



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI
FOI/2014/203

Mr Jon Lawrence
Right to Know

By email: Jon Lawrence <foi+request-800-0e93ef25@righttoknow.org.au>

Dear Mr Lawrence

I refer to your email of 14 November 2014, 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 am writing to request any documents relating to the process of appointing a new Independent National Security Legislation Monitor, since the announcement by the Attorney-General on 16th July that 'the government has decided to retain the position'.

I do not seek any documents that identify any potential candidates for the position, merely documents that demonstrate what actions the Department has taken in relation to filling the position, including such matters as the following:

- approval of budget for the recruitment process
- approval of budget for the salary of the new Monitor
- approval to proceed with the recruitment process
- updates on the recruitment process
- the expected timeframe for the conclusion of the recruitment process.

The authorised decision-maker for your request is Mr Simon Smalley, Assistant Secretary, Domestic Security Branch.

Notice of practical refusal reason

I write to advise you that, subject to possible clarification which would narrow your request, Mr Smalley 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, Mr Smalley intends to refuse access to the documents you have requested.

However, before Mr Smalley 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

The Department has identified potentially relevant documents comprising over 250 pages. Mr Smalley's preliminary view is that all of these pages would be partially exempt or exempt in full. The Department has estimated that it would take approximately 80 hours to process your request in its current form. It is the Department's experience that 40 hours generally reflects the point beyond which processing a request can be expected to substantially and unreasonably divert the resources of the Department.

Having regard to the resources required to process your request as outlined above, Mr Smalley considers that processing your request would substantially and unreasonably divert the resources of the Department from its other operations.

In reaching this view, Mr Smalley has had regard to the public interest in access to information held by the Department and considers that 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. This consideration includes the ability of the Department to be able to allocate fairly its specialist FOI resources to process FOI requests from other applicants in an efficient and effective manner.

Mr Smalley 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 reallocation of resources within an agency. However, Mr Smalley considers that the Department could not reasonably divert resources to assist in processing your request.

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.

Mr Smalley suggests that you may wish to consider revising your request in any or all of the following ways:

- excluding any drafts, and any emails attaching drafts, of documents;
- excluding all other emails;
- narrowing the timeframe for your request; and/or
- any other matters you may wish to propose.

Mr Smalley will assess whether the practical refusal reason has been removed following any revisions you might make to your request.

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 normally runs for 14 days and will start on the day after you receive this notice. However, in the light of the fact that this coincides with the Department's Christmas shut-down period, we would appreciate your response by 5 January 2014.

I am the relevant person for you to contact for the consultation process.

If you were to revise your request in a way that adequately addresses the practical refusal grounds outlined above, we would recommence processing it. Please note that the time taken to consult with you regarding the scope of your request is not taken into account for the purposes of the initial 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 with me during this period, your request will be taken to have been withdrawn.

Should you wish to discuss any aspect of your request, please contact me by telephone on (02) 6271 5849 or by email to foi@pmc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris', written over a light blue horizontal line.

Chris
FOI Adviser
Legal Policy Branch

12 December 2014