

Further submissions in support of claiming a practical refusal exists under s 24 of the FOI Act

Please provide the completed document to the OAIIC with the information the respondent is required to provide in accordance with paragraph [3.14] of the [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) (the Procedure Direction). Completion of the following tables will be taken as the respondent's submissions in this IC review. The respondent is required to send these submissions to the applicant at the same time as they are sent to the OAIIC (see the Procedure Direction at [3.23]).

Details of submission	
Agency reference	LEX 811
OAIIC reference	MR23/01386
Date submitted to OAIIC	21 November 2024

Processing timeline and request consultation process (s 24AB)	
Event	Date
FOI request received	16 October 2023
Request consultation notice sent	12 November 2023
Applicant's response	13 November 2023
Further contacts with applicant (if relevant)	
Applicant notified of decision	17 November 2023
Internal review request received (if relevant)	Not applicable
Internal review decision made (if relevant)	Not applicable

Request consultation process (s 24AB) – Assistance provided to applicant (s 24AB(3))

<p>Information provided to applicant to assist revision of request. (For example, suggestions as to a scope that can be processed, directing to applicant to publicly available information, explanation about difficulties processing request. Please provide detail.)</p>	<p>It was suggested that the FOI applicant could provide more specific information about exactly what documents they sought access to.</p> <p>The FOI applicant was advised of the difficulty with processing the request due to:</p> <ul style="list-style-type: none"> • the FOI applicant’s refusal for the request to be transferred to the Federal Court, being the agency most likely to hold relevant documents; • the sensitivity of the subject matter, being recruitment processes and a public interest disclosure investigation; • the Commission being a small portfolio agency with limited staffing resources; • the Commission, at that stage, having no permanent dedicated FOI staffing resources as the number of requests received in the past hadn’t warranted it and had limited capacity to obtain temporary resourcing; • the Commission had received a higher than usual number of FOI requests and internal review requests related to the same subject matter; • the Commission was then working on a number of priority matters related to its functions and the Government’s public service reform agenda; and • the scope of the request captured material related to the other FOI requests received, including documents created as part of processing them.
<p>Telephone contact attempted with applicant. (Yes/no – if Yes please provide detail)</p>	<p>No</p> <p>The request was made anonymously via the Right To Know website and no contact number was provided by the FOI applicant.</p>
<p>Request revised during request consultation process (yes/no)</p>	<p>No</p>

Breakdown of estimated processing time (minutes/hours)		
Total number of documents	No searches undertaken as it was considered these, in themselves, would be too onerous.	Total estimated processing time Up to 78 hours
Identifying, locating or collating	Up to 5 hours	Consulting Up to 9 hours
Examining	Up to 24 hours	Making a copy Not separately itemised in the decision letter.
Deciding to grant, refuse or defer access	Up to 37 hours (Note: Listed as “Redacting pages” and “Compiling schedule of documents” in the decision letter.)	Notifying decision Up to 3 hours
Any relevant additional information related to the estimated processing time	These estimates are extremely conservative, and the actual processing time would likely be considerably longer.	

Sampling	
Sample examined? (Yes or No)	No
Sample size (as a %)	
Number of electronic documents	
Number of hardcopy documents	
Number of non-exempt documents	
Number of partially exempt documents	
Number of fully exempt documents	
Exemptions proposed applied	
Number of documents to which a consultation requirement applies (s 26A, 27 or 27A)	
Any relevant additional information related to sampling	As even the work required to identify, locate and collate relevant documents was considered significant, no searches were undertaken. As such, no sampling was possible.

Whether processing the request would be unreasonable	
Size of the agency (in terms of number of employees).	515 total (including 402 ongoing) <i>(Source: 2023-24 APSC Annual Report)</i> 373 total <i>(Source: 2022-23 APSC Annual Report)</i>
Number of employees dedicated to FOI processing	6 – more than 75% of their time 90 – less than 75% of their time (this includes staff who may have conducted a single search for documents) <i>(Source: 2023-24 OAIC Annual Statistical Return)</i> 1 – more than 75% of their time 11 – less than 75% of their time (this includes staff who may have conducted a single search for documents) <i>(Source: 2022-23 OAIC Annual Statistical Return)</i>
Number or requests received in the last financial year	94 <i>(Source: 2023-24 OAIC Annual Statistical Return)</i> 70 <i>(Source: 2022-23 OAIC Annual Statistical Return)</i>

Whether processing the request would be unreasonable	
Other factors the Respondent may consider to be relevant (see FOI Guidelines [3.117] and ACW at [22])	
The staffing resources available to an agency or Minister for FOI processing	<p>As noted in both the consultation notice and the decision letter, the Commission is a small portfolio agency with limited staffing resources.</p> <p>At the time of the request, the Commission did not have any permanent dedicated FOI staffing resources as, historically, the number of requests received had been quite low.</p> <p>Also, the Commission had received a higher than usual number of FOI requests and internal review requests, 121 of which related to similar subject matter as this request.</p> <p>It was also advised that the Commission had limited capacity to obtain temporary resourcing and was, at that time, working on a number of priority matters related to its functions and the Government's public service reform agenda.</p>
Whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities	Given the subject matter of the request, being recruitment processes in the Federal Court and a public interest disclosure investigation, only a limited number of officers within the Commission had access to potentially relevant documents and the requisite knowledge and background to provide context and assistance. These officers all have competing responsibilities and would have to have been diverted from them to assist with the processing of this FOI request, together with the other 120 related requests.
The impact that processing a request may have on other work in an agency or Minister's office, including FOI processing	<p>As noted above, the Commission was working on a number of priority matters at the time this request was received with limited capacity to obtain additional temporary resourcing.</p> <p>Additionally, the Commission had also received an unusually high number of FOI requests and internal reviews, 121 of which related to similar subject matter as this FOI request.</p>
Whether an applicant has cooperated in framing a request to reduce the processing workload	No, the FOI applicant refused to revise their request in response to the consultation notice and, when the Commission sought to engage following notification of the IC review, the FOI applicant referred to their earlier responses confirming they disagreed that a practical refusal reason existed.

<p>Whether there is a significant public interest in the documents requested</p>	<p>The Commission does not consider there to be a significant public interest in the documents requested.</p>
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Whether processing the request would be unreasonable

<p>Steps taken by an agency or Minister to publish information of the kind requested by an applicant</p>	<p>As noted above, the Commission received 121 FOI requests (including internal reviews) for access to documents relating to the recruitment processes in the Federal Court and a public interest disclosure investigation, and released documents have been published on the Commission's FOI disclosure log in accordance with section 11C of the FOI Act.</p>
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<p>[Only relevant to Ministers] Responsibilities of the Minister and demands on the Minister's time, and whether it is open to the Minister to obtain assistance from an agency in processing the request.</p>	<p>Not applicable</p>
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