



6 May 2024

Our reference: LEX 78943

Frank N Fearless (Right to Know)

Only by email: foi+request-11267-743ab7e7@righttoknow.org.au

Dear Sir/Madam,

Decision on your Freedom of Information Request

I refer to your request dated and received by Services Australia (the Agency) on 26 March 2024 for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

I seek "the final report which is currently in the process of being drafted" which is referred to in my previous FOI, Lex 78384. That is; the final report on the samples prepared by Services Australia to inform decisions on whether and how to waive or remediate its mountain of unlawful calculations.

With unlawful decision-making sitting somewhere between 54%-80% of all employment income related debts from 2003-2021, the public interest in disclosure is particularly compelling.

My decision

The Agency holds one document (totalling 68 pages) relating to your request.

I have decided to grant you **part access** to this document (document 1) with some of the content removed.

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

- the material contained within the document is subject to legal professional privilege (section 42 exemption)
- information, that if released, would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d) of the FOI Act), and
- personal information of a third party, the disclosure of which would be unreasonable and contrary to the public interest (section 47F(1) 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. You do not have to pay for a review of the decision. 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

Tara
Authorised FOI Decision Maker
Freedom of Information Team
FOI and Reviews Branch | Legal Services Division
Services Australia



SCHEDULE OF DOCUMENTS FOR RELEASE

Frank N Fearless (Right to Know) - LEX 78943

Doc No.	Pages	Description	Decision	Exemption	Comments
1.	1-68	Final Report for Income Apportionment Sampling Activity #2	Release in part	s 42 s 47E(d) s 47F(1)	Material subject to legal professional privilege removed under s 42. Operational information in relation to the proper and efficient conduct of the operations of an agency removed under s 47E(d). Personal information of third parties removed under s 47F(1).



REASONS FOR DECISION

What you requested

I seek "the final report which is currently in the process of being drafted" which is referred to in my previous FOI, Lex 78384. That is; the final report on the samples prepared by Services Australia to inform decisions on whether and how to waive or remediate its mountain of unlawful calculations.

With unlawful decision-making sitting somewhere between 54%-80% of all employment income related debts from 2003-2021, the public interest in disclosure is particularly compelling.

On 4 April 2024 the Agency acknowledged your request and advised you we would not include personal details about our staff (such as their names) without your consent. You did not contact the Agency again about this. Therefore, staff details have not 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 original request dated 26 March 2024
- the document which falls within the scope of your request
- consultation with third parties about a document containing/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 document
 - 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 parts of the document you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemptions apply to Document 1 are discussed below.

Section 42 of the FOI Act – legal professional privilege

I have applied the exemption in section 42 of the FOI Act to parts of the document.

Section 42 of the FOI Act provides:

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.

(3) A document is not an exempt document under subsection (1) by reason only that:

(a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and

(b) the information is operational information of an agency.

Paragraph 5.129 of the Guidelines provides the following guidance in relation to the application of section 42:

At common law, determining whether a communication is privileged requires a consideration of:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
- whether the advice given is independent
- whether the advice given is confidential. (*internal references omitted*)

Document 1 contains legal advice provided to the Agency with respect to income apportionment. I am satisfied the document is advice provided by legal advisers acting with the required level of independence from the client and there is a clear legal adviser-client relationship.

Without disclosing the content of the advice, I am satisfied that the exempted part of the document does more than demonstrate the existence of the advice, but disclose the conclusion and how it was relied upon.

I am satisfied LPP attaches to this document and LPP has not been waived, expressly or otherwise. The documents have not been distributed further than reasonably necessary for internal operational purposes. Furthermore, it has not been communicated or distributed in a way that would be inconsistent with the maintenance of confidentiality. I am also satisfied the substance of the legal advice contained in the document has not been used in any way which is inconsistent with the maintenance of the confidentiality of the advice.

I am satisfied if this document were disclosed, it would most certainly impair the overall outcome and how the advice was relied upon. Additionally, I am of the view disclosure of the legal opinions and interpretation of legal matters of the Agency in such matters is likely to result in some legal providers not to legal views, thus impairing the Agency's ability to carry out its

functions effectively and efficiently. I am satisfied real harm is likely to result from the release of the part of the document to which this exemption has been applied.

Conclusion

In summary, I am satisfied parts of Document 1 are conditionally exempt under section 42 of the FOI Act. Accordingly, I have decided not to release the document 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 document.

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.'

Parts of Document 1 contain details of the Agency's computer systems, including internal business and management processes and screen shots relating to the use of the Agency's computer systems that are not publicly available.

Disclosure of this information would result in sensitive internal agency information being placed in the public domain, resulting in increased vulnerability of the Agency's computer systems to cyber-attack.

The Agency's purpose is to provide high-quality government services and payments to Australians. It is a large, public facing, government organisation and cyber security is an integral part of the Agency's obligations to protect the information of all customers, staff and government information.

Internal positional mailboxes

Parts of Document 1 also contain information relating to internal positional mailboxes of the Agency.

The Agency's purpose is to provide high-quality government services and payments to Australians. It is a large, public facing, government organisation with many points of contact designed to facilitate its purpose. Because of this, the Agency receives a significant volume of correspondence from customers and members of the public each day.

The Agency's Annual Report for 2022-2023 notes that from 1 July 2022 to 30 June 2023, the Agency had 26.7 million Medicare customers, 9.5 million Centrelink customers and 1.1 million Child Support customers. There were over 10 million face-to-face interactions in service centres, 1.1 billion online transactions and 55.2 million calls handled.

Noting, the large volume of interactions the Agency has with the public, the Agency has established channels of communication for customers and members of the public, which have been put in place to ensure the effective management of the significant volume of communication received. Such channels include dedicated and externally published positional mailboxes of different business areas within the Agency. These have been established to ensure correspondence is directed to the correct area and actioned accordingly. These established channels are monitored to ensure quality of service and ensure the Agency can respond to increased demand in a particular service as required.

Substantial peripheral work occurs in handling an enquiry, including filing, record keeping, and statistical analysis. Ensuring customers contact a dedicated Agency line or publicly available positional mailbox guarantees the call or email can be appropriately triaged, there is a record of the contact and information can be collected to assist in the design and delivery of services. Doing so also assists the Agency management to direct resources to where they are most needed and rapidly respond to a surge in workload to avoid interruptions in service.

If contact were received directly, the onus of recording much of this data (which in most cases is currently automatically collected) would fall upon individual staff members, who would need to manually complete the tasks. This would negatively affect customers as more staff effort would be diverted to this task, and away from the provision of critical services. If this information is not recorded accurately, the integrity of Agency record keeping and reporting would be jeopardised, creating further difficulties in managing the correspondence received by the Agency.

If internal positional mailbox details were to be made publicly available, this would have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency for the following reasons:

- these are not in the public domain and are intended to be used to facilitate confidential and prompt communications within the Agency.
- correspondence received and directed could be mishandled, lost, duplicated or double-handled on account of it not being directed to the most appropriate teams through the publicly available communication channels.
- from time to time, email addresses are deleted or changed due to operational requirements, and if a member of the public sends an email to such an address, there is a high probability the email would not be actioned. This may result in services not being administered correctly, or at all.

Noting the Agency's interactions with the public number in the millions and billions, diverting people away from correct channels cannot be appropriately categorised as 'insubstantial' or 'nominal'.

For the reasons set out above, I am satisfied the disclosure of internal positional mailboxes are conditionally exempt under section 47E(d) of the FOI Act as release would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency.

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.

I have also consider the 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:

- prejudice the Agency's ability to safeguard its computer systems and the substantial amount of sensitive personal information it holds about millions of Australians
- increase the risk of individuals circumventing the Agency's established communication channels for their own benefit, and
- undermine existing mechanisms of contacting the Agency, resulting in a limited ability for the Agency to provide essential services to the Australian public.

Having regard to the factors above, I have decided that in the circumstances of this particular matter, the public interest in disclosing the information in the document is outweighed by the public interest against disclosure.

Conclusion

In summary, I am satisfied that parts of Document 1 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 document in full to you.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to part of document 1.

Section 47F of the FOI Act provides:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency or Minister considers relevant.

Personal Information

The term 'personal information' is defined as follows:

...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

Paragraph 6.130 of the Guidelines provides:

Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

I find Document 1 contains personal information of other people. This includes names, direct phone numbers, signatures and interactions with the Agency.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the Guidelines provides:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

In deciding if the disclosure of certain third party personal information would be unreasonable, I have considered the following factors:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of the Agency's collection and use of the information, and
- the fact the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I am satisfied the disclosure of certain third-party personal information would be unreasonable for the following reasons:

- it relates to aspects of an individual's personal affairs

- you do not have the consent from this individual for the release of their personal information, and
- the information is private and not available in full or in part from publicly-accessible sources.

On this basis, I have decided the personal information included in the Document 1 is conditionally exempt under section 47F(1) of the FOI Act.

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 as extracted above.

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 and inform the debate on a matter of public importance.

I have also considered the relevant factors weighing against disclosure, indicating access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- prejudice an individual's right to privacy, and
- adversely affect or harm the interests of an individual or group of individuals, including current employees and customers of the Agency.

Based on these factors, I have decided in this instance, the public interest in disclosing the information in Document 1 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 Document 1 are conditionally exempt under section 47F(1) of the FOI Act. Furthermore, I have decided on balance it would be contrary to the public interest to release this information. Accordingly, I have decided not to release the document in full to you.

Summary of my decision

In conclusion, I have decided to grant you part access to one document with some of the content removed.

I have decided parts of the document you have requested are exempt under the FOI Act on the basis the document contains:

- the material contained within the document is subject to legal professional privilege (section 42 exemption),
- 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), and
- personal information of third parties, the disclosure of which would be unreasonable and contrary to the public interest (section 47F(1) conditional exemption).



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.

Note 1: 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 or by email to freedomofinformation@servicesaustralia.gov.au

Note 2: 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 3: 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.