



25 November 2021

By email: [REDACTED]

Dear [REDACTED]

Freedom of Information

FOI Reference number: 21/22-19

Request consultation notice under s.24AB of the FOI Act

I refer to your email to the Fair Work Commission (**Commission**) of 1 November 2021, in which you seek access to documents under the *Freedom of Information Act 1982 (FOI Act)*. I understand you seek access to:

1. All emails from or to President Iain Ross containing references to Deputy President Lyndall Dean from 27 September 2021 to 31 October 2021, inclusive; and
2. All emails from or to General Manager Murray Furlong containing references to Deputy President Lyndall Dean from 27 September 2021 to 31 October 2021, inclusive.

On 10 November 2021, the Commission acknowledged receipt of your request. I am writing to advise you that I consider the work involved in processing your request would substantially and unreasonably divert the resources of the Commission from its other operations. This is called a '*practical refusal reason*' under s.24AA of the FOI Act.

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

You have **14 days** to respond to this notice in one of the ways set out below under the heading '*Request consultation process*'.

Why I intend to refuse your request

Section 24(1) of the FOI Act relevantly provides:

If an agency...is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see s.24AA), the agency...

- (a) must undertake a request consultation process (see s.24AB); and
- (b) if, after the request consultation process, the agency...is satisfied that the practical refusal reason still exists – the agency...may refuse to give access to the document...

Section 24AA(1) of the FOI Act relevantly provides:

For the purposes of s.24, a practical refusal reason exists in relation to a request for a document if...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...

The Commission estimates that the scope of your FOI request includes a significant number of documents. Initial searches have identified in excess of 500 pages of documents that include a reference to Deputy President Dean. Further searches will be required to ensure that all documents that include a reference to the Deputy President are identified, which will require examination of further documents to identify whether they are relevant to the FOI request. Once the relevant documents have been identified, the Commission will need to review the documents to determine whether any exemptions under the FOI Act are applicable.

The documents identified through initial searches contain the personal information of a number of individuals, including parties to Commission matters and members of the public, as well as information about other agencies. It is anticipated the Commission will need to extend the time to process the FOI request to consult with these individuals and agencies. Once the consultation process has concluded, the Commission will then need to make a decision on whether to release or refuse the relevant documents or whether it is reasonably practicable to release the documents with modifications. The preparation of any documents for release by modifying irrelevant, exempt or conditionally exempt material will further require a substantial amount of time.

I therefore consider your request, in its current form, is unreasonably onerous. As Branson J noted in *Radicic v Australia Postal Commission*,¹ [t]he FOI Act is concerned with the provision of access to documents and does not, by its provisions, require the handing over of large portions of the records of a government agency to allow an individual to search them for himself or herself.²

The Commission is a small agency and can be distinguished from larger agencies with dedicated FOI teams. In respect of processing FOI requests received by the Commission, the Commission currently only has one FOI officer who is also responsible for processing other FOI requests within strict statutory timeframes.

For all the reasons outlined above, I believe the process of:

- identifying, locating and collating all potential documents relevant to your request;
- examining the documents and assessing them for relevance and removing duplications;
- assessing whether exemptions or conditional exemptions apply to any identified documents;
- consulting with affected third parties and agencies;
- making a decision on whether or not to grant access to any relevant documents; and

¹ [1999] FCA 574.

² Ibid at [28].

- preparing the relevant documents (if any) for release (by making a copy of and editing any documents, (where applicable))

would substantially and unreasonably divert the resources of the Commission from its other operations.

Request consultation process

The consultation period runs for 14 days and starts on the day after you receive this notice. You now have an opportunity to respond to this notice, in writing, before the end of the consultation period in one of three ways.

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

Revising your request can mean narrowing the scope of the request so that the documents falling within the scope can be more easily located and identified as relevant. For example, because your request is for emails containing *any reference to Deputy President Dean in emails to and from the President or General Manager*, I note that a document that currently falls within the scope of your request is a copy of one of the Commission's Annual Reports, which was attached to an email. The Commission's Annual Reports include information about Commission Members. They are published on the Commission's website and can be accessed here: [Annual reports | FWC Main Site](#).

During this period, you can contact me to seek assistance to revise your request including narrowing the scope of your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, I will recommence processing it. Please note, that the time taken to consult with you regarding the scope of your request is not taken into account for the purposes of the 30-day time limit for processing your request.

If you do not respond during the consultation period in one of the three ways referred to above, your request will be taken to have been withdrawn.

Charges

It is possible that you will be liable to pay a charge in respect of the processing of your request, if you decide to continue with your request and following the consultation period, I decide that a practical refusal reason no longer exists. The *Freedom of Information (Charges) Regulations 1982* authorises agencies to charge \$15 per hour for time spent searching for or retrieving documents and \$20 per hour for decision making (which includes examining documents and making a copy or editing documents). I note the first five hours of decision-making time are free.

I will formally advise you if I decide that a charge is payable and provide a preliminary assessment of the amount of the charge.

Contact officer

If you would like assistance in revising your request or if you have any queries about this matter, please feel free to contact me on (03) 8656 4544 or via email at foi@fwc.gov.au.

Yours faithfully,

Nancy Abdalla
Freedom of Information and Privacy Officer
Fair Work Commission
Phone: (03) 8656 4544
Email: foi@fwc.gov.au