



20 February 2020

Our reference: LEX 50573

Mr Anatoly Kern

Only by email: [foi+request-6087-fcfb0d8b@righttoknow.org.au](mailto:foi+request-6087-fcfb0d8b@righttoknow.org.au)

Dear Mr Kern

### Decision on your Freedom of Information Request

I refer to your request dated 21 January 2020, and received by the Department of Human Services, now known as Services Australia, on the same date, for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

- 1) Any document that the department relying on for denying to provide full names.
- 2) A copy of the staff directory of "Multicultural and Tailored Servers", managed by NM Jan Bailey (title, position level, name, surname, office location)

### Administrative release of documents

On 24 January 2020, Services Australia acknowledged your request and advised that where appropriate, it would provide you with documents under its administrative access arrangements. Services Australia has identified two publicly available documents relevant to part one of your request.

I have released these documents to you through Services Australia's administrative arrangements (outside the FOI Act), and that portion of your request has been taken to be withdrawn.

Paragraph 3 of an Operational Blueprint titled 'Customer requests access to their personal information 104-01010010' is relevant to your request. A copy of this paragraph has been released to you administratively. A copy of the full document is publicly available at the following hyperlink:

<http://operational.humanservices.gov.au/public/Pages/complaints-privacy-and-foi/104-01010010-01.html>.

Clause H6 'Employee Identification' of the *Department of Human Services Agreement 2011-2014 (Agreement)* is relevant to your request. A copy of this paragraph has been released to you administratively. A copy of the full document is publicly available at the following hyperlink:

<https://www.servicesaustralia.gov.au/sites/default/files/2017/11/dhs-agreement-2017-2020.pdf>.

## My FOI decision

The agency holds one document (totalling 9 pages) that relates to the remainder of your request.

I have decided to **refuse access** to the document (document 1).

I have decided that the document is conditionally exempt under the FOI Act, as it contains:

- information, the release of which would have a substantial adverse effect on the management of personnel by Services Australia, the disclosure of which would be contrary to the public interest (section 47E(c) conditional exemption); and
- information, the release of which would have a substantial adverse effect on the proper and efficient conduct of the operations of Services Australia, the disclosure of which would be contrary to the public interest (section 47E(d) conditional exemption).
- information the release of which would unreasonably disclose the personal information about a person, and the disclosure of which would be contrary to the public interest (section 47F(1)).

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 documents to you

The documents are attached.

## You can ask for a review of our decision

If you disagree with any part of the FOI decision you can ask for a review. There are two ways you can do this. You can ask for an internal review from within Services Australia, or an external review by the Office of the Australian Information Commissioner. You do not have to pay to apply 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@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

Yours sincerely

**Alex**

Authorised FOI Decision Maker  
Freedom of Information Team  
Employment Law and FOI Branch | Legal Services Division  
Services Australia



## SCHEDULE OF DOCUMENTS FOR RELEASE UNDER FOI

### KERN, Anatoly (Right to Know) - LEX 50573

| Doc No. | Pages | Date            | Description             | Decision       | Exemption  | Comments  |
|---------|-------|-----------------|-------------------------|----------------|--|---|
| 1.      | 1-9   | 10 January 2020 | MTS staff data workbook | Exempt in full | Section 47E(c)<br>Section 47E(d)<br>Section 47F(1) | Section 47E(c) conditional exemption applied to whole document (management of personnel).<br><br>Section 47E(d) conditional exemption applied to staff names (proper and efficient conduct of the operations of Services Australia).<br><br>Section 47F(1) conditional exemption applied to staff names and site locations. |



## REASONS FOR DECISION

### What you requested

- 1) Any document that the department relying on for denying to provide full names.
- 2) A copy of the staff directory of "Multicultural and Tailored Servers", managed by NM Jan Bailey (title, position level, name, surname, office location)

### What I took into account

In reaching my decision I took into account:

- your original request dated 21 January 2020;
- the document that falls within the scope of your request;
- whether the release of material is in the public interest;
- consultations with Services Australia officers about:
  - the nature of the document;
  - Services Australia's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **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 the document that you requested is conditionally exempt in full under the FOI Act. My findings of fact and reasons for deciding that the exemptions apply to that document are discussed below.

#### Section 47E(c) – information affecting management of personnel

I have decided that document 1 is conditionally exempt from disclosure, in its entirety, under section 47E(c) of the FOI Act.

Section 47E(c) 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:

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency

*Whether disclosure would or could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth*

In addition to the factors specified in section 47E(c) of the FOI Act, paragraph 6.114 of the Guidelines provides:

For this exemption to apply, the documents must relate to either:

- the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety;
- the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

I find that the document contains information about staff operating in their capacity as employees of the Commonwealth Government. I am satisfied that, in these particular circumstances, disclosure of the information would be unreasonable as there is a realistic likelihood that the information would allow you to locate and harass the identified individuals.

I have consulted with the Multicultural and Tailored Services (MTS) Branch. MTS advised that you stated your intention was to gather and publish information that could identify staff, including where they work and where they live. You have also indicated that this information could be used to locate their children. On this basis, I am satisfied that there is a very real risk of significant harm to MTS staff if I disclose this information to you.

Services Australia has obligations under sections 17, 18 and 19 of the *Work Health and Safety Act 2011* (Cth) (WHS Act) to take reasonable steps to eliminate or minimise the risks associated with customer aggression. In the modern technological environment, the release of even minimal personal details (such as a full name or contact details) may allow members of the public to use social media mediums to identify and target staff members for harassment, bullying or intimidation.

I find that the circumstances and issues relating to the disclosure of staff details are analogous to those arising in *NN and Department of Human Services (Freedom of Information)* [2018] AICmr 1. In that decision, the former Information Commissioner found that release of staff information was conditionally exempt as it might reasonably be expected to create a harassment risk for that staff member.

On this basis, I have decided that the document is conditionally exempt under section 47E(c) 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:

- harm the interests of the individuals identified in the document;
- prejudice the protection of an individual's right to privacy;
- prejudice the management functions of Services Australia;
- prejudice security, law enforcement, public health or public safety;
- compromise the safety and wellbeing of staff; and
- impact on the ability of Services Australia to comply with its industrial and occupational health and safety obligations.

The release of the staff details would not inform debate on any matter or promote oversight of public expenditure, and the material is not your personal information.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the document is outweighed by the public interest against disclosure.

I have not taken account of any of the irrelevant factors set out in section 11B of the FOI Act.

Section 47E(d) of the FOI Act – substantial adverse effect on the proper and efficient conduct of an agency's operations

I consider that document 1 is conditionally exempt, in part, under section 47E(d) of the FOI Act.

Section 47E(d) of the FOI Act relevantly provides:

- (1) 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 the agency.

*Substantial adverse effect on Services Australia's operations*

Releasing the names of staff would, or could reasonably be expected to, have an adverse effect on the proper and efficient conduct of the operations of Services Australia, for the following reasons:

- Services Australia has a large number of customers, and manages a large volume of contact from members of the public. Releasing the full name of a staff member to the world-at-large could reasonably be expected to enable a member of the public to directly contact that staff member and potentially increase the workload of that staff member. Given your stated intention to make this information public, it is reasonable

to expect this may divert these staff from effectively and efficiently performing their duties;

- additionally, where contact is made to staff directly, rather than utilising the established contact channels, this could reasonably be expected to create delays in processing and managing requests, especially where requests need to be redirected to other areas of Services Australia or where a staff member has moved roles; and
- given the dedicated contact points currently available to customers and members of the public, there may be confusion if other contact details became available. This would thereby reduce the efficiency of Services Australia's ability to allocate work and direct customers to the most appropriate service area.

Additionally, clause H6.1 of the Agreement states:

#### H6 EMPLOYEE IDENTIFICATION

H6.1 Employees will have a choice about whether they provide their full name or only their first name in response to public enquiries, including in correspondence and face to face contact, unless legislation requires otherwise.

The terms and conditions of employment contained in the Agreement including this clause are given effect by the determination under section 24(3) of the *Public Service Act 1999* which the Minister Assisting the Prime Minister for the Public Service and Cabinet made on 30 January 2020.

Services Australia is not in a position to release the names of employees in response to FOI requests because this information would be a breach of the terms governing the employment of our staff. This could adversely affect the industrial reputation of Services Australia, open Services Australia to industrial action, and have an adverse effect on Services Australia staff relations and confidence.

For these above mentioned reasons, I consider staff details within the document to be 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.

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:

- impede Services Australia's operations, including in relation to managing staff and industrial disputes which may arise; and

- prejudice Services Australia's ability to effectively and efficiently carry out its functions.

Based on these factors, I have decided that in this instance, the public interest in disclosing the conditionally exempt information in the 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.

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

I have decided that document 1 is conditionally exempt from disclosure, in its entirety, under section 47F(1) of the FOI Act.

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 the document contains personal information of other people, namely staff working in the MTS Branch.



### *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.'

Guideline 6.153 indicates that the starting presumption should be that disclosing public servants personal information is not unreasonable unless special circumstances exist. Given the statements, referred to above that you have previously made to the MTS Branch regarding publishing staff details and locating their children I consider special circumstances exist that make the release of these staff details unreasonable in this case.

I am satisfied that in addition to these special circumstances the disclosure of the third party personal information would be unreasonable for the following reasons:

- the document does not contain any of your personal information;
- you do not have the consent of these individuals for the release of their personal information;
- the information is private and not available in full or in part from publicly-accessible sources;
- the identity of the individuals' concerned is readily apparent; and
- the individuals concerned have opposed the release of the information on the grounds that it is of such a nature that disclosure may cause harm; in particular they are concerned this information could be used to harass them and their families.

On this basis, I have decided that the personal information included in the documents 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 the individuals' right to privacy;
- prejudice the individuals' families right to privacy;
- adversely affect or harm the interests of an individual or group of individuals, specifically the individuals listed in document; and
- compromise the safety and wellbeing of staff.

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 refuse access to the document.

I have decided that the document is conditionally exempt in full, under section 47E(c) and 47F(1), and conditionally exempt in part, under section 47E(d) of the FOI Act. I have also decided that disclosure would be contrary to the public interest for the purposes of section 11A(5).



**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 Services Australia (the **agency**); 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 Services Australia 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 agency 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 Services Australia decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the Services Australia'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 Services Australia 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 Services Australia 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.