



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2020/211

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

DECISION BY: Peter Rush
Assistant Secretary
Parliamentary and Government Branch

By email: foi+request-6695-26625266@righttoknow.org.au

Dear Trav S

I refer to your email of 9 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:

This a request for information under the FOI Act.

On 14 May 2020, PM&C's Honours Department wrote to the Minister for honours policy staff stating:

"In 2010, PM&C was approached by AusAID to consider a request (s47F name redacted) for these contractors to be considered for the award of the Humanitarian Overseas Service Medal. The honours team assessed the information and sought input from relevant stakeholders in forming a view for recommendation to the Minister for honours policy".

Regarding PM&C's statement, please provide the following documents for review:

- 1. the information the honours team assessed. Please don't include the HOSM application submitted by (s47F name redacted).*
- 2. PM&C's correspondence seeking the input from the "relevant stakeholders".*
- 3. the correspondence from the "relevant stakeholders" in which they provide their input to PM&C, and the input they provided.*

4. *PM&C's correspondence to the commercial organisation under consideration seeking their input, and the input provided.*

5. *PM&C's correspondence, occurring between April 2012 and 25 March 2013, to the Minister responsible for honours policy regarding their recommendations to the Minister.*

In April 2012 PM&C informed AusAID they would deliver a document titled "amendment of humanitarian overseas service medal (Iraq) declaration 2004 to extend to specified commercial contractors" to the Parliamentary Secretary to the Prime Minister [PSPM] Senator Jan McLucas.

Regarding that document, please provide the following for review:

6. *PM&C's correspondence to PSPM McLucas*

7. *PSPM McLucas's correspondence regarding the document.*

8. *PM&C's correspondence to AusAID regarding the document.*

On 14 May 2020, PM&C's Honours Department wrote to the Minister for honours policy's staff and stated:

"(s47F name redacted) was furnished with internal communications between AusAID and PM&C dating from 2012. Unfortunately, this communication pre-dated final input from stakeholders and the final Ministerial decision by the then responsible Minister, the Hon Josh Frydenberg MP".

Regarding PM&C's statement, please provide the following documents for review:

9. *The correspondence providing the "final input from stakeholders", and their input.*

On 9 October 2020, the Department notified you of its intention to refuse your request for practical refusal reasons under section 24AA(1)(a)(i) of the FOI Act. The Department's notice commenced a request consultation process under section 24AB of the FOI Act.

On 10 October 2020, you responded as follows:

On 14 May 2020, PM&C stated:

"In 2010, PM&C was approached by AusAID to consider a request (s47F name redacted) for these contractors to be considered for the award of the Humanitarian Overseas Service Medal. The honours team assessed the information and sought input from relevant stakeholders in forming a view for recommendation to the Minister for honours policy".

1. *Please provide a copy of PM&C's correspondence to the relevant stakeholders seeking their input.*

"(s47F name redacted) was furnished with internal communications between AusAID and PM&C dating from 2012. Unfortunately, this communications pre-dated final

input from stakeholders and the final Ministerial decision by the then responsible Minister."

2. *Please provide a copy of the 'communications between AusAID and PM&C dating from 2012'.*

3. *Please provide a copy of the final input.*

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 9 September 2020;
- the Department's practical refusal consultation notice of 9 October 2020 and your response of 9 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

Refusal of requests – diversion of resources

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.

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;

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/>.

² FOI Guidelines, [3.116].

- 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 the Department has undertaken one request consultation process with you, as described above.

I consider that your revised request of 9 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 9 October 2020 also apply to your revised request of 9 October 2020, namely:

The Department has undertaken preliminary searches and to date has identified over 1700 pages that would need to be manually reviewed to identify any documents meeting the terms of your FOI request. There may be additional locations that need to be searched to identify documents meeting the terms of your FOI request.

Having regard to the subject-matter of your FOI request, the above estimates concerning number of pages to be searched and pages meeting the terms of your FOI request, and the tasks required to process your FOI request, the Department estimates that processing will take at least 84 hours, based on a conservative estimate that approximately 50 per cent of the documents are within the scope of your FOI request.

Ordinary hours of work for full-time employees in the Department are 38 hours per week.⁴ Having regard to the estimate of time to process the request, this means it would take one officer at least 2 weeks to process your FOI 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.

³ Ibid, [3.117].

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

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/>.

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