



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/074

Ms Eleanor Davey

By email: foi+request-7170-737d5e75@righttoknow.org.au

Dear Ms Davey

I refer to your email of 11 May 2021, in which you made a new request to the Department of the Prime Minister and Cabinet (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**), in the following terms:

Correspondence and/or records of conversations with the Prime Minister's Office, held by the Department of the Prime Minister and Cabinet, that reference a decision to remove children and families from the Regional Processing Centre in Papua New Guinea, limited to documents created during a two week period preceding initial media reports of the removal of children and families from the Regional Processing Centre in Papua New Guinea (i.e. 6 June 2013 to 20 June 2013).

Authorised decision-maker

The authorised decision-maker for your request is Mr Michael Burke, Assistant Secretary, Home Affairs Branch.

Notice of practical refusal reason

Section 24(1) of the FOI Act provides that a request to an agency may be refused if the decision maker is satisfied that a practical refusal reason (as set out in section 24AA of the FOI Act) exists in relation to the request.

I write to advise you that the decision-maker has reviewed your request and considers that a practical refusal reason (as set out in section 24AA of the FOI Act) exists in relation to the request. This is on the basis that the work involved in processing your request, in its current form, would substantially and unreasonably divert the resources of the Department from its other operations. This constitutes a 'practical refusal reason' under section 24AA of the FOI Act. On this basis, the decision maker intends to refuse access to the documents you have requested.

Section 24AB(9) of the FOI Act provides that the Department is only required to undertake the consultation once. However, before the decision maker makes a final decision to refuse the request for a practical refusal reason, the decision-maker has decided to provide you with a further opportunity to revise your request under section 24AB of the FOI Act. Accordingly, you have 14 days to respond to this notice in one of the ways set out below.

Reasons for intention to refuse your request

In deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities specified in section 24AA(2) of the FOI Act:¹

- identifying, locating or collating documents within the filing system of the agency;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents;
- notifying an interim or final decision to the applicant.

Other matters may be relevant in deciding if a practical refusal reason exists such as the staffing resources available to an agency for FOI processing, whether the processing can only be undertaken by one or more specialist officers in an agency who have competing responsibilities, the impact that processing may have on other work in an agency including FOI processing, and whether there is a significant public interest in the documents requested.²

Preliminary document searches undertaken to date have identified over 623 documents potentially within scope of your request.

Before the decision-maker can make a decision regarding any disclosure of documents, these documents would need to be carefully examined and manually reviewed for relevance to your request. This is because your request for documents from 6 June 2013 to 20 June 2013 requires the Department to undertake searches on document storage systems, including some repositories with limited search functionality in identifying documents using specific date parameters.

For the 623 documents identified to date, the process of reviewing for relevance would require, at a minimum, opening the relevant document, reading the document, extracting the document if relevant to the request, and closing the document. It is not known how many of these documents have other documents embedded in them (for example, attachments to emails), nor how many of these documents may be duplicates.

The decision-maker has formed the view that, in order to process your FOI request, the task of thoroughly examining the material identified to date, firstly to confirm whether the material is within the scope of the FOI request and, secondly, to decide whether that material should be released, will be unreasonably time consuming. Documents would then have to be checked, possible redactions made, a schedule of documents prepared and a decision letter written, which would also add to the time required to process your request.

It is also likely that any documents that may ultimately be identified as within the scope of your request would require consultation with a range of third parties. Based on a conservative

¹ 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*', Part 3 – Processing and Deciding on Requests for Access (Version 1.6, January 2018), [3.116].

² *Ibid*, [3.117].

estimate of one page per document for 623 electronic documents, it is estimated that it would involve over 85 hours to process your request. The actual time involved to process your request would likely be significantly higher, as it is most likely that each electronic document is comprised of a number of pages.

The Department acknowledges that the processing of requests for access to documents is a legitimate part of each agency's functions, and that FOI requests may require reallocation of resources within an agency. However, the Department could not reasonably divert sufficient resources to process this request. In reaching this view, the Department has had regard to the public interest in access to information held by the Department but considers the public interest in access is outweighed by the competing public interest in the ability of the Department to undertake its ordinary functions without substantial impairment, including the processing of other FOI requests.

For the reasons given above, the decision maker considers that processing your request in its current form would be a substantial and unreasonable diversion of the Department's resources 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 specific documents you wish to access. We will assess whether any revised request has removed the practical refusal reason.

You may wish to consider revising your FOI request by, for example, limiting your request to a particular type of document.

No guarantee of access

Please be aware that even if you revise your FOI request to enable it to be processed, there is still no guarantee that documents will ultimately be released. That is a matter for the decision-maker to decide in the usual manner after examining the relevant documents. The issue we are addressing at the moment is whether your FOI request can be processed – not what the eventual outcome may be if it is processed.

Action required

Section 24AB of the FOI Act provides that you must do one of the following, in writing, within the next 14 days:

- revise your FOI request;
- indicate that you do not wish to revise it; or
- withdraw the FOI request.

If you do *not* do one of the above within the next 14 days, your FOI request will be taken to have been withdrawn. If you were to revise your FOI request in a way that adequately addresses the above concerns and makes it manageable, the Department will recommence processing it.

Calculation of 30 day period

Please note that the time taken to consult with you regarding the scope of your FOI request is not taken into account for the purposes of calculating the 30 day period during which the Department is required to take all reasonable steps to process your FOI request.

Should you wish to discuss your request, please contact the Department's FOI and Privacy Section on (02) 6271 5849, or by email to foi@pmc.gov.au, quoting reference number FOI/2021/074.

Yours sincerely



Andra Eisenberg
A/g Senior Adviser
FOI and Privacy Section
2 June 2021