

Freedom of Information

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**From:** Ben Fairless <contact@righttoknow.org.au>  
**Sent:** Monday, 7 September 2020 8:01 PM  
**To:** s 22  
**Cc:** Freedom of Information  
**Subject:** CM: Re: Request for take down of personal information [SEC=OFFICIAL]

Hi s 22

Sorry for the delay, take the time you need. Emails to our contact email address aren't automatically published on our site.

Thanks,  
Ben

—  
Ben Fairless

[OpenAustralia Foundation](#)

[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)



On 7 September 2020, 6:37 am AWST s 22

wrote:

Hi Ben

Thanks for your response.

I need to pull together some information from the relevant line area to be able to give you a fulsome response on this one. I will do that today and hopefully send something through to you later. If needed, perhaps we can follow up with a discussion tomorrow morning at 9am.

Can I also confirm that these emails aren't published on the site?

Thanks

s 22

**From:** Ben Fairless [<mailto:contact@righttoknow.org.au>]  
**Sent:** Friday, 4 September 2020 8:23 PM  
**To:** s 22  
**Cc:** Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>  
**Subject:** Re: Request for take down of personal information [SEC=OFFICIAL]

Hi s 22

I've had a chance to review the requests you've sent through.

As an organisation founded in transparency, we try to balance the public's right to know with ensuring that we create a safe and welcoming space for everyone (including those who don't use our site). There are a few things I'm struggling to understand with your request.

If you could clarify the below points for me, I would be in a much better position to give you an answer on how we can help:

1. Can you tell me why the Department of Industry, Science, Energy and Resources ("Department") is contacting us to request the removal of s 47F details? From what I can see on the [Linkedin Profile](#) referenced in [one request](#), s 47F
2. [This request](#) contains no reference to s 47F at all. Can you let me know what exactly you would like us to remove from this request?
3. For [this request](#) (and any others) would you be able to give specific detail on where you believe the FOI applicant has "expressed opinions and made untrue statements"?
4. Could you give me a bit more information on how you've reached your position that it is not in the public interest for s 47F name to be published?

If you think it would be better to have a phone call, let me know. I'm in WA and work full time, so 9am Canberra time (7am Perth Time) would work best for me (and for you I hope).

Kind Regards,

Ben

—

Ben Fairless

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[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)



On September 4, 2020, 1:52 PM GMT+8 s 22 wrote:

Thanks Ben for getting back to me. I'll wait to hear from you.

Cheers

s 22

**From:** Ben Fairless [<mailto:contact@righttoknow.org.au>]

**Sent:** Friday, 4 September 2020 3:44 PM

**To:** Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>

**Cc:** s 22

**Subject:** Re: Request for take down of personal information [SEC=OFFICIAL]

Hi s 22

Just letting you know we've got your email. As I'm a volunteer, I'll need to review this tonight and come back to you.

Thanks,

Ben

—

Ben Fairless

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On 4 September 2020, 1:30 pm AWST [foi@industry.gov.au](mailto:foi@industry.gov.au) wrote:

Good afternoon

I am writing to request the removal of certain personal information on the Right to Know website.

The department of Industry, Science, Energy and Resources is currently receiving a large volume of FOI requests through the Right to Know website in relation to the Incubator Support Initiative.

In a number of the requests, the FOI applicant has expressed opinions and made untrue statements about **s 47F** one of the Incubator Support Initiative Facilitators. These statements may reasonably cause harm to **s 47F** personal or professional reputation.

In accordance with the take down policy, the department would like to request that certain information relating to **s 47F** be removed from the site. It is not in the public interest for material of this nature to be published. Of particular concern is a copy of a letter dated 1 September 2020 available [here](#), the request date 21 August 2020 available [here](#), the request dated 24 August 2020 available [here](#).

I would be grateful if you could please let me know as soon as possible that the material has been removed. Alternatively, if you decide not to remove the information, the department will consider the matter further, considering the potentially defamatory nature of the material.

I would be happy to provide any further information as necessary.

Kind regards

**s 22**

A/g Principal Legal Counsel | Small Business, FOI and Privacy

Legal, Audit and Assurance Branch

Department of Industry, Science, Energy and Resources

E: **s 22**

s 22

This transmission is intended only for the use of the addressee and may contain confidential or legally privileged information. If you are not the intended recipient, you are notified that any use or dissemination of this communication is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and delete copies of this transmission together with any attachments.

OFFICIAL

OFFICIAL

OFFICIAL

Freedom of Information

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**From:** Ben Fairless <contact@righttoknow.org.au>  
**Sent:** Tuesday, 8 September 2020 9:48 AM  
**To:** s 22  
**Cc:** Freedom of Information  
**Subject:** CM: Re: Request for take down of personal information [SEC=OFFICIAL:Sensitive]

Hi s 22

Sorry, forgot to mention - We are not taking a view on if the content is defamatory or untrue, as we don't have the resources to investigate that. The below offer is made in good faith to assist the Department and s 47F

Thanks,  
Ben

—  
Ben Fairless  
[OpenAustralia Foundation](#)  
[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)



On September 8, 2020, 7:42 AM GMT+8 [contact@righttoknow.org.au](mailto:contact@righttoknow.org.au) wrote:

HI s 22

Thanks for your time today and for making available confidential information to assist us in working through what we can do to help.

As discussed, we are prepared to:

- Remove the names of s 47F " from the below requests:
  - s 47F
  - [https://www.righttoknow.org.au/request/disclosures\\_of\\_interests\\_from\\_th#outgoing-13224](https://www.righttoknow.org.au/request/disclosures_of_interests_from_th#outgoing-13224)
  - s 47F
- The name will be replaced with "[Name Removed at the request of the Department]"
- The tools we use don't work with PDFs, so we aren't able to make any changes to PDF documents

Here is an example of where this has been done before:

[https://www.righttoknow.org.au/request/apsc\\_produced\\_document\\_for\\_the\\_i](https://www.righttoknow.org.au/request/apsc_produced_document_for_the_i)

As part of our process, we would also reach out to the applicant via their real email address to let them know what we have done and make a comment on the request. We do this in the interests of transparency and to make it clear that Right to Know has made the decision, not the Department. You can see how this looks at the example above.

Can I get you to check with the team and confirm they are OK for the above actions to take place? If you have any further questions feel free to let me know.

Kind Regards,  
Ben

—

Ben Fairless

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On September 7, 2020, 6:32 PM GMT+8 [contact@righttoknow.org.au](mailto:contact@righttoknow.org.au) wrote:

Hi s 22

Sorry I didn't see your later email today. I'll give you a call around 9am your time to discuss what we can do and how we can help further.

If that doesn't suit please let me know ASAP.

Thanks,  
Ben

—

Ben Fairless

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On September 7, 2020, 3:02 PM GMT+8

s 22 wrote:

Good afternoon again Ben

I have provided some background information against the questions you have asked below.

Please do note that the information I have provided is for the purposes of this take down request only, and is not to be shared with any other person, except those staff or volunteers of the Right to Know website who you may need to consult about this request.

I would be more than happy to talk. I start work around 8am Canberra time, so if you would like to discuss tomorrow around 9am Canberra time, just let me know (although 7am your time sounds rather inconvenient for you?).

Kind regards

s 22

**A/g Principal Legal Counsel | Small Business, FOI and Privacy |  
Legal, Audit and Assurance Branch**

s 22

s 22

This transmission may contain confidential or legally privileged information. If you are not the intended recipient, you are notified that any use or dissemination of this communication is strictly prohibited.



s 47F

s 47F

These requests on the Right to Know website have encouraged three other individuals to also begin making FOI requests on this subject matter (these requests now constitute over a third of our current FOI requests).

s 47F has only recently become aware of the material on the Right to Know website and is s 47F

2. [This request](#) contains no reference to s 47F at all. Can you let me know what exactly you would like us to remove from this request?

s 47F . This request is based upon a misunderstanding of how the Programme works and insinuates that s 47F

3. For [this request](#) (and any others) would you be able to give specific detail on where you believe the FOI applicant has "expressed opinions and made untrue statements"?

Of most concern with this request is the email addressed to s 47F dated 1 September. In that request s 47F makes several untrue allegations, including:

1. That s 47F

2. That s 47F

which the department was not aware of;

3. Insinuates that s 47F

4. States that s 47F

5. States that s 47F

; and

6. States that s 47F advice was 'defective'.

4. Could you give me a bit more information on how you've reached your position that it is not in the public interest for s 47F name to be published?



It will never be in the public interest for defamatory material about an individual to be published online.

If you think it would be better to have a phone call, let me know. I'm in WA and work full time, so 9am Canberra time (7am Perth Time) would work best for me (and for you I hope).

Kind Regards,  
Ben

—  
Ben Fairless

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On September 4, 2020, 1:52 PM GMT+8

s 22

wrote:

Thanks Ben for getting back to me. I'll wait to hear from you.

Cheers

s 22

**From:** Ben Fairless

[\[mailto:contact@righttoknow.org.au\]](mailto:contact@righttoknow.org.au)

**Sent:** Friday, 4 September 2020 3:44 PM

**To:** Freedom of Information

[<FOI@industry.gov.au>](mailto:FOI@industry.gov.au)

**Cc:** s 22

**Subject:** Re: Request for take down of personal information [SEC=OFFICIAL]

Hi s 22

Just letting you know we've got your email. As I'm a volunteer, I'll need to review this tonight and come back to you.

Thanks,

Ben

—

Ben Fairless

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On 4 September 2020, 1:30 pm  
AWST [foi@industry.gov.au](mailto:foi@industry.gov.au)  
wrote:

Good afternoon

I am writing to request the removal of certain personal information on the Right to Know website.

The department of Industry, Science, Energy and Resources is currently receiving a large volume of FOI requests through the Right to Know website in relation to the Incubator Support Initiative.

In a number of the requests, the FOI applicant has expressed opinions and made untrue statements about **s 47F**, one of the Incubator Support Initiative Facilitators. These statements may reasonably cause harm to **s 47F** personal or professional reputation.

In accordance with the take down policy, the department would like to request that certain information relating to **s 47F** be removed from the site.

It is not in the public interest for material of this nature to be published. Of particular concern is a copy of a letter dated 1 September 2020 available [here](#), the request date 21 August 2020 available [here](#), the request dated 24 August 2020 available [here](#).

I would be grateful if you could please let me know as soon as possible that the material has been removed. Alternatively, if you decide not to remove the information, the department will consider the matter further, considering the potentially defamatory nature of the material.

I would be happy to provide any further information as necessary.

Kind regards

s 22

A/g Principal Legal Counsel | Small Business, FOI and Privacy

Legal, Audit and Assurance Branch

Department of Industry, Science, Energy and Resources

E: s 22

s 22

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OFFICIAL

OFFICIAL

OFFICIAL:Sensitive

Freedom of Information

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**From:** s 22  
**Sent:** Thursday, 17 September 2020 8:40 PM  
**To:** contact@righttoknow.org.au  
**Cc:** Freedom of Information  
**Subject:** CM: RE: Request for take down of personal information [SEC=OFFICIAL:Sensitive]

Thanks Ben.

We will contact s 47F

Kind regards  
s 22

**From:** Ben Fairless [mailto:contact@righttoknow.org.au]  
**Sent:** Thursday, 17 September 2020 8:38 PM  
**To:** s 22  
**Cc:** Freedom of Information  
**Subject:** Re: Request for take down of personal information [SEC=OFFICIAL:Sensitive]

Hi s 22

I'll make those changes later tonight. Just out at the moment and it's hard to do via mobile.

I've received an email from s 47F asking for more information in relation to our decision to redact information. He has given consent to me providing his direct email address to the Department. His email is s 47F

We would be most grateful if the Department could contact s 47F to discuss the redactions. I've advised s 47F I've passed on his details to the Department.

Thanks,  
Ben

—  
Ben Fairless  
[OpenAustralia Foundation](#)  
[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)



On 14 September 2020, 7:04 am AWST s 22 wrote:

Thanks Ben

The changes look good.

## DISER - Released under the FOI Act - LEX 68341

If I could possibly suggest one tweak, it would be to change the words “public servant” to “Commonwealth contractor” in your annotation to the request?

I note your comment that you don't take a view on the nature of the content, and that we may expect some follow up questions from applicants.

Thanks

s 22

**From:** Ben Fairless [<mailto:contact@righttoknow.org.au>]  
**Sent:** Friday, 11 September 2020 11:03 PM  
**To:** s 22  
**Cc:** Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>  
**Subject:** Re: Request for take down of personal information [SEC=OFFICIAL:Sensitive]

Hi s 22

Hope you're enjoying your weekend! Sorry for the delay in coming back to you.

As agreed, I've made the required changes. Can you please check and confirm you are happy with them?

On [this request](#), while you didn't specifically ask for it, I've redacted the URLs that link to the Facebook and LinkedIn page of s 47F (and other related sources that could identify him).

I'm not sure if you saw my follow up email, however by making these amendments are not taking a view on if the content is defamatory or untrue, as we don't have the resources to investigate that.

We've already had a query from one of the applicants asking for more information. I'll be replying shortly to let them know that a concern was raised around potentially defamatory material, and that when we remove potentially defamatory material from our site we are not taking a view on if it is accurate or not. I'll be referring them back to the Department if they have any follow up questions.

Thanks,

Ben

—

Ben Fairless

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On September 10, 2020, 11:17 AM GMT+8 **s 22**  
wrote:

Hi Ben

Thanks for your response and sorry for the delay in getting back to you. I've confirmed that the Department is happy with this approach.

We will be in touch again if we have any further requests for take down relating to new information.

Kind regards  
**s 22**

**A/g Principal Legal Counsel | Small Business, FOI and Privacy | Legal, Audit and Assurance Branch**  
**s 22**

**s 22**

This transmission may contain confidential or legally privileged information. If you are not the intended recipient, you are notified that any use or dissemination of this communication is strictly prohibited.

**From:** Ben Fairless [<mailto:contact@righttoknow.org.au>]

**Sent:** Tuesday, 8 September 2020 9:42 AM

**To:** **s 22**

**Cc:** Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>

**Subject:** Re: Request for take down of personal information  
[SEC=OFFICIAL:Sensitive]

Hi **s 22**

Thanks for your time today and for making available confidential information to assist us in working through what we can do to help.

As discussed, we are prepared to:

- Remove the names of s 47F from the below requests:
  - s 47F
  - [https://www.righttoknow.org.au/request/disclosures\\_of\\_interests\\_from\\_the\\_outgoing-13224](https://www.righttoknow.org.au/request/disclosures_of_interests_from_the_outgoing-13224)
  - s 47F
- The name will be replaced with "[Name Removed at the request of the Department]"
- The tools we use don't work with PDFs, so we aren't able to make any changes to PDF documents

Here is an example of where this has been done before:

[https://www.righttoknow.org.au/request/apsc\\_produced\\_document\\_for\\_the\\_i](https://www.righttoknow.org.au/request/apsc_produced_document_for_the_i)

As part of our process, we would also reach out to the applicant via their real email address to let them know what we have done and make a comment on the request. We do this in the interests of transparency and to make it clear that Right to Know has made the decision, not the Department. You can see how this looks at the example above.

Can I get you to check with the team and confirm they are OK for the above actions to take place? If you have any further questions feel free to let me know.

Kind Regards,  
Ben

—  
Ben Fairless  
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[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)



On September 7, 2020, 6:32 PM GMT+8  
[contact@righttoknow.org.au](mailto:contact@righttoknow.org.au) wrote:

Hi s 22

Sorry I didn't see your later email today. I'll give you a call around 9am your time to discuss what we can do and how we can help further.

If that doesn't suit please let me know ASAP.

Thanks,  
Ben

—  
Ben Fairless

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On September 7, 2020, 3:02 PM GMT+8

s 22

wrote:

Good afternoon again Ben

I have provided some background information against the questions you have asked below.

Please do note that the information I have provided is for the purposes of this take down request only, and is not to be shared with any other person, except those staff or volunteers of the Right to Know website who you may need to consult about this request.

I would be more than happy to talk. I start work around 8am Canberra time, so if you would like to discuss tomorrow around 9am Canberra time, just let me know (although 7am your time sounds rather inconvenient for you?).

Kind regards

s 22

**A/g Principal Legal Counsel | Small Business,  
FOI and Privacy | Legal, Audit and Assurance  
Branch**

s 22

s 22

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**From:** Ben Fairless  
[<mailto:contact@righttoknow.org.au>]  
**Sent:** Friday, 4 September 2020 8:23 PM  
**To:** s 22  
**Cc:** Freedom of Information  
<[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>  
**Subject:** Re: Request for take down of personal information [SEC=OFFICIAL]

Hi s 22

I've had a chance to review the requests you've sent through.

As an organisation founded in transparency, we try to balance the public's right to know with ensuring that we create a safe and welcoming space for everyone (including those who don't use our site). There are a few things I'm struggling to understand with your request.

If you could clarify the below points for me, I would be in a much better position to give you an answer on how we can help:

1. Can you tell me why the Department of Industry, Science, Energy and Resources ("Department") is contacting us to request the removal of s 47F details? From what I can see on the [Linkedin Profile](#) referenced in [one request](#), s 47F

s 47F

The role of a Facilitator is to work with applicants applying for grants under the Incubator Support Initiative stream of the Entrepreneurs Programme. The Facilitator looks at draft grant applications and provides advice to an

applicant on how the application could be strengthened.

s 47F

(Applications are first sent to the Department's program management group which assesses eligibility, and then if they are eligible the applications are sent to an independent expert assessment committee which assesses the applications on their merit).

s 47F

s 47F

These requests on the Right to Know website have encouraged three other individuals to also begin making FOI requests on this subject matter (these requests now constitute over a third of our current FOI requests).

s 47F has only recently become aware of the material on the Right to Know website s 47F

2. [This request](#) contains no reference to s 47F at all. Can you let me know what exactly you would like us to remove from this request?

s 47F

This request is based upon a misunderstanding of how the Programme works and insinuates that s 47F

3. For [this request](#) (and any others) would you be able to give specific detail on where you believe the FOI applicant has "expressed opinions and made untrue statements"?

Of most concern with this request is the email addressed to s 47F dated 1 September. In that request s 47F makes several untrue allegations, including:

1. That s 47F
  2. That s 47F
  3. Insinuates that s 47F
  4. States that s 47F
  5. States that Mr Smith benefited from the department's funding of MassChallenge; and
  6. States that Mr Smith's advice was 'defective'.
4. Could you give me a bit more information on how you've reached your position that it is not in the public interest for s 47F name to be published?

It will never be in the public interest for defamatory material about an individual to be published online.

If you think it would be better to have a phone call, let me know. I'm in WA and work full time, so 9am Canberra time (7am Perth Time) would work best for me (and for you I hope).

Kind Regards,

Ben

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Ben Fairless

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On September 4, 2020, 1:52 PM

GMT+8

s 22

wrote:

Thanks Ben for getting back to me.  
I'll wait to hear from you.

Cheers

s 22

**From:** Ben Fairless  
[<mailto:contact@righttoknow.org.au>

]

**Sent:** Friday, 4 September 2020

3:44 PM

**To:** Freedom of Information

<[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>

**Cc:** s 22

**Subject:** Re: Request for take down  
of personal information  
[SEC=OFFICIAL]

Hi s 22

Just letting you know we've got your email. As I'm a volunteer, I'll need to review this tonight and come back to you.

Thanks,

Ben

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Ben Fairless

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On 4 September  
2020, 1:30 pm  
AWST  
[foi@industry.gov.au](mailto:foi@industry.gov.au)  
wrote:

Good afternoon

I am writing to request the removal of certain personal information on the Right to Know website.

The department of  
Industry, Science,  
Energy and

Resources is currently receiving a large volume of FOI requests through the Right to Know website in relation to the Incubator Support Initiative.

In a number of the requests, the FOI applicant has expressed opinions and made untrue statements about **s 47F** one of the Incubator Support Initiative Facilitators. These statements may reasonably cause harm to <sup>s 47F</sup> personal or professional reputation.

In accordance with the take down policy, the department would like to request that certain information relating to **s 47F** be removed from the site. It is not in the public interest for material of this nature to be published. Of particular concern is a copy of a letter dated 1 September 2020 available [here](#), the request date 21

August 2020  
available [here](#), the  
request dated 24  
August 2020  
available [here](#).

I would be  
grateful if you  
could please let  
me know as soon  
as possible that  
the material has  
been removed.  
Alternatively, if  
you decide not to  
remove the  
information, the  
department will  
consider the  
matter further,  
considering the  
potentially  
defamatory nature  
of the material.

I would be happy  
to provide any  
further  
information as  
necessary.

Kind regards

s 22

A/g Principal Legal Counsel | Small Business, FOI and  
Privacy

Legal, Audit and Assurance Branch

Department of Industry, Science, Energy and Resources

E: s 22

s 22

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OFFICIAL:Sensitive

OFFICIAL:Sensitive

OFFICIAL:Sensitive



Freedom of Information

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**From:** s 22  
**Sent:** Monday, 21 December 2020 10:59 AM  
**To:** contact@righttoknow.org.au  
**Cc:** s 22  
**Subject:** CM: RE: New take down request [SEC=OFFICIAL]

Hi Ben

Sorry in turn also for the delay in getting back to you.

Thanks for the explanation of your balancing act. In response to your question, yes, the FOI team within the Legal, Audit and Assurance Branch processes all FOI requests for the Department. However, your response appears to be saying that the position you've reached is that you'll only remove ancillary material where it is potentially defamatory or may subject individuals to harassment.

In this case you say that the ancillary material is ok because it raises concerns about the Department generally rather than specific individuals. Our view is that the material still squarely falls within the category of material which RTK ask applicants not to include on its website – that is material which includes arguments about the applicant's cause and statements that could insult others.

Including this sort of information is harming us greatly – for instance we are receiving high numbers of requests relating to fraud documents simply because unrelated third parties are seeing these claims that the department is non-compliant with fraud legislation and these third parties are then repeating the allegations in a number of forums and submitting their own requests for documents. The requests we are receiving are rising exponentially.

Although I know you don't engage in the content of the requests, to illustrate our point, documents produced by the department which are available on RTK show clearly that the department conducts fraud risk assessments in two-yearly cycles and that one fraud risk assessment was performed at the beginning of the first cycle and the next fraud risk assessment was performed at the end of the next cycle. This is why the fraud risk assessments were conducted 37 months apart and is consistent with the department's fraud plan. However, we have now received numerous requests for fraud documents.

Similarly, the applicants have a misunderstanding of the operation of s17 of the FOI Act and repeatedly request the department to provide information or to create documents for them (like this request does). I assume you're aware that this is an incorrect understanding of how the FOI Act operates and it's also contrary to guidance RTK provides under the heading "Why do I have to ask for specific existing documents". Applicants' claims about the department's interpretation of s17 of the Act are spreading misinformation about how the Act operates and also insulting my staff by continual references to their failure to use their 'eyes and brains'. I have had several staff members in tears over the continual harassment they are receiving through these RTK requests.

In essence it's still our view that it's in the public interest that the ancillary material should be removed from this and all requests as it spreads misinformation, encourages abuse of the FOI process, and insults my staff and other departmental officials without any factual basis.

As the requests are escalating we have engaged Minter Ellison to manage them and will be briefing them this afternoon. I'll be asking Minter Ellison to continue monitoring the RTK website and engaging with you as necessary.

s 22, s 47F

(copied in) will be taking the reins for the next month.

Thanks  
s 22

**From:** Ben Fairless [mailto:contact@righttoknow.org.au]  
**Sent:** Friday, 11 December 2020 1:14 PM  
**To:** s 22  
**Subject:** Re: New take down request [SEC=OFFICIAL]

Hi s 22

Sorry for the delay. I've been waiting on a catch up with the Directors of OpenAustralia Foundation (the charity behind Right to Know) as we work to refine our policies.

We are trying to balance keeping as much of the request up on the site as possible while still preventing potentially defamatory material and material that could cause individuals to be the subject of harassment. As I'm sure you can appreciate, it's a really fine line and a balancing act for us.

In this case, the part above the FOI request appears to mostly be raising concerns (albeit not in the most productive way) about the Department generally rather than specific individuals.

Could you confirm that s 47F is correct that the Legal, Audit and Assurance Branch processes all FOI requests for the Department?

If so, we are prepared to remove:

- References to the Legal, Audit and Assurance Branch in the request
- Everything contained under the heading NOTICE (after the FOI request).

Let me know if you have any questions or want to discuss further.

Kind Regards,  
Ben

—

Ben Fairless

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On December 8, 2020, 9:24 AM GMT+8 [contact@righttoknow.org.au](mailto:contact@righttoknow.org.au) wrote:

Hi s 22

Just confirming receipt of your email. I'll be in touch when I've had the opportunity to review further.

Thanks,  
Ben

—

Ben Fairless

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On December 8, 2020, 5:27 AM GMT+8 s 22  
wrote:

Hi Ben

Could we please also request that you remove the ancillary information from the below request, with only the text under the heading "Request" remaining?

Thanks

s 22

A/g Principal Legal Counsel | Small Business, FOI and Privacy | Legal, Audit and Assurance Branch

s 22

s 22

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OFFICIAL

-----Original Message-----

From: s 47F [<mailto:foi+request-6959-bc35a079@righttoknow.org.au>]

Sent: Monday, 7 December 2020 5:09 PM

To: Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>

Subject: Freedom of Information request - Internal systems of control

Department of Industry, Science, Energy and Resources Legal Branch GPO Box 2013 Canberra ACT 2601

ATT FOI Coordinator

I am requesting access to information under the Freedom of Information Act.

BACKGROUND

s 47F received this response with respect to the Department's (non)compliance with finance legislation here-

<https://www.righttoknow.org.au/request/6697/response/18819/attach/4/67013%20FOI%20Answers.pdf>

The Department appropriates \$3.9 billion per annum yet it had not conducted a single divisional fraud risk-assessment for AusIndustry in over 37 months.

The branch responsible for this debacle is the Legal Audit and Assurance branch; also entrusted with managing Department FOI requests.

Notably, the Department held that it will not release documents with reports under section 17 without a ready-made 'database' as its staff struggles with having to use their "eyes and brains" in completing such tasks-  
<https://www.righttoknow.org.au/request/6788/response/19331/attach/4/67287%20Combined%20documents%20AR.pdf> (pg. 28 para. 200).

Recently, the Department declined another report under section 17, claiming that it refuses access to information under the act whilst its website states that to make an application "you must submit a request in writing stating that you're requesting information under the Act"-

<https://www.industry.gov.au/about-us/freedom-of-information>

REQUEST

I am requesting a document that contains a report with A-C as follows (for each Department Division from 1 January 2016 until 1 January 2020)- A. Number of completed fraud risk assessments as per s 6 and s 7.6 of the Fraud and Corruption Control Plan 2018-20 (FCCP). B. Number of completed fraud audits as per s 14.2 of the FCCP C. Number of completed fraud detection compliance reviews as per s 14.4 of the FCCP.

A simple report with these numbers will suffice.

NOTICE

I hereby allege that the Legal Audit and Assurance branch of the Department is likely withholding access under the FOI Act to suppress its non-compliance with finance/fraud legislation. I will report further non-acceptance of this FOI request to the authorities under suspicion of abuse of public office. This is your final warning.

DELIVERY

via [righttoknow.org.au](http://righttoknow.org.au)

s 47F

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Please use this email address for all replies to this request:

[foi+request-6959-bc35a079@righttoknow.org.au](mailto:foi+request-6959-bc35a079@righttoknow.org.au)

Is [FOI@industry.gov.au](mailto:FOI@industry.gov.au) the wrong address for Freedom of Information requests to Department of Industry, Innovation and Science? If so, please contact us using this form:

[https://www.righttoknow.org.au/change\\_request/new?body=department\\_of\\_industry\\_innovation\\_and\\_science](https://www.righttoknow.org.au/change_request/new?body=department_of_industry_innovation_and_science)

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:

<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

-----

OFFICIAL

Freedom of Information

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**From:** s 22  
**Sent:** Wednesday, 6 January 2021 9:10 AM  
**To:** contact@righttoknow.org.au  
**Cc:** Freedom of Information  
**Subject:** RE: New take down request [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

Hi Ben

Much thanks for the response. We're happy with the approach proposed and will seek to draw RTKs attention to any other specific requests that we have issue with.

Regards

s 22  
**A/g Principal Legal Counsel**  
Small Business, FOI and Privacy team  
Legal, Audit and Assurance Branch

s 22  

---

**Department of Industry, Science, Energy & Resources** | [www.industry.gov.au](http://www.industry.gov.au)

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**From:** Ben Fairless [mailto:contact@righttoknow.org.au]  
**Sent:** Wednesday, 6 January 2021 1:19 AM  
**To:** s 22  
**Cc:** Freedom of Information  
**Subject:** Re: New take down request [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

Hi s 22

Thanks for taking the time to speak with me about the recent increase in requests made to the Department, specifically those in relation to Regional Incubator Facilitators and Fraud complaints.

To recap our conversation, I provided some context on Right to Know, my role, and the role of the OpenAustralia Foundation (the charity behind Right to Know). You also discussed the role that the Department intends Minter Ellison to play in the management of FOI requests. I reiterated the complex balancing act that the Department's situation presents for us.

We discussed our guidelines, and how we prefer educating people instead of rigidly implementing our guidelines. We discussed how most people don't know what "Freedom of Information" is and aren't involved in the process (like you and I). We do this to educate people so they can make better requests, which improves everyone's experience. It also provides the added benefit of transparency, which is one of our primary goals. We try to assume that everyone coming to the table is acting in good faith (in the non legal sense).

We discussed events that are occurring within the Department that aren't immediately apparent when you refer to the requests on Right to Know. These include phone calls to FOI officers in the Department from applicants who are using the Right to Know website, as well as requests they have made outside of Right to Know. You also mentioned the significant increase of requests in relation to this specific program, which

the Department has previously attributed to Right to Know. We also discussed options for the Department to seek redress outside of Right to Know (for example, through the Information Commissioner).

I asked you what the Department would like us to do in relation to **s 22** earlier email. You advised that, as a starting point, you would like the names of the below individuals redacted:

**s 47F**

You advised the above people are "Regional Incubator Facilitators" (RIFs). You advised they aren't employed by the Department, however provide services to the Department. You weren't able to clarify what these were without checking with the relevant line area (which I completely understand).

Given the repeated requests to the Department, and a clear pattern with respect to the content, I feel that it is appropriate for us to redact names you have asked for until I have had time to discuss the matter in more detail with the directors of the OpenAustralia Foundation. Please be aware that this redaction is not an admission of wrongdoing, but rather an attempt on our part to address the Department's concerns while we review the situation further and come to a decision.

The tools we have available to use for redaction are limited. They will only apply to requests made to the Department, will not redact most PDF documents, are case sensitive and incredibly specific. For example, the redaction for **s 47F** would not redact **s 47F**

While you haven't specifically asked for this, I will also be writing to the applicants making requests using Right to Know and remind them of their obligations under our guidelines.

In relation to any further redaction requests, we would need the Department to identify specifically what material it wants removed and for what reason. We would need the below information (at a minimum):

1. Link to the relevant request
2. Specific quote(s) that you would like removed
3. Reason for removal

I've linked to our Takedown policy [here](#). Please note that while it says that a request to remove a name must come from the individual's line manager, we will accept a request from either yourself or **s 22** (or someone acting in the same or a more senior position). To help the Department review all the most recent requests, I've created an [Advanced Search link](#) which shows all requests from 1 January 2019 to 31 December 2021 (to cover any future requests after this email).

I hope the above email answers your questions and goes some way to helping the Department. If you have any questions or wish to discuss the contents of the above email please don't hesitate to reply at any time.

Kind Regards,  
Ben

—  
Ben Fairless  
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On January 5, 2021, 6:46 PM GMT+8s 22

wrote:

Hi Ben

The names of the RIFs are:

s 47F

If RTK could delete their personal information from requests on RTK, that would be much appreciated.

Please let me know if you need further information.

Regards

s 22

A/g Principal Legal Counsel  
Small Business, FOI and Privacy team  
Legal, Audit and Assurance Branch

s 22

Department of Industry, Science, Energy & Resources | [www.industry.gov.au](http://www.industry.gov.au)

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**From:** Ben Fairless [<mailto:contact@righttoknow.org.au>]

**Sent:** Tuesday, 5 January 2021 8:41 PM

**To:** s 22

**Cc:** Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>

**Subject:** Re: New take down request [SEC=OFFICIAL]

Hi s 22

I've only just finished work I'm afraid. I've accepted your meeting request for tomorrow. That said, if you're a night owl like me give me a ring on s 47F, s 47G. I'll be up for a few more hours.

Just a heads up (I say this to everyone who get's my mobile number) my mobile number is provided to the Department in confidence for the purposes of contacting me to discuss this specific request. It's wider release (as part of an FOI request or otherwise) would be, in my opinion, unreasonable. As a volunteer, I'm not always able to answer my phone during work hours, and it's easier for me to check our email account ([contact@righttoknow.org.au](mailto:contact@righttoknow.org.au)) then it is to take a call.

Kind Regards,  
Ben

Ben Fairless

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On January 5, 2021, 3:43 PM GMT+8 **s 22**  
wrote:

Hi Ben

Can do 6.30am tomorrow – I'll send an invite now. Alternatively we can talk right now if you like.

Cheers

**s 22**

**A/g Principal Legal Counsel**

Small Business, FOI and Privacy team

Legal, Audit and Assurance Branch

**s 22**

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**From:** Ben Fairless [<mailto:contact@righttoknow.org.au>]  
**Sent:** Tuesday, 5 January 2021 6:22 PM  
**To:** s 22  
**Cc:** Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>  
**Subject:** Re: New take down request [SEC=OFFICIAL]

Hi s 22

Can we do 6:30 am tomorrow? If I don't hear back from you tonight then 6:30 am on Thursday?

Thanks,

Ben

—

Ben Fairless

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On January 5, 2021, 12:41 PM GMT+8 s 22  
wrote:

Hi Ben

No worries – let's stay with 6am if that works for you. Would tomorrow work?

Cheers

s 22

**A/g Principal Legal Counsel**

Small Business, FOI and Privacy team

Legal, Audit and Assurance Branch

s 22

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**Department of Industry, Science, Energy & Resources |**  
[www.industry.gov.au](http://www.industry.gov.au)

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**From:** Ben Fairless [<mailto:contact@righttoknow.org.au>]

**Sent:** Tuesday, 5 January 2021 3:39 PM

**To:** s 22

**Cc:** Freedom of Information <[FOI@industry.gov.au](mailto:FOI@industry.gov.au)>

**Subject:** Re: New take down request [SEC=OFFICIAL]

Hi s 22

It would need to be 6:30 am at the latest for me - Don't forget, I work a full time job in addition to volunteering with Right to Know.

Cheers,

Ben

—  
Ben Fairless

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On January 5, 2021, 9:46 AM GMT+8  
**s 22** wrote:

Hi Ben

I'm free to discuss sometime. 6am telcon sounds a little rough for you. Would it work better if we aimed for 7am or 8am your time?

Cheers

**s 22**

**A/g Principal Legal Counsel**

Small Business, FOI and Privacy team

Legal, Audit and Assurance Branch

**s 22**

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**Department of Industry, Science, Energy & Resources** | [www.industry.gov.au](http://www.industry.gov.au)

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**From:** Ben Fairless  
[\[mailto:contact@righttoknow.org.au\]](mailto:contact@righttoknow.org.au)  
**Sent:** Monday, 4 January 2021 10:36 PM  
**To:** s 22

**Subject:** Re: New take down request  
[SEC=OFFICIAL]

Hi s 22

s 47F

s 22 would you be open to a phone call with me to discuss s 22 email and see what further we can do to assist? Or would you prefer I speak with someone at Minter Ellison?

As a volunteer I am generally unavailable during normal work hours, however I'm in Perth so I could jump on a call at 6am Perth Time (9am AEDT - Canberra time) if that worked for you. I just need a bit of notice so I can get enough sleep.

Kind Regards,

Ben

—

Ben Fairless

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On December 21, 2020, 7:59 AM  
GMT+8  
**s 22**  
wrote:

Hi Ben

Sorry in turn also for the delay in getting back to you.

Thanks for the explanation of your balancing act. In response to your question, yes, the FOI team within the Legal, Audit and Assurance Branch processes all FOI requests for the Department. However, your response appears to be saying that the position you've reached is that you'll only remove ancillary material where it is potentially defamatory or may subject individuals to harassment.

In this case you say that the ancillary material is ok because it raises concerns about the Department generally rather than specific individuals. Our view is that the material still squarely falls within the category of material which RTK ask applicants not to include on its website – that is material which includes arguments about the applicant's cause and statements that could insult others.

Including this sort of information is harming us greatly – for instance we are receiving high numbers of requests relating to fraud documents simply because unrelated third parties are seeing these claims that the department is non-compliant with fraud legislation and these third parties are then repeating the allegations in a number of forums and submitting their own requests for documents. The requests we are receiving are rising exponentially.

Although I know you don't engage in the content of the requests, to illustrate our point, documents produced by the department which are available on RTK show clearly that the department conducts fraud risk assessments in two-yearly cycles and that one fraud risk assessment was performed at the beginning of the first cycle and the next fraud risk assessment was performed at the end of the next cycle. This is why the fraud risk assessments were conducted 37 months apart and is consistent with the department's fraud plan. However, we have now received numerous requests for fraud documents.

Similarly, the applicants have a misunderstanding of the operation of s17 of the FOI Act and repeatedly request the department to provide information or to create documents for them (like this request does). I assume you're aware that this is an incorrect understanding of how the FOI Act operates and it's also contrary to guidance RTK provides under the heading "Why do I have to ask for specific existing documents". Applicants' claims about the department's interpretation of s17 of the Act are spreading misinformation about how the Act operates and also insulting my staff by continual

references to their failure to use their 'eyes and brains'. I have had several staff members in tears over the continual harassment they are receiving through these RTK requests.

In essence it's still our view that it's in the public interest that the ancillary material should be removed from this and all requests as it spreads misinformation, encourages abuse of the FOI process, and insults my staff and other departmental officials without any factual basis.

As the requests are escalating we have engaged Minter Ellison to manage them and will be briefing them this afternoon. I'll be asking Minter Ellison to continue monitoring the RTK website and engaging with you as necessary.

s 22, s 47F

(copied in) will be taking the reins for the next month.

Thanks

s 22

**From:** Ben Fairless  
[<mailto:contact@righttoknow.org.au>]  
]  
**Sent:** Friday, 11 December 2020  
1:14 PM  
**To:** s 22  
**Subject:** Re: New take down request [SEC=OFFICIAL]

Hi s 22

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We are trying to balance keeping as much of the request up on the site as possible while still preventing potentially defamatory material and material that could cause individuals to be the subject of harassment. As I'm sure you can appreciate, it's a really fine line and a balancing act for us.

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Could you confirm that **s 47F** is correct that the Legal, Audit and Assurance Branch processes all FOI requests for the Department?

If so, we are prepared to remove:

- References to the Legal, Audit and Assurance Branch in the request
- Everything contained under the heading NOTICE (after the FOI request).

Let me know if you have any questions or want to discuss further.



Kind Regards,

Ben

—

Ben Fairless

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On December 8,  
2020, 9:24 AM  
GMT+8  
[contact@righttoknow.org.au](mailto:contact@righttoknow.org.au) wrote:

Hi s 22

Just confirming receipt of your email. I'll be in touch when I've had the opportunity to review further.

Thanks,

Ben

—

Ben Fairless

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Freedom of Information

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**From:** Ben Fairless <contact@righttoknow.org.au>  
**Sent:** Wednesday, 3 March 2021 12:22 AM  
**To:** christina.graves@minterellison.com  
**Cc:** s 22  
**Subject:** Introductions - Right to Know

Hello Christina,

As you may (or may not) be aware, I am the volunteer primarily responsible for the day to day running of Right to Know. I have been the primary contact with s 22 over the last several months in relation to requests made to the Department via Right to Know.

s 22 mentioned that she would be briefing Minter Ellison to monitor our site and respond to requests, hence why I wanted to e-introduce myself and ensure you had this email address (which I get notifications for). s 22 both have my mobile number if you require it, however SMS is preferred as I have a full time job in addition to my volunteer work.

I also wanted to draw your attention to our [house rules](#), which took effect on 1 March 2021. It details how we expect users to behave using our service.

I'll be sending another email through shortly about a specific request, however please don't hesitate to reach out if I can be of assistance with anything else.

Kind Regards,  
Ben

—  
Ben Fairless  
[OpenAustralia Foundation](#)  
[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)

I acknowledge the Traditional Owners of the land on which I volunteer, the Whadjuk people of the Noongar Nation. I pay my respects to their Elders past, present and emerging.

In the last year, OpenAustralia Foundation has helped nearly two **million Australians** find the information they need to help create the change they need. Please consider donating by [clicking here](#).



Freedom of Information

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**From:** Ben Fairless [s 47F, s 47G](#)  
**Sent:** Tuesday, 2 March 2021 9:44 PM  
**To:** [s 22](#)  
**Subject:** Right to Know - New House Rules

Hi [s 22](#)

As you may not visit the site regularly, I wanted to draw your attention to our [house rules](#), which took effect on 1 March 2021.

If you find any requests or annotations on our site which breach our house rules, please don't hesitate to bring them to our attention.

Kind Regards,  
Ben

—  
Ben Fairless

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[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)

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Freedom of Information

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**From:** Ben Fairless <contact@righttoknow.org.au>  
**Sent:** Wednesday, 3 March 2021 10:04 PM  
**To:** s 22  
**Cc:** s 22 Freedom of Information  
**Subject:** Re: Right to Know - New House Rules [SEC=OFFICIAL]

Hi s 22

There are report buttons on each request which you can use which notify us (this is the preferred option, as we have a portal that shows these).

You can also send reports to to [contact@righttoknow.org.au](mailto:contact@righttoknow.org.au). If you're sending them via email, we need:

1. A link to the material. The easiest way to get this is by going to the email on our site and clicking "Link to this", which will copy a direct link to the email.
2. Information on what you are concerned about, and why you think it breaches our house rules.

I made a slight mistake when it comes to the house rules "coming into effect". The house rules articulate more clearly in one place what our rules are for using the site are and the consequences for not following those rules.

As this is the first time we've put all our rules in one place, you may notice minor changes over the coming weeks.

Kind Regards,  
Ben

—  
Ben Fairless  
[OpenAustralia Foundation](#)  
[openaustralia](#) | [planningalerts](#) | [electionleaflets](#) | [righttoknow](#) | [theyvoteforyou](#) | [morph](#)

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On March 3, 2021, 9:42 AM GMT+8 s 22

wrote:

Hi Ben

Much thanks for letting us know. If we do receive a request which we feel may breach one of the house rules, where would you like us to report it to?

Regards

s 22

**A/g Principal Legal Counsel**

Small Business, FOI and Privacy team

Legal, Audit and Assurance Branch

s 22

Department of Industry, Science, Energy & Resources | [www.industry.gov.au](http://www.industry.gov.au)

Supporting economic growth and job creation for all Australians

**This transmission is intended only for the use of the addressee and may contain confidential or legally privileged information. If you are not the intended recipient, you are notified that any use or dissemination of this communication is strictly prohibited.**

**If you have received this transmission in error, please notify me immediately by telephone and delete copies of this transmission together with any attachments.**

**From:** Ben Fairless **s 47F, s 47G**

**Sent:** Tuesday, 2 March 2021 9:44 PM

**To:** **s 22**

**Subject:** Right to Know - New House Rules

Hi **s 22**

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Kind Regards,

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