



OSI reference: FOI24/18; ACON24/47

1 November 2024

Mr James Smith
By email: foi+request-12071-a1d4867f@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request FOI24/18 – Request consultation

The purpose of this letter is to seek information from you about your request for access to documents under the *Freedom of Information Act 1982* (FOI Act) which you submitted to the Office of the Special Investigator (OSI).

Background

All correspondence for this request is located on the Right to Know webpage for the matter¹. A summary is provided at [Attachment A](#).

Practical refusal reason

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

I have decided the OSI is required or authorised to refuse access to your request because the work involved in processing your request – in its current form – would substantially and unreasonably divert the resources of the OSI from its other operations. This is called a ‘practical refusal reason’ under s 24AA of the FOI Act.

Searches indicate that the OSI holds 62 documents comprising an estimated 694 pages for your request.

Processing resource		Est. hrs
Identifying, locating or collating documents within the filing system of the OSI.	Subject to further scope revisions, searches for relevant document have been completed and the documents identified have been placed in chronological order. However, the OSI will still need to prepare the documents for a preliminary assessment – this would include: <ul style="list-style-type: none">• Collating the documents and inputting details of each one into a schedule• Applying relevant header information (eg FOI document numbers)	9
Examine the documents for	This work is not complete. To project estimated processing, a timed assessment of a 15% sample of the relevant documents was	12

¹ https://www.righttoknow.org.au/request/meetings_between_osi_and_icc

Processing resource	Est. hrs
application of exemptions.	<p>undertaken. As a result, it was estimated it would take approximately 40 seconds per page to assess the documents.</p> <p>As such, I conservatively estimate that it would take at least 12 hours (40 seconds x 694 pages = 11 hrs, 54 minutes) to do a preliminary assessment on the documents within the scope of the request.</p> <p>However, this estimate would likely increase due to complexity and other relevant factors. Specifically, the documents:</p> <ul style="list-style-type: none"> • Are not limited by reference to a timeframe or any particular subject-matter or topic. • Appear to include highly sensitive information which would require careful consideration. For example, information affecting national security, defence or international relations.
Consulting with third parties.	<p>Based on the sample above, the OSI considers that it may need to consult at least the following third parties:</p> <ul style="list-style-type: none"> • eight Australian Government agencies and departments or authorities of the Commonwealth • two private organisations • potentially one international organisation. <p>I estimate it would take 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. <p>However, the numbers of third parties and therefore hours required to complete consultation may increase subject to an assessment of all documents within scope.</p>
Deciding whether to grant, refuse or defer access.	<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, 2 OSI areas – Legal and Policy and Governance and Security - would be required to review the documents and provide input (3 hours per area = 12 hours). • Final review decision-making on the request by an OSI authorised officer (6-7 hours). A decision-maker must consider in detail the terms of the FOI request, relevant provisions of the FOI Act and

Processing resource	Est. hrs
the FOI Guidelines, the content of the relevant documents, as well as input from third parties and internal OSI work areas.	2.5
Redacting exempt material from the document and notifying you of an interim or final decision and preparing any relevant documents for disclosure.	<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.
Total est. hours 61-62	

Request consultation process

Before I make a decision to refuse your request, section 24AB of the FOI Act requires a 'request consultation process' (see FOI Act extracts at **Attachment B**). Under this request consultation process you have 14 days commencing the day after you are given this letter to do one of the following:

- Withdraw your request.
- Revise your request in writing.
- Tell us in writing you do not want to revise your request.

Further information about each of these options is below.

Withdraw your request

It is open to you to tell us in writing you want to withdraw your request.

Your request will be finalised as withdrawn if you do not respond to this letter by providing a revised request or telling us you do not want to revise your request within 14 days commencing the day after you are given this letter.

Revise your request

As suggested in the OSI's correspondence of 15 October 2024, we suggest that you revise your request by:

- Agreeing to exclude publicly available material that falls within scope. This material currently accounts for about 184 pages of material across the different parts of your request.
- Part 3 of your request currently captures an estimated 370 pages of material. We would encourage you to withdraw this part and await the outcome of your request for the travel programmes (part 2 of your request), which comprises about 48 pages of material.
- For part 1 of your request, agree to exclude any administrative communication (e.g. practical arrangements for travel and meetings, as well as thank you and acknowledgement emails).

- Advise whether the documents sought should relate to a particular subject-matter or topic, or to a particular time period (e.g. documents created in 2023) or a particular instance of OSI official travel. Please note that the documents currently within scope:
 - Cover a 2 year period spanning September 2022 to September 2024, inclusive.
 - Relate to three different instance of official travel which, respectively, occurred in October 2022; April 2023; and November 2023.

If you do not want to revise your request

You may not wish to revise your request. However, this may have an impact on the outcome of your request. For example, I or another authorised decision-maker may decide to refuse your request if a practical refusal reason still exists in relation to your request.

Next steps and questions

During this consultation period, you are welcome to seek assistance from the OSI's Communication and Information Access area to revise your request. If you revise your request in a way that adequately addresses or removes the practical refusal reason outlined above, we will review your revised request and tell you if further information is needed or if we can continue to process your request on the revised terms.

Please note this request consultation period is not included in the statutory processing period for your request.

If you wish to discuss this letter for any reason, please contact the OSI Communication and Information Access area by email to foiandprivacy@osi.gov.au.

Yours sincerely



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

Attachments

Attachment A: Background to FOI24/18
Attachment B: Relevant extracts of the FOI Act

Attachment A: Background to FOI24/18

- On 22 September 2024, you submitted your request to the OSI.
 - On 3 October 2024, the OSI requested that you provide further information to clarify the scope of your request.
 - On 4 October 2024, you revised the scope of your request to:
 1. *All communications between OSI and past and present staff, employees, advisors or contractors of ICC*
 2. *OSI travel programmes*
 3. *Briefing notes for OSI visits to the Netherlands and London*
- Exclude:
1. *Draft documents; and*
 2. *Documents captured by other FOI requests in which the OSI has provided me a decision already, or which have been published to the OSI's Disclosure log.*
- On 15 October 2024, the OSI contacted you again to request that you provide further information to clarify the scope of your request. The OSI also sought your agreement to a 30-day extension of time.
 - A follow-up was sent to you on 22 October 2024 as no response had been received to the OSI's request of 15 October 2024. The OSI also informed you that if a response was not received by 12:00PM on 23 October 2024, that the agency may need to process your request on the basis of the available information and request an extension of time from the OAIC.
 - As at 1 November 2024, the OSI has not received a response to its request for further information from you.

Attachment B: Relevant extracts of the FOI Act

Section 24AA of the FOI Act: When does a practical refusal reason exist?

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:
 - (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; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

Section 24AB of the FOI Act: What is a request consultation process?

Scope

- (1) This section sets out what is a request consultation process for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
 - (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;

- (e) that the period (the consultation period) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), reasonable steps includes the following:
 - (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
 - (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
 - (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.