



24 October 2019

Our reference: LEX 45328

Posty  
Right to Know

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

You have requested the Information Commissioner (**IC**) review the Department of Human Services' (**department**) internal review decision dated 3 May 2017 (LEX 42754) (**internal review decision**) in relation to your request for access to documents under the *Freedom of Information Act 1982* (**FOI Act**).

Your request was for access to the following documents:

'(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.'

### Background

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

The department's internal review decision decided to refuse you access in full 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.

### Variation of the internal review decision

Section 55G of the FOI Act provides that the department may vary, or set aside and substitute, the internal review decision at any time during IC review if the variation or substitution (**revised decision**) would have an effect of, among other things, giving access to documents sought in accordance with a request.

The department has decided to make a revised decision under section 55G of the FOI Act in relation to your request.

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

I have decided to vary the department's internal review decision and **grant you part 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.

### **How we will send the documents to you**

The documents are **attached**.

Please note that the material contained in these documents is not reflective of current departmental process. Documents 1 and 2 are no longer current Operational Blueprints and have been superseded.

### **You can ask for a review of this revised decision**

If you disagree with any part of this revised decision, you can advise the Office of the Australian Information Commissioner (**OAIC**) that you wish to continue with the IC review of your request. You do not have to pay for reviews of decisions.

**Attachment B** provides more information about how to continue the review process.

### **Further assistance**

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

Yours sincerely

**Nicole**

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 45328**

<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 part	s 47E(d)	Document contains material affecting operations of the department under s 47E(d) of the FOI Act.
2	20-52	Accessed 18.03.2019	"Check and update past income (CUPI) service 110-18100129"	Exempt in part	s 47E(d)	Document contains material affecting operations of the department under s 47E(d) of the FOI Act.



## 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 department's original decision dated 28 March 2019 (LEX42754);
- the department's internal review decision dated 3 May 2019 (LEX43566).
- your request for Information Commissioner review;
- 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 in part 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 parts of 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 documents outline the department’s internal procedures for Compliance Officers when they are assisting customers to complete online compliance activities under the Earned Income Confirmation (EIC) Programme or the Check and Update Past Information (CUPI) Programme. The documents contain material relating to how the department investigates, assesses and undertakes online compliance activities.

Accordingly, I am satisfied that 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 explains that ‘substantial adverse effect’ is broadly taken to mean ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person’.

The documents disclose information about the EIC Programme and the CUPI Programme infrastructure and workflows that underpin the delivery of these measures. There is a reasonable expectation that if this information were made publicly available, it would have the capacity to undermine the department's operations relating to delivery and implementation of online compliance and payment integrity measures.

I consider that the release of certain material contained in the documents could provide a means for customers to misrepresent their circumstances, including their employment income. Such activity could ultimately increase the risk of fraudulent behaviour from customers and financial miscalculation by the department. I consider that this would have a serious adverse effect on the proper and efficient conduct of the operations of the department.

In *Duncan and Chief Executive Officer of Centrelink* [2011] AATA 660 (**Duncan**), DP Nicholson decided that 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.

You have also 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. Therefore, I consider that the decision in *Duncan* is analogous to the circumstances of your request.

I have decided that the release of certain material contained in the documents would substantially and unreasonably affect the proper and efficient conduct of the operations of the department. Therefore I have decided that parts of the documents are 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.

Based on these factors, I have decided that, in this instance, the public interest in disclosing the information in the 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 parts of the documents are conditionally exempt under section 47E(d) of the FOI Act. Furthermore, I am satisfied that the public interest in disclosure is outweighed by the public interest against disclosure.

Accordingly, I have varied the department's internal review decision dated 3 May 2019 (LEX43566) and have decided to grant you part access to the documents.



**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 the Office of the Australian Information Commissioner (**OAIC**).

**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.