



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

Our ref: LEX 68141

Mr Warrick Alexander  
Right to Know

By email: [foi+request-6940-c2262a4b@righttoknow.org.au](mailto:foi+request-6940-c2262a4b@righttoknow.org.au)

Dear Mr Alexander

**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 2 December 2020 and 13 February 2021, for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

2 December 2020 (LEX 67637)

*I would like to see a document with the date and time of each statement made by officers in the Legal, Audit and Assurance line area that expressly mentions/considers the possibility/presence of Regional Incubator Facilitator bias/conflict as:*

- (a) "apparent", or*
- (b) "apprehended".*

13 February 2021 (LEX 68141)

*I did not ask for a report. I asked for a document to be released with all mentions of apparent bias as per request.*

*It is implied that the department should collate all such mentions for release in a document as per all other requests.*

*If there are 20 such documents, then that should be released as 1 document as you do for all other requests.*

**Background**

On 2 December 2020, you requested access to documents under the FOI Act (as above) (LEX 67637).

On 12 February 2021, you were issued with a notice of decision for LEX 67637. You were informed that the department had refused the request in accordance with section 24A of the FOI Act on the grounds that the document you had requested did not exist, as the information was not electronically stored in a form that was capable of being extracted to generate a discrete document.

On 13 February 2021, you requested an internal review of LEX 67637 (as above).

On 22 February 2021, you were notified that as your internal review request appeared to change the scope of your request in LEX 67637, the department would be treating your correspondence of 13 February 2021 as a new FOI request.

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GPO Box 2013 Canberra ACT 2601 ABN: 74 599 608 295

You were asked to confirm the scope of this new request by no later than 1 March 2021, however no response was provided by that date.

### Decision

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

The department has undertaken searches of all relevant electronic databases, files and corporate file lists for the documents you have requested, however has been unable to locate any existing documents that contain the information you are seeking. On the basis of these searches, I am satisfied that all reasonable steps have been taken to locate any documents relevant to your request, but no such documents exist.

In particular, no documents were identified containing a consolidated list of dates and times that officers in the Legal, Audit and Assurance branch expressly mentioned or considered 'apparent' or 'apprehended' Regional Incubator Facilitator bias or conflict.

Therefore, I have decided to refuse your request in accordance with section 24A of the FOI Act on the grounds that the documents you have requested do not exist.

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

Please do not hesitate to contact the FOI team at [FOI@industry.gov.au](mailto:FOI@industry.gov.au) if you require any further clarification.

Yours sincerely



Deborah Miliszewski  
General Counsel  
Legal, Audit and Assurance Branch

// March 2021

## **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).

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