



Australian Government
Department of Industry, Science,
Energy and Resources

Our ref: 67336

Harry Witherspoon

By email: foi+request-6827-94378781@righttoknow.org.au

Dear Harry Witherspoon

Freedom of Information Act – Notice of intention to refuse

I refer to your request received by the Department of Industry, Science, Energy and Resources (the department) on 22 October 2020, in which you sought access under the *Freedom of Information Act 1982* (the FOI Act) to the following:

On 19 September 2018, your Department's accountable authority, Secretary Heather Smith, released an annual report noting that:

"Significant instances of non-compliance were identified and reported to the relevant Minister and the Minister for Finance. The department identified significant instances of non-compliance with the finance law, specifically with the Commonwealth Procurement Rules (including consequential breaches relating to section 23 of the PGPA Act). Corrective action has been undertaken, which ensures that the department's needs for operational efficiency and flexibility are met within a compliant framework"

Page 59 in <https://www.industry.gov.au/sites/default/files/2018-10/annual-report-2017-18.pdf>

On 18 September 2019, the Secretary vowed compliance with fraud legislation:

"I certify that the department has prepared divisional fraud and corruption risk assessments and a fraud and corruption control plan; has in place fraud prevention, detection, investigation and reporting mechanisms that meet its needs; and has taken all reasonable measures to appropriately deal with fraud."

Page 11 in <https://www.industry.gov.au/sites/default/files/2019-10/annual-report-2018-19.pdf>

On 9 October 2020, your Department declared that no fraud risk assessments had been conducted in over 36 months for AusIndustry Support for Business - the Department's flagship division entrusted with whole-of-government grant administration through Business Grant Hub:

Page 1 in

<https://www.righttoknow.org.au/request/6697/response/18819/attach/4/67013%20FOI%20Answers.pdf>

I would like to see the documents that Secretary Heather Smith relied on to make her declaration and certify compliance in 2019

Under subsection 24(1) of the FOI Act, I am satisfied that a practical refusal reason exists in relation to this request. The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

The department comprises of many divisions that span a number of portfolios and programme areas. Your request does not specify enough detail to determine the appropriate program area of the department. Nor does it contain any information that might be used to narrow down the possibilities sufficiently to begin a search for documents. The department's annual report is a document that requires the input of multiple programme areas spanning several drafts over a 12 month period. Without further information it is unfeasible to conduct reasonable search of the numerous document repositories each of the programme areas of the department use and be satisfied that all possible documents within the scope of your request are found.

In accordance with section 24(1)(a) and 24AB of the FOI Act, I am writing to provide you with written notice that I intend to refuse your request on the grounds that a practical refusal reason exists and to initiate a request consultation process in accordance with section 24AB of the FOI Act.

Request consultation process

Before I make a decision to refuse your request under section 24(1)(b) of the FOI Act, I would like to provide you with the opportunity to revise the scope of your request so that a 'practical refusal reason' no longer exists. Although it is your responsibility to suggest ways that your request may be revised and narrowed, you may consider limiting your request to particular topics or particular timeframes.

Further, you may wish to consider the following suggestions to revise the scope of your FOI request (please note that these are suggestions only and do not guarantee the practical refusal reason/s will no longer exist):

- Consider identifying specific documents that the department may hold;
- Clarify the division where the documents you seek may exist. For the purposes of reducing the size of your request, you may wish to consider limiting your request to the Fraud Unit.

Should you wish to revise your request, you must do so **within 14 days** after the day you are given this notice (unless extended by agreement with the department). If you are unable to meet this deadline and wish to arrange an extension of time in which to consider this matter, or would like to discuss how you could best revise the scope of the request, please contact the FOI team by email at FOI@industry.gov.au.

Under subsection 24AB(6) of the FOI Act, you must, before the end of the 14-day consultation period, do one of the following by written notice to the department:

- a) withdraw the request;
- b) make a revised request; or
- c) indicate that you do not wish to revise the request.

Please note that under subsection 24AB(7), the request is taken to have been withdrawn at the end of the 14 day consultation period if:

- (a) the applicant does not consult the contact person during the consultation period in accordance with this notice; or
- (b) the applicant does not do one of the things mentioned in subsection(6) before the end of the consultation period.

In accordance with subsection 24AB(8) of the FOI Act, the 14-day consultation period is to be disregarded in calculating the processing period for the request.


Your written response should be addressed to:

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

Or by email to: FOI@industry.gov.au

Should you wish to discuss this matter further, please contact the FOI team by email at FOI@industry.gov.au.

Yours sincerely



Heather Davidson
A/g Senior FOI Officer
Legal, Audit & Assurance

9 November 2020