



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2020/208

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

DECISION BY: Peter Rush
Assistant Secretary
Parliamentary and Government Branch

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.

On 25 September 2020, the Department notified you of its intention to refuse your request for practical refusal reasons under section 24AA(1)(a)(i) and section 24AA(1)(b) of the FOI Act. The Department's notice commenced a request consultation process under section 24AB of the FOI Act.

On 26 September 2020, you responded as follows:

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 accomodate 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 publics 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.

On 8 October 2020, the Department notified you of its intention to refuse your revised request of 26 September 2020 for a practical refusal reason under section 24AA(1)(a)(i) of the FOI Act. The Department's notice commenced a further request consultation process under section 24AB of the FOI Act.

On 10 October 2020, you responded as follows:

It appears the 'authorised decision maker' who rejected my 7 September 2020 FOI request may be the same person who produced the advice in Paragraph 6.b. If this is the case, it appears reasonable to put they would be able to help to identify the specific documents informing the advice without the department needing to undertaking extensive searches.

Please provide a copy of the document informing the advice regarding 'existing medal holders' in Paragraph 6.b.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision

I have decided to refuse your request under section 24(1) of the FOI Act.

In making this decision, I have had regard to the following material:

- your request of 7 September 2020;
- the Department's practical refusal consultation notice of 25 September 2020 and your response of 26 September 2020;
- the Department's practical refusal consultation notice of 8 October 2020 and your response of 10 October 2020;
- the FOI Act; and
- the 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*'¹ (the **FOI Guidelines**).

Reasons

Section 24(1) of the FOI Act provides that if an agency is satisfied when dealing with a request for a document that a practical refusal reason exists in relation to the request, the agency:

- must undertake a request consultation process (see section 24AB of the FOI Act); and
- if, after the request consultation process, the agency is satisfied that the practical refusal reason still exists – the agency may refuse to give access to the document in accordance with the request.

¹ FOI Guidelines published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

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:²

- 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 may be relevant in deciding if a practical refusal reason exists such as the staffing resources available to an agency for FOI processing, whether the processing can only be undertaken by one or more specialist officers in an agency who have competing responsibilities, the impact that processing may have on other work in an agency including FOI processing, whether an applicant has cooperated in framing a request to reduce the processing workload, and whether there is a significant public interest in the documents requested.³

Section 24AB(9) of the FOI Act provides that an agency is only obliged to undertake a request consultation process once for any particular request.

I note that for this FOI request, the Department has undertaken two request consultation processes described above and summarised as follows:

- the first request consultation process was initiated by the Department by its notice dated 25 September 2020, and ended when you revised your request on 26 September 2020; and
- the second request consultation process was initiated by the Department by its notice dated 8 October 2020, and ended when you revised your request on 10 October 2020.

I consider that your revised request of 10 October 2020 has not removed the practical refusal reason under section 24AA(1)(a)(i) of the FOI Act.

In my view, the practical refusal reasons expressed in the Department's notice of 25 September 2020 (and 8 October 2020) also apply to your revised request of 10 October 2020, namely:

... 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.

² FOI Guidelines, [3.116].

³ Ibid, [3.117].

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.⁴ 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 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.

Therefore, for the reasons given above, I have decided to refuse your FOI request under section 24(1) of the FOI Act.

Review rights

Information about your rights of review can be found on the website of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

⁴ Department of the Prime Minister and Cabinet, *Enterprise Agreement 2017-2020*, [315].

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to a request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Rush', written in a cursive style.

Peter Rush
Assistant Secretary
Parliamentary and Government Branch

12 October 2020