



23 March 2020

Our reference: LEX 52729

Mr Anatoly Kern  
Right to Know

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

Dear Mr Kern

### Freedom of Information Request – Internal Review Decision

I refer to your correspondence, dated 21 February 2020, and received by Services Australia (formerly known as Department of Human Services) on the same date. You have sought an internal review of the decision of Services Australia dated 20 February 2020 (LEX 50573).

Services Australia received your original request on 21 January 2020, 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

I note that the original decision maker provided you with two documents under Services Australia's administrative access arrangements. The two publicly available documents identified were considered relevant to part one of your request and suitable to administratively release to you. The administrative arrangements were found to satisfy part one of your request.

While I appreciate you have not queried this part the original decision in your request for internal review, I have considered the administrative release of documents in **Attachment A** of this letter.

### My decision

I am authorised to make decisions under section 23(1) of the FOI Act, including internal review decisions under section 54C of the FOI Act. My decision is set out below.

Consistent with the requirements of section 54C(2) of the FOI Act, I have made a fresh decision in relation to LEX 50573.

Services Australia holds one document (totalling nine pages) that relates to your request.

I have decided to affirm the original decision and refuse access to the document.

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);
- 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); and
- information the release of which would unreasonably disclose personal information about a person, the disclosure of which would be contrary to the public interest (section 47F(1) conditional exemption).

### **You can ask for a review of our decision**

If you disagree with any part of the decision you can ask for a review. You can ask for 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 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

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



**SCHEDULE OF DOCUMENTS**  
**KERN, Anatoly (Right to Know) - LEX 52729**

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-9	10.01.20	MTS staff data workbook	Exempt in full	<p>s 47E(c)</p> <p>s 47E(d)</p> <p>s 47F(1)</p>	<p>Section 47E(c) conditional exemption applied to whole document (management of personnel).</p> <p>Section 47E(d) conditional exemption applied to staff names (substantial adverse effect on the proper and efficient conduct of operations of Services Australia)</p> <p>Section 47F(1) conditional exemption applied to staff names and site locations (personal privacy).</p>



## REASONS FOR DECISION

### Background

Services Australia received your original request on 21 January 2020, 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)'.

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

- Paragraph 3 of Operational Blueprint titled 'Customer requests access to their personal information 104-01010010'; and I
- Clause H6 'Employee Identification' of the *Department of Human Services Agreement 2011-2014*.

These documents were released to you outside the FOI Act, and part one of your request was considered satisfied and consequently withdrawn.

I have consulted further with the relevant business areas regarding part 1 of your request. They have confirmed that comprehensive searches were undertaken and the Enterprise Agreement and respective part of the Operational Blueprint are the only documents within the scope of this part of the request. I consider that the administrative release of these documents was suitable as:

- the original decision maker had explained to you Services Australia's administrative release arrangements in the acknowledgement letter dated 24 January 2020;
- you did not notify Services Australia of an objection to administrative release; and
- the documents are already publicly available.

Accordingly, I will now review the decision to refuse access under the FOI Act.

### What I took into account

In reaching my decision I took into account:

- your original request dated 21 January 2020, and your request for internal review dated 21 February 2020;
- the document that falls within the scope of your request;
- consultations with officers within Services Australia about:
  - the nature of the document;
  - the 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

### Section 47E(c) of the FOI Act– management of personnel

I have decided that the document is conditionally exempt from disclosure, in full, 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 agree with the original decision maker and find that the document contains information about staff operating in their capacity as employees within a particular Branch of Services Australia. This information identifies people and there is a reasonable likelihood that should this information be released, in these particular circumstances, the information would allow you to locate and harass the individuals.

I have undertaken further consultation with the Multicultural and Tailored Services (**MTS**) Branch. MTS affirmed their previous position as provided to the original decision maker, where they 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.

I note that in your internal review request you have provided that you do not require full personal details in a way that could affect any operations and are willing to exclude surnames. Your request still seeks access to first names and employee identification. I am satisfied that this exclusion will not remove the likelihood of harm that may result from disclosure of their names.

As explained in the original decision, 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 am satisfied that disclosure of a first name and employee identification is sufficient information to identify a person, noting you already know the employer of these individuals.

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 factor 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.

These public interest factors against disclosure are supported by the former Information Commissioner's decision of *NN and Department of Human Services (Freedom of*

*Information*) [2018] AICmr.

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 the document 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 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.

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*

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factor 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 Service's Australia's management of staff, as clause H6 of the *Department of Human Services Agreement 2011-2014*, represents an expectation that staff names will not be disclosed. Disclosure of staff names, could in turn give rise to industrial disputes;
- impede Services Australia's operations, including in the management of correspondence from the public; 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 - personal privacy

I have decided that the document 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. I agree with the original decision maker that special circumstances exist in this matter. This is evident in the statements you have made to a personalised service officer that you intend to publically identify staff to the extent of identifying details of their place of work, home address and children. In this case, I consider that special circumstances exist and the release of staff details are unreasonable.

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 Branch concerned has opposed the release of the information on the grounds that it is of such a nature that disclosure may cause harm to their staff members; 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*

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factor 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***

**Application for review of decision**

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by the Information Commissioner.

**Information Commissioner review**

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

**Complaints to the Commonwealth Ombudsman**

You may complain to the 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 Ombudsman may be made in person, by telephone or in writing. The 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.