



Our reference: FOIREQ20/00233

Julie

By Email: foi+request-6953-12b09c50@righttoknow.org.au

Your Freedom of Information request FOIREQ20/00233

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 7 December 2020.

In your email of 7 December 2020 (3.12am) you seek access to the following:

“For the purposes of the Freedom of Information Act, I request copy of documents relating to AusTender CN371714
[In your subsequent email of 7 December 2020 \(3.30am\) you seek access to the following:](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tenders.gov.au%2FCn%2FShow%2F4a6ddba6-17c5-4962-8151-8391888ffa32&data=04%7C01%7Clegal%40oaic.gov.au%7C82c590bd56244db984a308d89a01ab0a%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C1%7C637428679890630667%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwiLCJXVCI6Mn0%3D%7C2000&data=zZRNZuTZU1k1z93ZlzRUHcPOk2pTr35mFLfvTzS8JLk%3D&reserved=0”</p></div><div data-bbox=)

“I amend my scope to also include documents relating to:

* AusTender CN3711121

[* AusTender CN3700621](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tenders.gov.au%2FCn%2FShow%2F4a6ddba6-17c5-4962-8151-8391888ffa32&data=04%7C01%7Clegal%40oaic.gov.au%7Cbbe0fd21f3b74c587bae08d89a041f5d%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C1%7C637428690281102412%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwiLCJXVCI6Mn0%3D%7C2000&data=C1iU0oANW6X%2FPc33pVvAGrINaEysCGeZQJkqDRQinSI%3D&reserved=0”</p></div><div data-bbox=)

[1300 363 992
\[enquiries@oaic.gov.au\]\(mailto:enquiries@oaic.gov.au\)](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tenders.gov.au%2FCn%2FShow%2Fb2df63a6-f14d-4a10-abd0-d71f099b0b8f&data=04%7C01%7Clegal%40oaic.gov.au%7Cbbe0fd21f3b74c587bae08d89a041f5d%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C1%7C637428690281102412%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwiLCJXVCI6Mn0%3D%7C2000&data=C1iU0oANW6X%2FPc33pVvAGrINaEysCGeZQJkqDRQinSI%3D&reserved=0”</p></div><div data-bbox=)

[uMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C2000&odata=OYE9UN%2FhEq3jGZlr9CLRCbEcnSz0XOsa0maNLG88FYo%3D&reserved=0](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tenders.gov.au%2FCn%2FShow%2F2671b392-c6a2-411f-b132-ee4d6b74d86f&data=04%7C01%7Clegal%40oaic.gov.au%7Cbbe0fd21f3b74c587bae08d89a041f5d%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C1%7C637428690281102412%7CUnknown%7CTWFpbGZsb3d8eyJWljojoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C2000&odata=OYE9UN%2FhEq3jGZlr9CLRCbEcnSz0XOsa0maNLG88FYo%3D&reserved=0)

* AusTender CN3695712

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tenders.gov.au%2FCn%2FShow%2F2671b392-c6a2-411f-b132-ee4d6b74d86f&data=04%7C01%7Clegal%40oaic.gov.au%7Cbbe0fd21f3b74c587bae08d89a041f5d%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C1%7C637428690281102412%7CUnknown%7CTWFpbGZsb3d8eyJWljojoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C2000&odata=OYE9UN%2FhEq3jGZlr9CLRCbEcnSz0XOsa0maNLG88FYo%3D&reserved=0>

* AusTender CN3694802

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tenders.gov.au%2FCn%2FShow%2Fd099f04b-8669-4590-b6c4-7d93c67d00ab&data=04%7C01%7Clegal%40oaic.gov.au%7Cbbe0fd21f3b74c587bae08d89a041f5d%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C1%7C637428690281102412%7CUnknown%7CTWFpbGZsb3d8eyJWljojoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C2000&odata=b%2FgNtlmG0UKkC%2BncvuVoZ3RFnEN2ufW4hYJ1j5G3%2F%2FY%3D&reserved=0> and

* AusTender CN3693305

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tenders.gov.au%2FCn%2FShow%2F505cc6c0-15ca-44db-8c8e-745dccc8f78&data=04%7C01%7Clegal%40oaic.gov.au%7Cbbe0fd21f3b74c587bae08d89a041f5d%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C1%7C637428690281102412%7CUnknown%7CTWFpbGZsb3d8eyJWljojoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C2000&odata=J5eN20sZ%2F5%2BmSwUq64ka9tirfn9UAzEk3tvSkxwFnLU%3D&reserved=0> - including any document identifying the need for \$59K+ resilience development program for the less than 100 ongoing Oaic staff members (making it roughly \$600 per ongoing staff member to teach them how to be resilient)”.

On 25 December 2020 you clarified the scope your request and confirmed that in your request you are referring to:

- AusTender CN3717147 not AusTender CN371714.
- AusTender CN3711121 – not the hyperlink provided which goes to Contract Notice View - CN3717147

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. On 22 December 2020 the Oaic notified you that because your request covers documents which contain

information concerning an organisation's business or professional affairs and personal information, the OAIC would be required to consult the individuals and organisations under ss 27 and 27A of the FOI Act before making a decision on release of the documents. Accordingly the due date for processing your FOI request was extended by 30 days.

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.

The 60 day period for processing your request will be stopped until we have completed this consultation with you regarding the scope of your request. While we consider it best practice to engage in a practical refusal consultation as early as possible, it was only after searches for documents within the scope of your request yielded a significant number of documents that it became apparent that it was necessary to consult with you under s 24AB of the FOI Act.

Why I intend to refuse your request

Calculation of the processing time

I estimate it will take the OAIC at the very least **155.5 hours** to process your FOI request in its current form. This estimate is based on documents located as a result of searches completed to date and does not include the full suite of documents that are within the scope of your request.

In its current form, your request is broad as it would require the OAIC to identify any "documents" relating to AusTender CN3717147, AusTender CN3711121, AusTender CN3700621, AusTender CN3695712, AusTender CN3694802 and AusTender CN3693305. The term "documents" is defined in s 4(1) of the FOI Act to include any or any part of the following:

- any paper or other material on which there is writing
- a map, plan, drawing or photograph

- any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them
- any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device
- any article on which information has been stored or recorded, either mechanically or electronically
- any other record of information
- any copy, including any part of any copy, of a reproduction or duplicate of a thing listed above
- individually consult with each notifying entity, as the combined information would make each notifying entity reasonably identifiable.

On this basis, I have interpreted your request broadly to include all documents relating to the engagement of consultants, the procurement process, human resources and information management processes and or the services provided by the consultants in relation to AusTender CN3717147, AusTender CN3711121, AusTender CN3700621, AusTender CN3695712, AusTender CN3694802 and AusTender CN3693305.

Following our preliminary searches, we have identified a large quantity of documents that fall within the scope of your request. The documents found so far in the search relate to the procurement, engagement and (to a lesser extent) performance of contracts.

As you seek to access documents relating to six individual tender processes, it has been necessary to request that the following line areas conduct searches for documents that may fall within the scope of your request:

- Members of the OAIC Executive
- Corporate
- People and Culture
- Information management
- Regulation and Strategy
- Freedom of Information
- Legal Services

Documents that fall within the scope of your request are stored in various locations including Content Manager, email accounts, accounting systems and the OAIC's case management system Resolve.

Preliminary searches have been conducted by the following line areas for documents that come within the scope of each of the six tenders listed in your FOI request:

- Members of the OAIC Executive

- Corporate
- People and Culture
- Regulation and Strategy
- Freedom of Information
- Legal Services

The search has captured at least 630 documents and attachments, and these documents and attachments cover approximately 3400 pages.

The 3400 pages of documents found to date relate almost entirely to procurement and engagement. Less than 100 of these pages found to date relate to the performance of the contracts under these tenders, and these documents only relate to one of the tenders set out in your FOI request. Therefore, there remains a significant number of documents yet to be found, collated and considered that relate to the performance by successful tenderers under the relevant contracts. The following estimates have been calculated based on the documents found thus far and are conservative.

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

- To locate, convert to PDF and collate the documents from the OAIC's database will take at least **15 hours**.
- I estimate it will take 1 minute per document and attachment 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 at least 630 minutes (**10.5 hours**) to prepare a schedule for 630 documents and attachments.
- The documents relate to a number of 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 on average one hour to prepare and send a consultation notice and consider the entity's response. On this basis, consultation will take a minimum of **6 hours**.

I estimate that an additional one minute per page would be required for assessment of whether the documents can be released or whether they are subject to an exemption (3400 minutes, or **57 hours**), as well as 30 seconds per document for the updating of the schedule to record the FOI decision (315 minutes or **5 hours**). I estimate it would require a minimum of **5 hours** for writing of the decision statement. I estimate that an additional **57 hours** (one minute per page) would be required for collating and redacting documents for release, assuming the documents are released with exempt or irrelevant material removed. As stated above, these estimates are conservative as they are based on documents located as a result of preliminary searches conducted by six line areas. These estimates would necessarily increase as further documents are captured by searches.

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

Given the small size of the OAIC (around 140 employees) a processing time of 155.5 hours would substantially and unreasonably divert the resources of the OAIC from its other operations such as privacy and FOI regulatory work.

On this basis, 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.

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, 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 January 2021.

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 can include, for example:

- reducing substantially the number of AusTender contracts that are the subject of this FOI request (though I note that this alone is unlikely to reduce the resources required sufficiently, as the documents “relating to” even one of these tenders are voluminous, so reducing the number of AusTender contracts should be considered in combination with narrowing the kinds of documents sought in one of the ways suggested in the following bullet points)

- limiting your FOI request to documents relating to the engagement of consultants in relation to specific AusTender contracts;
- limiting your FOI request to documents relating to the financial procurement process in relation to specific AusTender contracts;
- limiting your FOI request to documents relating to the services provided by consultants under the AusTender contracts;
- a combination of the above.

I emphasise again that the 630 documents and attachments, comprising 3400 pages, within the current scope of your request do not represent all the documents that fall within the current scope of your request. Therefore I invite you to reduce the scope of your request in such a way that the number of documents (and processing resources required) is reduced below the numbers I have set out above, in such a way that the request would not substantially and unreasonably divert the OAIC's resources. You may wish to advise the OAIC of the specific documents you are seeking, having regard to the categories of information noted above.

Contact officer

If you would like to revise your request, or have any questions, you can contact me at john.molloy@oaic.gov.au or (02) 9284 9833.

Yours sincerely,

John Molloy
Senior Lawyer

15 January 2021