

6 December 2024

Sean

eSafety ref: FOI 24260

By email: foi+request-12397-763aecff@righttoknow.org.au

Dear Applicant

Your Freedom of Information request

I am writing to firstly acknowledge your request to the eSafety Commissioner (eSafety) on 27 November 2024 for access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). Specifically:

'I am seeking any and all documents that contain any of the following phrases enclosed in quotation marks, dated between 01/09/2024 to 27/11/2024: "Social media ban" "under 16 Age verification" "Social media verification" "social media age verification" "age verification for social media" "Online Safety Amendment (Social Media Minimum Age) Bill 2024" "Social media minimum age".

I am seeking all of the above documents however would accept any document released for any of the listed requests. I give my approval for any identifiable information to be removed or redacted from the request.'

(request).

In relation to your request:

- Unless otherwise requested, we will redact the names and personal information of public servants on relevance grounds pursuant to section 22 of the FOI Act. We will also proceed on the basis that duplicates or draft documents are not required.
- The FOI Act allows 30 days for processing a valid FOI request. This period may be extended for charges and third-party consultation.
- I will contact you at the email address above unless you advise otherwise.
- Any documents released under FOI will be published on our disclosure log unless one of the relevant exceptions apply. Further information about the FOI Act, including eSafety's publication obligations, is available on our website at <https://www.esafety.gov.au/about-us/corporate-documents/freedom-of-information>.

Notice of practical refusal

I am also writing to advise you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of eSafety from its other operations. This is due to the size and scope of your request.

This is called a 'practical refusal reason' (section 24AA of the FOI Act).

On this basis, I intend to refuse your FOI request. However, you have an opportunity to revise your request before I make a final decision. This is called a 'request consultation process' as set out in section 24AB of the FOI Act.

The consultation period runs for 14 days. Under section 24AB, the consultation period is to be disregarded in working out the 30-day period for processing an FOI request. You have 14 days to respond to this notice. I explain your options below under the heading 'what you need to do'.

Why I intend to refuse your request

Your request is for all documents created between 1 September 2024 – 27 November 2024 containing any of the following seven phrases:

- "Social media ban"
- "under 16 age verification"
- "social media verification"
- "Social media age verification"
- "age verification for social media"
- "Online Safety Amendment (Social Media Minimum Age) Bill 2024"
- "Social media minimum age"

We have conducted searches across eSafety's various systems, including Microsoft Outlook and SharePoint, and identified approximately 27,000 documents that fall within the scope of your request.

After examining a sample of the documents, we estimate that processing your request would take more than **4,000 hours**.

We note that the documents cover a wide range of authors, topics and subjects, and don't all necessarily feature the *Online Safety Amendment (Social Media Minimum Age) Bill 2024* as the primary subject matter. For example, documents that contain the requested keywords include emails sent to particular teams within eSafety highlighting the social media minimum age among other current issues of interest, and automated social media alerts (such as Google alerts or Meltwater reports) that highlight media reporting on the topic.

Why your request is substantial

In order to allow us to calculate an estimate of the time it will take to process your request, we have examined a sample of the approximately 27,000 documents within scope of your request. Based on this sample:

- I estimate that it will take, on average, one minute per document to work out if it is in fact relevant to your request (**450 hours**).

- I estimate it will take approximately one hour per 20 documents to prepare a document schedule listing the document number, date and a description of each document. I therefore estimate it will take approximately **1,350 hours** to prepare a schedule for 27,000 documents.
- I estimate it will take at least three minutes to examine each page to assess whether it can be released or whether it is subject to an exemption in the FOI Act (either in full or in part), and approximately two minutes to prepare an edited copy of the documents, including the redaction of exempt and irrelevant material. Taking the very conservative estimate that each document is only one page, there will be at least 27,000 pages within the scope of the request. In light of this, I estimate that this task will take at least **2,250 hours**.
- Assuming that your ‘approval for any identifiable information to be removed or redacted from the request’ removes the need to consult with affected third-party individuals and businesses, the documents at issue potentially contain sensitive information which may require consultation with eSafety personnel. Courtesy consultation with other government departments and agencies may also be required.
- To update the schedule to record the decision and prepare a notice of decision will take approximately **5 hours**.

I have therefore calculated it will take at least **4,000 hours**, or approximately **540 business days**, to process your request.

Diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal reason exists. As well as requiring a request to substantially divert an agency’s resources, section 24AA also requires the request to unreasonably divert an agency’s resources from its other functions before it can be refused under section 24.

The Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency’s resources from its other functions. These include:

- the staffing resources available to the agency for FOI processing
- the impact that processing a request may have on other work in the agency, 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.

In *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 (17 December 2018) [101] the AAT noted:

What constitutes valid practical refusal grounds is thus agency specific and resource dependent. Nevertheless for any agency, a burden in excess of 200 hours would almost certainly make the threshold of a rational and objective test. As is illustrated above, burdens as (relatively) small as 74 hours have been so characterised.

eSafety is an independent statutory office, supported by the Australian Communications and Media Authority. Processing a request of this size would substantially impact on eSafety's operations because of the limited number of people eSafety has available to process FOI requests. It would therefore be necessary for multiple staff members to be diverted from their other work in eSafety to process your request.

As such, I am satisfied that the work involved in processing your request, as currently presented, would substantially and unreasonably divert the resources of eSafety from its other operations.

Request consultation process

You have an opportunity to revise your request. This might mean narrowing the scope of the request to make it narrower and more manageable. This will assist eSafety to focus on the documents that you are most interested in, saving time and resources.

We consider that possible revisions which may remove the practical refusal reasons include:

1. limiting your request to particular categories of documents with a particular subject matter, for example "*briefs, consultation documents or correspondence sent between 01/09/2024 to 27/11/2024, between eSafety and the Minister for Communications Michelle Rowland about the social media minimum age*" or "*correspondence sent between 01/09/2024 to 27/11/2024, between eSafety and other Commonwealth government agencies about the social media minimum age*"; or
2. limiting your request further to a shorter time period and/or fewer keywords, for example "*documents containing either of the keywords 'social media verification' or 'under 16 age verification' dated between 20/11/2024-27/11/2024*".

You may also wish to review some of following resources to assist in revising your request to focus on the kinds of documents or date ranges that you are particularly interested in:

1. eSafety's Roadmap for age verification and background report, available at [Age verification | eSafety Commissioner](#).
2. [Age assurance trends and challenges – issues paper | eSafety Commissioner](#).
3. eSafety's submission to the Parliamentary Inquiry into the influence and impacts of social media on Australian society, available at [Submissions | eSafety Commissioner](#).

It is ultimately a matter for you to decide what changes to make to your request. Once you revise the request, we will be able to confirm whether the practical refusal reason for this request has been removed.

The eSafety FOI team is available to assist you to revise the scope of your request and can be contacted by emailing FOI@esafety.gov.au.

What you need to do

You have 14 days from the date you receive this notice to:

1. withdraw your request in full;
2. make a revised request; or
3. indicate you do not wish to revise your request.

If you do not respond in one of these ways within 14 days (that is, **by the end of 20 December 2024**), your 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 your request under section 24.

If you need more time to respond, please contact the eSafety FOI team within the 14-day period to discuss an extension of time.

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 three things listed above.

If you have any questions, please contact me.

Yours faithfully

Manager, Legal - Business Services