



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2020/255

Original Sovereign Tribal Federation

By email

Dear Original Sovereign Tribal Federation

I refer to your email of 28 October 2020, in which you made a request to the Department of the Prime Minister and Cabinet (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**), in the following terms:

Dear Honorable Ken Wyatt AM MP, Minister for Indigenous Australians.

I make request under the Freedom of Information Act,

I request the document providing the "Claim of Right" relied upon by the Minister for Indigenous Australians, the Crown and the COMMONWEALTH OF AUSTRALIA to provide administration, rule or ownership over the lands of the Larrakia people within the Northern Territorial area currently known to the Crown and Commonwealth as Darwin.

On 20 November 2020, the Department wrote to you noting that your request was addressed to the Minister for Indigenous Australians. The Department also provided you with the contact details of the National Indigenous Australians Agency (NIAA) which is the agency that provides administrative support to the Office of the Minister for Indigenous Australians in relation to FOI requests made to the Minister. The Department invited you to direct your request to the NIAA and withdraw your request with the Department.

On 21 November 2020, you confirmed that you do not wish to withdraw your request to the Department.

Authorised decision-maker

The authorised decision-maker for your request is Mr Tristan Reed, Assistant Secretary, Social Services, Indigenous and Veterans' Affairs Branch.

Notice of practical refusal reason

Section 24(1) of the FOI Act provides that a request to an agency may be refused if the decision maker is satisfied that a practical refusal reason (as set out in section 24AA of the FOI Act) exists in relation to the request.

I write to advise you that the decision-maker considers that your FOI request does not provide sufficient information to enable identification of the document you are seeking. This constitutes a ‘practical refusal reason’ under section 24AA of the FOI Act. On this basis, the decision-maker intends to refuse access to the document you have requested.

However, before the decision-maker makes a final decision to refuse the request for a practical refusal reason, you have an opportunity to revise your request. This is called a ‘request consultation process’ as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Reasons for intention to refuse your request

Under section 24AA(1)(b) of the FOI Act, a practical refusal reason exists where an FOI request does not satisfy the requirements of section 15(2)(b) of the FOI Act. Relevantly, section 15(2)(b) states that a request must ‘provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify it’.

It is not clear to the decision-maker what documents you are seeking and the other information in your request does not assist. Accordingly, the decision-maker considers that your request in its current form does not provide such information concerning the document as is reasonably necessary to enable a responsible officer of the Department to identify the document.

Request consultation process

You now have an opportunity to clarify and revise your request to enable it to proceed. Revising your request can mean explaining in more detail the specific document you wish to access.

After we receive further information from you, we will assess whether you have sufficiently clarified your request. If your request is sufficiently clarified, then we will assess the work involved in processing your request and consult you again if we consider that the request requires narrowing before it can proceed.

You may wish to consider clarifying your FOI request by, for example:

- specifying a date range for the documents you are seeking;
- limiting your request to specific types of documents; and
- providing further information as to what you mean by “claim of right”.

No guarantee of access

Please be aware that even if you revise your FOI request to enable it to be processed, there is still no guarantee that documents will ultimately be released. That is a matter for the decision-maker to decide in the usual manner after identifying and examining the relevant documents. The issue we are addressing at the moment is whether your FOI request can be processed – not what the eventual outcome may be if it is processed.

Action required

Section 24AB of the FOI Act provides that you must do one of the following, in writing, within the next 14 days:

- revise your FOI request;
- indicate that you do not wish to revise it; or
- withdraw the FOI request.

If you do *not* do one of the above within the next 14 days, your FOI request will be taken to have been withdrawn.

If you were to revise your FOI request in a way that adequately addresses the practical refusal grounds outlined above, the Department will recommence processing it.

Calculation of 30 day period

Please note that the time taken to consult with you regarding the scope of your FOI request is not taken into account for the purposes of calculating the 30 day period during which the Department is required to take all reasonable steps to process your FOI request.

Should you wish to discuss your request, please contact the Department's FOI and Privacy Section on (02) 6271 5849, or by email to foi@pmc.gov.au.

Yours sincerely



Leila Galang
A/g Senior Adviser
FOI and Privacy Section
24 November 2020