



Australian Government

Department of Finance

Reference: FOI15/11
Contact: FOI Team
Telephone: 02 6215 1783
e-mail: foi@finance.gov.au

Jackson Gothe-Snape

via email: foi+request-909-9847f5bc@righttoknow.org.au

Dear Mr Gothe-Snape,

Freedom of Information Internal Review Request – FOI15/11

On 4 February 2015 in an email to the Department of Finance (Finance) you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

provide records of all bookings of COMCAR since 1 July 2009 in a machine readable format, preferably CSV or XLS, with the following fields:

- Account Name
- City
- Date
- From
- To
- Start time
- Finish time
- Amount

On 4 March 2015, Finance sent you a notice under section 24AB of the FOI Act informing you that to process your request in its current form would be an unreasonable diversion of resources and provided you with an opportunity to limit the scope of your request.

On 4 March 2015, you revised your request to (our emphasis):

*all bookings of COMCAR since 1 July 2009 **made by Ministers in the government** in a machine readable format with the following fields:*

- Account Name
- City
- Date
- From
- To
- Start time
- Finish time
- Amount

Ministers of the government are those politicians listed here:
<https://www.aph.gov.au/~media/03%20Senators%20and%20Members/32%20Members/Lists/minlist.ashx>

Initial Decision

On 10 March 2015, the original decision maker advised you of her decision (dated 5 March 2015) to refuse your amended FOI request under s24(1)(b) of the FOI Act on the basis that a practical refusal reason still exists.

Internal Review Request

On 17 March 2015 you sought an internal review to the access refusal decision.

Internal Review Decision

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

I am authorised by the Secretary under s3(1) of the FOI Act to grant or deny access including considering whether a practical refusal reason exists under ss24 and 24AA of the FOI Act.

I have decided to affirm the original decision of 10 March 2015 (dated 5 March 2015) to refuse your amended FOI request on the basis that the work involved in processing the request would substantially and unreasonably divert the resources of the Department from its other operations.

Submissions

You have made a number of submissions supporting your internal review request (summary at Attachment A) which I have considered. For ease of identification, in addressing those submissions, below, I have referred to them as (a) – (h).

Reasons for Decision

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

- the terms of your FOI request, including the amended request;
- the content of the documents/materials that fall within the scope of your request;
- s24AB notice dated 4 March 2015;
- your response dated 4 March 2015 (including your revised request);
- s24 notice dated 5 March 2015 and sent to you on 10 March 2015;
- your application for internal review dated 17 March 2015;
- the relevant provisions of the FOI Act;
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

The original decision was to refuse the request on the grounds that it was an unreasonable diversion of resources to process your request. As the internal review decision maker, I must make a decision in relation to whether or not your request would be a substantial and unreasonable diversion of the Department's resources to process.

I am only required to make a decision regarding access to the relevant documents if I decide that your request is reasonable to process.

Section 24 of the FOI Act relevantly provides:

- (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, the agency or Minister:*
- (a) must undertake a request consultation process (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.*

As per paragraph 24(1)(a) of the FOI Act, the original decision maker undertook a request consultation process where you were provided with the opportunity to revise the scope of your request to remove the practical refusal reason.

The decision maker considered your revised request and estimated that the combination of search, retrieval and expected time it would take to review the requested documentation, third party consultations and additional preparation and examination of the documentation was likely to exceed 200 hours. This was considered to continue to constitute an unreasonable diversion of the Department's resources and as per paragraph 24(1)(b) of the FOI Act, the decision maker refused your request.

Subsection 24AA(2) of the FOI Act prescribes:

- ...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 related, 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.*

In deciding whether your request would be an unreasonable diversion of resources to process, I have taken into account the factors specified above (ss24AA(2) of the FOI Act), in particular the estimated time it would take to:

- search and retrieve all documents held within Finance's electronic and paper based filing systems that fall within the scope of your request. This includes tagging relevant pages and preparing schedules detailing all relevant documents. I have asked the relevant area who manage the relevant databases to provide information based on a sample and using the assumption, that for a period of 5 years and 7 months (67 months) for the 42 Ministers, each travelled approximately 20 COMCAR trips per month, would amount to over 55,000 records falling within the scope of your request. Converting this to a total number of pages, allowing a conservative approach of including 30 lines per page would total over 1800 pages;

- examine all pages in the identified documents to decide whether to grant, refuse or defer access to the documents. This also includes consultation with relevant third parties under ss27 and 27A of the FOI Act. Allowing 5 mins per relevant page of the 1800 pages, would still amount to over 150 hours in examination time (without consideration of possible exemptions). In addition, as the information contains personal information of third parties, allowing a conservative 1 hour per consultation with 42 Ministers, would amount to a further 42 hours (see further discussion below in relation to consultation under s27A of the FOI Act);
- prepare copies, or edited copies, of the documents before being released to reflect any material that I considered to be exempt under the FOI Act. This includes marking and applying redactions to the relevant parts of the documents.
- prepare correspondence and a final decision to be notified to you.

I am satisfied that even a conservative approach to processing your request would involve over 200 hours of search and retrieval and decision making time.

I have also taken into consideration your submissions in support of your internal review request.

In relation to submission (a), I confirm that the original decision maker did, on page 3 of her decision letter, state that to process the request would substantially and unreasonably divert the resources of the agency from its other operations.

Publically available information

As noted in Finance's letter dated 4 March 2015, although not in the form or the details you requested, the Parliamentary Entitlements six-monthly report contains information about parliamentarians and former parliamentarians' expenditure on COMCAR. The six-monthly report is available at Finance's website,

<http://www.finance.gov.au/publications/parliamentarians-reporting>.

In my view the fact that Finance has already published detailed information, which extends to the name of the parliamentarian, location, date and total amount for each COMCAR trip, this is relevant to consideration of the substantial and unreasonable diversion of resources of the agency from its other operations.

On a conservative estimate, to process your FOI request in its current scope would take an officer, working a 37.5 hour week, away from their operational duties for over 5 weeks.

In relation to submission (b), the information you seek is in a database and not in any easily retrievable document. The request requires Finance to retrieve 5 years of data for 42 Parliamentarians from several systems. The systems within Finance are not designed to provide the details and in the form that you seek and would require Finance to perform complicated, manual data manipulations from several systems. Accordingly, it is difficult to provide an accurate estimate of the time involved to process your FOI request. I have considered the provisions of s17 of the FOI Act and am also satisfied that s17(2) of the FOI Act has been satisfied.

In relation to submissions (c) and (d), as discussed above, the information that you seek is contained in several systems and would require considerable work to provide the level of details and in the form that you seek.

In relation to submission (e), as discussed above, the request requires Finance to retrieve 5 years of data for 42 Parliamentarians from several systems, and would require substantial resources to process. I do not agree that the amount of resources required to process your request is a result of poor record keeping. The systems in place in the Department are designed for Finance's operations and not designed to provide the details (i.e. the eight categories of data) in the form that you require.

In relation to submission (f), the test for determining whether third party consultations are required is contained in s27A of the FOI Act, which provides:

1) This section applies if:

(a) a request is made to an agency or Minister for access to a document containing personal information about a person (including a person who has died); and

*(b) it appears to the agency or Minister that the person or the person's legal personal representative (the **person concerned**) might reasonably wish to make a contention (the **exemption contention**) that:*

(i) the document is conditionally exempt under section 47F; and

(ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

(2) In determining, for the purposes of paragraph (1)(b), whether the person concerned might reasonably wish to make an exemption contention because of personal information in a document, the agency or Minister must have regard to the following matters:

(a) the extent to which the information is well known;

(b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the information;

(c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant.

I confirm that:

- a) the information you seek contains personal information;
- b) the personal information in relation to the departure and arrival and start and finish times is not well known nor publically available; and
- c) a third party might reasonably wish to contend that the document is conditionally exempt under s47F of the FOI Act and that access to the document would, on balance, be contrary to the public interest.

In relation to submission (g), there is no specific qualification for being a decision maker under the FOI Act, other than the person needs to be authorised under section 23 of the FOI Act.

I confirm that both the original decision maker and I are authorised decision makers for the purposes of the FOI Act.

In relation to submission (h), as noted above that there is already an abundance of material related to the subject matter of your request that is publicly available (e.g. the six monthly report published by Finance). I consider that processing your request would not provide any more benefit than the abundance of information that is already publicly available.

In the light of the above, I am satisfied that it would substantially and unreasonably divert the resources of the agency from its other operations to process your request. Accordingly, I affirm the original decision to refuse your request under section 24 of the FOI Act. As I have affirmed the original decision, I am not required to make a decision regarding access to the relevant documents.


Review and Appeal Rights

You are entitled to request a review of my decision to the Office of the Australian Information Commissioner, please refer to Attachment A.

Further Assistance

If you have any questions, please contact the FOI Team on the above contact details.

Sincerely,



Jenet Connell
Deputy Secretary
Chief Operating Officer

16th April 2015

...

- (a) I note Ms Moy has refused the request because it would create an "unreasonable diversion of resources."

Section 24AA of the FOI Act allows an agency to refuse a request if it "would substantially and unreasonably divert the resources of the agency from its other operations."

Ms Moy has not stated that this request would substantially divert the resources of the agency.

Given that there is precedent for allowing requests to records of Ministers' COMCAR trips, there is no justification for refusing this request based on its reasonableness.

Precedents for releasing records of COMCAR trips of Ministers are available here: <http://www.finance.gov.au/foi/disclosure-log/2012/foi-12-71-comcar-tony-abbott.html> and here:

https://www.righttoknow.org.au/request/tony_abbotts_expenses_claims

ESTIMATE OF TIME

If the person conducting Freedom of Information reviews for the Department of Finance concludes that the Ms Moy's refusal is on the grounds that she believes that the request would substantially and unreasonably divert the resources of the agency from its other operations, I submit that the estimate of time has been incorrectly assessed.

- (b) First, no count of the number of records covered by the request was communicated during the request consultation process. This is common practice in the request consultation process, even in requests where a s24AA refusal is found to be valid (see Philip Morris Ltd and Department of Health and Ageing [2013] AICmr 49 (22 April 2013)). There is no evidence that the process to estimate the time required for the request has been carried out. Given no estimate of records covered by the requests was provided at any time, it is submitted that the Department failed to take reasonable steps to assist the applicant. Had the Department provided an estimate of the time required at different stages of the request it would have assisted in revising the request to that it could be completed.
- (c) Second, the characterisation that the request is "broad" is refuted. The request very specifically identifies the scope of the request and all requested records are retained in a single data source. The format of the records requested is based on the above precedents in an attempt to follow proven FOI procedures.
- (d) Third, I submit that search and retrieval time is similar to the precedents listed above. In regards to my request, given the data must be stored in a professional-grade database, only the account names and dates would need to be altered in a query of the kind required in the precedents listed above - a trivial task.

- (e) Fourth, I submit that the records, once extracted from the data source, do not require substantial review or additional preparation or examination. I refer to the Department's Resource Management Guide No. 209 that requires records to be "complete, accurate and reliable". I have also requested the data in a machine readable-format, allowing the raw output of the database to be provided if it is more time-effective. I also note that the decision by the Information Commissioner in 'AP' and Department of Human Services [2013] that states that "poor record keeping or an inefficient filing system can also not in themselves provide grounds for a claim".
- (f) Fifth, I submit that no consultation with external parties is required. This was the primary goal of the revision to the request. The original request may have caught other parties that would have required consultation. However the use of government resources by Parliamentarians does not require consultation under the FOI Act.
- (g) Sixth, I submit that Ms Moy is insufficiently qualified to estimate the time required to complete the request, which is better characterised as an everyday database query.
- (h) Finally, I submit that the publication of COMCAR trips by Ministers falls directly under the object of the FOI Act of "increasing scrutiny, discussion, comment and review of the Government's activities" and the publication of this information would support one of the core functions of the Department of Finance as part of its responsibility over expenditure, financial management and operations of government. The use of government resources by Parliamentarians is core to the Government's activities and the disclosure of these records would encourage more accountability by users of COMCAR. This must be considered when assessing whether the request diverts the resources of the agency.

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.righttoknow.org.au/request/comcar_trips



Australian Government
Department of Finance

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be 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 documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to

extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online:

<https://forms.australia.gov.au/forms/oaic/foi-review/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_review.

Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth 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 the Commissioner 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. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal and Strategic Support Branch
Department of Finance
John Gorton Building
King Edward Terrace
PARKES ACT 2600
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html