

14 November 2024

Kristin Dietrich

eSafety ref: FOI 24259

By email: foi+request-12201-41f819bb@righttoknow.org.au

Dear Applicant

Your freedom of information request

I refer to your request to the eSafety Commissioner (eSafety) on 22 October 2024 under the *Freedom of Information Act 1982* (Cth) (FOI Act). Specifically:

How will the proposed age verification process function in practice for all proposed methods from a technical perspective? Is ESafety able to provide diagrams, technical design documentation etc

Could you please provide detailed information on the specific uses of age verification data? For instance, will the eSafety Commissioner or private companies have access to age verification data, such as facial recognition data or provided ID information? Additionally, will the eSafety Commissioner have the capability to associate potentially collected identifiable data with actual internet usage, such as visits to pornographic sites for example URLs, searches conducted on sites or content viewed? Or will esafety have the ability to compel private companies to provide this information.

If private companies are responsible for implementing age verification, has there been any research or measures taken to ensure that the data captured will be protected from data collection practices governed by legislation in the private companies' respective countries?

(request).

Request is not valid

The FOI Act provides a legally enforceable right to obtain access to documents held by Australian Government ministers and agencies.

Section 15 of the FOI Act therefore requires a freedom of information request to provide such information concerning the documents sought as is reasonably necessary to enable an agency to identify the documents. In our view, your request does not provide such information. Your request is not a request for documents containing information about age verification; it is a request for answers to questions about age verification.

Until your request is made in a manner required by section 15 of the FOI Act, it is not a valid request and cannot be processed.

Accordingly, we invite you to consult with eSafety with a view to amending or clarifying your request so that it complies with section 15 of the FOI Act and provides the information necessary to enable eSafety to identify the documents sought by you.

Suggestions for validity

In order to make your request a valid request, you may wish to consider seeking access to specific documents or categories of documents rather than seeking information or answers to questions¹.

For example, you may wish to revise your request to the following:

Documents containing details of the proposed age verification process, proposed uses of age verification data, and research on data protection of any age verification data collected by private companies.

You may also wish to consider whether eSafety is the appropriate agency for any revised request, noting that the age assurance trial is being undertaken by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), rather than by eSafety. We have provided further information about the age assurance trial, and eSafety's role, at Attachment A.

We note the following to further assist you to revise your request:

1. We can only give you access to documents we hold. Therefore as mentioned above, you may wish to consider whether the Department is more likely to hold the documents you seek than eSafety.
2. We are required to take 'reasonable steps' to identify documents. We can refuse a request if, after taking reasonable steps, a requested document cannot be found (section 24A of the FOI Act). This does not mean the document does not exist, although we can also refuse under section 24A when a document does not exist.

Next steps

We look forward to hearing from you by **close of business on Thursday, 28 November 2024**. If we do not hear from you by this date, we may treat your request as having been withdrawn and close your request. If we close your request, you will need to make a new FOI request if you wish to access documents.

If you have any questions about the matters discussed in this letter, please contact me at FOI@esafety.gov.au.

Yours faithfully

Manager, Legal - Business Services

¹ Noting that an agency is not required to create documents to respond to an FOI request unless section 17 of the FOI Act applies.

Attachment A – Further information about age assurance

Age Assurance Trial

The Age Assurance trial is being undertaken by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), rather than the eSafety Commissioner.

In May 2024, the Australian Government announced funding for an age assurance technology trial to protect children from harmful content, like pornography and other age-restricted online content.

The trial will evaluate the maturity, effectiveness, and readiness for use of age assurance technologies, and consider issues of privacy, security and accessibility. The trial outcomes will help inform future decisions of Government on implementing age assurance technologies.

On 10 September 2024, the Government announced its intention to introduce legislation this year to enforce a minimum age of access to social media and other relevant digital platforms. The legislation is still in development and details about how a minimum age could be verified and enforced are not yet available, but further information is available at the below links:

- [Social Media Summit address | Ministers for the Department of Infrastructure](#)
- [Albanese Government set to introduce minimum age for social media access | Ministers for the Department of Infrastructure](#)

The team managing the trial can be contacted via ageassurancetrial@infrastructure.gov.au.

FOI requests can be directed to FOI@infrastructure.gov.au.

You can also find more information about the trial here: [Tackling online harms | Ministers for the Department of Infrastructure](#)

eSafety's work on age assurance

eSafety is not managing or proposing the implementation and use of specific age verification technologies. However, for context, we provide background information relating to our work on age assurance below.

In March 2023, eSafety submitted a roadmap on age verification to the Australian Government for consideration. It included complementary measures to prevent and mitigate harm to children from online pornography. The roadmap, and an accompanying background report, provided an assessment of age assurance and online safety technologies and international successes and challenges in regulating online pornography.

The Australian Government published its response to the roadmap and the recommendations on 31 August 2023.

In July 2024, we published an issues paper on age assurance and its role in online safety. This paper captures developments since we published the roadmap and considers age assurance for a range of uses.

You can read the roadmap, background report and issues paper on our website. Both papers consider the privacy implications of age assurance technology:

- [Age verification | eSafety Commissioner](#)
- [Tech trends and challenges | eSafety Commissioner](#)

Phase 2 Codes

The Online Safety Act 2021 provides for industry bodies or associations to develop codes to regulate certain types of harmful online material, and for eSafety to register and enforce the codes. There are currently six industry codes in operation and two industry standards for sections of the online industry. This first phase of codes and standards contains measures to address 'class 1A' and 'class 1B' online material.

The second phase of industry codes development, focusing on class 1C and class 2 material that is inappropriate for children, such as online pornography, formally commenced on 1 July 2024.

eSafety issued notices requesting the development of Phase 2 codes to five industry bodies and associations who represent the sections of the online industry to which the codes will apply.

The aims of the Phase 2 industry codes are to prevent children from accessing or being exposed to age-inappropriate material online (including material like online pornography) and to provide all end-users with effective information, tools and options to limit access and exposure to this material.

eSafety's position on these matters is technology agnostic, but suggests that industry adopt measures mandating certain protections which are proportionate to the risk profile of a service, and the likelihood that an end-user might access or be exposed to age-inappropriate or harmful material on a service.

Draft codes as prepared by industry are currently open for public consultation until 22 November. You can also find more information about the codes process at the below links:

- [Industry codes | eSafety Commissioner](#)
- [Phase Two Codes | Online Safety](#)