



Australian Government
Attorney-General's Department

Our ref: FOI22/182; CM22/22832

5 September 2022

BE

By email: foi+request-9225-304cfbeb@righttoknow.org.au

Dear BE

Freedom of information request FOI22/182 – Request consultation process

The purpose of this letter is to seek information from you about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 4 August 2022, you requested access to:

Question Time briefs (however described). This request is limited to Question Time briefs for the 47th Parliament (ie Question Time briefs prepared for 27 – 28 July and 1-4 August).

I also request a copy of the Department's current index of Question Time briefs.

Duplicate copies of the same document are not required, although different or updated versions of a document are. If a document contains tracked changes or comments, it is requested that the document be provided in a form where all tracked changes and comments are visible.

Names and contact details for departmental staff below the SES level are not required and can be treated as irrelevant under s22 of the Act for the purposes of this request.

On 9 August 2022, the department sought to clarify the scope of your request. On 10 August 2022, you confirmed the following scope:

(1) *Question Time Briefs prepared by the Attorney-General's Department (the department) for the Attorney-General's Office (the Office), excluding portfolio agencies, for sitting days 27 July to 4 August 2022.*

Cleared briefs provided by the department to the Office are included (showing tracked changes from the previous cleared version), but uncleared working drafts held within the department are not.

Duplicates will be excluded, along with documents which are assessed as functionally duplicate (for example, where the only update has been to things like date, formatting or minor editorial/grammatical changes but no substantive text changes).

(2) *The department's current QTB index (as at 4 August 2022).*

On 11 August 2022, the department acknowledged your request and sought a 30-day extension from you pursuant to s 15AA of the FOI Act.

On 12 August 2022, you did not agree to the department's request for a 30-day extension for the entire request. You offered to agree to a 30-day extension for part 1 of your request, but not for part 2.

The department has considered your proposal and advises that it does not agree to provide the documents that are within scope of your request on two different dates, as this will add additional complexity to the processing of your request which, for the reasons outlined below, is already voluminous and complex.

Practical refusal reason

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

I have decided that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this department from its other operations due to its size and complexity. Section 24AA of the FOI Act refers to this as a 'practical refusal reason' (copy at **Attachment A**).

A search of the department's holdings indicates the department holds more than 115 documents relevant to your request, totalling over 700 pages. Our preliminary assessment of the relevant documents indicates that making a decision about access to these documents will require extensive consultation across the department, and with a number of government agencies and non-government stakeholders.

The resources required to undertake this consultation, to collate all documents within the scope of your request, and decide whether to grant, refuse or defer access to each of those documents will unreasonably divert the resources of the department from its other operations.

Request consultation process

Before I make a decision to refuse access to the documents you requested, s 24AB of the FOI Act provides for a 'request consultation process' (copy at **Attachment A**). This means you have 14 days in which to respond to this notice.

If you would like to proceed with your FOI request, you must make a revised request, in writing, within 14 days of the date you receive this letter.

The practical refusal reason in relation to your request will no longer exist if you narrow the scope of your request sufficiently to make it more manageable. One option you may wish to consider is to amend the scope of your current request to only part 2 – that is, the QTB index dated 4 August 2022 – and to withdraw part 1 of your request. Access to the index may assist you to identify the specific QTB that is of interest to you, for which you could then make a separate FOI request.

During the consultation period, you are welcome to seek assistance from the contact person listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, the department will recommence processing it.

The time taken to consult you about the scope of your request is not included in the 30-day time limit for processing your request.

In relation to the external consultation required for your request, please be advised if you continue with a revised request, the department may still need to apply an additional 30-day processing period under s 15(6) of the FOI Act. We will advise you of the new due date for your decision if a further extension is applied.

If you do not wish to proceed with your FOI request, you may either withdraw your request or advise the department that you do not wish to revise your request. Your request will be withdrawn if you do not contact us or provide written notice of the revised scope of your request within 14 days from receipt of this notice.

Questions

If you wish to discuss this decision, the FOI case officer for this matter is Dana, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Sarah Christensen', written over a horizontal line.

Sarah Christensen
Director
Freedom of Information and Privacy Section

Attachments

Attachment A: Sections 24AA and 24AB of the FOI Act

Attachment A

Section 24AA of the FOI Act: 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.

Section 24AB of the FOI Act: 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.