



8 May 2017

Our reference: LEX 25282

Mr Justin Warren

By email: foi+request-2952-748c3bc6@righttoknow.org.au

Dear Mr Warren

Decision on your Freedom of Information request

I refer to your revised request dated 6 February 2017 and received by the Department of Human Services (the **department**) on the same day for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

- ' - The business case document(s) for the Pay As You Go (PAYG) data matching initiative that is the subject of Question on Notice HS 15 from the Senate Community Affairs Legislation Committee Budget Estimates hearing on 3 June 2015.
http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/clacctte/estimates/bud1516/DHS/index
- Documents that describe the algorithm or process used to perform the data matching that identified the "approximately 1,080,000" discrepancies between PAYG data and data reported by DHS customers, as referred to in the Answer to Question HS 15.
- Documents that describe the analysis process for how the value of "historical discrepancies", as described in the Answer to Question HS 15, was determined. Such documents should describe the statistical method, the sampling process used, statistics returned (standard error, mean, confidence interval, etc.), how the likely average debt value was determined, etc.
- [the final version of the Requirements Specification (or similar document)] containing the program specifications/requirements used to define how the data matching process should be implemented by programmers. Such [a document] would refer to, for example, the use of certain fields to match on such as ABN, Business Name, Customer Name, etc

Where multiple revisions of documents exist, I am only interested in the version current at the time the Department refers to in its answer to HS15'.

My decision

The department holds 13 documents (totalling 287 pages) that relate to your request.

I have decided to **refuse access** to those documents.

I have decided that the documents that you have requested are exempt under the FOI Act, including because they are:

- documents prepared for and submitted to Cabinet or documents prepared for the purpose of briefing a Minister on a document to be submitted to Cabinet (section 34); and
- documents that detail the department's methods or procedures for detecting breaches of the law (section 37(2)(b)).

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

Processing Charge

On 16 February 2017, the department advised you that a preliminary assessment of the charge for processing your request was \$600.00. On the same day, you requested a reconsideration of charges.

On 20 March 2017, the department notified you of its reconsideration. The assessment of charges was reduced to \$510.00. On 21 March 2017, you requested an internal review of the reconsideration decision.

On 19 April 2017, the department notified you of the internal review decision, affirming the assessment of charges of \$510.00 for processing your request.

The payment of the charge in full was processed on 5 May 2017.

I have considered the actual cost of processing the request, for the purpose of considering whether to adjust the amount of the charge to you under Regulation 10 of the *Freedom of Information (Charges) Regulations 1982*. I am satisfied that the actual cost of processing the request was more than the decision on the charge, and accordingly no adjustment is necessary.

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 department, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how arrange a review.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Jonathon
Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division
Department of Human Services



LIST OF DOCUMENTS FOR RELEASE
RIGHT TO KNOW - JUSTIN WARREN - LEX 25282

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1	1 – 18	N/A	Costing	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
2	19 – 31	N/A	Costing	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
3	32 – 41	N/A	Costing	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
4	42 – 46	N/A	Proposal	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
5	47 – 60	N/A	Proposal	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
6	61 – 89	N/A	Proposal	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
7	90 – 102	N/A	Proposal	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
8	103 - 116	N/A	Proposal	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
9	117 – 122	N/A	Proposal	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
10	123 – 126	N/A	Proposal	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
11	127	N/A	Summary	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
12	128 - 129	N/A	Costing	Exempt in full	s 34	Whole document exempt under section 34 of the FOI Act.
13	130 – 287	11/6/2016	Pay As You Go (PAYG) Matched Risk Assessment	Exempt in full	s 37(2)(b)	Whole document exempt under sections 37(2)(b).



REASONS FOR DECISION

Your revised request

- ' - The business case document(s) for the Pay As You Go (PAYG) data matching initiative that is the subject of Question on Notice HS 15 from the Senate Community Affairs Legislation Committee Budget Estimates hearing on 3 June 2015.
http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/clacctte/estimate_s/bud1516/DHS/index
 - Documents that describe the algorithm or process used to perform the data matching that identified the "approximately 1,080,000" discrepancies between PAYG data and data reported by DHS customers, as referred to in the Answer to Question HS 15.
 - Documents that describe the analysis process for how the value of "historical discrepancies", as described in the Answer to Question HS 15, was determined. Such documents should describe the statistical method, the sampling process used, statistics returned (standard error, mean, confidence interval, etc.), how the likely average debt value was determined, etc.
 - [the final version of the Requirements Specification (or similar document)] containing the program specifications/requirements used to define how the data matching process should be implemented by programmers. Such [a document] would refer to, for example, the use of certain fields to match on such as ABN, Business Name, Customer Name, etc

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Request consultation process

On 2 February 2017, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request was too big to process. I gave you an opportunity to consult with the department to revise your request so as to remove the practical refusal reason.

On 6 February 2017, the department received your revised request.

What I took into account

In reaching my decision I took into account:

- your original request dated 14 January 2017 and your revised request on 6 February 2017;
- other correspondence with you;
- the documents that fall within the scope of your request;
- consultation with the Department of Prime Minister and Cabinet regarding Cabinet material;
- whether the release of material is in the public interest;

- consultations with departmental officers about:
 - the nature of the documents;
 - the department'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 decisions

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

I have decided that the documents 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.

Section 34 of the FOI Act - Cabinet documents

I have applied the exemption in section 34 to documents 1 to 12.

Section 34(1) of the FOI Act provides that:

'A document is an exempt document if:

- (a) both of the following are satisfied:
 - (i) it has been submitted to Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
- (b) it is an official record of the Cabinet; or
- (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
- (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.'

Section 34(3) of the FOI Act provides that:

'A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.'

Purely factual material in a Cabinet submission, record or briefing is not exempt unless its disclosure would reveal a Cabinet deliberation or decision that has not been officially disclosed.

Documents 1 to 12, to which you seek access, are documents submitted or proposed to be submitted to Cabinet having been brought into existence for the dominant purpose of that submission.

Cabinet documents are wholly exempt under the FOI Act. This exemption is 'designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined'.¹

Cabinet Submission

The exemption in section 34(1)(a) of the FOI Act applies to documents submitted, or proposed by a Minister to be submitted, to Cabinet for its consideration. This includes documents that are '*prepared simply to inform Cabinet and whose contents are intended to be noted by its Ministers*'.² Whether a document has been created for the dominant purpose of submission to Cabinet for its consideration will be a question of fact in each case.³ It is not required that submission to Cabinet be the only purpose for which the document was created. Section 34(1)(d) of the FOI Act applies to drafts of documents covered by section 34(1)(a) of the Act, described above.

Paragraph 63 of the Cabinet Handbook states that "[a]s a general rule, Ministers should put before their colleagues the sorts of issues on which they themselves would wish to be consulted". Paragraph 64 of the Cabinet Handbook goes on to state:

'the kind of issues that would normally require consideration by the Cabinet [include]:

(a) proposals relating to the delivery of the Government's priorities;

(b) significant or controversial policy issues;

(c) proposals affecting the Government's financial position, or important financial commitments'.

Documents 1 to 12 are draft costing documents, New Policy Proposal (NPP) documents and attachments to submissions which were created for submission to the Cabinet Expenditure Review Committee. I am satisfied that the documents were required to be created in order for the Cabinet to consider welfare compliance initiatives proposals and their impact on the Government's financial position and the implications in relation to the Government's Budget.

I am satisfied that the factual circumstances surrounding the creation of the Documents 1 to 12, in the scope of your request, indicate that the documents are exempt under section 34 of the FOI Act.

Conclusion

In summary, I am satisfied that Documents 1 to 12, as set out in the Schedule, are exempt under section 34 of the FOI Act. Accordingly I have decided not to release the documents to you.

Section 37(2)(b) of the FOI Act - documents affecting enforcement of law

I have applied the exemption in section 37(2)(b) to Document 13.

Section 37(2)(b) of the FOI Act provides that:

'(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

¹ Guidelines [5.55]

² *Toomer and Department of Agriculture, Fisheries and Forestry and Ors* [2003] AATA 1301, [67].

³ *Nick Xenophon and the Department of Defence* [2016] AICmr 14.

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'

Paragraph 5.109 of the Guidelines provides:

'Lawful methods and procedures' are not confined to criminal investigations and can, for example, extend to taxation investigations. The exemption focuses on an agency's methods and procedures for dealing with breaches of the law, where disclosure would, or could reasonably be expected to, adversely affect the effectiveness of those methods and procedures.'

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.

In *Community and Public Sector Union and Department of Health (Freedom of Information)* [2017] AICmr 33, the Australian Information Commissioner considered a document which contained details of methods and procedures used by the Department of Health and the Department of Veterans Affairs, in relation to investigating and auditing health claims and payments. In that matter, the Australian Information Commissioner held that if the document was disclosed, there would be a reasonable expectation or a real risk of prejudice to the effectiveness of the auditing and compliance methods and procedures of those agencies. Accordingly, the document was exempt from release under section 37(2)(b) of the FOI Act.

I have found that Document 13 is exempt under section 37(2)(b) of the FOI Act. The document relates to points two, three and four of your revised request. The document describes the risk assessment and detection strategies used by the department in relation to the Pay as You Go (PAYG) data matching activity.

I am satisfied that there is a reasonable expectation that the release of material in the Document 13 would disclose information about the department's investigative methods and procedures in relation to potential cases of non-compliance with social security law. This includes the precise data used in the PAYG data matching activity and the department's approach to evaluating and identifying potential instances of non-compliance. 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 also satisfied that there is a reasonable expectation of prejudice to the effectiveness of the department's data matching activities. If this information were made publically available, it would have the capacity to undermine the department's ability to detect, investigate and take action in response to potential non-compliance with the social security law. Moreover, it would potentially facilitate non-compliance by some customers by providing a means of understanding how to circumvent the department'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 section 37(2)(b) of the FOI Act and will not be released to you.



Attachment B

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

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

Asking for a formal review of an Freedom of Information 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 the Department of Human Services (the department); 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 departmental 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 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 department 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 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 Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department'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.