



Request consultation notice due to existence of a practical refusal reason under section 24AB of the *Freedom of Information Act 1982*

Practical Refusal Consultation Notice of Jessy (Position Number 62320730), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore

Decision date: 12 November 2021

FOI reference number: FOI 45443

Sent by (email, post etc): Via Email: foi+request-7796-1e218a8d@righttoknow.org.au

Dear Mr Ashmore

Freedom of Information Request: FOI 45443

Purpose of this notice

1. The purpose of this notice is to advise you (as required under section 24AB of the *Freedom of Information Act 1982 (FOI Act)*) that I intend to refuse your request on the basis that a practical refusal reason exists, as defined by section 24AA of the FOI Act.
2. Based on the terms of your request, and from initial searches undertaken to respond to your request, I am of the view that a practical refusal reason exists because:
 - a. Processing your request is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Authority to make decision

3. I, Jessy (Position Number 62320730), Information Access Officer, Information Law Section, am an officer authorised to make decisions in accordance with section 23(1) of the *Freedom of Information Act 1982 (FOI Act)*.

Scope of your request

4. On 2 September 2021 you made a request for access to documents in the possession of the Department. Your request sought access to:

In relation to the appointment of a National Commissioner for Defence and Veteran Suicide Prevention to inquire into suicides of serving and former ADF members:

I am seeking all documents including the initial brief/direction, and all aspects of the development of this policy by DVA up to and including 4 February 2020.

Documentation to include every document/s including internal emails and minutes of meeting/s pertaining to the development of this policy.

Power to refuse a request

5. Section 24 of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.
6. However, before I make a decision to refuse your request you have an opportunity to revise your request to remove the practical refusal reason. This is called a 'request consultation process'. You have 14 days to respond to this notice in one of the ways set out below at page 5. As mentioned below, you can request more time to consider and respond to this notice. Please let me know if you would like additional time to respond.

When does a practical refusal reason exist (section 24AA of the FOI Act)

7. The practical refusal reason applicable to your request is that:
 - a. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

8. Under section 24AA(2) of the FOI Act, the Department must have regard to the resources that would have to be used for:
 - identifying, locating or collating the documents within the filing system of the agency;
 - 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 examining the document or consulting with any person or body in relation to the request);
 - making a copy or an edited copy, of the document; and
 - notifying any interim or final decision on the request.

9. Further, the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:
 - the staffing resources available to the agency for FOI processing;
 - the impact that processing a request may have on other work in the agency, including FOI processing;
 - whether an applicant has cooperated in framing a request to reduce the processing workload;
 - whether there is a significant public interest in the documents requested; and
 - other steps taken by an agency or minister to publish information of the kind requested by an applicant.

10. I consider that the staffing resources available to the agency for FOI processing and the impact that processing a request may have on other work in the agency, including FOI processing; have a bearing on your request. The reasons why a practical refusal reason exists in relation to your request are set out below.

Why I intend to refuse your request

Request is substantial

11. Section 24AA(1)(a) of the FOI Act provides that 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 department from its other operations.
12. Following initial enquiries, I estimate that 80 hours of processing time is required to deal with this request. The reasons for this are as follows:
 - I estimate that there are approximately 1692 pages of material relevant to your request. These 1692 pages are contained over 238 documents identified as being relevant to your request.
 - The material relevant to your request is considered sensitive in their entirety or contain sensitive material.
 - The relevant documents will need to be analysed and a decision made before they can be released to you. The documents subject to your request are in relation to policy development leading to the appointment of a National Commissioner for Defence and Veteran Suicide. It is estimated that:
 - Searching and collating documents has taken 25 hours.
 - 10 hours will be required to consider the exemptions and applicable redactions to the documents;
 - 30 hours will be required to consult with another agency and for that agency to consider exemptions and applicable redactions;
 - 5 hours will be required to prepare a decision and statement of reasons; and
 - 10 hours will be required to prepare a schedule of documents to accompany the decision and statement of reasons.
13. Taking these factors into account, I have concluded the request as it currently stands is substantial.

Request is unreasonable

14. For the purpose of providing this notice, I have considered whether the substantial resource burden would be unreasonable having regard to the following:
 - 80 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business area to undertake their designated duties.
15. Taking this into account, I am of the view that the request as it currently stands is unreasonable, as well as substantial.

Ways you can revise the scope of your request

16. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.
17. 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 what documents you are interested in, we will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.
18. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24AA may still exist and/or the Department may need further time to process your revised request. This will depend on the revision you agree to make. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

Next steps

19. Before the end of the consultation period, which is **close of business Friday, 26 November 2021** (being 14 days from receiving this notice), you must do one of the following, in writing:
 - withdraw the request;
 - make a revised request; or
 - indicate that you do not wish to revise the request.

20. During this period, you can ask me for help 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.
21. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on the grounds that processing your request will result in a diversion of the Department's resources under section 24(1) of the FOI Act.
22. If you do not respond in one of these ways within 14 days (by **COB 26 November 2021**), the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act.
23. If you need more time to respond, please contact the Information Law Section via the below contacts, within the 14 day period to discuss your need for an extension of time.

Suspension of processing time

24. Please note under section 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above.

Contact us

25. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

Post: Legal Services and Audit Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: Information.Law@dva.gov.au

Yours sincerely,

Jessy (Position Number 62320730)

Information Access Officer
Information Law Section
Legal Services and Audit Branch

12 November 2021