



28 March 2019

Our reference: LEX 42754

Posty

Only by email: [foi+request-5274-479854ff@righttoknow.org.au](mailto:foi+request-5274-479854ff@righttoknow.org.au)

Dear Posty

### Decision on your Freedom of Information Request

I refer to your request, dated and received by the Department of Human Services (**department**) on 26 February 2019, for access to the following documents under the *Freedom of Information Act 1982 (FOI Act)*:

'(1) All documents contained within the file "EIC online compliance interventions 110-13090000" as listed on this page - referred to as your "Operational Blueprint" portal: <http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-13090000-01.html>

This includes all five "tabs" on the page - Background, Process Summary, Process, References and Resources.

(2) All documents contained within the file "Check and update past income (CUPI) service 110-18100129" as listed on this page - referred to as your "Operational Blueprint" portal: <http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-18100129-01.html>

This includes all six "tabs" on the page - Background, Process Summary, Process, References, Resources and Training & Support.'

### My decision

The department holds two documents (totalling 52 pages) that relate your request.

I have decided to **refuse access** to both documents on the basis that both documents contain material that is conditionally exempt under section 47E(d) of the FOI Act, and release is contrary to the public interest.

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decisions, 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 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 to arrange a review.

**Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto:FOI.LEGAL.TEAM@humanservices.gov.au).

Yours sincerely

**Jas**

Authorised FOI Decision Maker

Freedom of Information Team

Employment Law and Freedom of Information Branch | Legal Services Division

Department of Human Services



**Attachment A**

**SCHEDULE OF DOCUMENTS FOR RELEASE**  
**Posty (Right to Know) – LEX 42754**

<b>Doc No.</b>	<b>Pages</b>	<b>Date</b>	<b>Description</b>	<b>Decision</b>	<b>Exemption</b>	<b>Comments</b>
1	1-19	Accessed 18.03.2019	"EIC online compliance interventions 110-13090000"	Exempt in full	s 47E(d)	Entire document exempt in full.
2	20-52	Accessed 18.03.2019	"Check and update past income (CUPI) service 110-18100129"	Exempt in full	s 47E(d)	Entire document exempt in full.



## REASONS FOR DECISION

### What you requested

On 26 February 2019, the department received your request for access to the following documents under the FOI Act:

'(1) All documents contained within the file "EIC online compliance interventions 110-13090000" as listed on this page - referred to as your "Operational Blueprint" portal: <http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-13090000-01.html>

This includes all five "tabs" on the page - Background, Process Summary, Process, References and Resources.

(2) All documents contained within the file "Check and update past income (CUPI) service 110-18100129" as listed on this page - referred to as your "Operational Blueprint" portal: <http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-18100129-01.html>

This includes all six "tabs" on the page - Background, Process Summary, Process, References, Resources and Training & Support.'

### What I took into account

In reaching my decision I took into account:

- your request dated 26 February 2019;
- the documents falling within the scope of your request;
- consultations with departmental officers about:
  - the nature of the documents; and
  - the department's operating environment and functions;
- relevant case law;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**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 both documents are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemption applies to the documents are discussed below.

#### Section 47E – Public interest conditional exemptions – certain operations of agencies

I have decided to refuse access to both documents under the conditional exemption in section 47E(d) of the FOI Act.

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.’

*Does the document contain information regarding the operations of the department?*

The material included in the document contains information on how the department assesses the financial circumstances of a customer, including processes relating to debt recovery, debt calculation, evidence to be considered and other relevant issues.

*Would disclosure of the information have a substantial adverse effect on the operations of the department?*

Under paragraph 5.20 of the Guidelines, ‘a substantial adverse effect’ broadly means ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person’.

There is a reasonable expectation that if this information were made publicly available, it would have the capacity to undermine the conduct of the department’s operations, particularly in relation to the delivery and implementation of the Online Compliance Interventions (**OCI**) and Check and Update Past Income Service (**CUPI**) processes, which are online compliance and payment integrity measures.

The documents, by their very nature, disclose information about the OCI and CUPI infrastructure and workflows that underpin the delivery of the measure. Release of this material could potentially increase the risk of customers misrepresenting their circumstances, including their employment income. This could result in fraud and financial miscalculations, which would have a serious adverse effect on the proper conduct of the department.

It is therefore reasonable to consider that the release of these documents may undermine the effectiveness of departmental procedures in relation to investigating customer compliance. Release of the documents may also prejudice the department’s ability to collect the information it needs from income support recipients.

In *Duncan and Chief Executive Officer of Centrelink* [2011] AATA 660 (**Duncan**), DP Nicholson decided that documents containing information regarding Centrelink’s debt recovery processes were exempt under then section 40 of the FOI Act, which was in almost identical terms to section 47E(d) as currently enacted. DP Nicholson held at [33]:

In reaching the opinion on the application of the exemption to the [debt documents] I have had well in mind that if those matters, relating to the essential minimums to be applied by the agency in applying the new streamlined process, were to not be exempt there would be a predictable impact on the successful recovery of pensions, benefits or allowances. The important feature of those provisions is that they go to the heart of when and how the agency will exercise its discretion to seek recovery. What is then being sought is recovery of payments to which there is no entitlement. Knowledge of precisely how the agency will approach such recovery may itself be

encouraging of responses and accounting designed not to facilitate recovery but rather to facilitate non-recovery.

I consider that the decision in *Duncan* is analogous to the circumstances of your request, where you have sought access to documents that relate to the department undertaking compliance measures, the release of which may make it difficult for the department to conduct future compliance activities.

On this basis, I have decided that the release of the documents would substantially and unreasonably affect the proper and efficient conduct of the operations of the department and it is therefore conditionally exempt under section 47E(d) of the FOI Act.

#### *Public interest considerations*

Section 11A(5) of the FOI Act provides the following:

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

I have also considered the relevant factors indicating that access would be contrary to the public interest. In particular, I have considered:

- disclose procedures or methods for the conduct of agency investigations;
- prejudice the security and integrity of the department’s compliance measures;
- prejudice the department’s ability to obtain and effectively utilise similar information in the future; and
- increase the risk of customer misrepresentation.

In *‘IN’ and Australian Taxation Office* [2016] AICmr 33 (**IN**), the then Acting Australian Information Commissioner held that documents containing certain processes used by the ATO when conducting audits were conditionally exempt under section 47E(d) and their release was not in the public interest as release:

- 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.

I consider that the decision in *IN* is analogous to the circumstances of your request, where you have sought access to documents that relate to the department undertaking compliance measures, the release of which may make it difficult for the department to conduct future compliance activities.

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 above-mentioned documents 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.

### **Summary of my decision**

In summary, I am satisfied that the documents, if disclosed, would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the department.

Furthermore, I am satisfied that the public interest in disclosure is outweighed by the public interest against disclosure. Accordingly, I have decided to refuse access to the documents, under section 47E(d) of the FOI Act.



**Attachment B**

**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 an 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 the Department of Human Services (**department**); and/or
2. the Office of the Australian Information Commissioner (**OAIC**).

**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 Office of the Australian Information Commissioner**

If you do not agree with the original decision or the internal review decision, you can ask the OAIC 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 OAIC for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the OAIC.

You can **lodge your application**:

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

Post: Office of the Australian Information Commissioner  
GPO Box 5218



SYDNEY NSW 2001

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

**Note 3:** The OAIC generally prefers FOI applicants to seek internal review before applying for external review by the OAIC.

**Important:**

- If you are applying online, the 'Review Application Form' is available at <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.
- 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 OAIC and Commonwealth Ombudsman**

***Office of the Australian Information Commissioner***

You may complain to the OAIC 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 OAIC must be made in writing. The OAIC's contact details are:

Telephone: 1300 363 992  
Website: [www.oaic.gov.au](http://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](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.