



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

Our ref: 67328, 67329, 67337, 67338, 67458

Menzies

By email: via Right to Know

Dear Menzies

Freedom of Information Act – Notice of intention to refuse

I refer to your five requests received by the Department of Industry, Science, Energy and Resources (the department) on 21, 22, 26 October and 11 November, in which you sought access under the *Freedom of Information Act 1982* (the FOI Act) to the following:

L67338 (received 22 October 2020):

BACKGROUND

On 2 March 2020, Charlotte Tressler furnished a response to a complainant, purporting that [individual] held no "actual" conflicts of interest.

On 10 July 2020, Emma Greenwood advised the same complainant not to investigate Department conflicts.

REQUEST

I am requesting all correspondence sent to Charlotte Tressler and/or Emma Greenwood from Department staff in relation to (or as a result of) matters raised by the complainant.

L67337 (received 22 October 2020):

BACKGROUND

*On 24 August 2020, [FOI officer] made the allegation that [individual] declined to furnish documents under the FOI Act by demanding a subpoena-
<https://www.righttoknow.org.au/request/6541/response/18239/attach/3/LEX%2066692%20FOI%20Template%2024AB%20Notice%20of%20intention%20to%20refuse.pdf> (DEMAND)*

I note that the contract [individual] signed on behalf of [company] compels him to comply with FOI requests under section 27.

REQUEST

I am requesting correspondence containing (or telephone record in relation to) the DEMAND.

L67329 (received 26 October 2020):

BACKGROUND

*MassChallenge was awarded this ad hoc grant through the Entrepreneurs' Programme-
<https://www.righttoknow.org.au/request/6607/response/18835/attach/3/LEX%2066830%20Combined%20documents%20AR.pdf> (GRANT)*

[Individual] was the Australian country manager/facilitator of MassChallenge until October 2019- (ENGAGEMENT)

Throughout this time, [individual] was delivering the Incubator Support Initiative (ISI) grant program to Incubators/Accelerators under the Entrepreneurs' Programme (EP) as managed by-

- Charlotte Tressler - AusIndustry Support for Business (AISB) Head of Division;
- Emma Greenwood - EP General Manager, later a/g AISB Head of Division; and
- Andrew Lewis - a/g EP General Manager; and
- Zoe Naden - ISI Manager/Delegate (OFFICIALS).

REQUEST

For each of the OFFICIALS, I am requesting the date of the earliest email correspondence sent by anyone for any reason that alludes to (a) the GRANT and/or (b) the ENGAGEMENT.

To be clear, I am requesting only the date of each such email correspondence (a and b) for each of the OFFICIALS.

For example, an output as follows will suffice- Charlotte Tressler, GRANT, 5/4/2018 Charlotte Tressler, ENGAGEMENT, 2/3/2018 Emma Greenwood, GRANT, 5/4/2018 Emma Greenwood, ENGAGEMENT, 2/3/2018 etc.

For expediency, simply searching for MassChallenge and/or [individual] across OFFICIALS' emails may be efficient.

L67328 (received 21 October 2020):

Harry Witherspoon received this response with respect to the Department's (non)compliance with fraud legislation here-
https://www.righttoknow.org.au/request/internal_systems_of_control_and

AusIndustry (Support for Business) is entrusted with the business grant hub (whole-of-government grant administration).

REQUEST

I am requesting A-F as follows-

- Completion dates of fraud risk assessments as per s 6 and s 7.6 of the Fraud and Corruption Control Plan 2018-20 (FCCP) for each division from 1 January 2016 until 1 January 2020.
- Division, program name and completion date for each fraud audit conducted as per s 14.2 of the FCCP from 1 January 2016 until 1 January 2020.
- Division, program name and completion date for each fraud detection compliance review as per s 14.4 of the FCCP from 1 January 2016 until 1 January 2020.
- Division and completion date for each ICT compliance review as per s 14.5 of the FCCP from 1 January 2016 until 1 January 2020.
- Documents/correspondence containing the reasons as to why AusIndustry (Support for Business) did not complete a single fraud risk assessment in 37 months.
- Documents/correspondence containing the reasons as to why the Department never conducted a fraud audit for the Incubator Support Initiative.

L67458 (received 11 November 2020):

BACKGROUND

The Department engaged four regional incubator facilitators (Contractors) to deliver the incubator support initiative grant program in their respective service areas [1]. As part of their services, the Contractors were under the obligation to email monthly activity reports (Reports) to the program delegate [2].

REQUEST

I am requesting a document that contains the relevant year and month of all Reports submitted by Contractors as follows:

year, month, contractor

2018, april, name or service area

Practical Refusal Reason

Under section 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.

In identifying the practical refusal reason, I have relied on section 24(2)(b) of the FOI Act which permits me to treat two or more requests as a single request if I am satisfied that the requests relate to documents, the subject matter of which is substantially the same.

I have decided to treat your five requests as a single request as they relate to substantially the same subject matter, that is, documents relating broadly to the Incubator Support Initiative. This approach is consistent with the approach of the Information Commissioner in the case of *Philip Morris Ltd and Department of Health and Ageing [2013] AICmr 49 (22 April 2013)* in which the Information Commissioner decided that eight requests seeking access to 19 categories of documents directly and indirectly relating to plain packaging of tobacco products could be combined because the subject matter of all requests was substantially the same. In addition, in *Farrell and Department of Immigration and Border Protection [2014] AICmr 74 (31 July 2014)*, the Information Commissioner decided that 121 requests from different applicants for documents relating to various incidents within the detention network could be combined because they related to substantially the same subject matter.

My view that a practical refusal reason exists is based on a conservative estimate that over 109 hours of decision making and processing time is required to deal with this request. I also wish to advise that:

- I estimate that there are over 550 pages relevant to your request as presently framed;
- There are additional areas of the department where searches have not been completed which are likely to have additional relevant documents and therefore the total number of relevant documents is likely to be higher than the estimate; and
- The processing of these requests requires specialist attention by officers who have competing responsibilities and are already being diverted from their usual responsibilities by a large number of FOI requests relating to these same matters.

In accordance with sections 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.

I have made some comments on your various requests below. These comments may help you to revise the scope of the request.

L67338

The scope of L67338 is particularly broad. Complaints which the department receives may be long running and involve various communications between the department and the complainant. In addition, as a result of the initial complaint you refer to, the department has received a high number of further correspondence from other parties, including FOI requests, which could be characterised as being received 'as a result of' matters raised in that initial complaint.

At this time we have identified hundreds of emails that will need to be individually reviewed to determine whether they fall within scope of the request. In addition, the department would likely be required to undertake third party consultation with anyone who authored any of the correspondence.

L67328

The scope of L67328 is also very broad. It is estimated that over 200 pages of documents would be required to be obtained and examined to identify documents falling with the scope of this request. In addition, in relation to Item D of your request there is no single document which records this information. The department undertakes at least daily ICT compliance checks and as a result there would be a very high volume of documents which may fall within the scope of the request.

There are no documents which relate to the first point of your request identified as Item E and likely no documents that fall within the second point of your request also identified as Item E.

L67329

The department understands that this request seeks a document bearing the dates of certain correspondence sent by identified officers of the Department. No documents exist falling within the scope of this request.

L67337

No documents fall within the scope of your request L67337. You requested documents or telephone records related to a Departmental contractor declining to furnish documents under FOI. For clarity, in the letter dated 24 August 2020 that you refer to in your FOI request, the reference to the 'service provider' that requested a subpoena was a reference to the Department's telecommunications service provider, not a reference to a Regional Incubator Facilitator. On this basis, no documents falling within the scope of your request exist.

L67458

There is no document that contains the information as requested.

Suggestions for refining the scope of your request

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 will no longer exist:

- Withdrawing your requests L67329, L67337 and L67458 as no documents fall within the scope of these requests.
- Either withdraw or substantially revise the scope of L67338 to narrow the request, for instance:

- Be more specific about the information which you are requesting – for instance being specific about which aspect of the complaints you are interested in, or what sort of correspondence you consider to be ‘in relation to’ that matter;
- Consider not requiring any personal information or information which would require the department to consult with a third party under the FOI Act;
- Either withdrawing your request for L67328 or reducing the scope of this request by focusing on specific fraud related activities – such as in relation to a specific program.

Should you wish to take action 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

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a long horizontal stroke that loops back to the start.

Kristy-Lee Coker
A/g General Counsel
Legal, Audit & Assurance

20 November 2020