



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

Our ref: 67061

Mr Harry Witherspoon

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

Dear Mr Witherspoon

Freedom of Information Act 1982 – Notice of Internal Review Decision

I refer to your correspondence received by the Department of Industry, Science, Energy and Resources (the department) on 15 September 2020, for an internal review of a decision under section 54 of the *Freedom of Information Act 1982* (the FOI Act). You seek internal review of the Department's decision of 2 September 2020 (ref: 66692) (the original decision).

Background

Your request, as revised, was for access to the following documents:

- 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. (sic)

A copy of the original decision is attached for your reference.

In your request for internal review of the original decision, you have stated that you introduced limiting factors in respect of the first part of your request as revised. That revision is addressed below.

Internal Review Decision

I am an authorised internal review decision maker under section 23 of the FOI Act. I am required to make a fresh decision on behalf of the department and I am not bound by the original decision.

In reaching my decision, I relied on the following:

- the FOI Act;
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act;
- your correspondence of 29 July 2020 and 21 August 2020 outlining the particulars of your FOI request;
- the original decision; and
- your correspondence of 14 September 2020 outlining the particulars of your request for an internal review.

industry.gov.au

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

After review, I am satisfied that a practical refusal reason exists in relation to your request.

Reasons for Decision

For the purposes of s 24(1)(a) of the FOI Act, I note that the department has undertaken a request consultation process with you.

Request is substantial

In the request consultation process, you revised your initial request to exclude the following:

1. details of telephone calls from the department to Mr Smith; and
2. SMS messages exchanged between the department and Mr Smith.

As a result of that reduction, the terms of your revised request related to details of telephone calls to the department from Mr Smith between 1 and 22 November 2018 and between 28 October and 15 December 2019.

You have not provided the telephone numbers which are those of Mr Smith to which the FOI request relates. As the department did not provide Mr Smith with a telephone, the department has no easy way of identifying which calls it received were from Mr Smith. In any event, the department recognises that Mr Smith (like any other person) may have contacted the department via multiple telephone numbers over time.

In those circumstances, the Department would be required to identify the person responsible for each incoming telephone call to the department during the relevant periods in order to determine whether the call record falls within the scope of your request or not. Given the number of incoming calls to the department over even a short period, to do so would be a substantial diversion of the department's resources from its other operations. For that reason, I do not consider the estimate of 38 hours of search and retrieval time in the original decision to be accurate. I consider the real figure would be considerably higher, even with the reduction in scope in your revised request.

Undertaking the above work would require multiple staff to work for multiple days. For the purposes of s 24(1)(b) of the FOI Act, I consider the work involved in processing your request would be a considerable diversion of resources from the department's operations.

Request is unreasonable

I have had regard to the matters in paragraph [3.117] of the FOI Guidelines. In particular, I consider that:

- there does not appear to be significant public interest in the documents you have requested; and
- processing your request would have a significant impact on the other work of the department, including the department's ability to process other FOI requests.

In my view, those factors tend to show that the work involved in processing your request would be an unreasonable diversion of resources.

Practical refusal reason exists

I have not had regard to the factors in s 24AA(3) of the FOI Act.

For the above reasons, I am satisfied that a practical refusal request exists in relation to your request, as revised, as the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

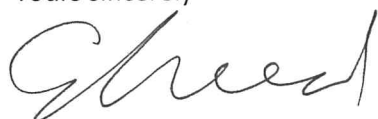
Therefore, pursuant to the power conferred by s 24(1)(b) of the FOI Act, I have decided to refuse your request as a practical refusal reason exists.

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



Emma Greenwood
Head of Division
AusIndustry - Support for Business

14 October 2020

Enclosures

Original Decision
Attachment A – Review Rights

REVIEW RIGHTS

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