



Australian Government
Department of Social Services

By email: foi+request-1105-962329c2@righttoknow.org.au

Dear Ms Rahman

1. I refer to your correspondence received by the Department of Social Services (**the Department**) on 12 June 2015, in which you requested access under the *Freedom of Information Act 1982* (**the FOI Act**) to the following documents:

"...the full report of the quantitative study conducted by Orima Research regarding the government child care package. The study is referenced in this article:

<http://www.theguardian.com/australia-news/2015/jun/05/coalitions-childcare-claims-based-on-limited-online-survey>".

2. On 26 June 2015, the Department advised you of its intention to consult with a third party because the requested documents contain information that the third party might wish to contend should not be disclosed.
3. On 1 July 2015, you wrote to the Department to note that you were 'still interested in the full report' but that, in the interim, you wished to receive the information on methodology (especially on sampling and the quantitative results).
4. On 1 July 2015 I wrote to advise you that there is no mechanism under the FOI Act which allows for documents to be provided 'in the interim', before a primary decision on access is made under section 23 of the FOI Act. In that email, I requested clarification as to whether you wished to proceed with your request for the 'full report', or reduce the scope of the request to only seek access to the methodology contained in the report (including sampling and quantitative results). As at the date of this decision, no response has been received by the Department in relation to that request for clarification. Accordingly, I have proceeded to process the request on the basis of your request as originally framed – that is, that you are seeking access to the 'full report'.
5. In the interests of clarity, I note that the 'full report' you are seeking access to comprises the following documents:
 - *A report on quantitative research to test a possible child care financial assistance model* (42 pages); and
 - *A report on quantitative research to test a possible child care financial assistance model – Appendices* (1,352 pages).
6. On 1 July 2015, you contacted me to discuss the request. During that discussion I noted that, as the full report was currently being used by the Department as the basis for its deliberations on future child care policy, it was likely that a decision would be made to exempt the full report under section 47C of the FOI Act (deliberative processes).

7. On 1 July 2015, I sent you an email containing a link to Part 6 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**the FOI Guidelines**), which contains relevant guidance on the interpretation and application of section 47C of that Act.
8. On 7 July 2015, the Department advised you that the preliminary estimate of the charge for processing your request was \$60. The Department received payment of the charge in full on 15 July 2015 (**receipt enclosed**).
9. I am authorised to make decisions under the FOI Act and my decision regarding your request and the reasons for my decision are set out below. The Document Schedule at **Attachment A** summarises my decision as it applies to the documents covered by your request.

Decision on access to documents

10. I am advised that the Department has in its possession two documents consisting of a total of 1,394 pages falling within scope of your request. Having considered these documents I have decided to grant access, in part, to two pages.
11. I have decided that all remaining pages contain material that is:
 - conditionally exempt under paragraph 47C(1)(a) of the FOI Act, because disclosure would disclose matter (deliberative matter) in the nature of an opinion, advice or recommendation obtained for the purpose of the deliberative functions of an agency; and
 - the material is not required to be disclosed because disclosure at this time would, on balance, be contrary to the public interest.
12. In reaching my decision, I have taken the following material into account:
 - your correspondence of 12 June 2015 outlining the particulars of your request;
 - your subsequent email dated 1 July 2015;
 - the Department's emails to you dated 1 July 2015;
 - our telephone conversation on 1 July 2015;
 - documents falling within the scope of your request;
 - the FOI Act;
 - factors relevant to my assessment of whether or not disclosure of certain pages would be in the public interest;
 - consultations with departmental officers about the nature of the documents and the Department's operating environment and functions; and
 - the FOI Guidelines.

Reasons for decision

Section 22 - Access to edited copies with exempt matter deleted

13. The FOI Act allows for the deletion of exempt material from a document so that the remainder of the document can be released.
14. I have decided that certain pages, as referred to in the Document Schedule at **Attachment A**, contain material that is exempt. Accordingly, I have deleted the exempt material from those pages where possible and have decided to release to you the balance of the documents. Such deletions are identified in the Document Schedule at **Attachment A**.

Section 47C of the FOI Act – deliberative processes

15. Section 47C of the FOI Act provides as follows:

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, an 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;
- (b) a Minister;
- (c) the Government of the Commonwealth; or
- (d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual information.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest to do so (see section 11A).

16. The FOI Guidelines contain useful guidance on the application of the conditional exemption set out under section 47C of the FOI Act, and I have taken into account the following paragraphs of Part 6 of the FOI Guidelines in making this decision:

Deliberative processes

6.58 The conditional exemption does not apply to:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters...

- 6.59 *The deliberative process exemption differs from other conditional exemptions in that no type of harm is required to result from disclosure. The only consideration is whether the document includes content of a specific type, namely deliberative matter.*
- 6.60 *While identifiable harm resulting from disclosure is not a specific factor in determining whether a document may be categorised as 'deliberative', it may be relevant subsequently when determining where the balance of the public interest lies. If, in a particular case, a deliberative document may be released without appreciable harm resulting, this would tend to indicate that it would not be contrary to the public interest to disclose the document and therefore it must be released to the applicant.*

Deliberative process

- 6.62 *A deliberative process involves the exercise of judgement in developing and making a selection from different options:*

...In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

- 6.63 *The deliberative process must relate to the functions of an agency, minister or the government of the Commonwealth...for the purposes of the FOI Act, the functions include both policy making and the processes undertaken in administering or implementing a policy....*

Assessing deliberative matter

- 6.66 *The agency must assess all the material to decide if it is deliberative matter that relates to, or is in the nature of, the deliberative processes of the agency or minister.*
- 6.67 *...The agency should assess the substance and content of the document before concluding it includes deliberative matter...*

Reports on scientific or technical matters

- 6.74 *As noted in paragraph 6.58 above, the s 47C conditional exemption does not apply to reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, including reports expressing experts' opinions on scientific or technical matters (s 47C(3)(a)).*
- 6.75 *The sciences include the natural sciences of physics, chemistry, astronomy, biology (such as botany, zoology and medicine) and the earth sciences (which include geology, geophysics, hydrology, meteorology, physical geography, oceanography and soil science). Technical matters involve the application of science, and include engineering.*
- 6.76 *The social sciences, or the study of an aspect of human society, are not scientific for the purposes of this exception (for example, anthropology, archaeology, economics, geography, history, linguistics, political science, sociology and psychology).*

17. Having examined the content and substance of the material falling within scope of your request I have decided that certain pages, as referred to in the Document Schedule at **Attachment A**, would

disclose deliberative matter in the nature of an opinion, advice or recommendation obtained from a third party organisation for the purpose of the deliberative functions of the Department.

18. Deliberative matter contained in these pages consists of detailed quantitative research, including the findings and subsequent recommendations made on the basis of that research, which was undertaken by the third party organisation to gauge and quantify Australian families' perceptions of (and likely behavioural responses to) a number of possible child care financial assistance models. The Department commissioned the third party to undertake this research in response to suggestions made recently in a report by the Productivity Commission as to how the current child care system could be made more responsive to the needs of Australian parents.
19. Having regard to the relevant paragraphs of the FOI Guidelines as set out above, in my view the employees of the third party organisation engaged to undertake the social research could not be considered to be making recommendations in the capacity of 'scientific or technical experts' (for the purposes of the exception set out under subsection 47C(3) of the FOI Act). Nor could the social research undertaken by them, which forms the underlying basis of the recommendations made in the full report, be construed as relating to any of the natural sciences specified in paragraph 6.75 of the FOI Guidelines.
20. Since almost all of the material contained in the full report consists of detailed analysis and recommendations relating to the quantitative research done on a range of potential financial child care assistance models, and the social context relevant to these models, I am satisfied that the deliberative matter falling within scope of your request relates to the social sciences (demographics and socio-economics in particular).
21. Accordingly, I have determined that the exception set out under subsection 47C(3) of the FOI Act does not apply to any of the material captured by the scope of the request. I have also determined that none of the material falling within scope is purely factual information or operational information.
22. I am therefore satisfied that the material in question (as referred to in the Document Schedule at **Attachment A**) is conditionally exempt under subsection 47C(1) of the FOI Act, as release of the material would disclose deliberative matter specifically prepared for the Department to inform and refine the Commonwealth Government's thinking processes around the development of new child care policy.
23. The Department must give you access to this material unless in the circumstances it would, on balance, be contrary to the public interest to do so.
24. When weighing up the public interest for and against disclosure, I have taken into account the following factors in favour of disclosure and the extent to which disclosure would:
 - promote the objects of the FOI Act; and
 - inform debate on a matter of public importance.
25. I have weighed against these factors the following factors indicating that access would be contrary to the public interest and the extent to which disclosure could reasonably be expected to:
 - inhibit the Department's ability to fully explore a range of different policy options relevant to its function as an agency responsible for the administration and implementation of child care programs and policy (among other things); and

- prejudice current decision making processes of the Department in relation to the development of future child care policy in Australia.
26. Based on these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the material in the abovementioned documents is outweighed by the public interest against disclosure.
27. In summary, I am satisfied that the material contained in these documents is conditionally exempt under paragraph 47C(1)(a) 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 these pages to you.
28. I have not taken into account any of the irrelevant factors set out under subsection 11B(4) of the FOI Act in making this decision.

Release of material

29. I have decided that material which is not subject to any exemptions under the FOI Act is to be released in part. Pages 4 and 9 of the full report are **enclosed** for release in part (as identified in the Document Schedule at **Attachment A**).

Rights of review

30. I have set out your rights to seek a review of my decision at **Attachment B**. Should you have any queries concerning this matter, please do not hesitate to contact me via email at foi@dss.gov.au

Yours sincerely



Alexandra Brown
Senior Legal Officer
Commercial, Child Care, Disability and Information Law Branch
Legal Services Group

19 August 2015

Document Schedule – Sara Rahman

Document Number	Page number	Date	Description	Decision on access
1	1 – 42	27 April 2015	<i>A report on quantitative research to test a possible child care financial assistance model</i>	<p>Pages 4 and 9: release in part</p> <p>Conditional exemption claimed under paragraph 47C(1)(a) of the FOI Act (deliberative processes); contrary to the public interest to release under subsection 11A(5)</p> <p>Pages 1 – 3, 5 – 8 and 10 – 42: exempt in full</p> <p>Conditional exemption claimed under paragraph 47C(1)(a) of the FOI Act (deliberative processes); contrary to the public interest to release under subsection 11A(5)</p>
2	1 – 1,352	Undated	<i>A report on quantitative research to test a possible child care financial assistance model - Appendices</i>	<p>Exempt in full</p> <p>Conditional exemption claimed under paragraph 47C(1)(a) of the FOI Act (deliberative processes); contrary to the public interest to release under subsection 11A(5)</p>

Your rights of review

Internal review

Section 54 of the FOI Act gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular format is required but it will help the new decision-maker if you state clearly why you consider the decision should be reviewed. Please send your application by post or email as follows:

Post: Commercial, Child Care, Disability and Information Law Branch, TOP CW2
Legal Services Group
Department of Social Services
PO Box 7576
Canberra Business Centre ACT 2610

Email: foi@dss.gov.au

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218 Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.

The Commonwealth Ombudsman

You can 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.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia on telephone 1300 362 072.