



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

Our ref: LEX 67939 / 67941

Mr To Nguyen

By email: foi+request-7018-b28ea4ce@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 15 January 2021 and 17 January 2021, and subsequent correspondence to combine and clarify the scope of your requests, for access to certain under the *Freedom of Information Act 1982* (**FOI Act**) as follows:

all documents with dates of third-party (public) enquiries/concerns/allegations regarding conflicts of interests in the incubator support initiative, excluding:

- *third party information (other than the content of enquiries/concerns/allegations);*
- *staff names; and*
- *duplicate documents.*

Background

The department applied to the Office of the Australian Information Commissioner (**OAIC**) under section 15AB of the FOI Act an extension of time for the processing of your FOI request, making the decision due on 2 March 2021. This extension was granted by the OAIC on 22 February 2021.

Decision

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

On the outset, I have decided not to impose any charges for the processing of your request.

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 2 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.

industry.gov.au

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

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;
- 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



Claire Forsyth
General Manager
Business Outreach and Engagement

26 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: To Nguyen – 17 January 2021 (LEX 67939 / 67941)
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; 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 2 February 2021, 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 you excluded from, or otherwise 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 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 I have decided that certain material contained in the documents is conditionally exempt under subsection 47E(d) of the FOI Act. This material is the email address of an internal point of contact mailbox. The release of this information would have a substantial adverse effect on the conduct of the Department's operations, specifically the Department's ability to ensure that enquiries from departmental personnel and external stakeholders to whom the email has been provided can be dealt with expediently. If the email address were to be released, members of the public may attempt to make contact with Department officers the mailbox, circumventing dedicated avenues of contact that are properly equipped manage and direct public enquiries. This would result in the diversion of departmental resources away from handling legitimate and relevant enquiries in the mailbox to responding to unsolicited correspondence received via the email address.

- 3.3 I am satisfied that the documents are conditionally exempt because release of the documents 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, inform debate on a matter of public importance, assist in the scrutiny of government decisions, or promote effective oversight of public expenditure.
- 3.7 I consider that the public interest factors in favour of disclosure, if any were to exist, 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;
 - no public purpose would be achieved through the release of the internal email address and phone number; and
 - if the information were to become more widely known and used by members of the public to contact the department, rather than through the proper public-facing communications, this would unreasonably interfere with the department's ability to direct enquiries to the appropriate area for response.
- 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 certain material contained in the 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 personal information about employees of an unsuccessful grant applicant, as well as the names of Regional Incubator Facilitators (**RIFs**). 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 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, to the extent the information relates to RIFs, 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 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 document 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 document and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

5. Section 47G – Business Information

5.1 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”*

5.2 Certain material contained in the document, as relevantly identified in the schedule, concerns information about an unsuccessful applicant, including its business name and aspects of its application. I am satisfied that disclosure of the information would, or could reasonably be expected to, unreasonably adversely affect the applicant in respect of its lawful business or professional affairs, especially given it would highlight the fact that the applicant was unsuccessful in obtaining a grant. 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).

5.3 Accordingly, I am satisfied that certain material contained in the document is conditionally exempt under section 47G(1) of the FOI Act.

5.4 Subsection 11A(5) of the FOI Act requires that access to a conditionally exempt document, including a document that is conditionally exempt under section 47G must be given to the applicant unless disclosure of the document would, on balance, be contrary to the public interest. I have considered section 11B of the FOI Act and Part 6 of the FOI Guidelines when applying the public interest test.

5.5 In weighing up the public interest factors both in favour and against disclosure, I have considered the factors favouring access set out in subsection 11B(3) of the FOI Act and the further factors and guidance material set out in the FOI Guidelines. I have therefore considered the following factors which may favour disclosure, including the extent to which disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- assist in the effective scrutiny of government decisions; and
- promote effective oversight of public expenditure.

5.6 While I consider that disclosure may promote the objects of the FOI Act and have some relevance to matters affecting oversight of public expenditure (insofar as it might provide some insight into

the basis upon which applicants were successful or unsuccessful), 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;
- if the information were to become more widely known and used by others to frame their grant applications, this would prejudice the integrity of such processes; and
- 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.

5.7 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.

5.8 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.

6. Publication

6.1 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.

6.2 The document being released to you contains personal and business 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.	Email	1-3	Release in part	Section 47F - Personal Information Section 47G(1) - Business information Section 22 – Deletion of irrelevant material
2.	Email	4-11	Release in part	Section 47E(d) – The Conduct of the Operations of an Agency Section 47F - Personal Information Section 47G(1) - Business information Section 22 – Deletion of irrelevant material