



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

Our ref: LEX 68128

Mr Warrick Alexander
Right to Know

By email: foi+request-7075-adea080a@righttoknow.org.au

Dear Mr Alexander

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 13 February 2021, and subsequent correspondence to clarify the scope of your request, for access under the *Freedom of Information Act 1982 (FOI Act)* as follows:

All documents furnished to Incubator Support Programme Management by officers in the Legal, Audit and Assurance line area that include the date/time of document creation and the express suggestion of material apprehended/apparent bias/conflict on the part of [Name Hidden]/Tminus Accelerator Pty Ltd (the suggestion may be within an email body or in an attachment or a standalone document, whichever may be the case).

For clarity, to qualify as the correct document, it must contain the suggestion that the bias is material and apprehended/apparent.

Material can be expressed in any terms to that effect.

Decision

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

At 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 our request.

I have decided to refuse your request.

Where an access refusal decision is made under the FOI Act, section 26(1) requires the decision-maker to give the applicant a notice explaining the reasons for the decision. However, section 26(2) of the FOI Act provides that:

A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

Documents created or communicated by officers in the department's Legal, Audit and Assurance Branch are of such a nature that they would be subject to legal professional privilege, on the basis that they comprise confidential communications for the purposes of providing legal advice.

Pursuant to section 26(2) of the FOI Act, I am satisfied that the department is not obliged to provide detailed reasons for the refusal of your request. This is because doing so would involve introducing exempt matter into the notice (being information which would prejudice the protection of legal professional privilege if divulged), and cause the notice itself to be an exempt document.

In reaching my decision, I have relied on the following information and documentary evidence:

- the FOI Act;
- your correspondence setting out the particulars of your request;
- consultation with departmental officers as to the nature of the documents requested;
- information relating to searches undertaken by the department for relevant documents; and
- the Guidelines issued by the Office of the Australian Information Commission under section 93A of the FOI Act (**FOI Guidelines**).

If you are dissatisfied with my decision, your review rights are set out in the Annexure.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Claire Forsyth', written in a cursive style.

Claire Forsyth
General Manager
Business Outreach and Insights Branch

15 March 2021

Enclosures

Annexure (Review Rights)

Annexure
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.