



Australian Government

Department of Health

Department Reference: FOI 3765

Mr Dean Miles

foi+request-8768-46248c13@righttoknow.org.au

Dear Mr Miles

**REQUEST CONSULTATION NOTICE UNDER SECTION 24AB
OF THE FREEDOM OF INFORMATION ACT 1982**

I refer to your request of 19 April 2022 to the Department of Health (department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

Documents, minutes, discussions, meetings, emanegotiations, Memorandum of Understanding, relating to contracts with Pfizer, Astrazeneca, Moderna, Johnson & Johnson Covid Injections that required the Nation, placing the order prior to delivery/perhaps prior to both parties signing contracts, regarding Sovereign Assets as COLLATERAL.

Practical refusal reason

I am writing to notify you the department is unable to process your request as currently framed due to the volume of documents captured. This letter sets out a process for you to consider revising your request so it can be processed.

If the department is satisfied a 'practical refusal reason' exists in relation to an FOI request, then after undertaking a request consultation process, it may refuse to give access in response to the request.

I am satisfied, for the reasons set out below, 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 (see section 24AA(1)(a)(i) of the FOI Act).

Substantial diversion of resources

Following a sampling exercise, I have identified 246 documents (not including emails) on a single database alone that may fall within the scope of your request. This represents only a portion of documents that are likely to exist in the department's possession which fall within the scope of your request.

Based on the sampling exercise, I estimate 250+ hours of processing time would be required to process your request.

The reasons for this are as follows:

- As you have not provided a date range, for the department to identify all relevant documents it would be required to review all records captured in various databases for the entire duration of the vaccine procurement project (over 2 years).
- This would include identifying and reviewing all emails of staff involved in vaccine procurement across the entire lifetime of that procurement process, and would involve searching and retrieving emails of staff who are no longer working with the relevant business area, or indeed the department.
- In addition, if we were to proceed with your request, the decision maker would be required to examine each of the documents identified as being relevant to your request and decide whether to grant, refuse or defer access to those documents. This includes work undertaken by an FOI Officer, the action officer supporting the decision maker, and the decision maker themselves, and will include a departmental officer with subject matter expertise and knowledge in the department's vaccine procurement process and an FOI officer with subject matter expertise in the provisions of the FOI Act. It also includes the work required to prepare the documents for release to you, and to compose the necessary formal decision on access.
- In addition, as your request is in relation to documents that contain business information of affected third party organisations, any documents found to be in scope would require third party consultation. Therefore, the assessment of time required to process your request includes time required to consult with affected third parties, as required by section 27 of the FOI Act and as recommended by the Information Commissioner's FOI Guidelines.

In *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 (17 December 2018) [101] the AAT noted:

What constitutes valid practical refusal grounds is thus agency specific and resource dependent. Nevertheless for any agency, a burden in excess of 200 hours would almost certainly make the threshold of a rational and objective test. As is illustrated above, burdens as (relatively) small as 74 hours have been so characterised.

Based on the above, I consider the work required to process your request as it is currently framed to be a substantial diversion of resources.

Unreasonable diversion of resources

I have also considered whether this substantial diversion of resources would be unreasonable in the circumstances.

The nature of the subject matter of your request means that officers from the Vaccine Procurement Branch ('Branch'), including senior officers, will need to be involved in processing the request. The Branch is responsible for managing the procurement and supply of the vaccines to Australia in relation to the COVID-19 global pandemic. Reallocation of limited staff resources to deal specifically with your request would compromise the department's ability to perform this important work in response to the pandemic.

For these reasons, I am satisfied processing your request would be an unreasonable diversion of resources and that a practical refusal reason exists for the purposes of paragraph 24AA(1)(a) of the FOI Act.

Request consultation process - what you need to do

Before I make a decision about whether to refuse access to the documents on the basis of the practical refusal reason, the FOI Act requires me to undertake a request consultation process which gives you an opportunity to revise your request (see paragraph 24(1)(a) and section 24AB of the FOI Act).

This letter constitutes a written notice in accordance with subsection 24AB(2) of the FOI Act giving you a 14-day period to consult with the department about the terms of your request.

The contact person for this consultation process is the department's FOI Coordinator who can be contacted by telephone on (02) 6289 1666 or by email at: FOI@health.gov.au.

Under subsection 24AB(6) of the FOI Act, you have 14 days from the date of this notice to notify the department, in writing, that you:

- a) would like to withdraw your request
- b) would like to make a revised request, or
- c) do not wish to revise your request.

If you do not respond in one of these ways or you do not consult the department's contact person within 14 days after you receive this notice, your request will be taken to have been withdrawn under subsection 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, I will proceed to make a decision on

whether to refuse your request under subsection 24(1) of the FOI Act. If you need more time to respond, please contact the department's FOI Unit within the 14-day period to discuss your need for an extension of time.

Under subsection 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above.

How you could revise your request

In considering whether and how to revise your request, please consider:

- providing a limited date range for your request
- reduce the request to a particular manufacturer of vaccines
- reducing the type of the documents you are seeking access to

Relevant provisions of the FOI Act

The FOI Act, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website:

www.legislation.gov.au/Details/C2022C00154

Yours sincerely



Jane Wagner
Assistant Secretary
Vaccine Procurement Branch
19 May 2022