



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

Our ref: 67336

Harry Witherspoon

By email: [foi+request-6827-94378781@righttoknow.org.au](mailto:foi+request-6827-94378781@righttoknow.org.au)

Dear Harry

**Freedom of Information Act 1982 – Notice of Decision**

I refer to your correspondence, received by the Department of Industry, Science, Energy and Resources (**the department**) on 22 October 2020, and subsequent correspondence to clarify the scope of your request, for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

*To clarify the specific documents requested, I note that the Secretary must have sought advice from the Assurance and Audit Committee and/or the Fraud Control Section in meeting her obligations under s 17AG of the PGPA Rule.*

*To reduce the size of the request, I consent to limit the search to the Assurance and Audit Committee and the Fraud Control Section.*

*Any advice from the Audit Committee and/or the Fraud Control Section that was provided to the Secretary to inform her 18/Sep/2019 declaration should be included in this FOI disclosure.*

**Background**

On 10 November 2020 you were issued with a notice of intention to refuse the request on the basis that the work involved would amount to a substantial and unreasonable diversion of the department's resources. You were invited to refine the scope of your request within 14 days.

On 10 November 2020 the department confirmed that a practical refusal reason no longer existed in relation to your revised request (as set out above).

**Decision**

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

I have decided not to impose any charges for the processing of your request.

I am satisfied that all reasonable searches have been undertaken for documents relevant to your request. I am advised that the department has in its possession 3 documents that are relevant to your request. These documents are described in the Schedule of Documents at **Attachment A**.

I have decided to grant access to 3 documents in part

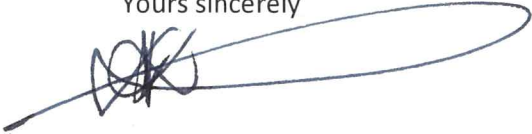
I have found that the requested documents contain material which is exempt under:

- Section 47E(a) of the FOI Act, as disclosure would prejudice the effectiveness of procedures for the conduct of examinations by an agency;
- Section 47G of the FOI Act, as disclosure of the information would be an unreasonable disclosure of an individual's or an organisation's business information;
- Section 22 of the FOI Act, as the documents contain material that is irrelevant to your request.

The reasons for my decision are set out below, as required by section 26 of the FOI Act, in Part A of the Annexure.

If you are dissatisfied with my decision, your review rights are set out in Part B of the Annexure.

Yours sincerely



Kristy-Lee Coker  
General Counsel  
Legal, Audit & Assurance

23 November 2020

**Enclosures**

Annexure (Part A – Statement of Reasons and Part B – Review Rights)  
Attachment A – Schedule of Documents

**Annexure A**  
**Part A – Reasons for Decision (section 26 FOI Act)**  
**Request: Harry Witherspoon – 22 October 2020 (LEX 67336)**  
**Decision Maker: Kristy-Lee Coker, A/g General Counsel, Legal, Audit & Assurance**

**1. Evidence/Material on which my findings were based**

1.1 In reaching my decision, I relied on the following information and documentary evidence:

- the FOI Act;
- the contents of the documents described in Attachment A;
- your correspondence setting out the particulars of your request;
- consultation with departmental officers as to the nature of the documents; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

**2. Section 22 – Deletion of exempt or irrelevant material**

2.1 Subsections 22(1) and (2) of the FOI Act permit an agency to decide to provide a copy of a document (modified by redaction) edited to remove exempt information (edited copy).

Subsection 22(1)

*Scope*

(1) *This section applies if:*

(a) *an agency or Minister decides:*

(i) *to refuse to give access to an exempt document; or*

(ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*

(b) *it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:*

(i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*

(ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*

(c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*

(i) *the nature and extent of the modification; and*

(ii) *the resources available to modify the document; and*

(d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

Subsection 22(2)

*Access to edited copy*

(2) *The agency or Minister must:*

(a) *prepare the edited copy as mentioned in paragraph (1)(b); and*

(b) *give the applicant access to the edited copy.*

2.2 Accordingly, where possible, I have decided that the exempt information will be deleted under section 22(1) of the FOI Act and a copy of the documents, with the exempt information deleted, will be provided to you.

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

### 3. Section 47E(a) – Certain operations of agencies

3.1 Subsection 47E(a) of the FOI Act provides that:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

*(a) Prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*

3.2 One of the documents that falls within the scope of the request identified in the Schedule is the Fraud Assessment Report (the report). It contains detailed information about the department's fraud risks and specific methods the department uses to address fraud risks. Following the FOI Guidelines, examples of testing methods considered by the AAT as falling within subsection 47E(a) of the FOI Act include 'potential fraud case assessment and analysis tools'.

3.3 I am of the view that the effectiveness of the fraud assessment procedures will be prejudiced as a result of the disclosure of the information. This is because it would make public the department's fraud risks and how the department addresses them. Disclosure could reasonably be expected to cause an increase in fraud risk to the department should the methods for addressing specific risks be made public. This would, or is reasonably likely to, adversely impact the department's ability to effectively undertake activities such as tests and audits to control fraud risks, and potentially expose the department to new or additional fraud risks.

3.4 Disclosing fraud assessments and analysis tools could provide forewarning, facilitate cheating or other fraudulent or deceptive conduct by individuals who wish to circumvent fraud detection. Disclosure would be contrary to the objects of the audits and tests that the department conducts.

3.5 On this basis, I am satisfied that the documents are conditionally exempt because their disclosure would, or could reasonably be expected to, prejudice the effectiveness of procedures or methods for the conduct of audits. For these reasons, I have decided that certain materials identified in the Schedule are conditionally exempt under section 47E(a) of the FOI Act.

3.6 I am aware that under the FOI Act, access must generally be given to a conditionally exempt document unless it would be contrary to the public interest. My consideration of the public interest factors for and against disclosure are set out below.

3.7 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.

3.7 The FOI Guidelines state that the public interest test is necessarily broad and is something that is of serious concern or benefit to the public, not merely of individual interest. Access to documents should not be given if, in the particular circumstances, there is, on balance, countervailing harm which offsets the inherent public interest of giving access.

3.8 I have considered each of the factors favouring access listed above and that disclosure of the material in question may promote the object of the FOI Act. In particular, disclosure of material may promote effective oversight of public expenditure and inform debate on a matter of public importance.

- 3.9 Though there are factors favouring access, I consider that overall they are outweighed by the public interest against disclosure. For the reasons outlined above, I consider there is countervailing harm sufficient to outweigh the public interest in favour of disclosure because releasing the information would expose the department to additional fraud risks and/or a higher rate of occurrence of existing fraud risks.
- 3.10 I have considered the irrelevant factors listed in 11B(4) of the FOI Act, and none of these factors have been taken into account in deciding whether access to the documents would, on balance, be contrary to the public interest.
- 3.11 On this basis, I have decided that giving access to the information at this time would be contrary to the public interest.
- 3.12 Therefore, for the reasons set out above, I am satisfied that the material in the report is of such a nature that it is conditionally exempt under subsection 47E(a) of the FOI Act and that, on balance, it would be contrary to the public interest to release this information.

#### **4 Section 47F – Personal Information**

- 4.1 Subsection 47F(1) of the FOI Act provides that:

*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

- 4.2 The term, ‘personal information’, is defined in section 4 of the FOI Act to mean:

*Information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

- 4.3 When determining whether the disclosure of personal information would be unreasonable, subsection 47F(2) of the FOI Act requires me to consider:
- the extent to which the information is well known;
  - 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;
  - the availability of the information from publicly accessible sources; and
  - any other matters that I consider relevant.
- 4.4 I have decided that material contained in certain documents, as identified in the Schedule of Documents, is conditionally exempt under subsection 47F(1) of the FOI Act.
- 4.5 The information which I have determined would be unreasonable to disclose includes the name of an officer who prepared the fraud report. This personal information is not well known or publicly available and the individuals to which the information relates, are not known to be (or to have been) associated with the matters contained in the documents. I also do not consider that any public purpose would be achieved through the release of the personal information of these third parties.
- 4.6 Under subsection 11A(5) of the FOI Act, the department must give you access to this conditionally exempt material unless in the circumstances it would be, on balance, contrary to the public interest to do so. Subsection 11A(5) of the FOI Act sets out the following factors favouring access to a document:

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

4.7 I have considered each of the factors favouring access listed above and I have decided that disclosure of the personal information in question would not go towards promoting the object of the FOI Act or inform debate on a matter of public importance. Disclosure of the personal information would also not promote effective oversight of public expenditure and will not allow you or another person to access his or her own personal information.

4.8 I have also taken into account the extent to which disclosure would prejudice individual's personal privacy and prejudice the conduct of an investigations by the department.

4.9 Further, I consider the release of personal information could cause stress to the persons to whom the information relates.

4.10 Following consideration of these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the personal information is outweighed by the public interest against disclosure.

4.11 Therefore, I am satisfied that the material is of such a nature that it is conditionally exempt under subsection 47F(1) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly, I have deleted the exempt material in Document 3 and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

## 5 Publication

5.1 Section 11C of the FOI Act requires agencies to publish documents released through an FOI request on our website within 10 days of release, except in certain circumstances including when the documents contain personal or business information that would be unreasonable to publish.

5.2 The documents being released to you do not contain any personal or business information that would be unreasonable to publish. As a result, they will be published on our disclosure log within 10 days of the documents being released to you.

## **Part B – Review Rights**

### **Application for Internal Review**

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

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

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

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

or by e-mail to: [FOI@industry.gov.au](mailto: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](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Fax: +61 2 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

An application form is available on the website at [www.oaic.gov.au](http://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](http://www.oaic.gov.au).

Request for Access under the *Freedom of Information Act 1982* (Cth)  
 Department of Industry, Science, Energy and Resources  
 FOI Applicant: Harry Witherspoon  
 SCHEDULE OF DOCUMENTS

Doc No	Description of document	Pages	Decision	Reasons
1.	Letter to Secretary Fraud Control Measures	1	Released in full	
2.	Minute to Secretary Fraud Control Measures	1	Released in full	
3.	Assurance and Audit Committee Fraud Assessment Report	15	Released in part	Section 22 – exempt material Section 47E(a) – certain operations of agencies Section 47F – personal information