



Request consultation notice due to existence of two practical refusal reasons under section 24AB of the *Freedom of Information Act 1982*

Practical Refusal Consultation Notice of Famida (Position Number 62122449),
Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Penny (Right to Know)

Decision date: 29 October 2020

FOI reference number: FOI 38581 & FOI 38604

Sent by email: foi+request-6791-f492e7a5@righttoknow.org.au
foi+request-6796-ee9db69f@righttoknow.org.au

Dear Penny,

Freedom of Information Requests: FOI 38581 & 38604

Purpose of this notice

1. I refer to your two (2) FOI requests made on the Department of Veterans' Affairs (**the Department**) seeking access to documents under the *Freedom of Information Act 1982* (**FOI Act**).
2. The purpose of this notice is to:
 - a. Advise you that the Department has decided to combine your two (2) requests into one single request, in accordance with section 24(2) of the FOI Act. The Department's reference number for the combined requests is **38581**; and
 - b. Consult with you under section 24AB of the FOI Act, on the basis that I intend to refuse your request due to the existence of two practical refusal reasons as defined by section 24AA of the FOI Act. In particular:

- Your request does not provide such information as is reasonably necessary to enable the Department to identify some of the documents you are requesting (section 24AA(1)(a) of the FOI Act); and
- Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Authority to make decision

3. I, Famida (Position Number 62212449), Information Access Officer, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982 (FOI Act)*.

Combining your Requests under Section 24(2) of the FOI Act

1. On 12 October 2020 you made a request for access to documents in the possession of the Department (FOI 38561). Your request sought access to:

'... May I please access the current Labour Hire Contract in place between DVA (WA office) and Adecco Group.

May I please access the current Labour Hire Contract in place between DVA (WA office) and Hudson.

May I please view the V2 funding arrangement, specifically in relation to the hiring of V2 classified staff in the Perth DVA office during 2020.

May I please access the number of Labour Hire staff working specifically for - "Perth DRCA PI team" or "perth PI - DRCA processing team" on the following dates:

01/03/2019

01/06/2019

01/10/2019

01/11/2019

01/01/2020

01/03/2020

01/10/2020

01/11/2020 (or day of request processing)

May I please have access to the costs of labour hire staff in the Perth DVA office for September 2020.

A list of projects and dates of commencement and completion which required the need for labour hire workforce within the WA DVA office.

Any other reason/justification for the need to utilise labour hire staff in the Perth Office and the number used from 01/01/2020 to present...'

2. The Department acknowledged this FOI request on 13 October 2020.
3. Subsequently on 13 October 2020 you made a second FOI request for access to documents in the possession of the Department (FOI 38604). This request sought access to:

'In making this request I refer to the document "commonwealth contract terms" specifically C.C.13 Specified Personnel paragraph 2.

I request any policy, regulation or guide which references to "commonwealth contract terms" within the Department of Veterans' Affairs.

Any correspondence being email, Skype or telephone transcripts at the Perth office of the department of Veteran affairs between senior personal, including aps 6 and above workers, and external correspondence with labour hire companies ie. Adecco, Hudson in which C.C.13 Specified Personnel of the commonwealth contract terms have been a basis for the communication in regards labour hire employee.

This would include any correspondence which may not directly refer to the Commonwealth contract terms but is written with the intent of executing rights as the "customer", specifically C. C. 13 PARAGRAPH 2 and the replacement of specified personal.

minutes/correspondence/policy/procedure executed by DVA having reference to, one or more of the below terms:

Commonwealth contract terms

C. C. 13

(b) is not a fit and proper person...'

4. The Department acknowledged this FOI request on 14 October 2020 and asked you to consider revising the scope of your request, because the Department considered your request to be voluminous and unclear in parts.
5. Following the Department's informal consultation email, on 21 October 2020, you agreed to amend the scope of your FOI request 38604 as follows:

'Any correspondence being email, Skype or telephone transcripts at the Perth office of the department of Veteran affairs between senior personal, including aps 6 and above workers

internally as well as external correspondence with labour hire companies contracted by the DVA WA office ie. Adecco, Hudson in the last 10 months.

Also, the current/retired policies and procedure (in place over the last 12 months) in relation to requesting Labour hire staff be replaced.

Costs of training new staff engaged in anyway by DVA WA office in the last 12 months.

The WHS current DVA policy in regards to leave requirements for all staff, specifically labour hire personal not having access to leave entitlements, which could increase risk in regards to a safe and healthy work place.

The financial reports/records in regards to DVA engaging in contracts with labour hire services under a goods or services agreement for the last 12 months and the last financial year.'

6. In accordance with section 24(2) of the FOI Act, the Department may treat two or more requests as a single request if:
 - a) the requests relate to the same document or documents; or
 - b) the requests relate to documents, the subject matter of which is substantially the same.
7. Paragraph 3.123 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI ACT (**FOI Guidelines**), notes that the most common circumstances that requests will be combined includes where multiple requests are made by a single applicant.
8. On 27 October 2020 the Department confirmed with you that you had made both requests through the website Right to Know, under the first name Penny. You also noted that the requests could be combined.
9. Your FOI requests seek access to documents relating to labour hire arrangements within the Department's Perth WA Office and the Department's commercial dealings with Adecco Group and Hudson Recruitment. As your two requests overlap and relate to a substantially similar subject matter, the Department has decided to combine these requests pursuant to section 24(2) of the FOI Act.
10. Your FOI requests will be actioned by the Department under the reference number FOI 38581.

11. The terms of your revised and combined request reads as follows:

'... May I please access the current Labour Hire Contract in place between DVA (WA office) and Adecco Group.

May I please access the current Labour Hire Contract in place between DVA (WA office) and Hudson.

May I please view the V2 funding arrangement, specifically in relation to the hiring of V2 classified staff in the Perth DVA office during 2020.

May I please access the number of Labour Hire staff working specifically for - "Perth DRCA PI team" or "perth PI - DRCA processing team" on the following dates:

01/03/2019

01/06/2019

01/10/2019

01/11/2019

01/01/2020

01/03/2020

01/10/2020

01/11/2020 (or day of request processing)

May I please have access to the costs of labour hire staff in the Perth DVA office for September 2020.

A list of projects and dates of commencement and completion which required the need for labour hire workforce within the WA DVA office.

Any other reason/justification for the need to utilise labour hire staff in the Perth Office and the number used from 01/01/2020 to present...

Any correspondence being email, Skype or telephone transcripts at the Perth office of the department of Veteran affairs between senior personal, including aps 6 and above workers internally as well as external correspondence with labour hire companies contracted by the DVA WA office ie. Adecco, Hudson in the last 10 months.

Also, the current/retired policies and procedure (in place over the last 12 months) in relation to requesting Labour hire staff be replaced.

Costs of training new staff engaged in anyway by DVA WA office in the last 12 months.

The WHS current DVA policy in regards to leave requirements for all staff, specifically labour hire personal not having access to leave entitlements, which could increase risk in regards to a safe and healthy work place.

The financial reports/records in regards to DVA engaging in contracts with labour hire services under a goods or services agreement for the last 12 months and the last financial year.'

Power to refuse a request

4. Section 24 of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.
5. However, before I make a decision to refuse your request you have an opportunity to revise your request to remove the practical refusal reasons. This is called a 'request consultation process'. You have 14 days to respond to this notice in one of the ways set out below. As mentioned below, you can request more time to consider and respond to this notice. Please let me know if you would like additional time to respond.

When does a practical refusal reason exist (section 24AA of the FOI Act)

6. The practical refusal reasons applicable to your request are that:
 - a. Your request does not provide such information as is reasonably necessary to enable the Department to identify some of the documents you are requesting (section 24AA(1)(a) of the FOI Act); and
 - b. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).
7. Under section 24AA(2) of the FOI Act, the Department must have regard to the resources that would have to be used for:
 - identifying, locating or collating the documents within the filing system of the agency;
 - deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document (including resources that would have to be used for examining the document or consulting with any person or body in relation to the request);

- making a copy or an edited copy, of the document; and
- notifying any interim or final decision on the request.

8. Further, the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**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; and
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

9. I consider that all of the above factors have a bearing on your request. The reasons why a practical refusal reasons exists in relation to your request are set out below.

Why I intend to refuse your request

Identification of documents

10. Section 24AA(1)(b) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy section 15(2)(b) of the FOI Act. This section says that a request must provide such information concerning the requested documents as is reasonably necessary to enable a responsible officer of the agency to identify those documents.

11. I consider that the scope of your request is framed too broadly and in such a way that the Department is unable to sufficiently or confidently identify the full extent of documents capture by your request. This is because your request broadly seeks access to various suites of documents including policy material, procurement and resourcing information and internal correspondence. Further I do not consider that your request sufficiently identifies

the specific kinds, types or dates of the documents that you are seeking access to. It is also unclear if your request is made for any and all documents falling within these broad terms, or whether instead you are requesting relevant material that relates to a specific event or decision of the Department.

12. As far as I can identify the terms of your request as it currently stands, I have consulted with relevantly identified business areas. They have advised that your request would require a more narrowed and defined scope of request prior to undertaking a document retrieval exercise. At present there is difficulty understanding the true extent of documents that you are requesting and whether your request stems from or relates to a specific event, or whether you have intended to request a very broader scope of material. This confusion arises from the parts of your request seeking access to broader policy documents such as your request for *'any policy, regulation or guide which references to "commonwealth contract terms" within the Department of Veterans' Affairs'* or your request for the *'Costs of training new staff engaged in anyway by DVA WA office in the last 12 months'* together with the parts of your request which appear to relate to a specific event, such as *'the number of Labour Hire staff working specifically for - "Perth DRCA PI team" or "perth PI - DRCA processing team" on the following dates....'*
13. Without further clarification, your request as it currently stands, does not enable the Department to confidently identify all relevant business areas and to undertake reasonable and effective searches of the Department's records.

Request is substantial

14. Section 24AA(1)(a) of the FOI Act provides that a practical refusal reason exists in relation to a request for a documents, if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.
15. Your combined request is made of twelve (12) different parts and requests access to a broad and extensive scope of documents, falling across policy, employment, procurement and statistic analysis areas of the Department.
16. As noted above, to determine the extent and scope of your request, I have undertaken an initial consultation process with relevantly identified business areas. Following this consultation, I understand that, to the extent that the Department can identify the terms of your request, your request would likely capture a significant number of documents and involve an extensive search and retrieval process across a number of different Departmental areas.

17. Additionally, in the absence of further guidance and clarification to the questions of scope noted above, the Department considers that a significant number of storage locations and documents would need to be reviewed to identify and produce documents falling within scope of your request. Parts of your request would also require the extraction of Department data and, where appropriate the creation of documents in accordance with section 17 of the FOI Act.

18. Following these initial enquiries and in consideration of the time already spent by a number of the Department's business areas in reviewing and considering the terms of your request, I estimate that a minimum of 100 hours of processing time would be required to respond to your request. The reasons for this are as follows:
 - a. You have requested access to a broad, and largely undefined, scope of documents;

 - b. You have not included relevant date periods or other sufficient identifying information to assist the Department in identifying the documents you are requesting;

 - c. Searches will need to be undertaken across multiple business areas of the Department;

 - d. Parts of your request require the extraction, review and manipulation of data and the consideration of whether a document can be created to meet the terms of your request;

 - e. Relevant business areas have advised on the complexities and substantial amount of work required to finalise your FOI request as it currently stands. In particular, the relevant business areas have advised that without further clarification or definition of the scope, the search time for your FOI requests would be substantial, specifically:
 - i. One relevant business area advised that searches in relation FOI 38604 alone would take a number of days to complete and would need to be actioned across several different areas of the Department; and

 - ii. Another relevant business areas that it would take approximately 60 hours to search and retrieve documents in relation to only one out of the seven (7) parts of FOI 38581.

- f. Due to the broad and undefined nature of your FOI request as it currently stands, the relevant business areas are unable to provide an accurate estimate of the number of documents or pages of material falling within the scope of your request.
- g. As part of the FOI decision making process, the relevant business areas would need to review and advise the relevant FOI decision maker on the sensitivities contained within these documents. I consider that that the requested documents will require the consideration of exemption under the FOI Act. At an absolute minimum, I consider that the FOI officer will have to have regard to sections 22 (irrelevant material), 47, 47G, 47C (deliberative material), 47E (operations of an agency) and section 47F (personal privacy) of the FOI Act;
- h. It is likely that the FOI Officer would have to organise and engage in a number of third party consultations under sections 27 and 27A of the FOI Act in relation to third party business and personal information; and
- i. The FOI officer will then be required to take time to draft a decision on access in respect of the requested material, including the preparation of a document bundle and a statement of reasons.

19. Taking these factors into account, I have concluded the request as it currently stands is substantial and that processing your request would constitute a substantial and unreasonable diversion of the Department's resources.

Request is unreasonable

20. I have also considered whether the processing of your request would constitute an unreasonable diversion of the Department's resources. I have decided that the minimum processing time of 100 hours is, at face value, an unreasonable burden for FOI requests. Specifically, I have taken the following factors into consideration:

- a. The Department's need to process multiple FOI requests from multiple applicants at any given time, and the impact that processing your request would have on the Department's ability to respond to other FOI applicants. Specifically, the Department's Information Law Team would be required to divert a substantial amount of staff resources to process your request, meaning that less resources were available for its other functions (including the processing of other applicant's FOI requests);

- b. The current staffing and resources constraints experienced by the Department's Information Law team; and
 - c. The relevant business areas needs to undertake their designated duties in addition to the processing of your request. The relevant business areas have advised that the work required to collate and review the documents falling within scope of your request would substantially affect their business as usual work and would divert a significant amount of their time and resources.
21. Specifically, the Department wishes to draw your attention to the current pressures it is facing in the relation to the processing of its FOI requests. The Department is currently managing both the impact of COVID-19 on different business areas and significant resourcing pressures being experienced by both the Department's Information Law Team and the National Information Access Processing Team.
22. As the Department focuses its efforts on managing the impact of COVID-19 on its critical services and employees, other non-critical services may not be delivered within expected timeframes. During this time, business areas that would ordinarily have capacity to undertake searches and assist in the processing of FOI requests have not always been readily available to provide that assistance.
23. Additionally, the Department's Information Law team and National Information Access Processing Teams process a high volume of Information Access related requests every day and are regularly the third highest recipient of FOI requests across the Commonwealth. These workload demands are impacting on the manner and timeframe in which the Department can process FOI requests. This increased workload and resourcing constraints also means that broad and significant FOI requests such as yours, would place an even greater burden on the Department's resources at this time.

Ways you can revise the scope of your request

24. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.
25. 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, we will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

26. For example, you may want to consider:
- a. providing further clarification about the information/specific documents you are seeking access to;
 - b. restricting and clarifying the date range of documents sought;
 - c. narrowing the scope of documents to a more specific subject matter;
 - d. restricting your request for emails/documents sent to or received by specific individuals and/or sections;
 - e. removing your request for skype messages;
 - f. removing your request for statistical data; and/or
 - g. reducing the number of different items you are requesting at the same.
27. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24AA may still exist and/or the Department may need further time to process your revised request. This will depend on the revision you agree to make. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

Next steps

28. Before the end of the consultation period, which is **close of business 12 November 2020** (being 14 days from receiving this notice), you must do one of the following, in writing:
- withdraw the request;
 - make a revised request; or
 - indicate that you do not wish to revise the request.
29. During this period, you can ask me 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.

30. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on the grounds that processing your request will result in a diversion of the Department's resources under section 24(1) of the FOI Act.
31. If you do not respond in one of these ways within 14 days (by **COB 12 November 2020**), the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act.
32. If you need more time to respond, please contact the Information Law Section via the below contacts, within the 14 day period to discuss your need for an extension of time.

Suspension of processing time

33. Please note under section 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above.
34. An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

Contact us

35. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

Post: Legal Services and Audit Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: Information.Law@dva.gov.au

Yours sincerely,

Famida (Position Number 62212449)

Information Access Officer

Information Law Section

Legal Services and Audit Branch

29 October 2020



Schedule of relevant provisions in the FOI Act

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

24 Power to refuse request--diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
- (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24AA When does a practical refusal reason exist?

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:

- (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
- (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
- (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

24AB What is a request consultation process?

Scope

- (1) This section sets out what is a request consultation process for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
 - (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the consultation period) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), reasonable steps includes the following:
 - (a) giving the applicant a reasonable opportunity to consult with the contact person;

- (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
 - (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
 - (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.