



Australian Government
Department of Immigration and Border Protection

10 March 2015

In reply please quote:

FOI Request FA 15/02/01243

File Number ADF2015/6828

Email: foi+request-973-6e808913@righttoknow.org.au

Dear Zoe Vjestica

Practical refusal notice - *Freedom of Information Act 1982*

I am writing to you regarding your request under the *Freedom of Information Act 1982* (the Act) on 21 February 2015 for:

On the Commonwealth Freedom of Information Act 1982, I would like to see, regarding Asylum Seekers in Australia;

- a. All documents regarding their process of immigration from the Department of Immigration and Border Patrol.*
- b. Photos or letters showing the living requirement of the Asylum Seekers and the state of their food intake.*
- c. Documents on the recorded amount of Asylum Seekers which arrive to Australia, including those who have died on arrival.*

I note that your request is currently due on Monday 23 March 2015.

Purpose of this notice

The purpose of this notice is to advise you (as required under s.24AB of the Act) that I consider that a *practical refusal reason* exists under s. 24AA of the Act and that I am considering refusing access to the requested documents, under s.24 of the Act. My reasons are set out in this notice. This notice sets out the actions required from you in order to ensure that no 'practical refusal reason' applies to your request.

Advice regarding practical refusal reasons

The Act contains two practical refusal reasons. The first is that processing the request *would substantially and unreasonably divert the resources of the agency from its other operations* (s.24AA(1)(a)).

An agency may also refuse an FOI request if the agency is satisfied that the request does not *provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify the document in question* (s.24AA(1)(b)).

people our business

It is the department's view that where it appears that a request under the Act for access to documents is likely to take more than 40 hours to complete, the request should be assessed under s.24AA(1) of the Act to determine whether a practical refusal reason exists in relation to the request. This balances the right of applicants to seek information under the Act with the department's need to appropriately allocate resources to its functions.

Application of s.24AA of the FOI Act to your request

It is my view that the request, as it currently stands, satisfies the second practical refusal reason. I believe that the request is vague and I am not able to identify the document or documents you are seeking access to.

Definition of a 'document'

I note that the term *document* is broadly defined in section 4 of the FOI Act and includes any record of information.

Documents include (but are not limited to) any of, or any part of, the following:

- Any paper or other material on which there is writing
- Each hard copy of a document
- Electronic documents – including emails, each electronic version of a document and databases
- DVDs and video tape recordings
- Sound recordings
- Photographs and drawings
- Maps, plans and diagrams
- Transcript of sound recording or shorthand notes
- Mobile phone SMS (text) messages
- Any copy, reproduction or duplicate of such thing
- Any part of such copy, reproduction or duplicate
- Any article on which information has been stored or recorded, either mechanically or electronically

Scope of your request and my response

a. All documents regarding their process of immigration from the Department of Immigration and Border Patrol.

- The department has never been known as the 'Department of Immigration and Border Patrol'. I can only assume that you are after information from the Department of Immigration and Border Protection.
- In relation to your request for 'all documents' please provide more specific information as to which type of documents you are seeking access to.
- I am unsure which 'processes of immigration' you are referring to.
- Please note that there is information on the department website regarding the visa processes and requirements in obtaining a visa.

b. Photos or letters showing the living requirement of the Asylum Seekers and the state of their food intake.

- In regards to 'living requirements' I am unsure what you mean. Please be more specific; e.g. photos of asylum seeker accommodation, etc.
- In regards to asylum seekers' 'food intake', please be more specific; e.g. are you seeking documents on what food is supplied to asylum seekers', how the food is kept, how much food is supplied, how much food they are eating etc.

c. Documents on the recorded amount of Asylum Seekers which arrive to Australia, including those who have died on arrival.

- I am not sure what you mean by 'the recorded amount of asylum seekers' or 'those who have died on arrival'. Please be more specific so that I can identify which documents you are seeking access to.
- The website provided below is from our department and is available publicly. It provides Asylum statistics. <https://www.immi.gov.au/media/publications/statistics/asylum/>

In light of the above, I am satisfied that your request does not provide such information concerning the document/s as is reasonably necessary to enable me (a responsible officer of the agency) to identify which document/s you are seeking access to. Therefore, I am required to consult with you under s.24AB of the Act regarding the scope of your request.

Assisting you in revising your scope

In helping you to refine your request you could be more specific as to which documents you are seeking access to (having regard to the definition of "document" above).

Also, I believe that you might find Australian Human Rights Commission website and the Department of Immigration and Border Protection website helpful in your studies.

Consultation over scope

You may consult with me on the scope during the *consultation period* which is from the date this notice until close of business Tuesday 24 March 2015.

You may request that I extend the consultation period if you wish, by writing to me before the end of the consultation period at foi@immi.gov.au . The requirements for the consultation period are contained in (s.24AB(5)).

Suspension of processing time

Please note that s.24AB(8) of the FOI Act provides the legislated processing time for your request is 'suspended' until you have either:

- revised the request or
- advised that you do not intend to revise the request.

In addition, if you do not contact me in writing before the end of the consultation period (to either withdraw your request, revise or affirm the scope of your request, or ask for an extension of time to respond to the s.24AB notice) your request will be deemed to be withdrawn in accordance with s.24AB(7) of the Act. The relevant legislation is attached to this notice.

Yours sincerely



Simone Stanley
Authorised FOI Decision Maker
Freedom of Information Section
Department of Immigration and Border Protection
Email foi@immi.gov.au
Telephone (02) 6264 1504

Attachment

- ✓ Attachment A - Extract of relevant legislation

Attachment A – Extract of relevant legislation

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.