



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT  
BARTON

FOI/2021/074

**FREEDOM OF INFORMATION ACT 1982**

**REQUEST BY:** Ms Eleanor Davey

**DECISION BY:** Mr Michael Burke  
Assistant Secretary  
Home Affairs Branch

By email: [foi+request-7170-737d5e75@righttoknow.org.au](mailto:foi+request-7170-737d5e75@righttoknow.org.au)

Dear Ms Davey

I refer to your email of 11 May 2021 in which you made a 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 (**initial request**):

*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).*

On 2 June 2021, the Department notified you of the Department's intention to refuse your FOI request for a practical refusal reason which existed under section 24AA(1)(a)(i) of the FOI Act, on the basis that processing your FOI request would constitute a substantial and unreasonable diversion of the Department's resources from its other operations. You were invited to revise your FOI request.

On 11 June 2021, you revised your request in the following terms (**revised request**):

*"Documentation held by the Department of the Prime Minister and Cabinet that references a decision or potential decision to remove children and families from the Regional Processing Centre in Papua New Guinea, limited to documents created during a four week period preceding initial media reports of the removal of children and families from the Regional Processing Centre in Papua New Guinea (i.e. 23 May 2013 to 20 June 2013) and excluding email correspondence."*

*I hope that this change in type of documentation will reduce the large volume of documents identified as in scope and thereby address the need for a practical refusal.*

*Note that I have also expanded the time frame which had previously been reduced as I believe that excluding email will affect a large proportion of documents. Thank you for your assistance with this request.*

### **Authorised decision-maker**

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

### **Decision**

I have decided to refuse your request under section 24(1) of the FOI Act.

In making my decision, I have had regard to the following material:

- your initial request;
- the outcome of the Department's preliminary searches in relation to your initial request;
- the Department's notice of 2 June 2021 advising you of its intention to refuse your request for a practical refusal reason;
- your revised request;
- the outcome of the Department's preliminary searches in relation to your revised request;
- the FOI Act; and
- the 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*'<sup>1</sup> (the **FOI Guidelines**).

### **Reasons**

Section 24(1) of the FOI Act provides that if an agency is satisfied when dealing with a request for a document that a practical refusal reason exists in relation to the request, the agency:

- must undertake a request consultation process (see section 24AB of the FOI Act); and
- if, after the request consultation process, the agency is satisfied that the practical refusal reason still exists—the agency may refuse to give access to the document in accordance with the request.

For the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations (section 24AA(1)(a)(i) of the FOI Act).

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:<sup>2</sup>

- identifying, locating or collating documents within the document management systems of the agency;
- examining the documents;
- deciding whether to grant, refuse or defer access to documents;

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<sup>1</sup> FOI Guidelines combined November 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>

<sup>2</sup> FOI Guidelines, [3.116].



- 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.<sup>3</sup>

Section 24AB(9) of the FOI Act provides that an agency is only obliged to undertake a request consultation process once for any particular request.

The request consultation process undertaken by the Department under section 24AB of the FOI Act has been described above.

#### *Work involved in processing your revised request*

Following receipt of your revised request on 11 June 2021, the Department undertook preliminary searches and identified at least 1051 documents that would need to be reviewed for relevance to your revised request. It is not known how many of these documents may have other documents embedded in them, which may increase the number of documents requiring review.

For any document identified as relevant to your revised request, there would be further work required to process the request which may include consulting with any parties, deciding whether to grant, refuse or defer access, redacting any exempt material, and preparing and notifying a decision. The Department conservatively estimates that it would take more than 143 hours to process your revised request, based on a very conservative estimate of 1 page per document.

Ordinary hours of work for full-time employees in the Department are 38 hours per week.<sup>4</sup> Having regard to the estimate of time to process the request, this means it would take one departmental officer more than 3.7 weeks, potentially more, in order to process your revised request.

For any documents identified as relevant to your revised request, subsequent tasks include:

- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents; and
- preparing and notifying a decision to you.

I acknowledge that the processing of requests for access to documents is a legitimate part of each agency's functions, and that FOI requests may require the reallocation of resources within an agency. However, in this case, the Department could not reasonably divert resources to assist in processing your revised request. In reaching this view, I have had regard

<sup>3</sup> Ibid, [3.117].

<sup>4</sup> Department of the Prime Minister and Cabinet, *Enterprise Agreement 2017-2020*, [315].

to the public interest in providing access to information but consider the public interest in providing access is outweighed by the competing public interest in the Department performing its ordinary functions without substantial interference, including the processing of other FOI requests.

For the reasons given above, I consider that processing the revised request would be a substantial and unreasonable diversion of the Department's resources from its other operations.

### **Review rights**

Information about the applicant's rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints>.

### **Complaint rights**

An applicant may make a complaint to the Information Commissioner about the Department's actions in relation to a request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

Yours sincerely



Michael Burke  
Assistant Secretary  
Home Affairs Branch

21 June 2021