



Australian Government

Australian Sports
Anti-Doping Authority

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14 August 2014

Joe
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Dear Joe

Practical refusal notice under section 24AB(2) of the Freedom of Information Act 1982 (Cth) (FOI Act)

I refer to your email of 23 July 2014 in which you requested access under the FOI Act:

"...electronic copies of all email correspondence sent in the calendar year 2013, between members of the Australian Sports Anti-Doping Authority and staff members of the Australian Football League relating to the investigation into the Essendon Football Club."

I, Trevor Burgess, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

I am writing to inform you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its size. This is called a 'practical refusal reason' (section 24AA).

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 section 24AB of the FOI Act. Accordingly, you have 14 days to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

In your request you sought access to:

"...electronic copies of all email correspondence sent in the calendar year 2013, between members of the Australian Sports Anti-Doping Authority and staff members of the Australian Football League relating to the investigation into the Essendon Football Club."

In order to identify the documents within the scope of your request, ASADA undertook the following actions:

- searches of ASADA's electronic document database using relevant keywords and dates;
- consultation with key ASADA staff; and
- searches of ASADA's electronic emailing system using relevant keywords (for all emails received and sent to and from ASADA).

This resulted in **11,455** documents being identified. On this basis, it is my view that processing your request in relation to these documents would substantially and unreasonably divert the resources of the agency. Because of this, I have decided that a practical refusal reason exists.

My reasons for a practical refusal are:

- (a) the **11,455** documents that have been identified will need to be collated and manually examined in order for a decision to be made in relation to whether or not these are in scope of your request and you may be granted access to them. Identifying the documents that are within scope and deciding whether to grant, refuse or defer access to these documents has been conservatively estimated to be an average of two (2) minutes per page. I have conservatively estimated that one document (including attachments) is one page long, this is likely to be considerably less than the actual time required. Therefore examining the **11,455** documents will take over 381 hours to complete.

In the *Review of Charges under the Freedom of Information Act 1982*, the Australian Information Commissioner recommended that a period of 40 hours be adopted as a statutory ceiling on processing time for an FOI request.

In the case of *Cianfrano v Premier's Department* (2006) NSW ADT 137 the Tribunal suggested that 40 hours was a reasonable presumptive period beyond which a request imposed a substantial and reasonable administrative burden on an agency. Your request, in its current form, would substantially exceed this amount of time.

Using the recommendations of the *Review of Charges* and the case of *Cianfrano* as a guide, I have determined that your request imposes too great a burden on ASADA's resources to process;

- (b) ASADA is a small agency and does not have a dedicated FOI section. With a small legal team, and limited support staff available to assist in the search, retrieval, collation and processing of the requested documents, a request of this magnitude diverts a significant amount of ASADA's finite resources;
- (c) our small legal team has already undertaken a significant increase in workload this year, including a significant increase in FOI requests. As such, processing your request will impact significantly on the agency's ability to undertake other work, including other FOI requests, which would unreasonably affect the agency's ability to perform its legislative functions.

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 which documents you are interested in, our agency 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; or
- 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.

During this period, you are welcome to seek assistance from the contact person I have listed below 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.

Contact officer

If you would like to revise your request or have any questions, the contact officer for your request is:

Alexie Finucan, Lawyer by telephone on (02) 6222 4254 or by email at legal@asada.gov.au.

Yours sincerely



Trevor Burgess
National Manager Operations