



20 December 2023

Our reference: LEX 77326

Paul Williams

Only by email: foι+request-10895-fxxxxxxx@xxxxxxxxxxx.xxx.xx

Dear Mr Williams,

Decision on your Freedom of Information Request

I refer to your request received by Services Australia (the Agency) on 22 November 2023 for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

1. All documents the Services Australia sent to the APSC for the purpose of completing Services Australia's contribution to the Common Conditions Dashboard
2. All documents held by Services Australia that support, for each proposed condition listed on the dashboard, Services Australia's view that each proposed condition represents an improvement (or otherwise).

My decision

The Agency holds one document (totalling 1 page) that relates to your request.

I have decided to grant you **part access** to the document with some of the content removed.

I have decided that part of the document you have requested is exempt under the FOI Act, as it includes:

- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C of the FOI Act), and
- information which if disclosed, would have a substantial adverse effect on the financial or property interests of the Commonwealth or an agency and release would be contrary to the public interest (section 47D of the FOI Act).

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

How we will send your document to you

The document is 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 freedomofinformation@servicesaustralia.gov.au.

Yours sincerely

Elizabeth
FOI Officer
Freedom of Information Team
FOI and Reviews Branch | Legal Services Division
Services Australia



SCHEDULE OF DOCUMENTS FOR RELEASE
WILLIAMS, Paul - LEX 77326

Doc No.	Pages	Date	Description	Decision	FOI Exemption	Comments
1.	1	N/A	All documents sent to the ASPC by the Agency and/or held by the Agency in regards to the Common Conditions Dashboard.	Release in part	s 47C s 47D	Deliberative material removed under s 47C Information relating to financial or property interests of the Commonwealth removed under s 47D



REASONS FOR DECISION

What you requested

1. All documents the Services Australia sent to the APSC for the purpose of completing Services Australia's contribution to the Common Conditions Dashboard
2. All documents held by Services Australia that support, for each proposed condition listed on the dashboard, Services Australia's view that each proposed condition represents an improvement (or otherwise).

What I took into account

In reaching my decision I took into account:

- your request dated 22 November 2023
- the document falling within the scope of your request
- whether the release of material is in the public interest
- consultations with Agency officers about:
 - the nature of the document
 - the Agency's operating environment and functions
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines)
- the FOI Act.

Reasons for my decision

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

I have decided part of the document you requested is exempt under the FOI Act. My findings of fact and reasons for deciding exemptions apply to the document are discussed below.

Section 47C of the FOI Act - Deliberative Matters

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.

I am satisfied part of the document contains deliberative matter, being the deliberation of the Agency in regard to our common conditions negotiations. The deliberative material ultimately includes evaluation of various factors, advice, and recommendations so to allow decision makers to weigh up or evaluate competing considerations. To the extent that the material to

which this conditional exemption has been applied does constitute factual information, I am satisfied that it is intertwined with the deliberative material to such an extent that it is not reasonably practicable to separate.

Further, I am satisfied the material is not a report on scientific or technical matters, the Agency is not a body prescribed by the regulations, and the document is not a formal statement of reasons for a final decision, so there are no exceptions that apply to the documents.

Accordingly, I find that parts of the document are conditionally exempt under section 47C(1) of the FOI Act.

Public interest considerations

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

I consider the disclosure of the material would generally promote the objects of the FOI Act as well as facilitate access to government information in relation to a APSC bargaining process, which is in the public interest.

I do however note there is a significant amount of information already available in the public domain regarding the APSC bargaining process and common conditions, so I consider the identified material will only promote the objects of the FOI Act to a limited extent.

The Agency relies on frankness and candour being available to decision makers during the bargaining of common conditions. The Agency takes its responsibilities in contributing to this process serious, and to come to a decision, decision-makers must consider all views to establish an understanding of the impacts when considering the Agency's position on common conditions.

For that reason, I consider disclosure could reasonably be expected to prejudice the Agency's ability to effectively negotiate our employees' common conditions of employment, as it would reveal the Agency's ongoing bargaining process and position.

For the reasons outlined above, I find the public interest factors in favour of disclosing the material are outweighed by the public interest factors against disclosure.

Section 47D of the FOI Act -Financial or property interests of the Commonwealth

I have applied the conditional exemption in section 47D to part of the document.

Section 47D of the FOI Act provides a document is conditionally exempt where disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

The document contains information relating to the Agency's bargaining process for our Australian Public Service staff. I consider the document is relevant to the Commonwealth's financial interests and it relates to expenditure and the Agency's financial interest in seeking to obtain best value for money for Australian taxpayers through a competitive bargaining process.

This material is not publicly available, and I am satisfied that if it were released to you and, in turn, into the wider public domain (noting that the FOI Act does not control or restrict use or dissemination of the information once released in response to an FOI request), this would have a substantial adverse effect on the financial interests of the Agency. Release would undermine

the Agency's position in approaching bargaining of common conditions, as well as value for money in relation to certain conditions that have an impact on the Agency, including items for which the Agency pays for, such as leave, higher duties, and reasonable paid time for certain activities.

I consider disclosure of the material, at a time where not all matters are settled, would materially compromise the Agency's position in the current process, adversely affecting the Government's interest in seeking to obtain best value for money for Australian taxpayers.

Whilst APS wide bargaining has concluded, I note a factor which is relevant in determining whether the conditional exemption applies to this document is the fact a number of matters were not resolved in the first round of APS-wide bargaining and have been referred to agency level bargaining. If the material were to be released, it is likely to affect any ongoing bargaining.

As such, I am satisfied parts of the document are also conditionally exempt under section 47D of the FOI Act.

Public Interest

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 that disclosure of this material would promote the objects of the FOI Act and promote effective oversight of public expenditure. However, due to the substantial adverse effects outlined above, disclosure of the information could reasonably be expected to prejudice the Agency's ability to obtain best value for money in bargaining processes.

The Agency provides essential public services nationwide, disclosing sensitive details about these financial interests, including private details of the Agency's employee bargaining process could reasonably be expected to weaken the Agency's ability to secure employees at a competitive rate and ensure they are fit for purpose. On balance, I am satisfied that the factors against disclosure outweigh the factors favouring disclosure and it would not be in the public interest to disclose this material.

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.



INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

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

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

Asking for a formal review of a FOI decision

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

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

Applying for an internal review by an Internal Review Officer

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

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

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

Applying for external review by the Australian Information Commissioner

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

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

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

You can **lodge your application**:

Online: www.oaic.gov.au

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 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.