



11 June 2020

Our reference: LEX 54773

Mr Nick Cambridge

Right to Know

Only by email: foi+request-6337-73134ef5@righttoknow.org.au

Dear Mr Cambridge,

Decision on your Freedom of Information Request

I refer to your request, dated and received by Services Australia on 12 May 2020, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the training records of an employee of Services Australia.

You have not given us this person's consent to release his personal information to you.

My decision

Services Australia holds one document that relates to your request.

I have decided to **refuse access** to this document.

I have decided the document that you have requested is exempt under the FOI Act as the document includes:

- information that would have a substantial adverse effect on the management or assessment of personnel by Services Australia, release of which would be contrary to the public interest (section 47E(c) of the FOI Act); and
- personal information about any person, release of which would be unreasonable and contrary to the public interest (section 47F of the FOI Act).

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

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 Services Australia, 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 freedomofinformation@servicesaustralia.gov.au.

Yours sincerely

Philippa

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



SCHEDULE OF DOCUMENTS FOR RELEASE
CAMBRIDGE, Nick (Right to Know) - LEX 54773

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	-	Various	Training Records	Exempt in full	S 47E(c) S 47F	<p>Assessment information of personnel removed under section 47E(c) of the FOI Act.</p> <p>Personal information of third party removed under section 47F of the FOI Act.</p> <p>Out of scope information redacted under section 22 of the FOI Act(details of other staff).</p>



REASONS FOR DECISION

What you requested

On 12 May 2020, Services Australia received your request for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the training records of an employee of Services Australia.

On 18 May 2020, Services Australia acknowledged your request.

What I took into account

In reaching my decision I took into account:

- your original request dated 12 May 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 documents;
 - 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 decision

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

I have decided that the document that you requested is exempt under the FOI Act. My findings of fact and reasons for deciding that the exemptions apply to the document are discussed below.

Section 47E(c) of the FOI Act

I have applied the conditional exemption in section 47E(c) to the document.

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

A document is conditionally exempt if its disclosure under this Act would, or could be 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;

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'

The documents refer to Services Australia's internal assessment of personnel, including information relating to training and development, competency levels, in-house training requirements, and performance (i.e. whether the course was successfully passed, or not). Personnel employed by Services Australia are required to undertake mandatory and specialist training not only on the services provided by the agency, but also training specific to the business area that they are employed in.

Personnel of Services Australia have a legitimate expectation that their training records and performance will be treated as confidential. These training records are essential to assessing the competency of employees, providing feedback on staff development during performance reviews, completing Learning and Development Plans for employees to maintain professional development and skills, and reviewing staff against agreed benchmarks for performance. This information is critical for undertaking an annual employee rating in accordance with Services Australia's Enterprise Agreement.

In relation to the words "substantial adverse effect" paragraph 5.20 of the Guidelines provides:

The term 'substantial adverse effect' broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'. The word 'substantial', taken in the context of substantial loss or damage, has been interpreted as 'loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal'.

If the training records of personnel were to be released to the world-at-large, it would reasonably be expected to alter the way in which Services Australia would be able to perform staff training, including prejudicing the ability to provide frank feedback. Further, it would likely reduce staff members' willingness to undertake training in the future. We consider that this will reduce Services Australia's ability to manage qualifications and ensure that appropriately skilled and trained individuals undertake work in support of Services Australia's functions.

Having considered the contents of the document, I am of the opinion that disclosure of the material could reasonably be expected to have the required substantial adverse effect on the assessment of personnel.

On this basis, I have decided that the information included in the document referred to in the Schedule 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:

- compromise the assessment of personnel employed by Services Australia;
- prejudice an individual's right to privacy;
- increase the risk of unauthorised access to Service Australia's personnel records; and
- adversely affect or harm the interests of an individual or group of individuals, specifically personnel of Services Australia.

I accept that there is a public interest in ensuring that Services Australia employees are properly trained, and that that interest may be promoted by providing transparency in training processes. However, I consider that in the circumstances, the protection of the privacy of the individual is persuasive.

Furthermore, if Services Australia were to release training information to the world-at-large, disclosure of this information may prevent staff from voluntarily participating in additional training in the future, adversely affecting their ability for promotion and advancement within the Australian Public Service.

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.

Section 47F of the FOI Act

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

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 contains personal information of another person. This includes their full name, training details and information as to whether they have successfully completed certain training courses. In the context of the document, I also find the assessment and training information of the employee to be personal information about the employee.

In *Re Department of Social Security v Eric Bernard Dyrenfurth [1988] FCA 148* the Federal Court (Sweeney, Keeley and Ryan JJ) held that an assessment of a person's work performance can contain person personal information, but that it is not automatically personal information per se:

'Information relating to the personal affairs of a person such as information concerning his or her state of health, the nature or condition of any marital or other relationship, domestic responsibilities, or financial obligations, may legitimately be regarded as affecting the work performance, capacity or suitability for appointment or promotion of that person. In those circumstances it is conceivable that an assessment of work performance, capacity or suitability for appointment or promotion might contain such information.'

This was cited with approval by the Information Commissioner in *Carver v Fair Work Ombudsman [2011] AICmr 5* and Deputy President Cowdroy in *Gallagher and Secretary, Department of Immigration and Border Protection (Freedom of Information) [2016] AATA 1025*

The request identifies a specific staff member. Even if the name of the third party were to be removed, due to the context in which the information has been requested and is presented, it would nevertheless be information from which the third party was reasonably identifiable. Therefore, I consider that the document contains the personal information of a third party.

Is release of the personal information 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.'

In *FG and National Archives of Australia* [2015] AICmr 26 the Information Commissioner outlined matters which may potentially be relevant to whether disclosure of personal information would be 'unreasonable'. This includes:

- the nature, age and current relevance of the information;
- whether the information is well known or available from other public sources;
- any detriment that disclosure may cause to the person to whom the information relates;
- any opposition to disclosure expressed or likely to be held by that person;
- the circumstances of an agency's collection and use of the information;
- whether disclosure of the information might advance the public interest in government transparency and integrity;
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act; and
- any submission an FOI applicant chooses to make in support of their applicant as to their reasons for seeking access and their intended or likely use or dissemination of the information.

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;
- I do not consider that their training records would be well known to you;
- the information is private and not available in full or in part from publicly-accessible sources;
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of the information; and
- disclosure of one staff member's training records will not advance the public interests in transparency and integrity.

I also consider that the disclosure of the training records of one individual would be unreasonable as it would not advance the public interest in government transparency and integrity.

For the reasons above, I find that the disclosure of the name and training records of a third party would be an unreasonable disclosure of personal information.

On this basis, I have decided that the personal information included in the document 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;
- compromise the assessment of personnel employed by Services Australia; and
- adversely affect or harm the interests of an individual, specifically the identified staff member.

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.

Conclusion

In summary, I am satisfied that the entire document as set out in the Schedule, is conditionally exempt under section 47F(1) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly I have decided not to release the document to you.

Section 22 of the FOI Act – access to an edited copy of the document

I have also removed irrelevant material from the document in accordance with section 22 of the FOI Act. This information relates to individuals other than the staff member mentioned in your request.

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 sections 47E(c) and 47F of the FOI Act, and 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 (FOI) 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 a 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 Services Australia; 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 Services Australia 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 Services Australia decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to 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 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.