



Dr Sue Foster  
Spokesperson  
Vets Against Live Export Inc.

Via email: [info@vale.org.au](mailto:info@vale.org.au)

Dear Dr Foster,

### Decision on your Freedom of Information request

I refer to your revised request, on behalf of Vets Against Live Export Inc. (**VALE**), received by the Department of Agriculture, Water and the Environment (**department**) on 2 June 2020 for access under the *Freedom of Information Act 1982* (**FOI Act**) to the following documents:

Records pertaining to the voyages:

1. Ocean Drover; Townsville to Jakarta and Panjang, departing 31 October 2019 (Independent Observer 197)
2. Yangtze Fortune; Portland to Qinzhou, departing 16 November 2019 (Independent Observer 201)

The following documents relating to each of the voyages detailed:

- all reports from the independent observer
- all correspondence, and records correspondence, between the independent observer and the department relating to the production of the observer's report and summary report.

VALE excludes from its request the names, signatures and contact details of the exporter's staff, the independent observer, and the ship's master. VALE also excludes from its request any photographs and video footage.

### My decision

I have decided to refuse your request under section 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations as specified in section 24AA(1)(a)(i) of the FOI Act.

The reasons for my decision are set out in **Attachment A**.

### You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au).

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website [www.oaic.gov.au](http://www.oaic.gov.au) or phone the OAIC on 1300 363 992.

**Further assistance**

If you have any questions, please email [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au).

Yours sincerely



Tina Hutchison  
Assistant Secretary  
Live Animal Exports Branch  
Export Reform & Live Animal Exports Division

16 June 2020

## REASONS FOR DECISION

### What you requested

On 18 May 2020, you requested the following documents:

Records pertaining to the voyages:

1. Ocean Drover; Townsville to Jakarta and Panjang, departing 31 October 2019 (Independent Observer 197)
2. Yangtze Fortune; Portland to Qinzhou, departing 16 November 2019 (Independent Observer 201)

The following documents relating to each of the voyages detailed:

- the End of Voyage Report
- the Masters Report
- all Daily Voyage Reports
- all daily correspondence/records from the independent observer during the voyage
- all reports from the independent observer
- all correspondence, and records correspondence, between the independent observer and the department relating to the production of the observer's report and summary report.

VALE excludes from its request the names, signatures and contact details of the exporter's staff, the independent observer, and the ship's master.

### Request consultation process

On 29 May 2020, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request was too big to process. I gave you an opportunity to consult with the department to revise your request so as to remove the practical refusal reason. Specifically, the department suggested you could consider reducing the number of voyages and types of documents you asked for. The department also suggested you could consider asking for documents in relation to narrow and specific timeframes.

On 2 June 2020, you revised the scope of your request to be:

Records pertaining to the voyages:

1. Ocean Drover; Townsville to Jakarta and Panjang, departing 31 October 2019 (Independent Observer 197)
2. Yangtze Fortune; Portland to Qinzhou, departing 16 November 2019 (Independent Observer 201)

The following documents relating to each of the voyages detailed:

- all reports from the independent observer
- all correspondence, and records correspondence, between the independent observer and the department relating to the production of the observer's report and summary report.

VALE excludes from its request the names, signatures and contact details of the exporter's staff, the independent observer, and the ship's master. VALE also excludes from its request any photographs and video footage.

## **What I took into account**

In reaching my decision, I took into account:

- your original request dated 18 May 2020 and your revised request dated 2 June 2020;
- the documents that fall within the scope of your request;
- information about:
  - the nature of the documents; and
  - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

## **Reasons for my decision**

I am authorised to make decisions under section 23(1) of the FOI Act.

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations. The reasons for my decision, including consideration of the factors I am required to take into account in section 24AA(2), are outlined below.

### **Practical refusal reason**

Section 24AA of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

The word 'substantial' has previously been interpreted to mean severe, of some gravity, large or weighty or of considerable amount, real or of substance and not insubstantial or of nominal consequence. The use of the word 'unreasonable' has been interpreted to mean that a weighing of all relevant considerations is needed, including the extent of the resources needed to meet the request.

In determining whether processing the request would substantially and unreasonably divert the department's resources, section 24AA(2) requires me to have regard to the resources that would have to be used for the following:

- identifying, locating or collating the documents within the filing system of the department;
- deciding whether to grant, refuse or defer access to a document including resources used for examining the document and consulting with any person or body in relation to the request;
- making a copy or an edited copy of the document; and
- notifying of any decision on the request.

In accordance with section 24AA(3), I did not consider your reasons for requesting access to the documents.

### Why your request is substantial

The department's searches and enquiries identified approximately 95 documents relevant to your revised request. I have calculated that it would take approximately 67.5 hours to process your request.

I have estimated the time to process your revised request as follows:

|   |                   |
|---|-------------------|
| Search for and retrieve documents   | 13 hours          |
| Examine 402 pages for decision making at an average of 2 minutes per page | 13.4 hours        |
| Time of 3 minutes per page for about 362 pages needing redaction          | 18.1 hours        |
| Consult with 7 third parties  | 14 hours          |
| Write statement of reasons for decision                                   | 9 hours           |
| <b>Total</b>  | <b>67.5 hours</b> |

### Sampling the documents for the purposes of the estimate

I determined that it was appropriate to sample approximately 43 pages of the documents in the scope of your request. This equated to approximately 10 percent of the documents in scope. The sampled documents revealed a range of summary reports, daily reports and email communications between the independent observer and the department relating to the reports.

After reviewing a sample of the identified documents, I found that the documents contain some sensitive information. A number of redactions will be required to remove sensitive information including business information, commercially valuable information and information relating to deliberative processes.

I am satisfied on the basis of that sample that I would have needed to consider applying the following redactions under the FOI Act:

- section 47 – commercially valuable information;
- section 47C – deliberative processes information; and
- section 47G – business information.

While you have removed some names and contact details of certain third parties from the scope of your request, the documents within the scope of your revised request contain information that is not publicly available in relation to at least 7 remaining third parties, which includes the exporters and vessel operators. Consideration would need to be given to consulting with all of those parties prior to releasing material related to them. This consultation would involve making deletions to the documents to remove material that is not relevant to the consultation, providing a copy of the document to each third party seeking their comments regarding release, and then considering these comments prior to making a decision.

The department relies on the receipt of information from third parties and other agencies to develop and implement policies and programs in relation to agriculture, water and the environment. Given the sizeable risk that the department's operations may be prejudiced if full

and proper consultations were not undertaken, I am satisfied that the time taken to properly consult all the individuals would be in excess of 14 hours (allowing 2 hours per consultation per party). I have made this assessment on the basis that the department would only consult each party once regardless of circumstances where they may be named in more than one document.

In my calculation I have allowed 2 minutes per page for considering the page and making a decision on the page and 3 minutes for applying any necessary redactions.

Based on the sample I have outlined above, I estimated that to consider each document, and in some documents consider each line of the document, identify relevant parties to consult and to undertake consultations, redact exempt material and prepare a statement of reasons it would take a decision maker approximately 67.5 hours.

#### *Why your request is unreasonable*

For the purposes of deciding whether your request would unreasonably divert the resources of the department from its other operations, I considered whether the substantial resource burden would be unreasonable having regard the fact one individual processing your request would be required to spend over 2 and a half weeks processing your request.

I am satisfied that the processing of your request would divert department resources from performing other functions.

#### *Conclusion*

In summary, I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations, namely the processing of other FOI requests and the development and implementation of policies and programs in relation to agriculture, water and the environment.

I have found that a practical refusal reason exists in relation to your request for access to the documents. Accordingly, I have decided to refuse your request under section 24(1) of the FOI Act.