



**Australian Government**  
**Department of Employment  
and Workplace Relations**

Our Ref LEX 390

BE

Right to Know

By email: [foi+request-9244-57aac32d@righttoknow.org.au](mailto:foi+request-9244-57aac32d@righttoknow.org.au)

Dear BE

**Your Freedom of Information request - consultation**

I refer to your request, received by the Department of Employment and Workplace Relations (department) on 8 August 2022, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

1. *All documents including advice and submissions provided by the Department to the Minister's Office in relation to Australian Building and Construction Commission (ABCC), the Code for the Tendering and Performance of Building Work 2016 (Building Code) or the Code for the Tendering and Performance of Building Work Amendment Instrument 2022 (Amended Building Code).*
2. *Communication between the Department and the Minister's Office in relation to the ABCC or the Building Code or Amended Building Code during the period 1 June 2022 to 25 July 2022.*
3. *Internal communication within the Department between 1 June 2022 and 25 July 2022 relating to the ABCC or the Building Code or the Amended Building Code.*

*In this request a reference to the Minister's Office includes a reference to the Minister and a reference to communication includes emails, correspondence, electronic messages (eg whatsapp, signal etc), meeting invites, and other forms of communication.*

*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.*

*Duplicates of documents are not required.*

### **Practical refusal reason**

I am writing to you, under sections 24AA(1)(a)(i), 24AA(2) and 24 of the FOI Act, to notify that processing your request in its current form would substantially and unreasonably divert the resources of the department from its other operations.

I have consulted with departmental officers in the Bargaining and Coverage Branch regarding the number and nature of documents held by the department which are likely to be relevant to your request, and the work involved in processing your request.

I am asking you to reduce the scope of your request. If we are unable to reach a satisfactory agreement on the scope of your request, it is my intention to refuse your request as currently worded under section 24 of the FOI Act.

To assist you, I have set out the relevant sections of the FOI Act at **Attachment A**.

### **Amount of time to process your request**

To process your request, the department would have to do extensive searches to find the documents you asked for. Preliminary searches indicate that the department may hold over 29,218 documents, totalling over 184,544 pages.

Based on my experience with the type and volume of records you want, I estimate it would take many hundreds of hours in processing time. This includes consulting with other persons, looking at all the documents to see if any of the pages might need redactions, scheduling and writing a statement of reasons. Further, the material you have requested is likely to be exempt as it consists of legal advice, was submitted to the Cabinet for its consideration, or is deliberative in nature.

### **Why your request captures a substantial number of documents & assistance to revise**

In order to understand the documents and assist you to revise your request, I have consulted with officers in the department who are most familiar with the types of documents you are seeking access to.

The department communicates regularly about the Australian Building and Construction Commission (ABCC) on business as usual matters, given it is an entity within the department's portfolio. Your request as it is currently worded would capture all of these business as usual type documents and communications. For example, a brief tabling the ABCC's quarterly reports would be captured by the terms of the current request, which may not be the types of documents that you are seeking access to. It appears that you may be interested in the government's election commitment to abolish the ABCC, including amending the Code, rather than all documents that may be business as usual in nature. Being more specific about this part of your request may assist to remove the practical refusal reason.

Similarly, your request covers a significant number of documents because of the time period, as well as the number of officers that would need to undertake searches to identify documents within the scope of the request. Accordingly, reducing the time period over

which you seek access to documents (for example, to a two week period), and limiting the officers that would need to search for documents, may assist.

If you are seeking access to documents in relation to the abolition of the ABCC, the most relevant officers in the department are those in the Bargaining and Coverage Branch in the Workplace Relations Legal Division, and the Bargaining and Industry Policy Branch in the Safety and Industry Policy Division. The Senior Executive officers in these two branches would be the most likely to hold all relevant documents – limiting the scope in this way may assist to remove the practical refusal reason. Reviewing the department’s organisational chart may also assist you to identify the particular business areas to search, that is available here: <https://www.dese.gov.au/about-us/resources/organisation-chart-dewr>. You may also wish to consider limiting searches to particular systems, like the Parliamentary Document Management System, which the department uses to formally brief Ministers.

There is also a range of publicly available material related to the scope of your request, including documents that were provided to the Senate in response to an Order to Produce. Reviewing these documents may assist you to narrow the scope of your request. These documents are available here: [https://www.aph.gov.au/Parliamentary\\_Business/Tabled\\_Documents/120](https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/120). You may wish to exclude this publicly available material when revising.

Additionally, there are documents that relate to legal advice, the legislative process and Cabinet documents that would require detailed review for decision making purposes. You may wish to exclude material of that nature to limit the scope of your request further.

### **Action required from you under the FOI Act**

Before I make a final decision on your request, you can submit a revised request.

Under the FOI Act, you must do one of the following things in the next 14 days:

- make a revised request
- tell us that you do not want to revise your request
- withdraw your request.

### **Contact officer**

I am the contact officer for your request. During the consultation period you can contact me to ask for help revising your request by emailing [foi@dewr.gov.au](mailto:foi@dewr.gov.au).

Your response will be expected by **Monday 5 September 2022**. If I do not receive a response from you, your request will be taken to be withdrawn by the operation of the FOI Act.

**Further assistance**

If you have any questions, please email [foi@dewr.gov.au](mailto:foi@dewr.gov.au).

Yours sincerely

*Claudia*

Claudia

Authorised decision maker

Freedom of Information Team

Department of Employment and Workplace Relations

22 August 2022

**Relevant sections of the *Freedom of Information Act 1982***

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to an FOI request if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

Section 24AA(2) of the FOI Act sets out certain factors which the department must consider when determining whether providing access in relation to a request would substantially and unreasonably divert resources. The department must specifically have regard to the resources that would have to be used for:

- identifying, locating or collating the documents
- 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 in relation to the request
- making a copy, or an edited copy, of the document
- notifying any interim or final decision on the request.

Section 24AB(7) of the FOI Act provides that the request is taken to have been withdrawn at the end of the consultation period if:

- the applicant does not consult the contact person during the consultation period in accordance with the notice
- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Section 24AB(6) says that the applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- withdraw the request
- make a revised request
- indicate that the applicant does not wish to revise the request.