



31 December 2024

Noseyrosey

By email: [foi+request-12608-e0eb68ca@righttoknow.org.au](mailto:foi+request-12608-e0eb68ca@righttoknow.org.au)

Dear Nosey,

**Freedom of Information – Request consultation notice under section 24AB**

**FOI Reference number: 24/25 – 37**

I refer to your correspondence to the Fair Work Commission (**Commission**) dated 14 December 2024, in which you requested access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

To recap, you have requested the following:

*"I seek access to any and all documents, records, data, and supporting material held by [Name of Agency] concerning the sharing of personal information originating from the Department of Veterans' Affairs (DVA) over the last ten years. This includes any data transfers from or to the DVA, whether they were one-off exchanges or ongoing, systematic transfers of DVA client information, including personal, medical, financial, or service-related details concerning veterans or their dependents.*

*I am interested in obtaining a comprehensive understanding of what DVA client information [Authority name] has received or accessed and for what purposes. Specifically, I request:*

*All records of data sharing arrangements between DVA and [Authority name], including but not limited to memoranda of understanding, service-level agreements, emails, letters, meeting minutes, file transfer logs, internal reports, and instructions that outline what data was shared, when it was shared, and the format or system used for the transfer.*

*Any policies, procedures, guidelines, or frameworks that govern how [Authority name] requests, obtains, stores, handles, or uses DVA client information. This includes documents that detail the criteria for approving access to such data, any consent or authorization processes, security controls, and retention or destruction policies.*

*Copies of any ethics committee approvals, privacy impact assessments, internal review board decisions, or other documents that reflect deliberations or authorizations for obtaining DVA client information. This includes records that show the agency considered the ethical, legal, or privacy implications of receiving or using DVA client data.*

*Documents that outline the intended uses or practical applications of the DVA client data, such as project proposals, business cases, internal strategy papers, or briefings that explain why [Authority*

*name] sought access to this information, how it was intended to be integrated into the agency's operations, and any expected outcomes or benefits.*

*A representative sample (in a suitably de-identified or redacted form) of the data or data fields received, so long as providing this sample does not breach any exemption under the FOI Act. The purpose is to understand the nature and granularity of the information shared, without disclosing identifiable personal details."*

**(requested documents)**

### **My intentions with your request**

I intend to refuse the request, based on its current wording and scope.

I draw your attention to sections 24 and 24AA of the FOI Act. An extract of those provisions are provided below:

#### **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.

#### **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.

For the reasons outlined below, a practical refusal reason exists in relation to the wording and the scope of the request.

In accordance with section 24AB(2) of the FOI Act, I am required to consult with you in writing to advise you of my intention to refuse your request. I am also required under section 24AB(2) to:

- seek confirmation as to whether you wish to revise your request within 14 days after you have been given the notice; and
- state the practical refusal reason in relation to your request.

Having assessed the nature and the number of the requested documents, the work involved in processing the request would substantially and unreasonably divert the resources of the Commission from its other operations. It is on that basis that a practical refusal reason exists, under section 24AA(1)(a)(i) of the FOI Act.

Commission staff have undertaken a search for the requested documents. The search was conducted with the assistance of the Commission's ICT team, which has oversight of, among other things, the Commission's email servers and correspondence which is received by email addresses monitored by staff of the Commission. The search has also incorporated the timeframe which you had specified in your request.

I have been advised of and I am satisfied that there are a large number of results. Specifically, the search conducted by ICT returned 907 results, which contain documents which may or may not be captured by the scope of your request. If I, or another decision-maker under the FOI Act, were to spend at least 3 minutes on each result, which may contain one or more documents that may or may not fall within the scope of your request, it would take approximately, and at minimum, 45.35 hours to process your request.

This, in my view, would reasonably be expected to amount to an unreasonable diversion of resources for Commission staff, based on the following factors:

- the Commission's Legal Services team, which processes Freedom of Information requests, is a small team that also has oversight of, among other things, management of judicial review matters in which the Commission is involved in as a party, advice and governance in relation to the Commission's obligations under the *Privacy Act 1988* (Cth), and the provision of legal advice and assistance to internal stakeholders in relation to the Commission's statutory functions;
- flowing on from my previous point, the Commission, as an agency, has finite resources and is not able to gather, assess, evaluate, and process an excessively large number of documents within the timeframes as stipulated by the FOI Act;
- consultation with third parties under the FOI Act, as well as internal consultation with Commission personnel may be required in determining the suitability in releasing some of the requested documents; and
- some of the requested documents may require a more detailed analysis compared to other documents in relation to their suitability and whether those documents should be released, which is expected to add to the processing time.

I have not considered the reasons which you have alluded to in your request, as that is an irrelevant consideration, as per section 24AA(3)(b) of the FOI Act.

Based on the above, I am satisfied that a practical refusal reason exists in relation to this request, within the meanings of sections 24(1) and 24AA(1) of the FOI Act.

## Consultation process

I have decided to give you 14 days, starting on the day after you have been given this notice to do one of the following:

- withdraw your request;
- make a revised request; or
- indicate that you do not wish to revise your request.

If you revise your request so that no practical refusal reason exists, I can assess the revised request.

As a suggestion, you may wish to consider narrowing the timeframe provided to be for a shorter time frame than the current period of ten years. Another suggestion which you may wish to consider is to specify which document, or documents, that you are requesting, rather than a broad and non-exhaustive list of categories of documents.

I further note that the Commission is Australia's national workplace relations tribunal and is also the Commonwealth regulator of registered organisations, as listed under the *Fair Work (Registered Organisations) Act 2009* (Cth). If you do wish to revise the scope of your request, I ask that you take the Commission's functions as an agency into consideration. Further information about the Commission's functions as an agency can be found [here](#).

Please also note that if you do provide a revised request, the due date for a decision may be extended by a period of 30 days, based on consultation requirements concerning either personal information or business information being contained in the documents covered by the revised request. However, whether the Commission will undergo consultation with any affected third parties will, of course, be contingent on the scope of the revised request.

If you decide to consider revising your request, I am willing to assist in negotiating for a revised scope.

## Status of your request

Under s 24AB(7) of the FOI Act, the request will be taken to have been withdrawn if, within 14 days after you have been given this notice:

- you do not make a revised request;
- you do not indicate that you do not wish to revise your request; or
- you do not consult me.

Under section 24AB(8) of the FOI Act, the period starting on the day you are given this notice and ending on the day you make a revised request or indicate that you do not wish to revise the request is disregarded when calculating the 30-day period for assessing the request (i.e. the clock has 'stopped' in relation to the processing time of your request until you make a revised request or indicate that you do not wish to revise your request).

Thank you for your assistance in relation to this matter. I look forward to hearing from you.

Yours sincerely,

FOI Officer  
FOI Delegate  
Legal Services  
Fair Work Commission