



**Australian  
Competition &  
Consumer  
Commission**

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12 September 2014

Mr Alex Vincent

*Via email to: [foi+request-752-de40391f@righttoknow.org.au](mailto:foi+request-752-de40391f@righttoknow.org.au)*

Dear Mr Vincent

### **Request for access under the Freedom of Information Act 1982 (Cth)**

I refer to your email of 27 August 2014 in which you request access, under the Freedom of Information Act 1982 (FOI Act), to the following:

*'all documents relating to investigations undertaken by the ACCC into the transmission costs charged by Australian ISPs, and the availability of peering within our telecommunications sector.'*

*I would also like reports about how our transmission costs compare to those charged overseas and any justification provided by the ISPs about why a discrepancy would exist between the servicing costs paid nationally, and those charged by international ISPs within their countries.'*

The ACCC is giving serious consideration to refusing the request as currently framed under section 24 of the FOI Act on the grounds that the work involved in processing the request would substantially and unreasonably divert the ACCC's resources from its other operations.

#### **Practical refusal reason**

This is a notice under section 24AB(2) of the FOI Act of an intention to refuse to grant access to the documents sought because a 'practical refusal reason' exists under section 24(1) of the FOI Act. The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of the ACCC from its other operations.

In deciding that this practical refusal reason exists, I have had regard to the following matters. I have given consideration to how the ACCC could proceed to process your request, and the time and resources that would be involved in doing so. I have been assisted in this task by estimates provided by members of staff in the relevant area of the ACCC to determine an estimate of the probable resource demands posed by your FOI request.

On advice from the relevant line area your request, as it currently stands, would involve consultation with approximately 19 third parties and would capture approximately 71,716 pages of material and I have formed the view that over 100 hours of staff time would be required to draw together the relevant documents; I must have regard to this under section 24AA(2)(a).

In addition, I consider that, conservatively estimated, 13,425 hours of staff time would be required for tasks including examination of documents, consultation, copying of documents and notification of decision; I must have regard to these under section 24AA(2)(b), (c) and (d).

The resource demands identified above would fall upon myself and other staff from various areas of the ACCC, including an estimated 5976 hours of a staff member with FOI expertise to determine whether or not documents could be released. Due to the relatively small size of the ACCC, we are not able to provide staff with the appropriate skills from other areas to undertake these tasks. Nor is it practicable to provide those skills from outside the ACCC.

Processing this request would, in my view, be a substantial diversion of the ACCC's resources within the meaning of section 24AA(1). To place it in context, the estimate above, if one person were dedicated to processing your FOI request, working 5 days a week, the person would require over 7 years to complete your request. It would require more than 43 staff members to work full time, 5 days a week, on your request alone to process the request within 60 days. The ACCC's FOI area currently has a staffing of 2 persons, so to process your request would fully occupy the FOI area for 60 days, as well as 41 further staff members from elsewhere in the ACCC.

#### **What should you do?**

I am the ACCC officer with whom you may consult with a view to making the request in a form that would remove the ground for refusal and I may be contacted on 02 6243 1244.

Please note that even if you do modify your request, it is possible that a practical refusal reason under subsection 24AA(1)(a)(i) may still exist or the ACCC may need further time to process your revised request – this will depend upon the terms of your final request. As far as is reasonably practicable, we are happy to provide you with further information to assist you in making your request in such a form that removes the practical refusal ground.

If you are able to pinpoint the specific documents within your request, or clarify more particularly the information you are seeking, that would assist. For example, to exclude particular material, such as if you were to agree not to seek access to the personal or business information of third parties, contained within the documents would remove the need to undertake consultation with those third parties.

Please note that, in accordance with section 24AB(2)(e), you have 14 days from the day you are given this notice (**i.e. by 26 September 2014**) to either:

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

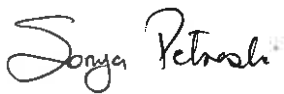
If you do not respond in one of these ways within 14 days the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, I will proceed to make a decision on whether to refuse the request on resource grounds under section 24(1).

If you need more time to respond, please contact me within the 14 day period to discuss your need for an extension of time.

Please note that during this period of consultation, the statutory timeframe under section 15(5) of the FOI Act for the processing of your request is on hold (see section 24AB(8) for details).

I have attached a copy of section 24AB of the FOI Act for your information.

Yours sincerely



For Heather Thomas  
Principal Lawyer  
ACCC Legal Group

## ATTACHMENT A

### Extract from the Freedom of Information Act

#### SECT 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.

#### 24A Requests may be refused if documents cannot be found, do not exist or have not been received

##### *Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

##### *Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

#### SECT 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.

## **SECT 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.