



26 October 2023

Our reference: LEX 76259
LEX 75376

Frank N Fearless

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

Dear Frank N Fearless,

Freedom of Information Request – Internal Review Decision

I refer to your correspondence received by Services Australia (the Agency) on 3 October 2023, seeking an internal review of the original decision (LEX 75376) made by the Agency on 29 September 2023 in relation to your request for access to documents under the *Freedom of Information Act 1982* (FOI Act).

Background

On 10 August 2023, you requested access under the FOI Act 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?

On 29 September 2023, the Agency notified you of the original decision to grant you **part access** to 2 documents (Documents 1 and 2) with some of the content removed. The Agency issued you with the original decision granting you access to the requested documents with some content removed on the basis they contained:

- deliberative material, the disclosure of which would be contrary to the public interest (section 47C conditional exemption), and
- operational information, 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 the Agency, and release would be contrary to the public interest (section 47E(d) conditional exemption).

On 3 October 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.

Having considered the material before me, I have decided to vary the original decision with respect to Document 2 while affirming the original decision with respect to Document 1. I have decided to grant you **part access** to 2 documents (Documents 1 and 2) with some of the content removed.

I have decided to grant you access to the requested documents with some content removed on the basis they contained:

- deliberative material, the disclosure of which would be contrary to the public interest (section 47C conditional exemption), and
- operational information, 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 the Agency, and release would be contrary to the public interest (section 47E(d) conditional exemption).

Additionally, I have decided to refuse part of your request to a document which contains the date the draft General Instructions were published on the Agency's Information Publication Scheme page under section 24A of the FOI Act. This refusal is on the basis all reasonable steps have been taken to locate the relevant documents and it does not exist.

This has the practical effect of varying the original decision made on 29 September 2023.

Please see the schedule at [Attachment A](#) for a detailed list of the documents for release and further information regarding the reasons for my decision.

How we will send the documents to you

The documents are attached.

You can ask for a review of the decision

If you disagree with any part of the decision, you can ask for an external review by the Australian Information Commissioner. See [Attachment B](#) for more information about how to request an external review.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Yours sincerely

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

Attachment A

SCHEDULE OF DOCUMENTS

INTERNAL REVIEW – FRANK N FEARLESS - LEX 76259 (75376)

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1 – 3	12 December 2022	Draft 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 (section 47E(d))
2.	4 – 6	6 March 2023	Draft General Instructions – revised	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 (section 47E(d))



Attachment A

REASONS FOR DECISION

What you requested

On 10 August 2023, you requested access under the FOI Act 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?

On 29 September 2023, the Agency notified you of the original decision.

Your internal review request

On 3 October 2023, you requested an internal review of the original decision, providing written submissions in which you argued:

Grounds for review

I might start with the public interest balance as this is overarching for both claimed exemptions.

Disclosure of paragraph 2 of this document supports the Commonwealth Ombudsman's position that this policy document was unlawful and amounted to fettering a discretion. The DSS instructions set an unqualified expectation as to outcome. From the policy entity to delegates. The wording of the policy is so poor it will not fall under even the Full Federal Court's flexible and forgiving approach in *G v Minister for Immigration*. DSS did not state the relevant considerations to determining 'sufficient reason' under section 126. It did not even employ the usual term of art - 'usually' - or instruct decision-makers to be alive to exceptions. The failure to take into account the principles of administration in section 8 of the Social Security Administration Act is particularly galling. We have had a Royal Commission that underlined how many vulnerable people will never appeal. The obligation to take into account relevant AAT decisions applies to all administration performed by the Secretary and his delegates.

The result is that unless and until government policy changes, individuals and organisations supporting them will need to weigh and consider internal review. The FOI guidelines strongly emphasise procedural fairness as a public interest factor. Most individuals in this cohort either (i) were threatened with unlawful averaging from 2015-2019 or (ii) had their debts unlawfully averaged. They have limited faith, and fear a merry go round.

Without fuller publication of this policy, these individuals will have no clear guidance on the nature of the calculation process, how they will be supported and how evidence will be evaluated. This decision even refuses to disclose the circumstances in which DSS thinks additional efforts should be made to obtain employer information on behalf of people.

So, I submit that disclosure of the document would further the objects of the Act, namely:

(a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;

(b) increasing scrutiny, discussion, comment and review of the Government's activities.

The following factors in 11B(3) of the FOI Act tend to support disclosure of document:

- (i) reveal the reason for a government decision and any background or contextual information that informed the decision; and
- (ii) promote effective oversight of public expenditure.

I also note that the more specific factors outlined by para 6.25 FOI guidelines are active in the case of this document:

(a) FOI Act promotes disclosure

1. inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community 2. allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official ...

(f) contribute to the administration of justice generally, including procedural fairness

(h) contribute to the administration of justice for a person ...

(i) advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies

Moving now to the actual exemptions:

Claiming the Deliberative Exemption on an Operational Policy Document

The claiming of the deliberative processes exemption is innovative, but wholly misplaced. This document is a policy statement (an instruction) from DSS to Services Australia. As the recent Ministerial joint statement on income apportionment itself states: "Administration of the Social Security Act 1991 ... sits with the Secretary of the Department of Social Services". Even were it to contain passages that give options or canvas approaches that does not place it within the scope of 47C. It is operational information. Decision-makers are under an obligation to apply policy in their decision-making, and this includes material which raises options or choices or flags material for further deliberation. All material in this document is designed to guide decision-making or inform decisions to escalate or consult.

See FOI guidelines para 6.53. This is matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process. [6.66] It is actually an output, put forward to the Ombudsman as departmental and agency practice.

Section 47E(d):

One piece of context that jumps out immediately here. This policy applies to individuals who seek internal or external reviews - that's its ambit. The Agency's claim that these individuals will evade it or circumvent it .. by themselves requesting a review. Seems counter-intuitive. These are individuals who have previously tendered information in the form of payslips to the Agency. From 2015 they were infamously not under any legal obligation to do so but had been threatened with averaging. They're the ones who "did the right thing", as the Agency expounded so volubly for years. Portraying them as a source of system threatening duplicity seems impolite and wholly speculative. I also note that the system of debt calculation has changed - so there is no 'threat' to current debt raising processes. The approach to the evaluation of oral statements is also well known, with the relevant policy in the public domain due to the Royal Commission.

Moving into specifics, the Agency's decision here another one of its confected section 47E(d) invocations. All, or at least most of, the material here does not fall within the scope of the section 47E(d).

Redactions occurred on the basis that the documents would result in individuals taking evasive action, thereby rendering the Department's process inefficient. Statements as to what qualifies as acceptable evidence and the criteria for a statutory decision are not processes which can be "gamed" or evaded by recipients. The decision-maker's reasons are overly general, bundling together content of differing form and character.

An individual's past income or their past employment represent immutable questions of fact, capable of confirmation via their past interactions with Centrelink or the documents the Agency actually holds. The redacted content likely address the relevant evidential thresholds and relevant considerations informing the exercise of a statutory power including evidence gathering.

It is clear from the description of the documents that a large majority, if not all, of the content, should be treated as analogous to document 15 in Paul Farrell and Australian Customs and Border Protection Service [2015] AICmr52 at [15]. Only a small proportion of this document was found to attract the exemption (even prior to a public interest analysis). This document was:

"...a ten page document that contains a framework analysis of considerations that are relevant to enforced turnback operations, including the legal basis for operations, the operational objective, procedures to be followed, decision making, and managing the response and conduct of boat occupants. The content deals with issues that one would expect to find in a government procedural manual or document. Release of this discussion would add to public understanding of how a difficult and sensitive function is discharged within government. Indeed, at least some of the content matches information that already forms part of public discussion of border control issues."

The decision-maker has not adequately particularised their claim of the exemption for the majority of the content featured in the requested documents. Section 55D of the Freedom of information Act underlines that the onus for establishing that a decision to refuse access to a document is justified is on the Department.

Turning now to the substance of the stretched claims that people will cause debt raising to collapse through a sustained cycle of knowing misrepresentation. The standard processes which the Department uses to identify knowing misrepresentations are (i) the provision of statutory notice under the social security law (ii) the provision of statutory notices to secure employer or bank documentation.

These are not prejudiced, or the sources of inefficiency. Both these processes remain available and are easily triggered in the era of automated correspondence. It is notable that under sections 66-72, and section 192 of the social security law, a failure to respond or misrepresentations may result in substantial criminal penalties. In this particular context it is difficult to discern quite how the asserted harm will eventuate and can even be established when the department already holds these people's payslips.

The internal reviewer should also ponder the wise admission of the ATO in its submission to the 2011 review of the FOI Act that:

"...The difficulty for the agency lies in the test for substantial and adverse effect. Whilst it may, in the example of the tax audit, be arguable that the particular FOI request has a substantial and adverse impact on that particular tax audit, it could be argued that a large agency like the ATO could reasonably be expected to reassign people to the audit and so bring the adverse impact below the threshold of what may be substantial."

The internal reviewer will need to explain why it is reasonable to allege that an instruction documents will trigger such a wave a misrepresentation when the fact of a person's income is eminently verifiable and such a severe penalty applies to misrepresentations. And the person themselves is the one who commenced the process. And the Agency already holds the primary documentation - the payslips.

The standard processes for addressing fraud or misrepresentation are in no way endangered and no specific risk has been identified.

Reviewing the ambit and documents in scope

I note I requested policy in relation to bank statement debts created in December. The decision does not make clear if that policy exists.

I still seek the date this disclosed document was published, which effectively represents metadata not available in public form. I invite the internal reviewer to approach the date of publication of these documents as information that is stored electronically and not in a discrete written form [section 17].

As a courtesy, just a heads up that I intend to complain to OAIC if my query regarding the publication date of this document under section 8 of the FOI is not answered. The document is quite clearly important operational information and I simply want my legitimate query - my internal complaint - answered.

I will end by noting the quality of the original decision. A mere statement that consideration of relevant factors has occurred goes nowhere to establishing active intellectual engagement necessary for a valid exercise of discretion. The initial decision-maker makes no findings whatsoever in relation to the factors favoring disclosure. In a statute whose foundational logic is public interest balancing, there was no effort to balance.

What I took into account

In reaching my decision, I took into account:

- your original request dated 10 August 2023
- your internal review request dated 3 October 2023
- the documents falling within the scope of your request
- whether the release of the 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 (the Guidelines), and
- the FOI Act.

Reasons for my 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.

I have decided parts of Documents 1 and 2 are exempt under the FOI Act. My findings of fact and reasons for deciding the exemptions under sections 47C and 47E(d) of the FOI Act apply to the documents are discussed below.

Section 47C of the FOI Act – Deliberative matter

I have applied the conditional exemption in section 47C of the FOI Act to parts of Documents 1 and 2.

Deliberative matter

Section 47C of the FOI Act provides a document is conditionally exempt if it would disclose deliberative matter. Deliberative matter is an opinion, advice or recommendation, or a consultation or deliberation that has taken place in the course of, or for the purposes of, the deliberative processes of an agency. Material which is operational or purely factual information is not deliberative 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.

The documents contain recommendations from the Department of Social Services (DSS) on circumstances where further advice from DSS may be required when calculating possible overpayments. I note the documents have not been finalised, pending further advice from DSS in consultation with the Agency and other external entities. The Agency implements operational instructions, however the information to which this conditional exemption has been applied is better characterised as recommendations from DSS rather than operational instructions.

Therefore, I am satisfied parts of the documents contain deliberative matter, being opinions and advice on circumstances where further advice may need to be provided to the Agency. I am also satisfied the relevant parts of the documents do not contain operational or purely factual information and are not otherwise of a kind specifically excluded by the FOI Act.

Accordingly, I find parts of the documents are conditionally exempt under section 47C of the FOI Act.

Public interest considerations

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.

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:

- promote the objects of the FOI Act

- increase scrutiny, discussion, comment and review of the government's activities, and
- inform the community of the government's operations.

However, 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:

- inhibit the provision of frank and candid opinions, advice and recommendations between Agency employees and to prejudice the Agency's decision-making and management functions
- impede the full and frank disclosure between staff members in its deliberation on sensitive issues
- impede the administration of justice generally, particularly on the Agency's intended functions under social security law, and
- prejudice the Agency's ability to obtain recommendations relating to its administration of social security law in the future.

On balance, I have decided in this instance, that the public interest in disclosing the deliberative material contained in the documents 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.

Conclusion

In summary, I am satisfied parts of the documents are conditionally exempt under section 47C of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly, I have decided not to release the documents in full to you.

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

I have applied the conditional exemption in section 47E(d) of the FOI Act to parts of the documents. The information I have found to be exempt are information on how Agency staff exercise discretionary powers, and processes on how the Agency calculates the apportionment of employment income.

Substantial adverse effect on the proper and efficient conduct of the operations of the Agency

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, do any of the following:

...

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

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, in *Re James and Australian National University* (1984) 6 ALD 687 the phrase 'conduct of operations' was interpreted to extend 'to the way in which an agency discharges or performs any of its functions.'

Paragraph 6.121 of the Guidelines also provides examples of circumstances where the AAT has upheld the exemption, including:

- disclosure of the Australian Electoral Commission policies on the accepted reasons for a person's failure to vote in a federal election would result in substantial changes to their procedures to avoid jeopardising the effectiveness of methods and procedures used by investigators, and
- disclosure of information provided by industry participants could prejudice the Australian Competition and Consumer Commission's ability to investigate anti-competitive behaviour and its ability to perform its statutory functions.

Paragraph 6.123 of the Guidelines also states:

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.

I note the Commonwealth Ombudsman's statement on his own motion investigation into the Agency's and DSS' handling of income apportionment matters before 7 December 2020. The Agency continues to act in response to the Commonwealth Ombudsman's investigation. While the Commonwealth Ombudsman considers there are inefficiencies in the Agency's handling of income apportionment matters, the Agency notes the documents outline proposed processes to undertake calculation of debts, subject to further external advice. The documents outline the most accurate information the Agency has on managing particular types of debt calculations. As such, if certain information is disclosed, it is likely to affect the Agency's proper and efficient operations, and the implied exemption outlined in paragraph 6.123 of the Guidelines is not applicable in this instance.

Operational information

I have applied the exemption in section 47E(d) of the FOI Act to parts of the documents as they contain internal Agency procedures relating to the calculation of debts in various circumstances. These circumstances include:

- the type of information required
- information on instances where insufficient evidence is provided, or

- instances where information provided are bank statements alone, alongside other circumstances which may arise.

Having regard to the above, I am satisfied information contained in the documents are relevant to the assessment, implementation, delivery and management of a program administered by the Agency, and therefore is relevant to the conduct of the Agency's operations.

I consider the release of internal instructions, procedures and considerations for various circumstances would have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency. In particular, I consider the release of the exempt material, which is not publicly available, has the real potential to enable individuals who are in receipt of income support payments, or are applying for such a payment, to circumvent the equitable provision of government services.

The Agency notes instances where customers provide incorrect or insufficient evidence to assist the Agency in calculating a correct debt, waiving or cancelling certain debts the customer may hold. While the Agency does provide automated correspondence in certain circumstances, there are also instances where information provided by customers still require manual intervention, particularly when it relates to the calculation of debts. If insufficient or incorrect information is provided, significant manual intervention will be required to correct records and calculate the correct debts customers may have, if applicable. The release of this information would have the effect of requiring significant manual intervention if the Agency is not certain the correct information has been provided.

The release of this information would also have the effect of undermining the powers the Agency holds under social security law to retrieve correct information from customers. While the Agency has powers to pursue actions against customers who provide false or misleading information to the Agency, those actions would divert the Agency's legal officers to focus on these prosecutions, rather than proceeding with action based on correct information being provided in the first instance.

Further, while I have no reason to believe you would misuse the exempt material in any way, the FOI Act does not control or restrict the use or dissemination of information released in response to an FOI request. Accordingly, I must consider actions any member of the public might take once the information were to become publicly available.

For the reasons set out above, I am satisfied the information contained in the documents are conditionally exempt under section 47E(d) of the FOI Act. This is because the disclosure of the material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency.

The amendment to redactions in Document 2 relates to the inclusion of paragraph 9 as being exempt under section 47E(d) of the FOI Act, for the reasons outlined above.

Public interest considerations

Access to conditionally exempt documents must be given unless I am satisfied it would not be in the public interest to do so per section 11A(5) of the FOI Act.

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:

- promote the objects of the FOI Act
- increase scrutiny, discussion, comment and review of the government's activities, and
- inform the community of the government's operations.

However, I also consider the disclosure of the material would:

- reasonably be expected to prejudice the enforcement of social security law and policy
- reasonably be expected to impede the administration of justice generally, including procedural fairness
- reasonably be expected to prejudice the Agency's ability to obtain accurate information from both confidential sources and other sources in the future, and
- prejudice its ability to effectively and efficiently maintain the integrity of the Agency's debt collection procedures.

As such, I have decided in this instance, the public interest in disclosing the information in the documents are outweighed by the public interest against disclosure.

Conclusion

In summary, I am satisfied the material in the documents are conditionally exempt under section 47E(d) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly, I have decided not to release the documents in full to you.

Section 24A – Documents cannot be located or do not exist

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

Information on the date the documents were published as part of the Agency's Information Publication Scheme obligations

You requested a document which contains information on when the documents in scope of your request was published pursuant to section 8D of the FOI Act.

As outlined below when discussing the Agency's obligations under Part II of the FOI Act, the Agency is not required to publish exempt matter, as per section 8C(1) of the FOI Act. This includes operational information which would be exempt under the FOI Act.

Because the Agency has not published the documents through the Agency's Information Publication Scheme, there are no documents which record a date in which the Agency published this information.

As such, I am satisfied in accordance with section 24A of the FOI Act:

1. all reasonable steps have been taken to find the relevant documents, and

2. I am satisfied the document does not exist.

Part II of the FOI Act – Information Publication Scheme

In your submissions for internal review, you refer to the Agency's obligations under section 8D(3) of the FOI Act, namely the obligation to publish operational information through the Agency's Information Publication Scheme (the Scheme).

Section 8D(1) of the FOI Act states:

An agency must publish information that is required or permitted to be published under this Part in accordance with this section.

Information which is required to be published under Part II of the FOI Act are outlined in section 8(2) of the FOI Act, which includes:

- details of the Agency's decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities), and
- operational information.

"Operational information" is defined under section 8A of the FOI Act as:

information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).

The Agency takes its obligations under Part II of the FOI Act seriously. The Agency publishes information as required or permitted on the Agency's website.¹ Information published by the Agency through the Scheme includes our organisational structure, our privacy policy, and operational information, such as Operational Blueprints which outline steps Agency decision-makers need to take to make an administrative decision.

However, section 8C(1) of the FOI Act states:

An agency is not required under this Part to publish exempt matter.

"Exempt matter" is defined under section 4(1) of the FOI Act as:

... matter the inclusion of which in a document causes the document to be an exempt document.

This includes information which would be exempt under a provision of the FOI Act. The documents in the scope of your request contain material exempt under sections 47C and 47E(d) of the FOI Act, as outlined above. As such, the exemption to publish documents through the Scheme applies to the documents in the scope of your request.

This does not negate other obligations the Agency has, and continues to undertake, to publish information on the Agency's disclosure log under section 11C of the FOI Act.

¹ See here the Agency's Information Publication Scheme:
<https://www.servicesaustralia.gov.au/information-publication-scheme?context=1>

Summary of my internal review decision

In conclusion, I have decided to grant you **part access** to the documents (Documents 1 and 2) with some of the content removed. I have decided parts of the documents are exempt under the FOI Act on the basis they contain:

- deliberative material, the disclosure of which would be contrary to the public interest (section 47C conditional exemption), and
- operational information, 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 the Agency, and release would be contrary to the public interest (section 47E(d) conditional exemption).

I have decided to refuse part of your request to a document which contains the date the draft General Instructions were published on the Agency's Information Publication Scheme page under section 24A of the FOI Act as all reasonable steps have been taken to locate the document and it does not exist.



Attachment B

INFORMATION ON RIGHTS OF REVIEW
FREEDOM OF INFORMATION ACT 1982

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

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

Asking for a formal review of an FOI internal review decision

If you still believe a decision is incorrect, the FOI Act gives you the right to apply for an external review of the internal review decision. Under section 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 have 60 days to apply in writing for 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 Agency's decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the Agency's decision.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

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.