.

On 31 July 2020, we provided you with a link to a publicly available report which contained information similar to the information requested by you. We asked you to confirm if that information satisfied your request. As you have not responded, your request is unclear and does not provide enough information for us to identify what documents you are requesting.

What should you do

I am the ACCC officer to contact to try to remove the ground for refusal. Please contact me on (02) 6243 1244. I am happy to provide you with reasonable further information to assist you in revising your request in such a way that removes the practical refusal ground.

I strongly encourage you to contact me before submitting a revised request. Once you submit a revised request, the request consultation process ends and we will make a decision regarding whether the practical refusal ground still exists based on the terms of your revised request.

When to respond by

You have 14 days from the date of this notice (i.e. by **24 August 2020**) to either:

- withdraw the request
- make a revised request
- advise that you do not wish to revise the request.

If you do not respond in one of these ways within 14 days, your request is taken to be withdrawn. If you indicate you do not wish to revise your request, I will decide whether to refuse the request.

If you need more time to respond, please contact me on 02 6243 1244 within the 14 day period to discuss your need for an extension of time.

During this period of consultation, the statutory timeframe for the processing of your request is on hold.

I have attached a copy of s15(2)(b) and s.24AB of the FOI Act for your information.

Yours sincerely



Sonya Petreski
FOI Team
ACCC Legal Group

Sent by email 10/08/2020

ATTACHMENT A

Extract from the Freedom of Information Act

SECT 24 Power to refuse request--diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - (a) must undertake a request consultation process (see section 24AB);
and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
 - (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found;
or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

SECT 24AA When does a practical refusal reason exist?

- (1) For the purposes of section 24, a ***practical refusal reason*** exists in relation to a request for a document if either (or both) of the following applies:
 - (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

SECT 24AB What is a request consultation process?

- (1) This section sets out what is a ***request consultation process*** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the **contact person**) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the **consultation period**) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), **reasonable steps** includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
- (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.