

Freedom of Information

From: Hilvert-Bruce, Alan
Sent: Tuesday, 15 September 2020 12:16 PM
To: 's47F'
Cc: Freedom of Information
Subject: CM: RE: Fwd: ausindustry case [SEC=OFFICIAL]

Good morning Menzies,

I am writing to let you know that the request in its current form is not valid for the purposes of the FOI Act.

As you are likely aware, requests under the FOI Act may only be made for 'documents' that are in existence as at the date of the request. We understand that you are not seeking specific identified documents, but rather are seeking the creation of a new document that bears numbers of Disclosures and Cited Applications sorted into different categories. Unfortunately this information cannot be sought via an FOI request in this instance.

Would you like to amend your request so that it seeks the grant applications referred within it? A request along these lines would be considered valid as it seeks 'documents' and the Department could process it.

Please note that submitting a valid request will not necessarily guarantee that access will be granted to the documents subject to it - the decision maker will consider the content of each to determine if they are exempt from disclosure.

Regards

Alan Hilvert-Bruce
Senior Legal Counsel
Energy and Climate Team
Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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From: s47F @gmail.com]
Sent: Sunday, 13 September 2020 11:21 AM
To: Freedom of Information
Subject: CM: Fwd: Re: ausindustry case

Department of Industry, Science, Energy and Resources
Legal Branch
GPO Box 2013
Canberra ACT 2601

ATT FOI Coordinator

I am requesting access to information under the Freedom of Information Act.

BACKGROUND

I am referring to 'regional incubator facilitator' disclosed interests ("*Disclosures*") and corresponding grant applications ("*Cited Applications*").

REQUEST

I am requesting the number of *Cited Applications*

(a) declared ineligible for committee consideration by AusIndustry,

(b) considered by a committee, and

(c) approved by a Minister

in each calendar month; I am aware that b and c will not coincide.

I am also requesting (d) the aggregate number of *Disclosures* made without reference to *Cited Applications*.

DELIVERY

s47F

[@gmail.com](#)

-Menzies

OFFICIAL

Freedom of Information

From: Hilvert-Bruce, Alan
Sent: Friday, 2 October 2020 3:42 PM
To: Ellie s47
Cc: Freedom of Information; s47F
Subject: CM: RE: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Ellie

Yes, a transcript would be great thanks.

Cheers

Alan Hilvert-Bruce
Senior Legal Counsel
Energy and Climate Team
Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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OFFICIAL

From: Ellie s47F
Sent: Friday, 2 October 2020 3:39 PM
To: Hilvert-Bruce, Alan
Cc: Freedom of Information ; s47F
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Alan,

Thanks for your time today.

Would you like me to provide you with the transcript of our call for your records?

Faithfully,
Ellie



Ellie s47



s22



liability in respect of such communication, and members responsible are personally liable for any damages or other liability arising.

On 02-10-2020 13:52, Hilvert-Bruce, Alan wrote:

Hi Ellie

Could we please push our discussion back to 2.30pm? I'm having a delayed lunch.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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OFFICIAL

From: Ellie s47F
Sent: Friday, 2 October 2020 10:33 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Great, I'll give you a call at 2pm.

In the meantime, is it possible to get a copy of your process for searches and extraction of documents under the FOI Act? I have attached AG's procedures for example.

This may help me better understand your position.

Faithfully,
Ellie



Ellie s47



s22

On 02-10-2020 09:46, Hilvert-Bruce, Alan wrote:

Hi Ellie

How does 2pm sound?

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 1 October 2020 5:31 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F <s47F@gmail.com>; Freedom of Information <FOI@industry.gov.au>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Wonderful! What's the best time to call?

Faithfully,
Ellie



Ellie s47



s22

On 01-10-2020 16:23, Hilvert-Bruce, Alan wrote:

Hi Ellie

The applicant is most welcome to request emails if they wish. There is otherwise no database that records the numbers of Cited Applications and Disclosures that exists.

For future discussions on this matter it's probably best to discuss via phonecall, as I suspect that we'll continue this debate over a non-existent database for longer than it needs to if it is kept to email.

My number is below if you would like to continue this discussion.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

From: Ellie **s47F**
Sent: Thursday, 1 October 2020 1:51 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: **s47F** <s47F@gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Of course - I'm advised that both Disclosures and Cited Applications reside on your department's email system dataset and I take your position to be that these documents don't comprise this dataset (please correct me if I misunderstood).

Therefore, I'm asking which parts of your email system would you consider a dataset for the purposes of the FOI Act?

Faithfully,
Ellie



Ellie s47



s22

On 01-10-2020 13:32, Hilvert-Bruce, Alan wrote:

Hi Ellie

The dataset does not exist.

As for the question about our email system, would you be able to clarify further? You can request emails under FOI if that's the issue.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

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Sent: Thursday, 1 October 2020 1:23 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F [@gmail.com](mailto:s47F@gmail.com)>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Thanks Alan.

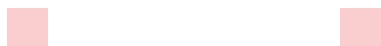
I'm confused since I was assured that the dataset exists. Have you been advised to the contrary by anyone?

Lastly, for clarity, does your department's email system constitute a dataset in your view?

Faithfully,
Ellie



s47F



s22

On 01-10-2020 11:11, Hilvert-Bruce, Alan wrote:

Hi Ellie

The pathways provided in pt 3 of FOI guidelines [3.204] (drawn from section 17 FOI Act) only apply where there is an existing database or dataset maintained by the Department at the time the request is received that contains the information sought. Section 17 allows, in part, for extracts to be drawn from that database/dataset, and for that extract to then be considered the document sought by the request. You may note the examples set out in the paragraph don't discuss creating new documents to respond to questions, but rather identify transcriptions and extracts of existing documents:

a transcript of a sound recording, a written compilation of information held across various agency databases, or the production of a statistical report from an agency's dataset...

If the information sought is not contained in such a dataset, section 17 of the FOI Act does not create an obligation to make a new document or dataset.

The request below sought statistics regarding "Disclosures" and "Cited Applications". The Department does not have an existing database which tracks these statistics. As a result, the Department is not required under section 17 to create a document in response to the request.

This does not mean that the applicant cannot request the information in a different form, so long as that form is contained in a document that exists at the time the request is received. To this end I suggested that the applicant may wish to request access to the grant applications related to their request, something that they may wish to consider in the future.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 1 October 2020 10:20 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F @gmail.com
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Greetings Alan,

I'm following up on request beneath. I would appreciate it if you would explain why pt 3 of FOI guidelines [3.204] does not apply in this instance?

From what I see, this is a request for a report spanning two types of documents (Disclosures and Cited Applications) with specifics provided as to their particulars - a to d. What do you see?

Faithfully,
Ellie



Ellie s47



s22

On 30-09-2020 13:44, s47F wrote:

this too thanks

----- Forwarded message -----

From: **Hilvert-Bruce, Alan** <Alan.Hilvert-Bruce@industry.gov.au>

Date: Tue, Sep 15, 2020 at 12:16 PM

Subject: RE: Fwd: ausindustry case [SEC=OFFICIAL]

To: s47F <s47F@gmail.com>

Cc: Freedom of Information <FOI@industry.gov.au>

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Sent: Sunday, 13 September 2020 11:21 AM
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Subject: CM: Fwd: Re: ausindustry case

Department of Industry, Science, Energy and Resources
Legal Branch
GPO Box 2013
Canberra ACT 2601

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(a) declared ineligible for committee consideration by AusIndustry,
(b) considered by a committee, and
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in each calendar month; I am aware that b and c will not coincide.

I am also requesting (d) the aggregate number of *Disclosures* made without reference to *Cited Applications*.

DELIVERY

s47F

-Menzies

TELECONFERENCE TRANSCRIPT

INITIATOR: Ms Ellie ~~617E~~
DATE & TIME: 2 October 2020 14:30 - 14:58 AEST
PARTICIPANTS: Ms Ellie ~~617E~~
Mr xxxxxxxxxxxxxxxxxxxxxx (+61 2 6243 7397)
AGENDA: FOI request seeking a report
FOI request seeking parts of documents (unaddressed)

1	14:30:54-14:30:54	EVENT	CALL INITIATED BY ELLIE
2	14:30:58-14:30:59	ALAN:	Legal, Alan here.
3	14:31:00-14:31:02	ELLIE:	Hi Alan, this is Ellie, how are you?
4	14:31:03-14:31:03	ALAN:	Hey, what's up?
5	14:31:04-14:31:06	ELLIE:	Good, uhm, not much, how are you?
6	14:31:07-14:31:07	ALAN:	Yeah, it's ok.
7	14:31:08-14:31:08	ELLIE:	Uhm...
8	14:31:09-14:31:17	ALAN:	Uhm, cool, so you guys are, I don't know, seeking to find some level of corruption around the handling of this FOI request?
9	14:31:17-14:31:27	ELLIE:	Uhm, no. We're just really trying to, uhm, just clarify and get some information from you. Do you have time now to go through some of the, uhm, discussions we had in the email?
10	14:31:28-14:31:44	ALAN:	Sure, I can, I can uhm, my concern just, just at the start, so let me just file this, this thing, you know when you're like halfway through a thought, let me just check, OK, cool. So, ugrhm, uhm, uhm, I, I think you guys might be based in Victoria or Queensland or something like that?
11	14:31:45-14:31:45	ELLIE:	Yeah...
12	14:31:45-14:31:45	ALAN:	...and uhm...
13	14:31:46-14:31:46	ELLIE:	Yeah...
14	14:31:46-14:31:56	ALAN:	...might not be completely familiar with the operations of the, the Commonwealth FOI Act, so, I think I might just start there, just kind of setting out what uhm, what's a valid request.
15	14:31:56-14:32:00	ELLIE:	Yep, OK. No worries. I might just take some notes as I go through it, if that's ok.

16 14:32:01-14:32:05 ALAN: Yeah, absolutely, and, and ask any questions you want, uhm, yeah...

17 14:32:06-14:32:06 ELLIE: Ok.

18 14:32:06-14:32:26 ALAN: It's, it's, it's all good. Uhm, so, just, just as a starting point, the, the Commonwealth FOI Act gives members of the public, or really anyone, you can have, members of uhm, private industry, uhm, you give them the right to access documents held by the, the Commonwealth.

19 14:32:26-14:32:26 ELLIE: Yep...

20 14:32:26-14:32:32 ALAN: And a document is, uhm, it's, it's kind of a pretty broad thing...

21 14:32:32-14:32:32 ELLIE: Uhum...

22 14:32:33-14:33:21 ALAN: ...but, it only extends to those things which are held in material form, and that the, you know, to just, or at least expressed in material form, that's probably the best way to say it. So you can always, uhm, you can actually make a valid request for a document that, that doesn't exist, and that will still be a valid request. The uhm, it's just that the decision would end up with a, what's called 24A decision. So for example, if you were going to (inaudible), request, uhm, what's a good one, let's say uhm, the, the army's plans for invading Mars or something like that. You know, you can, you can totally request that, but, uhm, it's going to come back with a 24A decision, or actually, if it does not exist, (laughter), well we'll, we'll say for argument sake that it doesn't exist...

23 14:33:22-14:33:22 ELLIE: Uhum...

24 14:33:22-14:33:59 ALAN: ...uhm, then, then they'd go, well you've requested a document, and that document is identified as, the plan to invade Mars, and we did our search and there's no plans, so we're going to decide that's not. Uhm, so, that, that's, that's one way of doing it. What it doesn't extend to is thoughts, or, uhm, basically any request which is posed as a question, would generally not be considered to be seeking a document, and, and that kind of takes us to our, the first issue with the request that uhm, that was referred to you for investigation.

25 14:33:59-14:33:59 ELLIE: Uhum...

26 14:33:59-14:34:13 ALAN: Let me, let me just pull it up, and, ugrhm, the, uhm, sorry, let me just get it up...

27 14:34:13-14:34:13 ELLIE: Uhum...

28 14:34:15-14:34:25 ALAN: Uhm, yep, cool, so, the, the first one seeks uhm, so the request seeks, uhm, the number of cited applications...

29 14:34:25-14:34:25 ELLIE: Uhum...

30 14:34:26-14:34:39 ALAN: ...declared ineligible by, uhm, blah, so just as a, as a starting point, the number may be contained in a document, but it's not actually seeking the document it's seeking a number...

31 14:34:39-14:34:39 ELLIE: Yep...

32 14:34:40-14:35:01 ALAN: ...and I know it's a huge technicality but it, it'll follow up to exactly why it wasn't accepted as valid. The uhm, the way that you could change this request so that it is valid, is that you'd say I'm requesting a document which contains the number of cited applications, as opposed to the cited applications themselves...

33 14:35:01-14:35:01 ELLIE: Uhum...

34 14:35:01-14:35:54 ALAN: ...and I know that's a huge technicality, the uhm, when we receive a, an invalid request, we're under an obligation, a statutory obligation under section 15 to suggest a way to make it valid, and while I could've and, and you probably saw, uhm, I'm not sure how much of my response you saw, but I did respond suggesting a way to, to make a valid request. And I could've suggested why don't you receive, why don't you request you know, a document containing the number. But that document doesn't exist. And it was just a little bit unhelpful to say hey make this valid request and then I'd have to come back with well no we don't have that document, it would be uhm, kind of like a waste of everyone's time. So, but, let's say that uhm, it, it kind of brings us to the second point that you're raising...

35 14:35:54-14:35:54 ELLIE: Uhum...

36 14:35:54-14:36:07 ALAN: ...it's a, it's a good point, uhm, if you requested the document containing the number and we have the ability to generate that number...

37 14:36:08-14:36:08 ELLIE: Uhum...

38 14:36:08-14:36:23 ALAN: ...why can't we generate that number, uhm, you know, do all of those things, know what I mean? Like, like, like I think, I think your question is if you can access all of this information and generate the number...

39 14:36:23-14:36:23 ELLIE: Uhum...

40 14:36:23-14:36:26 ALAN: ...why aren't you required to, under the FOI Act?

41 14:36:26-14:36:26 ELLIE: Uhum...

42 14:36:26-14:36:29 ALAN: And I, I think that kind of hits at what you're saying there.

43 14:36:29-14:36:29 ELLIE: Uhum...

44 14:36:30-14:37:03 ALAN: Yeah, the answer is that the FOI Act only applies to documents in existence at the time of the request, and therefore any document that's created subsequent to the receipt of that request is not captured within the FOI request itself. And one exception as you pointed out was, uhm, section 17, or paragraph 3 something of the FOI guidelines, which, which is a, a pretty cool section. And it was, it was brought in when, uhm, you know, databases started becoming more and more abundant...

45 14:37:03-14:37:03 ELLIE: Uhum...

46 14:37:04-14:37:18 ALAN: Yeah, because the question being raised was, well if we've got this, ugrhm, if we've got these databases and spreadsheets, how exactly are people meant to request documents? I, I guess they could request the entire database...

47 14:37:18-14:37:18 ELLIE: Uhum...

48 14:37:19-14:37:47 ALAN: ...or, none of it, uhm, but the, you know section 17 kind of comes along and says, you, if, with that database, if it's a, if you can make extract of it, you can pull it out and that can be the document for the purposes of the request. But what it doesn't do is create an obligation to make the database. And when you, if, if, if it was (inaudible)...

49 14:37:47-14:37:52 ELLIE: I'm sorry can you clarify why you're saying you don't believe, it's not an obligation to create it?

50 14:37:53-14:37:59 ALAN: Yeah, there's no obligation to create new documents under the FOI Act. Like if there is an existing database...

51 14:37:59-14:37:59 ELLIE: Uhum...

52 14:38:00-14:38:09 ALAN: Uhm, then you're, so uhm, uhm what's, what's the way that you file stuff over on your side? Do, do you have like a, a mana, management system or something like that?

53 14:38:09-14:38:12 ELLIE: Uhum, yeah, so just say we're using Windows Explorer for instance, yes.

54 14:38:12-14:38:24 ALAN: Yeah, so, so let's say, if someone asked, uhm, you to, I don't know, provide the number of applications received this year...

55 14:38:24-14:38:24 ELLIE: Uhum...

56 14:38:24-14:38:28 ALAN: ...you might be able to, I don't know if, you might be able to process that pretty quick?

57 14:38:28-14:38:28 ELLIE: Uhum...

58 14:38:28-14:38:35 ALAN: Maybe? Uhm, but if someone asked how many applications were submitted by females?

59 14:38:36-14:38:36 ELLIE: Uhum...

60 14:38:37-14:38:45 ALAN: You probably don't have access to that readily. You, it's probably not something you record on the side, to, to produce that number.

61 14:38:45-14:38:45 ELLIE: Uhum...

62 14:38:46-14:38:54 ALAN: You might actually have to read every application to identify if each was female, and then create this new number.

63 14:38:54-14:38:54 ELLIE: Uhum...

64 14:38:55-14:39:25 ALAN: And uhm, and that, that's kind of hitting at, at what's happening here. We don't have uhm, we, just, we're just not recording this number, uhm, for our own purposes and therefore we don't have it readily on hand. And so, with, well, with section 17 it's actually little, getting a little ahead of itself because the request is invalid in the first place because it doesn't seek a document. But if it was expressed in a form stating I want a document stating this number...

65 14:39:25-14:39:25 ELLIE: Uhum...

66 14:39:25-14:40:19 ALAN: ...the reason that it'll end up with a no document exists decision under 24A rather than creating a document under section 17 is because there's no requirement to create that document for, under the FOI Act. Yeah. And there are some situations where we might be required to, for example, uhm, maybe if uhm, Senate made an order, a standing order, uhm, there might be, yeah, I, I, I'm strug, I'm struggling to think of a different reason, but uhm, yeah if a Minister said how many you've got? Or a, or a member of Senate asked that to Parliament, how many you've got? You'd be all like yeah, yes Sir, we'll crack that out to you straight away. Uhm, yeah, but under FOI, it's, it's, it's just not doable, it, that, that's just not how far the Act stretches I guess.

67 14:40:21-14:40:23 ELLIE: So, because we're requesting a num...

68 14:40:22-14:40:30 ALAN: Uhm, however, however hopefully that's not too, too long-winded an explanation. But uhm, you feel free to ask any questions you like.

69 14:40:31-14:40:34 ELLIE: So, OK, I'm just...

70 14:40:35-14:40:35 ALAN: Yeah...

71 14:40:35-14:40:52 ELLIE: ...just give me a moment. So you're saying because you don't have a number, and because we're asking you to count these number of applications, you're saying you're under...

72 14:40:52-14:40:52 ALAN: Uhum...

73 14:40:52-14:41:01 ELLIE: ...no obligations to provide a count. You're under no obligation to do a search, and therefore give me a number based on that.

74 14:41:01-14:41:22 ALAN: Yeah, yeah that, that, that's a good way to think about it. And that lines up pretty much with the uhm, the information commissioner rulings in the area. Where, if, you know, if like you almost, if any minimum level of extra effort is required that's not considered, uhm, that you know, a proper use of section 17 I guess.

75 14:41:23-14:41:27 ELLIE: I guess, ughm, I guess we'll come back to a few other issues that I have.

76 14:41:27-14:41:28 ALAN: Ok...

77 14:41:28-14:41:54 ELLIE: I guess if I a look at a recent freedom of information request, which was, uhm, number 66717, and it talks about requesting the number of positional job titles and then a count of the number of staff in there. The, and, the information that was provided, and the information that was included in the letter stated that, this information doesn't exist in discrete form, but we're able...

78 14:41:54-14:41:54 ALAN: Uhum...

79 14:41:54-14:42:11 ELLIE: ...to create a document and the number of staff for each position. It sounds to me like what we're requesting is very similar to this. We're asking you to do a count, and you're telling me, no we're under no obligations to do that. So can you explain to me how that request is different to this request?

80 14:42:13-14:42:15 ALAN: Which request are you talking about?

81 14:42:15-14:42:56 ELLIE: Uhm, I've seen it, it's called FOI 66717, uhm, and it was a request for APS, uhm, position job titles, and then it had the count of the number of staff in those positions, and as part of it, it spoke about that this information doesn't exist in discrete form, but you're able to create a document and the number of staff for each position. So how is what you're telling me different, how, can you explain why you are able to do this, in this instance, but you're telling me, we're asking for a number and you're saying no we're not going to do a count. And I just, I don't understand how that, I, yep...

82 14:42:56-14:42:59 ALAN: 66717 is that right?

83 14:42:58-14:43:00 ELLIE: I think that, yep, I believe that's the number.

84 14:43:01-14:43:02 ALAN: Ehm, let me see.

85 14:43:04-14:43:18 ELLIE: Where are we, 66717. It said a list of all position job titles of every non-APS contractor working within your department.

86 14:43:24-14:43:28 ALAN: D, d, d... Oh an access of... Ok I see.

87 14:43:28-14:43:28 ELLIE: Uhum...

88 14:43:30-14:43:40 ALAN: An access of a list to a list of positions of every non-APS contractor working within the department. We collect that information. It's, it's, it's, it's maintained by HR.

89 14:43:42-14:43:51 ELLIE: But the actual document itself wasn't, it didn't exist in, you created the document.

90 14:43:50-14:43:53 ALAN: Exactly, yes, under section 17 they made the document.

91 14:43:54-14:43:57 ELLIE: And so how is what we're asking for different?

92 14:43:55-14:44:02 ALAN: That, that's, that's, that's a, that's a great example of a, so, our HR, like human resources facility...

93 14:44:02-14:44:02 ELLIE: Uhum...

94 14:44:02-14:44:05 ALAN: ...records the number of contractors that we engage.

95 14:44:05-14:44:05 ELLIE: Uhum...

96 14:44:06-14:44:53 ALAN: And that's a number that's readily available, we keep it for the uhm, reporting purposes, and yeah, budgetary sort of reasons. And, and, you're, and you're, you're saying hey, how come this one like you know, how, how come we can create a document for that and not for this, and because we already record the information, the, it was quite simple, we didn't go around counting all of the applications received by all the people. We didn't do a head count or a, or a massive group email of staff, hey guys would you please tell us who's a contractor and who's not. We already had the information on hand and already in numerical form too. And using section 17 we accessed that database and created a new document.

97 14:44:53-14:44:53 ELLIE: Ok.

98 14:44:55-14:45:05 ALAN: And that, that's a good example, if, if that, if that was the, uhm, response that you received to that request, you'd be totally justified in saying hey, hey that's, that's not right.

99 14:45:06-14:45:23 ELLIE: Ok. So, if we go back to some of the discussions that we've had through email. And you were saying to me that, uhm, it's not, we don't, a datasist [sic], doesn't exist. Can you I guess explain to me what is a dataset then, how would you define that?

100 14:45:24-14:45:35 ALAN: Uhm, I guess in this case, we're talking about a database, which collects the numbers of disclosures and, uhm, what was the other thing, something else.

101 14:45:38-14:45:41 ELLIE: Ok. So you're just saying a database that contains...

102 14:45:43-14:45:59 ALAN: Yeah, I hope, I hope, hopefully you get what I mean. Like you probably don't have the database saying, yeah, the number of emails received from Alan Hilvert-Bruce. You, you, you might have all of our emails, well hopefully you do...

103 14:45:59-14:45:59 ELLIE: Uhum...

104 14:45:59-14:46:02 ALAN: But uhm, yeah, you'd have to go and count.

105 14:46:02-14:46:04 ELLIE: Ok... and so you're saying...

106 14:46:03-14:46:07 ALAN: You, you don't, you don't have a numerical figure somewhere. You know what I mean?

107 14:46:07-14:46:15 ELLIE: Uhum... So you're saying a database is something contains numerical information, is that correct?

108 14:46:18-14:46:20 ALAN: Yeah, it's usually numerical, I'd say that.

109 14:46:21-14:46:26 ELLIE: Ok. And so a dataset and a database is the same thing. Is that correct?

110 14:46:27-14:46:28 ALAN: Sorry could you repeat that?

111 14:46:28-14:46:33 ELLIE: So, you're saying a database or dataset, they're one of the same, is that correct?

112 14:46:34-14:47:11 ALAN: Yep, sure. Uhm, you know, you, you can, you can define it as you wish. It's just a, you know, an electronic collection of informa, things. That, like, like, you, you do understand that, to answer this request we'd have to read through every application and their results to, to, to find out the number, right? Like that, that's really what it comes down to. And the reason that we have to do that, is because we're not doing it already. And we're not recording it anywhere. And we would be recording it in a database if we were.

113 14:47:11-14:47:17 ELLIE: Ok. And, so you're saying that you don't believe the database exists currently, is that correct?

114 14:47:19-14:47:19 ALAN: Sorry?

115 14:47:19-14:47:24 ELLIE: So you're saying that the datas [sic], the database doesn't exist currently. Is that correct?

116 14:47:25-14:47:25 ALAN: That's right, yep.

117 14:47:25-14:47:33 ELLIE: Yes, and I guess then, like, how do you know that? Like, how did you know that this database or dataset doesn't exist?

118 14:47:34-14:47:37 ALAN: I just called the line area and I said do you have this database and they said no.

119 14:47:37-14:47:38 ELLIE: So, who did you speak to sorry?

120 14:47:41-14:47:43 ALAN: The subject matter experts.

121 14:47:43-14:47:48 ELLIE: The subject matter expert. Do you have a particular name of that person, or, of who you spoke with?

122 14:47:48-14:47:54 ALAN: Uhm, yeah unfortunately not, your, your standing is, is quite limited in the situation.

123 14:47:54-14:47:54 ELLIE: Ok.

124 14:47:55-14:48:19 ALAN: And, I, I hope, I hope you do appreciate that you're the applicant neither have you provided the authority to act on the applicant's behalf. And uhm, and to provide further details in, in this kind of thing you know could be potentially a breach of the Privacy Act, I think that would be a good start. If I was to provide you with numbers and names.

125 14:48:20-14:48:20 ELLIE: Ok.

126 14:48:20-14:48:25 ALAN: And uhm, and then there will also be other issues that are... yeah.

127 14:48:26-14:48:29 ELLIE: So in terms of me just asking some general questions... Yep...

128 14:48:29-14:48:35 ALAN: Oh I'm al, I'm also under the, that's right, I'm also under statutory obligations to, you know, confidentiality, that sort of stuff.

129 14:48:37-14:48:49 ELLIE: So me asking you have you checked whether you have a record of this, and you're unwilling to provide any information because I'm not the one who asked for it. Is that correct?

130 14:48:51-14:49:05 ALAN: Well, unless you want to provide me with a, uhm, legislative authority that you have to access it. Do, do, do you, do you have any formal, uhm, standing?

131 14:49:06-14:49:14 ELLIE: I don't know what you mean by that. I, I've, we've discussed this through email, and we're just furthering, discuss, discussing this now...

132 14:49:14-14:49:14 ALAN: Uhum...

133 14:49:14-14:49:25 ELLIE: ...as a phone call, so I don't really understand why, you're now, I don't really know now why you're unwilling to sort of disclose any extra information, now you're really putting your back up.

134 14:49:25-14:49:28 ALAN: I, I've said, I've, I've, well we've made out position pretty clear haven't we?

135 14:49:28-14:49:28 ELLIE: Uhum...

136 14:49:29-14:49:35 ALAN: Is, is there any other part of the request is invalid that you'd like to know?

137 14:49:36-14:49:47 ELLIE: Well I guess my understanding is that the number that we're asking for is the report that we'd like you to get. It's the report that we want you to generate.

138 14:49:50-14:49:55 ALAN: There, there's no requirement under the FOI Act to create new documents.

139 14:49:57-14:50:02 ELLIE: Yes, there is, like this is the bit that I don't understand. That...

140 14:50:02-14:50:04 ALAN: Well, well...

141 14:50:04-14:50:19 ELLIE: This information exists somewhere within your department, and it might not be in a discrete form like a dataset as you are claiming, the information does exist within your department and as such you can produce a written document as per section 17.

142 14:50:20-14:50:23 ALAN: Yeah, you, uhm ok, that's right...

143 14:50:23-14:50:23 ELLIE: Yeah...

144 14:50:23-14:50:25 ALAN: ...in that singular example...

145 14:50:25-14:50:25 ELLIE: Uhum...

146 14:50:25-14:50:26 ALAN: ...which does not apply here...

147 14:50:26-14:50:28 ELLIE: Why doesn't it apply here?

148 14:50:27-14:50:32 ALAN: ...there is, there is an obligation, but in this example...

149 14:50:32-14:50:32 ELLIE: Uhum...

150 14:50:32-14:50:33 ALAN: ...there is not.

151 14:50:35-14:50:41 ELLIE: So, part 3 of the FOI guidelines and it requires you to make a report, like.

152 14:50:42-14:50:47 ALAN: It requires us to search when we've received a valid request that's correct.

153 14:50:48-14:50:50 ELLIE: Yes, so the information that I'm asking for...

154 14:50:50-14:50:52 ALAN: We have not received a valid request.

155 14:50:53-14:51:12 ELLIE: But the information does exist, somewhere within your department, and we are asking whether you, that it might not be in a spreadsheet as you would like to say, it does, this information does exist. And so we're asking for a count of it. I don't understand... So...

156 14:51:10-14:51:14 ALAN: Yeah, that's right, you're asking us to create a document which (inaudible)...

157 14:51:14-14:51:17 ELLIE: Yes, we're asking for a report, based on documents that...

158 14:51:17-14:51:17 ALAN: Yeah...

159 14:51:17-14:51:19 ELLIE: ...you have. I don't...

160 14:51:19-14:51:19 ALAN: But...

161 14:51:19-14:51:38 ELLIE: ...understand how you're saying it's not a valid request, when freedom of information is requesting information and it does exist in your department. And, it requires you to produce a written report. We, I don't understand.

162 14:51:39-14:51:44 ALAN: Yeah, because it would require the creation of a new document.

163 14:51:44-14:51:46 ELLIE: Exactly, yes. That's correct.

164 14:51:46-14:51:56 ALAN: Let's, let's go back to the FOI guidelines where there's, there's no obligation to create a new document. Just hold on for a second.

165 14:51:59-14:52:03 ELLIE: Yes, so the new document is the report. It's the report that we're asking for.

166 14:52:04-14:52:06 ALAN: Yeah, the non-existent report I understand.

167 14:52:12-14:52:16 ELLIE: It's not non-existing, the documents exist.

168 14:52:17-14:52:21 ALAN: It doesn't exist yet. It's, it's, it's, it's pretty...

169 14:52:22-14:52:22 ELLIE: Yes...

170 14:52:22-14:52:23 ALAN: I don't know how to express...

171 14:52:23-14:52:25 ELLIE: ...the report will exist because you have to create it. That's...

172 14:52:26-14:52:26 ALAN: Correct.

173 14:53:00-14:53:08 ELLIE: Yes, so part 3 of the FOI guidelines say that you have to create a report based on the documents you concede exist.

174 14:53:39-14:53:42 ALAN: OK, paragraph 2.33 of the FOI guidelines...

175 14:53:42-14:53:42 ELLIE: Uhum...

176 14:53:42-14:53:53 ALAN: Do you have, yep. Would you be able to read that?

177 14:53:53-14:53:56 ELLIE: Uhm, I don't have it open, uhm, at the moment, no.

178 14:53:57-14:54:28 ALAN: Sure, I'll, I'll, I'll read it to you. Uhm, this one's titled, uhm, documents in existence. The right of access under the FOI Act is to existing documents rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access. Extr, except in limited circumstanced where the applicant seeks access in different format, or where the information is stored in an agency computer system rather than discrete form.

179 14:54:28-14:54:28 ELLIE: Uhum...

180 14:54:28-14:54:36 ALAN: Which is what you're talking about. A request may nevertheless be framed by reference to a document that contains particular information...

181 14:54:36-14:54:36 ELLIE: Uhum...

182 14:54:36-14:54:50 ALAN: ...which is what (inaudible) advice (inaudible). The right of access applies to documents that exist at the time the FOI request was made. An applicant cannot insist that their request covers documents created after the document, the request was received.

183 14:54:53-14:54:58 ELLIE: Yes, so if we jump to 3.204, just bringing that up now.

184 14:54:58-14:55:09 ALAN: I, I, I, I think we've already explored that. Uhm, I, I don't think we're going to get much further in our conversation, but uhm, you know, I guess I hope that, uhm...

185 14:55:09-14:55:10 ELLIE: Well let me...

186 14:55:10-14:55:11 ALAN: ...you understand our position now.

187 14:55:12-14:55:36 ELLIE: Uhm, no, not at this stage, so, if I just read through then, so 3.204. So section 17 requires an agency to produce a written document or information that is stored electronically and is not in a discrete written form. If it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. Examples...

188 14:55:36-14:55:39 ALAN: It's not stored anywhere. The, the number is not stored anywhere.

189 14:55:39-14:55:40 ELLIE: No, the num...

190 14:55:40-14:55:44 ALAN: And, and... Exactly, so section 17 does not apply.

191 14:55:47-14:55:56 ELLIE: The documents do exist though. Just because we, you have, you don't have a count as such recorded somewhere, you can do it.

192 14:55:57-14:55:58 ALAN: Yes, that's right.

193 14:55:57-14:55:58 ELLIE: You can do a count.

194 14:55:58-14:56:00 ALAN: But there's no obligation to do it.

195 14:56:19-14:56:19 ELLIE: Ok. So let's continue to read through. So... Examples include a transcript of a sound recording, a written compilation of information held across various agency databases or the production of a statistical report from an agency's dataset.

196 14:56:20-14:56:20 ALAN: Uhum...

197 14:56:20-14:56:38 ELLIE: The obligation to produce a written document arises if the agency could produce a written document containing the information by using a computer or other equipment that is ordinarily available to the agency, were, for retrieving or collating stored information, or making a transcript from a sound recording.

198 14:56:37-14:56:52 ALAN: We don't, we don't have, the, the issue is that you're missing the step like, we don't have the information recorded, therefore we cannot use computer systems to record it (inaudible).

199 14:56:50-14:56:53 ELLIE: You do have, they're in your emails. Your...

200 14:56:53-14:57:00 ALAN: No, we'd have to use our eyes, and our brains, to manually count, and then create the number.

201 14:57:04-14:57:04 ELLIE: (gasp) So...

202 14:57:04-14:57:08 ALAN: So for, for example, for example you could also request... Let's, let's, let's...

203 14:57:06-14:57:36 ELLIE: Uhm, yes, of, yes, you'd (laughter), just, I'm sorry I can't believe... That you always will have to use your eyes. You always have to use your common sense of, your brain to process and to request certain information. I don't, that, that's, I can't believe that you said that. Like, it's baffling to me that you're telling me that you have to use your eyes that therefore you're not going to, do, like, oh, you...

204 14:57:36-14:57:55 ALAN: I'm saying, I'm saying, if you looked through the entirety of the department right now, for the number that the applicant seeks, you would not find it. Because the number has not been created. We would need to create the extra step to count each of the documents and then create the number, and then it would be created.

205 14:57:56-14:58:02 ELLIE: Yes, of course, you're required to create a report. That's correct. By law, you're obliged to create a report.

206 14:58:03-14:58:10 ALAN: Ok. I think, uhm, I think we've reached the end of our discussion. I don't think we're going to get any further. Well what do you think?

207 14:58:11-14:58:15 ELLIE: Uhm, I don't really feel like you've, you...

208 14:58:15-14:58:32 ALAN: Yep, you can inform the applicant that they're welcome to make a complaint to the information commissioner if they're uncomfortable with how, the uhm, department processed this FOI request in this instance. So uhm, have a great afternoon.

209 14:58:32-14:58:34 ELLIE: Oh, I'm sorry I still have a few...

210 14:58:34-14:58:34 EVENT CALL TERMINATED BY ALAN

211 14:58:34-14:58:35 ELLIE: ...more questions.

Freedom of Information

From: Hilvert-Bruce, Alan
Sent: Wednesday, 7 October 2020 10:03 AM
To: 's47F' 'Ellie s47'
Cc: Freedom of Information
Subject: CM: RE: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Menzies and Ellie

We will accept the below request as valid and received yesterday.

Just to confirm, should we identify the applicant (and subsequently the party that receives review rights) as:

- Menzies
- s22
- Ellie s47 (in her personal capacity, not on behalf of another party)

or some combination of the above? Note that if more than one party is identified, that authorisation by all parties will be required to proceed through certain steps.

Regards

Alan Hilvert-Bruce
Senior Legal Counsel
Energy and Climate Team
Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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From: s47F [mailto:s47F@gmail.com]
Sent: Tuesday, 6 October 2020 5:22 PM
To: Hilvert-Bruce, Alan
Cc: Ellie s47 ; Freedom of Information
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Please proceed with the request.

-Menzies

On Tue, Oct 6, 2020 at 5:04 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Hi Ellie

We can accept that request, but cannot make an undertaking that a document will be generated under section 17 in response to it.

Would you like to proceed with the request?

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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From: Ellie **s47F**
Sent: Tuesday, 6 October 2020 4:24 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; **s47F** <s47F@gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

It is understood that FOI requests seek documents.

Would this suffice, however:

I am referring to 'regional incubator facilitator' disclosed interests ("Disclosures") and corresponding grant applications ("Cited Applications").

I am requesting a document that contains a report with the number of Cited Applications

- (a) declared ineligible for committee consideration by AusIndustry,
 - (b) considered by a committee, and
 - (c) approved by a Minister
- in each calendar month; I am aware that b and c will not coincide.

As part of the same report document, I am also requesting (d) the aggregate number of Disclosures made without reference to Cited Applications.

As per section 17 of the FOI Act, the report can be developed on the basis of information in existing documents. Here is a report on the amounts requested by all ISI applications by month ([statistics created for the incubator support initiative](#)).

This report explicitly states that a query was made to list the applications and that the months were added with the totals.

Quote: "if there were no applications received in a given year/month, the month has not been listed in the results"

The aggregate amounts did not exist. The months and years also did not exist. They were created when existing document data were tallied - individual amounts requested for each application were added to create a new number and a month/year record for the purpose of that report.

Precisely in this way, you can tally the number of successful/unsuccessful grant applications. If you feel that this is burdensome, then please provide a formal decision.

Faithfully,
Ellie



s47F



s22

On 06-10-2020 14:55, Hilvert-Bruce, Alan wrote:

Hi Ellie

The Department's position is that the request was invalid. As a result, there is no legal obligation to make a decision in respect of it, nor an obligation to provide reasons in respect of that decision.

If the applicant would like to make a valid request seeking the same information, they may wish to amend their scope to:

I am referring to 'regional incubator facilitator' disclosed interests ("Disclosures") and corresponding grant applications ("Cited Applications").

*I am requesting a **document that contains the number** of Cited Applications*

*(a) declared ineligible for committee consideration by AusIndustry,
(b) considered by a committee, and
(c) approved by a Minister
in each calendar month; I am aware that b and c will not coincide.*

*I am also requesting (d) the **aggregate number** of Disclosures made without reference to Cited Applications.*

As discussed previously, this request is likely to result in a section 24A decision (documents do not exist), but it will achieve the goal of being legally entitled to a statement of reasons for that decision.

Let us know if this is a path that the applicant would like to proceed with.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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OFFICIAL

From: Ellie s47F]
Sent: Tuesday, 6 October 2020 3:34 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Alan,

On 5 October 2020, as per your request, I provided you with a call transcript of our teleconference held on 2 October 2020.

During the teleconference, you advised that:

1. you spoke with a subject matter expert [120] when you called the line area to ask if a special-purpose database exists [118];
2. you object to using your eyes and brain [200] to collate the outcomes of cited applications [112] from documents you know exist [204] without a special-purpose database [96, 98];
3. you know that this is a huge technicality [32, 34]; and
4. you are aware of your obligations to refrain from using technicalities to block FOI requests [34].

As per your statements, I feel it is appropriate to characterise your position as one that appeals to FOI guidelines 3.204 - second point.

However, even if it were reasonable to suggest that it is overburdening to count recorded application outcomes with only 11 RIF declarations at EPC meetings [FOI 66900 & Disclosure Log: 20/029], it is most certainly unreasonable to claim that the FOI request is invalid and unworthy of a department FOI reference number with a formal decision and a statement of reasons such that it meets OAIC complaint procedure.

As you will be aware, you have until 13 October 2020 to furnish a formal decision with a statement of reasons with respect to this FOI request.

Please let me know if you intend to provide a formal decision with a statement of reasons.

Faithfully,
Ellie



Ellie s47



s22

On 02-10-2020 15:42, Hilvert-Bruce, Alan wrote:

Hi Ellie

Yes, a transcript would be great thanks.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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received this transmission in error, please notify me immediately by telephone and delete copies of this transmission together with any attachments.

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From: Ellie s47F]
Sent: Friday, 2 October 2020 3:39 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Alan,

Thanks for your time today.

Would you like me to provide you with the transcript of our call for your records?

Faithfully,
Ellie



Ellie s47



s22

On 02-10-2020 13:52, Hilvert-Bruce, Alan wrote:

Hi Ellie

Could we please push our discussion back to 2.30pm? I'm having a delayed lunch.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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OFFICIAL

From: Ellie s47F
Sent: Friday, 2 October 2020 10:33 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Great, I'll give you a call at 2pm.

In the meantime, is it possible to get a copy of your process for searches and extraction of documents under the FOI Act? I have attached AG's procedures for example.

This may help me better understand your position.

Faithfully,
Ellie



Ellie s47



s22

On 02-10-2020 09:46, Hilvert-Bruce, Alan wrote:

Hi Ellie

How does 2pm sound?

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 1 October 2020 5:31 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F <s47F@gmail.com>; Freedom of Information <FOI@industry.gov.au>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Wonderful! What's the best time to call?

Faithfully,
Ellie



Ellie s47



s22

On 01-10-2020 16:23, Hilvert-Bruce, Alan wrote:

Hi Ellie

The applicant is most welcome to request emails if they wish. There is otherwise no database that records the numbers of Cited Applications and Disclosures that exists.

For future discussions on this matter it's probably best to discuss via phonecall, as I suspect that we'll continue this debate over a non-existent database for longer than it needs to if it is kept to email.

My number is below if you would like to continue this discussion.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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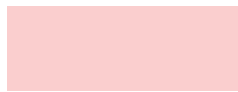
OFFICIAL

From: Ellie s47F]
Sent: Thursday, 1 October 2020 1:51 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Of course - I'm advised that both Disclosures and Cited Applications reside on your department's email system dataset and I take your position to be that these documents don't comprise this dataset (please correct me if I misunderstood).

Therefore, I'm asking which parts of your email system would you consider a dataset for the purposes of the FOI Act?

Faithfully,
Ellie



Ellie s47



s22

On 01-10-2020 13:32, Hilvert-Bruce, Alan wrote:

Hi Ellie

The dataset does not exist.

As for the question about our email system, would you be able to clarify further? You can request emails under FOI if that's the issue.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 1 October 2020 1:23 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Thanks Alan.

I'm confused since I was assured that the dataset exists. Have you been advised to the contrary by anyone?

Lastly, for clarity, does your department's email system constitute a dataset in your view?

Faithfully,
Ellie



Ellie s47

s22

On 01-10-2020 11:11, Hilvert-Bruce, Alan wrote:

Hi Ellie

The pathways provided in pt 3 of FOI guidelines [3.204] (drawn from section 17 FOI Act) only apply where there is an existing database or dataset maintained by the Department at the time the request is received that contains the information sought. Section 17 allows, in part, for extracts to be drawn from that database/dataset, and for that extract to then be considered the document sought by the request. You may note the examples set out in the paragraph don't discuss creating new documents to respond to questions, but rather identify transcriptions and extracts of existing documents:

a transcript of a sound recording, a written compilation of information held across various agency databases, or the production of a statistical report from an agency's dataset...

If the information sought is not contained in such a dataset, section 17 of the FOI Act does not create an obligation to make a new document or dataset.

The request below sought statistics regarding "Disclosures" and "Cited Applications". The Department does not have an existing database which tracks these statistics. As a result, the Department is not required under section 17 to create a document in response to the request.

This does not mean that the applicant cannot request the information in a different form, so long as that form is contained in a document that exists at the time the request is received. To this end I suggested that the applicant may wish to request access to the grant applications related to their request, something that they may wish to consider in the future.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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OFFICIAL

From: Ellie s47F]
 Sent: Thursday, 1 October 2020 10:20 AM
 To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
 Cc: s47F <s47F@gmail.com>
 Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Greetings Alan,

I'm following up on request beneath. I would appreciate it if you would explain why pt 3 of FOI guidelines [3.204] does not apply in this instance?

From what I see, this is a request for a report spanning two types of documents (Disclosures and Cited Applications) with specifics provided as to their particulars - a to d. What do you see?

Faithfully,
Ellie



Ellie s47



s22

On 30-09-2020 13:44, s47F wrote:

this too thanks

----- Forwarded message -----

From: **Hilvert-Bruce, Alan** <Alan.Hilvert-Bruce@industry.gov.au>
 Date: Tue, Sep 15, 2020 at 12:16 PM
 Subject: RE: Fwd: ausindustry case [SEC=OFFICIAL]
 To: s47F <s47F@gmail.com>
 Cc: Freedom of Information <FOI@industry.gov.au>

Good morning Menzies,

I am writing to let you know that the request in its current form is not valid for the purposes of the FOI Act.

As you are likely aware, requests under the FOI Act may only be made for 'documents' that are in existence as at the date of the request. We understand that you are not seeking specific identified documents, but rather are seeking the creation of a new document that bears numbers of Disclosures and Cited Applications sorted into different categories. Unfortunately this information cannot be sought via an FOI request in this instance.

Would you like to amend your request so that it seeks the grant applications referred within it? A request along these lines would be considered valid as it seeks 'documents' and the Department could process it.

Please note that submitting a valid request will not necessarily guarantee that access will be granted to the documents subject to it - the decision maker will consider the content of each to determine if they are exempt from disclosure.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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From: s47F [mailto:s47F@gmail.com]
Sent: Sunday, 13 September 2020 11:21 AM
To: Freedom of Information <FOI@industry.gov.au>
Subject: CM: Fwd: Re: ausindustry case

Department of Industry, Science, Energy and Resources
Legal Branch
GPO Box 2013
Canberra ACT 2601

ATT FOI Coordinator

I am requesting access to information under the Freedom of Information Act.

BACKGROUND

I am referring to 'regional incubator facilitator' disclosed interests ("*Disclosures*") and corresponding grant applications ("*Cited Applications*").

REQUEST

I am requesting the number of *Cited Applications*

- (a) declared ineligible for committee consideration by AusIndustry,
 - (b) considered by a committee, and
 - (c) approved by a Minister
- in each calendar month; I am aware that b and c will not coincide.

I am also requesting (d) the aggregate number of *Disclosures* made without reference to *Cited Applications*.

DELIVERY

s47F

-Menzies

OFFICIAL

Freedom of Information

From: Hilvert-Bruce, Alan
Sent: Thursday, 1 October 2020 1:33 PM
To: Freedom of Information
Subject: CM: FW: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Alan Hilvert-Bruce
Senior Legal Counsel
Energy and Climate Team
Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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OFFICIAL

From: Hilvert-Bruce, Alan
Sent: Thursday, 1 October 2020 1:33 PM
To: 'Ellie s47 '
Cc: s47F
Subject: RE: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Ellie

The dataset does not exist.

As for the question about our email system, would you be able to clarify further? You can request emails under FOI if that's the issue.

Cheers

Alan Hilvert-Bruce
Senior Legal Counsel
Energy and Climate Team
Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 1 October 2020 1:23 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F <s47F@gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Thanks Alan.

I'm confused since I was assured that the dataset exists. Have you been advised to the contrary by anyone?

Lastly, for clarity, does your department's email system constitute a dataset in your view?

Faithfully,
Ellie



Ellie s47



s22



On 01-10-2020 11:11, Hilvert-Bruce, Alan wrote:

Hi Ellie

The pathways provided in pt 3 of FOI guidelines [3.204] (drawn from section 17 FOI Act) only apply where there is an existing database or dataset maintained by the Department at the time the request is received that contains the information sought. Section 17 allows, in part, for extracts to be drawn from that database/dataset, and for that extract to then be considered the document sought by the request. You may note the examples set out in the paragraph don't discuss creating new documents to respond to questions, but rather identify transcriptions and extracts of existing documents:

a transcript of a sound recording, a written compilation of information held across various agency databases, or the production of a statistical report from an agency's dataset...

If the information sought is not contained in such a dataset, section 17 of the FOI Act does not create an obligation to make a new document or dataset.

The request below sought statistics regarding "Disclosures" and "Cited Applications". The Department does not have an existing database which tracks these statistics. As a result, the Department is not required under section 17 to create a document in response to the request.

This does not mean that the applicant cannot request the information in a different form, so long as that form is contained in a document that exists at the time the request is received. To this end I suggested that the applicant may wish to request access to the grant applications related to their request, something that they may wish to consider in the future.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

From: Ellie **s47F**
Sent: Thursday, 1 October 2020 10:20 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: **s47F** <s47F@gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Greetings Alan,

I'm following up on request beneath. I would appreciate it if you would explain why pt 3 of FOI guidelines [3.204] does not apply in this instance?

From what I see, this is a request for a report spanning two types of documents (Disclosures and Cited Applications) with specifics provided as to their particulars - a to d. What do you see?

Faithfully,
Ellie



Ellie s47



s22

On 30-09-2020 13:44, s47F :

this too thanks

----- Forwarded message -----

From: **Hilvert-Bruce, Alan** <Alan.Hilvert-Bruce@industry.gov.au>

Date: Tue, Sep 15, 2020 at 12:16 PM

Subject: RE: Fwd: ausindustry case [SEC=OFFICIAL]

To: s47F <s47F@gmail.com>

Cc: Freedom of Information <FOI@industry.gov.au>

Good morning Menzies,

I am writing to let you know that the request in its current form is not valid for the purposes of the FOI Act.

As you are likely aware, requests under the FOI Act may only be made for 'documents' that are in existence as at the date of the request. We understand that you are not seeking specific identified documents, but rather are seeking the creation of a new document that bears numbers of Disclosures and Cited Applications sorted into different categories. Unfortunately this information cannot be sought via an FOI request in this instance.

Would you like to amend your request so that it seeks the grant applications referred within it? A request along these lines would be considered valid as it seeks 'documents' and the Department could process it.

Please note that submitting a valid request will not necessarily guarantee that access will be granted to the documents subject to it - the decision maker will consider the content of each to determine if they are exempt from disclosure.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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From: s47F [mailto:s47F@[gmail.com](mailto:s47F@gmail.com)]

Sent: Sunday, 13 September 2020 11:21 AM

To: Freedom of Information <FOI@industry.gov.au>

Subject: CM: Fwd: Re: ausindustry case

Department of Industry, Science, Energy and Resources
Legal Branch
GPO Box 2013
Canberra ACT 2601

ATT FOI Coordinator

I am requesting access to information under the Freedom of Information Act.

BACKGROUND

I am referring to 'regional incubator facilitator' disclosed interests ("*Disclosures*") and corresponding grant applications ("*Cited Applications*").

REQUEST

I am requesting the number of *Cited Applications*

(a) declared ineligible for committee consideration by AusIndustry,

(b) considered by a committee, and

(c) approved by a Minister

in each calendar month; I am aware that b and c will not coincide.

I am also requesting (d) the aggregate number of *Disclosures* made without reference to *Cited Applications*.

DELIVERY

s47F

[@gmail.com](#)

-Menzies

OFFICIAL

Freedom of Information

From: Hilvert-Bruce, Alan
Sent: Wednesday, 7 October 2020 2:47 PM
To: 's47F'
Cc: Freedom of Information
Subject: CM: FW: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Menzies

The statutory deadline for your valid request, received yesterday, is 5 November 2020.

We will otherwise not engage in further correspondence regarding the validity of the request.

Regards

Alan Hilvert-Bruce
Senior Legal Counsel
Energy and Climate Team
Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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From: s47F @gmail.com]
Sent: Wednesday, 7 October 2020 2:22 PM
To: Hilvert-Bruce, Alan
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Mr. Hilvert-Bruce,

You accepted the request yesterday when you sought and received instruction to proceed.

The request you accepted is my initial request that now redundantly appeals to a report.

As it stands, the decision is due on 14 October 2020.

However, if you are reasonably concerned about wasted time, then rather than seek further clarification merely to extend the due date, you can ask for an extension pursuant to s15AA as I undertake to agree to a further 23 calendar days for a decision due on 6 November 2020.

-Menzies

On Wed, Oct 7, 2020 at 10:03 AM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Hi Menzies and Ellie

We will accept the below request as valid and received yesterday.

Just to confirm, should we identify the applicant (and subsequently the party that receives review rights) as:

- Menzies

- s22

- Ellie s47 (in her personal capacity, not on behalf of another party)

or some combination of the above? Note that if more than one party is identified, that authorisation by all parties will be required to proceed through certain steps.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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From: s47F [@gmail.com](mailto:s47F@gmail.com)]

Sent: Tuesday, 6 October 2020 5:22 PM

To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>

Cc: Ellie s47F >; Freedom of Information <FOI@industry.gov.au>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Please proceed with the request.

-Menzies

On Tue, Oct 6, 2020 at 5:04 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Hi Ellie

We can accept that request, but cannot make an undertaking that a document will be generated under section 17 in response to it.

Would you like to proceed with the request?

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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received this transmission in error, please notify me immediately by telephone and delete copies of this transmission together with any attachments.

OFFICIAL

OFFICIAL

OFFICIAL

From: Ellie s47F]
Sent: Tuesday, 6 October 2020 4:24 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

It is understood that FOI requests seek documents.

Would this suffice, however:

-

I am referring to 'regional incubator facilitator' disclosed interests ("Disclosures") and corresponding grant applications ("Cited Applications").

I am requesting a document that contains a report with the number of Cited Applications

(a) declared ineligible for committee consideration by AusIndustry,
(b) considered by a committee, and
(c) approved by a Minister
in each calendar month; I am aware that b and c will not coincide.

As part of the same report document, I am also requesting (d) the aggregate number of Disclosures made without reference to Cited Applications.

-

As per section 17 of the FOI Act, the report can be developed on the basis of information in existing documents. Here is a report on the amounts requested by all ISI applications by month ([statistics created for the incubator support initiative](#)).

This report explicitly states that a query was made to list the applications and that the months were added with the totals.

Quote: "if there were no applications received in a given year/month, the month has not been listed in the results"

The aggregate amounts did not exist. The months and years also did not exist. They were created when existing document data were tallied - individual amounts requested for each application were added to create a new number and a month/year record for the purpose of that report.

Precisely in this way, you can tally the number of successful/unsuccessful grant applications. If you feel that this is burdensome, then please provide a formal decision.

Faithfully,
Ellie



Ellie s47



s22

On 06-10-2020 14:55, Hilvert-Bruce, Alan wrote:

Hi Ellie

The Department's position is that the request was invalid. As a result, there is no legal obligation to make a decision in respect of it, nor an obligation to provide reasons in respect of that decision.

If the applicant would like to make a valid request seeking the same information, they may wish to amend their scope to:

I am referring to 'regional incubator facilitator' disclosed interests ("Disclosures") and corresponding grant applications ("Cited Applications").

*I am requesting a **document that contains the number** of Cited Applications*

*(a) declared ineligible for committee consideration by AusIndustry,
(b) considered by a committee, and
(c) approved by a Minister
in each calendar month; I am aware that b and c will not coincide.*

*I am also requesting (d) the **aggregate number** of Disclosures made without reference to Cited Applications.*

As discussed previously, this request is likely to result in a section 24A decision (documents do not exist), but it will achieve the goal of being legally entitled to a statement of reasons for that decision.

Let us know if this is a path that the applicant would like to proceed with.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

From: Ellie s47F]
Sent: Tuesday, 6 October 2020 3:34 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Alan,

On 5 October 2020, as per your request, I provided you with a call transcript of our teleconference held on 2 October 2020.

During the teleconference, you advised that:

1. you spoke with a subject matter expert [120] when you called the line area to ask if a special-purpose database exists [118];
2. you object to using your eyes and brain [200] to collate the outcomes of cited applications [112] from documents you know exist [204] without a special-purpose database [96, 98];
3. you know that this is a huge technicality [32, 34]; and
4. you are aware of your obligations to refrain from using technicalities to block FOI requests [34].

As per your statements, I feel it is appropriate to characterise your position as one that appeals to FOI guidelines 3.204 - second point.

However, even if it were reasonable to suggest that it is overburdening to count recorded application outcomes with only 11 RIF declarations at EPC meetings [FOI 66900 & Disclosure Log: 20/029], it is most certainly unreasonable to claim that the FOI request is invalid and unworthy of a department FOI reference number with a formal decision and a statement of reasons such that it meets OAIC complaint procedure.

As you will be aware, you have until 13 October 2020 to furnish a formal decision with a statement of reasons with respect to this FOI request.

Please let me know if you intend to provide a formal decision with a statement of reasons.

Faithfully,
Ellie



Ellie s47



s22

On 02-10-2020 15:42, Hilvert-Bruce, Alan wrote:

Hi Ellie

Yes, a transcript would be great thanks.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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OFFICIAL

From: Ellie s47F]
Sent: Friday, 2 October 2020 3:39 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Hi Alan,

Thanks for your time today.

Would you like me to provide you with the transcript of our call for your records?

Faithfully,
Ellie



Ellie s47



s22

On 02-10-2020 13:52, Hilvert-Bruce, Alan wrote:

Hi Ellie

Could we please push our discussion back to 2.30pm? I'm having a delayed lunch.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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OFFICIAL

From: Ellie s47F]
Sent: Friday, 2 October 2020 10:33 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Great, I'll give you a call at 2pm.

In the meantime, is it possible to get a copy of your process for searches and extraction of documents under the FOI Act? I have attached AG's procedures for example.

This may help me better understand your position.

Faithfully,
Ellie



Ellie s47



s22

On 02-10-2020 09:46, Hilvert-Bruce, Alan wrote:

Hi Ellie

How does 2pm sound?

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

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OFFICIAL

From: Ellie s47F
Sent: Thursday, 1 October 2020 5:31 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F <s47F@gmail.com>; Freedom of Information <FOI@industry.gov.au>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Wonderful! What's the best time to call?

Faithfully,
Ellie



Ellie s47



s22

On 01-10-2020 16:23, Hilvert-Bruce, Alan wrote:

Hi Ellie

The applicant is most welcome to request emails if they wish. There is otherwise no database that records the numbers of Cited Applications and Disclosures that exists.

For future discussions on this matter it's probably best to discuss via phonecall, as I suspect that we'll continue this debate over a non-existent database for longer than it needs to if it is kept to email.

My number is below if you would like to continue this discussion.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 1 October 2020 1:51 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Of course - I'm advised that both Disclosures and Cited Applications reside on your department's email system dataset and I take your position to be that these documents don't comprise this dataset (please correct me if I misunderstood).

Therefore, I'm asking which parts of your email system would you consider a dataset for the purposes of the FOI Act?

Faithfully,
Ellie



Ellie s47



s22

On 01-10-2020 13:32, Hilvert-Bruce, Alan wrote:

Hi Ellie

The dataset does not exist.

As for the question about our email system, would you be able to clarify further? You can request emails under FOI if that's the issue.

Cheers

Alan Hilvert-Bruce

Senior Legal Counsel

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OFFICIAL

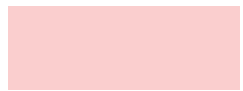
From: Ellie s47F]
Sent: Thursday, 1 October 2020 1:23 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F @gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Thanks Alan.

I'm confused since I was assured that the dataset exists. Have you been advised to the contrary by anyone?

Lastly, for clarity, does your department's email system constitute a dataset in your view?

Faithfully,
Ellie



Ellie s47



s22

On 01-10-2020 11:11, Hilvert-Bruce, Alan wrote:

Hi Ellie

The pathways provided in pt 3 of FOI guidelines [3.204] (drawn from section 17 FOI Act) only apply where there is an existing database or dataset maintained by the Department at the time the request is received that contains the information sought. Section 17 allows, in part, for extracts to be drawn from that database/dataset, and for that extract to then be considered the document sought by the request. You may note the examples set out in the paragraph don't discuss creating new documents to respond to questions, but rather identify transcriptions and extracts of existing documents:

a transcript of a sound recording, a written compilation of information held across various agency databases, or the production of a statistical report from an agency's dataset...

If the information sought is not contained in such a dataset, section 17 of the FOI Act does not create an obligation to make a new document or dataset.

The request below sought statistics regarding "Disclosures" and "Cited Applications". The Department does not have an existing database which tracks these statistics. As a result, the Department is not required under section 17 to create a document in response to the request.

This does not mean that the applicant cannot request the information in a different form, so long as that form is contained in a document that exists at the time the request is received. To this end I suggested that the applicant may wish to request access to the grant applications related to their request, something that they may wish to consider in the future.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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OFFICIAL

From: Ellie s47F
Sent: Thursday, 1 October 2020 10:20 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: s47F <s47F@gmail.com>
Subject: Re: Fwd: Fwd: ausindustry case [SEC=OFFICIAL]

Greetings Alan,

I'm following up on request beneath. I would appreciate it if you would explain why pt 3 of FOI guidelines [3.204] does not apply in this instance?

From what I see, this is a request for a report spanning two types of documents (Disclosures and Cited Applications) with specifics provided as to their particulars - a to d. What do you see?

Faithfully,
Ellie

Ellie s47



s22

On 30-09-2020 13:44, s47F wrote:

this too thanks

----- Forwarded message -----

From: **Hilvert-Bruce, Alan** <Alan.Hilvert-Bruce@industry.gov.au>

Date: Tue, Sep 15, 2020 at 12:16 PM

Subject: RE: Fwd: ausindustry case [SEC=OFFICIAL]

To: s47F <s47F@gmail.com>

Cc: Freedom of Information <FOI@industry.gov.au>

Good morning Menzies,

I am writing to let you know that the request in its current form is not valid for the purposes of the FOI Act.

As you are likely aware, requests under the FOI Act may only be made for 'documents' that are in existence as at the date of the request. We understand that you are not seeking specific identified documents, but rather are seeking the creation of a new document that bears numbers of Disclosures and Cited Applications sorted into different categories. Unfortunately this information cannot be sought via an FOI request in this instance.

Would you like to amend your request so that it seeks the grant applications referred within it? A request along these lines would be considered valid as it seeks 'documents' and the Department could process it.

Please note that submitting a valid request will not necessarily guarantee that access will be granted to the documents subject to it - the decision maker will consider the content of each to determine if they are exempt from disclosure.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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From: s47F [mailto:s47F@gmail.com]
Sent: Sunday, 13 September 2020 11:21 AM
To: Freedom of Information <FOI@industry.gov.au>
Subject: CM: Fwd: Re: ausindustry case

Department of Industry, Science, Energy and Resources
Legal Branch
GPO Box 2013
Canberra ACT 2601

ATT FOI Coordinator

I am requesting access to information under the Freedom of Information Act.

BACKGROUND

I am referring to 'regional incubator facilitator' disclosed interests ("*Disclosures*") and corresponding grant applications ("*Cited Applications*").

REQUEST

I am requesting the number of *Cited Applications*

- (a) declared ineligible for committee consideration by AusIndustry,
- (b) considered by a committee, and
- (c) approved by a Minister

in each calendar month; I am aware that b and c will not coincide.

I am also requesting (d) the aggregate number of *Disclosures* made without reference to *Cited Applications*.

DELIVERY

s47F

[@gmail.com](#)

-Menzies

OFFICIAL

Freedom of Information

From: Ellie s47F >
Sent: Thursday, 8 October 2020 10:59 AM
To: Hilvert-Bruce, Alan
Cc: Freedom of Information; s47F
Subject: CM: Re: Fwd: FOI request [SEC=OFFICIAL]

Dear Alan,

It gives me no pleasure to remind you of the public service, professional and criminal legislation that governs your conduct and the choices you've made in the previous days.

In the prelude to a major scandal you figured it's best to double down as though you've nothing to lose by adopting the role of a sacrificial lamb. You humiliated yourself and your colleagues by blocking valid FOI requests whilst documents were being illegally archived and decisions already made were purposely delayed.

Alan, you made a colossal mistake by allowing this nightmare to escalate and you're just one knee-jerk response from the point of no return. Hereon, there's no righting this wrong, so please collect your thoughts before taking any further action.

As you begin to mull over your options and draw on annual leave, I'll remind you that reality follows wherever you go and that perhaps it's time to seek independent legal advice to consider your options. Anyone who advises you to stay the course doesn't have your best interests at heart.

You have until EOD to redeem yourself, and if you have any sense you'll know what to do.

Faithfully,
Ellie

s22

Ellie s47



s22

On 08-10-2020 09:36, Hilvert-Bruce, Alan wrote:

Hi Ellie

Apologies for the confusion.

As advised in my previous email, if Menzies like to amend their request so that it seeks the correspondence identified within it, it would be considered valid as it seeks 'documents' and the Department could process it.

The Department will otherwise not engage in further correspondence regarding the validity of the request or other issues raised in your emails.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 8 October 2020 10:32 AM
To: Hilvert-Bruce, Alan
Cc: Freedom of Information ; s47F
Subject: Re: Fwd: FOI request [SEC=OFFICIAL]

Hi Alan,

My inquiry was with reference to the request submitted on 4 September (I'm referring to a different matter that's included beneath my correspondence).

The matter resolved yesterday was in relation to a request submitted on 13 September (an unrelated matter).

I appreciate you're inundated with various requests; please advise once you've had a closer look.

Faithfully,
Ellie



Ellie s47

 
s22

liability in respect of such communication, and members responsible are personally liable for any damages or other liability arising.

On 08-10-2020 09:03, Hilvert-Bruce, Alan wrote:

Hi Ellie

Menzies has submitted a new valid request which has a statutory deadline of 5 November 2020.

As advised in our phone conversation, if Menzies has any issues with the processing of the request, they may make a complaint to the Office of the Australian Information Commissioner.

We will otherwise not engage in further correspondence regarding the validity of the request or the other issues raised in your emails.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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OFFICIAL

From: Ellie s47F]
Sent: Thursday, 8 October 2020 8:54 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F @gmail.com
Subject: Re: Fwd: Re: FOI request [SEC=OFFICIAL]

Hi Alan,

I'm following up in regard to your intervention with this FOI request.

I bring your attention to pertinent facts in relation to the request whilst noting:
(a) your prior actions when faced with such facts [by reference to past experience];
(b) your current legal awareness as to such facts [by reference to our teleconference]; and
(c) your reaction to the facts in this instance [by reference to email correspondence].

Accordingly, I note that:

(1) Mr Menzies sought documents by reference to apparent email threads, and that:
 (a) you historically accepted requests citing documents with certain information [cf];
 (b) you remain aware that requests may cite documents with certain information [180]; yet
 (c) you pre-empted written authorisation for this request [9-Sep 16:14];

(2) Mr Menzies sought email metadata which is easily accessed in email header text, and that:
 (a) you historically accepted requests for documents in an available format [cf];
 (b) you remain aware that applicants may request documents in available formats [178]; yet
 (c) you treated this request as one for a non-existent document [15-Sep 13:30];

(3) Mr Menzies sought parts of documents as per s 4(1) ("document") (a)(v), and that:
 (a) you historically accepted requests that gather parts of documents [cf];
 (b) you remain aware that applicants may request anything in material form [22]; yet
 (c) you steered the request to s42 by refusing access to email metadata [15-Sep 12:11]; and

(4) Mr Menzies grew weary of your resolve to invalidate the request, and that:
 (a) you historically assisted applicants with compliance [cf];
 (b) you remain aware of your statutory duty to assist applicants with compliance [34]; yet
 (c) you refused to assist despite a ruling dispositive to your objection [15-Sep 15:41].

I also note that a formal decision with a statement of reasons is now 3 days overdue.

Given the circumstances, I propose it'd be in everyone's best interests if you would consider:
 - releasing the requested metadata for correspondence B & E under administrative access;
 - conceding that this has gone far enough by providing some explanation for your actions; and
 - allowing scrutiny to take its course rather than creating far greater implications.

Please advise how you wish to proceed.

Faithfully,
 Ellie



Ellie s47

s22

On 30-09-2020 13:44, s47F wrote:

please pursue in free time

in absence of genuine remorse-
 if shilling for colleagues then flag with s22
 if directly involved then flag for 142.2 with s22

p.p. myself

----- Forwarded message -----

From: s47F @gmail.com>

Date: Tue, Sep 15, 2020 at 4:49 PM

Subject: Re: Re: FOI request [SEC=OFFICIAL]
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>

Mr. Hilvert-Bruce,

I have provided reference to correspondence held by the department (A-F).

Each correspondence (A-F) consists of entries held by the department on disk storage.

For avoidance of doubt, an entry may be a sender name, sender email address, a timestamp (date), a recipient email address, etc.

I have requested that two entries (**documents**) relating to each correspondence be provided to myself. For expedience, I have specified a convenient form - the sender name and date for each correspondence.

The department is required by law to either create an edited copy of the database or provide the information in the specified form.

I have also provided a legal precedent that conveys this beyond question - **2013 AICmr 57** under [22].

Your proposal to create new and larger documents with sensitive information (aggregate email content) in PDF form, and then to redact the newly created documents, is needless and will achieve the very outcome you purport to be evading.

For the record, I am taking your silence as to your possible involvement in exchanges A-F as assurance that no apparent conflict of interests exists that may have interfered with your fiduciary obligations in this matter.

I will take further noncompliance with my lawful direction as an indication that you may have acted in this matter with a conflict of interests and I will have no choice but to instigate investigation into your conduct.

-Menzies

On Tue, Sep 15, 2020 at 3:41 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Good afternoon Menzies,

Unfortunately in the absence of a valid request, we are unable to process it.

If you amend your request to seek documents that are in existence at this time, rather than seeking the creation of a new document, we can accept the request as valid.

We will otherwise take no further action.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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From: s47F [@gmail.com\]](mailto:s47F@gmail.com)
Sent: Tuesday, 15 September 2020 3:24 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>
Subject: Re: Re: FOI request [SEC=OFFICIAL]

Mr. Hilvert-Bruce,

I refer you to 2013 AICmr 57 under [22].

I am becoming increasingly weary of your reluctance to release a few lines of text in specified form.

You will be aware of obligations under civil procedure, and to the extent that you were involved in any exchange A-F, I ask that you adhere to s 13(7) of the APS code.

Please deliver the document as requested.

-Menzies

On Tue, Sep 15, 2020 at 1:30 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Good afternoon Menzies,

Unfortunately your request is not seeking a document that is in existence as at the time of your request, but rather is seeking the creation of a new document.

If it is of assistance, Paragraphs 2.33 and 2.34 of the Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982* provide:

Documents in existence

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

2.34 The right of access applies to documents that exist at the time the FOI request was made. An applicant cannot insist that their request cover documents created after the request is received. However, the agency or minister could consider whether to include documents that were created after the request

was received. This could be more administratively efficient because the applicant might otherwise submit a new request for the later documents.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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From: s47F [@gmail.com](mailto:s47F@gmail.com)
Sent: Tuesday, 15 September 2020 12:59 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Subject: Re: Re: FOI request [SEC=OFFICIAL]

Mr. Hilvert-Bruce,

I had made it clear that I am not after documents about the complainant.

It is understood that I am after documents as per s 4(1) *document* (a)(v) of the Act.

No valid exemptions to the request as currently framed exist in absence of a criminal investigation. I am not aware of one yet.

Please provide the documents as requested.

-Menzies

On Tue, Sep 15, 2020 at 12:11 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Good morning Menzies,

Thank you for the information below.

I am writing to let you know that the request in its current form is not valid for the purposes of the FOI Act.

As you are likely aware, requests under the FOI Act may only be made for 'documents' that are in existence as at the date of the request. We understand that you are not '*after any documents*', but rather are seeking the creation of a new document that bears a list of dates and names. Unfortunately this information cannot be sought via an FOI request in this instance.

Would you like to amend your request so that it seeks the correspondence identified in your request? A request along these lines would be considered valid as it seeks 'documents' and the Department could process it.

Please note that submitting a valid request will not necessarily guarantee that access will be granted to the documents subject to it - the decision maker will consider the content of each to determine if they are exempt from disclosure.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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From: s47F [@gmail.com\]](mailto:s47F@gmail.com)
Sent: Wednesday, 9 September 2020 5:47 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Subject: CM: Re: FOI request [SEC=OFFICIAL]

Mr. Hilvert-Bruce,

Please allow me to clarify.

I am not after any documents nor information about the complainant.

Rather, I am after names of officers in discharge of duties A-F.

For instance-

- A. John Doe dated 5-March-2020 (project manager/seeking legal advice)
 - B. Jane Roe dated 12-March-2020 (legal counsel/providing legal advice)
 - C. John Doe dated 13-March-2020 (project manager/response to complainant)
- etc.

To the extent that multiple officers provided opinion in response to requests A and D, then multiple records would apply for B and E.

- Menzies

On Wed, Sep 9, 2020 at 4:14 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Hi Menzies

Thank you for your request.

The documents subject to your request would, by nature, contain the personal information of the complainant referred within it.

Would you be able to let us know if you have written authorisation to either act on behalf of the complainant or otherwise access their personal information? If so, it would be great if you provide us with that written authorisation as it would be relevant when considering exemption claims over the documents.

Feel free to call me if you would like to discuss.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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From: s47F [mailto:s47F@gmail.com]
Sent: Friday, 4 September 2020 12:28 AM
To: Freedom of Information <FOI@industry.gov.au>
Subject: CM: FOI request

Department of Industry, Science, Energy and Resources
Legal Branch
GPO Box 2013
Canberra ACT 2601

ATT FOI Coordinator

I am requesting access to information under the Freedom of Information Act.

BACKGROUND

It has come to my attention that an official from your department allegedly provided this advice to a complainant: *"In response to your statement that this facilitator had a conflict of interest, the department has reviewed the declaration of interest records in relation to your applications, and also sought legal advice. It has been determined that this facilitator did not hold an actual conflict of interest."* (quote 1)

The same complainant allegedly also received this advice: "*We note that you intend to seek review of the department's decisions under the Administrative Decisions (Judicial Review) Act 1977 (AD(JR) Act). You should be aware the decisions that your applications were ineligible for the Incubator Support Initiative are not decisions made under an enactment. Accordingly, they are not subject to the AD(JR) Act and the department is not required to provide you with a statement of reasons under section 13(1) of the Act.*" (quote 2)

The excerpts were posted on a legal forum in July and are taken to be direct quotes.

REQUEST

I am requesting [1] the sender's name and [2] date and time of each exchange A-F.

- A. Correspondence requesting the legal advice referred to in quote 1.
- B. Correspondence providing the legal advice referred to in quote 1.
- C. Correspondence addressed to the complainant with quote 1.
- D. Correspondence requesting advice in relation to the matter cited in quote 2.
- E. Correspondence providing advice in relation to the matter cited in quote 2.
- F. Correspondence addressed to the complainant with quote 2.

If the quotes are fictitious please advise.

DELIVERY

s47F [@gmail.com](mailto:s47F@gmail.com)

-Menzies

OFFICIAL

OFFICIAL

OFFICIAL

OFFICIAL

Freedom of Information

From: Hilvert-Bruce, Alan
Sent: Thursday, 8 October 2020 2:38 PM
To: s47F
Cc: Freedom of Information
Subject: CM: FW: Fwd: FOI request [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Further correspondence

Alan Hilvert-Bruce
Senior Legal Counsel
Energy and Climate Team
Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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From: s47F @gmail.com]
Sent: Thursday, 8 October 2020 2:35 PM
To: Hilvert-Bruce, Alan
Cc: Ellie s47
Subject: Re: Fwd: FOI request [SEC=OFFICIAL]

If I may chime in for a tad re: assurance by your superiors that they will have your back and similar nonsense.

They won't.

It is no coincidence that you are taking the brunt of this Alan.

You can simply ask them to take ownership of the decision in writing and watch them scurry to new theories as to why you should hold your indefensible grounds. This may give you some clarity and you may find courage to trust your common sense that you are being used.

I hope you will listen to your family and those close to you and certainly seek independent legal advice.

-Menzies

On Thu, Oct 8, 2020 at 11:00 AM Ellie s47F > wrote:

Dear Alan,

It gives me no pleasure to remind you of the public service, professional and criminal legislation that governs your conduct and the choices you've made in the previous days.

In the prelude to a major scandal you figured it's best to double down as though you've nothing to lose by adopting the role of a sacrificial lamb. You humiliated yourself and your colleagues by blocking

valid FOI requests whilst documents were being illegally archived and decisions already made were purposely delayed.

Alan, you made a colossal mistake by allowing this nightmare to escalate and you're just one knee-jerk response from the point of no return. Hereon, there's no righting this wrong, so please collect your thoughts before taking any further action.

As you begin to mull over your options and draw on annual leave, I'll remind you that reality follows wherever you go and that perhaps it's time to seek independent legal advice to consider your options. Anyone who advises you to stay the course doesn't have your best interests at heart.

You have until EOD to redeem yourself, and if you have any sense you'll know what to do.

Faithfully,
Ellie



Ellie s47



A s22



On 08-10-2020 09:36, Hilvert-Bruce, Alan wrote:

Hi Ellie

Apologies for the confusion.

As advised in my previous email, if Menzies like to amend their request so that it seeks the correspondence identified within it, it would be considered valid as it seeks 'documents' and the Department could process it.

The Department will otherwise not engage in further correspondence regarding the validity of the request or other issues raised in your emails.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

Department of Industry, Science, Energy & Resources | www.industry.gov.au

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OFFICIAL

OFFICIAL:Sensitive
Legal privilege

From: Ellie s47F
Sent: Thursday, 8 October 2020 10:32 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F <s47F@gmail.com>
Subject: Re: Fwd: FOI request [SEC=OFFICIAL]

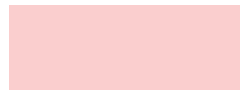
Hi Alan,

My inquiry was with reference to the request submitted on 4 September (I'm referring to a different matter that's included beneath my correspondence).

The matter resolved yesterday was in relation to a request submitted on 13 September (an unrelated matter).

I appreciate you're inundated with various requests; please advise once you've had a closer look.

Faithfully,
Ellie



Ellie s47



s22

s22

On 08-10-2020 09:03, Hilvert-Bruce, Alan wrote:

Hi Ellie

Menzies has submitted a new valid request which has a statutory deadline of 5 November 2020.

As advised in our phone conversation, if Menzies has any issues with the processing of the request, they may make a complaint to the Office of the Australian Information Commissioner.

We will otherwise not engage in further correspondence regarding the validity of the request or the other issues raised in your emails.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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OFFICIAL

From: Ellie s47F
Sent: Thursday, 8 October 2020 8:54 AM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>; s47F @gmail.com>
Subject: Re: Fwd: Re: FOI request [SEC=OFFICIAL]

Hi Alan,

I'm following up in regard to your intervention with this FOI request.

I bring your attention to pertinent facts in relation to the request whilst noting:

- (a) your prior actions when faced with such facts [by reference to past experience];
- (b) your current legal awareness as to such facts [by reference to our teleconference]; and
- (c) your reaction to the facts in this instance [by reference to email correspondence].

Accordingly, I note that:

- (1) Mr Menzies sought documents by reference to apparent email threads, and that:
 - (a) you historically accepted requests citing documents with certain information [cf];
 - (b) you remain aware that requests may cite documents with certain information [180]; yet
 - (c) you pre-empted written authorisation for this request [9-Sep 16:14];
- (2) Mr Menzies sought email metadata which is easily accessed in email header text, and that:
 - (a) you historically accepted requests for documents in an available format [cf];
 - (b) you remain aware that applicants may request documents in available formats [178]; yet
 - (c) you treated this request as one for a non-existent document [15-Sep 13:30];
- (3) Mr Menzies sought parts of documents as per s 4(1) ("document") (a)(v), and that:
 - (a) you historically accepted requests that gather parts of documents [cf];
 - (b) you remain aware that applicants may request anything in material form [22]; yet
 - (c) you steered the request to s42 by refusing access to email metadata [15-Sep 12:11]; and
- (4) Mr Menzies grew weary of your resolve to invalidate the request, and that:
 - (a) you historically assisted applicants with compliance [cf];
 - (b) you remain aware of your statutory duty to assist applicants with compliance [34]; yet
 - (c) you refused to assist despite a ruling dispositive to your objection [15-Sep 15:41].

I also note that a formal decision with a statement of reasons is now 3 days overdue.

Given the circumstances, I propose it'd be in everyone's best interests if you would consider:

- releasing the requested metadata for correspondence B & E under administrative access;
- conceding that this has gone far enough by providing some explanation for your actions; and
- allowing scrutiny to take its course rather than creating far greater implications.

Please advise how you wish to proceed.

Faithfully,
Ellie



Ellie s47



s22

On 30-09-2020 13:44, s47F wrote:

please pursue in free time

in absence of genuine remorse-
if shilling for colleagues then flag with s22
if directly involved then flag for 142.2 with s22

p.p. myself

----- Forwarded message -----

From: s47F @gmail.com>
Date: Tue, Sep 15, 2020 at 4:49 PM
Subject: Re: Re: FOI request [SEC=OFFICIAL]
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>

Mr. Hilvert-Bruce,

I have provided reference to correspondence held by the department (A-F).

Each correspondence (A-F) consists of entries held by the department on disk storage.

For avoidance of doubt, an entry may be a sender name, sender email address, a timestamp (date), a recipient email address, etc.

I have requested that two entries (**documents**) relating to each correspondence be provided to myself. For expedience, I have specified a convenient form - the sender name and date for each correspondence.

The department is required by law to either create an edited copy of the database or provide the information in the specified form.

I have also provided a legal precedent that conveys this beyond question - **2013 AICmr 57** under [22].

Your proposal to create new and larger documents with sensitive information (aggregate email content) in PDF form, and then to redact the newly created documents, is needless and will achieve the very outcome you purport to be evading.

For the record, I am taking your silence as to your possible involvement in exchanges A-F as

assurance that no apparent conflict of interests exists that may have interfered with your fiduciary obligations in this matter.

I will take further noncompliance with my lawful direction as an indication that you may have acted in this matter with a conflict of interests and I will have no choice but to instigate investigation into your conduct.

-Menzies

On Tue, Sep 15, 2020 at 3:41 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Good afternoon Menzies,

Unfortunately in the absence of a valid request, we are unable to process it.

If you amend your request to seek documents that are in existence at this time, rather than seeking the creation of a new document, we can accept the request as valid.

We will otherwise take no further action.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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received this transmission in error, please notify me immediately by telephone and delete copies of this transmission together with any attachments.

From: s47F [mailto:s47F@gmail.com]
Sent: Tuesday, 15 September 2020 3:24 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Cc: Freedom of Information <FOI@industry.gov.au>
Subject: Re: Re: FOI request [SEC=OFFICIAL]

Mr. Hilvert-Bruce,

I refer you to 2013 AICmr 57 under [22].

I am becoming increasingly weary of your reluctance to release a few lines of text in specified form.

You will be aware of obligations under civil procedure, and to the extent that you were involved in any exchange A-F, I ask that you adhere to s 13(7) of the APS code.

Please deliver the document as requested.

-Menzies

On Tue, Sep 15, 2020 at 1:30 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Good afternoon Menzies,

Unfortunately your request is not seeking a document that is in existence as at the time of your request, but rather is seeking the creation of a new document.

If it is of assistance, Paragraphs 2.33 and 2.34 of the Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982* provide:

Documents in existence

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

2.34 The right of access applies to documents that exist at the time the FOI request was made. An applicant cannot insist that their request cover documents created after the request is received. However, the agency or minister could consider whether to include documents that were created after the request was received. This could be more administratively efficient because the applicant might otherwise submit a new request for the later documents.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

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From: s47F [@gmail.com](mailto:s47F@gmail.com)
Sent: Tuesday, 15 September 2020 12:59 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Subject: Re: Re: FOI request [SEC=OFFICIAL]

Mr. Hilvert-Bruce,

I had made it clear that I am not after documents about the complainant.

It is understood that I am after documents as per s 4(1) *document* (a)(v) of the Act.

No valid exemptions to the request as currently framed exist in absence of a criminal investigation. I am not aware of one yet.

Please provide the documents as requested.

-Menzies

On Tue, Sep 15, 2020 at 12:11 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Good morning Menzies,

Thank you for the information below.

I am writing to let you know that the request in its current form is not valid for the purposes of the FOI Act.

As you are likely aware, requests under the FOI Act may only be made for 'documents' that are in existence as at the date of the request. We understand that you are not '*after any documents*', but rather are seeking the creation of a new document that bears a list of dates and names. Unfortunately this information cannot be sought via an FOI request in this instance.

Would you like to amend your request so that it seeks the correspondence identified in your request? A request along these lines would be considered valid as it seeks 'documents' and the Department could process it.

Please note that submitting a valid request will not necessarily guarantee that access will be granted to the documents subject to it - the decision maker will consider the content of each to determine if they are exempt from disclosure.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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From: s47F [@gmail.com](mailto:s47F@gmail.com)
Sent: Wednesday, 9 September 2020 5:47 PM
To: Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au>
Subject: CM: Re: FOI request [SEC=OFFICIAL]

Mr. Hilvert-Bruce,

Please allow me to clarify.

I am not after any documents nor information about the complainant.

Rather, I am after names of officers in discharge of duties A-F.

For instance-

- A. John Doe dated 5-March-2020 (project manager/seeking legal advice)
 - B. Jane Roe dated 12-March-2020 (legal counsel/providing legal advice)
 - C. John Doe dated 13-March-2020 (project manager/response to complainant)
- etc.

To the extent that multiple officers provided opinion in response to requests A and D, then multiple records would apply for B and E.

- Menzies

On Wed, Sep 9, 2020 at 4:14 PM Hilvert-Bruce, Alan <Alan.Hilvert-Bruce@industry.gov.au> wrote:

Hi Menzies

Thank you for your request.

The documents subject to your request would, by nature, contain the personal information of the complainant referred within it.

Would you be able to let us know if you have written authorisation to either act on behalf of the complainant or otherwise access their personal information? If so, it would be great if you provide us with that written authorisation as it would be relevant when considering exemption claims over the documents.

Feel free to call me if you would like to discuss.

Regards

Alan Hilvert-Bruce

Senior Legal Counsel

Energy and Climate Team

Legal, Audit and Assurance Branch

02 6243 7397 | alan.hilvert-bruce@industry.gov.au

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From: s47F [mailto:s47F@gmail.com]
Sent: Friday, 4 September 2020 12:28 AM
To: Freedom of Information <FOI@industry.gov.au>
Subject: CM: FOI request

Department of Industry, Science, Energy and Resources
Legal Branch
GPO Box 2013
Canberra ACT 2601

ATT FOI Coordinator

I am requesting access to information under the Freedom of Information Act.

BACKGROUND

It has come to my attention that an official from your department allegedly provided this advice to a complainant: *"In response to your statement that this facilitator had a conflict of interest, the department has reviewed the declaration of interest records in relation to your applications, and also sought legal advice. It has been determined that this facilitator did not hold an actual conflict of interest."* (quote 1)

The same complainant allegedly also received this advice: *"We note that you intend to seek review of the department's decisions under the Administrative Decisions (Judicial Review) Act 1977 (AD(JR) Act). You should be aware the decisions that your applications were ineligible for the Incubator Support Initiative are not decisions made under an enactment. Accordingly, they are not subject to the AD(JR) Act and the department is not required to provide you with a statement of reasons under section 13(1) of the Act."* (quote 2)

The excerpts were posted on a legal forum in July and are taken to be direct quotes.

REQUEST

I am requesting [1] the sender's name and [2] date and time of each exchange A-F.

- A. Correspondence requesting the legal advice referred to in quote 1.
- B. Correspondence providing the legal advice referred to in quote 1.
- C. Correspondence addressed to the complainant with quote 1.
- D. Correspondence requesting advice in relation to the matter cited in quote 2.
- E. Correspondence providing advice in relation to the matter cited in quote 2.
- F. Correspondence addressed to the complainant with quote 2.

If the quotes are fictitious please advise.

DELIVERY

s47F [mailto:s47F@gmail.com]

-Menzies

OFFICIAL

OFFICIAL

OFFICIAL