



**Australian Government**  
**Department of Immigration and Border Protection**

22 January 2014

**In reply please quote:**

FOI Request FA 14/07/00725  
File Number ADF2014/25298

To Robin De Garis

Email: [foi+request-711-b8e11bc8@righttoknow.org.au](mailto:foi+request-711-b8e11bc8@righttoknow.org.au)

Dear Robin de Garis

**Request consultation - Practical refusal notice - *Freedom of Information Act 1982***

I am writing to you in relation to your request under the *Freedom of Information Act 1982* (the Act) on 16 July 2014 for:

*I would like to request under the FOI act, a copy of correspondence regarding the decision of naming of "Border Force", the new DIBP agency.*

I note that your request is currently due on Friday 15 August 2014.

I am an officer authorised under section 23 of the Act to make decisions in respect of requests to access documents.

**Purpose of this notice**

The purpose of this notice is to advise you (as required under s.24AB of the Act) that I consider a '*practical refusal reason*' exists under s. 24AA of the Act and that I am considering refusing access to the requested documents, under s.24 of the Act. My reasons are set out in this notice.

This notice sets out the actions required from you in order to ensure that no '*practical refusal reason*' applies to your request.

**Advice regarding practical refusal reasons**

The Act contains two '*practical refusal reasons*'. The first is that processing the request '*would substantially and unreasonably divert the resources of the agency from its other operations*' (s.24AA(1)(a)). An agency may also refuse an FOI request if the agency is satisfied that the request does not '*provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify*' the document in question (s.24AA(1)(b)).

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### **Application of s.24AA of the FOI Act to your request**

It is my view that the request, as it currently stands, satisfies the second practical refusal reason as you have provided conflicting information which does not allow a reasonable officer of the agency to identify the documents you intend to seek access to. You have not provided sufficient information that would allow the department to identify the documents that would fall within the scope of your request. I will outline the reason for this below.

The 'Australian Border Force', which is to be established on the 1 July 2015, was announced by the Minister for Immigration and Border Protection on the 9 May 2014.

As your request is seeking access to documents pertaining to *the new DIBP agency* it appears that you may be seeking correspondence on the decision surrounding the naming of the recently announced 'Australian Border Force'. However the scope of your request identifies that you wish to seek access to information about the naming of "*Border Force*".

The 'Border Force' is a part of the Australian Customs and Border Protection Service (ACBPS) and came about as part of their 2013 service capability review. Information about the ACBPS 'Border Force' is available in the 'Blueprint for Reform 2013-2018'. This document is publicly available on the ACBPS website.

The department requires clarification from you on whether you are seeking access to documents about the naming of the 'Australian Border Force' or the ACBPS 'Border Force' in order to know where to direct this FOI request and what documents would fall within the scope of the request.

If you intend to seek access to the naming of the ACBPS 'Border Force' you should lodge a new FOI request with the ACBPS as the department would not hold documents in relation to the naming of 'Border Force'.

I am satisfied that your request does not *'provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify'* and that a practical refusal reason may apply to your request as it currently stands. Therefore, I am required to consult with you under s.24AB of the Act regarding the scope of your request.

### **Consultation over scope**

You may consult with me on the scope during the '*consultation period*' which is from the date this notice until **close of business Tuesday 5 August 2014**.

You may request that I extend the consultation period if you wish, by writing to me before the end of the consultation period at [foi@immi.gov.au](mailto:foi@immi.gov.au) . The requirements for the consultation period are contained in (s.24AB(5)).

### **Contacting the FOI section**

If you wish to discuss this matter, I can be contacted using the details provided below.

**Suspension of processing time**

Please note that s.24AB(8) of the FOI Act provides the legislated processing time for your request is 'suspended' until you have either:

- revised the request; or
- advised me that you do not intend to revise the request; or
- withdraw the request.

If you do not contact me in writing before the end of the consultation period (to either withdraw your request, revise or affirm the scope of your request, or ask for an extension of time to respond to the s.24AB notice) your request will be deemed to be withdrawn in accordance with s.24AB(7) of the Act. The relevant legislation is attached to this notice.

I look forward to hearing from you shortly.

Yours sincerely



Janelle Raineri  
Authorised decision maker  
FOI and Privacy Policy Section  
Parliamentary and Executive Coordination Branch  
Department of Immigration and Border Protection

Email           foi@immi.gov.au

**Attachment**

- ✓ Attachment A - Extract of relevant legislation

## Attachment A – Extract of relevant legislation

### 23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

### 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.