



Request consultation notice due to existence of a practical refusal reason under section 24AB of the *Freedom of Information Act 1982*

Practical Refusal Consultation Notice of Chantal (Position Number 62212962),
Information Access Unit, Client Access and Rehabilitation Branch, Department of
Veterans' Affairs

Applicant: Verity PANE

Decision date: 29 July 2022

FOI reference number: LEX 50244

Sent by email: foi+request-9005-298004ef@righttoknow.org.au

Dear Ms Pane,

Freedom of Information Request: LEX 50244

Purpose of this notice

1. The purpose of this notice is to advise you (as required under section 24AB of the *Freedom of Information Act 1982 (FOI Act)*) that I intend to refuse your request on the basis that practical refusal reason exist, as defined by section 24AA of the FOI Act.
2. Based on the terms of your request, and from initial searches undertaken to respond to your request, I am of the view that a practical refusal reason exists because:
 - a. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Authority to make decision

3. I, Chantal (Position Number 62212962), Information Access Officer, Information Access Unit, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Scope of your request

4. On 10 June 2022, you made a request for access to documents in the possession of the Department. Your request sought access to:

I apply under the FOI Act for the LEX records, TRIM entries, and Jabber and Microsoft Team chat records about LEX 47367 and LEX 47367.

I do not consent to access or notices being given by any method other than directly in unencrypted PDF files. I do not consent to any s 22 redactions. I do not consent to any extensions of time.

5. On 11 July 2022, the Department made an application for an extension of time for the processing of your request under section 15AB of the FOI Act. On 19 July 2022, the Office of the Australian Information Commissioner (**OAIC**) granted an extension of time to process your request and the decision is now due today, 29 July 2022.

Power to refuse a request

6. Section 24 of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.
7. However, before I make a decision to refuse your request you have an opportunity to revise your request to remove the practical refusal reason. This is called a 'request consultation process'. You have 14 days to respond to this notice in one of the ways set out below at page 5. As mentioned below, you can request more time to consider and respond to this notice. Please let me know if you would like additional time to respond.

When does a practical refusal reason exist (section 24AA of the FOI Act)

8. The practical refusal reason applicable to your request is that:

- a. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).
9. Under section 24AA(2) of the FOI Act, the Department must have regard to the resources that would have to be used for:
- identifying, locating or collating the documents within the filing system of the agency;
 - 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 examining the document or consulting with any person or body in relation to the request);
 - making a copy or an edited copy, of the document; and
 - notifying any interim or final decision on the request.
10. Further, the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**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; and
 - other steps taken by an agency or minister to publish information of the kind requested by an applicant.
11. I consider that all of the above factors have a bearing on your request. The reasons why a practical refusal reasons exists in relation to your request are set out below.

Why I intend to refuse your request

Request is substantial

12. Section 24AA(1)(a) 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 department from its other operations.
13. Following initial enquiries, I estimate that more than 365 hours of processing time (10 weeks of work) is required to deal with this request. The reasons for this are as follows:
 - Your request seeks access to a range of categories of records in relation to LEX 47367. In relation to the TRIM entries held in relation to LEX 47367, there are 255 separate records. These are a mix of emails, PDF documents, emails with draft and final documents attached and Microsoft word documents. It also includes complete copies of the documents which were released to you, in part, in response to LEX 47367 and extracts of those documents which were provided to third parties for the purposes of consultation under the FOI Act. I have conducted a sample of 10% of the TRIM entries, being the first 25 TRIM entries, and note that the number of pages range from 1 page through to 142 pages. Assuming an average of 28 pages per record, this would require a review of 7,140 pages (28 pages x 255 records).
 - Assuming 1 minute per page to review the record, this will take 119 hours to review (7,140/60 minutes). I note the Office of the Australian Information Commissioner (**OAIC**) has recently determined that 1 minute per page is a reasonable estimate of the time required to examine each page that comes within the scope of an access application.
 - I will then be required to apply redactions to the documents. Based on my sample, the documents contain a range of personal information (of DVA officers and third parties where were consulted under the FOI Act), complete copies of the information which was released to you in part in response to LEX 47367, which would require review and redaction. Consideration would need to be given to sections 22, 47F, 47C, 47G and 45 of the FOI Act. Assuming 2 minutes per page to apply redactions, this will take 238 hours to review (7,140 x 2 / 60). I note the OAIC has recently determined that up to 3 minutes per page is a reasonable estimate of the time required to apply redactions to each page that comes within the scope of an access application.

- In relation to the LEX entries for LEX 47367, there are 17 entries. These are a mix of file notes and documents. Assuming 1 page 17, I have assumed 17 minutes to review the documents and 34 minutes to apply redactions to each page that comes within the scope of the access application.
- Searches will need to be conducted to locate any Skype messages and MS Teams that are response to your access application.
- I have assumed up to 5 hours will be required to then prepare a decision record, schedule of documents and bundle for release.

14. Taking these factors into account, I have concluded the request as it currently stands is substantial.

Request is unreasonable

15. For the purpose of providing this notice, I have considered whether the substantial resource burden would be unreasonable having regard to the following:

- 365 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business area to undertake their designated duties.
- Some of the documents that are the subject of this request have been the subject of previous FOI requests by you (being the documents released to you in response to LEX 47367).

16. Taking the above factors into account, I am of the view that the request as it currently stands is unreasonable, as well as substantial.

Ways you can revise the scope of your request

17. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.

18. 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. For example, by providing more specific information about exactly what documents you are interested in, we

will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

19. For example, you may want to consider removing from the scope of your request the documents that were the subject of your FOI request LEX 47367. This would remove the need for the decision maker to consider those documents again, in full, any whether any of the information is appropriate for redaction under the FOI Act on the basis that the information is exempt or conditionally exempt. You may also wish to consider changing the scope of your request to confine it to internal communications between DVA officers in relation to the processing of your previous request LEX 47367.
20. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24AA may still exist and/or the Department may need further time to process your revised request. This will depend on the revision you agree to make. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

Next steps

21. Before the end of the consultation period, which is **close of business Friday, 12 August 2022** (being 14 days from receiving this notice), you must do one of the following, in writing:
 - withdraw the request;
 - make a revised request; or
 - indicate that you do not wish to revise the request.
22. During this period, you can ask me 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.
23. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on the grounds that processing your request will result in a diversion of the Department's resources under section 24(1) of the FOI Act.
24. If you do not respond in one of these ways within 14 days (by **COB Friday, 12 August 2022**), the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act.

25. If you need more time to respond, please contact the Information Law Section via the below contacts, within the 14 day period to discuss your need for an extension of time.

Suspension of processing time

26. Please note under section 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.
27. An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

Contact us

28. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

Post: Information Access Unit, Department of Veterans' Affairs
GPO Box 9998, Brisbane QLD 4001

Email: Information.Access@dva.gov.au

Yours sincerely,

Chantal (Position Number 62212962)

Information Access Officer
Information Law Unit
Client Access and Rehabilitation Branch

29 July 2022



Schedule of relevant provisions in the FOI Act

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

24 Power to refuse request--diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
- (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

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.