



**Australian Government**  
**Department of Industry, Science,**  
**Energy and Resources**

Our ref: 66692

Harry Witherspoon

By email: [foi+request-6541-41f6630a@righttoknow.org.au](mailto:foi+request-6541-41f6630a@righttoknow.org.au)

Dear Mr Witherspoon

**Freedom of Information Act – Notice of intention to refuse**

I refer to your request received by the Department of Industry, Science, Energy and Resources (the department) on 29 July 2020, in which you sought access under the *Freedom of Information Act 1982* (the FOI Act) to the following:

*1) date, time, caller number, destination number, call duration and (where available) geographical origin of all telephone calls made between Regional Incubator Facilitator Daniel Smith and any Department telephone number (or Department officer) from 1/11/2018 until 1/12/2018 inclusively and from 28/10/2019 until 15/12/2019 inclusively;*

*and*

*2) date, time, sender number, destination number, content and (where available) geographical origin of all SMS messages exchanged between Regional Incubator Facilitator Daniel Smith and any Department telephone number (or Department officer) from 1/11/2018 until 1/12/2018 inclusively and from 28/10/2019 until 15/12/2019 inclusively;*

In accordance with section 24(1)(a) of the FOI Act, I am writing to provide you with written notice that I intend to refuse part of your request on the grounds that a practical refusal reason exists and to initiate a request consultation process in accordance with section 24AB of the FOI Act.

This notice of intention to refuse is only in relation to point 1 of your request. For point 2, if any documents existed, they would not be held by the Department. The service provider holds this information and will not provide the information unless required under a subpoena/summons by a law enforcement agency.

Under subsection 24AA(1) of the FOI Act, I am satisfied that a practical refusal reason exists in relation to point 1 of your request. The work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations (s 24AA(1)(a)).

My view is based on a conservative estimate that over 38 hours of search and retrieval time is required to deal with this request because it is estimated that there are over 4000 pages of landline call details (for each billing month) to then conduct searches through to identify the relevant information.

Section 17 of the FOI Act provides that in instances where it appears from the request that the applicant is seeking information that is not available in discrete form in written documents of the agency, and the agency could produce a written document containing the information in discrete form by the use of a computer or other equipment ordinarily available to the agency, the agency shall deal with the request as if it were a request of access to a written document so produced and containing that information.

An agency is not, however, required to produce such a document if it would substantially and unreasonably divert the resources of the agency from its other operations.

In this instance, this request would substantially and unreasonably divert the resources of the agency from its other operations.

### **Request consultation process**

Before I make a decision to refuse your request under section 24(1)(b) of the FOI Act, I would like to provide you with the opportunity to revise the scope of your request so that a 'practical refusal reason' no longer exists.

Should you wish to revise your request, you must do so **within 14 days** after the day you are given this notice (unless extended by agreement with the department). If you are unable to meet this deadline and wish to arrange an extension of time in which to consider this matter, or would like to discuss how you could best revise the scope of the request, please contact the FOI team by email at [FOI@industry.gov.au](mailto:FOI@industry.gov.au).

Under subsection 24AB(6) of the FOI Act, you must, before the end of the 14-day consultation period, do one of the following by written notice to the department:

- a) withdraw the request;
- b) make a revised request; or
- c) indicate that you do not wish to revise the request.

Please note that under subsection 24AB(7), the request is taken to have been withdrawn at the end of the 14 day consultation period if:

- (a) the applicant does not consult the contact person during the consultation period in accordance with this notice; or
- (b) the applicant does not do one of the things mentioned in subsection(6) before the end of the consultation period.

In accordance with subsection 24AB(8) of the FOI Act, the 14-day consultation period is to be disregarded in calculating the processing period for the request.

Your written response should be addressed to:

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

Or by email to: [FOI@industry.gov.au](mailto:FOI@industry.gov.au)

### **industry.gov.au**

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

Should you wish to discuss this matter further, please contact the FOI team by email at [FOI@industry.gov.au](mailto:FOI@industry.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sasha Pesic', written over a vertical line.

Sasha Pesic  
Senior FOI Officer  
Legal, Audit & Assurance

24 August 2020