



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

Our ref: LEX 67675

Mr Jeremy Ballard

By email: foi+request-6950-c2c6db4b@righttoknow.org.au

Dear Mr Ballard

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

"AusIndustry Support For Business (Fraud and Corruption Control Plan) Divisional Risk Assessments completed in the years 2016, 2019, and 2020."

Background

On 6 January 2021, the statutory processing timeframe in which to process your request expired. 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 24 February 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 four 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 all four documents in part.

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

- section 47E(a) of the FOI Act, as disclosure would prejudice the effectiveness of procedures for the conduct of tests, examinations or audits by an agency;
- 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 of the FOI Act, as disclosure 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.

industry.gov.au

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

ME_180821459_3

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



Deborah Miliszewski
General Counsel
Legal, Audit and Assurance

24 February 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: Jeremy Ballard – 6 December 2020 (LEX 67675)
Decision Maker: Deborah Miliszewski, 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; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

2. Section 47E(a) – Certain operations of agencies

2.1 Subsection 47E(a) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(a) Prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

- 2.2 The documents identified in the Schedule contain detailed information about the department's fraud risks, and specific measures the department uses to manage and mitigate those risks. Following the FOI Guidelines, examples of testing methods considered by the AAT as falling within subsection 47E(a) of the FOI Act include 'potential fraud case assessment and analysis tools'. I find that the relevant information in the documents concerns procedures or methods relating to the conduct of examinations or audits for the purposes of subsection 47E(a).
- 2.3 I am of the view that the effectiveness of these procedures and methods would be prejudiced as a result of the disclosure of the information, because it the information reveals the department's approach to identifying, measuring the likelihood and seriousness of, and managing fraud risks. This information is not well known or available from publicly-accessible resources.
- 2.4 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 engage in fraudulent conduct by circumventing the department's fraud risk management methods and procedures. This in turn would undermine the effectiveness of those methods and procedures in detecting, assessing and responding to fraud risks, and potentially expose the department to new or increased levels of fraud risk.
- 2.5 Disclosing fraud assessments and analysis tools could facilitate fraudulent or deceptive conduct by third parties who wish to circumvent fraud detection. Disclosure would be contrary to the objects of the fraud assessments and audits that the department conducts.

- 2.6 I am satisfied that the documents are conditionally exempt because their disclosure would, or could reasonably be expected to prejudice the effectiveness of procedures or methods for the conduct of audits. For these reasons, I have decided that certain material in the documents as identified in the Schedule are conditionally exempt under section 47E(a) of the FOI Act.
- 2.7 I am aware that under the FOI Act, access must generally be given to a conditionally exempt document unless it would be contrary to the public interest. My consideration of the public interest factors for and against disclosure are set out below.
- 2.8 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.
- 2.9 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.
- 2.10 I have considered each of the factors favouring access listed. I consider the first factor to be relevant, in that disclosure of the material in question may promote the object of the FOI Act by enabling the public to understand how fraud risks are managed. However, in my view, the material in question would not go towards promoting effective oversight of public expenditure or informing debate on a matter of public importance. The fourth factor (allowing a person to access their own personal information) is not relevant.
- 2.11 I consider that the public interest factors in favour of disclosure are outweighed by the public interest factors against disclosure, namely:
- prejudice to the effectiveness of the department's methods and processes for identifying, assessing and managing fraud risks;
 - the substantial adverse effect to the department's operations (and other affected third parties) if the identified fraud risks were to increase, or new fraud risks were to emerge, as a consequence of persons circumventing the fraud detection and control measures identified in the documents.
- 2.12 I have considered the irrelevant factors listed in 11B(4) of the FOI Act, and none of these factors have been taken into account in deciding whether access to the documents would, on balance, be contrary to the public interest.
- 2.13 Following consideration of these factors, I have decided that giving access to the information at this time would be contrary to the public interest. Accordingly, I have deleted the exempt material in the document and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

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

- 3.1 I find that the material that I have found to be conditionally exempt under section 47E(a) of the FOI Act is also subject to subsection 47E(d).
- 3.2 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.

- 3.3 As discussed above, the documents contain material relating to the department's approach to identifying, measuring the likelihood and seriousness of, and managing fraud 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, particularly with respect to increased exposure to fraud risks. The information could be used by third parties to identify areas of potential fraud vulnerability, and circumvent fraud detection and control methods in order to engage in fraudulent activity.
- 3.4 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.
- 3.5 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.
- 3.6 I have considered each of the factors favouring access listed at 2.8. I consider the first factor to be relevant, in that disclosure of the material in question may promote the object of the FOI Act by enabling the public to understand how fraud risks are managed. However, in my view, the material in question would not go towards promoting effective oversight of public expenditure or informing debate on a matter of public importance. The fourth factor (allowing a person to access their own personal information) is not relevant.
- 3.7 I consider that the public interest factors in favour of disclosure are outweighed by the public interest factors against disclosure, namely:
- prejudice to the effectiveness of the department's methods and processes for identifying, assessing and managing fraud risks;
 - the substantial adverse effect to the department's operations (and other affected third parties) if the identified fraud risks were to increase, or new fraud risks were to emerge, as a consequence of persons circumventing the fraud detection and control measures identified in the documents.
- 3.8 I have considered the irrelevant factors listed in 11B(4) of the FOI Act, and none of these factors have been taken into account in deciding whether access to the documents would, on balance, be contrary to the public interest.
- 3.9 Following consideration of these factors, I have decided that giving access to the information at this time would be contrary to the public interest. Accordingly, I have deleted the exempt material in the document and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

4. Section 47F – Personal Information

- 4.1 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).

4.2 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.

4.3 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.

4.4 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.

4.5 The information which I have determined would be unreasonable to disclose comprises personal information about departmental employees, including their names and direct contact information. 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 document. I also do not consider that any public purpose would be achieved through the release of the personal information of these third parties.

4.6 I have considered each of the factors favouring access listed above at 2.8. 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.

4.7 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.

4.8 Further, I have considered the previous effects of releasing information about other departmental employees and contractors in response to similar FOI requests. In particular, I am mindful that those releases have resulted in those employees and contractors being directly contacted on their phone numbers and being targeted by public campaigns. It is reasonably foreseeable that such harm will continue to occur if I were to release the personal information of the RIFs named in this FOI request.

4.9 I am also minded that the disclosure of interests declared by third party experts would demonstrate that the Commonwealth is engaging experts that do not have conflicts of interests (or are taking the appropriate actions when they do). However, as discussed above, the RIFs named in this FOI request have been the subject of public campaigns to prove that they have adversely influenced the decisions of the RIF program. As a result, any benefit that could be derived from the disclosure of the documents could only be outweighed by the direct and

continued harm that would likely be brought on the RIFs.

- 4.10 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.
- 4.11 Therefore, I am satisfied that certain material 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.

5. Publication

- 5.1 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.
- 5.2 The documents being released to you do not contain any personal or business information that would be unreasonable to publish. As a result, they will be published on our disclosure log within 10 days of the documents 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: Jeremy Ballard
SCHEDULE OF DOCUMENTS

Doc No	Description of document	Pages	Decision	Reasons
1.	Email	1-2	Release in full	Pages 1, 2: Removed personal information under section 47F
2.	Attachment A Outcome of the independent review – Support for Business	3	Release in part	Page 3: Removed information prejudicing the conduct of audits under section 47E(a) Page 3: Removed operational information under section 47E(d)
3.	Fraud Risk Assessment and treatment plan 2018-20	4-14	Release in part	Pages 4-14: Removed information prejudicing the conduct of audits under section 47E(a) Pages 4-14: Removed operational information under section 47E(d)
4.	Divisional Fraud Risk Assessment 2016-18 - Business Services Division	15-22	Release in part	Pages 16-19: Removed information prejudicing the conduct of audits under section 47E(a) Pages 16-19: Removed operational information under section 47E(d) Page 15: Removed personal information under section 47F