



DEFENCE FOI 1001/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by James Smith (the applicant), dated and received on 19 June 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

...please provide a copy of Defence Force Recruiting - Recruiting Services Contract between Department of Defence and Adecco Australia Pty Ltd (ABN 91 006 253 336) contract ID CN3923195 Agency Reference ID:4600042630 dated around October or November 2022, including all and any annexures, appendices, attachments and the like.

See: <https://www.tenders.gov.au/Cn/Show/7ee5b746-f6e5-4dcb-86e6-d3268dc6c477>

Costing/profit information can be redacted however all other information and materials should be provided.

Background

2. On 26 June 2024, Defence formally consulted with the applicant in accordance with section 24AB of the FOI Act. The notice provided to the applicant requested a revision of scope and included a statement outlining Defence's intention to refuse the request if the scope was not revised, on the grounds that a practical refusal reason existed in relation to it. On the same day, the applicant declined to revise the scope of the request.

FOI decision maker

3. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Decision

4. I have decided to refuse this request for access under section 24AA(1)(a)(i) of the FOI Act on the basis that the work involved in progressing this request would substantially and unreasonably divert resources of the Department from its other operations.

Material taken into account

5. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the volume of documents within the scope of the request;
 - c. relevant provisions of the FOI Act; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

REASONS FOR DECISION

Section 24AA – When does a practical refusal reason exist?

6. Section 24AA of the FOI Act outlines when a practical refusal reason exists for the purposes of section 24. Relevantly, section 24AA(1)(a) provides that a practical refusal reason exists if:
 - (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*

7. Section 24(1) of the FOI Act provides that:

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.*

8. In considering whether a practical refusal reason exists I had regard to the matters set out in section 24AA(2), namely the resources required to perform the following activities:
 - a. identifying, locating or collating documents within the filing system of the agency or minister;
 - b. examining the documents;
 - c. deciding whether to grant, refuse or defer access;
 - d. consulting with other parties;
 - e. redacting exempt material from the documents; and
 - f. notifying a final decision to the applicant.

9. Advice was received from Defence Force Recruiting (DFR) that there are over 57 documents within scope, with one document consisting of over 4500 pages. Using a conservative 2 minutes to review each page, it would take one full time staff member 150 hours, or 4 weeks, to consider this document and its annexes.

10. 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 in deciding whether to grant, refuse or

defer access, and redacting any exempt material from the documents. I further note that only one of the 57 documents in scope has been considered, and therefore regard the actual time required to fulfil this request to be considerably higher than the estimate detailed in paragraph 9.

11. I am of the view that if this request were to be processed in its current form, it would have a substantial and adverse effect on DFR's ability to perform its usual functions.
12. Taking all the above into consideration I deem that the work required to progress the request would substantially and unreasonably divert the resources of the Department and on this basis I refuse access under section 24AA(1)(a)(i) of the FOI Act.

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by anna.whipp
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Anna Whipp
Accredited Decision Maker
Assistant Secretary
HR Business Partners