



11 April 2024

Our reference: LEX 78731

Lei Ying

Only by email: foi+request-11226-0xxxxxxx@xxxxxxxxxxx.xxx.xx

Dear Lei,

Decision on your Freedom of Information Request

I refer to your request, dated and received by Services Australia (the Agency) on 12 March 2024 for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

I request release of the following pages of the Operational Blueprint as an application pursuant to the Freedom of Information Act.

110-11010020 Creating or reviewing the investigation plan
110-11010030 Critical case reporting

In addition, the summary document for evidence gathering is requested.

110-11030000 Gathering information and evidence for fraud investigation

My decision

The Agency holds 3 documents that relate to your request.

I have decided to:

- grant you **part access** to one document (Document 1) with some of the content removed, and
- **refuse access** to 2 documents (Documents 2 and 3).

I have decided certain documents, and parts of a document, you have requested are exempt under the FOI Act as the documents contain:

- information affecting the enforcement of law (s37(1)(a) and s37(2)(b) exemptions), and
- information which if disclosed, would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency and release would be contrary to the public interest (section 47E(d) of the FOI Act)

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 the 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

YING, Lei – LEX 78731

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-3	30/10/2023	Gathering information and evidence for fraud investigations 110-11030000	Release in part	s 37(1)(a) s 37(2)(b) s 47E(d)	Information affecting enforcement of law deleted under s 37(1)(a) and s 37(2)(b) Operational information removed under s 47E(d)
2.	-	-	Creating or reviewing the investigation plan 110-11010020	Exempt in full	s 37(1)(a) s 37(2)(b) s 47E(d)	Information affecting enforcement of law deleted under s 37(1)(a) and s 37(2)(b) Operational information removed under s 47E(d)
3.	-	-	Critical case reporting 110-11010030	Exempt in full	s 37(1)(a) s 37(2)(b) s 47E(d)	Information affecting enforcement of law deleted under s 37(1)(a) and s 37(2)(b) Operational information removed under s 47E(d)



REASONS FOR DECISION

What you requested

I request release of the following pages of the Operational Blueprint as an application pursuant to the Freedom of Information Act.

110-11010020 Creating or reviewing the investigation plan

110-11010030 Critical case reporting

In addition, the summary document for evidence gathering is requested.

110-11030000 Gathering information and evidence for fraud investigation

On 13 March 2024 the Agency acknowledged your request and advised you we would not include out of scope details. You did not contact the Agency again about this. Out of scope details have therefore been redacted in accordance with section 22(1) of the FOI Act.

What I took into account

In reaching my decision I took into account:

- your request received on 13 March 2024
- the documents which falls 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 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 decision

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

I have decided that certain documents and parts of a document that 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.

Sections 37(1)(a) and 37(2)(b) - Documents affecting enforcement of law

I have applied the exemption in sections 37(1)(a) and 37(2)(b) to Documents 2 and 3, and parts of Document 1.

These sections of the FOI Act allow the Agency to exempt release of a document if disclosure could reasonably be expected to prejudice the conduct of an investigation of a

breach, or possible breach, of a law or disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law.

Documents 1 to 3 contain information relating to current Agency investigations into possible breaches of a law and would disclose the lawful investigation methods of the Agency.

Paragraph 5.82 of the Guidelines provides that a document should have a connection with the criminal law or the processes of upholding or enforcing civil law or administering a law, in order to be exempt under section 37(1)(a) of the FOI Act. This is not confined to court action or court processes, but extends to the work of agencies in administering legislative schemes and requirements, monitoring compliance, and investigating breaches.

I am satisfied that the release of the information in the documents would disclose information about the Agency's investigative procedures, and potentially adversely affect the current and future investigation undertaken by the Agency. It would also disclose methods and Agency procedures for investigating breaches or possible breaches of the social security law and this in turn would prejudice the effectiveness of these methods now and into the future.

Paragraph 5.108 of the Guidelines provides that the exemption under section 37(2)(b) of the FOI Act requires that two factors are satisfied. There must be a reasonable expectation that a document will disclose a method or procedure and a reasonable expectation or a real risk of prejudice to the effectiveness of that investigative method or procedure.

The material that is exempt in the documents details the Agency's investigative methods and procedures which are used by the Agency in relation to serious non-compliance matters generally. I also note the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I am satisfied that there is a reasonable expectation that the release of certain material in Documents 2 to 3 would disclose information about the Agency's investigative methods and procedures in relation to potential serious non-compliance cases. This includes the Agency's approach to gathering evidence and creating investigation plans.

There is a reasonable expectation of serious prejudice to the effectiveness of these investigative methods and procedures if the information were made publicly available. Release through FOI would undermine the Agency's ability to detect, investigate and take action in response to potential non-compliance with the social security law.

Moreover, if released, the information may potentially facilitate non-compliance by some customers by providing a means of understanding how to circumvent the Agency's investigative methods and avoid detection in the commission of welfare fraud.

For the reasons set out above, I am satisfied that the material is exempt under sections 37(1)(b) and 37(2)(b) of the FOI Act and will not be released to you.

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

I have applied the exemption in section 47E(d) to Documents 2 and 3 and parts of Document 1, as outlined in the Schedule.

This section of the FOI Act allows the Agency to exempt a document from release if its disclosure would have a substantial adverse effect on the Agency's ability to conduct its operations efficiently and properly.

Documents 1-3 contain information about how the Agency prevents and investigates fraud activity, including how relevant Officers review investigation plans, report cases and gather evidence used in the Agency's fraud cases.

It is critical that the Agency is able to ensure the ongoing and effective delivery of essential services to the Australian community. In order to do this, the Agency must ensure that:

- methods used to prevent, detect and investigate fraud remain effective and that ongoing investigations into breaches of the law are not compromised, to ensure payments are directed to those that need them, and
- the data and systems held and maintained by the Agency are secure to protect the privacy of Australians and the integrity of the Agency's operations.

Disclosure of the above material would have a substantial and adverse effect on the Agency's proper and efficient conduct as disclosure would undermine the Agency's ability to ensure the ongoing and effective delivery of the Agency's operations.

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, which is in the public interest. However, I also consider disclosure would increase the likelihood that individuals would use this information to commit Social Security fraud, or manipulate their circumstances to gain more favourable outcomes in fraud investigations. This in turn would significantly prejudice the Agency's ability to promptly and effectively deliver services to the Australian public.

While I have no reason to believe you would misuse the exempt materials in any way, the FOI Act does not control or restrict use or dissemination of the information once released in response to an FOI request, so I must consider actions that any member of the public might take once the information enters the public domain.

On balance and having weighed the factors in favour of disclosure against the factors against disclosure, I find the public interest in disclosing the material is outweighed by the public interest factors 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.



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 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 or by email to freedomofinformation@servicesaustralia.gov.au

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

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 'FOI 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.