



Australian Government
Department of Industry, Science,
Energy and Resources

Our ref: 67060

Harry Witherspoon

By email: foi+request-6588-67560742@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 14 September 2020, for an internal review of a decision under section 54 of the *Freedom of Information Act 1982* (the FOI Act).

You have requested an internal review of the department's decision of 28 August 2020 (original decision). A copy of the original decision is attached for your reference.

Background

On 10 August 2020, you made an FOI Act request for access to the following documents:

each disclosure of interests from the Entrepreneurs' Programme Committee meeting held on 11 December 2019 at Darling Park Tower 3, Level 18, 201 Sussex Street, Sydney.

For each disclosure, please leave unredacted: - the discloser (at the very least the department position/role of the discloser), and - the reference number of the application to which the disclosure pertains.

On 28 August 2020, the department provided you with notice of its decision to grant access to one document in part.

In your correspondence requesting an internal review, you made submissions contending that:

...RIF incubator business activity is purportedly forbidden by the department [3] yet is a matter of public record [4] and subject of considerable public interest [5].

Further, no sensitive information is revealed by disclosing positions/regions of RIFs making DOIs or internal (ISI) reference numbers of applications to which disclosures pertain.

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.

industry.gov.au

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

I have decided to affirm the original decision.

Reasons for Decision

In reaching my decision, I relied on the following:

- the FOI Act;
- your correspondence of 10 August 2020 outlining the particulars of your FOI request;
- your correspondence of 28 August 2020 outlining the particulars of your request for an internal review; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Section 47F

Documents are conditionally exempt under s 47F where disclosure would involve the unreasonable disclosure of personal information of any person.

The document that is the subject of your request contains personal information. The FOI Guidelines at [6.138] state that:

The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

I have had regard to the factors set out in paragraphs [6.140] to [6.143] of the FOI Guidelines. In particular, I consider:

- the information in the document not be well known;
- the persons to whom the information relates are not known to be associated with the matters dealt with in the document;
- the information is not available from publicly accessible sources; and
- release of the personal information could cause stress to the persons to whom the information relates.

Those factors weigh in favour of disclosure being unreasonable.

I have had regard to your submissions. In particular, I do not consider that FOI requests on the Right to Know website, made by a limited number of individuals, demonstrate that a considerable public purpose would be achieved through release.

On balance, I consider that disclosure would involve the unreasonable disclosure of personal information. The document that is the subject of your request is therefore conditionally exempt under s 47F.

Section 47G

Documents are conditionally exempt under s 47G where disclosure 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:

- would, or could reasonably be expected to, unreasonably affect the 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.

- could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

Disclosure of the information in the document that is the subject of your request, which concerns the business or professional affairs of persons and of organisations or undertakings, is conditionally exempt under s 47G for the following reasons.

Disclosure of the information would have a clear impact on the lawful business, commercial and/or financial affairs of undertaking or organisations through disclosing confidential details of contractual relationships, other business relationships and business objectives (e.g. potential investments). Such an impact would be, or could reasonably be expected to, be unreasonable having regard to the balance of private and public interests. In particular, disclosure of the information in the document that is the subject of your request would not, in my view, tend to serve any clearly identified public purpose.

The department relies on its ability to obtain the business information of disclosers in order to maintain the integrity of the programs it administers. Any reluctance to provide that information would have an impact on the department's ability to do so. Such a reluctance is an expected risk of the public disclosure of that information of that type in the current request.

The document that is the subject of your request is therefore conditionally exempt under s 47G.

Public interest test

Access must be given to documents that are conditionally exempt unless access to the documents would, on balance, be contrary to the public interest [see s 11A(5)] of the FOI Act.

For the purpose of the public interest test, I have had regard to the factors in s 11B(3) of the FOI Act. I consider the following factors that favour access are relevant to your request:

- disclosure would promote the object of the FOI Act; and
- disclosure would promote effective oversight of public expenditure.

I have had regard to the factors in paragraph [6.22] of the FOI Guidelines. I consider the following factors that weigh against disclosure are relevant to your request:

- disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
- disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- disclosure could reasonably be expected to harm the interests of an individual or group of individuals.

I have not had regard to the irrelevant factors.

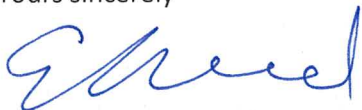
On balance, I consider that giving access to the document that is the subject of your request would be contrary to the public interest. The document is therefore exempt from release.

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

12th 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