



Australian Government
Department of Education

Your Ref
Our Ref: Lex 1177

Bob Buckley
By email: foi+request-12056-2324f6af@righttoknow.org.au

Dear Bob

Your Freedom of Information request - decision

I refer to your request, received by the Department of Education (department) on 15 September 2024 and revised on 24 September 2024 and 30 September 2024, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

“all documents held, sent or received by SES officers that explicitly mention or relate to the development of the National Autism Strategy and/or its contents.”

My decision

I am authorised to make decisions under section 23(1) the FOI Act.

I have decided to refuse your revised request under section 24(1) of the FOI Act because a practical refusal reason still exists under section 24AA of the FOI Act. I am satisfied the work involved in processing your revised request would substantially and unreasonably divert the resources of the department from its other operations as specified in section 24AA(1)(a)(i) of the FOI Act.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

You can ask for a review of my decision

If you disagree with any part of the decision, you can ask for a review. There are two ways you can do this. You can ask for an internal review by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment B**.

Further assistance

If you have any questions, please email foi@education.gov.au.

Yours sincerely



Emily
Authorised decision maker
Freedom of Information Team
Department of Education

1 November 2024

REASONS FOR DECISION

What you requested

On 15 September 2024, you requested access under the FOI Act to the following documents:

“all information held by the Department of Education relating to the National Autism Strategy including, but not limited to:

- 1. communication with and information provided to the National Autism Strategy Oversight/Committee/Council and/or its working groups,*
- 2. communication with and information provided to staff or officials in the Department of Social Security,*
- 3. information given to politicians or parliamentary officials,*
- 4. information and records held within the Department of Education, and*
- 5. relevant information received by the Department of Education.”*

Request consultation process

On 23 September 2024, the department wrote to you explaining the operation of the FOI Act in respect of your request. The department outlined its interpretation of your request and made suggestions for clarifying and refining the scope of your request, given it would have captured a broad range of documents. In particular, the department advised you that based on the broad wording of your request, particularly the words ‘including, but not limited to’, your request had been interpreted broadly as being for all documents held by the department relating to the National Autism Strategy (NAS).

On 24 September 2024, you emailed the department and revised your request, stating:

“You can exclude:

** Cabinet documents*

** I am only interested in the final email of email threads, and*

** I do not wish to receive duplicate documents.”*

On 30 September 2024, the department wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act, as your revised request was too big to process. The department gave you an opportunity to consult with the department to further revise your request to remove the practical refusal reason. The department advised you that preliminary searches indicated that the department potentially held thousands of documents, totalling several thousand pages, which could be relevant to your request.

On the same day, you responded by email stating:

“I am puzzled by your claim that preliminary searches indicate the department potentially holds thousands of documents, totalling several thousand pages, which could be relevant to your request.

Work on the National Autism Strategy (NAS) only started after the last election. Responsibility for the NAS is with DSS, not with your Department so it is unlikely that there are "several thousand pages" that could be relevant. And clearly, the time period is limited.

If it helps, I can describe the information I am after as:

all documents held, sent or received by SES officers that explicitly mention or relate to the development of the National Autism Strategy and/or its contents. ..."

I have interpreted your reference to 'SES officers' as a reference to SES officers of the Department of Education.

On 9 October 2024, the department wrote to you again providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act, as your revised request remained too big to process. The department gave you a further opportunity to consult with the department to revise your request to remove the practical refusal reason. The department also explained that it had interpreted the scope of your revised request as excluding Cabinet and duplicate documents and only including the 'final email of email threads'. The department advised you that it had conducted initial IT forensics searches of emails sent from, and received by, departmental email addresses of current and former departmental SES officers containing the terms 'National Autism Strategy' or 'NAS', as it was likely that the majority of documents relevant to your request would be in email form. These searches identified over 700 emails that could potentially be within the scope of your request. The department also advised you that a further 250 documents had been identified outside of the email system that could relate to your request.

On 10 October 2024, you responded and declined to revise the scope of your request.

On 18 October 2024, the department advised you that it had extended the time for processing your request by 30 days to allow for third party consultation in accordance with the FOI Act.

What I took into account

In reaching my decision, I took into account:

- your original request dated 15 September 2024, and your revised requests dated 24 and 30 September 2024
- other correspondence with you
- the results of preliminary searches revealing documents that may fall within the scope of your request
- the resources that would have to be used:
 - in identifying, locating and collating the documents within the records of the department
 - in examining the documents

- to decide whether to grant, refuse or defer access to documents in full or in part
- in making a copy, or an edited copy of the documents, and
- in preparing and notifying you of the decision in relation to the request
- consultations with departmental officers about the searches required to identify documents falling within the scope of your request, the nature of the documents and the operating environment and functions of the department
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the FOI Act.

Reasons for my decision

Following the request consultation process outlined above, I am satisfied that a practical refusal reason still exists because the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations. I did not consider any of the factors outlined in section 24AA(3) of the FOI Act in deciding whether a practical refusal reason exists.

The reasons for my decision are outlined below.

Interpretation of your request

As set out above, your revised request seeks access to:

“all documents held, sent or received by SES officers that explicitly mention or relate to the development of the National Autism Strategy and/or its contents”.

Date range

By email dated 10 October 2023, you advised that *“the date range for the request is already limited to the current term of government”*. Accordingly, the department has interpreted the date range for your request to be 23 May 2022 (when Prime Minister Albanese was sworn into office) to 15 September 2024 (the date of your request).

“Explicitly mention”

On its face, your request captures all documents held, sent or received by departmental SES officers that explicitly mention the NAS. I am advised that this broad interpretation would capture several hundred emails and other documents. I am advised that many of these emails and documents contain only a passing or incidental mention of the NAS. I am also advised that the department holds a large number of emails that explicitly mention the NAS, but relate to organisational or administrative aspects of meetings of the NAS Oversight Council or Working Groups.

Having regard to the overall wording of your request, the department has interpreted your request as being restricted to documents held, sent or received by departmental SES officers that contain substantive material in relation to the development of the NAS and/or its contents. If the department has misinterpreted your request, the estimates of relevant pages and processing time set out below may require significant adjustments.

Processing your request

Following your advice on 10 October 2024 that you were not agreeable to further amending your request, the department commenced manually reviewing each of the over 700 emails identified as potentially being in scope. Some of the emails that had been reviewed as at 18 October 2024 contained information that would require third party consultation, prompting the department to notify you on that date that the processing time for your request had been extended in accordance with section 27 of the FOI Act.

Subsequently, following the completion of the manual review of the over 700 emails, the number of pages containing substantive material relating to the development of the NAS became apparent. Approximately 1,600 pages of email correspondence (including attachments) fall within the scope of your revised request.

A number of additional documents outside of the department's email system have also been identified as being potentially relevant and would need to be manually inspected to determine if they contain substantive material relating to the development of the NAS. As I am satisfied that processing the emails falling within the scope of your request would constitute a substantial and unreasonable diversion of the department's resources for the purposes of section 24AA of the FOI Act, I have not manually reviewed those additional documents, however I expect that such a review would identify further material falling within the scope of your request.

Extent of documents held by departmental SES officers

I have had regard to the comments in your emails dated 24 September 2024 and 30 September 2024, questioning the volume of documents held by the department.

For your assistance, I am advised that the development of the NAS has been the subject of ongoing activity during the time period specified for your request. As set out on the Department of Social Services (DSS) NAS website (<https://www.dss.gov.au/disability-and-carers/national-autism-strategy>), activity during this time has included meetings of the NAS Oversight Council, as well as activities undertaken by four NAS Working Groups. Although responsibility for the NAS rests with DSS rather than the department, the responsible SES officers within the department have received a very large volume of documents and correspondence in relation to the NAS during the period specified in your request. Much of this correspondence relates to organisational or administrative matters in relation to meetings held by the Oversight Council and the Working Groups, and has been excluded from the department's interpretation of your request. However, a large volume of

documents containing substantive material in relation to the development of the NAS has also been held, sent or received by departmental SES officers over the relevant time period. Additional documents outside of the department's email system containing substantive material relating to the development of the NAS are also likely to fall within the scope of your request.

Why your request is substantial

I am satisfied that processing your request would constitute a substantial diversion of the department's resources for the purposes of section 24AA of the FOI Act. In making my decision, I estimate over 144.5 hours of processing time would be required to respond to your request.

I am advised that given the nature of your request, it was necessary for IT forensics searches to be conducted to assist in identifying any documents that may be within the scope of your FOI request. This is because the majority of documents held by the department that are likely to be within the scope of your request would be stored in email form, including in the emails of departmental SES officers who had left the department as at the date of your FOI request. I am also advised that responsibility for work relating to the NAS has moved between different teams and departmental SES officers (both current and former) and this made it necessary for IT forensics searches to be undertaken.

By letter dated 9 October 2024, the department advised that initial IT Forensics searches had identified over 700 emails, likely totalling at least 1,000 pages, that could potentially be within the scope of your request, and approximately 250 additional documents outside of the email system that may also relate to your request. The department estimated that it would take more than 85 hours to respond to your request.

Following your advice on 10 October 2024 that you were not agreeable to further amending your request, the department manually reviewed each of the over 700 emails identified as potentially being in scope. Based on the manual review of these emails, the department identified that considerably more pages fell within the scope of your request than had been previously estimated on the basis of preliminary searches. The department now estimates that email correspondence totalling approximately 1,600 pages falls within the scope of your request. This page estimate does not include an allowance for other documents outside of the email system that may also fall within the scope of your request.

I am advised that the department has spent approximately 53 hours searching for, identifying and retrieving documents falling within the scope of your request. This time includes 15 hours search time by the IT forensics team, 13.5 hours by the relevant business area in inspecting its records to identify relevant documents and arranging for IT forensic searches to be conducted, and approximately 24.5 hours by the FOI team in manually reviewing over 700 emails to identify those falling within the scope of your request.

Sampling exercise

In order to estimate the time required to process your request, two experienced FOI officers in the department's FOI team reviewed and redacted emails totalling 152 pages that had been identified as falling within the scope of your request. Given the number of pages falling within the scope of your request, I am satisfied that this constitutes a reasonable sample.

I am advised that the FOI officers took on average 52.3 seconds to examine each page for decision making purposes and 142.1 seconds per page to redact irrelevant and exempt material. For the purposes of this decision, I have rounded these figures up to 1 minute to examine each page and 2.5 minutes to make appropriate redactions.

I am advised that the officers estimated that approximately 87% of the pages in the sample contained irrelevant or exempt material. Based on this sample, I estimate that approximately 87% of the over 1,600 pages falling within scope of your request contain irrelevant or exempt material (i.e. in excess of 1,392 pages). I am advised that the sampling exercise indicates that if your request were to be processed, an authorised decision maker would need to consider redacting irrelevant material, as well as material likely to be exempt under a range of exemption provisions in the FOI Act.

Based on the searches conducted so far, the manual review of over 700 emails and the sampling exercise, I estimate the time required to process your request to be as follows:

Search for and retrieve documents (including identifying and collating documents within scope)	53 hours
Examine in excess of 1,600 pages for decision making at an average of 1 minute per page	In excess of 26.67 hours (rounded down to 26.5 hours)
Redact in excess of an estimated 1,392 pages at an average of 2.5 minutes per page	In excess of 58 hours
Consult with external third parties	2 hours
Write statement of reasons for decision	5 hours
Total	In excess of 144.5 hours

The time estimate set out above does not include time for reviewing the additional documents outside of the department's email system that have been identified as potentially relevant, or processing the additional documents that are found to fall within the scope of your request.

Some of the documents falling within the scope of your request contain information relating to third parties that is not publicly available. Consideration would need to be given to consulting with the third parties prior to releasing material related to them. This consultation would involve providing a copy of the documents to each third party seeking their comments regarding release, and then considering these comments prior to making a decision. For the purposes of this decision, I have estimated two external third parties would need to be consulted, and that each consultation would take approximately one hour.

As you are aware, responsibility for the NAS rests with DSS. In addition to consulting with external third parties, the department would also need to undertake a courtesy consultation with DSS in accordance with paragraph 3.70 of the FOI Guidelines. The consultation would likely involve several hundred pages of consultation material, and would require extensive work by DSS to review the consultation documents and respond to the department. The time estimate set out above does not include an allowance for the time required to conduct this consultation.

I am satisfied that a processing time estimated to be in excess of 144.5 hours constitutes a substantial diversion of the department's resources for the purposes of section 24AA of the FOI Act.

Why your request is unreasonable

I am also satisfied that processing your request would involve an unreasonable diversion of the department's resources for the purposes of section 24AA of the FOI Act.

Paragraph 3.112 of the FOI Guidelines notes that there may be circumstances where the processing of an applicant's request would have a substantial effect on an agency, but may not necessarily be unreasonable in the circumstances.

The FOI Guidelines provide as follows:

3.113 Similarly, where there is significant public interest value in the disclosure of the information contained in the documents, and/or where an individual has been significantly personally affected by decisions of government, the agency may find it difficult to justify that a practical refusal reason exists on the basis that processing the request would have an unreasonable effect on the agency even where the FOI processing burden is substantial.

3.115 The evident purpose of this practical refusal ground is to ensure that the capacity of agencies and ministers to discharge their normal functions is not undermined by processing FOI requests that are unreasonably burdensome. ... Similarly, although a broadly worded request is more likely to constitute an unreasonable diversion of resources than a request that is narrowly focused, the fact that a large number of documents lies within the scope of a request may not be determinative if the documents can be easily identified, collated and assessed.

3.116 *In deciding if a practical refusal reason exists, an agency or minister must have regard to the resources required to perform the following activities specified in s 24AA(2):*

- *identifying, locating or collating documents within the filing system of the agency or minister*
- *examining the documents*
- *deciding whether to grant, refuse or defer access*
- *consulting with other parties*
- *redacting exempt material from the documents*
- *making copies of documents*
- *notifying an interim or final decision to the applicant.*

3.117 *Other matters that may be relevant in deciding if a practical refusal reason exists include:*

- *the staffing resources available to an agency or minister for FOI processing*
- *whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities*
- *the impact that processing a request may have on other work in an agency or minister's office, including FOI processing*
- *whether an applicant has cooperated in framing a request to reduce the processing workload*
- *whether there is a significant public interest in the documents requested*
- *other steps taken by an agency or minister to publish information of the kind requested by an applicant*
- *...*

I acknowledge that you have narrowed the scope of your original request and I thank you for your efforts in this regard. However, even on a narrow interpretation, your revised request continues to capture a very large number of documents and covers a considerable time frame. If your request is read as including all documents held, sent or received by departmental SES officers that explicitly mention the NAS, it becomes even broader and captures significantly more documents. If this interpretation of your request were to be taken, the time estimates set out above would need to be substantially increased.

I also acknowledge that issues in relation to autism are a matter of public interest and debate. However, I am advised that the draft NAS was released by DSS for public feedback on 2 April 2024 and remains publicly available on the DSS website. I am further advised that it is expected that the final NAS will be considered by Government by the end of 2024, and that it is anticipated that the NAS will be made publicly available if the Government accepts it. The DSS website at <https://www.dss.gov.au/disability-and-carers/national-autism-strategy> also contains extensive information regarding the NAS. In these circumstances, I am

not satisfied that the disclosure of the requested documents would add significantly to the public debate.

In considering whether processing of your request would constitute an unreasonable diversion of the department's resources, I have also had regard to the significant time and resources that would be required to process your request, given the breadth of your revised request and the volume of material falling within its scope.

As discussed above, I estimate that your request would take in excess of 144.5 hours to process. I am satisfied that this constitutes an unreasonable diversion of departmental resources for the processing of one FOI request.

Freedom of information requests are handled by the department's Corporate and Information Law team, which is a small team with responsibility for a range of other functions. I am satisfied that the processing of your request would unreasonably divert the resources of the department's Corporate and Information Law Team from performing its other functions, including processing other FOI requests.

The processing of your request would also divert staff in the relevant departmental business area, who would need to assist the authorised decision maker in the processing of the request.

Weighing all of these relevant considerations, I am satisfied that while there is some public interest in the disclosure of the documents, the processing task is significant and the work involved in processing your request would involve an unreasonable diversion of the department's resources from its other operations.

Accordingly, I have decided to refuse your request under section 24(1)(b) of the FOI Act.

YOUR RIGHTS OF REVIEW

Asking for a formal review of an FOI decision

If you believe the decision is incorrect, the FOI Act gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

- an internal review officer in the department and/or
- the Australian Information Commissioner.

There are no fees for applying for a formal review.

Applying for an internal review by an internal review officer

If you apply for internal review, a different decision maker to the decision maker who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application by email to foi@education.gov.au.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can lodge your application in one of the following ways:

Online:

<https://webform.oaic.gov.au/prod?entitytype=ICReview&layoutcode=ICReviewWF>

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Complaints to the Australian Information Commissioner

Australian Information Commissioner

You may complain to the Australian Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

<https://webform.oaic.gov.au/prod?entitytype=Complaint&layoutcode=FOIComplaintWF>

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001