



20 August 2019

Our reference: LEX 45021

Ms Evelyn Doyle

Only by email: foi+request-5468-fefbed1b@righttoknow.org.au

Dear Ms Doyle

Decision on your Freedom of Information Request

I refer to your request dated 7 June 2019 and received by the Department of Human Services (**department**) on the same day for access under the *Freedom of Information Act 1982* (**FOI Act**) to the following documents:

'1. All Ministerial Briefs relating to the decision to outsource Centrelink call centres dated from January 1, 2016 (as advised by your team).

(Some Briefs may refer to the KPMG Serco Trial Report so this might be one of many useful search terms.)

2. Any general correspondence (letters, emails) to the Minister or the department from KPMG, Concentrix Services, Serco, DataCom Connect and Stellar Asia Pacific that relate to the Serco trial or the decision to outsource Centrelink call centre services (please exclude documents that relate to the official tender process).

Also please exclude the 'Serco Trial Report' in the request as an earlier request LEX 43923 noted it remains Cabinet classified.'

My decision

The department holds three documents that relate to your request.

I have decided to:

- grant you **part access** to one document (document 1) with some of the content removed; and
- **refuse access** to two documents (documents 2 and 3).

I have decided that certain parts of the documents that you have requested are exempt under the FOI Act, including:

- information that was brought into existence for the dominant purpose of briefing a Minister on a document for consideration by Cabinet (section 34(1)(c) exemption);
- information the disclosure of which would reveal a Cabinet deliberation or decision the existence of which has not been officially disclosed (section 34(3) exemption);

- information the disclosure of which would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency, and would be contrary to the public interest (section 47E(d) conditional exemption); and
- personal information of other people, the disclosure of which would be contrary to the public interest (section 47F(1) conditional exemption).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision, including the relevant sections of the FOI Act.

How we will send your document to you

The document is being prepared for release and will be provided to you shortly.

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

Catherine

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 (Right to Know) - LEX 45021

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-11	8 June 2017	Question Time Brief QB17-000082	Release in part	47E(d) 47F	Material the disclosure of which would have a substantial adverse effect on the operations of the department exempt under s 47E(d) Personal information exempt under s 47F
2.			Brief to Minister for Human Services	Exempt in full	34(3)	Material the disclosure of which would reveal a Cabinet deliberation or decision exempt under s 34(3)
3.			Brief to Minister for Human Services	Exempt in full	34(1)(c)	Cabinet document exempt under s 34(1)(c)



REASONS FOR DECISION

What you requested

'1. All Ministerial Briefs relating to the decision to outsource Centrelink call centres dated from January 1, 2016 (as advised by your team).

(Some Briefs may refer to the KPMG Serco Trial Report so this might be one of many useful search terms.)

2. Any general correspondence (letters, emails) to the Minister or the department from KPMG, Concentrix Services, Serco, DataCom Connect and Stellar Asia Pacific that relate to the Serco trial or the decision to outsource Centrelink call centre services (please exclude documents that relate to the official tender process).

Also please exclude the 'Serco Trial Report' in the request as an earlier request LEX 43923 noted it remains Cabinet classified.'

What I took into account

In reaching my decision I took into account:

- your original request dated 7 June 2019;
- the documents that fall within the scope of your request;
- consultation with a third party about documents which contain information concerning them;
- consultation with other government agencies, including the Department of Prime Minister and Cabinet (**DPMC**);
- the Cabinet Handbook issued by the DPMC, 12th edition;
- the FOI Guidance Notes issued by the DPMC;
- whether the release of material is in the public interest
- 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 decisions

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

I have decided that certain documents and parts of documents that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemption applies to those documents are discussed below.

Section 34(1)(c) of the FOI Act – document for briefing a Minister on a Cabinet document

I have applied the exemption in section 34(1)(c) of the FOI Act to the whole of document 3.

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) 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;

(b) it is an official record of the Cabinet; or

(c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or

(d) it is a draft of a document to which (a), (b) or (c) applies.

Was document 4 brought into existence for the dominant purpose of briefing a Minister on a document to which section 34(1)(a) applies?

The decision of the former Australian Information Commissioner in *Nick Xenophon and the Department of Defence* [2016] AICmr 14 makes clear that, when determining whether a document falls within the exemption in section 34(1)(c) of the FOI Act, ‘the question of dominant purpose will be a question of fact in each case’.

Document 4 is a ministerial briefing document prepared by the department for the purpose of briefing the then Minister for Human Services, the Hon Michael Keenan MP. The brief relates to the 2017 budget measure to increase Centrelink call capacity and the Centrelink Call Centre Enhancements Initiative Evaluation Report prepared by KPMG (**KPMG report**).

I have confirmed with DPMC that a brief pertaining to this budget measure was ultimately submitted to Cabinet for its consideration.

I also note that your request acknowledges that the KPMG report, which you described as the ‘Serco Trial Report’, remains subject to the Cabinet exemption as outlined in the department’s previous FOI decision (LEX 43923).

Conclusion

As document 4 was brought into existence for the dominant purpose of briefing the Minister in relation to the KPMG report, to which the exemption in section 34(1)(a) of the FOI Act applies in full, I am satisfied that document 4 is exempt in full, under section 34(1)(c) of the FOI Act.

Section 34(3) of the FOI Act – material revealing a Cabinet deliberation or decision

I have applied the exemption in section 34(3) of the FOI Act to the whole of document 2.

Section 34(3) of the FOI Act provides that:

'A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed'.

Does the document reveal the existence of a Cabinet deliberation or decision?

Paragraph 5.65 of the Guidelines states that:

...if, at the time a report is brought into existence there was no purpose of submitting it to Cabinet, but it is later decided to submit it to Cabinet, the report will not be covered by s 34(1)(a) because it will not have been brought into existence for the dominant purpose of submission to the Cabinet. It may, however, still be exempt under s 34(3) if its disclosure would reveal a Cabinet deliberation or decision.

The DPMC's FOI Guidance Notes state that:

A document may also canvass options or information in the context that they may later be put to Cabinet for consideration or canvass views which a Minister may raise in Cabinet for consideration. This is particularly relevant in the case where such documents would allow a correct inference to be made about the content of later Cabinet consideration. Where the document or information is closely related to subsequent Cabinet consideration or a subsequent Cabinet decision on particular issues, whether or not the document was eventually submitted to the Cabinet, it will be relevant for the decision maker to consider if the release of the document or information may reveal Cabinet deliberations within the meaning of section 34(3).

The fact that a Cabinet deliberation or decision occurred after a document was created does not necessarily mean that the document cannot be exempt under section 34(3) of the FOI Act. Rather, it is a question of fact at the time that the FOI request is made as to whether disclosure of the document would reveal a Cabinet deliberation or decision.

Paragraph 5.75 of the Guidelines states that:

'Deliberation' in this context has been 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.

As a result of consultation with the DPMC, I am satisfied that the disclosure of document 1 would reveal a Cabinet deliberation or decision.

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

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

This can refer to disclosure by oral as well as written statement - for example, an oral announcement by a minister about a Cabinet decision. 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.

I acknowledge that the Serco pilot review has been a topic of media interest. On 23 April 2018, Minister Keenan issued a Media Release on the Serco pilot program, which stated that:

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 26 November 2018, Minister Keenan 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.

The Minister's statement reaffirms that the relevant Cabinet deliberations or decisions have not been officially disclosed by Cabinet or a person (such as a Minister) acting within the scope of their role or functions.

At this time, I have no evidence before me to establish that there has been an official disclosure, or official publication, of a deliberation or decision of Cabinet.

Section 34(6) of the FOI Act provides that, in a document to which section 34(3) applies, information is not exempt if it consists of 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.

I am satisfied that any purely factual material that exists in document 2 cannot be reasonably separated from deliberative matters, the release of which would reveal a Cabinet decision or deliberation that has not been officially disclosed.

I am satisfied that the other exceptions specified in sections 34(4) and 34(5) of the FOI Act do not apply.

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 the disclosure of document 2, has been officially disclosed. Therefore, I have applied the exemption in section 34(3) of the FOI Act to the whole of document 2.

Section 47E(d) of the FOI Act – material affecting operations of the department

I have applied the conditional exemption in section 47E(d) of the FOI Act to parts of document 1.

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 have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.’

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’.

Paragraph 6.123 of the Guidelines provides that ‘the predicted effect must bear upon the agency’s ‘proper and efficient’ operations, that is, the agency is undertaking its expected activities in an expected manner’.

I am satisfied that the release of some material in document 1 could reasonably be expected to prejudice the proper and efficient conduct of the department.

In particular, I consider there is a reasonable expectation that public disclosure of certain material could interfere with the department’s conduct of its relationship the Australian Taxation Office (**ATO**). Furthermore, disclosure of the material could impact on the department or the ATO’s ability to engage with external organisations in the future.

On this basis, I have decided that the release of the document would reasonably 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 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; and

- inform debate on a matter of public importance.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- prejudice the department's working relationship with third parties and other Commonwealth agencies.

Based on these factors, I have decided that in this instance, 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.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to parts of document 1.

Section 47F of the FOI Act relevantly provides:

- '(1) 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).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.'

Personal Information

The term 'personal information' is defined as follows:

'...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.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

I find that document 1 contains personal information of other people. The personal information is their mobile phone numbers. The decision in *Hunt and Australian Federal Police* [2013] AICmr 66 makes clear that mobile phone numbers are considered personal information.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the Guidelines provides:

'The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

I am satisfied that the disclosure of the third party personal information would be unreasonable for the following reasons:

- it relates to aspects of an individual's personal affairs;
- you do not have the consent from this individual for the release of their personal information; and
- the information is private and not available in full or in part from publicly-accessible sources.

On this basis, I have decided that the personal information included in document 1, referred to in the Schedule, is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

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

'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.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- prejudice an individual's right to privacy; and
- adversely affect or harm the interests of an individual.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the above-mentioned document 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 conclusion, I have decided to:

- grant you part access to one document (document 1); and
- refuse access to two documents (documents 2 and 3).

I have decided that:

- document 1 is conditionally exempt, in part, under section 47E(d) of the FOI Act, and disclosure would be contrary to the public interest;
- document 1 is conditionally exempt, in part, under section 47F(1) of the FOI Act, and disclosure would be contrary to the public interest;
- document 2 is exempt, in full, under section 34(3) of the FOI Act; and
- document 3 is exempt, in full, under section 34(1)(c) 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 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 Freedom of Information 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; and
- 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 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.