



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 26 September 2020, which was in response to a practical refusal consultation notice issued to you by the Department of the Prime Minister and Cabinet (the **Department**) on 25 September 2020 in relation to your request under the *Freedom of Information Act 1982* (the **FOI Act**).

In your email of 26 September 2020, you relevantly advised as follows:

Section 24AB suggests if the applicant contacts the contact person during the consultation period in accordance with the notice, the agency may take reasonable steps to assist the applicant to review the request so that the practical refusal reason no longer exists.

I will be grateful for your advice. Document B13/1718 informed a Ministerial decision. Recent FOI disclosures reveal the Minister's decision was predicated, at least in part, on the advice "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".

The advice is unsubstantiated and may be incorrect. The Medal's original Letters Patent came before the governing regulations. They state the Medal was instituted to accord "recognition to persons who have given humanitarian in hazardous circumstances outside Australia". Definitions are important, they say what particular words mean and give words special meaning for particular Acts or instruments. The regulations governing the Medal prescribe "humanitarian service means service giving immediate remedy or action to assist the needy or distressed persons in order to sustain the life and dignity of those persons". The regulations do not appear to use the term not-for-profit.

The advice may have conflated the Medal's purpose, prescribed by Letters Patent, with the types of organisations the Medal is principally awarded to i.e. humanitarian not-for-profit organisations. However the Medal was designed to be flexible to accommodate Government approval of operations conducted under the authority of

international or national agencies. This is evidenced by the Australian contingent to the rehabilitation program in Iraq carried out by the Coalition Provisional Authority being a prescribed eligible organisation in the Medal's declaration for Iraq.

The advice may be the opposite of the evidence. The public record shows examples of commercial contractors being awarded the Medal in recognition of their service with the Australian contingent to the Coalition Provisional Authority. Documents shows AusAID, the lead agency responsible for delivering the Australian Government's humanitarian programs for the Iraqi people supported the Medal being awarded. AusAID staff in Canberra supported the case as did medal holders from the Australian contingent to Iraq. It appears unreasonable for the advice to claim to know the public's opinion without reference. It appears reasonable to question the utility of uninformed opinions in any case.

I would like to revise my request to ask for the documents demonstrating the advice was predicated on substantive fact versus unsubstantiated opinion.

Any help will be greatly appreciated.

Authorised decision-maker

The authorised decision-maker for your request is David Belgrove, Acting 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 if the work involved in processing the request would substantially and unreasonably divert the resources of an agency from its other operations (section 24AA(1)(a)(i) of the FOI Act).

I write to advise you that the decision maker considers that your revised request has not removed the practical refusal reasons under section 24AA(1)(a)(i). 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

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

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].

- 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;
- 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

The decision maker has considered your revised request and considers that the practical refusal reason remains, because the Department would still be required to undertake the same document searches and retrieval process to identify “documents demonstrating the advice was predicated on substantive fact versus unsubstantiated opinion”.

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 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 revised request 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.

² FOI Guidelines, [3.117].

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

- narrowing the timeframe of the documents you are seeking;
- providing further specificity in relation to the documents you wish to access.

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

8 October 2020