



29 September 2023

Our reference: LEX 75376

Frank N Fearless (Right to Know)

Only by email: foi+request-10545-2432c164@righttoknow.org.au

Dear Frank N Fearless

Decision on your Freedom of Information Request

I refer to your request to Services Australia (the Agency) dated 10 August 2023 for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**). You requested:

For income apportionment debts: The General Instructions for Decision makers created by DSS for Services Australia decision-makers to apply referred to in the Ombudsman's recent statement (Recommendation 2):

https://www.ombudsman.gov.au/__data/assets/pdf_file/0040/299947/Commonwealth-Ombudsman-public-statement-regarding-OMI-Income-Apportionment-Lawfulness.pdf#:~:text=The%20Ombudsman%20used%20section%209%20of%20the%20Ombudsman,a%20section%209%20notice%20without%20a%20reasonable%20excuse.

In the event there is a version change prior to my request being finalised, I would like both versions of the document, original and updated please.

I'm requesting this from you, not DSS, as it constitutes operational information of Services Australia.

Can I also get the date this General Instructions document was published by Services Australia in compliance with its obligations under section 8(D)(3), Freedom of Information Act 1982 (Cth)

I also seek the revised policy on grossed up bank statement debts referred to by Senior Member Webb in Jackson and Secretary, Department of Social Services (Social services second review) [2023] AATA 1286 (22 May 2023) at paragraph 4:

"The Secretary's legal representative informed me a new Departmental policy was promulgated in December 2022 in respect of assessing income from a claimant's bank records, under which records from Mr Jackson's previous employer/s would be obtained. "

I would like this policy.

Can I get the date this revised policy was published by Services Australia in compliance with its obligations under section 8(D)(3) of the Freedom of Information Act 1982?

My decision

The Agency holds 2 documents (totalling 6 pages) relating to your request.

I have decided to grant you **part access** to these documents (documents 1 and 2) with some of the content removed.

I have decided parts of the documents you have requested are exempt under the FOI Act, as they include:

- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C of the FOI Act), and
- information which could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency and release is contrary to the public interest (section 47E(d) 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.

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 FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Yours sincerely

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



SCHEDULE OF DOCUMENTS FOR RELEASE
Frank N Fearless (Right to Know) - 75376

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1 – 3	12 December 2022	General Instructions	Release in part	s47C s47E(d)	Deliberative material (section 47C) Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency deleted under s47E(d)
2.	4 – 6	6 March 2023	General Instructions – revised – finalised 6.3.23	Release in part	s47C s47E(d)	Deliberative material (section 47C) Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency deleted under s47E(d)



REASONS FOR DECISION

What you requested

On 10 August 2023, you requested access to the following documents:

For income apportionment debts: The General Instructions for Decision makers created by DSS for Services Australia decision-makers to apply referred to in the Ombudsman's recent statement (Recommendation 2):

https://www.ombudsman.gov.au/__data/assets/pdf_file/0040/299947/Commonwealth-Ombudsman-public-statement-regarding-OMI-Income-Apportionment-Lawfulness.pdf#:~:text=The%20Ombudsman%20used%20section%209%20of%20the%20Ombudsman, a%20section%209%20notice%20without%20a%20reasonable%20excuse.

In the event there is a version change prior to my request being finalised, I would like both versions of the document, original and updated please.

I'm requesting this from you, not DSS, as it constitutes operational information of Services Australia.

Can I also get the date this General Instructions document was published by Services Australia in compliance with its obligations under section 8(D)(3), Freedom of Information Act 1982 (Cth)

I also seek the revised policy on grossed up bank statement debts referred to by Senior Member Webb in Jackson and Secretary, Department of Social Services (Social services second review) [2023] AATA 1286 (22 May 2023) at paragraph 4:

"The Secretary's legal representative informed me a new Departmental policy was promulgated in December 2022 in respect of assessing income from a claimant's bank records, under which records from Mr Jackson's previous employer/s would be obtained. "

I would like this policy.

Can I get the date this revised policy was published by Services Australia in compliance with its obligations under section 8(D)(3) of the Freedom of Information Act 1982?

What I took into account

In reaching my decision I took into account:

- your request dated 10 August 2023
- documents falling within the scope of your request
- consultation with third parties about documents which contain information concerning them
- whether the release of material is in the public interest
- consultations with Agency officers about:



- the nature of the documents
- 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 decisions

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

I have decided parts of the documents you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemption applies to those documents are discussed below.

Section 47C of the FOI Act – deliberative process

I have applied the conditional exemption in section 47C to parts of documents 1 and 2 as outlined in the schedule.

Section 47C of the FOI Act provides that 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 matter. 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 documents 1 and 2. I am satisfied these documents contain deliberative matter, being advice and recommendations prepared by the Department of Social Services for the purpose of providing guidance for operational staff within the Agency on the assessment of employment income for debt periods that fall before 7 December 2020. The information to which this conditional exemption has been applied is not operational information, or purely factual information, and are otherwise not of a kind specifically excluded by the FOI Act.

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

I have applied the conditional exemption in section 47E(d) to parts of documents 1 and 2.

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.

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

Would disclosure of the information reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of operations of Services Australia?



Paragraph 5.20 of the Guidelines provides:

The term 'substantial adverse effect' broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'. The word 'substantial', taken in the context of substantial loss or damage, has been interpreted as 'loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal'.

Further, paragraph 6.101 of the Guidelines provides:

... There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

The information to which this conditional exemption has been applied includes information relating to:

- discretionary decision making processes, and
- details of agency operational processes that are not publicly available and which relate to the ways the Agency calculates the apportionment of employment income.

I consider that providing the conditionally exempted material to you will negatively affect the operations of the Agency. The release of this material would reasonably be expected to facilitate or promote the broad circumvention of the processes and procedures designed to assist operational staff within the Agency on the assessment of employment income for debt periods that fall before 7 December 2020. This would therefore compromise the Agency's ability to ensure the effective delivery of associated functions. If the processes and procedures became public knowledge, this is likely to inhibit the effectiveness of those processes and procedures. It would mean some individuals would be able to circumvent them for dishonest personal benefit, substantially affecting the Agency's work relating to debt raising decisions and debt calculations under internal and external reviews.

For these reasons, I am satisfied certain operational information is conditionally exempt under section 47E(d) 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 and allow individuals to understand how debts are calculated, which is in the public interest.

However, I also consider the disclosure of this material would prejudice the Agency's ability to effectively and efficiently manage the delivery of agency operations regarding the assessment of employment income.

For this reason, I have decided in this instance, the public interest in disclosing the information in the requested documents is outweighed by the public interest against disclosure.

Accordingly, I have decided parts of the documents, are conditionally exempt under sections 47C and 47E(d) of the FOI Act.



Summary of my decision

In conclusion, I am satisfied parts of the documents, as set out in the Schedule, are conditionally exempt under section 47C and 47E(d) of the FOI Act. I have therefore decided to grant you part access to the requested documents.

I have redacted the exempt information in the documents and released the remaining material in accordance with section 22(1) of the FOI Act.



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 an 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.

Note: There are no fees for these reviews.

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

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: 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.
- 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.