



30 August 2017

Our reference: LEX 31128

Mr Justin Warren

By email only: foi+request-3230-a9030c88@righttoknow.org.au

Dear Mr Warren

Freedom of Information Request – Internal Review Decision

I refer to your correspondence, dated and received by the Department of Human Services (the **department**) on 31 July 2017. You requested an internal review of the decision made by a delegate of the department on 27 July 2017 (LEX 28338) under the *Freedom of Information Act 1982* (the **FOI Act**).

I am an authorised decision-maker under subsection 23(1) of the FOI Act to make internal review decisions under section 54C of the FOI Act. My decision is set out below.

My decision

I have decided, under section 54C of the FOI Act, to affirm the original decision.

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

- operational information, the disclosure of which could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

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.

You can ask for a review of our decision

If you disagree with any part of the decision you can ask for an external review by the Office of the Australian Information Commissioner. See **Attachment B** for more information about how to arrange a review.

Further assistance

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

Yours sincerely

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



LIST OF DOCUMENTS

RIGHT TO KNOW - JUSTIN WARREN - LEX 31128

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-22	06/08/15	Risk Management Plan	Refuse in full	section 47E(d)	Operational information removed under section 47E(d)
2.	23-40	Various	Open Issues Summary	Refuse in full	section 47E(d)	Operational information removed under section 47E(d)
3.	41-45	Various	Progress Report	Refuse in full	section 47E(d)	Operational information removed under section 47E(d)
4.	46-69	Various	Issues Summary	Refuse in full	section 47E(d)	Operational information removed under section 47E(d)



Attachment A

REASONS FOR DECISION

What you requested

On 14 March 2017, you requested the following documents under the *Freedom of Information Act 1982* (the **FOI Act**):

- 'I request the following information relating to the initiative to match Centrelink data with data from the Australian Tax Office (ATO) to detect potential overpayment and the recovery of those overpayments from citizens. This initiative has been extensively covered by the media using various names, including #robodebt and #notmydebt.

- Documents listing identified risks, categorisations (Likelihood, Impact, etc.), and treatments in the period 1 Jan 2016 to 31 Dec 2016. You have previously indicated that these are known more specifically as:

a) Risk Plans
b) Weekly Reports
c) Issues and Escalated Issues Registers.

as per the FOI request listed here:

https://www.righttoknow.org.au/request/risk_governance_and_oversight_of_2, LEX 26567.'

Background

On 14 March 2017, the department received your FOI request (LEX 28228). On 23 March 2017, following a request consultation process with the department under section 24AB of the FOI Act, you revised your request to exclude draft documents.

On that basis, your revised request was framed in the following terms:

'I request the following information relating to the initiative to match Centrelink data with data from the Australian Tax Office (ATO) to detect potential overpayment and the recovery of those overpayments from citizens. This initiative has been extensively covered by the media using various names, including #robodebt and #notmydebt.

- Documents listing identified risks, categorisations (Likelihood, Impact, etc.), and treatments in the period 1 Jan 2016 to 31 Dec 2016. You have previously indicated that these are known more specifically as:

- a) Risk Plans
- b) Weekly Reports
- c) Issues and Escalated Issues Registers

as per the FOI request listed here:

https://www.righttoknow.org.au/request/risk_governance_and_oversight_of_2, LEX 26567.

Excluding draft documents.'

On 4 April 2017, the department contacted you to advise you were liable to pay a \$263.05 processing charge, in accordance with section 29 of the FOI Act. This preliminary estimate of the processing charge was based on four documents (totalling 78 pages) which the department had identified as falling within the scope of your FOI request.

On 20 March 2017, following your request dated 16 February 2017 for reconsideration of the charge, the department wrote to you to advise that some of the documents included in the calculation of charge were in fact outside the scope of the request. Accordingly, the number of identified documents falling within the scope of your FOI request was reduced to three documents (totalling 68 pages), and the charge was reduced to \$226.25.

On 13 June 2017, following your request for review of the charge on 15 May 2017, the department advised that the charge had been affirmed. You subsequently elected to pay the charge in full and, on 18 July 2017, your payment was processed by the department.

On 27 July 2017, the department provided its decision to you, refusing access to all documents because they are subject to exemption under section 47E(d) of the FOI Act.

What I took into account

In reaching my decision I took into account:

- your original request dated 14 March 2017 and your revised request dated 23 March 2017;
- the department's decision of 27 July 2017;
- your request for review dated 31 July 2017;
- the documents that fall within the scope of your request;
- whether the release of material is in the public interest;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**); and
- the FOI Act.

Calculation of charges

The department received your payment of \$226.25 on 18 July 2017. As a preliminary step in this internal review decision, I have examined the calculations which were used to determine the charge. I am of the view that the charge fairly reflects the work involved in processing your request and is a fair contribution towards the cost of processing your request.

Reasons for my decisions

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

I have decided that the documents 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.

Conditional Exemption - 47E(d) of the FOI Act

I have decided to apply the conditional exemption in 47E(d) of the FOI Act to documents 1 to 4, as identified in the schedule.

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.'

Do the documents contain information regarding the operations of the department?

For the purpose of this internal review, I have reviewed documents 1 to 4 as identified in the schedule. In summary, the documents comprise project management material for the department's Employment Income Matching (the **EIM project**), which is one of eight components of the 'Strengthening the Integrity of Welfare Payments' 2015-16 budget measure.

- document 1 is a risk management plan for the EIM project, which details potential risks for the EIM project and sets out strategies for mitigation;
- document 2 is an 'Open Issues Summary' document for the EIM project. This document details identified issues, the action taken to address each issue and the subsequent results;
- document 3 is an ICT progress report for the EIM project. This document details the progress of the EIM project against milestones and deliverables; and
- document 4 is an issues summary document for the department's EIM project. Similar to document 2, this document describes issues, the strategy to address each issue and the progress of the strategy.

Would/could disclosure of the documents have a substantial adverse effect on the proper and efficient conduct of the department?

Maintaining the integrity of Australia's social security and family assistance payment system is integral to the operations of the department. I am satisfied that there is a reasonable expectation that disclosure of the material contained in documents 1 to 4 would have a substantial adverse effect on measures used in undertaking this role and, as a result, the proper and efficient conduct of the department

In particular, documents 1 to 4 contain information sourced from departmental officers, regarding weaknesses and vulnerabilities in the EIM project. If this information were to be made publicly available, there is a reasonable expectation that disclosure would interfere with the department's ability to source frank and candid advice from departmental officers regarding such weaknesses, as they may not be forthcoming with information. This would, in turn, inhibit the department's ability to identify and rectify issues with the EIM project and future compliance intervention measures of this nature.

Further, the information contained in these documents provides significant insight into the manner in which the department undertakes compliance intervention. In particular, document 1 details potential risks or weaknesses with the EIM project and strategies for mitigating such

risks. Documents 2 to 4 disclose issues and gaps in the structure of the EIM project, particularly regarding ICT design, implementation processes and timeframes. The operational detail in these documents may enable a person motivated to circumvent the department's compliance activities, to undermine the effectiveness of the operations. Further, any disclosure resulting in the prejudice of the effectiveness of those compliance measure would, or could reasonably be expected to cause the department to change or divert the conduct of those measures, which may prejudice current operations. In addition, there would be a substantial adverse effect to operations whilst operational directives were reformulated.

In *Australian Associated Press Pty Ltd and Department of Immigration and Border Protection* [2016] AICmr 25 (the **AAP decision**), the Australian Information Commissioner (the **Information Commissioner**) considered whether the disclosure of a report into incidents connected to the 'Operation Sovereign Borders', would reasonably be expected to have a substantial adverse effect on conduct of the Department of Immigration and Border Protection (the **DIBP**). The document in question contained details regarding the surrounding circumstances of the incidents, including details of task direction, supervision and reporting.

The DIBP, in this case, submitted that disclosure of the material contained in this report would undermine the tactical advantage that border protection agencies have over threats in the maritime domain by providing operational information about assets engaged in those operational activities. In this decision the Information Commissioner had regard to the DIBP's submissions and held that such a document would be conditionally exempt under section 47E(d) of the FOI Act.

I consider that the circumstances in the AAP decision are analogous to the circumstances in your request. In particular, the documents in the AAP decision are comparable to the documents you have requested, in that they relate to operational details regarding issues with the EIM project, and the way in which the department responded to those issues. Similarly, disclosure of this material is likely to threaten the integrity of the EIM project and other compliance intervention measures, as there is a reasonable expectation that such measures will become exposed to external threats through the disclosure of the operational details in the documents.

Public interest considerations

Section 11A(5) of the FOI Act requires the department to disclose conditionally exempt documents unless in the circumstances it would be contrary to the public interest to do so.

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;
- promote effective oversight of public expenditure; and
- inform debate on a matter of public importance.

On this last point, while I accept that the 'Strengthening the Integrity of Welfare Payments' 2015-16 budget measure has been a the subject of media attention, the Guidelines stipulate that a link must be drawn between granting to the documents and a benefit to the public generally or a substantial section of the public.

Further, in *Paul Farrell and Australian Customs and Border Protection Service* [2015] AICmr 52 the then Information Commissioner considered the disclosure of information concerning

the Government's border control program. In this decision, the then Information Commissioner explained, at paragraph 24:

'This public interest balancing process must be undertaken in a context which accepts that the elected government has implemented a border control program of which the ACBPS [Australian Customs and Border Protection Service, which is now Department] operations are a part. While there is strong public and political debate about that program, it is not part of the IC review function to join that debate.'

I consider the above is applicable to the circumstances of your request. While the public debate surrounding the 'Strengthening the Integrity of Welfare Payments' 2015-16 budget measure is a consideration in favour of disclosure, this must be considered in the context which accepts that the 'Strengthening the Integrity of Welfare Payments' 2015-16 budget measure has been implemented by the elected government.

I have also considered the relevant factors weighing against disclosure. In particular, if the material in the documents were to be released

- as above, disclosure of the document would interfere with the exchange of frank and candid advice regarding the weaknesses in the EIM project and other compliance measures, which would in turn inhibit the effectiveness of the department's compliance intervention operations; and
- further, there is a significant risk that disclosure of the documents would expose the department's compliance measures to external threats as detailed operational information is disclosed, particularly regarding weaknesses in the ICT systems.

As noted in the original decision, in *'IN' and Australian Taxation Office* [2016] AICmr 33 (the **IN decision**), the then Acting Information Commissioner considered documents containing certain audit processes used by the ATO when conducting audits and information which initiated the audit.

In this decision, it was held that the material was conditionally exempt under section 47E(d) on the basis that the disclosure:

- could reasonably be expected to make it more difficult for the ATO to undertake audit activities generally; and
- could have a substantial adverse effect on the proper and efficient conduct of ATO operations.

Further, in considering whether disclosure of the material would be in the public interest, the then Acting Information Commissioner gave greater weight to the factors against disclosure, particularly the public interest in protecting the security of the ATO's IT systems and the confidentiality of the audit process.

I consider that the IN decision is analogous to the circumstances of your request. You have requested documents that disclose operational details of the department's compliance intervention measures, and the information used to initiating the compliance intervention process. As in the IN decision, disclosure of this information could reasonably be expected to make it more difficult for the department to undertake compliance measures generally and, on that basis, could have a substantial adverse effect on the proper and efficient conduct of the department's operations.

Further, similarly to *the IN decision* there is significant public interest in the protection of the department's compliance measures, particularly regarding the security of the IT system that underpins the EIM project.

When balancing all the relevant factors for and against release I have decided that in the circumstances of this particular request, the public interest in disclosing the information in the four documents is outweighed by the public interest against disclosure.

Summary of my decision

In conclusion, I have decided to affirm the original decision, provided to you on 27 July 2017, to refuse access to all four documents, in full, under section 47E(d) of the FOI Act.

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Application for review of decision

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by the Australian Information Commissioner.

Australian Information Commissioner review

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au Post: GPO Box 5218, Sydney NSW 2001 Email: enquiries@oaic.gov.au
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An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Commonwealth Ombudsman

You may 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.