



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/155

AB

By email: foi+request-7666-d0b2c724@righttoknow.org.au

Dear AB

I refer to your email of 7 August 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:

I request access to the meeting agendas and minutes of all 50 National Cabinet meetings held.

I refer to the decision of the AAT in Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information) [2021] AATA 2719 (5 August 2021) in support of this request.

Authorised decision-maker

The authorised decision-maker for your request is Ms Angie McKenzie, Acting Assistant Secretary, Legal Integrity and National Cabinet 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 considers 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.

However, before the decision maker makes a final decision to refuse the request for a practical refusal reason, 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. 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

Document searches undertaken to date have identified 318 documents that are relevant to the 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. 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 ensure that the material is within the scope of the FOI request and, secondly, to decide whether that material should be released, will be substantially 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 FOI request.

We have sampled approximately 15 per cent of the documents identified to date. The average size of each document in that sample was 1.92 pages and the documents in the sample show that there are at least 18 third parties who would need to be consulted. Accordingly, for the purposes of calculating the time estimate, we have used the formula of 1.92 pages per document, with 18 third parties to be consulted. On the basis of this formula, it is estimated that over 110 hours would be involved to process your request. The actual time would likely be higher, as there are likely to be a wider range of third parties, requiring further consultation.

We note that section 15(6) of the FOI Act provides for the extension of the processing time by a further 30 days for third party consultations, irrespective of the number of third parties that would need to be consulted. Your request, as it is currently framed, captures a large volume of documents, which in turn increases the likelihood that there will be a wide range of third parties who would need to be consulted within the further 30 day period.

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 the reallocation of resources within an agency. However, the Department could not reasonably divert

¹ 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*, [3.116].

² *Ibid*, [3.117].

sufficient resources to assist in processing this request. In reaching this view, the Department has had regard to the public interest in providing 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:

- narrowing the date range for the documents you are seeking; and/or
- 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 Section on (02) 6271 5849, or by email to foi@pmc.gov.au.

Yours sincerely



Andra Eisenberg
A/g Senior Adviser
FOI Section
2 September 2021