



Our reference: FOIREQ22/00253

Verity Pane

By email: foi+request-9315-e8ea5c07@righttoknow.org.au

Your Freedom of Information request FOIREQ22/00253

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 27 August 2022.

Scope of your request

In your request you seek access to the following:

This FOI is for copy of all internal emails sent to any Commissioner (including acting) that include "snapshot" (in any case - upper, lower, title) in the body of the email.

Personal details of third party private individuals and private businesses are out of scope.

Only the 100 most recent emails are in scope.

On 31 August 2022 and 9 September 2022, we emailed you to seek clarification regarding the scope of your request. We did not receive a response to these emails so as set out in our email of 9 September 2022, we interpreted the scope of your request to only refer to emails sent to Information and Privacy Commissioner Angelene Falk and Freedom of Information Commissioner Leo Hardiman.

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your request 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. On 26 September 2022 the timeframe for processing your request was extended by 30 days.

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. 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

Search and retrieval

Your request was referred to the relevant Commissioners to conduct searches based on your request. A total of **2 hours** (1 hour for each Commissioner) has been included in the processing time for this request.

Examination and assessment time

Based on our collation and preliminary review of the documents within the scope of your request, I have considered the time it would take 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.

We advise the following:

- We have reviewed the first 10 emails within the scope of your request to assess their complexity and any sensitivities or exemptions that may apply to the particular documents.
- These 10 emails and their attachments totalled 290 pages.
- This assessment took 4 minutes per page.

- The estimate is conservative noting:
 - In previous IC review decisions, it has generally been accepted that a figure between 30 seconds to five minutes per page is a reasonable estimate of time required for an agency to assess and edit documents, except where documents contain a substantial amount of sensitive information. This assessment is at the top end of this range. This is because the documents relevant to your request are complex and require detailed consideration of multiple exemptions.
 - We reviewed and assessed the documents for potential exempt material and did not reach a final view or mark-up exempt material.

Accordingly, we estimate that it would take at least **82.6 hours** for the FOI case officer to assess the documents within the scope of the request and mark-up exempt or irrelevant material.

Third party consultation

Having reviewed the documents, I have identified potentially 6 private individuals or businesses that will need to be consulted under sections 27 and 27A of the FOI Act. I estimate that it will take on average 2 hours per third party (either individual or business) to identify relevant material, prepare third party consultation correspondence and review and consider any submissions made by the relevant third party.

I therefore estimate that it will take **12 hours** to complete third party consultation for these 6 private individuals or businesses.

Decision making time

I conservatively estimate that it will take the FOI decision maker **2 hours** to draft the FOI decision and reasons for decision. Given the work of converting to PDF and entering each of the documents on a schedule of documents has already been completed during search and retrieval, I have not included this task in the estimate.

Combining these estimates for conducting search and retrieval, examination and assessment, third party consultation, and the estimated time to draft the FOI decision, I estimate that it would take a staff member of the OAIC at least **98.6 hours** to process your FOI request.

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. Processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests. This makes it likely that staff will be diverted from their other work in the OAIC, including:

- undertaking regulatory functions in both FOI and privacy
- 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; or
- 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 17 October 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 two 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:

- Excluding attachments to emails from the scope of your request; and/or
- Limiting your request to the most recent 20 internal emails received by Information Commissioner Falk or Commissioner Hardiman.

Contact officer

If you would like to revise your request, or require assistance in revising the scope of the request, or would like to discuss this matter in general, please contact me on (02) 9942 4296 or at legal@oaic.gov.au.

Yours sincerely

Molly Cooke

Lawyer

3 October 2022