



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

Our ref: 66879

Alby P.
Right to Know

By email: foi+request-6649-415fb367@righttoknow.org.au

Dear Alby

Freedom of Information Act 1982 – Notice of Decision

I refer to your request received by the Department of Industry, Science, Energy and Resources (the department) on 26 August 2020, for access under the *Freedom of Information Act 1982* (FOI Act) to the following:

"...department emails written by Tminus Accelerator (department contractor) staff members during delivery of the incubator support grant program... during the time period starting on 31/10/19 and ending on 11/12/19."

On 3 September 2020, you were provided with a notice of the department's intention to refuse your request on practical refusal grounds. The practical refusal grounds being that processing your request would unreasonably and substantially divert the resources of the department from its other operations. In this notice you were informed that a conservative estimate indicated it would take the department at least 76 hours to process the request, and you were invited to revise the scope of your request.

On the same day, you revised the scope of your request to the following:

"Seeing as there are too many emails to process, I would like to change my request to add specifics."

- * Emails by staff members contracted through Tminus Accelerator.*
- * From 31 October 2019 to 1 January 2020.*
- * Addressed "to" (not just copying with "cc") incubator support initiative program management officers (managers / assistant managers / department officers but not to other regional incubator facilitators).*
- * Including emails of any subject matter.*
- * Only excluding those emails that are solely related to grant applicants that are not mentioned in regional incubator facilitator declarations of interests at the EPC meeting on 11 December 2019."*

On 10 September 2020, the department advised you that your request is still considered too voluminous to process, and invited you to further refine the scope of your request. The department

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also sought clarification regarding the information you were seeking in order to better assist you to revise your request to a manageable size.

On 11 September 2020, you revised the scope of your request and provided additional information:

** Noting 'DOIs Declared by RIFs' recorded at these committee meetings (<https://www.industry.gov.au/sites/default/files/2020-08/disclosure-log-20-029.pdf> and <https://www.righttoknow.org.au/request/6640/response/18486/attach/4/66900%20Combined%20documents%20AR.pdf>).*

** Noting that incubators are taken to 'include accelerators' in the guidelines used to assess grant applications at the meetings (<https://www.business.gov.au/-/media/Grants-and-programs/Incubator-Support/Incubator-Support-new-and-existing-grant-opportunity-guidelines-PDF.ashx>).*

** Noting that RIFs appear to be in incubator/accelerator business - examples include ISI grant recipients...*

Business in Bare Feet/Mark Phillips - (<https://agfrontier.com.au/team/>)

Consulting/Brad Twynham - <https://begavalleyinnovationhub.com.au/events-directory/adaptive-leadership-for-continuous-change/>

We Are Arising/Andrew Outhwaite - <https://blog.spacecubed.com/for-entrepreneurs-and-innovators-why-pursue-consciousness>

Tminus Accelerator/Daniel Smith -

https://www.righttoknow.org.au/request/disclosures_of_interests_from_th#outgoing-13224

** Noting (the obvious) reasons this is inappropriate (https://www.righttoknow.org.au/request/question_2_of_addendum_6_of_rft#outgoing-13126).*

I am trying to find out if it is common knowledge among department staff that the incubator facilitators hired for public duty are actually incubator facilitators in private business too.

To put it bluntly, does anyone at the department realise that the contractors who are supposed to help ISI applicants are either direct competitors or associates of ISI applicants?

Since an FOI application cannot come in the form of a question, I would like to see all RIF DOIs from 1 September 2019 until 20 March 2020.

On 18 September 2020, the department acknowledged receipt of your revised request received on 11 September 2020. You were advised the department is currently experiencing a high volume of requests and currently operating on limited resources and requested the consultation period be extended under section 24AB(5) of the FOI Act.

On 21 September 2020, you stated you did not agree to extend the consultation process. Subsequently the legislated timeframe resumed from the day you submitted your latest revision, being 11 September 2020.

Decision

I am an authorised decision maker under section 23 of the FOI Act.

I have decided to refuse your request under section 24(1) of the FOI Act on practical refusal grounds. The practical refusal ground being that processing your request would unreasonably and substantially divert the resources of the department from its other operations.

The reasons for my decision are set out below as required by section 26 of the FOI Act.

Reasons for Decision

Under subsection 24(1) of the FOI Act, if an agency is satisfied that a practical refusal reason exists in relation to a request, the agency must undertake a request consultation process in accordance with section 24AB of the FOI Act. However, if after the request consultation process the agency is satisfied that the practical refusal reason still exists, the agency may refuse the request.

I am satisfied that a request consultation process has been undertaken by the department in accordance with section 24AB of the FOI Act.

On 3 September 2020 you were issued a notice of intention to refuse informing you of the voluminous scope of your request and that it would require over 76 hours of processing and decision making time to process your request. Accordingly, the processing of your request as originally framed would unreasonable and substantially divert the resources of the department from its other operations.

I am satisfied that the department also took reasonable steps to assist you to revise the scope of your request so that a practical refusal reason would no longer exist. The department provided you with a reasonable opportunity to consult with the department and you were provided with information to assist you to narrow the scope of your request. In accordance with section 24AB(8) not more than one request consultation process is required, however the department provided you with a second opportunity to revise your request on 10 September 2020. The department also requested you consider extending the consultation process to provide more time to assist you in refining your request. Therefore, I am satisfied that the department has taken reasonable steps to assist you to revise the scope of your request.

I am also satisfied that a practical refusal reason exists in relation to your revised request of 11 September 2020, after a request consultation process had been undertaken. Specifically:

- In both revisions of your request, you increased the timeframe thereby expanding the scope of your request with each revision;
- While your revisions provided more detail, this detail did not assist in reducing the size of the search;
- The latest preliminary search based on your revised scope of 11 September 2020 estimates in excess of 300 emails would need to be searched and examined to determine if the email is relevant to your request. A conservative estimate indicates that it would take the department at least 89 hours to process the revised request, excluding the time required to consult with any third parties identified;
- There would be multiple third parties identified that the department would be required to consult regarding on the disclosure of their business or personal information. Each facilitator identified in the relevant documents would require consultation. The time to prepare documents and schedule to consult with each third party has also been excluded from the conservative estimate;

- The department sought to extend the consultation process with you in order to continue negotiations until a manageable scope was received. However, you indicated that you did not wish to extend the consultation process.

Accordingly, based on the above-mentioned factors, I am satisfied that a practical refusal reason remains in relation to your request and I have decided to refuse your request under section 24(1) of the FOI Act.

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



Andrew Lewis
A/g General Manager
Entrepreneurs' Programme

22 September 2020

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.

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.

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