



FOI15/030; 15/3593

26 March 2015

Mr Alex McKean
Barrister at Law
Sunshine Coast Barristers Chambers
Suite 3, Level 3
57 The Esplanade
Cotton Tree QLD 4558

Dear Mr McKean

Freedom of Information Request FOI 15/030

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) for access to documents relating to Professor Gillian Triggs.

I, Sarah Chidgey, First Assistant Secretary, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its broad scope. This is called a 'practical refusal reason' (section 24AA).

On this basis, I intend to refuse access to the documents you 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 in section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways described below.

Why I intend to refuse your request

On 28 February 2014 you sought access to documents relating to Professor Gillian Triggs, specifically:

"The relevant time period for the request is 01.09.14 to date

Access is sought to the following documents:

1. *Created by Mr Moraitis: File notes, memoranda, emails, or any other documents, relating to Professor Gillian Triggs.*
2. *Created by the Attorney-General, Senator the Hon. George Brandis QC:*
 - *a) records of any communications with Mr Moraitis about Prof. Gillian Triggs;*
 - *b) records of communications with the Prime Minister, the Prime Minister's office, or the Department of Prime Minister and Cabinet about:*

Prof Gillian Triggs;

The HRC inquiry into children in detention.

c) Mr Moraitis' diary for the period, including details of his travel;

d) Records showing, with respect to the loss of a briefcase, a folder or folders, or particular notes by Mr Moraitis ('the loss'):

- i) any notification, report or other communication from Mr Moraitis, or on his behalf,*
- ii) steps taken to comply with the security governance guidelines published by the Department, in particular:*
 - whether the loss has been classified as a major security incident, security incident or security infringement;*
 - the time and place of the loss;*
 - the circumstances of the loss;*
 - the types of official resources suspected to have been lost;*
 - whether the loss was deliberate or accidental;*
 - an assessment of the degree of harm done;*
 - a summary of the short and long term damage done;*
 - any investigation which is being contemplated, or has begun, into the loss;*
 - any efforts made by Mr Moraitis, or on his behalf, to locate the lost briefcase;*
 - any effort made by Mr Moraitis, or on his behalf, to inform Prof Triggs of the loss of notes of a confidential discussion involving Prof Triggs.*

On 3 March 2015 the Department transferred part of your FOI request, regarding documents created by the Attorney- General, to the Attorney General's Office under section 16 (1)(b), as the documents requested are more closely connected to the functions of the Attorney General's Office than this Department.

I decided that a practical refusal reason exists because I have determined that processing this request would substantially and unreasonably divert the resources of the Department from its other operations.

In coming to this decision, I have considered the elements to which I must have regard to under section 24AA(2) of the FOI Act, including the resources that would be used for:

- identifying, locating or collating the documents within the department's electronic documents management system;

- 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 examining the document or consulting with any person or body in relation to the request);
- making a copy or an edited copy, of the documents;
- notifying any interim or final decision on the request.

I consider that a practical refusal reason exists in relation to your request because of the large volume of information you have requested and the complexities involved in considering relevant documents in order to decide whether to grant access.

In particular, at point "C" of your request you seek access to "*Mr Moraitis diary for the period, including details of his travel*", which is information not available in discrete form in a written document. This is because the Secretary's diary is kept as an electronic database, using Microsoft Outlook. I consider that a written document containing the information in discrete form can be produced in accordance with section 17 of the FOI Act, using information technology available in the Department. Given the broad scope of your request, this will be a significant undertaking which will divert resources from the other operations of the Department.

Part "C" of your request seeks access to the appointment diary and travel details of Mr Moraitis, Secretary of the Attorney-General's Department, for the period 1 September 2014 to date. Mr Moraitis was not appointed Secretary to the Department until 22 September 2014. Because of this, I have taken your request to be for access to the diary of Mr Moraitis from 22 September 2015 until the date of your request. This is a total of 5 months and one week. The Secretary works at least five days each week, though often more. On any given day, the Secretary has on average 32 meetings and other engagements a week. On that basis I estimate that a document containing the information about the Secretary's engagement for the period would contain approximately 725 separate appointment entries.

For each appointment entry, a decision would have to be made about disclosure. A significant proportion of the entries would contain exempt material. Decisions about the proper application of the provisions of the FOI Act would necessarily involve extensive consultations with the Secretary's Executive Adviser, and in many instance, the Secretary himself.

Using a sample consisting of diary entries for a four week period, I have estimated that some 190 individuals and representatives of government, community or commercial organisations, referred to in the diary entries, would need to be consulted as part of the process of making a decision on your request. Having considered recent decisions of the Information Commissioner in '*EU and Department of Human Services* [2015] AICmr 15[56]; *Farrell and Department of Immigration and Border Protection (No 2)* AICmr 121 [47]; and *Gurjit Singh and Attorney-General's Department* [2015] AICmr 20 [45], I consider 2 hours for each consultation to be a reasonable estimate of the time required to consult with third parties. Based on this, I estimate it would require approximately 380 hours of staff time to conduct consultations prior to making a decision about disclosure of material in the Secretary's diary for the period 22 September 2014 to 28 February 2015.

In estimating the time it would take to process your request, I have taken the following into account:

- The time it would take to generate, locate and collate the requested documents;
- The Secretary's role as the most senior officer in the Attorney-General's Department, which has the central function of supporting the Attorney-General as First Law Officer of the Commonwealth and the Minister for the Arts as well as the Minister for Justice;

- The need for the Secretary or his Executive Advisor to inspect each of the estimated 1,170 appointment entries, as well as other documents, which may fall within the scope of your request.
- The resources necessary to consult with a number of Commonwealth agencies regarding material affecting law enforcement and protection of public safety, national security, defence, international relations, or Cabinet deliberations;
- The resources necessary to consult State government agencies about material that may affect Commonwealth-State relations;
- The resources necessary to consult individuals and business organisations about material containing personal or business information; and
- The time it would take to prepare a notice of decision and schedule of documents.

Taking all those factors into account, I estimate that processing your request would require in excess of 400 hours of time of officers of the Department.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, we will be able to identify the documents more quickly and avoid using excessive resources to process documents that are not of interest to you.

To assist you to revise the scope of your request I can advise that the Secretary, Mr Moraitis, did not lose a briefcase during the period 1 September 2014 to 28 February 2015.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice.

During this period, you are welcome to seek my assistance to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you about the scope of your request is not included in the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

If you would like to revise your request or have any questions, please contact me by telephone on (02) 6141 2782 or by email at foi@ag.gov.au.

Yours sincerely



Sarah Chidgey

First Assistant Secretary