



26 November 2020

Our reference: LEX 58707

Posty

Only by email: [foi+request-6748-6e7b0120@righttoknow.org.au](mailto:foi+request-6748-6e7b0120@righttoknow.org.au)

Dear Posty

### **Decision on your Freedom of Information Request**

I refer to your request to Services Australia dated 24 September 2020, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

I request, under the Freedom of Information Act 1982, copies of the following documents:

All documents contained within the files on your "Operational Blueprint" portal:

Optical surveillance 110-11040000

(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040000-01.html>) Requesting referral for optical surveillance 110-11040010

(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040010-01.html>)

Referring a case to a provider for optical surveillance 110-11040020

(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040020-01.html>) Optical surveillance report received from provider 110-11040030

(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040030-01.html>)'

### **My decision**

Services Australia holds 4 documents (totalling 20 pages) that relate to your request.

I have decided to **refuse access** to the documents.

I have decided that the documents are exempt under the FOI Act as disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Services Australia and release is contrary to the public interest (section 47E(d) 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.

### **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 [FOI.LEGAL.TEAM@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

Yours sincerely

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



**SCHEDULE OF DOCUMENTS FOR RELEASE**

**Posty - LEX 58707**

<b>Doc No.</b>	<b>Pages</b>	<b>Date</b>	<b>Description</b>	<b>Decision</b>	<b>Exemption</b>	<b>Comments</b>
1.	1-4	27 March 2020	Operational Blueprint 'Optical Surveillance 110-11040000'	Exempt in full	s 47E(d)	Document refused in full under s 47E(d) operations of the agency
2.	5-9	27 March 2020	Operational Blueprint 'Requesting referral for optical surveillance 110-11040010'	Exempt in full	s 47E(d)	Document refused in full under s 47E(d) operations of the agency
3.	10-15	27 March 2020	Operational Blueprint 'Referring a case to a provider for optical surveillance 110-11040020'	Exempt in full	s 47E(d)	Document refused in full under s 47E(d) operations of the agency
4.	16-20	27 March 2020	Operational Blueprint 'Optical Surveillance report received from provider 110-11040030'	Exempt in full	s 47E(d)	Document refused in full under s 47E(d) operations of the agency



## REASONS FOR DECISION

### What you requested

'I request, under the Freedom of Information Act 1982, copies of the following documents:

All documents contained within the files on your "Operational Blueprint" portal:

Optical surveillance 110-11040000

(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040000-01.html>) Requesting referral for optical surveillance 110-11040010

(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040010-01.html>)

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(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040020-01.html>) Optical surveillance report received from provider 110-11040030

(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040030-01.html>)'

### What I took into account

In reaching my decision I took into account:

- your request dated 24 September 2020;
- the documents that fall 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 decisions

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

I have decided that all four 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.

#### Conditional Exemption - 47E(d) of the FOI Act

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.'

Paragraph 6.101 of the FOI Guidelines explain:

'For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.'

Paragraph 6.120 of the FOI Guidelines provides that:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.

*Proper and efficient conduct of the operations of an agency*

The documents contains investigative methods used by Services Australia to target fraud and non-compliance. Services Australia has consulted with the Taskforce Integrity and Fraud Investigation Branch who have advised that if these investigative methodologies are released, this information could assist individuals to circumvent the procedures.

Any prejudice to the effectiveness of the operational methods and procedures used by Services Australia when undertaking its compliance role would result in a substantial adverse effect on the operations of Services Australia.

Further, the FOI Act does not control or restrict any subsequent use or dissemination of information. Noting that the documents could well be released to a wide audience, Services Australia considers that the release of the documents could reasonably be expected to facilitate the large-scale circumvention or non-compliance with Services Australia's compliance activities.

I am satisfied that the disclosure of investigative methods would have a substantial adverse effect on the proper and efficient conduct of Services Australia's operations, and therefore, this material is conditionally exempt under section 47E(d) of the FOI Act.

*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 in the general sense.

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:

- increase the likelihood that customers will be able to circumvent Services Australia's fraud identification techniques; and

- prejudice Services Australia's ability to properly and efficiently conduct compliance activities.

Based on these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the information in the documents is outweighed by the public interest against disclosure. This is because I consider that there is a persuasive public interest in ensuring that Services Australia can undertake efficient and effective compliance activities.

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*

I am satisfied that the documents are conditionally exempt under section 47E(d) 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 documents to you.



## **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 an 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](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 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](http://www.oaic.gov.au)

***Commonwealth Ombudsman***

You may also complain to the Commonwealth Ombudsman concerning action taken by an depart 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.