



19 July 2024

Our Reference: 2024/1448

James Smith (Right to Know)  
By email: [foi+request-11535-ef946ccb@righttoknow.org.au](mailto:foi+request-11535-ef946ccb@righttoknow.org.au)

Dear James Smith

### **Notice of intention to refuse access – request consultation process**

I refer to your emails of 19 and 26 June 2024 seeking access under the *Freedom of Information Act 1982 (FOI Act)* to the following:

*19 June – “Please provide all Work Health and Safety notices and reports, including Incident Reports and Notifications sent to Comcare in relation to the MRH-90 Taipan helicopter”*

*26 June – “The FOI request should be read as is and hopefully is self explanatory. The request is for all notifications and reports in relation to the helicopter. It’s not limited to any particular incident or timeframe.*

*I understand Comcare has a searchable database. Additionally the information is likely to have been provided or submitted by Defence given the role of the helicopter.”*

### **Notice of intention to refuse**

This is a notice of an intention to refuse access to the documents you have requested because a 'practical refusal reason' exists under section 24(1) of the FOI Act. I am issuing this notice under section 24AB(2) of the FOI Act.

Section 24AA (1)(a)(i) of the FOI Act provides that a practical refusal reason exists where the work involved in processing the request would substantially and unreasonably divert the resources of Comcare from its other operations.

#### *Documents identified in scope of your request*

Comcare has identified approximately 190 documents, falling within the scope of your request, totalling around 1600 pages.

To process your request, Comcare would have to:

- convert emails and attachments into a PDF for assessment;
- review each page of the files - identifying which documents are able to be released in full, with partial redactions and exempt in full;
- mark each document with appropriate redactions;

- collate documents that relate to another organisation and consult with them;
- schedule documents and prepare its decision; and
- review by relevant business area.

**Size of your request**

Comcare holds a total of approximately 1600 pages of documents that fall within scope of your request.

In accordance with section 24AA(2) of the FOI Act, I have considered factors relevant to processing your request. Due to the volume of documents you have requested, I have undertaken a sampling exercise of approximately 10% of the documents (160 pages) to accurately assess the complexity of the material in the documents. This allows me to make an informed decision on whether the work involved in processing your request would constitute a substantial and unreasonable diversion of resources from Comcare’s other operations.

My 10% sampling exercise included retrieving a variety of the types of documents falling within the scope of your request, and conducting a preliminary review of the documents to determine the nature and sensitivity of the documents. My review of the sample identified a number of exemptions under the FOI Act which would need to be considered, as the documents appear to include:

- information that may prejudice the conduct of an investigation of a breach, or possible breach, of the law (section 37(1)(a))
- material obtained in confidence (section 45)
- information that, if released, would, or could reasonably expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Comcare, and release of which would be contrary to the public interest (section 47E(d) conditional exemption);
- information that relates to the personal privacy of individuals (section 47F conditional exemption); and
- information concerning the business, commercial or financial affairs of an organisation or undertaking, where disclosure of the information would or could reasonably be expected to unreasonably affect the organisation in respect of its lawful business, commercial or financial affairs (section 47G(1)(a) conditional exemption).

The majority of the documents were provided to Comcare by another agency and are complex and appear to be sensitive in nature. The documents are technical and specific to that agency and would require close consultation with them on what information may be released under the FOI Act. Based on this, and my consideration of the sample, I consider that it would take a Comcare FOI officer, on average, four minutes to review each page of the documents and determine if any of the above exemptions apply to the information.

**Amount of time to process your request**

I have calculated an estimate of the number of hours it would take to process your request.

Search and Retrieval	Hours
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<i>Search and retrieval (electronic claims files, claims comments and emails)</i>	14
<b>Search and Retrieval Total</b>	<b>14</b>

<b>Document Processing</b>	<b>Hours</b>
<i>Examination of documents (4 minutes per page)</i>	106
<i>Preparation of decision (10 hours for statement of reasons, plus 2 hours per 500 pages to complete scheduling and convert emails to PDF including attachments)</i>	16
<b>Processing &amp; Decision-Making Total</b>	<b>122</b>

<b>TOTAL HOURS</b>	<b>136</b>
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Based on the sampling exercise and my experience with the type and volume of records you have requested, I estimate it would take approximately 136 hours to process your request. The estimate of 136 hours of processing time is equivalent to a person working full time on your request for more than 3 weeks.

I consider this to be a conservative estimate. I note that the 14 hours to search and retrieve the relevant documents was confirmed to be the time taken by one of the teams involved in locating documents relevant to your request, however there have been four other teams also involved in locating relevant documents.

Further, as noted above, most of the documents that fall within scope of your FOI request have been provided to Comcare by the Department of Defence. These documents include information that is complex, technical and appears to be sensitive in nature. In order to make a decision on access that properly considers relevant exemptions under the FOI Act, Comcare would need to consult with that agency closely and seek significant input in relation to those documents.

Accordingly, I am satisfied that this is a 'substantial' request and would be an unreasonable diversion of Comcare's resources from its other operations, including its roles under the *Safety, Rehabilitation and Compensation Act 1988* and the *Work Health Safety Act 2011*.

### **What you should do?**

I am the officer with whom you may consult with a view to making the request in a form that would remove the ground for refusal. You can contact me by email on [foi@comcare.gov.au](mailto:foi@comcare.gov.au).

#### *Assistance to remove the ground for refusal reason*

Making your request more manageable may mean excluding specific documents or types of documents. For example, you may wish to revise your scope to:

- exclude documents provided by a third party;
- request only internal Comcare documents;

- specify particular types of documents; and
- limit your request to a specific type of incident or timeline.

Further, we note in your clarification email of 26 June 2024, you stated that “*the information is likely to have been provided or submitted by Defence.*” I can confirm that it would assist to remove the practical refusal reason if your request removed or limited documents provided by Defence. You also may want to consider making an FOI request to Defence for certain documents they may hold.

Lastly, please note that even if you do modify your request, it is possible that a practical refusal reason under subsection 24AA(1)(a)(i) may still exist or Comcare may need further time to process your revised request – this will depend upon the terms of your final request. As far as is reasonably practicable, we are happy to provide you with further information to assist you in making your request in such a form that removes the practical refusal ground.

### **Timeframes for revising the scope of your request**

Please note that you have **14 days** from the date you receive this notice to either:

- withdraw the request;
- make a revised request; or
- indicate that you do not wish to revise the request.

If you do not respond in one of these ways within 14 days the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, I will proceed to make a decision on whether to refuse the request on resource grounds under section 24(1).

If you need more time to respond, please contact me within the 14 day period to discuss your need for an extension of time.

Please note that under section 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above. Your response is due to Comcare by close of business **Friday 2 August 2024**.

### **Contacts**

Should you require clarification of any matter discussed in this letter, please contact me by email to [foi@comcare.gov.au](mailto:foi@comcare.gov.au).

Yours sincerely

Sami  
Legal Adviser

Statutory Oversight Team  
Legal Group | Comcare