



Australian Government
Department of Finance

Reference: FOI 22/42
Contact: FOI Team
E-mail: foi@finance.gov.au

Andrew
Right to Know

By email only: foi+request-9024-14c70a5a@righttoknow.org.au

Dear Andrew

Freedom of Information Request – FOI 22/42

On 15 June 2022, the Department of Finance (Finance) received your email requesting access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to the following documents:

Any currently-valid organisational charts that show the position of the Electoral Policy Unit within the Department's organisational structure.

A list of all files (in the records management sense of container objects or "folders") from the Department's primary records management system, created from 2017 to the present, where the file is owned or otherwise associated with the Electoral Policy Unit.

On 22 June 2022, Finance wrote to you requesting that you narrow the scope of your request. In that email Finance stated that electoral policy sits within the Resource Management branch, which is located within the Governance division. The following link to Finance's Organisational Directory was provided to you:

<https://www.finance.gov.au/publications/chart/organisational-directory>

The same day you responded stating:

- clarifying 'the term "organisational charts" was intended to be generic, and cover unpublished division-specific organisational charts of the kind that are commonly prepared for internal distribution within divisions or branches of large organisations, rather than just the Department-wide organisational chart'; and
- agreeing to amend the scope of the second part of your request by 'narrow[ing] the scope of my request to cover files created from 1 January 2020 onwards, rather than 2017'.

On 5 July 2022, Finance sent you a request consultation notice, which set out that based upon the existence of a practical refusal reason, I intended to refuse your request.

On 18 July 2022, you responded to Finance's request consultation notice stating:

I advise that I wish for the request to be processed as is.

As I have stated, the information that I seek is metadata of a kind that agencies are expected to produce on a regular basis as part of Senate Order 12 reports. I am unable to find any relevant files listed in the Department's Senate Order 12 reports for the period I have requested.

This implies that either:

a) there are no files belonging to the Electoral Policy Unit, in which case it should be a very quick exercise to refuse access on the grounds that the information does not exist (which may come as a surprise to the AEC officials who have been dealing with Finance on various critical policy measures during the time period I am enquiring about); or

b) the Department has been submitting non-compliant and incomplete reports to the Senate, in which case a diversion of resources in order to rectify this oversight in relation to one of the Department's functions seems quite justifiable.

I have already agreed to constrain the scope to a time period of under 3 years and I find it difficult to believe producing such a document from the Department's computer systems and then preparing that document for release would take over 40 hours.

The notice only gives a single ground for determining that a practical refusal reason exists, namely that the processing time is expected to exceed 40 hours. I note that the OAIC states (FOI Guidelines 3.119, with reference to the Commissioner's decision in Aloysia Brooks and Department of the Prime Minister and Cabinet [2015] AICmr 66 at [30]) that a request cannot be considered an unreasonable diversion of resources purely on the grounds of exceeding a 40 hour threshold without consideration of the other factors required to make a request a substantial and unreasonable diversion of resources.

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Authorised decision-maker

I am authorised by the Secretary of Finance to grant or refuse access to documents.

Decision

I have made an access refusal decision on the basis of subsection 24(1)(b) of the FOI Act, being that I am satisfied that the practical refusal reason identified in the request consultation notice dated 5 July 2022, still exists.

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

- the terms of your FOI request, your response to Finance's request to narrow the scope of the request, and your response to the request consultation notice;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act;
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Reasons

In accordance with the requirements of subsection 24AB(2) of the FOI Act, Finance sent you a request consultation notice on 18 July 2022 advising you of my intention to refuse your request on the grounds that I consider that the work involved in processing your request would substantially and unreasonably divert Finance's resources from its other operations.

In the request consultation notice, I stated the following reasons for why I intended to refuse your request, being:

[Having] regard to the resources that would have to be used by Finance for:

- identifying, locating or collating the documents within Finance's filing system
- 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 documents
- notifying any interim or final decision on the request.

I decided that a practical refusal reason exists because your request would require in excess of 40 hours to process.

I further note that although you initially narrowed your scope by reducing the period of time that you requested folders for, you did not narrow the scope of your request to any particular subject or keyword/s, as requested in both Finance's correspondence to you on 22 June 2022, and in the request consultation notice.

I consider that the following tasks would take the corresponding time to complete:

- identifying, locating or collating the documents within Finance's filing system – 1 hour.
- 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) – 148 hours.
- making a copy or an edited copy, of the documents – 2 hours.
- notifying any interim or final decision on the request; noting that we anticipate that a number of exemptions would apply to exempt material – 5 hours.

As you have not reduced the scope of your request further, I estimate that it would still take in excess of 40 hours to process your request, which I consider would substantially and unreasonably divert the resources of Finance from its other operations.

In your response to the request consultation notice you referred to the following extract from the Office of the Australian Information Commissioner (OAIC) FOI Guidelines at paragraph 3.119:

Whether a practical refusal reason exists will be a question of fact in the individual case. Bearing in mind the range of matters that must and can be considered, it is not possible to specify an indicative number of hours of processing time that would constitute a practical refusal reason. Agencies should not adopt a 'ceiling' in relation to processing times; for example, deciding that a practical refusal reason exists once the estimated processing time exceeds 40 hours [Aloysia Brooks and Department of the Prime Minister and Cabinet [2015] AICmr 66]. Rather, each case should be assessed on its own merits, and the findings in individual AAT and IC review decisions which discuss estimated processing times should be viewed in that light.

Finance has not adopted a 'ceiling' in relation to processing times, however, as Finance has a very small FOI team, a request estimated to take over 40 hours to process is generally considered to substantially and unreasonably divert the resources of Finance from its other operations.

Charges

On the basis that I have refused your request, I have decided that a charge is not payable in this matter.

Review and appeal rights

You are entitled to request an internal review or a review by the Office of the Australian Information Commissioner of my decision. The process for review and appeal rights is set out at **Attachment A**.

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'SP' with a stylized flourish.

Sebastian Powney
Assistant Secretary
Resource Management | Governance and Resource Management
Department of Finance
27 July 2022



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foi@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 1 June 2022 it is \$962).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be, or has been, investigated by the IC, the Ombudsman will consult with the IC to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.