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Freedom of Information (FOI) request

Practical Refusal Consultation Notice

Reference: FOI/2022/130

To: Mr Dean Miles

Email: foi+request-8809-78ec4993@righttoknow.org.au

Dear Mr Miles,

I refer to your email of 26 April 2022 in which you made an FOI 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 (numbered for reference purposes):

- 1) Records of discussions held by the Department of Prime Minister and Cabinet and Treasury, that Mortgages can be a Listed Security simultaneously.*
- 2) Records related to Qld 2019 Qld Certificates of Title CEASE TO INSTRUMENTS, and it's effects on SECURITIZED INSTRUMENTS Currency Act 1966 Banking Act 1959 in Foreclosures.*

Notice of practical refusal reason

Section 24(1) of the FOI Act provides that a request to an agency may be refused if the decision maker is satisfied that a practical refusal reason exists¹ in relation to the request.

I write to advise you that subject to possible revision and clarification of your request, the Department considers that your request does not satisfy the requirement in paragraph 15(2)(b) of the FOI Act. That is, the request, in its current form, does not provide such information as is reasonably necessary to enable an officer to identify relevant documents².

With regard to the terms of the request, it is unclear how your request would relate to the functions of this Department and if relevant records would be in our possession. Particularly, part 2 of your request may relate to the functions of other agencies or State bodies and this information may not be held by

¹ Section 24AA of the FOI Act

² Sub-section 15(2)(b) of the FOI Act

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this Department. As a result, the request is not sufficiently clear to enable a reasonable officer of this Department to interpret and identify relevant documents³.

For these reasons the request in its current form constitutes a 'practical refusal reason' and on this basis, the Department intends to refuse access to the request.

However, before a final decision is made to refuse the request for a practical refusal reason, you have an opportunity to revise your request. This is called a 'request consultation process'⁴.

The FOI Guidelines provide that an agency should not take a narrow or pedantic approach to interpreting a person's FOI request and should provide assistance through a request consultation process⁵.

This notice provides guidance on how you may revise your request. You have 14 days to respond to this notice in one of the ways set out below.

Reasons for intention to refuse your request

The unclear nature of your request is insufficient for an officer to search or identify relevant records. The area in the Department responsible for Taxation, Financial Sector and Employment Policy was consulted, however they request further clarification regarding "*Mortgages can be a Listed Security simultaneously*" and "*Qld 2019 Qld Certificates of Title CEASE TO INSTRUMENTS*" to identify how these matters relate to the functions of this Department, and inform the search for relevant documents. .

Further, you have not provided a timeframe for the request, this may require the search of multiple current and legacy systems, including paper files. The process would involve conducting broad key word searches across various systems and record holdings, further requiring multiple consultations across the agency, and the engagement of other key areas to assist with searches. Work would then be required to review any returned results to consider if they were relevant to the terms of your request, which the Department requires further clarification on, as set out above.

The Department acknowledges that the processing of requests for access to documents is a legitimate part of each agency's functions, and that FOI requests may require the reallocation of resources within an agency in some circumstances. However, in this case, the Department is not able to reasonably identify documents related to your request.

For the reasons given above, the decision maker considers that your request constitutes a practical refusal reason as it does not satisfy Section 15(2)(b) of the FOI Act, in that it is not sufficiently clear to enable a reasonable officer of the Department to interpret and identify relevant documents⁶.

³ Sub-section 15(2)(b) of the FOI Act

⁴ Section 24AB of the FOI Act

⁵ 3.133 of the FOI Guidelines

⁶ Sub-section 15(2)(b) of the FOI Act

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 specific documents you wish to access.

For example, you may wish to consider revising your FOI request in one or more of the following ways:

- provide a timeframe for your request
- provide further information regarding the category of documents, and what information within those documents you are seeking
- identify the responsible area of the Department which you believe may hold relevant records. You can view the Department's structure at: <https://www.pmc.gov.au/who-we-are/the-department>

Action required

Section 24AB of the FOI Act provides that you must do one of the following, in writing, within the next 14 days (by 2 June 2022):

- revise your FOI request;
- indicate that you do not wish to revise it; or
- withdraw the FOI request.

If you do not do one of the above within the next 14 days, your FOI request will be taken to have been withdrawn⁷.

If you were to revise your FOI request in a way that adequately addresses the above concerns and makes it manageable, the Department will recommence processing it.

No guarantee of access

Please be aware that even if you revise your FOI request to enable it to be processed, there is still no guarantee that documents will ultimately be released. That is a matter for the decision maker to decide in the usual manner after examining the relevant documents. The issue we are currently addressing is whether your FOI request can be processed – not what the eventual outcome may be if it is processed.

⁷ Sub-section 24AB(7) of the FOI Act

Calculation of 30 day period

Please note that the time taken to consult with you regarding the scope of your FOI request, under this request consultation notice, is not taken into account for the purposes of calculating the 30 day period⁸.

Should you wish to discuss any aspect of your request, please contact the Department by email at foi@pmc.gov.au or by phone at 02 6271 5849, quoting reference number FOI/2022/130.

Yours sincerely



Janelle Dedakis
FOI and Privacy Section
19 May 2022

⁸ Sub-section 24AB(8) of the FOI Act