



OSI reference: FOI24/15; ACON24/30

22 October 2024

Mr James Smith

By email: foi+request-11650-407e8553@righttoknow.org.au

Dear Mr Smith

Freedom of Information request FOI24/15 – Decision Letter

This letter provides you a decision on your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Office of the Special Investigator (OSI).

Background

All correspondence for this matter is available online at the Right to Know webpage for this request¹. A summary is provided at **Attachment A**.

Scope of your request

Your request – as revised on 4 October 2024 – is for:

1. *The agendas and minutes of the OSI's Executive Board and Audit and Risk Management Committee (ARMC) meetings.*
 - a. *final versions of the agendas and minutes (i.e. no drafts are requested)*
 - b. *only documents created between 1 July 2023 to date*
2. *Training presentations and lecture notes, slides or handouts:*
 - a. *given by Mr Mark Weinberg, Mr Chris Moraitis, Ms Helen Daniels or Mr Ross Barnett.*
 - b. *final versions of documents (i.e. no drafts are requested)*

Exclude from the documents: information concerning the businesses and individuals referred to in the OSI's practical refusal request consultation letter dated 3 October 2024

My decision

I am authorised to make decisions in relation to FOI requests received by the OSI.

I consider processing your request would substantially and unreasonably divert the resources of the OSI from its other operations. As such, I have decided to refuse your request under s 24 of the FOI Act.

¹ https://www.righttoknow.org.au/request/osi_board_committee_and_presenta#incoming-37429

In making my decision, I have considered:

- correspondence with you, including the terms of your request and revisions you made.
- advice provided to me by officers who assisted with processing your request
- relevant provisions of the FOI Act
- the FOI Guidelines² issued by the Australian Information Commissioner under s 93A of the FOI Act
- relevant FOI precedent, namely *Tate and Director, Australian War Memorial [2015] AATA 107 (27 February 2015)*³.

Reasons for decision

There are 20 documents comprising 101 pages for part 1 of your request. There are nil documents for part 2 of your request.

Based on advice provided to me, I conservatively estimate it will take 60.5 hours to process your request. A breakdown of the estimated processing time, categorised by reference to processing resource, is below.

Processing resource		Est. hours
<i>Identifying, locating or collating documents within the filing system of the OSI.</i>	<p>This part of work for your request is complete and has involved:</p> <ul style="list-style-type: none"> • Searching for and retrieving the relevant documents from the OSI's records management system. This also involved manually extracting from omnibus records the specific documents relevant to your request. • Liaising with officers who manage relevant records as part of their core duties to ensure all relevant documents were located. • Converting the relevant documents to PDF format where required. • Placing all documents in chronological order, or in another order that is appropriate for responding to this FOI request. • Applying relevant header information (eg FOI document numbers). • Inputting relevant document details into a schedule for preliminary assessment. 	9
<i>Assess the relevant documents for the application of exemption.</i>	<p>This work is not complete. To project estimated processing, a timed assessment of a sample of the relevant documents was previously undertaken for the purpose of the first round of consultation. As a result of that assessment, it was estimated it would take 2 minutes per page to assess the documents.</p> <p>The above assessment was used to estimate the processing time, noting the sample remains representative of the documents within the scope of this revised request.</p> <p>As such, it is conservatively estimate that it would take at least 3 hours (2 minutes x 101 pages) to complete a preliminary assessment on the 20 documents within the scope of the request.</p> <p>However- this estimate could likely increase due the complexity and breadth of subject-matter within the documents. Specifically, the documents:</p>	3

² <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines>

³ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2015/107.html>

	<ul style="list-style-type: none"> Cover all of the OSI's corporate, legal and policy and operational functions, and are not confined to a particular subject-matter or issue. Topics include, but are not limited to, investigations work, health and safety, security, risk management, records management, privacy, human resources, operational updates and legal and policy matters. Include highly sensitive information which would require careful consideration. For example, information affecting law enforcement and national security, defence or international relations. 	
<i>Consultation with third parties</i>	<p>Based on a review of the documents currently within scope, the OSI would need to consult 10 Australian Government agencies and departments or authorities of the Commonwealth.</p> <p>It would take an estimated 1.5 hours to complete each third party consultation, having regard to:</p> <ul style="list-style-type: none"> The time involved with preparing correspondence and document packs for each third party – noting several third parties would need to provide views on several of the documents. Answering enquiries the third parties may make during the consultation process. Considering any final submissions the third parties make to the OSI and, if required, updating the relevant documents accordingly. 	15
<i>Deciding whether to grant, refuse or defer access.</i>	<p>This involves:</p> <ul style="list-style-type: none"> Preparing a draft decision, statement of reasons and a finalised schedule of documents (3 hours). Relevant internal areas and officers with necessary subject-matter expertise reviewing the draft decision and relevant documents. In this case, 7 OSI areas would be required to review the documents and provide input (3 hours per area = 21 hours). Final review decision-making on the request by an OSI authorised officer (7 hours). A decision-maker must consider in detail the terms of the FOI request, relevant provisions of the FOI Act and the FOI Guidelines, the content of the relevant documents, as well as input from third parties and internal OSI work areas. 	31
<i>Redacting exempt material from the documents and notifying you of an interim or final decision and preparing any relevant documents for disclosure.</i>	<p>This involves redacting identified material per the decision-maker's decision and a range of other administrative tasks, such as:</p> <ul style="list-style-type: none"> Ensuring appropriate metadata and security controls are placed on the documents as required, and that relevant footer information is also included. Manually applying a strikethrough on all classification markers that appear in the documents to be disclosed. Preparing and seeking clearance of the correspondence enclosing the final decision and attachments notifying you of the decision on your request. 	2.5
Total hours		60.5

Other matters I have considered in deciding that a practical refusal reasons exists

In line with the FOI Guidelines⁴ published by the Information Commissioner under s 93A of the FOI Act, I have considered other factors in deciding that a practical refusal reasons exists in relation to your request. These factors are detailed below.

The staffing resources available to the OSI for FOI processing

The OSI has one staff member dedicated to processing FOI requests on a day-to-day basis. However, FOI-related work is one part of their role. Other duties include records management and privacy-related work.

In your email of 19 September 2024, you referred to the OSI's FOI delegations⁵ and advised '*... it is not a reasonable excuse to refuse access to the documents requested on the basis of staffing where the OSI must have enough staff available to handle FOI requests.*'

In line with paragraph 3.13 of the FOI Guidelines, the OSI has taken steps to ensure that a sufficient number of officers are authorised at appropriately senior levels to make decisions on FOI requests received into the agency. FOI decision-making by these staff is undertaken in addition to their day-to-day duties which is unrelated to FOI work.

Whether the processing work requires the specialist attention of a senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities

Due to the breadth and complexity of the documents sought, it is anticipated that processing this request would require:

- Review and input from 7 OSI areas, including staff with specialist expertise in ICT, finance, legal and policy, risk, security, governance and investigative and operational matters. Staff in these areas have competing priorities, including duties which are central to the purpose for which the OSI was established.
- The decision to release or refuse access to any documents would need to be made by a senior member of OSI. This is due to the broad scope of subject-matter contained within the documents and the sensitive nature of some of the information.

The impact that processing a request may have on other work in the OSI, including for FOI

All of the OSI's corporate and legal and policy functions necessary to support the running of a small APS agency are carried out by a small cohort of staff; not more than 20.

I consider that processing a request of this scale and breadth would substantially and unreasonably divert the available resources of the OSI from its priority operations. The OSI was established by Executive Order for a specific purpose⁶ and it is essential that as a temporary agency, it remains focused on delivering its mandate in the limited time available.

Specifically, processing this request in its current form would substantially and unreasonably:

- Impact the OSI's ability to process and respond to other FOI requests in a timely manner.

⁴ Paragraph 3.117

⁵ Information regarding the delegations were included in a document released to you by the OSI on 19 September 2013 in response to FOI24/13 – See: https://www.righttoknow.org.au/request/osi_foi_known_materials#incoming-37099

⁶ <https://www.osi.gov.au/about/our-purpose>

- Impact OSI business areas ability to deliver on their work by diverting staff from their priorities. This could compromise the OSI’s ability to deliver on its core outcomes and requirements. For example external reporting required by the Australian Government or the Parliament, as well as deadlines imposed by court, legal and other processes.

Whether an applicant has cooperated in framing a request to reduce the processing workload

The OSI acknowledges you have sought to revise the terms of your request and that fewer overall documents have been captured as a result. However, as previously advised the date range and/or breadth of the subject-matter covered within the documents remains an issue, and the OSI suggested on several occasions you focus your request on documents about a topic or issue..

Whether there is a significant public interest in the documents requested

I acknowledge there may be substantial public interest in the OSI’s remit. However, the sensitive and singular focus of the OSI’s work necessarily places limits on the amount of information the agency is able to release publicly while criminal investigations are ongoing.

Your comments

In your email of 4 October 2024, you raised several concerns about the OSI’s letter dated the previous day. I have outlined your concerns and the OSI’s responses to them below .

Concern raised	OSI’s response
<p>The estimate for third party consultation was not based on any ‘assessment or metric’ and appeared to be inflated.</p>	<p>The estimate for consultation was based on the OSI FOI Officer’s experience in processing other FOI requests. The FOI Guidelines⁷ state an assessment of a sample of the documents – as undertaken by the OSI for this FOI request – “would provide an indication of the complexity of the potential decision, that is, ... the number of consultations required and effort required to contact third parties based on available contact details.”</p>
<p>It was unclear how the 3 hours allocated to the processing resource ‘Assess the relevant documents for the application of exemptions’ differed from the review by relevant line areas, which accounted for 21 hours for the processing resource ‘Deciding whether to grant, refuse or defer access’.</p>	<p>The 3 hours allocated against the processing resource ‘Assess the relevant documents for the application of exemptions’ refers to a brief preliminary assessment of the documents, undertaken by the OSI’s FOI Officer. This assessment identifies any potential exemptions that may be needed and informs next steps for processing – it is not a finalised assessment or decision. As the FOI Officer does not possess relevant subject-matter expertise over the materials, each line area with knowledge of the matters concerned reviews the material in detail and collaborates with the FOI officer as required – this is what accounts for the 21-hours of further review.</p>

⁷ Paragraph 3.121

	As it was estimated it would take approximately 3 hours for the FOI Officer to complete a preliminary assessment, it is expected it would also take each other OSI area (7 in total) to do the same.
The OSI did not mention which 7 different areas needed to review the documents, nor their functions or purpose.	The 7 areas were described in the letters dated 18 September 2024 and 3 October 2024, and are also described in this letter – see the subheader called: <i>Whether the processing work requires the specialist attention of a senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities.</i>
It is unclear why it would take a decision-maker 7 hours to review the materials and make a decision.	As mentioned in the letters dated 18 September 2024 and 3 October 2024, and also in this letter, a decision-maker must consider in detail the terms of the FOI request, relevant provisions of the FOI Act and the FOI Guidelines, the content of the relevant documents, as well as input from third parties and internal OSI work areas. Additionally, as access to the documents would require fine and complex decisions (due to the breadth of subject-matter at issue and sensitivity of some information) decision-making will be an involved and considered process.
The OSI has allocated only one staff member to day-to-day processing of FOI requests: <ul style="list-style-type: none"> as ‘<i>an additional reason to refuse access to materials</i>’, ‘<i>contrary to government policy and the advice of your own external consultant</i>’ despite its annual budget ‘<i>of over \$50m per annum</i>’ 	As mentioned in this letter and previous correspondence, the OSI: <ul style="list-style-type: none"> has no more than 20 staff to support all agency corporate and legal and policy functions and requirements. has taken reasonable steps to ensure that a sufficient number of officers are authorised at appropriately senior levels to make decisions on FOI requests received into the agency, in line with the FOI Guidelines and the Department of Finance’s Entity Start Up Guide⁸ which was referred to in the OSI audit report disclosed to you earlier this year⁹.
There has been a delay with processing and you have revised the request, mostly in line with the OSI’s suggestions.	The OSI is aware this request is overdue and has acknowledged in this letter and previous correspondence that you have made efforts to revise your request. The OSI notes that: <ul style="list-style-type: none"> you were consulted on 6 separate occasions to clarify the scope of this request¹⁰.

⁸ <https://www.finance.gov.au/government/setting-commonwealth-entity>

⁹ Information about this was included in a document released to you by the OSI on 19 September 2013 in response to FOI24/13 – See: https://www.righttoknow.org.au/request/osi_foi_known_materials#incoming-37099

¹⁰ Requests to clarify the request were sent to you on 10 July 2024, 17 July 2024, 8 August 2024, 22 August 2024, 18 September 2024 and 3 October 2024.

	<ul style="list-style-type: none">• you have not revised your request to limit the breadth of subject-matter, despite repeated suggestions that it was one of the factors contributing most to processing time.• this FOI request is one of several which you have submitted to the OSI this year and it is the first to become overdue. The OSI has disclosed material in response to 4 of your requests this year.
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Your rights

If you are unhappy with the way we have handled this FOI request, you can make an FOI complaint to the Information Commissioner.

More information about making an FOI complaint is available on the Office of the Australian Information Commissioner website: <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints>.

Your review rights

You have already referred this matter to the Office of the Australian Information Commissioner (OAIC) – the OAIC reference for the matter is: MR24/01508.

For further information about your review rights, access:

- [Apply for an Information Commissioner review](#)
- [Your freedom of information rights](#)

Yours sincerely



Name: Sam
Position: A/g Chief Operating Officer
Office of the Special Investigator

Attachments

Attachment A: Background to FOI24/15

Attachment A – Background to FOI24/15

- On 8 July 2024, you submitted your FOI request to the OSI.
- On 10 July 2024, the OSI requested further information about your request because parts 1-2 captured a large volume of documents and it was not possible for the OSI to conduct reasonable searches for documents sought under part 3. Later that same day, you responded to the OSI's request and provided additional information.
- On 17 July 2024, the OSI contacted you and advised it had considered the information you provided on 10 July 2024. However, parts 1-2 of your request still captured a large volume of documents and it was still not possible for the OSI to conduct reasonable searches for documents sought under part 3. The OSI requested further information to clarify the terms of your request.

Later that same day, you responded to the OSI's request and asked the OSI to provide a list of the documents for parts 1-2 of your request, and provide a list of topics/issues covered part 3 of the request.

- On 18 July 2024, the OSI invited you to refine the scope of parts 1-2 of your request to a list of documents that would be relevant. The OSI also invited you to further consider the information already provided for part 3 of your request – the OSI advised it was not possible to provide *a list of topics/issues covered by the scope of the request* because it was not possible for the OSI to conduct reasonable searches to begin identifying the documents relevant to this part of your request. The OSI asked you to clarify your request by 22 July 2024.
- On 22 July 2024, the OSI acknowledged your request and advised *'we are still awaiting your response to our request for further information – we have asked you to clarify your request by today, 22 July 2024. As previously advised, if you do not clarify your request, the OSI may need to take steps to practically refuse it under s 24 of the FOI Act.'*
- On 23 July 2024, you responded to the OSI's request for information and advised *'I agree to your suggested refined scope for items 1 and 2. Regarding item 3, please limit it to training presentations and lecture notes, slides or handouts given by the senior staff mentioned.'*
- On 8 August 2024, the initial due date for your request, the OSI sought further information from you as it was unclear to the OSI in what ways you wished to clarify the scope of parts 1-2 of your request. The OSI also requested an extension until 9 September 2024.
- On 15 August 2024, you advised the OSI that:

In relation to request 1 and 2 please provide the agendas and minutes of the OSI's Executive Board and Audit and Risk Management Committee (ARMC) meetings and lists of the documents presented at each meeting (tabulating subject, author, date, number of pages), rather than copies of the presented documents.

In relation to the extension, I note the response is overdue. Rather than submitting the matter for review by the OAI, please confirm if the materials will still be provided? I agree to an extension to COB 6 September.

As an agreement to extend the processing period was not reached before the expiration of the statutory processing period, the extension referred to above could not be applied to your request.

- On 22 August 2024, you contacted the OSI and sought an update on your request. Later that same day, the OSI responded to you and advised the agency was still processing your request and intended to provide a decision. However, that due to *'competing priorities and other events there has recently been an impact on the staffing resources available for processing FOI requests at the OSI'*. The OSI also asked if the following interpretation of your request was correct:

1. *The agendas and minutes of the OSI's Executive Board and Audit and Risk Management Committee (ARMC) meetings. Also provide lists of the documents presented at each meeting (tabulating subject, author, date, number of pages), rather than copies of the presented documents.*
 - a. *final versions of the agendas and minutes (i.e. no drafts are requested)*
 - b. *only documents created between 1 January 2022 to date*
2. *Training presentations and lecture notes, slides or handouts:*
 - a. *given by Mr Mark Weinberg, Mr Chris Moraitis, Ms Helen Daniels or Mr Ross Barnett.*
 - b. *final versions of documents (i.e. no drafts are requested)*

Later, on 22 August 2024, you responded to the OSI's request and advised that *'Yes, I believe your email now captures the scope of the request.'*

- On 18 September 2024, the OSI sent you a practical refusal request consultation letter.
- On 19 September 2024, you responded to the OSI's letter of the previous day, advising:

I revise the request by limiting the time frame from 1 July 2023 to date.

I also withdraw the request for the list, however I note you could have pointed me to the list on your website: <https://www.osi.gov.au/publications/senate-order-production-indexed-lists-files>

I note in response to your letter the comments by Synergy in its audit report of the OSI, where it is stated at page 24 of that report: "The DoF Guide also outlines that staff and resources must be delegated under section 23 of the FOI Act to enable compliance with the FOI Act. The Director-General has delegated a number of officers to make and/or review decisions under the FOI Act - the authorisation was signed on 27 April 2021."

Accordingly, it is not a reasonable excuse to refuse access to the documents requested on the basis of staffing where the OSI must have enough staff available to handle FOI requests.

- On 3 October 2024, the OSI sent you a second practical refusal request consultation letter.
- On 4 October 2024, you responded to the OSI's letter of the previous day. You raised several concerns about the OSI's estimate of processing time and revised your request in the following way:

... by consenting to the redaction of information concerning the two businesses and five individuals. This will remove, at minimum, 10.5 hours of the OSI's estimate in row two of the table.