



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ22/00048

Julie

By email: foi+request-8508-b01e3041@righttoknow.org.au

Your Freedom of Information request FOIREQ22/00048

Dear Julie,

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 24 February 2022.

In your request you seek access to the following:

The OAIC has appeared (via videolink or in person) before the Legal and Constitutional Affairs Legislative Committee (Senate Estimates) on 15 February 2022 (Angelene Falk, Elizabeth Hampton, Melanie Drayton) and 26 October 2021 (Angelene Falk, Elizabeth Hampton, Bruce Cooper).

As part of the appearance of the above named OAIC officials, to enable these above named OAIC officials to address any issues or questions Committee members might raise, the OAIC prepares a 'briefing book' or 'briefing folder' for each official appearing, that typically consists of a 'corporate folder', a 'privacy folder', an 'FOI folder', and other folders that contain 'Commissioner Briefs', 'Hot Topic Briefs', and other documents.

Excluding drafts and duplicates, I seek copy of such briefing folders or briefing books consisting of such documents provided by the OAIC to the above named OAIC officials for their appearances before the Committee on the dates specified.

Personal information of private individuals (not Commonwealth officials) is irrelevant

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your requests no later than 30 days after the day we receive them. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third parties about certain information, such as business documents or documents affecting their personal privacy.

However, this time will be stopped until we have completed this consultation with you regarding the scope of your request.

Notice of intention to refuse your request

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

I am writing to tell you that I believe that the work involved in processing your request in its current form will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope. This is called a 'practical refusal reason' (under s 24AA of the FOI Act).

On this basis, I intend to refuse access to the documents you have 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 s 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 the processing time

I estimate it will take the OAIC at least 150 hours to process your FOI request in its current form.

There are approximately 100 documents that were prepared for the Australian Information Commissioner's appearances before Senate Estimates on 26 October 2021 and 15 February 2022. The documents are complex and are resourced from various sections of the OAIC. The approximately 100 documents comprise approximately 1,500 pages.

Of those 1,500 pages, a small portion of the documents pertaining to the OAIC's FOI functions are published on the OAIC's website disclosure log in 3 previous FOI requests received by the OAIC in 2020.

To calculate the processing time, I have taken the following factors into account:

- I estimate it will take one hour per 20 documents to prepare a document schedule listing the document number, date, number of pages and a description of each document. I therefore estimate it will take approximately 5 hours to prepare a schedule for 100 documents.
- Based on a sample of 10 documents (184 pages) and the complex nature of each document, I estimate it will take 2 minutes to examine each page to assess whether it can be released or whether it will be subject to an exemption (either in full or in part), and approximately 3 minutes to prepare an edited copy of the documents, including the redaction of exempt material. On the basis that there will be at least 1,500 pages within the scope of the request this task will take at least 150 hours.
- The documents contain a mix of complex and sensitive information obtained from various line areas which may require consultation with OAIC internal staff with subject

matter expertise. Courtesy consultation with other Government agencies may also be required.

- To update the schedule to record the FOI decision and write a decision statement for the FOI applicant will take approximately 2 hours.

I have therefore calculated it will take at least 157 hours to process your FOI request.

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 124 (head count) 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
- undertaking activities set out in the OAIC's 2021/2022 Corporate Plan such as:
 - conciliating and investigating privacy complaints, responding to notifiable data breaches, and overseeing the privacy aspects of the My Health Record system and Consumer Data Right scheme
 - monitoring compliance with new legislation and providing guidance and education materials to support participants in the COVIDSafe system

- develop a binding code of practice for digital platforms increases the privacy protection of Australians in the online environment
- improve agencies' processes for managing FOI requests

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 documents you wish to access. In relation to your request, you could reduce the scope by:

- limiting your request to those topics which are of most interest to you (I have attached an index for both the October 2021 and the February 2022 Senate Estimates to assist you to limit your request).
- only requesting documents in relation to either the October 2021 or the February 2022 Senate Estimates Briefs.

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. Therefore, you must respond to this notice by **31 March 2022**.

During this period, you can ask the contact person (see below) 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.)

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

Contact officer

If you would like to revise your request, or have any questions, you can contact me at legal@oaic.gov.au or on (02) 92849852.

Yours sincerely,

Emily Elliott
Senior Lawyer
17 March 2022