



Our reference: FOIREQ22/00181

Verity Pane

By email: foi+request-9124-d204e3ec@righttoknow.org.au

Your Freedom of Information request FOIREQ22/00181

Dear Verity Pane

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 13 July 2022.

Scope of your request

In your request you seek access on the following terms:

"I want copy of every letter the OAIC sent in FY2021/22 that states "The purpose of this letter is to advise you of my intention to recommend the delegate of the Information Commissioner exercises the discretion to decide not to continue to undertake a review of your IC review application".

Personal information of any person to be redacted under s 22, as well as the FOI and IC review references numbers.

Transparency of reasoning as to why ic reviews are not recommended by OAIC staff is important in showing what confidence can be had in the Office's primary statutory functions..."

On 15 July 2022 we acknowledged your request.

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your requests no later than 30 days after the day we receive them. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third parties about certain information, such as business documents or documents affecting their personal privacy.

With this letter being a notice under section 24AB of the FOI Act, the time to process your request will be stopped until we have completed this consultation with you regarding the scope of your request, as per section 24AB(8) of the FOI Act.

Notice of intention to refuse your request

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests.

I am writing to tell you that based on the information before me at this time, I am of the view that the work involved in processing your request in its current form will substantially and unreasonably divert the resources of the OAIC from its other operations due to the substantial number of documents which may fall within the scope of the request (ss 24AA(1)(i) and 24AA(2)(b)(i) its size and scope. Based on the information before me, including consideration of the time required to process this FOI request, I consider to process these documents in scope of the FOI request in this case will unreasonably divert the resources of the OAIC from its other operations. This is called a 'practical refusal reason' (under s 24AA of the FOI Act).

On this basis, I intend to refuse access to the documents you have requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as 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 at the end of this letter.

Why I intend to refuse your request

Calculation of the processing time

Noting that the FOI guidelines state at [3.110] that "...A request...must be read fairly by an agency or minister, being mindful not to take a narrow or pedantic approach to its construction," I have interpreted your request as being for letters that contain the statement you have outlined in your request, or that contains words to the same effect (for instance, some letters contain a different phrase, that varies from your request by one or two words but has in substance an identical meaning and arises in a similar context).

Search and retrieval

Your request was referred to the relevant line area to conduct searches based on your request. I have consulted with the relevant line area, the FOI Regulatory Group, to help identify documents within the scope of your request. The line area provided a spreadsheet which contains all IC review matters where an ITD was issued between 1

July 2021 to 30 June 2022. The line area advised that there are 422 matters which would need to be manually reviewed in order to confirm whether the files contain a document, or documents, within the scope of your request.

Estimated document identification time

A staff member of the Legal Services team undertook a sampling exercise of 20 *Resolve* files identified by the line area as potentially containing a document or documents within the scope of your request. The staff member reported that it took an average of 1.925 minutes to identify whether the resolve file contained a document within the scope of your request, download the document, read and consider whether the document contains any exempt material, and note the exempt material to advise the decision maker in a table.

Accordingly, using this estimate provided by the line area, I estimate that it would take approximately **13.15 hours** to conduct search and retrieval for the 422 IC review matters which potentially contain material within the scope of your request.

Decision making time

I have calculated the time it would the FOI decision maker to examine, assess and edit the documents in scope in order to process and make a decision on your FOI request.

A staff member from the Legal team conducted a sample of 10 of the documents identified as being within the scope of your request, to help calculate the time it would take for an FOI Officer to process your FOI request. The staff member advised that many of the documents contained large amounts of personal information, necessitated a close line by line reading of the documents at issue, in order to ensure that all personal information was redacted.

Based on the sample, I calculate that:

- of the documents in the sample, the decisions ranged from 4 to 10 pages with a consistently high level of complexity in the documents. Using the extrapolated average of 6.7 pages in each decision from the sample and applying this to the total number of files potentially containing letters within scope of your request, it is estimated that there would be approximately 2827 pages to be reviewed and processed.
- in conducting the sample, it took an average of approximately 5.79 minutes in each IC review matter to:
 - review each page of the document
 - identify personal information

- identify any other relevant exemptions that may apply
- apply redactions where appropriate.
- based on the above sample, it would take at approximately **40.72 hours** to review and assess relevant documents in the 422 IC review matters.
- I conservatively estimate that it will take the FOI decision maker **5 hours** to prepare a schedule of documents within scope of your FOI request, and another **2 hours** to draft the FOI decision and reasons for decision.

I therefore estimate the approximate time it would take to process your request as **60.87 hours**. I also calculate that it would take at least **15 hours** to undertake the following:

- Collate and prepare documents for third party consultation. There are at least 10 documents within the scope of your request that contain business information about third-party entities, as such it appears that consultation would be required under section 27 the FOI Act.
- Assess each third-party's response to our consultation, edit and redact the relevant information for release.

It therefore appears that it would take at least **75.87 hours** to process your request. Which is equivalent to approximately 2 working weeks.

Diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal reason exists. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (**the 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
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The OAIC is a small agency, employing approximately 130 staff. The OAIC does not have a dedicated FOI processing team. The FOI requests received by the OAIC are processed by its Legal Services Team, which is also responsible for providing internal legal advice to the OAIC's line areas, as well as dealing with litigation matters involving the OAIC. In processing FOI requests, Legal seeks assistance from the line areas in conducting search and retrieval of the relevant documents in scope of the FOI request. Once the line areas provide the relevant documents to the Legal Services Team, its staff members will then proceed to assess, examine, edit and decide on the documents, including undertaking any formal or information consultations with third parties or other agencies if necessary.

I am satisfied that processing this request would have a significant and negative impact on both line areas' ability to complete their regular duties, including conducting the OAIC's FOI functions and the processing of other FOI requests. This makes it likely that staff will be diverted from their other work in the OAIC, including:

- undertaking regulatory functions in FOI
- conducting IC review
- delivering internal legal advice
- improve agencies processes for managing FOI requests.

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 documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, as well as excluding information that has previously been published on our disclosure log, we will 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. Therefore, you must respond to this notice by **Monday 22 August 2022**.

During this period, you can ask the contact person (see below) 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. If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Ways you can reduce the scope of your request

There are a number of ways that you can reduce the scope of your request to enable us to process it without unreasonably diverting our resources from our other operations.

These include limiting the scope of your request to:

- a specified one month period (e.g. July 2022); or
- reduce the number of documents you seek (e.g. “5 most recent letters sent with the phrase *“The purpose of this letter is to advise you of my intention to recommend the delegate of the Information Commissioner exercises the discretion to decide not to continue to undertake a review of your IC review application.”*”

Contact officer

If you would like to revise your request, or requires assistance in revising the scope of the request, or would like to discuss this matter in general, please contact me on (02) 9942 4145 or at legal@oaic.gov.au

Yours sincerely



Margaret Sui
Senior Lawyer

8 August 2022