



Our reference: FOIREQ20/00187

Julie

By email: foi+request-6746-ebedaa1a@righttoknow.org.au

Your Freedom of Information request FOIREQ20/00187

Dear Julie,

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 23 September 2020.

In your request you seek access to the following:

copy of that briefing book or pack used by the Information Commissioner on Tuesday 3 2020 (when she appeared before the Senate Legal and Constitutional Affairs Legislation Committee for the 2019-20 Additional Budget Estimates).

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your requests no later than 30 days after the day we receive them. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third parties about certain information, such as business documents or documents affecting their personal privacy.

However, this time will be stopped until we have completed this consultation with you regarding the scope of your request.

Notice of intention to refuse your request

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests.

I am writing to tell you that I believe that the work involved in processing your request in its current form will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope. This is called a 'practical refusal reason' (under s 24AA of the FOI Act).

On this basis, I intend to refuse access to the documents you have requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under s 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out at the end of this letter.

Why I intend to refuse your request

Calculation of the processing time

I estimate it will take the OAIC at least 64.8 hours to process your FOI request in its current form.

There are 57 documents that were prepared for the Australian Information Commissioner's appearance before Senate Estimates on Tuesday 3 March 2020. The documents are complex and a resourced from various sections of the OAIC. The 57 documents comprise approximately 670 pages.

Of those 670 pages, a portion of the documents pertaining to the OAIC's FOI functions are published on the OAIC's website disclosure log in two former FOI requests received by the OAIC.

To calculate the processing time, I have taken the following factors into account:

- I estimate it will take one hour per 20 documents to prepare a document schedule listing the document number, date, number of pages and a description of each document. I therefore estimate it will take approximately 3 hours to prepare a schedule for 57 documents.
- Based on a sample of six documents (70 pages) and the complex nature of each document, I estimate it will take 2 minutes to examine each page to assess whether it can be released or whether it will be subject to an exemption (either in full or in part), and approximately 3 minutes to prepare an edited copy of the documents, including the redaction of exempt material. On the basis that there will be at least 670 pages within the scope of the request this task will take at least 55.8 hours.
- The documents contain a mix of complex and sensitive information obtained from various line areas which may require consultation with OAIC internal staff with subject matter expertise. The documents also relate to at least two third parties who would need to be consulted in relation to the request under s 27 of the FOI Act. I estimate that it will take a minimum of 4 hours to prepare and send consultation notices and consider each entity's response.
- To update the schedule to record the FOI decision and write a decision statement for the FOI applicant will take approximately 2 hours.

I have therefore calculated it will take at least 64.8 hours to process your FOI request.

Diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal reason exists. As well as requiring a request to

substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

- the staffing resources available to the agency for FOI processing
- the impact that processing a request may have on other work in the agency, 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.

The OAIC is a small agency, employing approximately 140 (head count) staff. Processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests. This makes it likely that staff will be diverted from their other work in the OAIC, including:

- undertaking regulatory functions in both FOI and privacy
- undertaking activities set out in the OAIC's 2020/2021 Corporate Plan such as:
 - conciliating and investigating privacy complaints, responding to notifiable data breaches, and overseeing the privacy aspects of the My Health Record system and Consumer Data Right scheme
 - monitoring compliance with new legislation and providing guidance and education materials to support participants in the COVIDSafe system
 - develop a binding code of practice for digital platforms increases the privacy protection of Australians in the online environment
 - improve agencies' processes for managing FOI requests
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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 documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, as well as excluding information that has previously been published on our disclosure log, we will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice. Therefore, you must respond to this notice by 29 October 2020.

During this period, you can ask the contact person (see below) for help to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Ways you can reduce the scope of your request

There are a number of ways that you can reduce the scope of your request to enable us to process it without unreasonably diverting our resources from our other operations. These include limiting the scope of your request to:

- only include documents that were prepared for the witnesses in relation to a specific topic or documents that exclude a number of topics. The transcript of the hearing may provide information to assist you to limit your request to a particular subject or to exclude topics from your request. The transcript can be found at:
https://www.aph.gov.au/Parliamentary_Business/Hansard/Estimates_Transcript_Schedule
- exclude third party personal information, and
- exclude information that is publicly available. For instance some documents are published on the OAIC's FOI disclosure log relating to Senate Estimates this calendar year (2020): See <https://www.oaic.gov.au/about-us/access-our-information/our-foi-disclosure-log/?keyword=Senate%20Estimates&start=0&year=2020>. In addition, some documents such as media articles are otherwise publicly available.

Contact officer

If you would like to revise your request, or have any questions, you can contact me at legal@oaic.gov.au or on (02) 8231 4207.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a central vertical stroke, resembling a stylized 'A' or 'W'.

Angela Wong
Lawyer
15 October 2020