



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

Our ref: LEX 66860

Denis Jakota

By email: [foi+request-6624-f459ca40@righttoknow.org.au](mailto:foi+request-6624-f459ca40@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 21 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:

*In relation to TMINUS ACCELERATOR, all periods of leave approved for this contractor, and all correspondence between this contractor and the department between 10 June 2018 and 30 June 2018 inclusively.*

*Please exclude the newly discovered large attachments and all other attachments that have anything to do with third parties other than masschallenge.*

*Also, if an email message only deals with a matter to do with a third party then please redact the entire email message, only leaving APS staff/Facilitator names and date/time visible.*

*However, if an email message only mentions a third party in passing then please redact only the part to do with the third party.*

**Background**

On 9 September 2020 you were notified that you were liable to pay a charge for the processing of your request in the amount of \$195.98. You were also advised at this time of the need to conduct a third party consultation in relation to your request.

On 10 September 2020 the department received a payment in the amount of \$195.98 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.

On 1 October 2020 you were issued with a notice of intention to refuse the request on the basis that the work involved would amount to a substantial and unreasonable diversion of the department's resources. You were invited to refine the scope of your request within 14 days.

On 1 October 2020 you provided a revised scope (as set out above).

On 14 October 2020 the department was granted a 30 day extension under section 15AB of the FOI Act for the processing of your FOI request by the Office of the Australian Information Commissioner (OAIC).

## **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 31 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 documents in part.

I have found that the requested documents contain material which is exempt under:

- Section 47C of the FOI Act, as disclosure would reveal deliberative processes involved in the functions of the agency;
- Section 47F(1) of the FOI Act, as disclosure of the information would be an unreasonable disclosure of an individual's personal information;
- 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 \$195.98, 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 \$217.93.

However, I am not providing access to the documents in full and therefore you are not required to pay the actual charges.

As you have already paid the estimate of \$195.98 in full, the documents are now being released to you.

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

17 November 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 – 21 August 2020 (LEX 66860)**  
**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; 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 On 1 October 2020, you confirmed that all third party information can be excluded from the scope of your request but specified you are seeking APS staff/Facilitator names and date/time mentioned in the documents.
- 2.3 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.
- 2.4 These deletions are identified in the Schedule of Documents at Attachment A.

### 3. Section 47C – Deliberative Matter

- 3.1 Subsection 47C(1) of the FOI Act provides that:

*A document is conditionally exempt if disclosure under the FOI Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or a Minister or of the Government of the Commonwealth.*

- 3.2 Parts of the combined documents includes deliberative matter regarding applications for Incubator Support Programme funding by other businesses. This material covers the opinions, advice and recommendations involved in the Incubator Support Initiative in regards to applications of other companies. Accordingly, I am satisfied the part of the combined documents marked as exempt under section 47C of the FOI Act is conditionally exempt as its disclosure would disclose deliberative matter relating to deliberation that has taken place in the course of the deliberative processes involved in the functions of the department (an agency).
- 3.3 In considering the documents, I have had regard to subsection 47C(2) of the FOI Act which provides that “deliberative material” does not include operational information or purely factual material. I am satisfied that the conditionally exempt part of document is not operational information or purely factual information.
- 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 47C(1) must be given to the applicant unless disclosure of the document would, on balance, be contrary to the public interest. I have considered section 11B of the FOI Act and Part 6 of the FOI Guidelines when applying the public interest test.
- 3.5 In applying the public interest test, I have considered the factors in favour of the disclosure of the documents, namely that disclosure would:
- promote the objects of the FOI Act;
  - provide the community with access to government information;
  - inform debate on matters of public importance;
  - assist in the effective scrutiny of government decisions, and
  - promote effective oversight of public expenditure.
- 3.6 However, I consider that these interests are outweighed by the public interest factors against disclosure. I consider that disclosure of deliberative material relating to the applications of other third parties would disclose matters requiring attention by the government. Specifically, the deliberative material includes information about other third parties that is not well known and is not available from publicly-accessible resources. I am of the view that no public purpose

would be achieved through the release of deliberative matters that may no longer be accurate, nor inform debate on a matter of public importance.

- 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 documents outweigh those in favour of disclosure. I therefore find that certain materials contained in documents are exempt from disclosure under sections 47C(1) of the FOI Act. Accordingly, I have deleted the exempt material in the documents and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

#### 4. Section 47F – Personal Information

- 4.1 Subsection 47F(1) of the FOI Act provides that:

*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

- 4.2 The term, 'personal information', is defined in section 4 of the FOI Act to mean:

*information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

- 4.3 When determining whether the disclosure of personal information would be unreasonable, subsection 47F(2) of the FOI Act requires me to consider:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources; and
- (d) any other matters that I consider relevant.

- 4.4 I have decided that material contained in certain documents, as identified in the Schedule of Documents, is conditionally exempt under subsection 47F(1) of the FOI Act.

- 4.5 This personal information is not well known or publicly available and the individuals to which the information relates, are not known to be (or to have been) associated with the matters contained in the documents. I also do not consider that any public purpose would be achieved through the release of the personal information of these third parties.

- 4.6 Under subsection 11A(5) of the FOI Act, the department must give you access to this conditionally exempt material unless in the circumstances it would be, on balance, contrary to the public interest to do so. Subsection 11A(5) of the FOI Act sets out the following factors favouring access to a document:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person access to his or her own personal information.

- 4.7 I have considered each of the factors favouring access listed above and I have decided that disclosure of the personal information in question would not go towards promoting the object of the FOI Act or inform debate on a matter of public importance. Disclosure of the personal information would also not promote effective oversight of public expenditure and will not allow you or another person to access his or her own personal information.

- 4.8 Following consideration of these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the personal information is outweighed by the public interest against disclosure.
- 4.9 Therefore, I am satisfied that the material is of such a nature that it is conditionally exempt under subsection 47F(1) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly, I have deleted the exempt material in the documents and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

## 5. Section 47G – Business Information

- 5.1 Section 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 ....”*

- 5.2 I am satisfied that certain material in the documents contain information about the lawful business, commercial or financial affairs of an organisation, 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.
- 5.3 Accordingly, I am satisfied that certain material contained in the documents is conditionally exempt under section 47G(1) of the FOI Act.
- 5.4 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 section 11B of the FOI Act and Part 6 of the FOI Guidelines when applying the public interest test.
- 5.5 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.
- 5.6 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.

5.7 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 documents outweigh those in favour of disclosure. Therefore, I have decided that certain material contained in documents is conditionally exempt from disclosure under section 47G(1) of the FOI Act and will not be released. Accordingly, I have deleted the exempt material in the documents and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

## **6. Publication**

- 6.1 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.
- 6.2 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	1-55	Part release	Section 47F – Personal information Section 47G – Business information Section 47C – Deliberative material Section 22 – Irrelevant material