



Australian Government
Attorney-General's Department

Our ref: FOI23/548; CM23/35971

27 June 2024

CB

By email: foi+request-10789-6b60e1b2@righttoknow.org.au

Dear CB

Freedom of Information Request FOI23/548 – Request consultation process

The purpose of this letter is to seek information from you about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your Request

On 24 October 2023, you requested access in the following terms:

I would like to request all Ministerial submissions provided to the Attorney-General Dreyfus since their appointment as Attorney-General.

I request it in the following format:

Date of submission,

PDR number

Section of the Department

On 25 October 2023, the department acknowledged your request.

Between 25 October 2023 and the 10 November 2023, the department corresponded with you about the scope of your request. During this timeframe you agreed to narrow the timeframe of your request from 1 June 2022 to 1 June 2023. You also confirmed you were seeking the title of the ministerial submission and agreed with the department's proposal to list the 'section of the Department' at Branch level.

On 11 November 2023, you agreed to the department's request for a 25-day extension of time under s 15AA of the FOI Act.

Between 4 December 2023 and the 29 May 2024, correspondence was sent between the department and you about the processing of this request (i.e. processing updates). To review all the correspondence the department has sent to you about this request see the Right to Know webpage:

https://www.righttoknow.org.au/request/ministerial_submissions#incoming-34958.

On 11 December 2023 and 15 January 2024, the Office of the Australian Information Commissioner agreed to the department's extension of time requests under s 15AB of the FOI Act.

The due date for this request was the 15 January 2024.

Practical refusal reason

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

I acknowledge this request has taken significant time to progress due to its volume and complexity. In progressing the request, I have identified that the work involved in continuing to process this request in its current form would substantially and unreasonably divert the resources of this department from its other operations due to its voluminous nature and the breadth of internal and external consultations required. Section 24AA of the FOI Act refers to this as a 'practical refusal reason' (see **Attachment A**).

I have detailed the estimate of work undertaken and work still required to be undertaken to finalise this request below.

Work undertaken to date	Line by line assessment (1009 titles in total)	Estimated Time
Identify and collate the material in scope of the request	n/a	1 hour
Examine the document to identify relevant business units to consult	n/a	2 hours
Informal consultation with you on the scope of request		1 hour
Prepare consultation documents and consult with relevant business units including responding to queries and requests for advice (37 business units)	n/a	15 hours
Relevant business units assessing material and preparing feedback on whether to grant or refuse access	6 min x 1009 lines	100.9 hours
Preparation of documents for a staged release	1 min x 1009 lines	16.81 hours
Assessment as to whether material is already in public domain and making recommendation to redact the exempt material from the document	8 min x 550 lines	73.33 hours
Total		210.04 hours

Work yet to be undertaken	1009 titles in total	Estimated Time
Consultation with Attorney-General's Office (AGO) on stage 1 release	4 min x 550	36.66 hours
Decision maker assessment of material for stage 1 release	2 min x 550	18.33 hours
Stage 2 Work commences		
Assessment as to whether material is already in public domain and making recommendation to redact the exempt material from the document (on remaining lines of information – <i>stage 2 release</i>)	3 min x 459 lines	22.95 hours
Identifying third parties and external agencies to be consulted		1 hour
Consulting with third parties and other agencies with an interest in the material		1 hour per consultation identified
Consultation with AGO on stage 2 release	3 min x 459	22.95 hours
Decision maker assessment of material for stage 2 release	3 min x 459	22.95 hours
Preparation of decision (including preparation of statement of reasons)		5 hours
Total estimated hours		130.84 hours

Request consultation process

While this FOI request is now deemed (overdue), the department is still obliged to provide you with a statement of reasons and as such, in processing this request, we are following the steps required for a decision under s 24 of the FOI Act.

Where a department is of the view that a practical refusal reason exists, s 24AB of the FOI Act provides for a 'request consultation process' (copy at **Attachment A**). This letter initiates the 'request consultation process'. This means you have 14 days in which to respond to this notice revising your request in one of the ways described below. If you would like to proceed with your FOI request, you must make a revised request, in writing, within 14 days of the date you receive this letter.

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the nature of the material you wish to access. For example, by providing more specific information about exactly what material you are interested in, the department may be able to avoid using excessive resources to assess ministerial submission titles that are not of interest to you.

We have summarised submissions by departmental group below for your information. More information about our organisational structure, which reflects the type of work undertaken across the department, is on the website at <https://www.ag.gov.au/about-us/publications/attorney-generals-department-organisational-structure>.

Submissions by Departmental Group	Number of ministerial submission lines in scope (in its current form)
Enabling Services Group	121
Integrity & International Group	302
National Security & Criminal Justice Group	272
Justice & Communities Group	314

During the consultation period, you are welcome to seek assistance from the contact person named below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, the department will recommence processing it.

If you do not wish to proceed with your FOI request, you may either withdraw your request or advise the department that you do not wish to revise your request. Your request will be withdrawn if you do not contact us or provide written notice of the revised scope of your request within 14 days from receipt of this notice. It is also open to you to you withdraw this request and resubmit a new FOI request. As internal review rights are not available to applicants of deemed decisions, lodging a new FOI request would reinstate the internal review rights available to you.

If you wish to discuss this decision, the FOI case officer for this matter is Joanna, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Jess Hockings
Director
Strategy and Governance Branch

Attachments

Attachment A: Sections 24AA and 24AB of the FOI Act

Attachment A

Section 24AA of the FOI Act: 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.

Section 24AB of the FOI Act: 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.