



Our reference: FOIREQ21/00284

By email: foi+request-8089-3ec1b6e1@righttoknow.org.au

Freedom of Information Request – Our reference: FOIREQ21/00284

Dear Concerned Citizen

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) received on 12 November 2021.

Scope of your request

In your email you seek access to clarify and access to the following:

Please provide any advice provided to the Department of Home Affairs, the Department of Health, the Department of the Prime Minister and Cabinet, or the Digital Transformation Agency about the privacy impacts of contact tracing mobile phone apps including but not limited to COVIDSafe.

Notice of intention to refuse your request

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

I am writing to tell 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 and broad scope (s 24AA(1)(a)(i) FOI Act). This is called a ‘practical refusal reason’ (section 24AA FOI Act).

On this basis, I intend to refuse access to the documents you 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. You have 14 days to respond to this notice in one of the ways set out at the end of this letter.

Why I intend to refuse your request

Calculation of processing time

The Regulation and Strategy Branch conducted a search and retrieval of potentially relevant documents within the scope of your request.

Based on a preliminary count of potentially relevant document within the scope of your request, I estimate that it will take approximately **three and a half weeks** to process your FOI request in its current form.

This estimate was obtained based on searches conducted by the director of the Regulation and Strategy Branch:

- There are approximately **1266** potentially relevant documents on the OAIC's information management system, totalling approximately 5064 pages, that need to be examined to determine whether each document falls within the scope of your request.
- Together, it is estimated that it will take at least **nine working days** to search and collate documents within the scope of your request. This estimate is based on the average time of 3 minutes per document, which was established in consultation with the case officer.
- In addition to the identified documents on our information management system, there are nine relevant email accounts to be searched on the OAIC's email system, Outlook, and relevant emails within the scope of your request be identified and collated.

Furthermore, this estimate does not take into account additional steps in processing your request after the relevant line area has collated the relevant documents within the scope of your request. They include:

- Assessing the collated documents to determine whether it will be subject to an exemption (either in full or in part)
- If an exemption applies, redacting exempted materials and preparing an edited PDF copy of the documents
- Conducting consultation with Commonwealth agencies and third parties
- Preparing a schedule of documents
- Preparing a decision statement

Diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal reason exists. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (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
- other steps taken by an agency or minister to publish information of the kind requested by an applicant

The OAIC is a small agency, employing approximately 140 staff. Processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests. This makes it likely that staff will be diverted from their other work in the OAIC, including undertaking regulatory functions in both FOI and privacy along with undertaking activities set out in the OAIC's 2020/2021 Corporate Plan.

Request consultation process

You now have the opportunity to provide further information so that we can identify the documents you seek.

You may revise your request by explaining in more detail the documents you wish to access. For example, by providing more specific information about the documents you are interested in, the OAIC may be able to identify what documents you are seeking.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- 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. At this stage, you must respond to this notice by **Friday 24 December 2021**.

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. (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.)

In my view, you can revise your scope by narrowing down:

- the timeframe of your request
- the type of contact tracing apps e.g. COVIDSafe app only
- the agency that we have advised e.g. Department of Health only

If you do not do one of the three things listed above during the consultation period or you do not consult me during this period, your request will be taken to have been withdrawn.

Request for an extension of time

I also note that the OAIC will be closed for the holidays from 25 December 2021 and will only reopen on 4 January 2022. Given the timing of your request, I seek your agreement, under s 15AA of the FOI Act, to extend the time to process your request by an additional **30 days from the day which you respond to this notice**. I note that even with the extension of time request, I still intend to process your request as soon as possible upon my return to the office.

If you would like to revise your request or have any questions, please respond via return email.

Yours sincerely

Nora Truong
Paralegal
Legal Services

10 December 2021