



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 Sotiria (Position Number 62214764),
Senior Information Access Officer, Information Access Unit, Client Access and Rehabilitation
Branch, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore

Decision date: 30 June 2023

FOI reference number: LEX 55801

Sent by email: foi+request-9849-240a7825@righttoknow.org.au

Dear Mr Ashmore,

Freedom of Information Request: LEX 55801

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.
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).

Next Steps

3. **You have 14 days to respond to this notice in one of the ways set out below at pages 5-6. You can request more time to consider and respond to this notice. Please let me know if you would like additional time to respond.**

Authority to make decision

- I, Sotiria (Position Number 62214764), Senior 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

- On 26 January 2023, you made a request for access to documents in the possession of the Department. Your request sought access to:

'...I am seeking all briefing papers, updates, etc. from Liz Cosson and her staff to the new Secretary Alison Frame...'

- On 3 February 2023, the Department acknowledged your request via email.

Request is substantial

- Under section 24AA(2) of the FOI Act, in making an assessment that a request is 'substantial', the Department must have regard to the resources that would have to be used:
 - 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.
- Further, the Guidelines issued by the Australian Information Commissioner under section 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.

Searches Conducted

9. As the Incoming Secretary's briefing package was compiled with the intention of briefing the incoming Secretary on the entirety of DVA's functions and activities, extensive consultation across seventeen (17) internal subject matter experts is necessary to process the request.
10. In the time since your request was received, the Department has undertaken thorough searches for documents relevant to your request. We estimate that undertaking targeted searches for documents, with the input of 17 separate internal business areas, has so far taken 55 hours to complete. In addition, we estimate that it has taken 15 hours in total to consult with 17 internal business areas, five (5) third parties and five (5) external Government Agencies in relation to the documents.
11. I estimate that there are approximately 2300 pages of material relevant to your request which were contained within the briefing package provided to the incoming Secretary. These 2300 pages are contained over twelve (12) documents identified as being relevant to your request. The types of documents that fall within the scope of your request include Executive Briefs and Minutes, Divisional Records and Reports, Departmental Audits and Reports, and Royal Commission into Defence and Veteran Suicide records and accounts.

Sensitivities Identified

12. From my initial review of the documents, it appears that they contain exempt material. A brief review of the documents indicates that a significant proportion of the material is highly sensitive and will require redactions to withhold material considered to be exempt from release under the FOI Act.
13. It is likely that multiple exemptions will need to be considered, and applied, to the documents including sections 47C (documents subject to deliberative processes), 47F (documents affecting personal privacy), 47E (documents affecting certain operations of agencies), 47G (documents disclosing business information), 47D (documents affecting financial or property interests of the Commonwealth) and 47 (documents disclosing trade secrets or commercially valuable information) of the FOI Act.

Processing the Documents

14. In order to assess whether the request is voluminous for the purposes of section 24AA(1)(a)(i), the Department processed a small sample of the requested documents (166 pages in total) in order to calculate the time and resources required to complete the full request. It took an officer of the department six (6) hours and fifty-five (55) minutes to review and process around 166 pages of material.
15. Applying this conservative estimate of 2.33 minutes per page (although technical and protected documents will likely need 3-4 minutes per page), it would take a suitably senior FOI Delegate approximately 5,359 minutes or 89 hours (11.7 full business days) to review and mark up redactions for the documents and 15-18 hours to retrieve, review, collate, process and mark up sensitive protected documents.

Total Estimated Timeframe

16. Further to the previous point, a statement of reasons will need to be provided to you. I anticipate that it would take approximately 12 hours (1.6 business days) to prepare a schedule of documents and draft a decision letter under section 26 of the FOI Act that suitably explains the reasoning behind the multiple exemption claims made.
17. Further, the seventeen (17) subject matter experts who assisted with searches for the material will require additional time to review the processed documents and express their views in relation to the internal consultation. We estimate a further 1-2 hours per subject matter expert (25.5 hours total) to allow for this consultation to occur.
18. Therefore, in total, I estimate that it would take the Department approximately 196.5 hours (or 26.5 business days) to process your request in its current form.

Request is Unreasonable

19. I have considered whether the substantial resource burden would be unreasonable having regard to the following:
 - 196.5 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business area to undertake their designated duties.
 - Despite the Department's best efforts to progress your request since it was received on 26 January 2023, it is still going to take the Department an additional

126.5 hours roughly to finalise the request on top of the 76.5 hours the Department has so far spent processing the request.

- Due to the nature of your request, at least 17 separate business areas consultants would be required to spend a significant amount of time and resources in document retrieval, scoping and consultation activities. This would divert the resources of these teams away from their core functions.
- While we appreciate that there is public interest in the documents requested, the Department actively takes steps to proactively publish information relating to its functions and activities on its public facing website, Annual reports etc.

Ways you can revise the scope of your request

20. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.
21. 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.
22. For example, you may want to consider:
 - providing further clarification about the information/specific documents you are seeking access to;
 - narrowing the scope of your request to a particular class of documents contained within the Secretary's briefing package – for example, *documents relating to the Royal Commission into Defence and Veteran Suicide only*.
23. 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

24. Before the end of the consultation period, which is **13 July 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.

25. 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.
26. 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.
27. If you do not respond in one of these ways within 14 days (by **13 July 2023**), the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act.
28. 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

29. 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.
30. An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

Contact us

31. 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,

Sotiria (Position Number 62214764)

Senior Information Access Officer

Information Access Unit

Client Rehabilitation and Access Branch

Department of Veterans' Affairs

30 June 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.