

opportunity to revise your request to remove the practical refusal reason. This is called a 'request consultation process' as per section 24AB of the FOI Act.

Practical refusal reason

Section 24AA(1) of the FOI Act provides that a *practical refusal reason* exists in relation to a request for a document or either (or both) of the following applies:

- (a) the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations; or
- (b) the request does not satisfy the requirement in paragraph 15(2)(b).

My assessment of the section 24AA(1)(a) practical refusal reason is as follows:

Search and retrieval of documents

The department has undertaken preliminary searches for documents in scope of your request, as per the Office of the Australian Information Commissioner's Freedom of Information Guidelines [at 3.89].

These searches were undertaken by officers of the department with knowledge of and responsibility for the subject of your request, having regard to the department's record management systems and the age of the documents sought.

This preliminary search has so far taken the department approximately **2 hours** to identify 600 documents potentially relevant to your request.

Extraction and scheduling of documents

To process your request further, the department would need to extract the approximately 600 documents from its record management and/or computer systems and manually review each document to ensure that it falls within scope of your request.

On the basis that extraction and conversion of documents to an editable format would take approximately 1 minute per document, I estimate that the extraction process would take at least **10 hours** to complete. Duplicate documents would also be identified and removed during this process.

The department would then need to create a schedule of documents in scope of the request. On the basis that it would take approximately 1 minute per document to enter the required information into a table, I estimate that the scheduling process would take approximately **10 hours** to complete.

Assessment

As the delegated FOI decision maker for this request, I would then be required to read and assess each page of each document in scope of your request against the FOI Act to decide whether to grant, refuse or defer access to the information in any document in scope of your request.

If all documents identified as potentially relevant to your request were determined to be in scope of your request, I would need to review **1,200 pages of material**.

On the basis that assessment would take me an average of 3 minutes per page, I estimate that it would take me **60 hours** to make a decision on access to the documents potentially in scope of your request.

Third party consultation

The department may need to consult with affected third parties in accordance with the statutory provisions of section 27 of the FOI Act.

A preliminary review of documents potentially in scope of your request indicate that 40 third parties may need to be consulted in relation to you request, as per section 27 of the FOI Act.

I estimate that it would take the department approximately **40 hours** for consultation to prepare, send, receive, interpret and apply any correspondence with third parties, noting that this estimate may change as further assessment work is undertaken.

Document preparation

Once I had assessed each of the documents in scope of your request, officers of the department would then need to prepare the documents in scope of your request by applying any relevant deletions or exemptions. Assuming this process would take an average of 3 minutes per page, I estimate that it would take the department **60 hours** to prepare the documents for decision.

The department would also need to prepare a statement of reasons as required by section 15 the FOI Act. I anticipate it would take an officer of the department approximately **2 hours** to prepare this statement of reasons for my final review and decision.

Summary

As outlined above, I estimate that it would take the department at least **184 hours** (or 24 business days) to process your request, as summarised below:

Task	Time (hours)
Search for potentially relevant documents	2
Extraction of documents	10
Preparation of a schedule of documents	10
Third party consultation	40
Assessment	60
Preparation of documents	60
Preparation of a statement of reasons	2
TOTAL ESTIMATE OF WORK EFFORT	184

Whether diversion of resources would be substantial and unreasonable

In considering whether processing your request would constitute substantial and unreasonable diversion of resources of the department I have considered the following factors, as suggested by the FOI Guidelines [at 3.117]:

- the staffing resources available to the department for FOI processing
- whether the processing work requires the specialist attention of a senior officer, or can only be undertaken by one or more specialist officers in the department who have competing responsibilities; and
- the impact that processing this request may have on other work in the department, including FOI processing.

In financial year 2022-23, the department had 5984 staff, 15 of which were allocated to processing of FOI requests. I consider that processing one access request with an estimated work effort of **184 hours** would represent an unreasonable diversion of resources as it would:

- divert 82 hours work effort of myself, an SES Officer, and support staff from the Private Health Strategy Branch, a core operation of the department.
- divert 102 hours work effort from the FOI Section, which is required to respond to all other on hand FOI requests within statutory timeframes.

I further observe that in *VMQD and Commissioner of Taxation (Freedom of information) [2018] AATA 4619* (17 December 2018) [101] the AAT noted:

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. As is illustrated above, burdens as (relatively) small as 74 hours have been so characterised.

As such, I am satisfied that the work involved in processing your request, as currently presented, would substantially and unreasonably divert the resources of the department from its other operations.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

You could revise your request by narrowing the scope of the request and/or providing greater detail about the documents you wish to access. Providing more specific information about the format, timeframes, and substance of the documents you are interested in will enable the department to conduct targeted searches for documents of interest.

The request consultation period runs for 14 days and starts on the day after you receive this notice.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request, or
- tell us that you do not wish to revise your request.

If you do not do one of the three things listed above during the consultation period, or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

If you agree to revise your request in a way that removes the practical refusal reason outlined above, the department will recommence processing your request. Please note: as per section 24AB(8) of the FOI Act the time taken to consult you regarding the scope of your request is not counted in the statutory timeframe provided for processing your request.

Please contact FOI section on the contact details below if you have any questions or require assistance responding to the practical refusal notice.

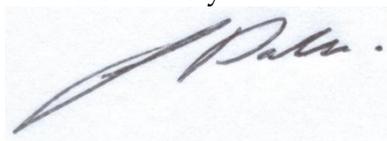
Legislative provisions

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

Contact officer

For the purposes of this consultation, you may contact the FOI Section on (02) 6289 1666, or you can email us at xxx@xxxxxx.xxx.xx

Yours sincerely



Toni Patrick
A/g Assistant Secretary
Private Health Strategy Branch

16 July 2024