



Our reference: FOIREQ22/00380

Attention: Julie

By email: foi+request-9543-b3ecd2da@righttoknow.org.au

Your Freedom of Information request FOIREQ22/00380

Dear Julie

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 8 November 2022.

Scope of your request

In your request you seek access on the following terms:

The OAIC has appeared (via videolink or in person) before the Legal and Constitutional Affairs Legislative Committee (Senate Estimates) on 7 November 2022 (Angelene Falk, Leo Hardiman, Elizabeth Hampton).

As part of the appearance of the above named OAIC officials, to enable these above named OAIC officials to address any issues or questions Committee members might raise, the OAIC prepares a 'Commissioner briefing book' or 'briefing folder' for each official appearing, that typically consists of a 'corporate folder', a 'privacy folder', an 'FOI folder', and other folders that contain 'Commissioner Briefs', 'Hot Topic Briefs', and other documents.

Excluding drafts and duplicates, I seek copy of the contents of the ComBrief book/s, excluding the index, limited to the amount of the ComBrief documents that the OAIC can produce before a valid practical refusal could be made. In determining the order of documents in scope, the OAIC should process in order of most likely to be released in full to most likely to be refused in full.

Personal information of private individuals (not Commonwealth officials) is irrelevant.

I note in your request you have stated that your request is "...limited to the amount of the ComBrief documents that the OAIC can produce before a valid practical refusal could be made." Please note that, as per [3.109] of the Guidelines issued by the

Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982* (Cth) (the FOI Guidelines), a request under the FOI Act "... must provide such information as is reasonably necessary to enable a responsible officer of the agency or the minister to identify the document that is requested". Your request does not appear to meet this requirement.

In line with [3.89] of the FOI Guidelines, which state that agencies "... should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request." We have interpreted your request as being for the entirety of the Senate Estimate briefing documents.

Timeframes for dealing with your request

The original due date of your request is 8 December 2022. 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 fall within the scope of the request (ss 24AA(1)(i) and 24AA(2)(b)(i)). 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 line area to confirm the location of the documents within the scope of your request. Searching and retrieving the relevant documents took **1 hour**. It has taken a further **5 hours** to compile the internal

document bundle and document schedule for the documents within the scope of 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 8 documents totalling 91 pages within the scope of your request to assess their complexity and any sensitivities or exemptions that may apply to the particular documents ('the sample').
- The sample represents approximately 11% of the total number of the documents within the scope of your request. These documents are of a range of complexity levels. I am satisfied that the sample is an adequate sample of all documents within the scope of your request.
- This assessment took approximately 0.5 minutes per page.

Accordingly, noting that there are **830 pages** within the scope of your request we estimate that it would take approximately **6.91 hours** for the FOI case officer to assess and examine the pages within the scope of the request.

Noting the complexity of the material within the sample, I estimate that it would take an average of **3.5 minutes** per page to:

- identify potentially sensitive material for OAIC line area consultation,
- prepare a schedule of this material; and
- send this material to relevant internal line areas; and
- review internal submissions received, engage in further any consultation required, and mark up documents accordingly.

I therefore estimate these tasks would take a further **48.41 hours** to complete.

Third party consultation

Having reviewed the sample for the purposes of this s 24AB letter, I have identified 17 third party businesses that it appears would need to be consulted under section 27 of the FOI Act. I estimate that it will take on average 2 hours per third party 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 at least 34 hours to complete third party consultation for these parties. Noting that this is a sample of approximately 11% of the total document bundle, in order to process the request, based on the sampling results, I estimate that it would take approximately **310 hours** to complete third party consultation for the entire document bundle. I note that you have excluded the personal information of private individuals from the scope of your request. I confirm that material regarding private individuals has not been included within this calculation.

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 **373 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 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.

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; and
- improving 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 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 **8 December 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 three 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:

- Limiting your request to the first five documents in order of appearance in the final briefing pack to the Australian Information Commissioner; or

- Limiting your request to the first five documents in order of appearance in the final briefing pack to the FOI Commissioner.

We note that you have already made an FOI request for the index to these briefs. It may be worthwhile for you to consider withdrawing this FOI request, and once you have received the index for you to consider making a new FOI request for documents which may be of interest to you.

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

24 November 2022