



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

Our ref: LEX 68410

Mr Denis Jakota
 Right to Know

By email: foi+request-7157-9c0630ff@righttoknow.org.au

Dear Mr Jakota

Freedom of Information Act 1982 – Notice of Decision

I refer to your request received by the Department of Industry, Science, Energy and Resources (**the department**) on 17 March 2021, for access under the *Freedom of Information Act 1982 (FOI Act)* to the following:

Please make available only page 1 of the Eligibility and Completeness Checklist (that includes criteria 1. a & b) for all incubator support imitative 'new and existing' applications that were assessed as ineligible (rather than just incomplete on page 5).

You may find page 1 of the Eligibility and Completeness Checklist as page 14 in the PDF here: [link not reproduced].

Please remove all personal and business information including that of third parties as only the ticked checkboxes are required without the applicants' details.

On 16 April 2021, you were provided with a notice of the department's intention to refuse your request on practical refusal grounds, being that processing your request would unreasonably and substantially divert the resources of the department from its other operations. In this notice you were informed that a conservative estimate indicated it would take the department at least 50 hours to process the request, and you were invited to revise the scope of your request.

On 16 April 2021, you revised the scope of your request to the following:

I did not ask for all 90 pages from the 15 Documents...

I asked for ONLY the FIRST page of the CHECKLIST of each INELIGIBLE application (1 page from each of the 15 Documents you had found; just 15 pages in total).

I also asked for EVERYTHING except the "TICKS" (the checkboxes) be EXCLUDED, so:

- NO third-party information
- NO personal information
- NO dates
- NO application/project number
- NO organisation
- NO project title
- NO comments

- *NOTHING* except the *TICKS* – so it is possible to see how these anonymous ineligible applications were classified but impossible to identify any person nor any business.

In case I misunderstood and there are more than 15 applications, then please narrow the search to the timespan from 1/8/2016 to 31/12/2019.

To be clear, you can see what the 1st page of the requested checklists looks like on the 14th page of the 32 pages in this PDF here: [link not reproduced].

PLEASE ALSO NOTE this from my request too:

I only wish to see Page 1 of applications marked INELIGIBLE on PAGE 5.

- meaning NOT applications marked as JUST INCOMPLETE on PAGE 5*
- the applications must be marked INELIGIBLE on PAGE 5 of the checklists*
- if an application is both INELIGIBLE and INCOMPLETE that's also a match as it's still INELIGIBLE.*

On 16 April 2021, the Office of the Australian Information Commissioner (**OAIC**) granted the department an extension until 30 April 2021 under section 15AB of the FOI Act for the processing of your FOI request.

Decision

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

I have decided to refuse your request under section 24(1) of the FOI Act on practical refusal grounds. The practical refusal ground being that processing your request would unreasonably and substantially divert the resources of the department from its other operations.

The reasons for my decision are set out below as required by section 26 of the FOI Act.

Reasons for Decision

Request consultation process

Under subsection 24(1) of the FOI Act, if an agency is satisfied that a practical refusal reason exists in relation to a request, the agency must undertake a request consultation process in accordance with section 24AB of the FOI Act. However, if after the request consultation process the agency is satisfied that the practical refusal reason still exists, the agency may refuse the request.

I am satisfied that a request consultation process has been undertaken by the department in accordance with section 24AB of the FOI Act. On 16 April 2021, you were issued a notice of intention to refuse your request, on the basis that the processing of your request as originally framed would unreasonably and substantially divert the resources of the department from its other operations.

I am also satisfied that the department took reasonable steps to assist you to revise the scope of your request so that a practical refusal reason would no longer exist. The department provided you with a reasonable opportunity to consult with the department, and you were provided with information to assist you to narrow the scope of your request. This included a number of suggestions on ways that your request could be revised and narrowed so that the practical refusal reason no longer existed.

Substantial and unreasonable diversion of resources

I am satisfied that following the request consultation process, and notwithstanding your response clarifying the scope on 16 April 2021, a practical refusal reason still exists in relation to your revised request. While your response specifically listed out the information that would be excluded from your request, it did not change the substance of what you were originally seeking. As such, this did not diminish the considerable amount of processing time required for this request.

In particular, the request would still require the department to retrieve the checklist documents and then individually review these documents to determine if they were relevant for the purposes of your request. Further, despite specifying that no third party information or personal information should be included, the department would still be required to undertake consultations with at least 15 third parties to the extent that the documents, including the 'ticked checkbox' information that you have requested, contain information about the business and professional affairs of these third parties.

I am satisfied that the resource impact of processing your request would be substantial and unreasonable in the circumstances. In forming this view, I have taken into account:

- the estimate of at least 42 hours of work required to process the request;
- the availability of suitably experienced FOI officers to undertake FOI processing, as well as line area staff to identify and review relevant documents;
- the department's broader FOI workload; and
- the fact that the department has received more than 130 FOI requests and 31 internal review requests on this particular subject matter since April 2020, which has required a significant diversion of resources.

Accordingly, I find that a practical refusal reason remains in relation to your request, and I have decided to refuse your request under section 24(1) of the FOI Act.

Review rights

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

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

Yours sincerely



Rebecca Lannen
General Manager
Entrepreneurs' Programme

5 May 2021

industry.gov.au

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

ATTACHMENT A**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

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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.