



Australian Government
Department of Education

Your Ref
Our Ref LEX638

Me

By email: foi+request-10170-5b0553d2@righttoknow.org.au

Dear Me

Your Freedom of Information request - decision

I refer to your request, received by the Department of Education (department) on 17 April 2023, and revised on 5 July 2023, for access under the *Freedom of Information Act 1982* (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) (including documents that do not directly mention s 67CC(2) but form part of the considerations that resulted in an amendment to s 67CC(2) being sought), and
 - c. not already released via [FOI request to Services Australia with reference number] LEX71589, and
 - d. sent or received by an entity acting on behalf of the Department of Education (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 the Department of Education that explain or could be perceived to explain why, from page 2, 'we [the Department of Education?] are looking at amending s 67CC(2)(d)'
3. Any documents in the possession of the Department of Education that confirm who the 'we' is in 2 above
4. Any documents in the possession of the Department of Education, not covered by point 2 above, that provide information as to what caused, prompted, or contributed to, the Department of Education making the 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. [A document containing] The names of any CCS claimants, where the Department of Education considered those claimants' 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 the Department of Education 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.

My decision

Parts 1, 2 and 5 of your request

The department holds 6 documents (totalling 53 pages) that fall within the scope of these parts of your request.

I have decided to:

- grant you **access in full** to two documents (Part 2, Document 2; Part 5, Document 1)
- **refuse access** to four documents (Part 1, Document 1; Part 1, Document 2; Part 1, Document 3; Part 2, Document 1).

I have decided that certain documents and parts of documents that you have requested are exempt under the FOI Act because they contain:

- material subject to legal professional privilege (section 42 exemption)
- 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 with the functions of an agency, the disclosure of which would be contrary to the public interest (section 47C conditional exemption)

- material, the disclosure of which would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency and would be contrary to the public interest (section 47E(d) conditional exemption).

A schedule of the documents and the reasons for my decision are set out at **Attachment A**. To assist your review of the documents, I have scheduled the documents by corresponding the document to the part of your request to which the document relates, for example, 'Part 1, Document 1'.

Parts 3, 6 and 7 of your request

I have decided to refuse these parts of your request pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act on the basis that I am satisfied that the documents you have requested at these parts do not exist within the department.

Parts 4, 9, 10 and 11 of your request

I am advised that the documents captured by these parts of your request are the same as those that relate to parts 1, 2 and 5. Accordingly, to avoid duplication, I have set out where a document relates to more than one part of your request and the part to which the document relates in the schedule of documents in **Attachment A**.

Part 8 of your request

I am advised that the 'taper graph' referred to in part 8 of your request is publicly available in the Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022 and can be accessed on the Australian Parliament House website using the following link: [Bills Digest 21, 2022-23 - Family Assistance Legislation Amendment \(Cheaper Child Care\) Bill 2022. \(aph.gov.au\)](https://aph.gov.au/Bills/2022/23/Family_Assistance_Legislation_Amendment_(Cheaper_Child_Care)_Bill_2022).

Charge

On 10 July 2023, the department made a preliminary assessment of the charge payable to process your further revised request in the amount of \$125.00. On 3 August 2023, the department received payment in full.

I have assessed the charge under regulation 10 of the *Freedom of Information (Charges) Regulations 2019* and the cost of processing your request exceeded the amount estimated. Accordingly, I have fixed the charge under this provision.

How we will send your documents

The documents released to you in accordance with this decision are attached.

You can ask for a review of my 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 by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment B**.

Further assistance

If you have any questions, please email foi@education.gov.au.

Yours sincerely

A handwritten signature in cursive script that reads "Alison".

Alison
Authorised decision maker
Freedom of Information Team
Department of Education

15 August 2023

SCHEDULE OF DOCUMENTS – Me

Number	Pages	Date	Description	Decision	Exemption	Comments
Part 1						
I am advised that the documents captured by this part of your request are the same as those that relate to part 9 of your request.						
Document 1	5	1 July 2022	Internal email correspondence	Refuse access	s 42	Material subject to legal professional privilege deleted under s 42. Irrelevant material (non-SES employee names and contact details and SES employee email address) deleted under s 22.
Document 2	7	8 August 2022	Email chain including emails between the department and Services Australia and internal email correspondence	Refuse access	s 42 s 47C s 47E(d)	Material subject to legal professional privilege deleted under s 42. Deliberative material deleted under section 47C. Material, the disclosure of which would, or could reasonably be expected to have a substantial and adverse effect on the proper and efficient conduct of the operations of an agency deleted under s 47E(d).

						Irrelevant material deleted under s 22, including material already released in response to LEX71589 and non-SES employee names and contact details.
Document 3	6	18 August 2022	Email chain including emails between the department and the Office of Parliamentary Counsel and internal email correspondence, plus two attachments	Refuse access	s 42	Material subject to legal professional privilege deleted under s 42. Irrelevant material (non-SES employee names and contact details and SES employee telephone numbers) deleted under s 22.
Part 2						
I am advised that the documents captured by this part of your request are the same as those that relate to parts 4 and 10 of your request.						
Document 1	5	7 September 2021	Internal email chain	Refuse access	s 42	Material subject to legal professional privilege deleted under s 42. Irrelevant material deleted under s 22.
Document 2	2	1 July 2022	Internal email chain	Grant access in full	N/A	Irrelevant material, including non-SES employee names and contact details and SES employee email address, deleted under s 22.
Part 5						

I am advised that the document captured by this part of your request is the same as the document that relates to part 11 of your request.

Document 1	27	Undated	Family Assistance Legislation Amendment (Plan for Cheaper Child Care) Bill 2022 – lay person explanation of amendments	Grant access in full	N/A	N/A
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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) (including documents that do not directly mention s 67CC(2) but form part of the considerations that resulted in an amendment to s 67CC(2) being sought), and
 - c. not already released via [FOI request to Services Australia with reference number] LEX71589, and
 - d. sent or received by an entity acting on behalf of the Department of Education (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 the Department of Education that explain or could be perceived to explain why, from page 2, 'we [the Department of Education?] are looking at amending s 67CC(2)(d)'
3. Any documents in the possession of the Department of Education that confirm who the 'we' is in 2 above
4. Any documents in the possession of the Department of Education, not covered by point 2 above, that provide information as to what caused, prompted, or contributed to, the Department of Education making the 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. [A document containing] The names of any CCS claimants, where the Department of Education considered those claimants' 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 the Department of Education 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 [FOI request to Services Australia with reference number] 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 [FOI request to Services Australia with reference number] 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).
14. Correspondence internal to the Department of Education related to [FOI request to Services Australia with reference number] LEX71589
15. Correspondence sent to/from the Department of Education/Services Australia and vice versa related to [FOI request to Services Australia with reference number] LEX71589

On 20 April 2023, the department advised you that it would treat the names, signatures, position titles and contact details of Commonwealth employees as irrelevant in accordance with section 22 of the FOI Act unless you advised otherwise.

On the same day, you responded to this email and advised as follows:

I'm happy for APS and EL staff details to be redacted.

For SES, I don't agree to their names being redacted (although I do agree) to redacting their context numbers and similar).

On 1 May 2023, the department sent you a preliminary assessment of the charge payable to process your request. On the same day, you asked for further information about how the charge was calculated.

On 2 May 2023, the department provided you with a further explanation about the basis on which the preliminary assessment of the charge payable for the processing of your request was calculated. The department also responded to your question about whether one part of your request accounted for the majority of the pages captured by the scope of your request by advising you that the majority of pages fall within the scope of part 15 of your request.

On the same day, you asked whether excluding part 15 from the scope of the request would be 'sufficient to fall under the charge threshold and/or for DoE to voluntarily waive the charge.'

The department provided you with further information about the basis on which charges are calculated, including that there is no 'charge threshold' in the manner you described in your 2 May 2023 email. The department also advised you that it would recalculate the charge if you were to revise the terms of your request to remove part 15.

On 4 May 2023, you provided commentary about the FOI process and asked whether the department 'intends to continue requiring a processing charge.'

On 8 May 2023, the department advised you that the processing charge was imposed consistent with the charges regimes provided under the FOI Act and the *Freedom of Information (Charges) Regulations 2019* (Charges Regulations). The department also referred you to the options available to you in responding to the charge notice as set out in the letter sent to you on 1 May 2023, including your option to seek reduction or non-imposition of the charge.

On 28 May 2023, you sought waiver of the charge on the basis that access to the documents is in the general public interest and the interest of a substantial section of the public.

On 27 June 2023, I notified you of my decision to affirm the imposition of the adjusted charge in relation to your FOI request dated 17 April 2023. I also decided to reduce the processing charge to exclude publicly available material from the charge calculation. On 30 June 2023, you revised the scope of your request as follows:

May I please amend the scope to exclude point 15, and to exclude documents that are already published (provided they are already published in full with no redactions).

On 4 July 2023, I sent you a preliminary assessment of the charge payable for the processing of your revised request.

On 5 July 2023, you further revised the scope of your request as follows:

Could I please also exclude points 12, 13 and 14.

That should limit the scope of my request to s 67CC(2) amendments (that is, not including LEX71589).

On 10 July 2023, I sent you a preliminary assessment of the charge payable for the processing of your further revised request.

On 20 July 2023, you sent a credit card authorisation form and on 24 July 2023, the department advised you that it cannot process your credit card payment without your name and signature as the department is unable to verify your authorisation.

On 25 July 2023, you noted that you would be happy to pay the charge by phone.

On 28 July 2023, I sent you an email outlining alternative options for paying the charge anonymously and on 3 August 2023 you paid the charge.

What I took into account

In reaching my decision, I took into account:

- your original request dated 17 April 2023, your revised request dated 30 June 2023 and your further revised request dated 5 July 2023
- other correspondence with you
- the documents that fall within the scope of your request

- consultation with other Commonwealth Government agencies about documents which contain information concerning them
- consultations with departmental officers about the nature of the documents and the operating environment and functions of the department
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the Charges Regulations
- the FOI Act.

Reasons for my decision

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

Parts 1, 2 and 5 of your request

I have decided that certain documents and parts of documents that you requested at parts 1, 2 and 5 of your request are exempt under the FOI Act. My findings of fact and reasons for deciding that exemptions apply to those documents are discussed below.

Section 22 of the FOI Act: access to edited copies with irrelevant matter deleted

I have decided that some of the documents falling within the scope of your request contain exempt or irrelevant material. In this regard, sections 22(1) and (2) of the FOI Act provide that:

Scope

(1) This section applies if:

(a) an agency or Minister decides:

- (i) to refuse to give access to an exempt document; or
- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and

(b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:

- (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
- (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and

- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

The documents identified in the schedule of documents include exempt or irrelevant material.

In accordance with section 22 of the FOI Act, I have deleted exempt and irrelevant material where possible from the pages identified in the schedule of documents and have decided to release the remaining material to you.

Section 42 of the FOI Act - Documents subject to legal professional privilege

I have applied the exemption in section 42 to Part 1, Document 1; Part 1, Document 2; Part 1, Document 3; and Part 2, 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.

Part 1, Documents 1 and 2 include email conversations between one of the department's in-house lawyers and the Child Care Division regarding advice on drafting instructions for the

Family Assistance Legislation Amendment (Plan for Cheaper Child Care) Bill 2022 (the Bill). Part 2, Document 1 is an email chain between lawyers in the department's Child Care Legal Team and policy officers in the Child Care Division containing legal advice regarding the interpretation of a provision in the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) (FA Administration Act). Part 1, Document 3 also contains an email conversation between one of the department's in-house lawyers and the Child Care Division about the Bill as well as an email and attachment from a lawyer from the Office of Parliamentary Counsel to one of the department's in-house lawyers containing draft amendments to the Bill.

I am satisfied that the material in these documents is of such a nature that it would be privileged from production in legal proceedings on the grounds of legal professional privilege.

In accordance with paragraph 5.127 of the FOI Guidelines, I am required to address each aspect of legal professional privilege as established at common law. Paragraph 5.129 of the FOI Guidelines provides that, at common law, determining whether a communication is privileged requires a consideration of the following factors:

- 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 is independent
- whether the advice is confidential.

I have considered each of these factors in turn below.

The legal advice contained in the documents was given by the department's in-house government lawyers. All departmental officers engaged by the department as government lawyers and working in the department's legal branches are required to hold a current practising certificate issued by the law society in the state or territory in which they practice. As noted above, Part 1, Document 3 includes an email and attachment from a lawyer from the Office of Parliamentary Counsel.

Paragraph 5.134 of the FOI Guidelines relevantly provides that:

...communications and information between an agency and its qualified legal advisers for the purpose of giving or receiving advice will be privileged whether the legal advisers are salaried

officers [or not], provided that they are consulted in a professional capacity in relation to a professional matter and the communications arise from the relationship of lawyer client.

I am satisfied that a legal adviser-client relationship existed at the time the legal advice contained in the documents was produced on the basis that the advice was given by one of the department's in-house legal advisers holding a current practising certificate and the lawyer was acting in their capacity as a professional legal adviser at the time. Similarly, I am satisfied the lawyer from the Office of Parliamentary Counsel was acting in their professional capacity at the time of giving the legal advice to the department.

I consider the documents were created for the dominant purpose of giving or receiving legal advice on the basis that the advice contained in the document was in response to a direct request for legal advice from the relevant business area of the department and, as set out above, a legal adviser-client relationship existed at the time. The email from the Office of Parliamentary Counsel was also received following a direct request for legal advice from one of the department's in-house lawyers regarding the drafting of legislation.

In relation to the last two aspects of legal professional privilege as set out above, I am satisfied the advice was given independently and confidentially. As noted above, the advice was written by the department's in-house legal advisers who are required to maintain a current practising certificate. The advice contained in Part 1, Document 3 was also produced by a lawyer from the Office of Parliamentary Counsel. Accordingly, the relevant lawyers are subject to the professional standards required of practising lawyers, including providing independent legal advice and there is nothing before me to suggest that the lawyers concerned acted contrary to this when giving the advice. The advice was provided to the officers in the department who sought the advice, being officers employed in the department's Child Care Division and, in the case of Part 1, Document 3, the department's in-house lawyers, and there is nothing to suggest the advice was circulated more broadly, beyond those departmental officers with a business need to access the advice. Accordingly, I am satisfied the advice is confidential.

In making my decision, I have also had regard to the decision of the Federal Court in *State of New South Wales v Betfair Pty Ltd* [2009] FCAFC 160, in which the Court held that dealings between instructing agencies and the Office of Parliamentary Counsel attract legal professional privilege. The Court found that privilege applies to drafting instructions, draft legislation and related communications.

On this basis, I have decided that the information included in the abovementioned documents is exempt under section 42 of the FOI Act.

Section 47C of the FOI Act – deliberative processes

I consider Part 1, Document 2 contains material that is conditionally exempt under section 47C of the FOI Act.

Subsection 47C(1) of the FOI Act relevantly provides that:

- (1) 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...

As discussed in the FOI Guidelines at paragraph 6.52 to 6.88, the main requirements of this conditional exemption are that a document:

- contains or relates to ‘deliberative matter’ that was prepared for a ‘deliberative purpose’ (subsection 47C(1))
- the material is not ‘purely factual’ or non-deliberative (subsection 47C(2)), and
- it would be ‘contrary to the public interest’ to give access at this time (subsection 11A(5)).

Paragraph 6.63 of the FOI Guidelines outlines that:

‘Deliberative matter’ is a shorthand term for ‘opinion, advice and recommendation’ and ‘consultation and deliberation’ that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words ‘opinion, advice or recommendation, consultation or deliberation.’

At paragraph 6.66, the FOI Guidelines provide ‘material that is not deliberative matter, where not already excluded as operational information, purely factual material or a scientific report, would include:

- content that is merely descriptive
- incidental administrative content
- procedural or day to day content

- the decision or conclusion reached at the end of the deliberative process
- matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.'

Further, at paragraph 6.73, the FOI Guidelines explain that 'purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

Paragraph 6.59 of the FOI Guidelines provides that a:

'Deliberative process' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

The parts of Part 1, Document 2 marked as conditionally exempt under this provision contain recommendations, opinions and advice that were prepared and recorded by officers from both Services Australia and the department about the practical application of a provision of the FA Administration Act as well as proposed amendments to that provision. I am satisfied that this material constitutes deliberative material.

One of the functions conferred on the department under the Administrative Arrangements Order is early childhood education and care policy and programs. Similarly, under the Administrative Arrangements Order, Services Australia (as part of the Department of Social Services portfolio), is responsible for income security and support policies and programs for families with children. Accordingly, I am satisfied that the deliberative material contained in the document was prepared and recorded for the purposes of the deliberative processes involved in Services Australia and the department's functions with respect to child care.

I am satisfied that the relevant parts of Part 1, Document 2 do not contain 'purely factual material.' To the extent that the information contains factual material, I consider that such information is intertwined with the deliberative content such that it cannot reasonably or practically be separated. I am also of the view that this information forms an integral part of the deliberative content and purpose of the document. Accordingly, it is my view that this material is conditionally exempt under subsection 47C(1) of the FOI Act.

Public interest

Section 11A(5) of the FOI Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

I have weighed the public interest factors for and against disclosure under section 11A(5) of the FOI Act. While I consider disclosure would promote the objects of the FOI Act to a small extent, this factor favouring disclosure is outweighed by the public interest factors against disclosure as I consider that access to this information could reasonably be expected to inhibit frankness and candour in the provision of advice, recommendations, opinions and consultation between departmental officers and officers of Services Australia in relation to the deliberative processes concerning both the department's functions and the functions of Services Australia.

Based on these factors, I have decided that, in this instance, the public interest in disclosing the information in the abovementioned 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.

Section 47E(d) of the FOI Act – operations of agencies

I have applied the conditional exemption in section 47E(d) of the FOI Act to small parts of Part 1, Document 2.

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

(1) A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.123 of the FOI Guidelines provides, in relation to section 47E(d) of the FOI Act, that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

Part 1, Document 2 contains an email address for a positional mailbox used by staff within Services Australia and staff of other Australian Government agencies, including the department, to communicate with a particular team within Services Australia. This is an established communication channel internal to the Australian Government and is not publicly available.

Services Australia has established contact methods for the public in relation to services which enable Services Australia to manage the volume of correspondence and communications received by Services Australia. These methods include dedicated telephone numbers, external email addresses, postal addresses and other online mechanisms. The release of this positional email address could reasonably be expected to undermine these established methods for contacting Services Australia by allowing members of the public to contact employees of Services Australia through additional avenues, thereby disrupting Services Australia's usual operations.

I consider that the release of the positional email address would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Services Australia, as it would, or could reasonably be expected to circumvent established practices for communicating with Services Australia.

Given the above, I have decided that references to the positional email address are conditionally exempt under section 47E(d) of the FOI Act.

Public interest

In weighing up the public interest factors for and against disclosure under section 11A(5) of the FOI Act, I have taken into account the extent to which disclosure would promote the objects of the FOI Act and consider that release of the information would achieve this to a limited extent. I consider this factor is outweighed by the extent to which disclosure could reasonably be expected to impede Services Australia's ability to operate efficiently and that release of the information could reasonably be expected to divert Services Australia's resources from its usual operations.

Accordingly, I am satisfied that the positional email address contained in Part 1, Document 2 is exempt from release under section 47E(d) of the FOI Act and that disclosure would, on balance, be contrary to the public interest.

For completeness, I have not taken into account any of the irrelevant factors listed in section 11B(4) of the FOI Act.

Parts 3, 6, and 7 of your request

As set out above, I have decided to refuse your request in relation to parts 3, 6 and 7 in accordance with subparagraph 24A(1)(b)(ii) of the FOI Act on the basis that I am satisfied that the documents you are seeking at these parts of your request do not exist within the department.

An agency or Minister may refuse a request for access under subsection 24A(1) of the FOI Act 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.

I have decided to refuse parts 3, 6 and 7 of your request pursuant to section 24A of the FOI Act on the basis that I am advised that all reasonable steps have been taken by relevant departmental officers to find documents falling within the scope of these parts of your request and those documents do not exist.

Part 3

In relation to part 3 of your request, I am advised that the 'we' referred to in part 2 of your request is a reference to the department collectively rather than to specific departmental officers. Accordingly, the department does not hold a document containing this information.

Part 6

I am advised that the Minister's Rules referred to in part 6 of your request are publicly available on the Federal Register of Legislation using the following link: [Child Care Subsidy Minister's Rules 2017 \(legislation.gov.au\)](https://www.legislation.gov.au/Details/F2017L00001). I am further advised that the *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022* (Cth) contained a number of measures, including schedule 1 part 2, which repealed paragraph 67CC(2)(d) of the FA Administration Act. I am advised that, while there were amendments to the Minister's Rules that supported some of these measures, the measure in schedule 1 part 2 did not require

any amendments to the Minister's Rules. Accordingly, the department does not hold documents relating to amendments to the Minister's Rules as it relates to the amendments to paragraph 67CC(2)(d) of the FA Administration Act.

Part 7

In relation to part 7 of your request, I am advised that the department did not study any individual claims as part of its consideration of the amendments to paragraph 67CC(2)(d) of the FA Administration Act.

On the basis of the above, I have decided to refuse parts 3, 6 and 7 of your request.

Conclusion

In summary, I am satisfied that the documents and parts of documents relating to parts 1, 2 and 5 of your request, as set out in the schedule of documents, are exempt under section 42 of the FOI Act and conditionally exempt under sections 47C and 47E(d) of the FOI Act.

Furthermore, I have decided that, on balance, it would be contrary to the public interest to release the information to which I have applied sections 47C and 47E(d) of the FOI Act.

Accordingly, I have decided not to release the documents to you.

I have also decided to refuse parts 3, 6 and 7 of your request pursuant to section 24A of the FOI Act on the basis that I am advised that all reasonable steps have been taken by relevant departmental officers to find documents falling within the scope of these parts of your request and those documents do not exist within the department.

YOUR RIGHTS OF REVIEW

Asking for a formal review of an FOI decision

If you believe the decision is incorrect, the 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:

- an internal review officer in the department and/or
- the Australian Information Commissioner.

There are no fees for applying for a formal review.

Applying for an internal review by an internal review officer

If you apply for internal review, a different decision maker to the decision maker who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application by email to foi@education.gov.au.

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.

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

You can lodge your application in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Complaints to the Australian Information Commissioner

Australian Information Commissioner

You may complain to the Australian Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001