



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2020/208

Trav S

By email: foi+request-6687-ee442ba1@righttoknow.org.au

Dear Trav S

I refer to your email of 7 September 2020, in which you made a request to the Department of the Prime Minister and Cabinet (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**), in the following terms:

On 26 September 2013 the then Assistant Secretary of PM&C's Honours, Symbols and Territories Branch produced document reference B13/1718 titled "Humanitarian Overseas Service Medal Iraq - eligibility of a commercial contractor".

In this document the Assistant Secretary states to the Minister for Honours Policy that:

"we would expect strong criticism from existing medal holders and others of a decision to extend eligibility for the medal beyond the original purpose, which is to recognise not-for-profit humanitarian service".

1. We seek a copy of the documents substantiating the Secretary's assertion that the Department "would expect strong criticism from existing medal holders".

2. We seek a copy of the document identifying the stakeholders the Secretary refers to as 'others'.

The Sovereign has ultimate authority for the Australian Honours and Awards System and the Sovereign instituted the medal in 1999 for the purposes of:

"according recognition to persons who have given humanitarian service in hazardous circumstances outside Australia".

The Prime Minister reaffirmed the medal's original purpose again in 2011 via a Commonwealth of Australia Special Gazette in which he states the medal was instituted for the purposes of:

"according recognition to persons who have given humanitarian service in hazardous circumstances outside Australia".

3. We seek a copy of the document evidencing the Secretary's assertion that the medal's original purpose was to recognise not-for-profit humanitarian service.

Records in the open access period under the *Archives Act 1983*

Documents that fall in scope of your request, particularly part 3 of your request, may include documents created during the policy development stage of the HOSM, and prior to the signing of the Letters Patent on 16 April 1999.

Section 12(1)(a) of the FOI Act provides that a person is not entitled to obtain access to document, or a copy of a document, which is, under the *Archives Act 1983* (the Archives Act), within the open access period within the meaning of the Archives Act unless the document contains personal information (including personal information about a deceased person).

Under the Archives Act, records that came into existence on or prior to 31 December 1999 are in the open access period.

This means that you have no right of access under the FOI Act to any documents that are otherwise within the scope of your request, if any such documents exist, that came into existence on or prior to 31 December 1999.

If you wish to access records that came into existence on or prior to 31 December 1999, then you will need to contact the National Archives of Australia (the NAA).

More information about access to records under the Archives Act can be found on the NAA's website: <https://www.naa.gov.au/help-your-research/using-collection/access-records-under-archives-act>.

Authorised decision-maker

The authorised decision-maker for your request is Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch.

Notice of intention to refuse your FOI request

Section 24(1) of the FOI Act provides that a request to an agency may be refused if the decision maker is satisfied that a practical refusal reason (as set out in section 24AA of the FOI Act) exists in relation to the request.

Section 24AA of the FOI Act provides that for the purposes of section 24 of the FOI Act a request raises a practical refusal reason to an agency if:

- the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations (section 24AA(1)(a)(i) of the FOI Act); and/or:

- the request does not satisfy the requirement in section 15(2)(b) of the FOI Act that a request provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency to identify it (section 24AA(1)(b) of the FOI Act).

I write to advise you that the decision maker considers that your request raises practical refusal reasons under section 24AA(1)(a)(i) and section 24AA(1)(b) of the FOI Act. The decision maker therefore intends to refuse access to the documents requested.

However, before the decision maker makes a final decision to refuse the request for a practical refusal reason, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Reasons for intention to refuse your request

The FOI request does not provide sufficient information to enable identification of the document sought (24AA(1)(b) of the FOI Act)

Part 1 and part 2 of your FOI request, in their current form, do not provide sufficient information to enable identification of the document/s you are seeking.

Any 'strong criticism' that may have been expressed by 'existing medal holders' and 'others' may have been expressed using various words or language and may not necessarily have been expressly labelled as 'strong criticism'. Further, where an existing medal holder or others had expressed criticism, then it may not be possible to distinguish the gradation of the criticism (for example, distinguishing 'strong criticism' from something short of 'strong criticism'). The Department therefore would not be able to devise search terms to interrogate its document holdings that could give adequate assurance that all reasonable steps had been taken to identify documents meeting part 1 and part 2 of your request, if such documents exist. Accordingly, part 1 and part 2 of your request do not provide such information as is reasonably necessary to enable the Department to identify the documents you are seeking.

In relation to part 2 of your request, the decision maker advises that the reference to 'others' in the brief should be understood as a reference to the general public with an interest in the Australian Honours System.

The work involved in processing the request would substantially and unreasonably divert the resources of the agency (24AA(1)(a)(i) of the FOI Act)

In deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities specified in section 24AA(2) of the FOI Act:¹

- identifying, locating or collating documents within the filing system of the agency;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;

¹ 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*' (FOI Guidelines) , Part 3 – Processing and Deciding on Requests for Access (version 1.7, June 2020), [3.116].

- making copies of documents;
- notifying an interim or final decision to the applicant.

Other matters that the decision maker finds relevant in deciding if a practical refusal reason exists include:

- the staffing resources available to an agency or minister for FOI processing;
- whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities;
- the impact that processing a request may have on other work in an agency or minister's office, including FOI processing;
- whether an applicant has cooperated in framing a request to reduce the processing workload
- whether there is a significant public interest in the documents requested;
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.²

Subject to clarification of your request, the Department has undertaken preliminary searches and identified 134 files that would need to be manually searched to identify any documents meeting all three parts of your FOI request. The Department estimates that each file contains an average of 150 pages. This means that Department would need to review approximately 20,100 pages to determine whether these files contain any documents meeting the terms of your request.

The Department conservatively estimates that it would take at least 30 seconds per page to undertake the tasks of search and retrieval associated with these files. These tasks would include: reading each page and, if the page meets the terms of your request, removing the page from the file and scanning the page; and collating the scanned pages into one electronic file to enable efficient processing of your request. The Department therefore estimates that the tasks of search and retrieval in relation to the 134 files or 20,100 pages would be at least 167 hours.

Ordinary hours of work for full-time employees in the Department are 38 hours per week.³ Having regard to the estimate of time process the request, this means it would take one officer at least 4 weeks to process your FOI request.

There may be additional document holdings that need to be searched, which will add to the time required to undertake search and retrieval and therefore increase the time to process your request. Noting that there is no right of access under the FOI Act to documents in the open access period under the Archives Act, the current time frame for document searches is 1 January 2000 to the date of the brief referred to in your request namely 26 September 2013 – a period of over 13 years. For any documents identified as relevant to your FOI request, further time will be required to undertake such other tasks as may be required to process your request, thereby increasing the time required to process your request.

The Department acknowledges that the processing of requests for access to documents is a legitimate part of each agency's functions, and that FOI requests may require reallocation of resources within an agency. However, the Department could not reasonably divert resources

² FOI Guidelines, [3.117].

³ Department of the Prime Minister and Cabinet, *Enterprise Agreement 2017-2020*, [315].

to assist in processing the request. In reaching this view, the Department has had regard to the public interest in access to information held by the Department but considers the public interest in access is outweighed by the competing public interest in the ability of the Department to undertake its ordinary functions without substantial impairment, including the processing of other FOI requests.

For the reasons given above, the decision maker considers that processing the request in its current form would be a substantial and unreasonable diversion of the Department's resources from its other operations.

Request consultation process

You now have an opportunity to revise the request to enable it to proceed. Revising the request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the specific documents you wish to access. We will assess whether any revised request has removed the practical refusal reason.

You may wish to consider revising your request by, for example:

- Withdrawing part 1 and part 2 of your request. Given the inherent difficulties described above in devising adequate search terms to interrogate the Department's document holdings, it is not apparent to the Department how part 1 and part 2 of the FOI request might be clarified to enable searches. However, the Department will consider any clarification of part 1 and part 2 to enable searches that you may wish to suggest.
- Narrowing the time frame for your FOI request. As noted above, the current time frame for document searches is 1 January 2000 to the date of the brief referred to in your request namely 26 September 2013 – a period of over 13 years.

No guarantee of access

Please be aware that even if you revise the FOI request to enable it to be processed, there is still no guarantee that documents will ultimately be released. That is a matter for the decision-maker to decide in the usual manner after examining the relevant documents. The issue we are addressing at the moment is whether the FOI request can be processed – not what the eventual outcome may be if it is processed.

Action required

Section 24AB of the FOI Act provides that you must do one of the following, in writing, within the next 14 days:

- revise the FOI request;
- indicate that you do not wish to revise it; or
- withdraw the FOI request.

If you do *not* do one of the above within the next 14 days, the FOI request will be taken to have been withdrawn as per subsection 24AB(7) of the FOI Act. If you were to revise the FOI request in a way that adequately addresses the above concerns and makes it manageable, the Department will recommence processing it.

Calculation of 30 day period

Please note that the time taken to consult with you regarding the scope of the FOI request is not taken into account for the purposes of calculating the 30 day period during which the Department is required to take all reasonable steps to process the FOI request.

Should you wish to discuss your request, please contact the Department's FOI and Privacy Section on (02) 6271 5849, or by email to foi@pmc.gov.au, quoting reference number FOI/2020/208.

Yours sincerely



Leila Galang
A/g Senior Advisor
FOI & Privacy Section

25 September 2020