



Australian Government
Department of Industry, Science,
Energy and Resources

Our ref: LEX 67670

Mr To Nguyen

By email: foi+request-6946-65bc325d@righttoknow.org.au

Dear Mr Nguyen

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 4 December 2020 for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

"**i would appreciate a similar document with a response for answers 3, 4, and 5 but for the entrepreneur program:*

3. internal audit reports by Legal, Audit and Assurance as per s. 14.2, 4. compliance reviews as per s. 14.4, and 5. audit reports that address:

- insider threats as per s. 5.4, or*
- employment screening as per s. 13.2, or*
- leave policies as per s. 13.3, or*
- conflicts of interest as per ss. 5.2 & 13.4, or*
- cyber and digital awareness as per s. 5.5, or*
- ICT compliance as per ss. 13.5 & 14.5.*

** also I would like to see documents noting that ausindustry (support for business) did not complete a divisional fraud risk assessment in 2017 and 2018 (from 25 October 2016 to 16 December 2019)."*

Background

On 1 February 2021, the Office of the Australian Information Commissioner granted the department an extension under section 15AC of the FOI Act for the processing of your FOI request until 31 March 2021.

Decision

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

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 one document that is relevant to your request. This document is described in the Schedule of Documents at **Attachment A**.

industry.gov.au

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

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I have decided to grant access in part to the document.

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

- section 42 of the FOI Act, as the information is of such a nature that it would be privileged from production in legal proceedings on the grounds of legal professional privilege;
- section 47E(d) of the FOI Act, as disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;
- section 47F(1) of the FOI Act, as disclosure of the information would be an unreasonable disclosure of an individual's personal information;
- 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; 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



Rebecca Lannen
General Manager
Entrepreneurs' Programme

26 March 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: To Nguyen – 4 December 2020 (LEX 67670)

Decision Maker: Rebecca Lannen, General Manager, Entrepreneurs' Programme

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 irrelevant material

2.1 Under section 22 of the FOI Act, the department may delete material from documents that it considers irrelevant to the scope of your request.

2.2 As per our correspondence of 10 December 2020, the department considers the names and contact details of APS staff below the SES level to be irrelevant unless informed otherwise. Accordingly, this information has been deleted under section 22 of the FOI Act.

2.3 Further, I have identified material within the documents that does not relate to the scope of your request. This information has also been deleted as irrelevant under section 22 of the FOI Act.

3. Section 42 – Legal Professional Privilege

3.1 I have found that Document 1 contains material which is exempt from release under section 42(1) of the FOI Act. Section 42(1) provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

3.2 Legal officers within the department's Legal, Audit & Assurance Branch act in their capacity as qualified legal practitioners, and provide professional, independent and confidential legal advice to staff and business areas within the department. A legal adviser-client relationship therefore exists between the department's legal officers and internal clients.

3.3 I am satisfied that Document 1 contains material which discloses confidential communications made by department legal officers for the dominant purpose of giving legal advice, and which are subject to legal professional privilege. I therefore find that the material is of such a nature that it is exempt under section 42(1) of the FOI Act and will not be released. In accordance with subsection 22(1) of the FOI Act, I have deleted exempt material so that the remaining material in the document can be released to you.

4. Section 47E(d) – The Conduct of the Operations of an Agency

4.1 Subsection 47E(d) of the FOI Act permits an agency to conditionally exempt material in a document in circumstances where:

... its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Grant applicants and recipients:

- 4.2 The documents contain information about grant applicants and recipients. Applicants and recipients have a reasonable expectation of confidentiality in relation to grant applications submitted to the department, particularly given the commercial and other sensitivities around the content of applications, review processes and outcomes. Applicants would not reasonably expect that information concerning their business affairs would be disseminated beyond necessary parties in order to review their grant application, and particularly to third parties external to the department who are unknown to them. I am of the view that if this information were to be disclosed under the FOI Act (and noting that the FOI Act does not restrict the use or further dissemination of released material), this could discourage future applicants from applying for grant funding entirely, due to concerns that information concerning their business may not be kept confidential. This decreased engagement in the department's grants programs would have an adverse effect on the success of those programs.
- 4.3 For the reasons stated above, I am satisfied that the relevant information contained in the documents is conditionally exempt under subsection 47E(d), because release would involve the disclosure of information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the department. However, I am required under subsection 11A(5) of the FOI Act to give access to the information unless it would, at this time, on balance, be contrary to the public interest. My consideration of the public interest test is set out further below.

Risk identification and management

- 4.4 The document contains material relating to the department's approach to identifying, measuring the likelihood and seriousness of, and managing risks. It also reveals information about underlying causes and risk factors. The release of this information would have a substantial adverse effect on the conduct of the operations of the department, particularly with respect to increased exposure to risks. The information could be used by third parties to identify areas of potential vulnerability, and circumvent detection and control methods in order to engage in improper conduct to gain a benefit from the department to which they are not entitled, such as a grant.
- 4.5 The FOI Act does not restrict the use or further dissemination of released material. If the relevant material were to be made public or become more widely known, this could be used by persons with improper motives to circumvent the department's risk management methods and procedures. This in turn would undermine the effectiveness of those methods and procedures in detecting, assessing and responding to risks relating to the administration of grants, and potentially expose the department to new or increased levels of risk.
- 4.6 I am satisfied that the documents are conditionally exempt because their disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the department. As noted above, I am required under subsection 11A(5) of the FOI Act to give access to the information unless it would, at this time, on balance, be contrary to the public interest. My consideration of the public interest test is set out below.

Public interest test:

- 4.7 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.
- 4.8 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.
- 4.9 I have considered each of the factors favouring access listed above. In my view, disclosure of the material in question would not go towards promoting the object of the FOI Act, other than insofar as it would promote access to government information in the general sense. As the information in question relates to unsuccessful grant applications, disclosure of that material would not promote effective oversight of public expenditure, allow you or another person to access his or her own personal information, or inform debate on a matter of public importance.
- 4.10 However, as discussed above, disclosure of the document would likely have a substantial and unreasonable adverse effect on the effective administration of, and participation in, the department's grants programs. I am satisfied that this outweighs the limited public benefit that would flow through the disclosure of the document, and that giving access to the information at this time would be contrary to the public interest.
- 4.11 I have therefore decided that the relevant material in the documents is exempt under section 47E(d) of the FOI Act. In accordance with subsection 22(1) of the FOI Act, I have redacted the exempt material so that the remaining non-exempt material in the document can be released to you.

5. Section 47F – Personal Information

- 5.1 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).

- 5.2 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.

- 5.3 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.

- 5.4 I have decided that material contained in certain documents, as relevantly identified in the schedule, is conditionally exempt under subsection 47F(1) of the FOI Act.
- 5.5 The information which I have determined would be unreasonable to disclose comprises personal information about the chair of the Entrepreneurs' Programme Committee, including payment amounts, travel history, and other information of a personal nature. Further, the documents contain the names of employees of third party service providers. This personal information is not well known or publicly available, and the individuals to which part of 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. I am therefore satisfied that release of the relevant third party material would involve an unreasonable disclosure of personal information.
- 5.6 In applying the public interest test, I have considered each of the factors favouring access listed above at 4.7. I do not consider that disclosure of the personal information in question would go towards promoting the objects of the FOI Act, as the FOI Act recognises the need to protect unreasonable intrusions on the privacy of individuals. Nor do I consider that disclosure would materially inform debate on a matter of public importance, or promote effective oversight of public expenditure. As the personal information relates to third parties and not yourself, the fourth public interest factor is not relevant.
- 5.7 I have taken into account the extent to which disclosure would prejudice the individuals' personal privacy, and also consider that the release of personal information could cause stress to the persons to whom the information relates.
- 5.8 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.
- 5.9 Therefore, I am satisfied that the third party personal information contained in the documents 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 the documents and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

6. Section 47G – Business Information

- 6.1 Section 47G(1) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under the FOI Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth”*

- 6.2 Certain material contained in the documents, as relevantly identified in the schedule, concerns information about grants applicants and recipients, including their business names. Having regard to the context in which the information appears in the documents, I am satisfied that its

disclosure would, or could reasonably be expected to, unreasonably adversely affect the applicant in respect of its lawful business or professional affairs, especially given it might suggest possible issues arising from the assessment of applications. The FOI Act does not restrict the use or further dissemination of released material. If the information were to become more widely known, it could have a real detrimental impact on the business, professional and/or financial affairs of the applicant, particularly in similar grant or fundraising application processes, or otherwise in a wider business context (including professional reputation).

- 6.3 Accordingly, I am satisfied that certain material contained in the document is conditionally exempt under section 47G(1) of the FOI Act.
- 6.4 I have considered each of the public interest factors favouring access listed above at 4.7. While I consider that disclosure may promote the objects of the FOI Act (insofar as it might provide some insight into the assessment process relating to certain applications), I do not consider that disclosure of the business information would inform debate on a matter of significant public importance. I consider that the public interest factors in favour of disclosure are outweighed by the public interest factors against disclosure, namely that:
 - the information is not well known and is not available from publicly-accessible resources;
 - disclosure of this information would reasonably be expected to unreasonably affect a person or organisation in respect of their lawful business affairs; and
 - as noted above, the department's ability to effectively administer the grants program would be adversely effected if other potential applicants were to be deterred from making applications, out of concern that confidential information relating to unsuccessful applications, or confidential communications with the department in relation to applications, could be made available under the FOI Act without their consent.
- 6.5 Having considered the strengths of the public interest factors for and against disclosure, I am of the view that, on balance, the public interest factors against disclosing the material in the document outweighs those in favour of disclosure.
- 6.6 Therefore, I have decided that the relevant material contained in the document is conditionally exempt from disclosure under section 47G(1) of the FOI Act, and that disclosure would be contrary to the public interest. As noted above, I have deleted the exempt material in the document, and decided to release the remaining material to you in accordance with subsection 22(1) of the FOI Act.

7. Publication

- 7.1 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.
- 7.2 The documents being released to you contain information that would be unreasonable to publish. As a result, a redacted copy of the document will be published on our disclosure log within 10 days of it 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.

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: To Nguyen

SCHEDULE OF DOCUMENTS

Doc No	Description of document	Pages	Decision	Reasons
1.	Entrepreneurs' Programme Committee Governance Review Final report (February 2019)	1-31	Release in part	Pages 5, 10-11, 27-28: Removed information subject to legal privilege under section 42 Pages 20, 21: Removed operational information under section 47E(d) Pages 1: Removed personal information under section 47F Pages 20, 21: Removed business information under section 47G Pages 3-11, 13-19, 22-25, 29-31: Removed out of scope information under section 22