



20 April 2021

Ms Eleanor Davey

BY EMAIL: foi+request-7168-c7075729@righttoknow.org.au

In reply please quote:

FOI Request: FA 21/03/01159

File Number: OBJ2021/9809

Dear Ms Davey

I refer to your email dated 23 March 2021 in which you request access to documents held by the Department of Home Affairs (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

I am writing to tell you that I intend to refuse your request on the basis that a practical refusal reason exists. However, before I make a final decision to do this, you have an opportunity to revise your request to remove the practical refusal reason. This is called a '*request consultation process*'. You have 14 days to respond to this notice in one of the ways set out below.

Power to refuse request

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.

Practical refusal

A *practical refusal reason* exists if either (or both) of the following applies:

- (a) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations
- (b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to provide such information concerning the document you are seeking access to, to enable the Department to be able to identify it.

Scope of Request

You have requested access to the following:

I would like to request under the Freedom of Information Act any and all site assessments and/or records of site preparation works pertaining to the possibility of transferring or otherwise accommodating children of any age (including infants) in the Regional Processing Centre on Nauru from 2012-2018.

Reasons for practical refusal

The Department has made a preliminary assessment of the documents that would be captured by your request.

The Department has identified 134 documents that may be captured by your request. This assessment results from a search of the Department's electronic systems, including emails and other documents.

It has taken the Department one hour to identify and retrieve the relevant documents identified so far. The Department has taken a sample of roughly 10 per cent of the documents (that is, 14 documents).

To assist with the decision-making process, the Department has prepared a schedule of these documents, which took approximately 1 hour. It would therefore take the Department a further **9 hours** to prepare a schedule of the remaining 120 documents so far identified. This schedule would be necessary to manage the complexity of the request.

The 47 documents relevant to your request contain business affairs information concerning third party organisations. The Department considers that the entities to which these business affairs relate might reasonably wish to make a contention that the documents are conditionally exempt under section 47 or 47G of the FOI Act. As such, the Department must not decide to give access to those documents unless the affected third parties have been provided with a reasonable opportunity to make exemption submissions. I estimate that this consultation process would take, on average, one hour per entity, and require a total of at least **2 hours** to complete. This includes managing any queries raised by the third parties in relation to the consultation.

In order to finalise the request, once any third party exemption submissions are received, a decision maker would be required to assess the documents that are captured by your request. The sample of 14 documents comprise 127 pages, an average of 9.1 pages each. The total page count of the documents tentatively identified as falling within the scope of your request can be estimated to be:

134 documents x 9.1 pages each = **1,219 pages total**

The Department assumes that a decision maker requires 3 minutes to assess each page, and therefore estimates that the time required to complete decision making of the 134 documents so far tentatively identified would be:

1,219 pages x 3 minutes = 3,657 minutes, or **61 hours**

This decision making process would include deciding whether to grant, refuse or defer access to the 134 documents to which your request relates, or to grant access to edited copies of such documents, and includes the resources that would have to be used to examine the documents, make copies, or edited copies, of the documents, and to notify you of a decision on access in your request.

As such, a total estimated time required to process this request is:

9 hours + 2 hours + 61 hours = **72 hours**

As noted above, this estimate is based on the 134 documents so far tentatively identified. “*Any and all site assessments and/or records of site preparation works*” is necessarily wide-ranging, as it may cover works, buildings or infrastructure of any kind related to the Nauru regional processing centre. Further searches for relevant documents would increase, possibly very significantly, the time required to interrogate multiple systems consider documents against the scope of your request, and complete the decision-making process.

In view of these considerations, I am satisfied that the Department would be required to divert significant resources from its current operations in order to identify, locate and collate the documents held within the Department and to make a decision on access to those documents. This diversion would result in a significant drain on the resources of the area within the Department that would be required to process this request.

I consider that this would result in this request imposing both a substantial and an unreasonable diversion of resources of the Department from its other operations and that a practical refusal reason exists in relation to this request.

Request Consultation Process

You now have an opportunity to revise your request to enable it to proceed.

Under section 24AB of the FOI Act, you have 14 days to do one of the following:

- withdraw your request;
- make a revised request;
- indicate that you do not wish to revise your request.

If you do not do one of the three things listed above during the consultation period (14 days) or you do not consult the contact person listed below during this period, your request will be taken to have been withdrawn in accordance with section 24AB(7) of the FOI Act.

Contact

Should you wish to revise your request or have any questions in relation to this process, please do not hesitate to contact the FOI section at: foi@homeaffairs.gov.au.

Yours sincerely

Will
Position no. 60043894
FOI Officer | Freedom of Information Section
FOI and Records Management Branch
Data Division | Corporate and Enabling Group
Department of Home Affairs