



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

Our ref: LEX 68291

Mr Allan Phu
Right to Know

By email: foi+request-6984-be7bf8b1@righttoknow.org.au

Dear Mr Phu

Freedom of Information Act 1982 – Notice of Internal Review Decision

I refer to your correspondence, received by the Department of Industry, Science, Energy and Resources (**the department**) on 3 March 2021, seeking an internal review of a decision under section 54 of the *Freedom of Information Act 1982 (FOI Act)*.

Background

In correspondence of 3 March 2021, you requested an internal review of the department's decision of 2 March 2021 (LEX 67798) (**original decision**). A copy of the original decision is attached for your reference at **Attachment A**. In the original decision, access to Documents 1 – 5 was refused on the grounds that they were exempt in full under section 47F of the FOI Act (personal privacy exemption).

In your correspondence you stated:

I note that 5 documents were refused in full as it is alleged that they are about "Regional Incubator Facilitators and other third party individuals" and that they include "identifying information, contact details, employment history, photographs and other information of a personal nature".

I find it hard to believe that all these documents, in their entirety, amount to personal information about the authoring officer. Unless the correspondence is essentially an auto-biography, please redact the personal information and release the surrounding content as per request.

The department understands the scope of your internal review request to be limited to the application of section 47F of the FOI Act over the whole contents of Documents 1 - 5

Internal Review Decision

I am an authorised internal review decision maker under section 23 of the FOI Act. I am required to make a fresh decision on behalf of the department and I am not bound by the original decision.

My decision relates only to the refusal of access to five documents (**excluded documents**) in accordance with section 47F of the FOI Act, and does not relate to any other matter from the original decision.

I have decided to affirm the original decision to refuse access to Documents 1 – 5 on the basis that they comprise material that is exempt under section 47F in their entirety.

In reaching my decision, I relied on the following:

- the FOI Act;
- your correspondence of 19 December 2020 outlining the particulars of your FOI request;
- the department's original decision of 2 March 2021, sent to you on 3 March 2021;
- your correspondence of 3 March 2021 outlining your request for internal review;
- consultations with department officers as to the nature of the documents;
- consultations 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**).

Reasons for Decision

In your correspondence of 3 March 2021, you suggest that the excluded documents (identified as Documents 1 – 5 in the Schedule attached to the original decision) would not, in their entirety, amount to personal information about the author of the documents, and as such the excluded documents should be released with any relevant redactions applied.

I have reviewed the contents of Documents 1 – 5, and have decided to affirm the original decision to refuse access to those documents on the grounds that they are exempt in accordance with subsection 47F(1) of the FOI Act.

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).

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.

Documents 1 – 5 comprise email correspondence between individuals, as well as (in the case of Document 5) photographs of individuals. I am satisfied that the whole contents of these documents consist of personal information relating to Regional Incubator Facilitators (**RIFs**) and other third party individuals who are identified or reasonably identifiable. The personal information includes contact details, employment history and other information of a personal nature. I also find that the emails in themselves are personal information relating to the authors and recipients, particularly insofar as they reveal the fact that an individual communicated or received information, when those communications occurred, and the content and nature of those communications.

I am also satisfied that, for the reasons outlined in the original decision, that disclosure of the third party personal information would be unreasonable in the circumstances.

With regard to the public interest test in subsection 11A(5) of the FOI Act, I agree with the reasoning in the original decision regarding the consideration of the public interest factors for and against disclosure, and am satisfied that in the circumstances of this particular matter, the public interest in disclosing the personal information is outweighed by the public interest against disclosure.

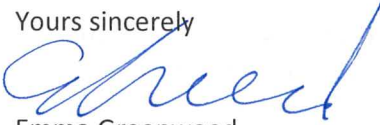
Accordingly, I have decided to affirm the original decision to refuse access to Documents 1 – 5 in full.

Review Rights

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

Please do not hesitate to contact the FOI team by email at FOI@industry.gov.au, if you require any further clarification.

Yours sincerely



Emma Greenwood
Head of Division
AusIndustry

1 April 2021

Enclosures

Attachment A – Original Decision

Attachment B – Review Rights

REVIEW RIGHTS

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 Comm