



## Australian Government

### Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT  
BARTON

FOI

FOI/2020/217

Ms Janae Brown

By email: [foi+request-6717-852d0b35@righttoknow.org.au](mailto:foi+request-6717-852d0b35@righttoknow.org.au)

Dear Ms Brown

I refer to your email of 14 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 relevant terms:

*I seek the following under FOI;*

- A document that contains the position titles of officers who were non-ongoing or receiving high duties at any time in the last month [Part 1]*
- The job advertisement or expression of interest used to appoint officers in non-ongoing positions or on higher duties. [Part 2]<sup>1</sup>*

#### **Authorised decision-maker**

The authorised decision-maker for your request is Ms Michelle Wicks, Chief People Officer, People Branch.

#### **Notice of practical refusal reason**

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.

I write to advise you that the decision maker considers that the work involved in processing your request, in its current form, would substantially and unreasonably divert the resources of the Department from its other operations. This constitutes a 'practical refusal reason' under section 24AA of the FOI Act. On this basis, the decision maker intends to refuse access to the documents you have 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

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<sup>1</sup> For ease of reference, the parts of the FOI request have been labelled 'Part 1' and 'Part 2', respectively.

‘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:<sup>2</sup>

- 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, and whether there is a significant public interest in the documents requested.<sup>3</sup>

The Department does not possess a discrete written document that contains the information requested in Part 1 of the FOI request.

In these circumstances, the Department has considered whether it is required by section 17 of the FOI Act to produce a document meeting Part 1 of the FOI request. The requirement in section 17 of the FOI Act relevantly applies where an agency could produce a written document containing the information by using a ‘computer or other equipment that is ordinarily available’ to the agency for retrieving or collating stored information. The FOI Guidelines relevantly provide that:

*... the reference in s 17(1)(c)(i) to a ‘computer or other equipment that is ordinarily available’ means ‘a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available ... [T]he computer or other equipment ... must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.’<sup>4</sup>*

The Department’s relevant line area advised that the production of a document meeting Part 1 of the FOI request would include manual interrogation, manipulation and cross-checking of data in the Department’s HR system, and manual creation of such a document. Hence, the Department is currently of the view that section 17 of the FOI Act does not apply to part 1 of the request and the Department is not required to create a document meeting part 1 of the request.

In order to identify any document meeting Part 2 of the FOI request, the Department would effectively need to create a document meeting Part 1 of the FOI request. However, as

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<sup>2</sup> ‘Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*’ (FOI Guidelines), [3.116].

<sup>3</sup> FOI Guidelines, [3.117].

<sup>4</sup> FOI Guidelines, [3.207] (footnotes omitted).

explained above, the Department is not required under the FOI Act to create a document meeting Part 1 of the FOI request. Hence, to identify any documents meeting Part 2 of the FOI request, the Department would need to have searches undertaken by every business unit in the Department that may have employed officers in non-ongoing or higher duties positions. Assuming the searches are conducted at the level of each business unit in the Department, this process is estimated to involve over 63 hours (on the conservative estimate of 1 hour per business area in the Department). This time does not include review, redaction, third party consultation, and any other tasks required to make and notify a decision on the FOI request. The total time involved would be likely higher if all steps were taken into account.

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 your 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 your request to enable it to proceed. Revising your 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.

### **No guarantee of access**

Please be aware that even if you revise your 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 your 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 your 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, your FOI request will be taken to have been withdrawn.

If you were to revise your 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 your 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 your 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](mailto:foi@pmc.gov.au), quoting reference number FOI/2020/217.

Yours sincerely



A/g Senior Adviser  
FOI and Privacy Section

9 October 2020