



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

Our ref: 66929

Alby P.
via Right to Know

By email: foi+request-6657-ec00493c@righttoknow.org.au

Dear Alby

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 29 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:

*...this grant listed on the grant-connect website -
<https://www.grants.gov.au/?event=public.GA.show&GAUID=FEE82B1D-01D5-C7E7-024928E740DAC655>*

Please provide these documents if they are available:

- Draft feedback by AusIndustry
- Final application that was approved

Background

On 10 September 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 24 September 2020 the department confirmed that a practical refusal reason no longer existed in relation to your revised request (as set out above). On the same day you were notified that you were liable to pay a charge for the processing of your request in the amount of \$739.77. You were also advised at this time of the need to conduct a third party consultation in relation to your request.

On 28 September 2020 the department received a payment in the amount of \$739.99 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 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 11 documents 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 two documents in full
- grant access to four documents in part, and
- refuse access to five documents in full.

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

- Section 47(1)(b) of the FOI Act, as disclosure would reveal commercially valuable information;
- Section 47F(1) of the FOI Act, as disclosure of the information would be an unreasonable disclosure of an individual's personal information; and
- 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.

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 \$739.77, 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 \$650.50.

As you paid the estimate of \$739.77 in full, the department will refund the overpayment in the amount of \$89.27 and the documents are being released to you now. Please provide your bank details to FOI@industry.gov.au so that a refund can be issued.

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

14 December 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: Alby P, Right to Know – 29 August 2020 (LEX 66929)
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 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 exempt information (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 Accordingly, where possible, I have decided that the exempt information will be deleted under section 22(1) of the FOI Act and a copy of the documents, with the exempt information deleted, will be provided to you.

2.3 These deletions are identified in the Schedule of Documents at Attachment A.

3. Section 47(1)(b) – Documents disclosing commercially valuable information

3.1 Section 47(1)(b) of the FOI Act provides that:

(1) A document is an exempt document if its disclosure under this Act would disclose:

...

(b) Any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

3.2 Documents 2 and 6 are the business plan and project plan of the third party. Document 10 contains the titles of attachments which concern the project plan and letters of support. These documents contain details about the particulars of Hunter Business Centre in relation to their methodology, pricing and models of service.

3.3 Documents 4 and 7 contain letter of support from 24 other third parties. They contain details about the business relationship between Hunter Business Centre and 24 other third parties, and relate to other third party business affairs and their role in the business affairs of Hunter Business Centre.

3.4 I am of the view that Documents 2, 4, 6, 7, and 10 contain material that is considered commercially valuable, and their business could be diminished or destroyed if this information were disclosed. I consider that this information is not publicly available and is known only to the parties concerned. The extent to which it is known by others is limited, and I have confirmed with the relevant parties that this information is still current and in effect. As such, I am satisfied that there is commercial value in business and project plans, and the association between the multiple parties. Disclosure of this information would, or could reasonably be expected to, reduce the value of the business, and the business relationship with the department would also be diminished.

3.5 Therefore, I am satisfied that this material consists of commercially valuable information that would be, or could reasonably be expected to be, destroyed or diminished if it were publicly disclosed.

3.6 Accordingly, I have decided that certain material in Document 10, and all material in Documents 2, 4, 6, and 7 is exempt from disclosure under section 47(1)(b) of the FOI Act and will not be released.

3.7 As identified in the Schedule, I have deleted the exempt material in these 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 The information which I have determined would be unreasonable to disclose includes six curricula vitae, which includes the names and details of individuals, and the names and contact details of employees of Hunter Business Centre. 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 I have also taken into account the extent to which disclosure would prejudice individuals' personal privacy and release of their personal information could cause stress to the persons to whom the information relates.

4.9 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.

4.10 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 Documents 8, 9, and 10, and Document 3 in its entirety, 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 Document 1 is the Incubator Support – New and Existing Incubators application form, and Documents 8-10 are documents in support of that application. I am satisfied that certain material in Documents 1, and 8-10 concern the business or professional affairs of persons and of organisations or undertakings, is conditionally exempt under section 47G(1) of the FOI Act for the following reasons.

5.3 Disclosure of the information would have a clear impact on the lawful business, commercial and financial affairs of undertaking or organisations through disclosing confidential details of contractual relationships, other business relationships and business objectives. Such an impact would be would, 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 1 and 8-10 would not, in my view, tend to serve any clearly identified public purpose.

5.4 The department relies on its ability to obtain the business information of applicants 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.

5.5 Accordingly, I am satisfied that certain material contained in Documents 1, 8, 9 and 10 is conditionally exempt under section 47G(1) of the FOI Act.

5.6 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.

5.7 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.

5.8 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;
- could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- 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.

5.9 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 certain material in Documents 1, 8, 9 and 10 outweigh those in favour of disclosure. Therefore, I have decided that certain material contained in these documents is conditionally exempt from disclosure under section 47G(1) of the FOI Act and will not be released.

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.

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.

Request for Access under the *Freedom of Information Act 1982* (Cth)
 Department of Industry, Science, Energy and Resources
 FOI Applicant: Alby P – LEX 66929
 SCHEDULE OF DOCUMENTS

Doc No	Description of document	Pages	Decision	Reasons
1.	Application	1-35	Release in part	Section 47G – business information
2.	Business Plan	36-63	Exempt in full	Section 47(1)(b) – commercially valuable information
3.	Curricula Vitae	64-88	Exempt in full	Section 47F – personal information
4.	Letters of Support	89-114	Exempt in full	Section 47(1)(b) – commercially valuable information
5.	Innovation in Hunter Business Report	115-119		<i>Publicly available document</i>
6.	Project Plan	120-127	Exempt in full	Section 47(1)(b) – commercially valuable information
7.	Letter of Support	128	Exempt in full	Section 47(1)(b) – commercially valuable information
8.	Incubator Support form	129	Release in part	Section 47F – personal information Section 47G – business information
9.	Cover letter	130	Release in part	Section 47F – personal information Section 47G – business information
10.	External correspondence	131	Release in part	Section 47(1)(b) – commercially valuable information Section 47F – personal information Section 47G – business information
11.	The iF Project	132-187		<i>Publicly available document</i>

