



**Australian Government**  
**Department of Social Services**

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Mr Charles Powers  
via Right to Know

By email: [foi+request-4261-48c7a013@righttoknow.org.au](mailto:foi+request-4261-48c7a013@righttoknow.org.au)

Dear Mr Powers

**Freedom of Information (FOI) Request No. 17/18-067**

1. I refer to your correspondence received by the Department of Social Services (the Department) on 14 December 2017 in which you requested access under the *Freedom of Information Act 1982* (the FOI Act) to the following:

*"I would like all reports given to the Attorney-General, Attorney-General's Department or Office of Legal Services Coordination regarding compliance with the Legal Services Directions, including but not limited to annual compliance certificates, for the period 1 July 2015 to present."*

2. On 21 December 2017, the Office of the Australian Information Commissioner granted the Department a 30-day extension to process your request under section 15AB of the FOI Act.
3. I am authorised to make decisions under subsection 23(1) of the FOI Act. My decision regarding your request and the reasons for my decision are set out below.
4. The Schedule of Documents at **Attachment A** summarises my decision in relation to each document.
5. I have decided that there is no charge for processing your request.

**Decision on access to documents**

6. The Department has identified six documents, consisting of 26 pages, that fall within the scope of your request.
7. Having considered these documents, I have decided to grant access in part to six documents in accordance with section 22 of the FOI Act [access to edited copies with exempt or irrelevant matter deleted], on the grounds that the deleted material is considered exempt under section 47E [conditional exemptions – certain operations of agencies] and/or section 47F [conditional exemptions – personal privacy] of the FOI Act.

8. In reaching my decision, I have taken the following material into account:

- the scope of your request;
- the content of the documents falling within the scope of your request;
- the FOI Act;
- consultation with another government agency;
- consultations with departmental officers about the nature of the documents; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

#### **Reasons for decision**

#### **Section 47E of the FOI Act – public interest conditional exemption – certain operations of agencies**

9. Subsection 47E(d) of the FOI Act provides that:

*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.*

10. The identified material specifies the amount spent on specific legal firms by the Department.
11. Disclosure of this information could reasonably be expected to compromise the ability of the Department to contract law firms in the future as it reveals to each law firm the percentage of business they receive from the Department. This has the potential to subject future decisions about the procurement of legal services to undue pressure from law firms competing for the same business.
12. I am satisfied that releasing the identified material could have a substantial adverse effect on the proper and efficient conduct of the Department as it would undermine its ability to contract law firms free from undue pressure.
13. In light of the above, I have decided the specified material is conditionally exempt in accordance with section 47E(d) of the FOI Act.

#### **Section 47F of the FOI Act – public interest conditional exemption – personal privacy**

14. Subsection 47F(1) of the FOI Act provides that:

*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).*

15. The term 'personal information' in section 4 of the FOI Act has the same meaning as in the *Privacy Act 1988*, that is:

*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.*

16. Upon examination of the documents, I identified personal information, specifically the details of a legal matter relating to a third party, and names and contact details of Departmental staff.
17. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:
  - the extent to which the information is well known;
  - whether the persons to whom the information relates are known to be (or to have been) associated with the matters dealt with in the documents; and
  - the availability of the information from publicly accessible sources.
18. I am satisfied that the personal information specified above is not well known, the individuals are not known to be associated with the matters dealt with in the documents and the information is not available from publically available sources.
19. In light of the above, I find the identified personal information is conditionally exempt under section 47F of the FOI Act.

#### **The public interest test – sections 47E and 47F**

20. Section 11A(5) provides that the Department must give access to the material identified as conditionally exempt unless, in the circumstances, it would be, on balance, contrary to the public interest to do so.
21. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the FOI Guidelines together with a range of factors that favour access to a document set out in section 11B(3) of the FOI Act.
22. I consider that disclosing the conditionally exempt material may promote some of the objects of the FOI Act as information held by the Government is a national resource.
23. However, disclosure of the information could reasonably be expected to compromise the ability of the Department to undertake competitive procurement and prejudice the protection of the privacy of the individuals concerned.
24. Based on these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the information identified above is outweighed by the public interest factors against disclosure.
25. I have not taken into account any of the irrelevant factors set out under subsection 11B(4) of the FOI Act in making this decision.
26. As a result, I find the material exempt under sections 47E and 47F of the FOI Act.

#### **Release of documents**

27. Documents for release are enclosed and listed in the Schedule of Documents at **Attachment A**.

#### **Rights of review**

28. I have set out your rights to seek a review of my decision at **Attachment B**.

29. Should you have any enquiries concerning this matter please do not hesitate to contact me via email at [foi@dss.gov.au](mailto:foi@dss.gov.au) or on 02 6146 0348.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Beacroft', written over the printed name.

Dr Melanie Beacroft  
Assistant Director, Legislation & FOI  
Government & Executive Services Branch  
Corporate Services Group

12 February 2018

## Schedule of Documents

Document Number	Page Number	Date	Description	Decision
1.	1-3	13/11/17	Agency Notification Form	Release in part with deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47F (conditional exemption – personal privacy) of the FOI Act.
2.	4-9	18/08/17	Certificate of Compliance and Legal Services Expenditure Report for 2016-17 financial year	Release in part with deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47E (conditional exemption – certain operations of agencies) of the FOI Act.
3.	10-16	18/08/16	Certificate of Compliance and Legal Services Expenditure Report for 2015-16 financial year	Release in part with deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47E (conditional exemption – certain operations of agencies) of the FOI Act.
4.	17-18	16/10/15	Agency Notification Form	Release in part with deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47F (conditional exemption – personal privacy) of the FOI Act.
5.	19-20	16/10/15	Agency Notification Form	Release in part with deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47F (conditional exemption – personal privacy) of the FOI Act.
6.	21-26	28/08/15	Certificate of Compliance and Legal Services Expenditure Report for 2014-15 financial year	Release in part with deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47E (conditional exemption – certain operations of agencies) of the FOI Act.



## Your rights of review

### Internal review

Section 54 of the FOI Act gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review in writing within 30 days of receipt of this letter.

No particular format is required but it will help the new decision-maker if you clearly state why you consider the decision should be reviewed. Please send your application by post or email as follows:

Post: Freedom of Information (FOI) Team  
Government and Executive Services Branch  
Corporate Services Group  
Department of Social Services  
GPO Box 9820  
CANBERRA ACT 2601

Email: [foi@dss.gov.au](mailto:foi@dss.gov.au)

### External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review in writing or by using the online merits review form available on the AIC's website at [www.oaic.gov.au](http://www.oaic.gov.au), within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaint can be lodged in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: GPO Box 5218  
SYDNEY NSW 2001

Phone: 1300 262 992 or +61 2 9284 9749 (international)

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

In person: Level 3  
175 Pitt Street  
SYDNEY NSW 2000