



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

Our Ref LEX 424

DW

foi+request-9295-8600de61@righttoknow.org.au

Dear DW

Your Freedom of Information request - consultation

I refer to your request, directed to the Office of the Minister for Employment and Workplace Relations and Minister for the Arts on 23 August 2022, for access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

... the Minister's incoming Minister's brief that was prepared by the Department, and any preceding department before the Machinery of Government Changes which came into effect July 1 2022.

On 30 August 2022, the Department of Employment and Workplace Relations (department) accepted a transfer of your request from the Minister's Office under section 16 of the FOI Act on the basis that the subject matter of your request is more closely connected with the functions of the department.

Practical refusal reasons

I am writing to you, under section 24AB(2) of the FOI Act to notify you of my intention to refuse your request, because I am satisfied that practical refusal reasons exist under subparagraphs 24AA(1)(a) and 24AA(1)(b) of the FOI Act.

Scope of your request

Following the Administrative Arrangements Order made by the Governor-General, on 1 July 2022, the former Department of Education, Skills and Employment was renamed the Department of Education and the Department of Employment and Workplace Relations was established.

As a result of these recent machinery of government changes, the workplace relations portfolio was also transferred to the department from the Attorney-General's Department,

along with responsibility for the Pacific Australia Labour Mobility (PALM) scheme from the Department of Foreign Affairs and Trade.

Subsection 15(2) of the FOI Act provides that a ‘... request must provide such information as is reasonably necessary to enable a responsible officer of the agency... to identify the document that is requested’.

It is not clear whether the scope of your request is limited to the incoming Minister’s brief that was prepared by the former Department of Education, Skills and Employment, or if it also extends to incoming briefing material prepared by the Attorney-General’s Department and/or the Department of Foreign Affairs and Trade in relation to the portfolio responsibilities that were formally transferred to the department on 1 July 2022.

I further note that your request was sent to the department through the Right to Know website, but it was addressed to the Office of the Minister for Employment and Workplace Relations and Minister for the Arts. It is not clear whether you are also seeking incoming government briefing prepared in relation to the Minister’s capacity as the Minister for Arts, or whether it is limited to the incoming Minister’s brief that was presented to the Hon. Tony Burke MP by the former Department of Education, Skills and Employment on 1 June 2022.

Size of your request

I have consulted with departmental officers in the Finance and Budget Division regarding the number and nature of briefs held by the department which are likely to be relevant to your request, and the work involved in processing your request.

Noting that the scope of your request is unclear, the department has considered the incoming Minister’s brief that was prepared by the former Department of Education, Skills and Employment for Minister Burke for the purposes of estimating the work involved in processing your request.

This brief alone contains over 600 pages. Due to the significant volume of material, the sensitive nature of incoming Ministers’ briefs and the need to undertake extensive consultation, I estimate that processing your request would take more than 60 hours.

Suggestions for clarifying and narrowing the scope of your request

A targeted and limited revised scope is more likely to remove the practical refusal reason and allow the department to process your request.

To assist you in clarifying and narrowing your request, you may wish to consider limiting the scope of your request to the incoming Minister’s brief that was presented to the Hon. Tony Burke MP by the former Department of Education, Skills and Employment on 1 June 2022.

In addition to the above, you may also wish to limit the scope of your request for the incoming Minister’s brief so that it relates to a specific issue or issues relevant to the department’s portfolio responsibilities, particular election commitment, or a portion of the incoming government brief prepared by a particular area of the department. In this regard,

you may wish to review the department's Organisation Chart, available here:

<https://www.dese.gov.au/about-us/resources/organisation-chart-dewr>.

At this time, you may also wish to consider excluding attachments and those parts of the incoming Minister's brief that have been published on the department's disclosure log:

<https://www.dese.gov.au/about-us/corporate-reporting/freedom-information-foi/foi-disclosure-log>.

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; or
- 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.

Your response will be expected by **20 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.

Yours sincerely

Claudia

Claudia
Authorised decision maker
Freedom of Information Team
Department of Employment and Workplace Relations
6 September 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.