



4 September 2023

Our reference: LEX 74480

Me (Right to Know)

Only by email: foi+request-10169-8a1dcf10@righttoknow.org.au

Dear Me,

Freedom of Information Request – Internal Review Decision

I refer to your correspondence received by Services Australia (the Agency) on 7 July 2023, seeking an internal review of the decision made by the Agency on 14 June 2023 in relation to your request for access to documents under the *Freedom of Information Act 1982* (FOI Act).

Background

On 17 April 2023, you made a request that was then revised on 21 April 2023, for access under 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.

On 14 June 2023, the Agency notified you that it had decided (original decision) to:

- grant you **part access** to 1 document 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 had been taken to locate the documents that you requested and the decision maker was satisfied they did not exist.

On 7 July 2023, you requested an internal review of the original decision.

Summary of my internal review decision

I am authorised to make decisions under section 23(1) of the FOI Act, including internal review decisions under section 54C of the FOI Act. Consistent with the requirements of section 54C(2) of the FOI Act, I have made a fresh decision.

I have decided to vary the original decision and release more information to you. In summary, I have decided to:

- grant you **full access** to 2 documents (Documents 4 and 5),
- grant you **part access** to 3 documents with some of the content removed (Documents 1 to 3 inclusive), and

- **refuse** Points 3, 4, 6, 7, 9 to 11 and 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 certain parts of documents falling within the scope of your request are exempt under the FOI Act as the documents include:

- material subject to legal professional privilege (section 42 exemption)
- deliberative information, the disclosure of which would be contrary to the public interest (section 47C conditional exemption)
- information that, if disclosed, would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient operations of the Agency, and the disclosure of would be contrary to the public interest (section 47E(d) conditional exemption), and
- personal information of other people, disclosure of which would be unreasonable and contrary to the public interest (section 47F(1) conditional exemption).

Please refer to the schedule at **Attachment A** for a list of the documents and further information regarding the reasons for my decision.

How we will send your documents to you

The documents are attached.

You can ask for a review of our decision

If you disagree with any part of the decision, you can ask for a review by 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: FOI.LEGAL.TEAM@servicesaustralia.gov.au

Yours sincerely

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

Attachment A

SCHEDULE OF DOCUMENTS

Me (Right to Know) - LEX 74480 (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 42 s 47C s 47E(d) s 47F(1)	Material subject to legal professional privilege removed under s42. Deliberative material removed under s47C. Operational information removed under s47E(d). Personal information removed under s47F(1). Irrelevant and duplicate information removed under s 22.
2.	59 – 64	Various	Services Australia consult bundle	Release in part	s 47C s 47E(d) s 47F(1)	Deliberative material removed under s47C. Operational information removed under s47E(d). Personal information removed under s47F(1).
3.	65 - 85	13 Oct 2022	MCS First Principles	Release in part	s 47C s 47E(d)	Deliberative material removed under s47C. Operational information removed under s47E(d). Irrelevant information removed under s 22.

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
4.	86 – 96	-	Family Assistance Legislation Amendment Bill 2022 – Lay person explanation of amendments	Release in full	-	-
5.	97	-	New CCS Rates	Release in full	-	-



REASONS FOR DECISION

What you requested

On 21 April 2023, you made the following revised request for access to documents under the FOI Act:

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.

On 14 June 2023, the Agency notified you that it had decided (original decision) to:

- grant you **part access** to 1 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 had been taken to locate the documents that you requested and the decision maker was satisfied they did not exist.

On 7 July 2023, you requested an internal review of the original decision, providing written submissions embedded in a copy of the original decision.

What I took into account

In reaching my decision, I took into account:

- your FOI request dated 17 April 2023
- your revised FOI request dated 21 April 2023
- your internal review request dated 14 March 2023
- the materials falling within the scope of your request
- consultations with third parties in relation to information about them that is contained within the material
- whether the release of material would be in the public interest
- consultations with Agency officers about:
 - the nature of the documents
 - searches conducted for the documents requested, and
 - the Agency's operating environment and functions
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines), and
- the FOI Act.

Reasons for my decisions

I am authorised to make decisions under section 23(1) of the FOI Act, including internal review decisions under section 54C of the FOI Act.

I have decided that some documents are exempt, in part or full, under the FOI Act. My findings of fact and reasons for deciding that the relevant exemptions apply to those documents are discussed below.

Legal professional privilege – section 42 of the FOI Act

This section of the FOI Act allows the Agency to redact documents or parts of documents subject to legal professional privilege (LPP). I have applied this exemption to part of Document 1.

Section 42 of the FOI Act provides:

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.

(3) A document is not an exempt document under subsection (1) by reason only that:

(a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and

(b) the information is operational information of an agency.

Paragraphs 5.129 of the Guidelines provides the following guidance in relation to the application of section 42:

At common law, determining whether a communication is privileged requires a consideration of:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
- whether the advice given is independent
- whether the advice given is confidential. (*internal references omitted*)

Document 1 contains legal advice provided to the Agency with respect to sensitivities contained in LEX 71589 and how certain exemptions may apply under the FOI Act. I am satisfied the document contains advice provided by government lawyers acting with the required level of independence from the client and there was a clear legal adviser-client relationship.

I am satisfied LPP attaches to this advice and LPP has not been waived. The advice has not been distributed further than reasonably necessary for internal operational purposes. I am also satisfied the substance of the legal advice contained in the document has not been used in any way which is inconsistent with the maintenance of the confidentiality of the advice.

I am satisfied there is a possibility of real harm resulting from release as the document contains legal analysis about the Agency's application of certain exemptions to the documents under the FOI Act.

Deliberative matter – section 47C of the FOI Act

Section 47C of the FOI Act provides:

A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency...

In your internal review request, you submitted that the Agency had wrongly concluded that the conditional exemption in section 47C of the FOI Act applied to material in Document 1.

Deliberative matter

In particular, you submitted that this material was not conditionally exempt under section 47C of the FOI Act because 'It is arguable that what SA has claimed is deliberative matter with regard to managing FOI requests does not attract the relevant exemption, as FOI is not a policy function of SA.'

Having regard to the broad interpretation of the 'deliberative processes involved in the functions of ... an agency' that has been adopted in several cases,¹ I am satisfied that opinions and recommendations for the redaction and release of documents under the FOI Act falls under the Agency's functions and obligations as a Government body.

As such, I am satisfied that the disclosure of Documents 1 – 3 would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Agency in relation to the proposed changes to section 67CC(2)(d) of the Family Assistance Admin Act 1999 (FA Admin Act) and LEX 71589.

I am also satisfied that the material to which this conditional exemption has been applied is not operational information or purely factual material and that none of the exceptions listed in section 47C(3) apply.

Accordingly, I have decided that the conditional exemption in section 47C of the FOI Act applies to material in Documents 1 – 3.

Public interest

As highlighted in your internal review request, section 11A(5) of the FOI Act provides that the Agency must give access to conditionally exempt material unless doing so would, on balance, be contrary to the public interest.

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would facilitate oversight of deliberations underpinning the proposed amendments to section 67CC of the FA Admin Act and LEX 71589 and generally promote the objects of the FOI Act.

I have also considered relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice the Agency's ability to obtain

¹ See, eg, *Carver and Fair Work Ombudsman* [2011] AICmr 5 at [14].

comprehensive information to inform decision-making in relation to potential legislative amendments and processing of requests under the FOI Act.

I note your submission that:

- As per OAIC guideline 6.56 'if a deliberative document may be released without appreciable harm resulting, this would tend to indicate that it would not be contrary to the public interest to disclose the document and therefore it must be released to the applicant'. SA have not identified any appreciable harm. Therefore, SA cannot apply these redactions. Please disclose the documents without these redactions.
 - I note that SA's internal review decision cannot invent an appreciable harm – if there was one, the original decision would have mentioned it. SA have no option but to disclose these documents without this exemption in place.
- Deliberative matter is only exempt if it relates to a deliberative process (OAIC 6.57). However, documents relating to a deliberative process are not inherently exempt.
 - Deliberative processes relating to non-policy functions (such as FOI) must meet a high threshold before it will be considered contrary to the public interest to disclose them (OAIC 6.60; see citation at footnote 41 also)
 - Regarding pre-decisional communications, 'inhibition of frankness and candour' cannot be a public interest factor against access (OAIC 6.81). SA's decision relies almost solely on inhibition of frankness and candour to justify the deliberative exemption. Consequently, SA has put forward no lawful basis to apply the exemption, let alone show it would be contrary to the public interest to disclose.
 - See also OAIC 6.83 and 6.84 – public servants are expected to give frank and fearless advice in a transparent environment. Unless there are 'special and specific' circumstances (OAIC 6.85), the exemption will not succeed. SA's decision provides no special or specific circumstances.

However, I am also satisfied that the act of disclosing this information is likely to erode the effectiveness of the deliberations that underpin the processes for discussing amendments to legislation and negotiating what portions of documents are sensitive for the purposes of disclosure under the FOI Act. If such deliberations were liable to be publicly disclosed, those involved would likely be less frank and candid and provide less specific and comprehensive opinions, advice and recommendations that do not contribute as meaningfully to the deliberative process.

Having weighed the factors in favour of disclosure against the factors against disclosure, I am satisfied disclosing the deliberative material redacted from Documents 1 – 3 would, on balance, be contrary to the public interest.

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.

Operations of the Agency – section 47E(d) of the FOI Act

Section 47E(d) of the FOI Act provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Conduct of the Agency's operations

In your internal review request, you submitted that:

See OAIC 6.120-6.123. This exemption simply does not arise. First, the documents would have to apply to SA's operations – FOI decisions are not SA's operations. Releasing the documents will not impact SA undertaking its expected activities (e.g., social security) in an expected manner (e.g., paying money on time to eligible people) Second, there are no third parties (in the sense of industry participants or similar) involved in the documents or who would be affected by them. Third, the effectiveness of FOI decisions would not be jeopardised by revealing which exemptions were used and why. Fourth, disclosure would not impact SA's ability to make effective FOI decisions in future. Fifth, the documents do not relate to a complaints process. Sixth, the amount of discussion implied in multiple pages of redaction suggests that something happened that was inefficient, whereupon, the exemption does not even arise.

I consider that this submission misconstrues the requirements of the conditional exemption in section 47E(d) of the FOI Act, as well as the material redacted under this conditional exemption and the reasons for its redaction as set out in the original decision.

Relevantly, I note that the conditional exemption in section 47E(d) of the FOI Act does not require that the subject matter of a document specifically relates to the operations of the Agency, only that disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency. In any event, while I agree it is arguable that the administration of social security law is the main operation of the Agency, its functions also include compliance with the obligations imposed by the FOI Act. Accordingly FOI decisions are a subset of the Agency's operations.

Further, I note that the material redacted under this conditional exemption principally comprises details of the Agency's internal positional mailboxes. I am satisfied that releasing details of these internal positional mailboxes, which were established for the purposes of facilitating particular internal communications only, could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency.

The remainder of the material redacted under this conditional exemption comprises information about ICT systems and processes of the Agency and the Department of Education. I am also satisfied that releasing this information, could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency

While I have no reason to believe you would misuse these details in any way, the FOI Act does not control or restrict the use or dissemination of information once released in response to an FOI request, so I must consider actions any member of the public might take if the information entered the public domain. If that were to occur, I consider that it would be reasonable expect an increase in communications from the public being misdirected to these internal positional mailboxes, instead of through the established channels for customer communication. This would likely result in customer correspondence being misdirected and/or mishandled or not appropriately actioned in an efficient and effective way. I also consider that the public disclosure of information about ICT systems and processes of the Agency and the Department of Education would introduce risks and vulnerabilities in relation to those systems and

processes. This would have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency.

For the reasons set out above, I am satisfied parts of Document 1 – 3, as identified in the Schedule, are conditionally exempt under section 47E(d) of the FOI Act.

Public interest

As set out above, 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 internal communication channels and ICT system and process information would generally promote the objects of the FOI Act, which is in the public interest. However, I also consider the disclosure of this information would prejudice the Agency's ability to effectively and efficiently manage contact with the public and introduce ICT risks and vulnerabilities.

I have decided in this instance that 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.

Personal privacy – section 47F(1) of the FOI Act

Section 47F of the FOI Act relevantly provides:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
 - (c) the availability of the information from publicly accessible sources
 - (d) any other matters that the agency or Minister considers relevant.

In your internal review request, you submitted that the Agency had wrongly concluded that the conditional exemption in section 47F(1) of the FOI Act applied to material falling within the scope of your request, on the basis that the material (at least in part) could not be considered personal information and that disclosure of the material would not be unreasonable.

Personal information

You submitted that:

- o This exemption does not justify, and has never justified, the removal of domains in emails. All email addresses that have been redacted in full may only be redacted up to

the '@'. The '@servicesaustralia.gov.au' or '@education.gov.au' or similar must be released, as the domains do not contain any personal information. The exemption simply does not arise.

o Further, SA is obliged to disclose the names of its employees when those employees are conducting their usual duties (OAIC 6.153). Classification is irrelevant. I did not push this point, but SA refused to make the entirely reasonable redactions of email domains. Consequently, I submit all SA employee names and signature blocks must be disclosed in full, unless the review decision specifies in detail 'special circumstances' to justify nondisclosure.

On internal review, I have decided to release domain names in email addresses to you. However, I note that term 'personal information' is defined as follows for the purposes of the FOI Act:

...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

This is a broad definition that includes information or opinion about an identified individual's work and employment.

Accordingly, I am satisfied Documents 1 – 3 contains personal information about third party individuals, particularly employees of the Agency and the Department of Education.

Unreasonable disclosure

You further submitted that:

- As above, the OAIC guidelines expressly state that personal information of 'agency staff', when performing their usual duties, is not an unreasonable disclosure of personal information. It is expressly not unreasonable to disclose the names, work telephone numbers, work location, work email addresses, and non-personal employment details (e.g., anything in a signature block).
- When the OAIC guidelines are taken into consideration, it is not possible for the decision-maker to be lawfully so satisfied. If the state of mind jurisdictional fact is not present, there is no power to make the subsequent decision. In this case, the subsequent decision is applying the exemption. Consequently, this exemption has not been applied ab initio. The allegedly exempt information must be disclosed as it is not at present legally exempt.

I accept your submission that personal information of Agency staff does not automatically fall under the category of personal information of which disclosure would be unreasonable. However in the circumstances where disclosure of this information would lead to staff being easily identified and subject to harassment and bullying, especially if the information is provided to the world at large, the release of this information is unreasonable. I have also had regard to the potential stress that I anticipate the release of this material would cause the identified third parties, which is acknowledged at paragraph 6.142 of the Guidelines as a key factor for determining whether disclosure would be unreasonable.

Further, paragraph 6.143 of the Guidelines lists 'any opposition to disclosure expressed or likely to be held by that person' as a relevant factor in determining whether or not disclosure

would be unreasonable. Accordingly, in making this internal review decision, I have had regard to the fact that you do not have consent from the relevant third parties for the release of their personal information, as well as objections received in response to third party consultations.

After balancing your submissions with the various considerations outlined above, I am satisfied that the disclosure of Documents 1 – 3, would involve the unreasonable disclosure of personal information and those documents are conditionally exempt, in whole or part as identified in the Schedule, under section 47F(1) of the FOI Act.

Public interest

As set out above, access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would generally promote the objects of the FOI Act.

I have also considered relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- prejudice an individual's right to privacy, and
- adversely affect or harm the interests of other individuals.

Having weighed the factors in favour of disclosure against the factors against disclosure, I am satisfied disclosing the deliberative material redacted from Documents 1 – 3 would not, on balance, be in the public interest.

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.

Section 24A of the FOI Act – Documents do not exist

Section 24A of the FOI Act provides that:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

In your request for internal review, you submitted:

- Point 2: There is an email in LEX73077 where [redacted] says 'we are looking at amending section 67 CC(2)(d)' and asks SA for further input. It seems very unlikely SA does not possess any documents dated after 1428 28 July 2022 that shed any light on why [redacted] is seeking to amend s 67CC(2)(d). Please check again, noting that the 'why' in my FOI application is a broad question
- Point 3: SA definitely has documents relating to point 3, because they've already released them with redactions. SA are required to disclose a further document, and/or, reconsider the exemption on an existing document. Reconsideration is

required because 73069 is a new request with a different scope, and the public interest test needs to be undertaken in light of the different scope.

- Point 4: Similar to point 2. Fundamentally, I don't believe that SA possesses no such documents. And/or, if they don't, it's only because those documents were unlawfully destroyed. If there really are no documents, please expressly state in writing that the only documents that exist in relation to point 4 are the documents already partly disclosed in 73077
- Point 5: the 'comprehensive layperson explanation' is mentioned expressly in 73077 documents (page 4), and SA says they have it on page 6. And it is again attached to an email received by SA (page 9). Please provide this document, as it is in scope of the request. As is whatever was attached to the email 1539 23 August 2022 email
- Point 6: even if the 'Minister's Rule changes' list didn't exist at the time of my application, it almost certainly does now (given it's now after 1 July 2023). It is somewhat unlikely the SA was not provided a list of changes to delegated legislation that SA has to implement. Please provide the list.
- Point 8: as I said in my application, and as SA have listed above, the 'taper graph' was attached to the email sent to SA on 1058 18 August 2022. It exists, SA must disclose it.

Noting your concerns, further searches were undertaken in an attempt to locate these documents and 3 documents were located, addressing points 1, 2, 5 and 8 of your request.

Further searches were conducted by the Families and Child Care Branch (the FCC Branch) of the Child Support and Tailored Services Division as well as the FOI team in the Legal Services Branch. I consider the FCC Branch and the FOI team to be the most appropriate business areas of the Agency to conduct searches for documents falling within the scope of your request, as they would be the custodian of any documents relevant to your request.

As outlined above, the FCC Branch and the FOI team located 3 additional documents but did not locate any documents falling within the scope of Points 3, 4, 6, 7, 9 to 11 or 13 of your request.

Section 24A(1) of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document, and the agency is satisfied the document cannot be found or does not exist.

Given further searches have been conducted by both the FCC branch and the FOI team, I am satisfied that in accordance with section 24A, it is appropriate to refuse Points 3, 4, 6, 7, 9 to 11 and 13 of your request 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.

Summary of my decision

In conclusion, I have decided to affirm the original decision and:

- grant you **full access** to 2 documents (Documents 4 and 5)
- grant you **part access** to 3 documents (Documents 1 – 3) with some of the content removed, and

- **refuse** Points 3, 4, 6, 7, 9 to 11 and 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 parts of documents falling within the scope of your request are exempt under the FOI Act as the documents include:

- material subject to legal professional privilege (section 42 exemption)
- deliberative information, the disclosure of which would be contrary to the public interest (section 47C conditional exemption)
- information that, if disclosed, would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient operations of the Agency, and the disclosure would be contrary to the public interest (section 47E(d) conditional exemption), and
- personal information of other people, disclosure of which is unreasonable and contrary to the public interest (section 47F(1) conditional exemption).



INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information 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 an Freedom of Information internal review decision

If you still believe a decision is incorrect, the FOI Act gives you the right to apply for a review of the internal review decision. Under s 54M of the FOI Act, you can apply for a review of an FOI decision by the Australian Information Commissioner. There are no fees for this review.

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

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Services Australia 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

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

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