



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

Our ref: 66692

Mr Harry Witherspoon

By email: foi+request-6541-41f6630a@righttoknow.org.au

Dear Mr Witherspoon

Freedom of Information Act 1982 – Notice of Decision

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;

On 21 August 2020, you were provided with a notice of the department's 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 at minimum 38 hours for search and retrieval, and you were invited to revise the scope of your request.

On the same day, you revised the scope of your request to the following:

- date, time, caller number, destination number, call duration and (where available) geographical origin of all telephone calls made by Regional Incubator Facilitator Daniel Smith to any Department telephone number (or Department officer) from 1/11/2018 until 22/11/2018 inclusively and from 28/10/2019 until 15/12/2019 inclusively.

For each call, please also include (and do not redact) the name of the APS employee whose telephone number was dialed irrespective of SES level.

If the department redacts telephone numbers, please do not redact the 3 digits of each.

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

Decision

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

I have decided to refuse your request under section 24(1) of the FOI Act on practical refusal grounds. The practical refusal ground being that processing your request would unreasonably and substantially divert the resources of the department from its other operations.

The reasons for my decision are set out below 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 21 August 2020 you were issued a practical refusal notice informing you of the voluminous scope of your request and that it would require over 38 hours of search and retrieval time, not including the processing and decision making time to process your request. Accordingly, the processing of your request as originally framed would unreasonably and substantially divert the resources of the department from its other operations.

I am satisfied that the department also took reasonable steps to assist you to revise the scope of your request so that a practical refusal reason would no longer exist. The department provided you with a reasonable opportunity to consult with the department and you were provided with information to assist you to narrow the scope of your request.

I am also satisfied that a practical refusal reason exists in relation to your revised request of 21 August 2020. I am of the view that your revised request did not sufficiently reduce the scope of your request to a manageable size. Whilst you excluded text messages from the scope of your request, the majority of documents would relate to item 1 of your request which you did not reduce or introduce any limiting factors. On that basis, I am satisfied that your revised request would still require over 38 hours of search and retrieval time, not including the processing and decision making time to process your request. The processing of your revised request as framed would still be an unreasonable and substantially diversion of the resources of the department from its other operations.

Therefore, I am satisfied that the department has taken reasonable steps to assist you to revise the scope of your request.

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, if you require any further clarification.

Yours sincerely



Andrew Lewis
General Manager
Entrepreneurs' Programme
2 September 2020



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.