

Ashauer, Matthew MR

From: Groves, Joanne MRS on behalf of FOI
Sent: Thursday, 21 December 2017 12:56 PM
To: Viney, Nicola MS
Cc: Davidson, Melissa MRS; Cameron, Cos MR
Subject: FOI MEDIA SENSITIVE - [REDACTED] - Right to Know - FOI Processing/Management Policy & Procedural Documents [SEC=UNCLASSIFIED]

Importance: High

Categories: UNCLASSIFIED

UNCLASSIFIED

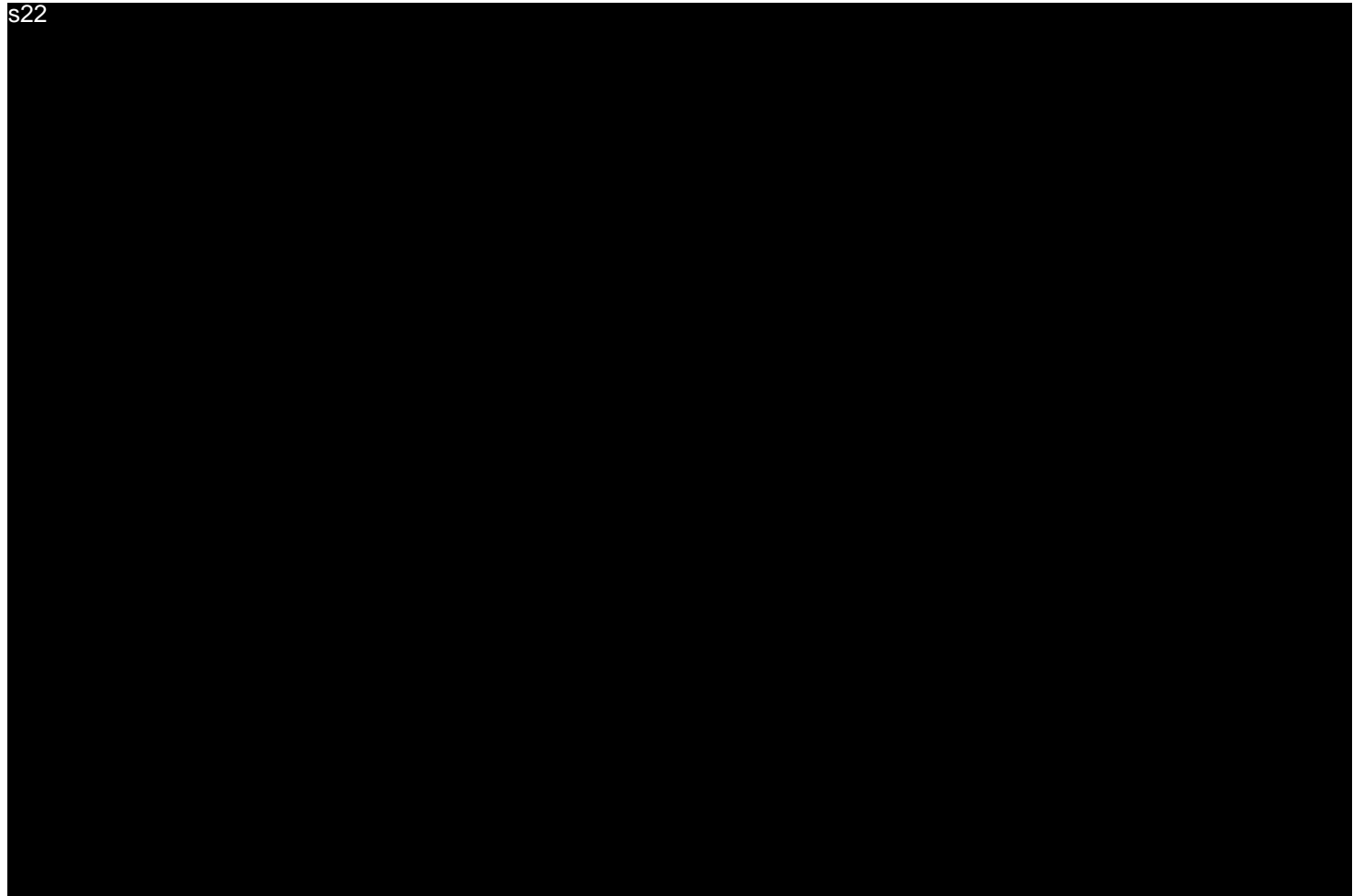
Good afternoon Nicola,

Please see the below media sensitive FOI request from [REDACTED]. It has been registered (case 244/17/18) and the applicant has been requested to agree to an extension of the statutory timeframes. As yet, she has not responded.

Kind regards,
Jo

Jo Groves
Assistant Director - Information Access
Information Management and Access
Governance & Reform Division

Telephone: (02) 6266 3948
CP1-6-005 joanne.groves@defence.gov.au



Ashauer, Matthew MR

From: Ashauer, Matthew MR
Sent: Thursday, 25 January 2018 9:54 AM
To: Cameron, Cos MR
Subject: 180125 0953 - [Ashauer, Matthew MR]-[Cameron, Cos MR] 180125 0953 - [Ashauer, Matthew MR]-[Cameron, Cos MR] FOI Request 244/17/18 - Section 24AA Practical Refusal

Follow Up Flag: Follow up
Flag Status: Completed

Categories: UNCLASSIFIED

UNCLASSIFIED

Good afternoon [REDACTED],

Thank you for your below response to our notice of intention to refuse access.

As detailed below in our response to you on 19 January 2018, the processing time for this request was conservatively estimated to be in excess of 150 hours or two staff working exclusively on the request full time to meet the statutory time frame. This is based on 3 mins per page for decision making. Please note the sample of documents this estimation was based on only incorporated the documents currently held by the FOI Directorate on the Defence Electronic Records Management System (Objective).

A further detailed search that included our electronic database used to process all FOI requests captured a further 777 438 pages of documents, this would require a further 154 full time staff to complete the request within 60 days. This does not include any hardcopy files that are currently archived.

As your original request did not specify any dates your request in its current form would capture all documents (electronic and hardcopy) relating to your scope that have been created by FOI over a substantial period of time, furthermore any requests for any/all documents concerning a particular subject will likely attract refusal under section 24AA of the FOI Act because, with few exceptions, it would simply not be possible for the decision maker to certify that he or she has identified every copy of every document held by FOI. To do so would require a search of every hard copy file and the electronic communication and records management systems used by Defence.

Under section 24AB(3) of the FOI Act and for the purpose of section 24 of the FOI Act, if the applicant contacts the contact person during the consultation period (as you have done) then the agency must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

Taking the above into consideration I suggest the following:

- providing a specific date range for the requested documents;
- specifying in your scope if the documents are to include/exclude hardcopies, final copies, drafts etc.

Please don't hesitate to contact me if you have any questions relating to the above process.

Matt Ashauer
Case Manager
Freedom of Information
Governance and Reform Division

Department of Defence
CP1-06-005
PO Box 7910 Canberra ACT 2610

(02) 6266 2096

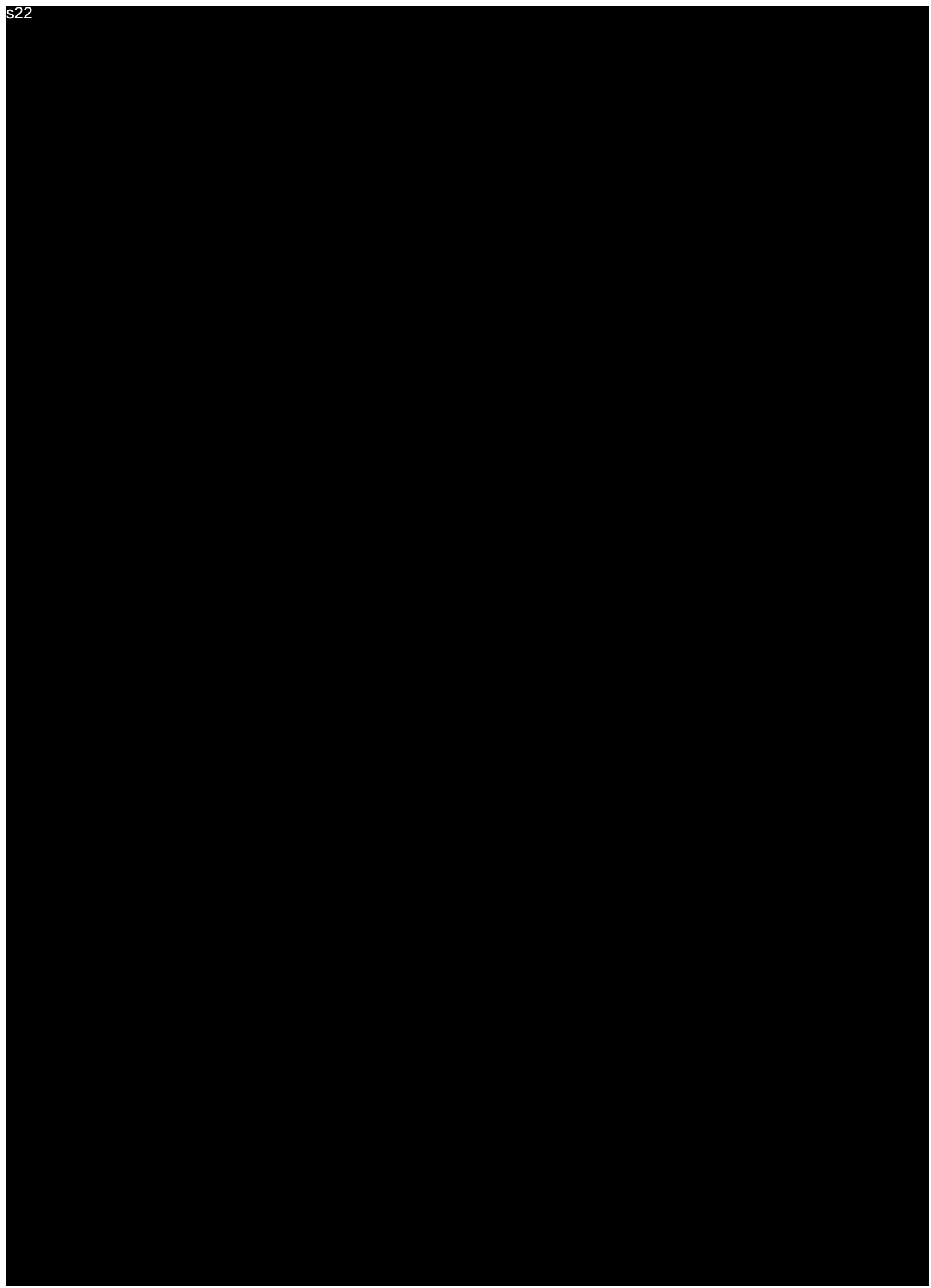
IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

s22



s22







Ashauer, Matthew MR

From: Elphick, Vanessa MRS on behalf of FOI
Sent: Monday, 29 January 2018 8:34 AM
To: Cameron, Cos MR; Davidson, Melissa MRS
Subject: 180129 0834 - [FOI]-[Cameron, Cos MR] FOI request 244/17/18 - Clarification of scope

Follow Up Flag: Follow up
Flag Status: Completed

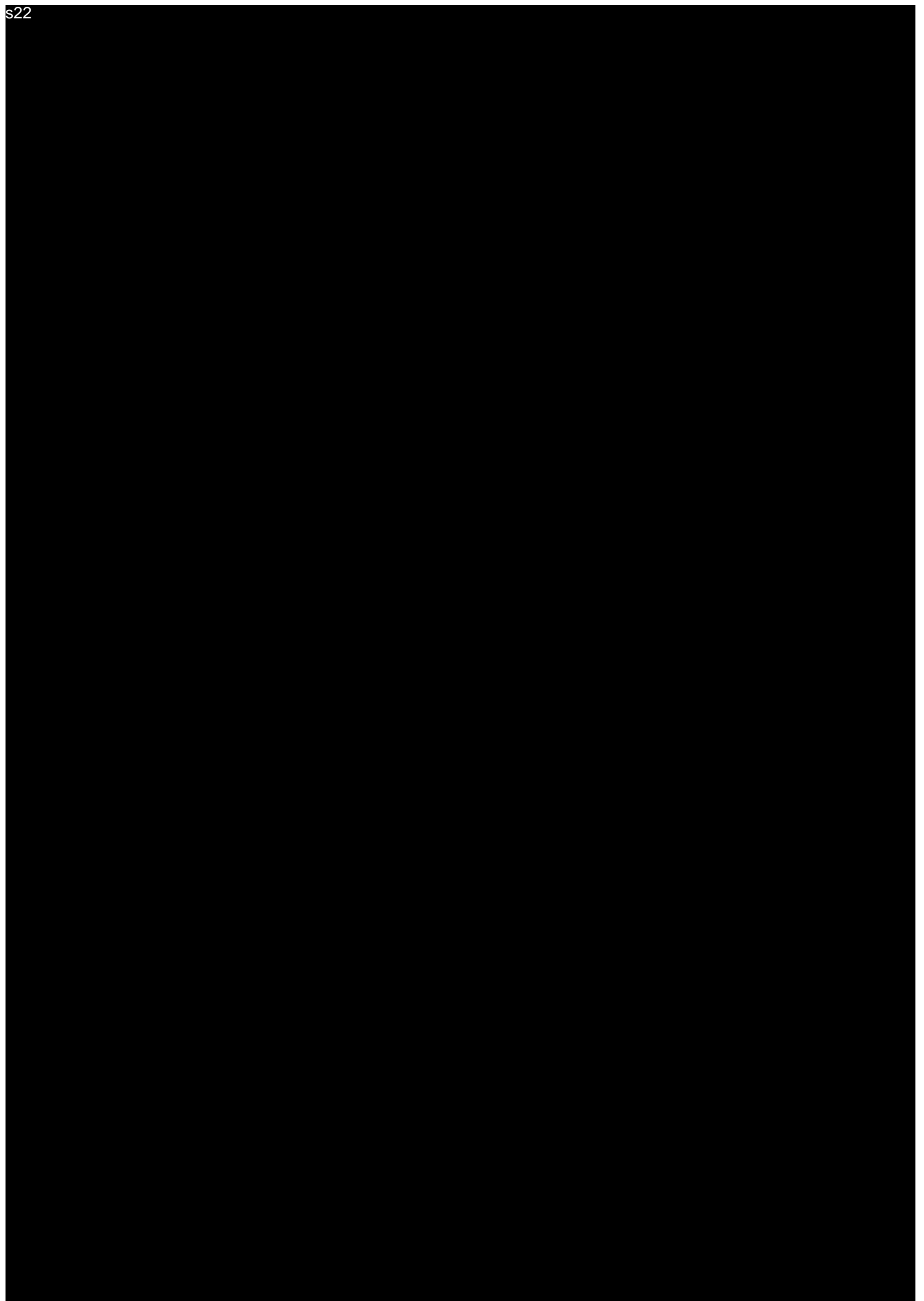
UNCLASSIFIED

FYI

Vanessa Elphick
Case Officer
FOI Review and Guidance
Information Management and Access
Governance and Reform Division
Telephone: 02 6266 2526
| CP1-6-003 | CAMPBELL PARK |
vanessa.elphick@defence.gov.au

s22





s22



Ashauer, Matthew MR

From: Ashauer, Matthew MR
Sent: Tuesday, 30 January 2018 8:45 AM
To: Davidson, Melissa MRS
Cc: Cameron, Cos MR (cos.cameron@defence.gov.au)
Subject: 180130 0845 - [Ashauer, Matthew MR]-[Davidson, Melissa MRS] 01 Original documents
Attachments: ObjRef.obr

Follow Up Flag: Follow up
Flag Status: Completed

Categories: UNCLASSIFIED

UNCLASSIFIED

Mel/Cos,

Attached link to documents for FOI 244/17/18 - [REDACTED].

I have re-drafted [REDACTED] scope to the following based on [REDACTED] latest response:

I seek under FOI any documents held by the Information Management and Access Branch of the Governance and Reform Division, relating to:

ITEM 1 - current guidance, procedure or policy for the management and administration of FOI applications made by members of the public.

ITEM 2 - current documents relating to guidance, procedure or policy on "difficult" or "problematic" applicants that relate to Defence's management and administration of FOI applications.

ITEM 3 - current documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence's management and administration of FOI applications.

Excluding historical documents, proposed documents, templates, informal notes and draft documents

Happy to discuss, one we are happy with the documents I will put Item and Serial numbers on and look at possible redactions. On another note, the training documents contain AGS material so will require courtesy consultation?

Happy to discuss.

Matt

Ashauer, Matthew (MR)(FOIIM) has sent you a link to "01 Original documents" from Objective.

Open in Navigator

Double click on the attachment

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

Ashauer, Matthew MR

From: Ashauer, Matthew MR
Sent: Monday, 5 February 2018 8:45 AM
To: Cameron, Cos MR
Subject: 180205 0845 - [Ashauer, Matthew MR]-[Cameron, Cos MR] FOI 244 1718 - Proposed Scope
Attachments: 180129 0834 - [FOI]-[Cameron, Cos MR] FOI request 244/17/18 - Clarification of scope
Follow Up Flag: Follow up
Flag Status: Completed
Categories: UNCLASSIFIED

UNCLASSIFIED

Cos,

Proposed response to [REDACTED],

Cheers

Matt

Good morning [REDACTED],

Thank you for your attached response.

Taking your advice into consideration could you please advise if you agree to the following proposed scope for your request:

I seek under FOI any documents held by the Information Management and Access Branch of the Governance and Reform Division, relating to:

ITEM 1 - current guidance, procedure or policy for the management and administration of FOI applications made by members of the public.

ITEM 2 - current documents relating to guidance, procedure or policy on "difficult" or "problematic" applicants that relate to Defence's management and administration of FOI applications.

ITEM 3 - current documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence's management and administration of FOI applications.

Excluding historical documents, proposed documents, templates, informal notes and draft documents.

Once the scope has been confirmed processing will continue on your FOI request.

Please don't hesitate to contact me if you have any questions.

Kind regards

Matt Ashauer

Case Manager
Freedom of Information
Information Management and Access

Governance and Reform Division

Department of Defence
CP1-06-005
PO Box 7910 Canberra ACT 2610
(02) 6266 2096

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

Ashauer, Matthew MR

From: Ashauer, Matthew MR
Sent: Thursday, 22 February 2018 8:22 AM
To: Cameron, Cos MR
Subject: 180222 0821 - [Ashauer, Matthew MR]-[Cameron, Cos MR] FOI 244 1718 - Review of Charges
Attachments: ObjRef.obr
Follow Up Flag: Follow up
Flag Status: Completed
Categories: UNCLASSIFIED

UNCLASSIFIED

Cos,

Drafted charges decision for FOI 244/17/18 - [REDACTED].

Regards

Ashauer, Matthew (MR)(FOIIM) has sent you a link to "FOI 244 1718 - Review of Charges" from Objective.

Open in Navigator
Double click on the attachment

Open in Your Browser

Latest: <https://drms-russell/id:R33412331/document/versions/latest>

Published: <https://drms-russell/id:R33412331/document/versions/published>

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

Ashauer, Matthew MR

From: Ashauer, Matthew MR
Sent: Tuesday, 6 March 2018 8:14 AM
To: Cameron, Cos MR
Subject: 180306 0814 - [Ashauer, Matthew MR]-[Cameron, Cos MR] For your signature
Attachments: FOI 244 1718 - Review of Charges.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: UNCLASSIFIED

UNCLASSIFIED

Cheers

Matt Ashauer

Case Manager
Freedom of Information
Information Management and Access
Governance and Reform Division

Department of Defence
CP1-06-005
PO Box 7910 Canberra ACT 2610
(02) 6266 3685

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

Ashauer, Matthew MR

From: Ashauer, Matthew MR
Sent: Friday, 9 March 2018 7:49 AM
To: Cameron, Cos MR (cos.cameron@defence.gov.au)
Cc: FOIRreview
Subject: 180309 0749 - [Ashauer, Matthew MR]-[Cameron, Cos MR (cos.cameron@defence.gov.au)] Charges Decision - FOI 244/17/18

Follow Up Flag: Follow up
Flag Status: Completed

Categories: UNCLASSIFIED

UNCLASSIFIED

Cos,

FYI, I am taking the below as a request for IR of the charges decision.

Regards

Matt Ashauer
Case Manager
Freedom of Information
Information Management and Access
Governance and Reform Division

Department of Defence
CP1-06-005
PO Box 7910 Canberra ACT 2610
(02) 6266 3685

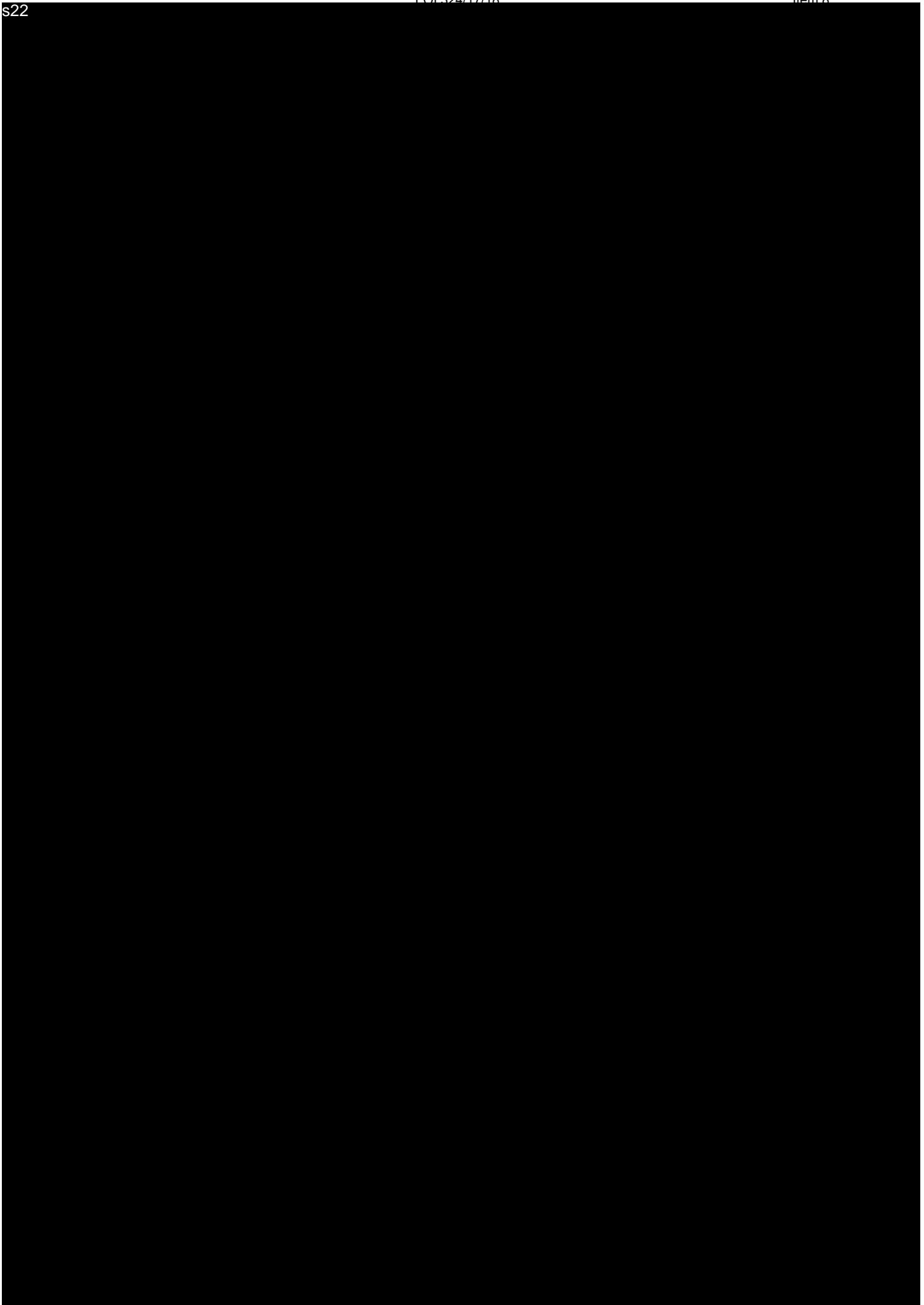
IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

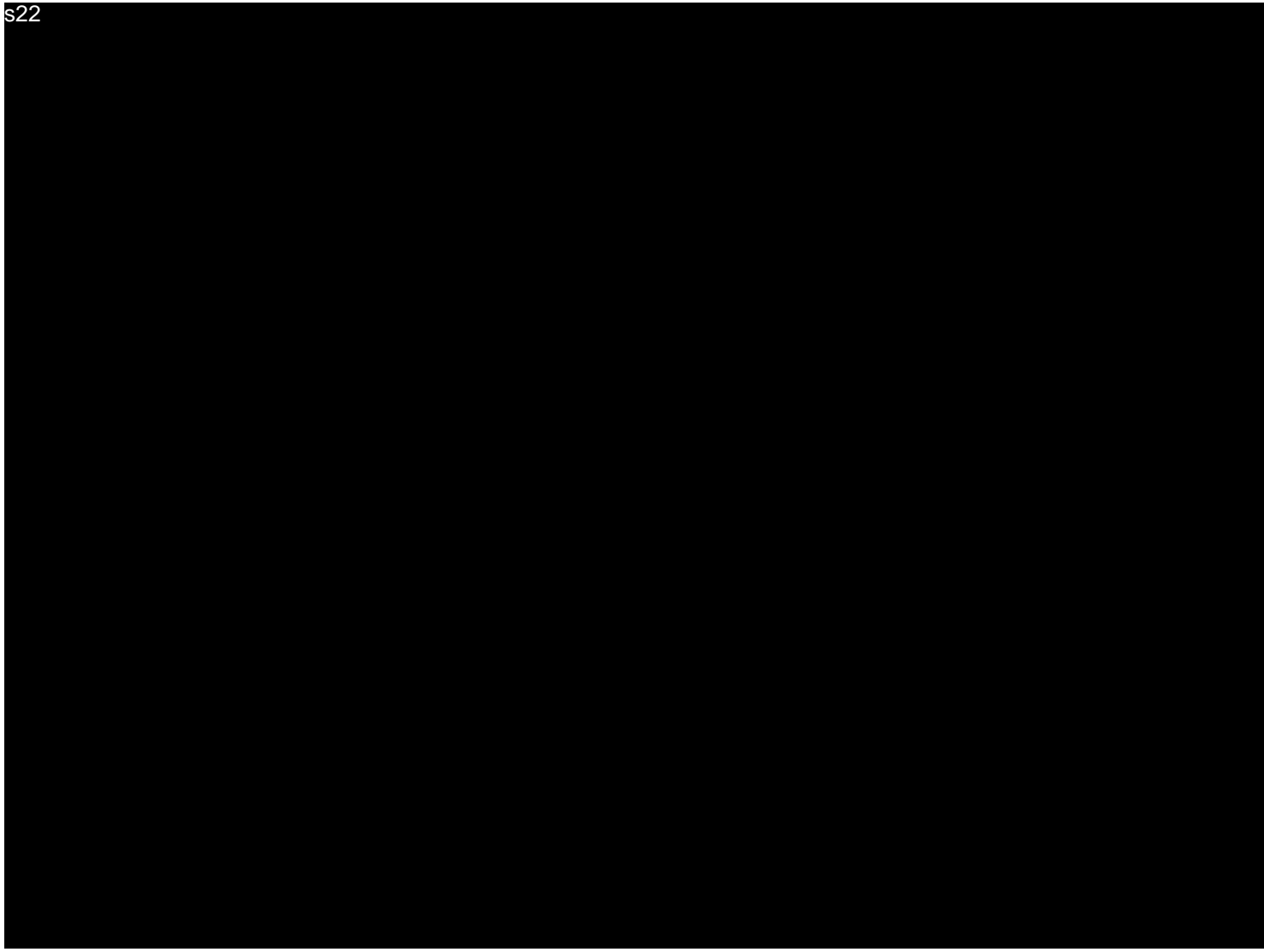
-----Original Message-----

From: Edwards, Judy MS 1
Sent: Friday, 9 March 2018 7:46 AM
To: Ashauer, Matthew MR
Subject: FW: Charges Decision - FOI 244/17/18 [SEC=UNCLASSIFIED]

UNCLASSIFIED

UNCLASSIFIED







Australian Government
Department of Defence

Reference: [insert objective ID/out number]

FOI 244/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

Any documents held by the Information Management & Access Branch of the Governance & Reform Division, relating to guidance, procedure or policy for the management and administration of FOI applications made by members of the public.

I also seek any documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.

I would also be interested in any documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence’s management and administration of FOI applications.

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents

Background

2. On 19 January 2018, our office notified you that your request in its current form was considered too large and would likely attract refusal under section 24 of the FOI Act because s24AA(1)(a)(i) the work involved in processing the request in the case of an agency-would substantially and unreasonably divert the resources of Defence from its other operations.

3. By email, on 20 January 2018 you replied:

“Dear FOI,

I am very intrigued by this claim that checking what manuals or policy documents that staff within the Freedom of Information Directorate (FID) use, that relate to the scope of the FOI application, which would be used on a day to day basis by FID staff, would require in excess of 150 hours to locate.

You make mention you have conducted a sampling study, but beyond claiming it supports this figure, fail to give any detail to support this fanciful claim.

Simply put, having given notice of a claim of practical refusal, just before the extended statutory response date for this FOI elapses, appears to be little more than a deliberate bad faith mechanism to obtain the delay the Department originally sought for another month in extension to be given (despite that the Christmas stand down period doesn’t exceed a week, and is by no means universal, with some Defence staff continuing to work across this period).

To assist in this “consultation”, can you please list all Defence manuals and policies FID staff use in the processing of FOI applications and the number of pages they contain, as well

as a brief description of how they relate to the scope of the FOI application made, so I can “limit” the scope of this FOI.

My understanding that there are only a couple of such manuals and policies FID staff use in the processing of FOI applications, certainly an order of magnitude less than would be required for it to take more than 150 hours to locate and identify them.

Can I also have copy of your scoping study calculations, so that I might better understand your “burden”.

I obviously need some information, beyond vague statements, if I am to assist the FID staff to “reduce” its “burden”.

Kind Regards

██████”

4. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

FOI decision maker

5. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Decision

6. I decided to refuse access to the documents that are the subject of the request under section 24 of the FOI Act [power to refuse request – diversion of resources].

Practical refusal reasons

7. You were advised that under section 24AA of the FOI Act and for the purposes of section 24 of the FOI Act, Defence considered that a practical refusal reason existed in relation to this FOI request.

8. In particular, a very significant amount of resources would have to be diverted from other Defence activities to identify, examine and decide whether to grant, refuse or defer access to the large number of documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used to examine the documents, or to consult with any person or body in relation to the request, and to make copies, or edited copies, of the documents, and to notify you of any interim or final decision on the request.

9. Given the use of the term “any documents” and the resulting substantial number of documents associated with the request, I have been advised that in addition to the significant workload, consultation would need to be undertaken Defence wide.

10. The Australian Information Commissioner has made recommendations that an agency should have the discretion to refuse to process a request that is estimated to take more than 40 hours to process. Based on a very conservative estimate, I have received advice that it would take in excess of 150 hours to search, retrieve and assess the documents. The actual figure is likely much higher.

11. The re-allocation of a significant amount of staff time from the responsible areas to process one complex and voluminous Freedom of Information request would substantially divert the resources of Defence from its other operations.

Material taken into account

12. In making my decision, I had regard to:
- a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions in the FOI Act;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
 - e. the Principles on open public sector information issued by the Information Commissioner; and
 - f. advice from relevant officers of the department.

Reasons for decision

13. Section 24 of the FOI Act provides that:
- (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 access to the document in accordance with the request.*
14. Section 24AA of the FOI Act provides that:
- (1) For the purpose 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...*
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b)(identification of documents).*
15. I also noted subsection 24AB(9) of the FOI Act, which states that section 24AB:
- “only obliges the agency or Ministers to undertake a request consultation process once for any particular request.”*
16. Taking into account paragraph 2 above, I am satisfied that Defence has met, and in fact exceeded, this requirement.
17. Paragraph 3 above is a materially expanded request and does not promote any refinement of scope.
18. Paragraph 24AA(3) of the FOI Act provides that:

- (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 beliefs 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.*

19. I did not have regard to any of the factors listed in subsection 24AA(3) of the FOI Act.

20. Having considered all of the above, I am satisfied that a practical refusal reason exists in relation to this request. On this basis, I have decided to refuse access to the documents, under section 24 of the FOI Act.

Rights of review

21. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is attached.

Further Information

22. The primary and overall direction relating to guidance, procedures and policy for FOI applications derives from the Office of the Australian Information Commissioner (OAIC) working under the *Freedom of Information Act 1982 Cth*. On their website at www.oaic.gov.au you will find numerous documents issued for the guidance of the public and government agencies.

23. In addition to the above, the entirety of case-work by Defence FOI forms the basis of how cases are managed. All cases require extensive cross referencing of the case-work that has gone on before and in relation to the items mentioned in paragraph 22. Furthermore, the work of FOI Directorate in relation to its compliance with the legislation is subject to review internally and externally through the OAIC and through the Administrative Affairs Tribunal.

24. Furthermore, given the publication of the outcome of FOI cases on our disclosure log and the items listed in paragraph 22, the information sought in relation to this request is already in the public domain.

25. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

26. The FOI Act may be accessed at: www.legislation.gov.au/Series/C2004A02562

Yours sincerely,

<Name> [electronic signature]

Accredited Decision Maker

*** Group



Australian Government
Department of Defence

Reference: [insert objective ID/out number]

FOI 244/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

Any documents held by the Information Management & Access Branch of the Governance & Reform Division, relating to guidance, procedure or policy for the management and administration of FOI applications made by members of the public.

I also seek any documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.

I would also be interested in any documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence’s management and administration of FOI applications.

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents

Background

2. On 19 January 2018, our office notified you that your request in its current form was considered too large and would likely attract refusal under section 24 of the FOI Act because s24AA(1)(a)(i) the work involved in processing the request in the case of an agency-would substantially and unreasonably divert the resources of Defence from its other operations.

3. By email, on 20 January 2018 you replied:

“Dear FOI,

I am very intrigued by this claim that checking what manuals or policy documents that staff within the Freedom of Information Directorate (FID) use, that relate to the scope of the FOI application, which would be used on a day to day basis by FID staff, would require in excess of 150 hours to locate.

You make mention you have conducted a sampling study, but beyond claiming it supports this figure, fail to give any detail to support this fanciful claim.

Simply put, having given notice of a claim of practical refusal, just before the extended statutory response date for this FOI elapses, appears to be little more than a deliberate bad faith mechanism to obtain the delay the Department originally sought for another month in extension to be given (despite that the Christmas stand down period doesn’t exceed a week, and is by no means universal, with some Defence staff continuing to work across this period).

To assist in this “consultation”, can you please list all Defence manuals and policies FID staff use in the processing of FOI applications and the number of pages they contain, as well

as a brief description of how they relate to the scope of the FOI application made, so I can “limit” the scope of this FOI.

My understanding that there are only a couple of such manuals and policies FID staff use in the processing of FOI applications, certainly an order of magnitude less than would be required for it to take more than 150 hours to locate and identity them.

Can I also have copy of your scoping study calculations, so that I might better understand your “burden”.

I obviously need some information, beyond vague statements, if I am to assist the FID staff to “reduce” its “burden”.

Kind Regards

█ ”

On 25 January Defence FOI wrote to you with some suggestions for refining the scope of your request. This advice included: providing a specific date range for the requested documents or specifying in your scope if the documents are to include or exclude hardcopies, final copies and drafts of documents. Your response on that same date did not provide sufficient information for the Defence FOI Directorate to refine the scop to a size that would not constitute an unreasonable diversion of resources.

4. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

FOI decision maker

5. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Decision

6. I decided to refuse access to the documents that are the subject of the request under section 24 of the FOI Act [power to refuse request – diversion of resources].

Practical refusal reasons

7. You were advised that under section 24AA of the FOI Act and for the purposes of section 24 of the FOI Act, Defence considered that a practical refusal reason existed in relation to this FOI request.

8. In particular, a very significant amount of resources would have to be diverted from other Defence activities to identify, examine and decide whether to grant, refuse or defer access to the large number of documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used to examine the documents, or to consult with any person or body in relation to the request, and to make copies, or edited copies, of the documents, and to notify you of any interim or final decision on the request.

9. Given the use of the term “any documents” and the resulting substantial number of documents associated with the request, I have been advised that in addition to the significant workload, consultation would need to be undertaken Defence wide.

10. The Australian Information Commissioner has made recommendations that an agency should have the discretion to refuse to process a request that is estimated to take more than 40 hours to process. Based on a very conservative estimate, I have received advice that it would take in excess of 150 hours to search, retrieve and assess the documents. The actual figure is likely much higher.

11. The re-allocation of a significant amount of staff time from the responsible areas to process one complex and voluminous Freedom of Information request would substantially divert the resources of Defence from its other operations.

Material taken into account

12. In making my decision, I had regard to:

- a. the terms of the request;
- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
- e. the Principles on open public sector information issued by the Information Commissioner; and
- f. advice from relevant officers of the department.

Reasons for decision

13. Section 24 of the FOI Act provides that:

(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 access to the document in accordance with the request.*

14. Section 24AA of the FOI Act provides that:

(1) For the purpose 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...*
- (b) the request does not satisfy the requirement in paragraph 15(2)(b)(identification of documents).*

15. I also noted subsection 24AB(9) of the FOI Act, which states that section 24AB:

“only obliges the agency or Ministers to undertake a request consultation process once for any particular request.”

16. Taking into account paragraph 2 above, I am satisfied that Defence has met, and in fact exceeded, this requirement.

17. Paragraph 3 above is a materially expanded request and does not promote any refinement of scope.

18. Paragraph 24AA(3) of the FOI Act provides that:

(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 beliefs 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.

19. I did not have regard to any of the factors listed in subsection 24AA(3) of the FOI Act.

20. Having considered all of the above, I am satisfied that a practical refusal reason exists in relation to this request. On this basis, I have decided to refuse access to the documents, under section 24 of the FOI Act.

Rights of review

21. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, “Freedom of Information – Your Review Rights”, setting out your rights of review is attached.

Further Information

22. The primary and overall direction relating to guidance, procedures and policy for FOI applications derives from the Office of the Australian Information Commissioner (OAIC) working under the *Freedom of Information Act 1982 Cth*. On their website at www.oaic.gov.au you will find numerous documents issued for the guidance of the public and government agencies.

23. In addition to the above, the entirety of case-work by Defence FOI forms the basis of how cases are managed. All cases require extensive cross referencing of the case-work that has gone on before and in relation to the items mentioned in paragraph 22. Furthermore, the work of FOI Directorate in relation to its compliance with the legislation is subject to review internally and externally through the OAIC and through the Administrative Affairs Tribunal.

24. Furthermore, given the publication of the outcome of FOI cases on our disclosure log and the items listed in paragraph 22, the information sought in relation to this request is already in the public domain.

25. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

26. The FOI Act may be accessed at: www.legislation.gov.au/Series/C2004A02562

Yours sincerely,

<Name> [electronic signature]

Accredited Decision Maker

*** Group



Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 244/17/18

By email: <mailto:foi+request-4276-ae4aa40c@righttoknow.org.au>

Dear [REDACTED]

NOTICE OF PRELIMINARY ASSESSMENT OF CHARGES

1. I refer to your request of 21 December 2017 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

I seek under FOI any documents held by the Information Management and Access Branch of the Governance and Reform Division, relating to guidance, procedure or policy for the management and administration of FOI applications made by members of the public.

I also seek any documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.

I would also be interested in any documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence’s management and administration of FOI applications.

2. On 19 January 2018 you were advised that your request was at risk of a practical refusal under section 24AA of the FOI Act. On 6 February 2017 you agreed to the following revised scope:

I seek under FOI any documents held by the Freedom of Information (FOI) Branch of the Governance and Reform Division, relating to:

ITEM 1 - current guidance, procedure or policy held on the Defence corporate records management system, for the management and administration of FOI applications used by FOI staff to process requests made by members of the public on a day to day basis.

ITEM 2 - current documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.

ITEM 3 - current documents relating to guidance, procedure or policy and training with respect to Defence’s management and administration of FOI applications.

Excluding websites, historical documents, proposed documents, templates, informal notes and draft documents.

3. The Department excludes personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers, contained in documents that fall within the scope of a FOI request unless you specifically request such details. Defence also excludes duplicates of documents [and documents sent to and from you].

4. If you do require these personal details, please inform us within five days of receipt of this email so that the decision maker can consider your request.

LIABILITY TO PAY CHARGES

5. In accordance with section 29 of the FOI Act, Mrs Melissa Davidson, Director Freedom of Information, deemed that you are required to pay a charge for processing your request.

6. The decision regarding payment of a charge does not mean that you are required to pay now. You will only be required to pay if, after consideration of your response to this letter, the decision is made to impose a charge.

PRELIMINARY ASSESSMENT OF CHARGES

7. The preliminary assessment of the charge is \$319.60. You are required to pay a deposit of \$79.90. A breakdown of the charges is at Enclosure 1.

DEPOSIT REQUIRED

8. If you wish to proceed with your request, and agree to pay the charge, a deposit is required as indicated above in the preliminary assessment of charges.

9. Please complete the authorisation form at Enclosure 2 and return it. Processing will recommence on receipt of the deposit payment.

RESPONSE TO THIS NOTICE

10. Under the FOI Act you have 30 days of receipt of this letter to notify the Department of your decision to:

- a. withdraw your request (you will not be required to pay any charges); or
- b. agree to pay the charges as set out in the preliminary assessment of charges;
or
- c. contest that the charge has been wrongly assessed, or should be reduced or not imposed (you should give your full reasons for doing so); or
- d. reduce the scope of your request. Defence will offer you one opportunity to consult our office to reduce the scope of your request and revise the preliminary assessment of charges.

11. If you require additional time to respond, please contact this office.

12. If you do not respond to this letter within 30 days or by the extension date provided by this office, it will be assumed you have withdrawn your request.

CHALLENGING ASSESSMENT OF CHARGES

13. If you wish to contest the charges for your request, the decision maker will consider all relevant reasons which include the following:

- a. whether payment of the charge, or part of it, would cause you financial hardship; and
- b. whether the giving of access to the documents requested is in the general public interest or in the interest of a substantial section of the public.

FURTHER INFORMATION

14. If you proceed with the request, when a decision letter is sent to you, an invoice for the outstanding balance of charges will be raised and forwarded to you within 5 working days. Documents will not be released until we receive your proof of payment.

15. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish, on its website, information released under the FOI Act within 10 working days of the applicant being given access to documents. Defence will also publish the decision notice, with personal and business information deleted.

16. Please contact me if you have any questions about this matter.

Yours sincerely

Matthew Ashauer
Case Officer
Freedom of Information

6 February 2018

Enclosures:

1. Breakdown of Charges
2. FOI – Deposit authorisation



Australian Government
Department of Defence

Freedom of Information
 CP1-6-001
 PO Box 7910
 CANBERRA BC ACT 2610
 Tel: 02 626 62200
 Fax: 02 626 62112
 FOI@defence.gov.au

Enclosure 1
BREAKDOWN OF CHARGES

Search and retrieval time

Searching for documents	2	2 hours @ \$15 per hour	\$ 30.00
-------------------------	---	-------------------------	----------

Decision-making time

Examination of documents	9	9.48 hours @ \$20 per hour	\$ 189.60
--------------------------	---	----------------------------	-----------

Consulting outside of Defence	3 0	3 hours @ \$20 per hour	\$ 60.00
-------------------------------	-----	-------------------------	----------

Making copies of documents	0	@ \$20 per hour	\$ -
----------------------------	---	-----------------	------

Preparing decision notice	2 0	2 hours @ \$20 per hour	\$ 40.00
---------------------------	-----	-------------------------	----------

Other decision making tasks	5 0	5 hours @ \$20 per hour	\$ 100.00
-----------------------------	-----	-------------------------	-----------

Less	0	% reduction for personal information	\$ -
------	---	--------------------------------------	------

Less		5 hours of free decision making time	\$ 100.00
------	--	--------------------------------------	-----------

Other tasks	0 0		\$ -
--------------------	-----	--	------

Copying of documents		pages @ 10 cents per page	\$ -
----------------------	--	---------------------------	------

Production of CD

GST (Exempt)			Nil
--------------	--	--	-----

Total			\$ 319.60
--------------	--	--	------------------

Deposit required			\$ 79.90
-------------------------	--	--	-----------------



Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Enclosure 2

FREEDOM OF INFORMATION REQUEST - PAYMENT AUTHORISATION

FULL NAME or ORGANISATION	[REDACTED]	
POSTAL ADDRESS:	[REDACTED]	
CONTACT PHONE NUMBERS	H/B	[REDACTED]
	M	[REDACTED]
EMAIL:	[REDACTED]	
FOI REFERENCE :	244 1718	
DEPOSIT AMOUNT \$	79.90	

By signing this form you are agreeing to pay the charges notified to you by the Freedom of Information Directorate. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

On completion of your request a final invoice will be generated for the outstanding balance of charges.

PLEASE DO NOT SEND CHEQUES OR MONEY ORDERS TO FOI

Once our office receives this form, the Department of Defence will generate an invoice in order for you to make payment of the agreed charges via one of the payment options.

Our office will not proceed to process your request until a receipt has been received in our office notifying that the deposit amount has been paid.

Please sign below and return this form by one of the following:

via email to FOI@defence.gov.au

via fax 02 6266 2112

by post to the address noted above.

Signature: _____



Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 244/17/18

Ms [REDACTED]

Right to Know

By email: foi+request-4276-ae4aa40c@righttoknow.org.au

Dear Ms Pane

NOTICE OF DECISION ON REQUEST FOR REVIEW OF CHARGES

1. I refer to your email, dated 21 December 2017 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

I seek under FOI any documents held by the Information Management and Access Branch of the Governance and Reform Division, relating to guidance, procedure or policy for the management and administration of FOI applications made by members of the public.

I also seek any documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.

I would also be interested in any documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence’s management and administration of FOI applications.

2. On 6 February 2018 you agreed to the following revised scope:

I seek under FOI any documents held by the Information Management and Access Branch of the Governance and Reform Division, relating to:

ITEM 1 - current guidance, procedure or policy for the management and administration of FOI applications made by members of the public.

ITEM 2 - current documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.

ITEM 3 - current documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence’s management and

administration of FOI applications.

Excluding historical documents, proposed documents, templates, informal notes and draft documents.

Liability to pay charges

3. In a letter dated 6 February 2018, you were advised of the decision, in accordance with section 29 of the FOI Act, that you were liable to pay a charge for the processing of your request and for giving access to the requested documents.

4. On 6 February 2018 you sought a review of the charges associated with your request on the grounds the estimate given was disproportionate to the documents subject to your request.

Decision maker

5. By arrangements made by Defence under section 23 of the FOI Act, I am authorised to decide on your request for review of the processing charges.

Material taken into account

6. In coming to my decision, I had regard to:

- a. your submission in support of remission of the charges;
- b. the relevant provisions of the FOI Act;
- c. the relevant provisions of the FOI (Charge) Regulations;
- d. the Guidelines published by the Office of the Australian Information Commissioner (the Guidelines); and
- e. the Office of the Australian Information Commissioner review decision in 'M' and Department of Agriculture, Fisheries and Forestry [2013] AICmr 24 (13 March 2013).

Relevant legislation – section 29(5) of the FOI Act

7. Section 29(5) of the FOI Act provides as follows:

Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charges, the agency or Minister must take into account:

- a. *whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the applicant was made; and*
- b. *whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.*

Consideration of financial hardship

8. As noted above, I am required to take into account whether access to the requested documents would cause you any financial hardship.

9. The Guidelines provide the following advice:

4.75 Whether payment of a charge would cause financial hardship to an applicant is primarily concerned with the applicant's financial circumstances and the amount of the estimated charge. Financial hardship means more than an applicant having to meet a charge from his or her own resources. The decision in 'AY' and Australian Broadcasting Corporation referred to the definition of financial hardship in guidelines issued by the Department of Finance for the purpose of debt waiver decisions:

Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible.

4.76 Different hardship considerations may apply if the request is made by an incorporated body or an unincorporated association. The mere fact that costs for FOI requests have not been budgeted for has been held to be a commercial decision, rather than a matter of a lack of funds.

4.77 An applicant relying on this ground could ordinarily be expected to provide some evidence of financial hardship. For example, the applicant may rely upon (and provide evidence of) receipt of a pension or income support payment; or provide evidence of income, debts or assets. However, an agency should be cautious about conducting an intrusive inquiry into an applicant's personal financial circumstances. Agencies need to have regard to the policy of the Privacy Act, which is to minimise the collection of personal information to what is required for the particular function or activity. For example, in this case, to make a decision as to whether to waive or reduce a charge.

10. In the absence of any such information in relation to your request I am not satisfied that the payment of the charge, or part of it, would cause you any financial hardship.

Consideration of public interest

11. In relation to public interest considerations, the Guidelines state:

4.79 The Act requires an agency or minister to consider 'whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public' (s 29(5)(b)). This test is different to and to be distinguished from public interest considerations that may arise under other provisions of the FOI Act.

4.80 Specifically, the public interest test for waiver in s 29(5)(b) is different to the public interest test in s 11A(5) that applies to conditionally exempt documents. Nor will s29(5)(b) be satisfied by a contention that it is in the public interest for an individual with a special interest in a document to be granted access to it, or that an underlying premise of the FOI Act is that transparency is in the public interest.

4.81 An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from this disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

12. In the absence of any such information in relation to your request I am not satisfied that public interest considerations apply in this case.

Further Considerations

13. While the FOI Act states that the above considerations must be taken into account, as a delegate I am not limited to the consideration of those two factors. This is evidenced in section 29(5) which states '*without limiting the matters the agency, ... may take into account.*' Accordingly, I have also had regard to the points you raised in your email dated 6 February 2018 to Mr Ashauer.

14. In your email you stated: "*Estimates need to be based on reasonable assessments, and must be supported by evidence*", further you state: "*Defence would be well aware of the documents in scope, and their contents, given these are day to day reference material used by this FOI section*".

15. Paragraph 4.84 of the Guidelines refers to the consideration of the range or volume of documents requested by an applicant when considering whether to impose charges for processing. Our office conducted preliminary searches for documents matching your revised scope which amounted to over 500 pages. The FOI Directorate use many various guidelines, advice and policy documents in processing FOI requests. There is no single guide Defence FOI practitioners use to process requests and as such your scope has captured all reference material currently in use. These documents will need to be reviewed closely prior to release and some documents may require redaction. I have taken this into account when considering your arguments, and in the first instance have assured myself that the estimated charge of \$319.60 is reasonable in terms of the amount of work required to process the request. I am an experienced FOI practitioner and I consider the calculations reflect the time it would take to process the request.

Charges decision

16. Taking into account the work that has already been undertaken on this matter, I have decided to impose the charges in the amount previously estimated.

17. If you agree with my decision, and wish to proceed, a deposit of **\$79.90** is required. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

18. Please complete the authorisation form at Enclosure 1 and return it to the FOI Directorate by 4 April 2018. Upon receipt of the form an invoice will be sent to you within five working days. Details about payment of the invoice are on the form. Our office will not process your request until a receipt is received in our office notifying that the deposit amount has been paid. If

you do not respond to this letter within 30 days of receiving it (or by a later deadline if we give you an extension), we will take it that you have withdrawn your request.

19. Alternatively, if you disagree with my decision, you are entitled to apply for an internal review. Such an application should be made within 30 days of receipt of this letter or such further time as the Department may allow. The fact sheet *Freedom of Information – Your Review Rights* is at Enclosure 2.

Further advice

20. Please note if you would like to revise your scope further and potentially reduce your charges then please don't hesitate to contact our office.

Yours sincerely

Cos Cameron
Assistant Director
Freedom of Information

5 March 2018

Enclosures:

1. Payment Authorisation form
2. Freedom of Information – Your Review Rights



Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

FREEDOM OF INFORMATION REQUEST - PAYMENT AUTHORISATION

FULL NAME or ORGANISATION	[REDACTED]		
POSTAL ADDRESS:	[REDACTED]		
CONTACT PHONE NUMBERS:	H	M	B
EMAIL:	[REDACTED]		
FOI REFERENCE :	244/17/18		
AMOUNT \$	79.90		

By signing this form you are agreeing to pay the charges notified to you by the Freedom of Information Directorate. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid:

PLEASE DO NOT SEND CHEQUES OR MONEY ORDERS TO FOI

Once our office receives this form, the Department of Defence will generate an invoice in order for you to make payment of the agreed charges via one of the payment options.

Our office will not proceed to process your request until a receipt has been received in our office notifying that the deposit amount has been paid.

Please sign below and return this form by one of the following:

via email to FOI@defence.gov.au
via fax 02 6266 2112
by post to the address noted above.

Signature: _____

From: [Viney, Nicola MS](#)
To: [FOI HEADS UP](#)
Subject: FOI Media/Sensitive Heads up - [REDACTED], Right to Know, Documents relating to processing of FOI 244/17/18 [DLM=For-Official-Use-Only]
Date: Thursday, 1 March 2018 2:03:11 PM

For-Official-Use-Only

Good afternoon,

Our Office has received a Freedom of Information request from [REDACTED] via the Right to Know website seeking:

".. all documents held by Defence that relate or refer to FOI 244/17/18 (but to avoid doubt is not for copies of documents that are in scope of FOI 244/17/18), including emails, text messages, and file notes, that were created during the period 21 December 2017 (when the request from first made) to today 1 March 2018, received by or sent from the Freedom of Information Directorate and it's chain of direct reporting executives, excluding copies of any communications authored by me and any communications sent to me by the Freedom of Information Directorate (given I already have those copies)."

ACTION AREA: Assoc Sec (FOI considering scope)

Regards,

Nicola

Nicola Viney

Director, Freedom of Information
Enterprise Reform Branch
Governance and Reform Division

CP1-6-012 | Campbell Park | Canberra ACT
P: 02 62663754 | **E:** nicola.viney@defence.gov.au

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

From: [Davidson, Melissa MRS](#)
To: [Matthews, Venessa MS](#)
Subject: RE: FOI Request 244/17/18 - Section 24AA Practical Refusal [SEC=UNCLASSIFIED]
Date: Thursday, 25 January 2018 4:59:00 PM

UNCLASSIFIED

UNCLASSIFIED

Venessa

Cos will come see you.

Good afternoon [REDACTED],

Thank you for your response below to our notice of intention to refuse access.

As detailed in our response to you on 19 January 2018, the processing time for this request was conservatively estimated to be in excess of 150 hours or two staff working exclusively on the request full time to meet the statutory time frame. Please note the sample of documents this estimation was based on only incorporated the documents currently held by the FOI Directorate on the Defence Electronic Records Management System (Objective).

The scope of your request in the current form includes any documents that relate to guidance and administration of FOI applications - regardless of how often they may be used. This includes our intranet site, templates, instructions on how to use our tracking system and notes on how to report on FOI matters to the OAIC. This is not an exhaustive list.

Under section 24AB(3) of the FOI Act and for the purpose of section 24 of the FOI Act, if the applicant contacts the contact person during the consultation period (as you have done) then the agency must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

Taking the above into consideration, the following may assist you in refining your request.

- providing a specific date range for the requested documents;
- specifying in your scope if the documents are to include/exclude hardcopies, final copies, drafts etc.

Kind regards

Defence FOI

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.