



Our ref: LEX 67671

To Nguyen

By email: foi+request-6947-88863d4e@righttoknow.org.au

Dear To

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:

a document with dates of third-party (public) enquiries/concerns/allegations regarding conflicts of interests in the incubator support initiative

Background

On 23 December 2020 the department was granted a 15 day extension under section 15AB of the FOI Act for the processing of your FOI request by the Office of the Australian Information Commissioner (OAIC).

Decision

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

I firstly note that your request has been interpreted as being a request for an existing document which contains the information you outlined.

I am satisfied that the relevant electronic databases, files and corporate file lists in the department have been searched for the document you have requested, and a document or documents that contain dates of third-party (public) enquiries/concerns/allegations regarding conflicts of interests in the incubator support initiative cannot be found.

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.

Your request appears to suggest that the department create a document for you containing the requested information. As you would be aware, the FOI Act relates to documents and not information. While section 17 of the FOI Act enables an agency to create a document where it appears as though an applicant is requesting information, which is only required where there is an existing computer or software system which can independently collate or retrieve stored information to produce the requested document. You may wish to refer to section 17 of the Act and also paragraphs 3.204-3.210 of the FOI Guidelines for further explanation of this.

The department does not have a computer system or software which can independently search and collate that information into a document for your benefit.

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 if you require any further clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sasha Pesic', written over a vertical line.

Sasha Pesic
Senior FOI Officer
Legal Audit & Assurance
8 January 2021

Enclosures

Attachment A – Review Rights

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.

industry.gov.au

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