

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

Question No. AE16/014

Senator Rhiannon asked the following question at the hearing on 9 February 2016:

Senator RHIANNON: Commissioner, I was interested in the case with the Department of Immigration and Border Control. This was the issue where they said that they would need to consult with 600 employees before releasing documents. Could you provide some brief about that decision and if this is a trend that is coming with departments to argue that they need to consult with large numbers of employees before information can be released?

Mr Pilgrim: Without going through the decision, which was published entirely, I think it is an issue that I would prefer to take on notice because I would like to remind myself of some of the other trends we may be seeing in that area. We do believe that we encourage all agencies to publish org charts as part of their publication scheme to try to reduce the number of issues or inquiries people may have about staffing levels and particular positions within agencies. As to the broader question you are asking, I would like to take that on notice.

The answer to the honourable senator's question is as follows:

The Acting Australian Information Commissioner has considered in two Information Commissioner (IC) review decisions whether staff consultation is required under s 27A of the *Freedom of Information Act 1982* in relation to requests for organisations charts: see [Ray Brown and Department of Immigration and Border Protection \[2014\] AICmr 146 \(12 December 2014\)](#) and [Maria Jockel and Department of Immigration and Border Protection \[2015\] AICmr 70 \(5 November 2015\)](#).

These cases involved reviews of the Department of Immigration and Border Protection's decision to refuse access to documents on the basis that a practical refusal reason exists as the resource impact of processing the request would be substantial and unreasonable.

In [Ray Brown and Department of Immigration and Border Protection \[2014\] AICmr 146 \(12 December 2014\)](#), the Department found that a practical refusal reason existed on the basis that the estimated consultation process would take 106 hours. The Commissioner considered whether s 27A of the *Freedom of Information Act 1982* requires the Department to consult with its staff before deciding to give access to an organisational chart. In that case, the Commissioner noted that ss 27A(3) and 27A(4) provide that an agency is not required to give a third party a reasonable opportunity to make submissions in support of an exemption contention before deciding to give an applicant access to a document if it is not 'reasonably practicable' for the agency to give the third party that opportunity 'having regard to all the circumstances'.^[1] The Commissioner's conclusion in *Brown* was that it would not be reasonably practicable (for the purposes of s 27A(4)) to consult with 526 staff members (the number of affected staff members in that case), because of the time and resources involved and the type of personal information contained in the document. The Commissioner's view was that the Department could decide to give Mr Brown access to the document without providing its staff members with a reasonable opportunity to make submissions under s 27A.

^[1] *Ray Brown and Department of Immigration and Border Protection [2014] AICmr 146 [42]*, footnote omitted.

The Commissioner set aside the Department's decision and found that no practical refusal reason exists.

The Commissioner also considered this issue in [*Maria Jockel and Department of Immigration and Border Protection \[2015\] AICmr 70 \(5 November 2015\)*](#). Ms Jockel, the applicant, sought access to various organisational charts. The Commissioner applied the reasoning in *Brown* and found that it was not reasonably practicable for the Department to undertake consultation with 600 employees and that no practical refusal reason exists.

While the issue of consultation with a large number of employees was considered in these particular applications, it does not appear to be an identifiable trend across agencies in the context of recent applications that have been lodged with the OAIC.