



Our ref: 67668

Allan Phu
Right to Know

By email: foi+request-6952-9800d8c2@righttoknow.org.au

Dear Mr Phu

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, and subsequent correspondence to clarify the scope of your request, for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

‘...all regional incubator facilitator (RIF) disclosures [NEI grant applications] and relevant decisions in entrepreneur programme committee (EPC) meetings [from April 2018 to February 2020] and the ad-hoc minute approved by the incubator support initiative manager on 20/6/18.’

Your request identified four regional incubator facilitators (RIFs) that it was seeking information about. As such, I have interpreted this request as seeking information exclusively about those four identified RIFs.

Background

On 23 December 2020 you were issued with a notice of intention to refuse the request on the basis that the work involved would amount to a substantial and unreasonable diversion of the department’s resources. You were invited to refine the scope of your request within 14 days.

On 6 January 2021, the department confirmed that a practical refusal reason no longer existed in relation to your revised request (as set out above).

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 two 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 the two documents in part. I have found that the requested documents contain material which is exempt under:

- 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; 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



Claire Forsyth
General Manager
Business Outreach & Engagement

17 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: Allan Phu – 6 December 2020 (LEX 67668)
Decision Maker: Claire Forsyth, General Manager, Business Outreach & Engagement

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 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 the instructions in your request and our correspondence of 15 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.

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

3.1 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.

3.2 Document 1 contains information about grant applications that were later deemed unsuccessful. Applicants 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. In particular, unsuccessful applicants would not reasonably expect that information concerning their business affairs, which was provided by a third party, would be disseminated beyond necessary parties in order to review their grant application. 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.

3.3 For the reasons stated above, I am satisfied that the document is conditionally exempt because release of the document 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.

3.4 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.

3.5 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.

3.6 I have considered each of the factors favouring access listed above and I have decided that disclosure of the material in question would not go towards promoting the object of the FOI Act. As the information in question relates to unsuccessful grant applications, disclosure of that material would also 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.

3.7 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.

3.8 I have therefore decided that the relevant material in Document 1 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.

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 both documents, as identified in the Schedule of Documents, 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 information about the four Regional Incubator Facilitators (RIFs) that are the subject of this request, and other third party individuals, including identifying information, employment information and work history, contact details, and other information of a personal nature. 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.
- 4.6 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.
- 4.7 I have considered each of the factors favouring access listed above. 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.
- 4.8 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.
- 4.9 Further, I have considered the previous effects of releasing information about RIFs in response to similar FOI requests. In particular, I am mindful that those releases has resulted in RIFs being directly contacted on their personal 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.
- 4.10 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 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.
- 4.11 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.

4.12 Therefore, I am satisfied that certain material in the documents are 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 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: Allan Phu
SCHEDULE OF DOCUMENTS

Doc No	Description of document	Pages	Decision	Reasons
1.	Entrepreneurs' Programme Committee Meeting documents - Disclosures of interests declared by Regional Incubator Facilitators – ISI applications	11	Exempt in part	Removed personal information under section 47F(1) and information excluded under section 47E(d).
2.	Minute – Innovation Programmes	9	Exempt in part	Removed personal information under section 47F(1) and irrelevant material under section 22.