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Via email: foi+request-9060-e153d97b@righttoknow.org.au

22 / 7 / 2022

Dear Raphael,

Notice Pursuant to Section 24AB of the *Freedom of Information Act 1982*

Thank you for your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) emailed to and received by the Australian Public Service Commission (APSC) on Wednesday 29 June 2022.

As you are aware the Merit Protection Commissioner (MPC) accepted a transfer from the APSC of those aspects of your request that relate to information within the control of the MPC. Specifically, you asked for:

“...all documents in the control of the Merit Protection Commissioner, or in the control of staff assisting her, that has not been published on www.mpc.gov.au and relates to sanction decisions for contraventions of the Code of Conduct set out in the Public Service Act 1999 (Cth).”

Having reviewed your request I can advise that the work involved in processing your current FOI request, in its current form, will substantially and unreasonably divert the MPC’s resources from its other operations. This is due to the broad scope and size of your request and is called a ‘practical refusal reason’ (under s. 24AA of the FOI Act).

On this basis, I propose to refuse your request. However, before I make a final decision, you have an opportunity to revise your FOI request. This is called a ‘request consultation process’ and is 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 below.

Why I propose to refuse your request

I have determined that a practical refusal reason exists for the following reasons:

- An initial search for documents in the MPC’s claims records management system alone has confirmed there are a significant number of files (approximately 130 since 2017) likely to be within the scope of your request. A conservative estimate is that each of those files contains at least 200 (if not more) pages. I estimate the present scope of your request would involve examining at least 26,000 pages.

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- You are seeking copies of documents about sanction decisions and you have not provided any time limitation for your request and therefore your request could cover more than a decade of records held by the MPC.
- The above estimate is based only on those decisions since 2017 which is captured in the current claims records management system. The above estimate does not include review application documents which predate 2017 or documents stored in alternative systems.
- The 130 files referred to above that you seek to access include matters that involve a review of one or more decisions by an Australian Public Service (APS) employer involving the relevant review applicant, the APS employee. Other parties may also be involved in these matters. You would therefore appreciate each of these files contains personal and/or confidential information of other people and other parties.
- Your request in its present form would require locating, collation and examination of each document in each of those files to determine the breadth of any required consultation with each of the parties involved or named in each of those files. Copying relevant documents and then considering relevant exemptions to documents would also be required.
- In addition, making a decision regarding the release of documents, and preparing edited copies of documents for release would also be required. Given the nature of the information contained within each of those files as discussed above, it is likely significant editing would be required to release any documents to you.
- Using a conservative 3 to 5 minutes per page examination and processing time would mean a total of about 1,300 to 2,166 hours (approximately 35 to 58 working weeks). This would substantially and unreasonably divert the MPC from its other operations.
- The MPC has a small number of staff, is a separate entity to the APSC and the MPC's limited resources are dedicated to performing the MPC's statutory function and duties. Resourcing is a relevant consideration in making a decision under the FOI Act (see section 24AA FOI Act). And
- The scope of your request as presently made is extensive and I believe the work involved in processing your request, in its current form, will substantially and unreasonably divert the MPC's resources from its other operations.

Request consultation process

You now have an opportunity to revise your FOI request to enable it to proceed. Revising your request can mean narrowing the scope of the request to make it more manageable. By providing more specific information about exactly what documents you are interested in, we may be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

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. During this period, you are welcome to ask me for help revising 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 statutory 30 day time limit for processing your request.)

You are therefore required to respond to this letter by close of business **Friday 5 August 2022**.

If you do not do one of the three things listed above during the 14-day consultation period or you do not consult me during this period, your request will be taken to have been withdrawn.

Other sources of information

To assist you in revising your response you may also consider gathering information about sanction decisions from other sources and publications. For example, on the MPC website we have published case studies that demonstrate a range of our review outcomes about breach and sanction decisions. Our case studies are designed for decisions makers and public sector employees to understand merits review, our decision making process and the diversity of actions and decisions we review. Another source of information about sanction decisions are the MPC's annual report. Every year, we report on our performance and activities throughout the year, this includes our decisions on code of conduct matters.

I also refer you to the Administrative Review Councils [publications](#) and in particular its Best Practice guidelines which contain very useful information on merits review and administrative decision making.

Details for contact

If you would like to revise your request or need more information, please contact me by email at Kirsteen.Banwell@mpc.gov.au or by phone 02 28239 5353.

Yours sincerely



Kirsteen Banwell

Authorised FOI Decision maker

For the Merit Protection Commissioner