



Request consultation notice due to existence of a practical refusal reason under section 24AB of the *Freedom of Information Act 1982*

S 24AB consultation notice Suzanne (Position Number 62210871),
Information Access Officer, Information Access Unit,
Client Access and Rehabilitation Branch, Department of Veterans' Affairs

Applicant: Verity Pane

Decision date: 28 February 2023

FOI reference number: LEX 54130

Sent by email: foi+request-9424-1d15963b@righttoknow.org.au

Dear Verity Pane,

Freedom of Information Request: LEX 54130

Purpose of this notice

1. The purpose of this notice is to advise you as required under section 24AB of the *Freedom of Information Act 1982 (FOI Act)* that I intend to refuse your request on the basis that a practical refusal reason exist, as defined by section 24AA of the FOI Act. I apologise for the delay in providing this consultation notice to you.
2. Based on the terms of your request, and from initial searches undertaken to respond to your request, I am of the view that a practical refusal reason exists because:
 - a. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Authority to make decision

3. I, Suzanne (Position Number 62210871), Information Access Officer, Information Access Unit, Client Rehabilitation Access Branch, am an officer authorised by the Secretary of the

Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Scope of your request

4. On 1 October 2022, you made a request for access to documents in the possession of the Department. Your request sought access to:

'...Excluding identifying personal information, the scope of this foi is for documents (whether held in electronic or other forms) sent in 2022 to clients about cost recovery of incapacity payments made to them due to the client receiving a ComSuper pension (including backpay of such a pension)...'

5. On 12 October 2022, the Department acknowledged your request via email.

Power to refuse a request

6. Section 24 of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.
7. However, before I make a decision to refuse your request you have an opportunity to revise your request to remove the practical refusal reason. This is called a 'request consultation process'. You have 14 days to respond to this notice in one of the ways set out below at page 6. As mentioned below, you can request more time to consider and respond to this notice. Please let me know if you would like additional time to respond.

When does a practical refusal reason exist (section 24AA of the FOI Act)

8. The practical refusal reason applicable to your request is that:
 - a. processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Request is substantial

9. Under section 24AA(2) of the FOI Act, the Department must have regard to the resources that would have to be used for:
 - identifying, locating or collating the documents within the filing system of the agency;
 - 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 with any person or body in relation to the request);
 - making a copy or an edited copy, of the document; and
 - notifying any interim or final decision on the request.

10. Further, the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI 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; and
 - other steps taken by an agency or minister to publish information of the kind requested by an applicant.

11. The relevant business area has returned their response to a search minute request and have indicated the scope of your request is too broad to process in its current form.

12. Over 11,000 payees nationally have been identified.

13. As the information to your request is not held in a discrete document, retrieval of this information would potentially involve the review of each client in receipt or previously in receipt of an incapacity payment, to then determine which clients have received correspondence related to cost recovery for a ComSuper payment during 2022.
14. Taking these factors into account, I have concluded the request is substantial.

Request is unreasonable

15. I have considered whether the substantial resource burden would be unreasonable having regard to the following:
 - Due to the broad nature of your request the relevant business area would be required to spend a significant amount of time and resource in determining how to retrieve the requested documents.
 - As the identified number of clients potentially within scope is significant, it is anticipated that all incapacity delegates would be required to assist in scoping for relevant client's and associated documents.
 - The diversion of staff from their core duties to action this request is an unreasonable request of the department.
16. Taking the above factors into account, I am of the view that the request as it currently stands is unreasonable, as well as substantial.

Ways you can revise the scope of your request

17. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.
18. 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, we will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.
19. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24AA may still exist and the Department may need further time to process your revised request. This will depend on the revision you agree to make. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

Next steps

20. Before the end of the consultation period, which is **COB Monday 14 March 2023** (being 14 days from receiving this notice), you must do one of the following, in writing:
 - withdraw the request;
 - make a revised request; or
 - indicate that you do not wish to revise the request.
21. During this period, you can ask me 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.
22. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on the grounds that processing your request will result in a diversion of the Department's resources under section 24(1) of the FOI Act.
23. If you do not respond in one of these ways within 14 days (by **Monday 14 March 2023**), the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act.
24. If you need more time to respond, please contact the Information Access Unit via the below contacts, within the 14 day period to discuss your need for an extension of time.

Suspension of processing time

25. Please note under section 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above.
26. An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

Contact us

27. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

Post: Information Access Unit,
Department of Veterans' Affairs
GPO Box 9998, Brisbane QLD 4001

Email: Information.Access@dva.gov.au

Yours sincerely,

Suzanne (Position Number 62210871)

Information Access Officer

Information Access Unit

Client Rehabilitation and Access Branch

Department of Veterans' Affairs

28 February 2023



Schedule of relevant provisions in the FOI Act

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

24 Power to refuse request--diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
- (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24AA 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.

24AB 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.