



Australian Government
**Department of Employment
and Workplace Relations**

Our Ref LEX 1305

Jenny Bree

By email: foi+request-12469-78cbf1a1@righttoknow.org.au

Dear Jenny Bree

Your Freedom of Information request – Notice of request consultation process

I refer to your request, received by the Department of Employment and Workplace Relations (department) on 4 December 2024, and revised on 17 December 2024, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

“all briefings and emails between the Department of Employment and Workplace Relations and the Minister of Employment and Workplace Relations from 31 January 2024 to 30 April 2024 relating to draft principles, short term options and possible future directions of changes to mutual obligations and compliance policy settings.”

I am an officer authorised by the department’s Secretary under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

Request consultation

I am consulting with you because the work involved in processing your request in its current form would substantially and unreasonably divert the resources of the department from its other operations, due to the large number of documents identified as being relevant to your request. This is called a ‘practical refusal reason’ (see section 24AA of the FOI Act).

Because of the amount of work involved for the department, under sections 24AA(1)(a)(i), 24 and 24AA(2) of the FOI Act, I intend to refuse your FOI request as a ‘practical refusal reason’ exists.

To assist you, I have set out extracts of the relevant sections of the FOI Act at **Attachment A**.

Practical refusal reason

I have undertaken initial enquiries with departmental officers in the Targeted Employment and Policy Branch regarding the scope and nature of documents held by the department which are likely to be relevant to your request.

The Targeted Employment and Policy Branch have completed searches indicating that the department holds approximately 155 documents (totalling approximately 948 pages) that appear to fall within the scope of your request.

I have considered the work involved in processing your request, taking into account the resources that would be used for:

- identifying, locating or collating documents
- consulting internally within the department regarding sensitivities in the documents
- consulting with other persons or bodies (third parties) external to the department
- examining the documents to decide whether to grant, refuse or defer access to a document, including if any pages require redactions
- preparing third party decision letters and associated schedules should any third parties object to the proposed release of information
- preparing a schedule of documents and writing a statement of reasons
- notifying of any interim or final decision on the request.

Taking these matters into account, I have calculated that it would take over 120 hours to process your request in its current form.

Unless you narrow the scope of documents sought, a very large amount of material would likely be in scope, the processing of which would require an unreasonable diversion of the department's resources from its other operations.

Please note that the FOI Guidelines do not allow the department to undertake 'part processing' of an FOI request. Even if some parts of your request are clear or not considered voluminous, the department must consider your request in its entirety and cannot process any part of your request, while a practical refusal reason exists.

Revising the scope of your request

I am providing you with an opportunity to revise your request in order to narrow the scope of documents you are seeking, and remove any practical refusal reasons that exist in the processing of your request.

Should you wish to continue with your request, you may wish to consider any of the following:

- excluding briefings, emails and attachments that are substantially about administration, coordination, cabinet processes, or budget processes
- further limiting your request to briefings and emails, other than Cabinet material and correspondence connected with Cabinet material, which relate to a specific draft principle, short term option or possible future directions of change (you may find relevant specific draft principles, options, and possible future directions in the department's disclosure log publications of LEX 1114 and LEX 1266)

Please note this is not an exhaustive list and you are welcome to add any further suggestions on how you can further narrow the scope of your request to further improve your chances of removing the practical refusal reason.

What you need to do

Within the next 14 days (consultation period) you will need to respond, in writing, in one of the following ways:

- make a revised request
- indicate that you do not want to revise your request

- withdraw your request.

If we do not hear from you by **30 January 2025**, we will assume you do not wish to continue with your request.

Timeframe for processing your request

As you agreed to a 30 day extension of time to process your request (pursuant to section 15AA of the FOI Act), we have 60 days to give you a decision about your request.

However, the time taken to consult with you now is not included in this 60 day time period.

Further assistance

During the consultation period you are welcome to ask for my help in revising your request by sending an email to foi@dewr.gov.au.

Yours sincerely

MB

Marcus
Authorised decision maker
Australian Government Department of Employment and Workplace Relations
16 January 2025

RELEVANT SECTIONS OF THE FREEDOM OF INFORMATION ACT 1982

Section 24 Power to refuse request—diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.

- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
 - (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

Section 24AA 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.

24AB 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