



Our ref: LEX 66405

Harry Witherspoon

By email: foi+request-6427-87950475@righttoknow.org.au

Dear Mr Witherspoon

Freedom of Information Act 1982 – Notice of Decision

I refer to your correspondence, received by the Department of Industry, Science, Energy and Resources (**the department**) on 25 June 2020, and subsequent correspondence to clarify the scope of your request, for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

- 1) *The contract (CN ID: CN3495925) between TMINUS ACCELERATOR and Department of Industry, Science, Energy and Resources.*
- 2) *all email messages and attachments shared between regional incubator facilitator Daniel Smith and any recipient with an email address at the domain @masschallenge.org from 1 April 2018 to date.*
- 3) *the Incubator Support Initiative grant application (GA ID: GA35362) for 'MedTech's got talent' lodged by THE ACTUATOR OPERATIONS LTD, and*
- 4) *all email messages, attachments and documents shared with Daniel Smith that mention or pertain to the MedTech's got talent project or its grant application under (3) above.*

Background

On 8 July 2020 you were issued with a notice of intention to refuse the request on the basis that the work involved would amount to a substantial and unreasonable diversion of the department's resources. You were invited to refine the scope of your request within 14 days.

On 8 July 2020 you provided a revised scope (as set out above).

On 14 July 2020 the department confirmed that a practical refusal reason no longer existed in relation to your request.

On 15 July 2020 you were notified that you were liable to pay a charge for the processing of your request in the amount of \$562.36. You were also advised at this time of the need to conduct a third party consultation in relation to your request.

On 25 July 2020 the department received a deposit in the amount of \$140.59 for the processing of your request. Subsequently, in accordance with section 15(6) of the FOI Act the time limit was extended by 30 days to allow for third party consultation.

Decision

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

I am satisfied that all reasonable searches have been undertaken for documents relevant to your request. I am advised that the department has in its possession two documents that are relevant to your request. These documents are described in the Schedule of Documents at **Attachment A**.

I have decided to grant access to two documents in part.

I have found that the requested documents contain material which is exempt under section 47G of the FOI Act, as disclosure of the information would be an unreasonable disclosure of an individual's or an organisation's business information and section 22 of the FOI Act, as the documents contain material that is irrelevant to your request.

The reasons for my decision are set out below, as required by section 26 of the FOI Act, in Part A of the Annexure.

Final Decision on Charges

The preliminary estimate of charges associated with processing this FOI request was \$562.36, which includes the first five hours of decision making at no cost.

In accordance with the *Freedom of Information (Charges) Regulations 1982* (the Charges Regulations), I have calculated the actual costs associated with processing your request and have decided that the final total amount for processing this FOI request is \$194.03.

As you have already paid a deposit of \$140.59, you are required to pay the balance owing of \$53.44 before the documents can be released to you.

Methods of payment are set out in **Attachment B**.

If you are dissatisfied with my decision, your review rights are set out in Part B of the Annexure.

Yours sincerely



Andrew Lewis
A/g General Manager
Entrepreneurs Program Strategy

25 August 2020

Enclosures

Annexure (Part A – Statement of Reasons and Part B – Review Rights)
Attachment A – Schedule of Documents
Attachment B – Methods of Payment

industry.gov.au

Industry House - 10 Binara Street, Canberra City, ACT 2601
GPO Box 2013 Canberra ACT 2601 ABN: 74 599 608 295

Annexure
Part A – Reasons for Decision (section 26 FOI Act)
Request: HARRY WITHERSPOON – 25 June 2020 (LEX 66405)
Decision Maker: Andrew Lewis, A/g General Manager, Entrepreneurs Program Strategy

1. Evidence/Material on which my findings were based

1.1 In reaching my decision, I relied on the following information and documentary evidence:

- the FOI Act;
- the contents of the documents described in Attachment A;
- your correspondence setting out the particulars of your request;
- consultation with departmental officers as to the nature of the documents;
- consultation with affected third parties as to the nature of the documents;
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

2. Section 22 – Deletion of exempt or irrelevant material

2.1 Subsections 22(1) and (2) of the FOI Act permit an agency to decide to provide a copy of a document (modified by redaction) edited to remove information that would reasonably be regarded as irrelevant to the request (edited copy).

Subsection 22(1)

Scope

(1) *This section applies if:*

(a) *an agency or Minister decides:*

(i) *to refuse to give access to an exempt document; or*

(ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*

(b) *it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:*

(i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*

(ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*

(c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*

(i) *the nature and extent of the modification; and*

(ii) *the resources available to modify the document; and*

(d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

Subsection 22(2)

Access to edited copy

(2) *The agency or Minister must:*

(a) *prepare the edited copy as mentioned in paragraph (1)(b); and*

(b) *give the applicant access to the edited copy.*

2.2 I consider that to provide you with full access to the documents would disclose information that does not fall within the scope of your FOI request. Accordingly, where possible, I have decided that the irrelevant and exempt information will be deleted under section 22(1) of the FOI Act and a copy of the documents, with the irrelevant and exempt information deleted, will be provided to you.

2.3 These deletions are identified in the Schedule of Documents at [Attachment A](#).

3. Section 47G – Business Information

3.1 Paragraph 47G(1) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under the FOI Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth”*

3.2 I am satisfied that certain material in documents 1 and 2 contain information about the lawful business, commercial or financial affairs of an organisation that such disclosure of this information would, or could reasonably be expected to, unreasonably adversely affect that organisation in respect of its lawful business, commercial and financial affairs.

3.3 Accordingly, I am satisfied that certain material contained in documents 1 and 2 is conditionally exempt under section 47G(1) of the FOI Act.

3.4 Subsection 11A(5) of the FOI Act requires that access to a conditionally exempt document, including a document that is conditionally exempt under section 47G must be given to the applicant unless disclosure of the document would, on balance, be contrary to the public interest. I have considered s11B of the FOI Act and Part 6 of the FOI Guidelines when applying the public interest test.

3.5 In weighing up the public interest factors both in favour and against disclosure, I have considered the factors favouring access set out in subsection 11B(3) of the FOI Act and the further factors and guidance material set out in the FOI Guidelines. I have therefore considered the following factors which may favour disclosure, including the extent to which disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- assist in the effective scrutiny of government decisions; and
- promote effective oversight of public expenditure.

3.6 While I consider that disclosure would promote the objects of the FOI Act and would have some relevance to matters affecting oversight of public expenditure, I do not consider that disclosure of the business information would inform debate on a matter of significant public importance. I consider that the public interest factors in favour of disclosure are outweighed by the public interest factors against disclosure, namely that:

- the information is not well known and is not available from publicly-accessible resources;

- no public purpose would be achieved through the release of the business information of these people or organisations;
- disclosure of this information would reasonably be expected to:
 - unreasonably affect a person or organisation in respect of their lawful business affairs; and
 - potentially prejudice the Commonwealth's ability to obtain business information of the same or a similar nature in the future.

3.7 Having considered the strengths of the public interest factors for and against disclosure, I am of the view that, on balance, the public interest factors against disclosing the material in documents 1 and 2 outweigh those in favour of disclosure. Therefore, I have decided that certain material contained in documents 1 and 2 is conditionally exempt from disclosure under section 47G(1) of the FOI Act and will not be released.

4. Publication

- 4.1 Section 11C of the FOI Act requires agencies to publish documents released through an FOI request on our website within 10 days of release, except in certain circumstances including when the documents contain personal or business information that would be unreasonable to publish.
- 4.2 The documents being released to you do contain personal or business information that would be unreasonable to publish. As a result, they will not be published on our disclosure log.

Part B – 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, Science, Energy and Resources
GPO Box 2013
CANBERRA ACT 2601

or by e-mail to: 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
Post: GPO Box 5218, Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

An application form is available on the website at 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.

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22 – irrelevant material
47G – business information
22 – irrelevant material
47G – business information

METHODS OF PAYMENT

Payment can be made via one of the following three options:

- ***Cheque:***

Please make the cheque payable to the Collector of Public Monies and mark it attention to:

The FOI team
Department of Industry, Science, Energy and Resources
GPO Box 2013
CANBERRA ACT 2601

- ***Credit card:***

The department accepts visa or master card. If you would like to pay by credit card please complete the enclosed credit card payment request form, return a scanned copy to the CPM@industry.gov.au and copy the FOI team in your email at FOI@industry.gov.au.

- ***Electronic Funds Transfer:***

The department also accepts EFT payments. Please see bank details below:

Bank Name:	Reserve Bank of Australia
Bank Address:	20-22 London Circuit Canberra ACT Australia
Account Name:	Department of Industry, Science, Energy and Resources
BSB No:	092-009
Account No:	118689

Please include reference to FOI 66405 in all forms of payment, and notify the FOI team at FOI@industry.gov.au once payment has been made. Failure to include your reference number and notify the FOI team of payment will result in delays in releasing the documents to you.