



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2022/019

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

**DECISION BY: Ms Petra Gartmann
Assistant Secretary
Legal Policy Branch**

Trav S

By email: foi+request-8251-c6ca72bc@righttoknow.org.au

Dear Trav S

I refer to your email of 7 January 2022 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:

- 1. Please provide a copy of all correspondence between public servants Peter Rush and John Reid regarding the Humanitarian Overseas Service Medal. Limit your search to correspondence in 2019, 2020, 2021 and 2022.*
- 2. Last year a Mr John Reid served me with a notice of intent to consider a vexatious declaration with the Information Commissioner. Your department has the onus of establishing that the IC should make the declaration. Please provide a document listing explicitly the FOI requests Mr Reid claims as vexatious.*

On 28 January 2022, the Department notified you of the Department's intention to refuse your FOI request for a 'practical refusal reason' under section 24(1) of the FOI Act. The Department's notice advised that a practical refusal reason existed under section 24AA(1)(a)(i) of the FOI Act on the ground that processing your FOI request would constitute a substantial and unreasonable diversion of the Department's resources from its other operations. The Department's notice initiated a request consultation process in accordance with section 24AB of the FOI Act and invited you to revise your FOI request.

You responded on 3 February 2022, advising that you were revising your FOI request to the following:

- 1. Your department has identified 113 documents relevant to my request. Please provide a document listing those 113 documents.*
- 2. Please provide a copy of all correspondence, including mobile text messages, between Mr John Reid and Mr Peter Rush relating to the vexatious declaration matter*

3. *Please provide a copy of all correspondence, including mobile text messages, between Mr John Reid and Mr Peter Rush relating to the Humanitarian Overseas Service Medal for Iraq matter. Please limit this search to 2019 through 2022.*

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision

I have decided to refuse the revised request to the Department under section 24(1) of the FOI Act.

In making my decision, I have had regard to the following material:

- your initial FOI request of 7 January 2022;
- the Department's notice of 28 January 2022 advising you of the intention to refuse your FOI request for a practical refusal reason and commencing a request consultation process;
- your revised FOI request of 3 February 2022;
- the outcome of the Department's consideration of your revised FOI request of 3 February 2022;
- the FOI Act; and
- the 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*'¹ (the **FOI Guidelines**).

Reasons

Section 24(1) of the FOI Act provides that if an agency is satisfied when dealing with a request for a document that a practical refusal reason exists in relation to the request, the agency:

- must undertake a request consultation process (see section 24AB of the FOI Act); and
- if, after the request consultation process, the agency is satisfied that the practical refusal reason still exists – the agency may refuse to give access to the document in accordance with the request.

Section 24AA(1)(a)(i) 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 agency from its other operations.

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:²

- 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;

¹ FOI Guidelines combined November 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>

² FOI Guidelines, [3.116].

- making copies of documents; and
- notifying an interim or final decision to the applicant.

The FOI Guidelines provide that 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.³

Section 24AB(9) of the FOI Act provides that an agency is only obliged to undertake a request consultation process once for any particular request.

Scope of the first part of your initial request

You were informed on 28 January 2022 that the Department estimated that there are 113 documents which are potentially relevant to part 1 of your request. These documents would need to be retrieved and reviewed for relevance. For any document identified as relevant to the request, there would be further work required to process the request that may include consulting with third parties, deciding whether to grant, refuse or defer access, redacting any exempt material, and preparing and notifying a decision. Based on a 10% sample taken from the initial results received, the Department estimates that it would take approximately 60 hours to process your request.

I find that parts one and two of your revised request have not refined or reduced the scope of the first part of your initial request. As a result the number of documents which are potentially relevant to part 1 of your initial request and the time that it is estimated to process your request have not been reduced.

Scope of the second part of your initial request

In the second part of your initial request you requested:

Last year a Mr John Reid served me with a notice of intent to consider a vexatious declaration with the Information Commissioner. Your department has the onus of establishing that the IC should make the declaration. Please provide a document listing explicitly the FOI requests Mr Reid claims as vexatious.

You noted in the third part of your revised request

Please provide a copy of all correspondence, including mobile text messages, between Mr John Reid and Mr Peter Rush relating to the vexatious declaration matter

I find that your revised request has widened the scope of the documents requested and may in turn increase the number of documents that would need to be searched for and reviewed. As a result, the documents which are potentially relevant to part 2 of your initial request may be increased and the time that is estimated to process your request has not been reduced.

Accordingly, the same considerations regarding the work involved in processing your initial request, which were set out in the practical refusal consultation notice, apply to your revised request received 3 February 2022.

³ Ibid, [3.117].

I acknowledge that the processing of FOI requests is a legitimate part of each agency's functions, and that the processing of FOI requests may require the reallocation of resources within an agency. However, the Department could not reasonably divert sufficient resources to assist in processing your revised request. In reaching this view, I have had regard to the terms of your revised FOI request and the results of the Department's preliminary searches.

I have also had regard to the public interest in access to information held by the Department but consider that in this case, 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 interference, including the processing of other FOI requests.

For the reasons given above, I consider that processing your revised FOI request would be a substantial and unreasonable diversion of the Department's resources from its other operations.

I am of the view that the practical refusal reason remains in relation to your revised request, namely that the work involved in processing your revised request would substantially and unreasonably divert the resources of the Department from its other operations. Accordingly, I have decided to refuse your request under section 24(1)(b) of the FOI Act.

Review rights

Information about the applicant's rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Complaint rights

An applicant may make a complaint to the Information Commissioner about the Department's actions in relation to a request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

Yours sincerely



Petra Gartmann
Assistant Secretary
Legal Policy Branch
14 February 2022