



15 April 2019

Our reference: LEX 43040

Ms Evelyn Doyle

Only by email: foi+request-5299-abc3f4fe@righttoknow.org.au

Dear Ms Doyle

Decision on your Freedom of Information Request

I refer to your request dated 10 March 2019 and received by the Department of Human Services (**department**) on the same date for access under the *Freedom of Information Act 1982* (**FOI Act**) to the following document:

'I note in a Sydney Morning Herald newspaper article dated 30 October 2018, there is mention of a \$51m trial to outsource Centrelink call centre services to Serco.

Since then, the department has proceeded with a large call centre outsourcing project to various companies based on the report outlining the findings of the trial, and from which the decision to outsource was made.

I would like to request a copy of the report under administrative access, as I assume the department has it ready to hand or could provide a link. I searched the Department of Human Services website but have not managed to locate the report'.

My decision

The department holds one document that is within scope of your request.

I have decided to **refuse access** to this document in its entirety, on the basis that it is exempt under section 34(1)(a) of the FOI Act, as it has been submitted to Cabinet for its consideration and it was brought into existence for the dominant purpose of submission for consideration by Cabinet.

Please see the schedule at **Attachment A** to this letter for information about the document and the reasons for my decision, including the relevant sections of the FOI Act.

Assessment of FOI processing charges

On 28 March 2019, the department notified you, pursuant to section 29 of the FOI Act, of the preliminary assessment of charges in the amount of \$44.50. This amount was based on an estimate of the time that would be involved to process your request and was calculated in accordance with regulation 9 of the *Freedom of Information (Charges) Regulations 1982* (**Charges Regulations**).

On 1 April 2019, your payment of the charge was received by the department.

In accordance with regulation 10 of the Charges Regulations, I have considered the actual time taken to process your request to determine whether the reconsidered charges ought to be adjusted.

I have decided that the reconsidered charges are a fair and accurate reflection of the time taken to process your request.

On that basis, I have decided not to adjust the charge and have fixed the charges under regulation 10 of the Charges Regulations.

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

Yours sincerely

Robert

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
DOYLE, Evelyn - LEX 43040

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-45	-	Evaluation Report	Exempt in full	s 34(1)(a)	Pages 1-45: Cabinet document exempt under s 34(1)(a).



REASONS FOR DECISION

What you requested

'I note in a Sydney Morning Herald newspaper article dated 30 October 2018, there is mention of a \$51m trial to outsource Centrelink call centre services to Serco.

Since then, the department has proceeded with a large call centre outsourcing project to various companies based on the report outlining the findings of the trial, and from which the decision to outsource was made.

I would like to request a copy of the report under administrative access, as I assume the department has it ready to hand or could provide a link. I searched the Department of Human Services website but have not managed to locate the report'.

What I took into account

In reaching my decision I took into account:

- your request dated 10 March 2018;
- the document that falls within the scope of your request;
- comments provided by the Department of the Prime Minister and Cabinet regarding application of the Cabinet exemption;
- Cabinet Handbook issued by the Department of the Prime Minister and Cabinet, 12th Edition (**Cabinet Handbook**);
- consultations with departmental officers about:
 - the nature of the documents;
 - the department's operating environment and functions;
- 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 the document you have requested is exempt under the FOI Act. My reasons for deciding that an exemption applies to that document are discussed below.

Section 34(1)(a) of the FOI Act – Cabinet documents

I have applied the exemption in section 34(1)(a) to the document, in full.

Paragraph 5.55 of the Guidelines states:

The Cabinet exemption in s 34 of the FOI Act is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined. Like the other exemptions in Division 2 of Part IV, this exemption is not subject to the public interest test. The public interest is implicit in the purpose of the exemption itself.

Section 34(1)(a) of the FOI Act provides that:

(1) A document is an exempt document if:

(a) both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet;

Was the document brought into existence for the dominant purpose of submission for consideration by the Cabinet?

Paragraph 5.64 of the Guidelines states that:

To be exempt under s 34(1)(a), a document must have been created for the dominant purpose of being submitted for Cabinet's consideration and must have actually been submitted or have been proposed by a sponsoring minister to be submitted. Documents in this class may be Cabinet submissions or attachments to Cabinet submissions.

Furthermore, paragraph 5.66 and 5.67 of the Guidelines provides the threshold for this exemption:

The use of the word 'consideration' rather than 'deliberation' in s 34(1)(a) indicates that the Cabinet exemption extends to a document prepared simply to inform Cabinet, the contents of which are intended merely to be noted by Cabinet.

Whether a document has been prepared for the dominant purpose of submission to Cabinet is a question of fact. The relevant time for determining the purpose is the time the document was created.

In *Re Toomer and Department of Agriculture, Fisheries and Forestry and Ors* [2003] AATA 1301 (**Re Toomer**) at [68] President Forgie provided:

Having examined the meaning of the words individually, it seems to me that they confirm what is clear on the face of s. 34(1)(a).. That is, that it exempts from disclosure a document that has been created for the purpose of being presented to Cabinet for it to deliberate upon, take into account or to reflect upon and that has either been presented to Cabinet for that purpose or is proposed by a Minister to be presented to Cabinet for that purpose. The choice of the word "consideration" in s. 34(1)(a), rather than the word "deliberation" chosen in s. 34(1)(d), suggests that the exemption extends to a document that is prepared simply to inform Cabinet and whose contents are intended to be noted by its Ministers...

The Capability Improvement Branch are the responsible area within the department for this document. This Branch has confirmed that the document was brought into existence for the dominant purpose of submission for consideration by Cabinet and has been submitted to Cabinet.

The Minister for Human Services and Digital Transformation, the Hon Michael Keenan MP (**Minister**), tabled a document in the Senate, dated 4 December 2018, that confirmed that the document was brought into existence for Cabinet, stating:

The KPMG report is a Cabinet document, created for the purpose of informing decisions of the Cabinet.

In accordance with paragraph 133 of the Cabinet Handbook, I have consulted with the Department of the Prime Minister and Cabinet (**PM&C**) regarding this document. PM&C advised that the document was submitted to Cabinet for its consideration and it was brought into existence for the dominant purpose of submission for consideration by the Cabinet.

Given the responses from the Capability Improvement Branch, the Minister and PM&C, I am satisfied that the document is exempt under section 34(1)(a) of the FOI Act.

Has the existence of the Cabinet deliberation or decision been officially disclosed?

Section 34(6) of the FOI Act provides that, in a document to which section 34(1) of the FOI Act applies, information is not exempt if it is purely factual material unless:

- (a) the disclosure of the information would reveal a Cabinet deliberation or decision, and
- (b) the existence of the deliberation or decision has not been officially disclosed.

‘Deliberation’ is explained at paragraph 5.75 of the Guidelines to be:

...interpreted as active debate in Cabinet, or its weighing up of alternatives, with a view to reaching a decision on a matter (but not necessarily arriving at one). In *Re Toomer*, Deputy President Forgie analysed earlier consideration of ‘deliberation’ and concluded:

Taking its [Cabinet’s] deliberations first, this means that information that is in documentary form and that discloses that Cabinet has considered or discussed a matter, exchanged information about a matter or discussed strategies. In short, its deliberations are its thinking processes, be they directed to gathering information, analysing information or discussing strategies. They remain its deliberations whether or not a decision is reached. [Cabinet’s] decisions are its conclusions as to the courses of action that it adopts be they conclusions as to its final strategy on a matter or its conclusions as to the manner in which a matter is to proceed.

Furthermore, *Re Toomer*, affirms that documents can disclose Cabinet deliberations, even when the document was prepared prior to the Cabinet meeting at which the relevant matter was discussed.

The term 'officially disclosed' is not defined in the FOI Act. The Guidelines state at paragraph 5.78:

The disclosure may be a general public disclosure (for example, a statement in a consultation paper published on a Departmental website) or a disclosure to a limited audience on the understanding that it is not a confidential communication. The disclosure must be 'official' — for example, authorised by Cabinet or made by a person (such as a minister) acting within the scope of their role or functions.

However, in *Re Toomer*, before the FOI Act amendments in 2010, 'officially disclosed' was instead referred to as 'officially published'. Paragraph 101 explains:

The words should be given their meanings as they are ordinarily understood. When that is done, it means that the exclusion relates to a document that has two qualities. The first is that it is a document that makes the decision generally known... It is not an announcement that is made confidentially but may be an announcement made to a limited audience if the understanding is that it is not conveyed on a confidential basis or for a limited purpose. The second quality must be that the document by which the decision is published must be written or issued as one of the functions of the person or body responsible for publishing it. That is to say, it must publish the decision officially. Given the evidence as to the manner in which Cabinet considers matters taken to it by Ministers of government, it is conceivable that a decision might be officially published in a document approved by Cabinet or in a document approved by the Minister responsible for the matter. Whether a document officially publishes a decision depends upon the evidence.

On 23 April 2018, the Minister's office issued a media release stating:

An independent evaluation of the Serco pilot also found that staff were efficient and were giving the department greater flexibility around peak demand periods.

On 30 October 2018 the Minister's office issued a media release stating:

Queenslanders can expect to see a steady improvement in customer service at Centrelink, with 2750 additional call centre workers promised by the Coalition Government now starting to come on board.

...

The new workers are being engaged through partnership arrangements with Australian-based call centre operators who are leaders in their field.

Also on 30 October 2018, a number of journalists reported that the Minister had referred to a review of the Serco pilot in Centrelink call centres. The Guardian and the Sydney Morning Herald published articles indicating the Minister had stated that the report found that outsourced workers 'answered more calls each day, had less down time between calls, were cost effective and ranked equally for customer satisfaction'.

While the statements show that the Serco pilot review has been a topic of recent media interest, these media releases do not make any definitive announcement about a decision or deliberation of Cabinet, or the Government. Rather they provide factual information about government initiatives and programs, without reference to a decision or deliberation of the Cabinet having been taken. At this time, I have no evidence before me to demonstrate that there has been an official disclosure, or official publication, of the existence of a deliberation or decision of Cabinet.

In particular, I note that on 26 November 2018, the Minister provided this statement that was tabled in the Senate:

The Government will continue to provide information to the public when it is appropriate to do so. Future release of this report will take place in keeping with the normal practices of the Government, following the completion of the appropriate processes.

Furthermore, on 4 December 2018 in a further letter from the Minister that was tabled in the Senate he stated:

The release of the report would, in my view, be contrary to the public interest because it would expose Cabinet deliberations and thereby breach Cabinet confidentiality.

...

The Order made on 3 December 2018 asserts that "significant portions of the final report have been referred to in the media". This assertion is entirely false. On multiple occasions in Senate Estimates, in both chamber, and in the media, the Department of Human Services officials and the Government have been asked to explain the successful trial of contracted staff within the Department. Department officials and members of the Government have responded to these questions within the bounds of Cabinet confidentiality.

The Cabinet Handbook notes at paragraph 27:

Obviously general information about what has been decided by the Cabinet is, on occasion, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.

It is expected that a minister or other authorised person may, in the ordinary course of government business, discuss matters and make announcements that pertain to Cabinet decisions or deliberations without officially disclosing their existence. The letter by the Minister to the Senate (dated 4 December 2018) accepts that, while information about the Government's trial of contracted staff within the Department has been disclosed in response to media enquiries and in the course of Government business, this has only occurred within the bounds of Cabinet confidentiality.

On the basis of the above, I am not satisfied that the existence of a decision or deliberation of Cabinet, which would be revealed by disclosure of the document, has been officially disclosed. I am also satisfied that any purely factual material that exists in the document cannot be reasonably extracted from deliberative matters, the release of which would reveal a Cabinet decision or deliberation that has not been officially disclosed.

Therefore, I am not satisfied that the decision or deliberation of Cabinet that would be revealed through release of the document has, to date, been officially disclosed such that section 34(6) of the FOI Act applies.

Conclusion

I have decided to refuse access to the document in its entirety, on the basis that it is exempt under section 34(1)(a) of the FOI Act, as the document has been submitted to the Cabinet for its consideration and it was brought into existence for the dominant purpose of submission for consideration by Cabinet.



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 an 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 Australian Information Commissioner.

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 or FOI.LEGAL.TEAM@humanservices.gov.au.

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 Australian Information Commissioner

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

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- 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 Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner 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 Australian Information Commissioner must be made in writing. The Australian Information Commissioner'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.