



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

Our ref: 67565

Harry Witherspoon
via Right to Know

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

Dear Harry Witherspoon

Freedom of Information Act 1982 – Notice of Internal Review Decision

I refer to your correspondence received by the Department of Industry, Science, Energy and Resources (the department) on 24 November 2020 requesting an internal review of a decision dated 19 November 2020 (original decision) under section 54 of the *Freedom of Information Act 1982* (the FOI Act).

A copy of the original decision is at **Attachment A**.

Internal Review Decision

I am an authorised internal review decision maker under section 23 of the FOI Act. I am required to make a fresh decision on behalf of the department and I am not bound by the original decision.

I have decided to vary the original decision, finding that the department holds one document that falls within the scope of your request. I have decided to exempt this document in full under section 47F(1) of the FOI Act.

In reaching my decision, I relied on the following:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act;
- your correspondence of 17 October 2020 outlining the particulars of your FOI request;
- the department's original decision of 19 November 2020;
- your correspondence of 24 November 2020 outlining the particulars of your request for an internal review;
- advice from departmental officers; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Reasons for Decision

I am satisfied that all reasonable searches have been undertaken for documents relevant to your request, and in contrary to the findings in the primary decision, I am advised that the department has

industry.gov.au

Industry House - 10 Binara Street, Canberra City, ACT 2601
GPO Box 2013 Canberra ACT 2601 ABN: 74 599 608 295

in its possession one document that is relevant to your request. This document is departmental phone records between the period 28 October 2019 to 15 December 2019 inclusively. There are no records accessible for 2018.

Section 47F – Personal Information

Subsection 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). Access to that document may then be withheld if it would be contrary to the public interest.

The document consists of both identifying information and contact information of the regional incubator facilitator (RIF) that is the subject of this request. I am satisfied that the document in totality, consists of the personal information of that RIF.

When determining whether the disclosure of this personal information would be unreasonable, subsection 47F(2) of the FOI Act requires me to consider:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources; and
- (d) any other matters that I consider relevant.

With reference to the above, none of the personal information in the document is well known or publicly available and the identified RIF is not known to be (or to have been) associated with the matters contained within it.

I have also given consideration to the effects of releasing information about any RIF in response to previous FOI requests. In particular I am mindful that those releases have resulted in:

- (a) FOI applicants directly contacting RIFs on their personal phone numbers, encouraging them to perform their “FOI duties”;
- (b) FOI applicants seeking to defame the RIFs publicly by publishing adverse claims about them on the Right To Know website; and
- (c) a lengthy, targeted and public campaign by multiple FOI applicants, making unfounded allegations that the RIFs are engaged in some type of corruption, despite having no evidence to that effect.

It is reasonably foreseeable that the above will continue to occur if I were to release further about the RIFs in response to this FOI request. In the interest of protecting the RIFs from further harm, I have decided that the document is in full, exempt under section 47F(1) of the FOI Act. I may only withhold access to it if access would be contrary to the public interest.

Under subsection 11A(5) of the FOI Act, the department must give access to the conditionally exempt material unless access would be contrary to the public interest. Subsection 11A(5) of the FOI Act sets out the following factors favouring access to a document:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person access to his or her own personal information.

I have considered each of the factors favouring access listed above and have decided that disclosure of the personal information in question would promote the objects of the FOI Act as access to government information naturally has this effect. However, release of this information would not inform debate on a matter of public importance, would not promote effective oversight of public expenditure and would not allow a person access to their own personal information.

As described above, the RIF named in the request has been the subject of a prolonged and public campaign making unfounded allegations of some type of adverse influence on the program. As a result, any benefit that could be derived from the disclosure of the documents could only be outweighed by the direct and continued harm that would likely be brought on them.

For the reasons above, the public interest in disclosing the personal information is outweighed by the public interest against disclosure, and accordingly access to the document in full would be contrary to the public interest.

Review rights

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

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

Yours sincerely



Emma Greenwood
Head of Division
AusIndustry

25th January 2021

Enclosures

Attachment A – Original Decision

Attachment B – Review Rights

REVIEW RIGHTS

Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply for review of my decision by the Information Commissioner.

An application for review by the Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Information Commissioner.

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

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

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

Complaints to the Australian Information Commissioner

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