

Our ref: CRM 2015/240

4 March 2015

Mr Ben Fairless

By Email: foi+request-816-c9a12e3b@righttoknow.org.au

Dear Mr Fairless

FREEDOM OF INFORMATION REQUEST RE: Watchlists

I refer to your request dated 5 December 2014 for documents held by the Australian Federal Police (AFP) pursuant to the *Freedom of Information Act 1982* (the Act). Under the Act you requested:

"Can I please request the following information:

For the below companies:

- iiNet Limited ACN 068 628 937*
- Internode Pty Ltd ABN 82 052 008 581*
- TransACT Capital Communications Pty Limited ACN 093 966 888*
- TransACT Victoria Communications Pty Limited ACN 063 024 475 --Westnet Pty Ltd ACN 086 416 908*
- Adam Internet Pty Ltd ACN 055 495 853 and any subsidiary or related company of the above mentioned companies ("iiNet Group").*

I request a copy of all correspondence made via SEDNODE to the iiNet Group (including attachments) and I request a copy of any response provided by iiNet in relation to those requests.

I also request a copy of any emails sent to or from the Compliance Manager or Law Enforcement Liaison teams at iiNet Group in relation to any request for customer data or metadata, and the response from iiNet Group.

The above request is subject to the below exclusions:

- Duplicates of Documents*
- Personal Information of individuals other than AFP members and Company representatives of iiNet Group."*

Notification

1. Notice is hereby given under section 24AB(2) of the Act of an intention to refuse to grant access to the documents sought, pursuant to section 24AA of that Act. For the reasons outlined in paragraphs 5 to 7 below, the Australian Federal Police ("the AFP") is satisfied that the work involved in processing that request would substantially and unreasonably divert the resources of the AFP from its other operations.

2. I am the agency officer with whom you may consult with a view to making the request in such a form that would remove the ground for refusal. I may be contacted on (02) 6131 6131.
3. The following information is provided to assist you in making a request in such a form that the grounds for the section 24AA refusal is removed.
4. On 15 December 2014, you were contacted about identifying email addresses, providing a data range or stipulating the subject matter you are interested in rather than broad approach of "customer data or metadata". You responded on 15 December 2014, with suggested search options, rather than further clarification about specific documents.
5. Following your advice, further consultation with line areas was undertaken. It is estimated that the AFP receives many thousands of requests for historical data via SEDNODE which would require a manual check for documents relating to the telecommunication company you have stipulated. This a burden in terms of resources and is made relevant to a section 24AA(1) decision by virtue of sections 24AA(2)(a), (b), (c) and (d).
6. To process your request in its current form would also be a substantial burden on the relevant line area, including Freedom of Information Team which will impact severely on other requests for information to the detriment of a number of other applicants. This type of information would require substantial redaction and may be subject to any provisions under Telecommunications legislation prohibiting disclosure.
7. You could consider narrowing your request within a reasonable form which would remove the ground for the section 24AB refusal. In addition, information about annual legislative reporting obligations by law enforcement agencies regarding telecommunications data can be found on the Commonwealth Ombudsman's website.
8. As noted above, I would of course be available to discuss the matter. Should you not avail yourself of this opportunity to consult within 14 days of the date of this letter, notice will be given of a decision to refuse access on the basis stated above.
9. An extract of sections 24AA and AB of the Act is attached for your information.

Yours sincerely,



Jacqueline Ellery
Team Leader
Freedom of Information
Operations Support

FREEDOM OF INFORMATION ACT 1982 EXTRACT

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.

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.