



27 September 2019

Our reference: LEX 46187

Mr Justin Warren  
Right to Know

Only by email: [foi+request-5538-6e966511@righttoknow.org.au](mailto:foi+request-5538-6e966511@righttoknow.org.au)

Dear Mr Warren

### Decision on your Freedom of Information Request

I refer to your request, dated and received by the Department of Human Services (**department**) on 29 July 2019, for access under the *Freedom of Information Act 1982* (**FOI Act**) to the following document:

I request a copy of the Privacy Impact Assessment reference number 21987 titled "DHS Response to the Independent Review of Health Providers' Access to Medicare Card Numbers" as listed on the department's Privacy Impact Assessment Register.

#### My decision

The department holds one document (totalling 40 pages) that relates to your request.

I have decided to grant you **part access** to the document, because it contains material:

- that discloses the department's lawful methods or procedures for detecting, investigating, or dealing with matters arising out of breaches or evasions of law (section 37(2)(b) of the FOI Act);
- that if disclosed would have a substantial and adverse effect on the proper and efficient conduct of the operations of the agency, and disclosure would be contrary to the public interest (section 47E(d) of the FOI Act).

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

#### Charges

On 20 August 2019, the department notified you of a preliminary processing charge of \$106.15. This charge was based on an estimate calculated in accordance with Regulation 9 of the *Freedom of Information (Charges) Regulations 2019* (**Charges Regulations**).

On the same day, you paid the deposit of \$26.55 and requested reconsideration of the preliminary charge.

On 19 September 2019, the department notified you of the decision to reduce the charge to \$27.65 (**revised charge**). This revised charge reflected 50% of the lowest reasonable processing cost to provide you with a decision on access. This revised charge also balanced that a portion of the cost of processing FOI requests is to be borne by the Applicant with the fact that there are public interest factors associated with this matter.

In accordance with Regulation 10 of the Charges Regulations, I have considered the actual time taken to process your request. I have decided the revised charge of \$27.65 is a fair and accurate reflection of the time taken to process your request. On this basis, I have decided not to adjust the revised charge, and have fixed the charge under Regulation 10.

I note that the difference between the revised charge and the deposit you have paid is \$1.10. As the remaining payment will likely incur more than its value to collect, the department is waiving the remainder of the revised charge and releasing the document to you today.

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

The document is attached.

### **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

### **Kaitlin**

Authorised FOI Decision Maker

Freedom of Information Team

Employment Law and Freedom of Information Branch | Legal Services Division

Department of Human Services



**SCHEDULE OF DOCUMENT FOR RELEASE**  
**WARREN, Justin - LEX 46187**

<b>Doc No.</b>	<b>Pages</b>	<b>Date</b>	<b>Description</b>	<b>Decision</b>	<b>Exemption</b>	<b>Comments</b>
1.	1-40	Sept 2019	DHS response to the Independent Review of Health Providers' Access to Medicare Card Numbers – Privacy Impact Assessment	Release in part	s 37(2)(b)  s 47E(d)	Certain material exempt under section 37(2)(b) of the FOI Act.  Certain material conditionally exempt under section 47E(d) of the FOI Act.



## REASONS FOR DECISION

### What you requested

On 29 July 2019, you requested access under the *Freedom of Information Act 1982* (FOI Act) to the following document:

I request a copy of the Privacy Impact Assessment reference number 21987 titled "DHS Response to the Independent Review of Health Providers' Access to Medicare Card Numbers" as listed on the department's Privacy Impact Assessment Register.

### What I took into account

In reaching my decision I took into account:

- your request dated 29 July 2019;
- the documents that fall within the scope of your request;
- 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 parts of the document you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemptions apply to the document are discussed below.

#### Section 37(2)(b) of the FOI Act

I have applied the exemption in section 37(2)(b) to part of the document.

Section 37(2)(b) of the FOI Act provides that:

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures

Paragraph 5.108 of the Guidelines provides that the exemption under section 37(2)(b) of the FOI Act applies where two factors are satisfied. Firstly, there must be a reasonable

expectation that a document will disclose a lawful method or procedure, and secondly, there is a reasonable expectation or a real risk of prejudice to the effectiveness of that method or procedure.

The document you requested contains material that relates to the review that was undertaken into the vulnerabilities of the systems health providers use to access Medicare information, particularly card numbers. The document contains information that discloses the security verification process used by the department to authenticate a health professional before allowing them access to a patient's Medicare card number. Medicare card numbers can be used to access a range of health services and benefits, and importantly can be used to access personal information. As such, the verification process used by the department when interacting with health professionals forms a significant part of the security measures aimed at preventing fraudulent activity and protecting personal privacy.

I am satisfied that there is a reasonable expectation that disclosure of the department's verification security processes contained in this document would disclose a key fraud prevention and privacy protection methodology used by the department.

I am also satisfied that there is a reasonable expectation that the disclosure of this information would prejudice the effectiveness of the department's fraud prevention and privacy protection procedures. Disclosure of the verification process has the capacity to undermine the department's fraud prevention and privacy protection strategies by providing individuals with forewarning of the information used by the department to confirm a health provider's identity and consequently be granted access to Medicare records. As such, individuals that are intent on perpetrating fraud or accessing information without lawful authority may be better positioned to do so as they are able to better prepare prior to an unauthorised access attempt.

I further note that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act. Accordingly, noting that the information could be released to a wide audience, disclosure would substantially inhibit the department's methods for mitigating personal privacy breaches and preventing Medicare fraud, and compromise the department's ability to effectively administer correct payments.

For the reasons set out above, I am satisfied that the material is exempt under section 37(2)(b) of the FOI Act and cannot be released.

#### Section 47E(d) of the FOI Act

I have also applied section 47E(d) to part of the document.

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.

I have found that part of the document contains material that is conditionally exempt from release under section 47E(d) of the FOI Act. The material to which I have refused access refers to the specific, verification process of health providers used by the department's Medicare Provider Enquiries Line and the PBS General Enquires line in preventing unauthorised Medicare activity.

Releasing this information would, or could reasonably be expected to, have an adverse effect on the proper and efficient conduct of the operations of the department. In particular, the

disclosure of information about the verification process would disclose part of the department's fraud prevention and personal privacy methodology which, if released to the public, may allow some individuals to take steps to minimise detection of fraudulent activities. Individuals may be better positioned to make certain enquiries with the aim of ascertaining Medicare customer information. The disclosure of this information would increase the risk of illegitimate access and reduce the effectiveness of the department's security protections.

Accordingly, I am satisfied that the document contains material that is conditionally exempt from disclosure under section 47E(d) of the FOI Act, to the extent that it contains material which, if disclosed, would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct 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, including to:

- inform the community of the government's operations;
- reveal the reasons for government decisions and any background or contextual information that informed the decisions related to the handling of Medicare information;
- enhance the scrutiny of government decision making; and
- facilitate access to government information generally.

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 security measures in place by the department to prevent fraud and illegitimate access to Medicare records;
- impede the department's ability to protect the personal information of Medicare customers;
- compromise the department's ability to effectively administer correct payments in the future; and
- prejudice the department's ability to collect and obtain Medicare information from the public in the future.

Based on these factors, I have decided that in the circumstances of this particular matter, 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*

In summary, I am satisfied that part of the document is

- exempt under section 37(2)(b) of the FOI Act; and
- conditionally exempt under section 47E(d) of the FOI Act, and that it would be contrary to the public interest to release this information.

Accordingly, I have decided not to release the document in full to you.



## 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 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 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
- 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](http://www.oaic.gov.au)  
Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](http://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](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.