



Our ref: 67295

Harry Witherspoon

By email: foi+request-6809-b8ade383@righttoknow.org.au

Dear Harry Witherspoon

Freedom of Information Act 1982 – Notice of Decision

I refer to your request received by the Department of Industry, Science, Energy and Resources (the department) on 17 October 2020, in which you sought access under the *Freedom of Information Act 1982* (the FOI Act) to the following:

I would like to see the date, time, destination number, call duration and (where available) geographical origin of all telephone calls made by Regional Incubator Facilitator Daniel Smith from his telephone number... to any department telephone number from 1/11/2018 until 22/11/2018 inclusively and from 28/10/2019 until 15/12/2019 inclusively.

On 13 November 2020 you were provided with a notice of the department's intention to refuse your request on practical refusal grounds. The practical refusal grounds being that processing your request would unreasonably and substantially divert the resources of the department from its other operations. In this notice you were informed that a conservative estimate indicated it would take the department at least 38 hours in search and retrieval time, and you were invited to revise the scope of your request. The department also provided suggestion to assist you in confining your scope to specific documents rather than general information which may be held by the department.

On 13 November 2020, you provided correspondence of the following:

The telephone records may be obtained from Tminus Accelerator Pty Ltd as per clause 27.3 of the services agreement (available at this location).

Alternatively, you may obtain the records by simply retrieving department incoming calls during the time periods and from the telephone number I specified as part of my request.

On 17 November 2020, the department sought confirmation of your intention to either revise, withdraw or confirm your current scope. The department also provided further information to assist with your revision including that:

- *Copies of a contractor's personal mobile phone records are not records which 'relate to the performance of a Commonwealth contract' and as such, are not required to be furnished to the department in response to a request for access under s6C of the FOI Act; and*
- *The letter which was sent to you outlined that it would take the department over 38 hours to manually conduct a search of its 4000 pages of call records for the telephone number you have specified. There is no simple way to 'retrieve' incoming calls from particular numbers as you suggest*

On 17 November 2020, you provided correspondence of the following:

I'm confused as to how Department contractors' calls to Department telephone numbers do not 'relate to the performance of a Commonwealth contract', especially when the contractor's telephone bills are claimed as costs by the contractor from the department?

Also, your IT department will be able to retrieve a list of calls based on the telephone number and date ranges from its VoIP database so that you may create a simple report.

Alternatively, you may even OCR-scan the pages and search the document for the phone number; use your imagination.

In the further alternative, you may embarrassingly decline the request for the benefit of the contractor, only to have it overturned by the OAIC

With further correspondence from you on 17 November 2020 including:

For context, the department has already declined a similar request here:

https://www.righttoknow.org.au/request/telecommunications_records_betwe#outgoing-13125

The department claimed that it doesn't have the contractor's phone number despite publishing it on its website as a Regional Incubator Facilitator service number, also in the face of the contractor's email signature with the number in plain sight, and with full awareness of the contractor's engagement terms and entity file.

Decision

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

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

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

Reasons for Decision

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

I am satisfied that a request consultation process has been undertaken by the department in accordance with section 24AB of the FOI Act. On 13 November 2020, you were issued a notice of intention to refuse informing you of the voluminous scope of your request and that it would require searching over 4000 pages of landline call details to retrieve the relevant information you have requested.. Accordingly, the processing of your request as originally framed would unreasonable and substantially divert the resources of the department from its other operations.

I am satisfied that the department also took reasonable steps to assist you to revise the scope of your request so that a practical refusal reason would no longer exist. The department provided you with a reasonable opportunity to consult with the department and you were provided with information to

assist you to narrow the scope of your request. This included suggestions on confining your scope to specific documents which may be held by the department, not general information that may exist within the department. The department also provided you with further context surrounding the search and retrieval of document within the department. I am therefore satisfied that the department has taken reasonable steps to assist you to revise the scope of your request.

I am also satisfied that a practical refusal reason exists in relation to your request , after a request consultation process had been undertaken. In your responses of 13 and 17 November 2020, while you did suggest potential methods on how to conduct a search, this suggestion is not relevant to our request to narrow your scope. I am satisfied that you have not changed or narrowed your scope of request nor provided additional information in order for the department to further assist you in the revision of your request.

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

Review rights

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

Please do not hesitate to contact the FOI team on by e-mail at FOI@industry.gov.au, if you require any further clarification.

Yours sincerely



Andrew Lewis
General Manager
Entrepreneurs' Programme

19 November 2020

REVIEW RIGHTS

Application for Internal Review

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter, or within 15 days of receipt of the documents to which this decision relates (whichever is the longer period). You do not have to pay any fees or processing charges for an internal review, except for charges relating to the provision of any additional relevant material located as a result of the review (for example photocopying). While a specific form is not required, it would assist the decision maker if your application specifies the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator
Department of Industry, Science, Energy and Resources
GPO Box 2013
CANBERRA ACT 2601

or by e-mail to: FOI@industry.gov.au.

Review by the Australian Information Commissioner

If any decision on internal review were not satisfactory to you, section 54L of the FOI Act gives you the right to apply for review of my decision by the Information Commissioner.

An application for review by the Information Commissioner may be made regardless of whether the decision was the subject of a departmental internal review. An application for review by the Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Information Commissioner.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Australian Information Commissioner will make a completely independent investigation of your complaint. A complaint to the Australian Information Commissioner must be made in writing and can be lodged online using the Information Commissioner Complaint Application form on the Australian Information Commissioner's website at www.oaic.gov.au.

industry.gov.au

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