



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

Our ref: LEX 68766

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 Internal Review Decision

I refer to your correspondence, received by the Department of Industry, Science, Energy and Resources (**the department**) on 6 May 2021, and subsequent correspondence to clarify the scope of your request, seeking an internal review of a decision under section 54 of the *Freedom of Information Act 1982 (FOI Act)*.

Background

In your correspondence of 6 May 2021, you requested an internal review of the department's decision of 5 May 2021 (LEX 68410) (**original decision**). A copy of the original decision is attached for your reference at **Attachment A**.

In the original decision, your request was refused on practical refusal grounds as it was determined that processing your request would unreasonably and substantially divert the resources of the department.

In your correspondence on 6 May 2021 you stated:

I am writing to request an internal review of Department of Industry, Science, Energy & Resources' handling of my FOI request 'Unsuccessful ISI applications'...

I should also note that my request was changed to cover the period to November 2019...

In your further correspondence on 19 May 2021 you stated:

To clarify, I am requesting access only to checkboxes on 15 pages.

There is no need to engage in a consultation process since I am only requesting the checkboxes with everything else redacted. The documents as released would literally amount to a few boxes and ticks without any text...

The check-boxes on their own are non-identifying – so no consultation with any third parties is involved and no personal information is involved.

Again, to be very clear, I am only after the checkboxes on those 15 otherwise redacted pages (blank pages).

The department understands the scope of your internal review request to be limited to reviewing the following points, as well as how these points impact the existence of a practical refusal reason:

- whether or not third party consultations were required for your original request; and
- whether or not the revised timeframe for your original request was considered in coming to the original decision.

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.

I have decided to affirm the original decision to refuse your request.

In reaching my decision, I relied of the following:

- the FOI Act;
- your correspondence of 17 March 2021 outlining the particulars of your FOI request;
- your correspondence of 16 April 2021 refining the scope of your FOI request;
- the department's original decision of 5 May 2021, provided to you on 6 May 2021;
- your correspondence of 6 May 2021 outlining your request for internal review;
- your further correspondence of 19 May 2021 refining the scope of your internal review request;
- information relating to searches undertaken by the department for documents relating to your request;
- consultations with department officers as to the nature of the documents; and
- the Guidelines issues by the OAIC under section 93A of the FOI Act (**FOI Guidelines**).

Reasons for Decision

Relevant time period

In your correspondence of 6 May 2021, you submitted that you revised the scope of your original request to only cover the period up to November 2019.

On 16 April 2021, you revised the scope of your original request as follows:

In case I misunderstood and there are more than 15 applications, then please narrow the search to the timespan from 1/8/2016 to 21/12/2019.

I have reviewed information relating to searches undertaken by the department for documents relating to your original request. I am satisfied that the revised timeframe was communicated to the relevant area of the department, and in particular to the department officers who conducted the new document searches. I am also satisfied that the revised timeframe did not reduce the number of documents identified as being relevant to your original request.

Third party consultations

In your correspondence of 19 May 2021, you further submitted that the department did not need to engage in a consultation process with any third parties, as the information requested was limited to specified checkboxes that on their own would not include any personal information.

Where a document contains either personal information or business information relating to an individual or organisation other than the applicant, an agency should give that third party a reasonable opportunity to make submissions on the possible disclosure of that information before making any access decision.

I am satisfied that the ticked checkboxes subject to your original request contain information about the business and professional affairs of at least 15 third parties. In particular, the requested information relates to the processing of grant applications submitted by those third parties and whether or not those third parties were deemed an 'eligible entry' for a government grant.

While I acknowledge that you believe that third party consultations are not required in circumstances where you have consented to the redaction of all other information contained in the documents, I am satisfied that the ticked checkbox information relates directly to the business and professional affairs of third parties, and as such the department would be required to undertake consultations with those affected third parties.

Substantial and unreasonable diversion of resources

I am satisfied that the revised timeframe for your original request did not alter the number of documents identified as relevant to your original request. I am also satisfied that the department would be required to undertake consultations with at least 15 third parties before making any decision to provide access to documents falling within the scope of your original request, as revised.

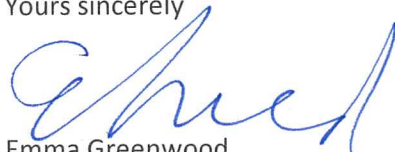
Accordingly, I am satisfied that the resource impact of processing your original request would be substantial and unreasonable in the circumstances outlined in the original decision, and that a practical refusal reason remains in relation to your request. I have therefore decided to affirm the original decision 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 B**.

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

Yours sincerely



Emma Greenwood
Head of Division
AusIndustry

4 June 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