



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

Our ref: 67479

Mr Harry Witherspoon

By email: foi+request-6896-13a870bf@righttoknow.org.au

Dear Mr Witherspoon

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 15 November 2020, for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

I would like to see all documents that contain correspondence between the Department and Right to Know in relation to censorship of officer details in FOI requests.

As a starting point, to locate such documents, please note that censorship requests were made by Erin Higuchi from the Legal, Audit and Assurance branch.

However, if similar requests were made by other officers from the Department, please include documents that encompass such correspondence too.

I trust Right to Know will not object to the release of these documents given the organisation's purpose.

Background

On 26 November 2020 you were notified of the need to conduct a third party consultation in relation to your request. Subsequently, in accordance with section 15(6) of the FOI Act the time limit was extended by 30 days to allow for third party consultation.

Decision

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

On the outset, 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 2 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 2 documents in part.

industry.gov.au

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

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

- Section 47F(1) of the FOI Act, as disclosure of the information would be an unreasonable disclosure of an individual's personal information; and
- 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
A/g General Counsel
Legal, Audit and Assurance Branch

11 January 2021

Enclosures

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

Annexure
Part A – Reasons for Decision (section 26 FOI Act)
Request: Harry Witherspoon – 15 November 2020 (LEX 67479)
Decision Maker: Kristy-Lee Coker, A/g General Counsel, Legal, Audit and 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;
- consultation with affected third parties 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 information that would reasonably be regarded as irrelevant to the request (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 On 26 November 2020, the department advised you that unless you indicated otherwise, the names and contact details of APS staff below the SES level would be treated as out of scope and deleted under section 22 of the FOI Act.
- 2.3 You did not respond to the email regarding the exclusion of personal information from the scope of your request.
- 2.4 I consider that to provide you with full access to the documents would disclose information that does not fall within the scope of your FOI request. Accordingly, where possible, I have decided that the irrelevant and exempt information will be deleted under section 22(1) of the FOI Act and a copy of the documents, with the irrelevant and exempt information deleted, will be provided to you.
- 2.5 These deletions are identified in the Schedule of Documents at [Attachment A](#).

3. Section 47F – Personal Information

- 3.1 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).

- 3.2 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.

- 3.3 When determining whether the disclosure of 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.

- 3.4 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.

- 3.5 The information which I have determined would be unreasonable to disclose includes the names and contact details of non-SES officers and third parties. 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.

- 3.6 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.

- 3.7 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.
- 3.8 I have also taken into account the extent to which disclosure would prejudice individuals' personal privacy, be privileged from production in legal proceedings on the ground of legal professional privilege, and prejudice the conduct of an investigation of a breach, or possible breach, of the law.
- 3.9 Further, I consider the release of personal information could cause stress to the persons to whom the information relates.
- 3.10 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.
- 3.11 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 Documents 1 and 2 and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

4. Publication

- 4.1 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.
- 4.2 The documents being released to you do contain personal or business information that would be unreasonable to publish. As a result, they will not be published on our disclosure log.

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.

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.

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.	LEX 67479 - FOI - Document 1	2	Release in part	Section 22 - Deletion of exempt or irrelevant material Section 47F – Personal Information
2.	LEX 67479 - FOI - Document 2	2	Release in part	Section 22 - Deletion of exempt or irrelevant material Section 47F – Personal Information

