



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

Our ref: 67730

Mr Denis Jakota
via Right to Know

By email: foi+request-6624-f459ca40@righttoknow.org.au

Dear Mr Jakota

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 December 2020 requesting an internal review of a decision under section 54 of the *Freedom of Information Act 1982* (the FOI Act).

Background

In correspondence of 14 December 2020, you requested an internal review of the department's decision of 17 November 2020 (original decision). A copy of the original decision is attached at **Attachment A**.

In your request for internal review, you submitted:

I am writing to request an internal review of Department of Industry, Innovation and Science's handling of my FOI request 'Contractor correspondence [Name Removed at the request of the Department]'.

The redaction under s47C in relation to the email by [contractor] on Friday, 15 June 2018 at 2:00 PM are invalid as deliberative processes do not apply for contractor business that is conducted during leave periods and unrelated to Department matters.

RE: s22, s47G, s47F

The contractor business is cited in the original request (relevant) and widely known (publicly advertised).

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 am satisfied with the reasoning provided in the original decision and I have decided to affirm the original decision.

In reaching my decision, I relied on the following:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act;
- your correspondence of 21 August 2020 outlining the particulars of your FOI request;
- the department's original decision of 17 November 2020;
- your correspondence of 14 December 2020 outlining the particulars of your request for an internal review;
- consultation with a third party on the disclosure of their personal information;
- advice from departmental officers; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Reasons for Decision

Section 22 – Deletion of irrelevant material

I have reviewed the material deleted as irrelevant information and I am satisfied the material is not relevant to the subject matter of your request. I agree with the reasoning provided in the original decision and I have decided to affirm the original decision in relation to the deletion of exempt and irrelevant material. Therefore, I affirm the deletions under section 22(1) of the FOI Act.

Section 47C – Deliberative Matter

I have reviewed the material that was exempt under section 47C (deliberative matter) and affirm this material contains opinions, advice and recommendations in relation to the applications of other third parties.

Having regard to section 47C(2), I affirm the original decision that this material does not include operational information or purely factual material.

Accordingly, I am satisfied certain material in the combined document is conditionally exempt under section 47C(1) of the FOI Act.

I am aware that under the FOI Act, access must generally be given to a conditionally exempt document unless it would be contrary to the public interest. My consideration of the public interest factors for and against disclosure is set out later in these reasons.

Section 47F – personal information

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

The documents that are the subject of your request contain 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. Having had regard to the FOI Guidelines at [6.152] to [6.157], I am satisfied that special circumstances exist such that disclosure would be unreasonable. In particular, I note that there is no need for you to contact a particular public servant in the future, and that you have pursued these matters to date despite that.

The documents that are the subject of your request are therefore conditionally exempt under section 47F(1) of the FOI Act.

Section 47G – Business information

I have considered the specific material you have requested and I am satisfied the material contains information about the business affairs of a contractor, and that the material relates directly to their professional affairs and does not relate to their work contracted by the department.

In relation to the consultation undertaken in accordance with section 27 of the FOI Act, I am satisfied that it would be unreasonable to disclose information about the third party's business affairs in that disclosure would have an adverse effect on their business. Further, disclosure of the material could reasonably be expected to cause contractors to be less likely to engage with the department in the future, and this would impact the department's ability to undertake assessment of Incubator Support Initiative (ISI) applications received and to ensure it has expert advice available on a range of matters that are essential to the functions of the ISI programme.

For material to be exempt under section 47G(1), any adverse effects on the business affairs of the third party must be "unreasonable". In determining whether any adverse effect is "unreasonable", it is necessary to undertake a balancing of relevant interests.

The FOI Guidelines provide an example of where there may be public interest grounds to disclose the information notwithstanding that affairs of a business or person may be adversely affected. Specifically, the FOI Guidelines give the example of information that a business's activities pose a threat to public safety - in such circumstances it may be reasonable to disclose the information even though it may well have an adverse effect on the business.

In the present case, I am satisfied that there is no overarching public interest of the kind referred to in the FOI Guidelines that would make such disclosure justified and reasonable. Therefore, I am satisfied the material is conditionally exempt under section 47G(1) of the FOI Act.

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 section 11A(5) of the FOI Act).

For the purpose of the public interest test, I have had regard to the factors in section 11B(3) of the FOI Act and the factors in paragraph [6.22] of the FOI Guidelines. Having reviewed the reasons favouring access and against disclosure, I am satisfied with the reasoning provided in the original decision.

I have not had regard to the irrelevant factors.

On balance, I consider that giving access to the documents that are the subject of your request would be contrary to the public interest. Therefore, I affirm the original decision that the material is conditionally exempt under sections 47C, 47F, and 47G of the FOI Act and will not be released.

Review rights

If you are dissatisfied with any part of my decision, your review rights are set out in **Attachment B**.

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



Claire Forsyth
A/g Head of Division
AusIndustry

6 January 2021

Enclosures

Attachment A – Original Decision

Attachment B – 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 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

