



Our ref: IEF18/1452

Mr Ethan Glew  
Right to Know

By email: [foi+request-4504-f0b94d8b@righttoknow.org.au](mailto:foi+request-4504-f0b94d8b@righttoknow.org.au)

Dear Mr Glew

**Freedom of Information Act 1982 – Notice of Decision**

I refer to your request received by the Department of Industry, Innovation and Science (the department) on 15 April 2018 for access under the *Freedom of Information Act 1982* (FOI Act) to:

*“...all documents used by the department (including industry submissions) relating to the review and update of the guidance publication “ICT and the R&D Tax Incentive” dated Jan 2017”.*

In correspondence dated 2 May 2018, you were provided with a notice of intention to refuse your request on practical refusal grounds. The practical refusal grounds being that processing your request would unreasonably and substantially divert the resources of the department from its other operations. In this notice you were informed that a conservative estimate indicated it would take the department over 125 hours to process the request, and you were invited to revise the scope of your request so the practical refuse grounds no longer exists.

In correspondence dated 16 May 2018, you requested the department to conduct an internal review on the department’s handling of your FOI request.

In the same correspondence, you have also revised your request to:

*“...documents which can be accessed within 7 hours of decision making and processing time used by the department on the update of the guidance publication: “ICT and the R&D Tax Incentive” dated Jan 2017”.*

In correspondence dated 17 May 2018, you were acknowledged receipt of your revised request and the department would consider it.

**Decision**

I am an authorised decision maker under section 23 of the FOI Act.

I have decided to refuse your request under section 24AA (1) of the FOI Act on the request does not satisfy the requirement in paragraph 15(2) (b) (identification of documents).

The reasons for my decision are set out on the next page as required by section 26 of the FOI Act.

## Reasons for Decision

Under subsection 24(1) of the FOI Act, if an agency is satisfied that a practical refusal reason exists in relation to a request, the agency must undertake a request consultation process in accordance with section 24AB of the FOI Act. However, if after the request consultation process the agency is satisfied that the practical refusal reason still exists, the agency may refuse the request.

I am satisfied that a request consultation process has been undertaken by the department in accordance with section 24AB of the FOI Act.

On 2 May 2018, you were issued a practical refusal notice informing you of the voluminous scope of your request and that it would require over 125 hours of processing and decision making time to process your request. Accordingly, the processing of your request as originally framed would be unreasonable and substantially divert the resources of the department from its other operations.

In the same notice, you were notified that two documents may be of interest to you which we could provide to you administratively. However, the department has not received any correspondence from you regarding these two documents or assistance required.

On 16 May 2018, you have revised your request for "*documents which can be accessed within 7 hours of decision making and processing time....*" It is not a valid request under the FOI Act as your revised request does not satisfy the requirement in paragraph 15(2)(b).

Paragraph 15 (2)(b) of the FOI Act provides that a valid request must:

*"... contain such information concerning the document as is reasonably necessary to enable a responsible officer to identify it".*

In your revised request, you did not provide such information for the officer to identify the documents. Accordingly, I am satisfied that a practical refusal reason remains in relation to your request and I have decided to refuse your request under section 24(1) of the FOI Act.

## **Review rights**

If you are dissatisfied with any part of my decision, your review rights are set out in **Attachment A**.

Please do not hesitate to contact the FOI team by e-mail at [FOI@industry.gov.au](mailto:FOI@industry.gov.au), if you require any further clarification.

Yours sincerely



Joanne Mulder  
General Manager  
Business Equity and Incentives

6 June 2018

**REVIEW RIGHTS**

**Application for Internal Review**

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter, or within 15 days of receipt of the documents to which this decision relates (whichever is the longer period). You do not have to pay any fees or processing charges for an internal review, except for charges relating to the provision of any additional relevant material located as a result of the review (for example photocopying). While a specific form is not required, it would assist the decision maker if your application specifies the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator  
Department of Industry, Innovation and Science  
GPO Box 2013  
CANBERRA ACT 2601

or by e-mail to: [FOI@industry.gov.au](mailto:FOI@industry.gov.au).

**Review by the Australian Information Commissioner**

If any decision on internal review were not satisfactory to you, section 54L of the FOI Act gives you the right to apply for review of my decision by the Information Commissioner.

An application for review by the Information Commissioner may be made regardless of whether the decision was the subject of a departmental internal review. An application for review by the Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Information Commissioner.

You must apply in writing and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Fax: +61 2 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

**Complaints to the Australian Information Commissioner**

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Australian Information Commissioner will make a completely independent investigation of your complaint. A complaint to the Australian Information Commissioner must be made in writing and can be lodged online using the Information Commissioner Complaint Application form on the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au)

