



3 May 2019

Our reference: LEX 43566

Posty

Only by email: foi+request-5274-479854ff@righttoknow.org.au

Dear Posty

Freedom of Information request – Internal Review

I refer to your correspondence, dated 3 April 2019 and received by the Department of Human Services (**department**) the same day, requesting an internal review of the decision made by a delegate of the department under the *Freedom of Information Act 1982 (FOI Act)* dated 28 March 2019 (LEX 42754) (**original decision**).

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

Internal Review Decision

Consistent with the requirements of section 54C(2) of the FOI Act, I have made a fresh decision in relation to LEX 41394.

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 they contain material which is conditionally exempt under section 47E(d) of the FOI Act, and release is contrary to the public interest.

I have affirmed the original decision in LEX 42754 and decided to **refuse your request**.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

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. 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

Katie

Authorised FOI Decision Maker

Freedom of Information Team

Employment Law and Freedom of Information Branch | Legal Services Division

Department of Human Services



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

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
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

Original decision

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.'

On 28 March 2019, the original decision maker notified you of their decision to refuse access to the requested documents on the basis that they were exempt in full under section 47E(d) of the FOI Act.

On 3 April 2019, you sought internal review of the original decision.

What I took into account

In reaching my decision I took into account:

- your request dated 26 February 2019;
- the department's original decision dated 28 March 2019;
- your internal review request dated 3 April 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, including internal review decisions under section 54C of the FOI Act.

I have decided that both documents are exempt under the FOI Act because disclosure of the documents would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the department. My findings of fact and reasons for deciding that the exemption applies to the documents are set out below.

Section 47E(d) of the FOI Act – Operations of the department

I have applied the conditional exemption in section 47E(d) of the FOI Act in full to the documents.

Section 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.

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

The documents contain material about the department's services relating to Online Compliance Interventions (**OCI**) and Check and Update Past Income Service (**CUPI**). This includes information about how the department assesses a customer's financial circumstances as well as processes relating to the calculation and recovery of customer debts.

On this basis, I am satisfied the documents contain information regarding the operations of the department.

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

Paragraph 5.20 of the Guidelines provides that a 'substantial adverse effect' broadly means:

'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'.

I am satisfied there is a reasonable expectation that the release of the documents would undermine the department's delivery and implementation of online compliance and payment integrity measures.

The documents contain material about the department's OCI and CUPI infrastructure and associated workflow delivery measures. Disclosure of this material could increase the risk of customers attempting to dishonestly or fraudulently misrepresent their financial circumstances to the department during compliance interventions. This is likely to frustrate efforts by the department to correctly calculate customers' employment income; and increase the risk that compliance initiatives will be evaded or manipulated.

I also consider the release of this material would likely undermine the proper and efficient conduct of the department's investigations procedures relating to customer compliance. Disclosure of this information would likely prejudice the department's ability to collect accurate employment and financial information required from income support recipients.

In the matter of *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. At the time of this decision section 40 of the FOI Act was drafted in almost identical terms to section 47E(d) of the currently enacted FOI Act. At [33] of the decision DP Nicholson held:

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.

Similar to the applicant in *Duncan*, you have requested access to documents relating to the department's compliance measures and as such, the circumstances and decision in *Duncan* are analogous to that of your request. Accordingly, I find that the release of the requested material is likely to inhibit the department's future compliance activities.

In summary, I find that the documents are conditionally exempt under section 47E(d) of the FOI Act because release would likely have a substantial adverse effect on the proper and efficient conduct of the operations of the department.

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 whether release would:

- disclose the department's investigation procedures or methods;
- potentially increase the risk of customer's misinterpreting their financial circumstances;
- potentially increase instances of customer fraud against the department;

- prejudice the department's ability to undertake and manage customer compliance measures; and
- prejudice the security and integrity of those compliance measures;

In the decision of *'IN' and Australian Taxation Office* [2016] AICmr 33 (*IN*), the then Acting Australian Information Commissioner found that documents containing information about how the ATO conducted audits were conditionally exempt under section 47E(d). They determined release of the documents was not in the public interest because disclosure could reasonably be expected to inhibit the ATO's auditing activities and prejudice the security of the ATO's IT systems.

I consider that the circumstances and decision in *IN* are analogous to that of your request. Release of this material is likely to both prejudice the security of existing systems and inhibit the department's future compliance activities.

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.

On balance, I consider that the relevant public interest factors in favour of disclosure of the requested documents are outweighed by the public interest factors against disclosure.

Summary of my decision

I have decided that disclosure of the documents would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the department.

I am also satisfied that the public interest in favour of disclosure of these documents is outweighed by the public interest against disclosure.

Accordingly, I have decided to affirm the department's original decision dated 28 March 2019 and 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

Post: Office of the Australian Information Commissioner
GPO Box 5218

SYDNEY NSW 2001

Email: 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

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.