



Australian Government

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 23-174

MBV

Via: foi+request-9975-7f1e25ed@righttoknow.org.au

Dear MBV

Your Freedom of Information Request – Notice of Practical Refusal

I refer to your request of 22 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act). Your request seeks access to the following:

All documents relating to venue hire and the provision of entertainment, food and alcohol at the 30 January 2023 launch of 'Revive: a place for every story, a story for every place'

1 Power to refuse request

I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of the Department from its other operations due to its size, complexity and broad scope. This is called a 'practical refusal reason' (section 24AA).

On this basis, I intend to refuse access to the documents you 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 section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

2 Practical refusal reason

We consider that a practical refusal reason exists in relation to your request for the following reasons.

We have undertaken a preliminary assessment of our information holdings, specifically in our email systems only. A preliminary assessment of our information holdings indicates that approximately 711 documents are in the scope of your request. The number of pages contained within these documents amounts to approximately 3555 pages, which does not include email attachments.

Affected Third Party Consultation

Section 27 of the FOI Act provides that we must not decide to give access to a document containing business information unless the organisation concerned is given a reasonable opportunity to make submissions in support of any exemption contentions under section 47B (Trade Secrets/Commercially valuable information) or section 47G (business information). Due to the nature of the information contained in the documents, it

appears to us that 41 relevant affected third parties might reasonably wish to make an exemption contention over their business information. As such, each affected third party involved in the documents would need to be consulted.

In addition, we have identified Commonwealth Government agencies that would also require consultation as the documents contain information relating to their operations. While there is no provision under the FOI Act requiring an agency to consult with other relevant agencies, under the FOI Guidelines, section 3.70 states that *before making a decision about release of a document it is good practice to consult with other relevant agencies... Consulting with other agencies will also assist in managing requests where an FOI applicant has requested access to the same or similar documents from several agencies.*

I estimate that it would take us approximately 2 hours to consult each affected third party, including other agencies, which would total **82 hours** to complete each consultation. This would include addressing queries that any affected third parties may have to address concerns or questions that they may have about the FOI process, which experiences shows us is common. It also includes receiving and consolidating the affected third-party responses for consideration by the decision maker.

Decision making

If we were to proceed to process your request, a decision maker would be required to examine each page of each document identified as being relevant to your request to decide whether to grant, refuse or defer access to the information in those documents. We would be required to prepare any documents being released to you, including deleting any exempt information from the documents. We would also be required to prepare an access decision, including a statement of reasons setting out the reasons for any information deleted from the documents, as required by section 22 of the FOI Act. I estimate that it would take a decision maker 3 minutes to examine each of each document captured by your request.

Summary of tasks:

Consultation with 41 affected third parties, including Commonwealth Government agencies (2 hours per party consulted)	82 hrs
Examining and deciding on access to 3555 pages captured by your request (at 3 min per page).	178 hrs
Total decision making	260 hrs

In *VMQD and Commissioner of Taxation (Freedom of information) [2018] AATA 4619* (17 December 2018) at paragraph 101, the Senior Tribunal Member Puplick stated that “what constitutes valid practical refusal grounds is thus agency specific and resource dependent. Nevertheless, for any agency, a burden in excess of 200 hours would almost certainly make the threshold of a rational and objective test”.

I have not included in this estimate, the time required to conduct additional searches of information holdings and the time required to sort through all emails to eliminate duplicates. Therefore, consider the actual time required to fulfill this request to be considerably higher than the estimate above.

Based on the above assessment, I am satisfied that your request as it is currently framed, constitutes valid practical refusal grounds.

3 Request consultation

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, the Department will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents.

For example, you may wish to consider revising the scope of your request to:

- Invoices related to the National Cultural Policy launch venue, entertainment, food and refreshments; or
- A document containing the breakdown of all final costs by category (i.e. venue, Welcome to Country, AV and Entertainment, Auslan interpreter) with third party names excluded.

4 Next steps

You have 14 days, from the receipt of this notice, to consult with the Department concerning your request.

Before the end of the consultation period, you are required to 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.

If you consult with the Department within the next 14 days, the Department will take reasonable steps to assist you to revise your request, so that the practical refusal reasons fall away.

If you do not consult with the Department or do one of these things within the next 14 days, your request will be taken to have been withdrawn.

Please note that the statutory processing time for making a decision in response to your request is suspended until the conclusion of the consultation process described in this letter.

5 Legislative provisions

The FOI Act, including the provisions referred to above, are available on the Federal Register of Legislation website: www.legislation.gov.au/Series/C2004A02562

Further information

If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

Mia
FOI Case Manager

Date: 1 March 2023