



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

Our ref: 66830

Denis Jakota

By email: [foi+request-6607-0e18a08f@righttoknow.org.au](mailto:foi+request-6607-0e18a08f@righttoknow.org.au)

Dear Denis

**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 18 August 2020, and subsequent correspondence to clarify the scope of your request, for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

*Please make available all contracts and variations, each with Minister or Accountable Authority approval, relating to the following entry from the 2015-2016 Senate order on non-corporate Commonwealth entity contracts (1/7/2015 to 30/6/2016):*

*- MASSCHALLENGE INC, Support the initial expansion of MassChallenge into Australia and help it secure partnerships with domestic players including State and Territory Governments, \$308,000.00*

*For each contract and variation retrieved, please make available the legislation pursuant to which the Minister or Accountable Authority authorised the contract and the legal grounds for your department to enter into the contract.*

*Lastly, for each contract and variation retrieved, please make available each financial transaction made to MassChallenge by your department, including the date, amount, services and time period covered.*

**Background**

On 3 September 2020 you were notified that you were liable to pay a charge for the processing of your request in the amount of \$121.72. You were also advised at this time of the need to conduct a third party consultation in relation to your request.

On 4 September 2020 the department received a payment in the amount of \$121.72 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 five documents (combined) 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 the combined document 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 \$121.72, which includes the first five hours of decision making at no cost.

In accordance with the *Freedom of Information (Charges) Regulations 2019* (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 \$56.33.

As you have already paid the estimate of \$121.72 in full and the documents are now being released to you, a refund of \$65.39 will be issued. Could you please provide bank details for the refund of the charges received for this matter.

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 Programme

9 October 2020

### **Enclosures**

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

**Annexure**  
**Part A – Reasons for Decision (section 26 FOI Act)**  
**Request: Denis Jakota – 18 August 2020 (LEX 66830)**  
**Decision Maker: Andrew Lewis, A/g General Manager, Entrepreneurs Programme**

**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; and
- 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 the combined documents contain information about the lawful business, commercial or financial affairs of an organisation that as 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 the combined documents 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 the combined document outweigh those in favour of disclosure. Therefore, I have decided that certain material contained in the combined document 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](mailto: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](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Fax: +61 2 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

An application form is available on the website at [www.oaic.gov.au](http://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](http://www.oaic.gov.au).

**Request for Access under the *Freedom of Information Act 1982* (Cth)**

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

**FOI Applicant: Denis Jakota**

**SCHEDULE OF DOCUMENTS**

Doc No	Description of document	Pages	Decision	Reasons
1.	Combined documents	1-25	Release in part	Section 47G – Business Information Section 22 – Irrelevant material