



14 June 2023

Our reference: LEX 73069

Me (Right to Know)

Only by email: [foi+request-10169-8a1dcf10@righttoknow.org.au](mailto:foi+request-10169-8a1dcf10@righttoknow.org.au)

Dear Me

### **Decision on your Freedom of Information Request**

I refer to your request received by Services Australia (the Agency) on 17 April 2023, and subsequently revised on 21 April 2023, for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

1. Any emails or written correspondence that are:
  - a. dated 7 March - 29 November 2022, and
  - b. related to the amendment to s 67CC(2), and
  - c. not within scope of LEX71589, and
  - d. sent or received by an entity acting on behalf of Services Australia (e.g., employee, contractor, etc.). This includes emails or written correspondence sent directly to or received directly from an external source (e.g., a minister's office).
2. Any documents in the possession of Services Australia that explain or could be perceived to explain why 'we [the Department of Education?] are looking at amending s 67CC(2)(d)'
3. Any documents in the possession of Services Australia that confirm who the 'we' is in 2 above
4. Any documents in the possession of Services Australia, not covered by point 2 above, that provide information as to what caused, prompted, or contributed to, the Department of Education making the 1059 28 July 2022 request for advice (page 2).
5. I am not clear whether the 'comprehensive layperson explanation for internal use only' was later published. Assuming it was not published, or that the internal version is different to the published version, I request the final version of the 'comprehensive layperson explanation for internal use only'.
6. A document setting out, from page 5, any/all 'Minister's Rule changes by 1 July 2023' that are consequent to or otherwise relate to the amendment to s 67CC(2)
7. The names of any CCS claimants, where Services Australia considered those claimant's claims as part of considering s 67CC(2) amendments (e.g., as an example of why the amendment was needed, or a case study of what the amendment would achieve, or similar). I will grant extensions of time to consult with the relevant third party CCS claimants

8. To the extent not included in point 5 above, a copy of (from page 9) 'the taper graph demonstrating the new CCS rates and a very handy layperson explanation of the amendments in the ED'
9. Documents that set out why Services Australia thought it mattered to make it so that, from page 15 at [73], 'It would not matter whether or not the child received care for which another individual was receiving CCS.'
10. Documents that set out why, from page 15 at [74], the 'policy intent' needed to be clarified.
11. Documents that consider and/or justify, from page 15 at [75], the retrospective application of the amendment.
12. Copies of any emails or written correspondence related to LEX71589 that were sent or received by an SES or equivalent (regardless of which department the SES worked for, and regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field).
13. Copies of any emails or written correspondence sent by or received by the Agency to/from the Minister for Government Services (Minister, Minister's office, or ministerial staff) in relation to LEX 71589 (regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field). Additionally, any emails or written correspondence in relation to LEX 71589 sent by or received by the Agency to/from another Minister.

### **My decision**

The Agency holds one document (totalling 58 pages) that relates to your request.

I have decided to:

- grant you **part access** to one document (Document 1) with some of the content removed, and
- **refuse** Points 1 to 11 (inclusive) and Point 13 of your request, under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents that you have requested and I am satisfied they do not exist.

I have decided that parts of Document 1 are exempt under the FOI Act as it includes:

- information that, if released, could be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency, the disclosure of which would be contrary to the public interest (section 47E(d) conditional exemption)
- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C conditional exemption), and
- personal information of third parties, the disclosure of which would be unreasonable and contrary to the public interest (section 47F(1) conditional exemption).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision, including the relevant sections of the FOI Act.

### **How we will send your documents to you**

The documents are attached.

Please note that pages 5-10, 15-20, 22-24, 29-35, 39, 42, 44-46, 50-51, 54, 57-58 inclusive, have no content once exempt material and duplicates have been redacted and therefore those pages are not provided.

### **You can ask for a review of our decision**

If you disagree with any part of the decision you can ask for a review. There are two ways you can do this. You can ask for an internal review from within the Agency, or an external review by the Office of the Australian Information Commissioner. See **Attachment B** for more information about how to request a review.

### **Further assistance**

If you have any questions please email [freedomofinformation@servicesaustralia.gov.au](mailto:freedomofinformation@servicesaustralia.gov.au).

Yours sincerely

Leanne  
Authorised FOI Decision Maker  
Freedom of Information Team  
FOI and Ombudsman Branch | Legal Services Division  
Services Australia



**SCHEDULE OF DOCUMENTS FOR RELEASE**  
**Me (Right to Know) - LEX 73069**

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-58	Various	Email correspondence, sent or received by SES, relating to LEX 71589	Release in part	s 47E(d) s 47C s 47F(1)	<p>Information that would have a substantial effect on the proper and efficient conduct of the operations of the Agency deleted under section 47E(d).</p> <p>Deliberative material deleted under section 47C.</p> <p>Personal information of third parties deleted under section 47F(1).</p> <p>Duplicate material deleted under s 22.</p>



## REASONS FOR DECISION

### What you requested

1. Any emails or written correspondence that are:
  - a. dated 7 March - 29 November 2022, and
  - b. related to the amendment to s 67CC(2), and
  - c. not within scope of LEX71589, and
  - d. sent or received by an entity acting on behalf of Services Australia (e.g., employee, contractor, etc.). This includes emails or written correspondence sent directly to or received directly from an external source (e.g., a minister's office).
2. Any documents in the possession of Services Australia that explain or could be perceived to explain why 'we [the Department of Education?] are looking at amending s 67CC(2)(d)'
3. Any documents in the possession of Services Australia that confirm who the 'we' is in 2 above
4. Any documents in the possession of Services Australia, not covered by point 2 above, that provide information as to what caused, prompted, or contributed to, the Department of Education making the 1059 28 July 2022 request for advice (page 2).
5. I am not clear whether the 'comprehensive layperson explanation for internal use only' was later published. Assuming it was not published, or that the internal version is different to the published version, I request the final version of the 'comprehensive layperson explanation for internal use only'.
6. A document setting out, from page 5, any/all 'Minister's Rule changes by 1 July 2023' that are consequent to or otherwise relate to the amendment to s 67CC(2)
7. The names of any CCS claimants, where Services Australia considered those claimant's claims as part of considering s 67CC(2) amendments (e.g., as an example of why the amendment was needed, or a case study of what the amendment would achieve, or similar). I will grant extensions of time to consult with the relevant third party CCS claimants
8. To the extent not included in point 5 above, a copy of (from page 9) 'the taper graph demonstrating the new CCS rates and a very handy layperson explanation of the amendments in the ED'
9. Documents that set out why Services Australia thought it mattered to make it so that, from page 15 at [73], 'It would not matter whether or not the child received care for which another individual was receiving CCS.'
10. Documents that set out why, from page 15 at [74], the 'policy intent' needed to be clarified.
11. Documents that consider and/or justify, from page 15 at [75], the retrospective application of the amendment.

12. Copies of any emails or written correspondence related to LEX71589 that were sent or received by an SES or equivalent (regardless of which department the SES worked for, and regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field).

13. Copies of any emails or written correspondence related to LEX71589 that were sent or received by a minister, minister's office, or ministerial staff (regardless of which minister, and regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field).

On 20 April 2023 and 21 April 2023, I wrote to you about your original request, in particular in relation to Point 13. You revised Point 13 of your request and this was confirmed by email on 21 April 2023.

Your revised request for Point 13 was:

13. Copies of any emails or written correspondence sent by or received by the Agency to/from the Minister for Government Services (Minister, Minister's office, or ministerial staff) in relation to LEX 71589 (regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field). Additionally, any emails or written correspondence in relation to LEX 71589 sent by or received by the Agency to/from another Minister.

### **What I took into account**

In reaching my decision I took into account:

- your original request dated 17 April 2023 and your revised request on 21 April 2023
- other discussions and correspondence with you
- the documents that fall within the scope of your request
- whether the release of material is in the public interest
- consultations with Agency officers about:
  - the nature of the documents
  - searches conducted for the documents requested
  - the Agency's operating environment and functions
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines), and
- the FOI Act.

### **Reasons for my decision**

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that certain parts of Document 1 are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemption applies to that document are discussed below.

#### Operations of the Agency

I have applied the conditional exemption in section 47E(d) of the FOI Act to parts of Document 1.

This section of the FOI Act allows the Agency to redact material from a document if its disclosure would have a serious and significant effect on the Agency's ability to conduct its operations efficiently and properly.

Document 1 contains Agency positional mailboxes and I consider that releasing the exempt material to you would negatively affect the conduct of the operations of the Agency. This is because the Agency's purpose is to provide high-quality government services and payments to Australians. It is a large, public facing, government organisation with many points of contact designed to facilitate its purpose. The Agency has established channels of communication for customers and members of the public, which have been put in place to ensure the effective management of the significant volume of communication received.

Such channels include dedicated and externally published positional mailboxes of different business areas within the Agency. These have been established to ensure correspondence is directed to the correct area and actioned accordingly.

If internal positional mailbox details were to be made publicly available, correspondence directed to these mailboxes could be mishandled, lost, duplicated or double-handled on account of it not being directed to the most appropriate teams through the publicly available communication channels. Noting the Agency's interactions with the public number in the hundreds of millions, diverting people from correct channels cannot be appropriately categorised as insubstantial or nominal.

Whilst I have no reason to believe you would misuse the exempt material in this way, the FOI Act does not control or restrict use or dissemination of the information once released, so I must consider actions any member of the public might take once the information enters the public domain and is available to the world at large.

#### *Public interest considerations*

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

I consider the disclosure of the material would generally promote the objects of the FOI Act, which is in the public interest. However, I also consider disclosure of the Agency's internal positional mailboxes would prejudice the Agency's ability to properly and efficiently manage contact with the public.

Accordingly, I am satisfied the public interest factors in favour of disclosing the material are outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

#### Deliberative material

I have applied the conditional exemption in section 47C to parts of Document 1.

Section 47C of the FOI Act provides a document is conditionally exempt if it would disclose deliberative matter. Deliberative matter is an opinion, advice or recommendation, or a consultation or deliberation that has taken place in the course of, or for the purposes of, the deliberative processes of an Agency. Material which is operational or purely factual information is not deliberative. The deliberative exemption also does not apply to reports of scientific or technical experts, reports of a body or organisation prescribed by the regulations, or a formal statement of reasons.

I have applied this exemption to Document 1. I am satisfied the document contains deliberative material, being opinions, advice and recommendations that have been prepared by Agency staff for the purpose of managing freedom of information requests and consultations that have taken place with other Australian Government agencies. I am also satisfied the document is not operational information or purely factual information, and is otherwise not of a kind specifically excluded by the FOI Act.

Accordingly, I am of the view that the information is also conditionally exempt under section 47C of the FOI Act.

#### *Public interest considerations*

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

I consider the disclosure of the material would generally promote the objects of the FOI Act, which is in the public interest. However, I also consider disclosure could reasonably be expected to prejudice the Agency's ability to:

- efficiently and effectively manage freedom of information requests, by inhibiting the provision of opinions, advice and recommendations by Agency staff, and
- undertake effective consultations with other Australian Government agencies in the future and impede the Agency's capacity to receive frank and open responses in future consultation processes.

That is, I consider that disclosure would inhibit frankness and candour in the provision of advice, opinions and consultations between Agency staff in relation to deliberative processes concerning the Agency's functions and activities. This would prejudice the management functions of the Agency including limiting the Agency's ability to form an analysis and present recommendations in response to freedom of information requests.

Based on these factors, I have decided that, in this instance, the public interest in disclosing the deliberative information in Document 1 is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision

#### Unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to Document 1.

This section of the FOI Act allows the Agency to redact material from a document if its disclosure would result in the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable. It can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature. I am satisfied that Document 1 contains personal information of other people, being their names, telephone details, location details, employment details and email addresses of Agency staff.

I am satisfied that the disclosure of the third party personal information would be unreasonable as you do not have the consent from these individuals for the release of their personal information and the information is private and not publicly available.



On this basis, I have decided that the personal information included in the document referred to in the Schedule is conditionally exempt under section 47F(1) of the FOI Act.

#### *Public interest considerations*

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so. I consider disclosure of the material would generally promote the objects of the FOI Act.

However, I have also considered the relevant factors weighing against disclosure, indicating access would be contrary to the public interest. I have considered the extent to which disclosure could reasonably be expected to prejudice individuals' right to privacy and adversely affect the individual's interest.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the above-mentioned document is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

#### Documents do not exist

Section 24A of the FOI Act permits an Agency to refuse a request for access to a document if all reasonable steps have been taken to find the documents, and the Agency is satisfied that the documents cannot be found, or do not exist.

The Families and Child Care Branch conducted searches of the Agency's electronic files in relation to Points 1 to 13 of your FOI request. This Branch did not identify any additional documents pertaining to Points 1 to 13, which have not already been provided to you in relation to your previous FOI request, LEX 71589.

Searches were also conducted by the Freedom of Information and Ombudsman Branch of the Agency's electronic files in relation to Points 12 and Point 13 of your FOI request. This Branch did not identify any documents pertaining to Point 13 of your request.

On the basis of the searches above, I am satisfied that in accordance with section 24A of the FOI Act all reasonable steps have been taken to find the documents detailed in Points 1 to 11 (inclusive) and Point 13 of your FOI request, and they do not exist.

#### **Summary of my decision**

In conclusion, I have decided to:

- grant you **part access** to one document, and
- **refuse** Parts 1 to 11 (inclusive) and Part 13 of your request under Section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents sought by these parts of the request, and I am satisfied they do not exist.

I have decided that Document 1 is conditionally exempt, in part, under sections 47C, 47E(d) and 47F of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).



**Attachment B**

**INFORMATION ON RIGHTS OF REVIEW**

***FREEDOM OF INFORMATION ACT 1982***

**Asking for a full explanation of a Freedom of Information (FOI) decision**

Before you ask for a formal review of a FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

**Asking for a formal review of a FOI decision**

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in Services Australia (the Agency), and/or
2. the Australian Information Commissioner.

**Applying for an internal review by an Internal Review Officer**

If you apply for internal review, a different decision maker to the Agency delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

**Note:** You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

**Applying for external review by the Australian Information Commissioner**

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in the Agency within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application:**

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: Australian Information Commissioner

GPO Box 5218  
SYDNEY NSW 2001

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**Note:** The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

**Important:**

- If you are applying online, the application form the 'Merits Review Form' is available at [www.oaic.gov.au](http://www.oaic.gov.au).
- If you have one, you should include with your application a copy of the Agency's decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the Agency's decision.

**Complaints to the Australian Information Commissioner and Commonwealth Ombudsman**

***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. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992  
Website: [www.oaic.gov.au](http://www.oaic.gov.au)

***Commonwealth Ombudsman***

You may also complain to the Commonwealth Ombudsman 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. A complaint to the Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072  
Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.