

OFFICIAL



Australian Government
Department of Finance

Reference: FOI 24-25/035
Contact: FOI Team
E-mail: foia@finance.gov.au

Gary Moorcroft
Via the Right to Know website

By email only: foi+request-12003-dff3286c@righttoknow.org.au

Dear Mr Moorcroft,

Decision and Statement of Reasons issued under the *Freedom of Information Act 1982* – FOI 24-25/035

On 4 September 2024, the Department of Finance (Finance) received your email, in which you sought access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to the following:

In accordance with the FOI Act, I request the release of the document titled "National Disability Insurance Scheme" referenced in the document Secretary / Minister Brief Titles - Budget 2024-25, released in FOI 24/004 and FOI/005 (Document 1).

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Authorised decision-maker

I am authorised by the Secretary of Finance and section 23(1) of the FOI Act to make decisions in relation to FOI requests.

My Decision

I have identified one document falling within the scope of your request. I have decided to refuse the release of this document in full as it contains information which, if released, would have a substantial adverse effect on the proper and efficient conduct of the operations of Finance.

Material taken into account

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- consultations with other Commonwealth agencies;
- the relevant provisions of the FOI Act, including sections 3, 11 and 11A; and

- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Locating and identifying documents

The document was identified by conducting searches of Finance's information management systems using all reasonable search terms that could return the document relevant to your request.

Relevant Finance staff able to identify the document within the scope of the request were also consulted.

Section 47E – Certain operations of agencies

Section 47E of the FOI Act relevantly 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.

The FOI Guidelines provide:

[6.90] For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur... There must be more than merely an assumption or allegation that damage may occur if the document is released.

[6.92] An agency cannot merely assert that an effect will occur following disclosure. The particulars of the predicted effect should be identified during the decision-making process, including whether the effect could reasonably be expected to occur.

...

[6.113] Examples of circumstances where the AAT has upheld the conditional exemption include where it was established that:

- disclosure of the Australian Electoral Commission's policies in relation to 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.

[6.115] The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its operations in an expected manner.

Part of Finance's operations as an agency are to support the Government's ongoing priorities through the Budget process. Finance's broader operations relating to the Budget include providing advice on expenditure to support Government to shape and deliver its fiscal and policy objectives, which includes the provision of high quality, informed advice to senior executives within the Department of Finance, other agencies, and Ministers on the preparation of the Budget. This includes preparing briefs which contain information and advice about the Budget for ministers and senior executives for the purposes of Senate Estimates.

The document requested contains information prepared for Budget 2024-25 and was prepared to inform and advise the Finance Minister and senior executives at the Department of Finance preparing for Senate Estimates about the National Disability Insurance Scheme. The document provides detail on the internal workings of Finance to achieve fiscal and

policy outcomes and set out the calculations and methodologies involved. Finance's internal processes in providing advice on government expenditure and non-taxation revenue matters in the context of the Budget are generally confidential to facilitate frank and informed advice to Government.

The document contains information provided by other Commonwealth agencies to enable Finance to properly and efficiently carry out its functions at Senate Estimates. The purpose of the document is to provide information and advice to senior executives about key elements of the Budget, and they are not intended for public release.

I consider that the release of this Senate Estimates brief could reasonably be expected to substantially adversely affect the proper and efficient management of the development of the Budget and associated processes. This is because it would cause Finance to change how it briefs and advises the Finance Minister and senior executives about the Budget process and Senate Estimates hearings. These changes would include redesigning how such information and advice is provided by Finance officials to senior executives and Ministers on Government spending and the National Disability Insurance Scheme to minimise the disclosure of such information. This would impact on the preparation of the Budget by Government.

For these reasons, I consider that release of the document requested would have a substantial adverse impact on the proper and efficient conduct of Finance's operations. As a result, I consider the document is conditionally exempt under section 47E(d) of the FOI Act.

Public interest test

Section 11A of the FOI Act relevantly provides:

- (5) 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.

In finding that the documents are conditionally exempt in part, I am required to consider whether it would be contrary to the public interest to give access to the information in the documents at this time.

Factors favouring disclosure

Section 11B of the FOI Act relevantly provides:

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

In considering the scope of your request and the content of the documents, I have taken into account the intention of the FOI Act to provide for open Government and that the release of the documents would promote transparency of Government activities.

I consider that the release of the documents would promote the objects of the FOI Act, inform debate on a matter of public importance and promote effective oversight of public expenditure.

Factors against disclosure

Paragraph [6.233] of the FOI Guidelines provides a non-exhaustive list of factors against disclosure. I consider that the following factors apply to these documents, in that the release of the information in the documents could reasonably be expected to:

- prejudice an agency's ability to obtain confidential information; and
- prejudice an agency's ability to obtain similar information in the future.

As indicated in my reasons in relation to paragraph 47E(d), I consider that the release of this information would adversely affect the proper and efficient management of Budget development processes, as it would cause Finance to make substantial changes to how it performs its Budget functions, which would adversely impact the quality of advice and timely delivery of the Budget and MYEFO. In turn, the release of this information would disincentivise the provision of candid advice and undermine advice to the Government.

I consider that these reasons weigh heavily against the release of the deliberative matter in the document. As such, I consider that the document should not be released.

Irrelevant factors

Section 11B of the FOI Act relevantly provides:

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

I have not taken into account any of these irrelevant factors.

Balancing public interest factors

The FOI Guidelines relevantly provide:

[6.238] To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts of the matter at the time the decision is made.

I acknowledge that there is public interest in providing access to the information in the documents. I also acknowledge that some information contained in the brief is published in Budget papers. However, on balance, I consider that the factors against disclosure of the brief outweighs the factors favouring disclosure.

This is because I consider that there is a public benefit to maintaining confidentiality over Senate Estimates briefs used to provide advice and information prepared in the Budget process to senior executives and Ministers on contractor conversion for Budget and MYEFO. This ensures that Finance can provide frank and unqualified briefings to support

the Minister and senior executives about the Budget for the purpose of preparing for Senate Estimates.


For this reason, I consider that the release of the brief which would have a substantial adverse impact on Finance's future management of the Budget would not be in the public interest. Therefore, on balance I consider the release of the conditionally exempt material in the documents would be against the public interest and have decided to refuse the release of this material.

Review and appeal rights

You are entitled to request an internal review or an external review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at **Attachment A**.

If you have any questions about this request, please contact the FOI Team on the above contact details.

Yours sincerely,

 Digitally signed
by Valenti, Donna
Date: 2024.10.04
16:05:09 +10'00'

Donna Valenti
Assistant Secretary
Social Services and Indigenous Australians Branch | Social Policy Division
Department of Finance
4 October 2024



Australian Government

Department of Finance

Legislation

A copy of the FOI Act is available at: <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

Internal Review (IR)

If you disagree with this decision, you can seek a review of the original decision. The review will be conducted by a different decision maker, usually someone at a more senior level.

You must apply for an IR within **30** calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Your request for an IR should include:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foia@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

Information Commissioner review

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for an Information Commissioner review of this decision. You must apply in writing within **60** calendar days of this notice.

For further information about review rights and how to submit a request for a review to the OAIC, please see <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the Information Commissioner within **30** calendar days of being notified of our decision to release your information.

The OAIC asks that you commence a review by completing their online form which is available on their website.

Your review application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

Phone: 1300 363 992 (local call charge).

Making a complaint

You may complain to the Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Information Commissioner can be directed to:

Phone: 1300 363 992 (local call charge)

Email: enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Finance as the relevant agency.