



PO Box 7820 Canberra BC ACT 2610

25 January 2021

Our reference: LEX 60322

Posty

By email only: foi+request-6748-6e7b0120@righttoknow.org.au

Dear Posty

Freedom of Information request – Internal Review Decision

I refer to your correspondence dated 26 December 2020 seeking an internal review of the decision made by Services Australia (the **agency**) under the *Freedom of Information Act 1982 (FOI Act)* on 27 November 2020 (the **original decision**).

Your request for internal review was made in the following terms:

I don't believe literally the entire documents would be unable to be released.

try again.

I'd like an internal review please.

Internal Review Decision

Consistent with the requirements of the FOI Act, I have made a fresh decision set out below.

The agency holds 4 documents (totalling 20 pages) that relate to your request.

I am satisfied that the requested documents are conditionally exempt in their entirety under section 47E(d) of the FOI Act. Furthermore, I have decided on balance it would be contrary to the public interest to release this information.

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 an external review by the Office of the Australian Information Commissioner. You do not have to pay for a review of the decision. See **Attachment B** for more information about how to request a review.

Further assistance

If you have any questions please email FOI.Legal.Team@servicesaustralia.gov.au.

Yours sincerely

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

SCHEDULE OF DOCUMENTS

Posty – LEX 60322

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
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

On 24 September 2020, you made a request under the FOI Act for access to 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>).

On 27 November 2020, the agency provided you with the original decision to refuse access to 4 documents (totalling 20 pages) in full.

On 26 December 2020, you requested an internal review of the original decision in the following terms:

I don't believe literally the entire documents would be unable to be released.

try again.

I'd like an internal review please.

What I took into account

In reaching my decision I took into account:

- your original request dated 24 September 2020
- your request for internal review dated 26 December 2020
- the original decision
- consultations with agency officers about:
 - the nature of the documents
 - the agency's operating environment and functions
- the documents falling within the scope of your request (the **requested documents**)

- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**), and
- the FOI Act.

Reasons for my internal review decision

Conditional exemption - Section 47E(d) of the FOI Act

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

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 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 Guidelines provides:

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 agency’s 2019-2020 Annual Report provides the agency is responsible for designing, developing and delivering government services and payments. During the 2019-2020 year, the agency processed over 438 million claims and made in excess of \$203.7 billion in payments.¹

In order to allow the efficient processing of these claims and payments, the management of fraud is a key operational function of the agency. The agency’s fraud prevention capabilities seek to ensure only eligible people receive payments and they receive the correct payment amounts. Failure to ensure compliance will compromise the agency’s capacity to implement relevant government policies.

Among other activities, the agency focusses its compliance action on ensuring people receive payments they are entitled to and preventing the exploitation of welfare payments. During the 2019-2020 year, the agency’s compliance work led to:

- 1014 criminal investigations
- 564 administrative investigations
- referring 454 cases to the Commonwealth Director of Public Prosecutions
- preventing the payment of fraudulent Medicare claims worth over \$250,000 and

¹ Services Australia, *Annual Report 2019-2020* <https://www.servicesaustralia.gov.au/sites/default/files/annual-report-2019-20.pdf> page xiii

- preventing fraud involving \$400,000 worth of welfare payments.²

I am satisfied the requested documents contain investigative methods used by the agency to target fraud and non-compliance. The requested documents are intended for the sole use of the Taskforce Integrity and Fraud Investigation Branch to assist members of that branch to coordinate the agency's compliance work. Therefore, I am satisfied that the documents relate to the agency's operations, namely compliance operations.

The agency makes no comment regarding the Applicant's use of or interest in the requested documents. However, as noted in the original decision, the FOI Act does not control or restrict any subsequent use or dissemination of information after the initial disclosure. The agency's Taskforce Integrity and Fraud Investigation Branch has advised if the investigative methodologies contained within the requested documents are released, this information could assist other individuals circumvent the fraud prevention procedures.

Further, I concur with the original decision-maker in concluding:

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

I further note section 10 of the *Public Governance, Performance and Accountability Rule 2014* (the **PGPA Rule**) provides:

The accountable authority of a Commonwealth entity must take all reasonable measures to prevent, detect and deal with fraud relating to the entity, including by:

- (a) conducting fraud risk assessments regularly and when there is a substantial change in the structure, functions or activities of the entity and
- (b) developing and implementing a fraud control plan that deals with identified risks as soon as practicable after conducting a risk assessment and
- (c) having an appropriate mechanism for preventing fraud, including by ensuring that:
 - (i) officials of the entity are made aware of what constitutes fraud and
 - (ii) the risk of fraud is taken into account in planning and conducting the activities of the entity and
- (d) having an appropriate mechanism for detecting incidents of fraud or suspected fraud, including a process for officials of the entity and other persons to report suspected fraud confidentially and
- (e) having an appropriate mechanism for investigating or otherwise dealing with incidents of fraud or suspected fraud and
- (f) having an appropriate mechanism for recording and reporting incidents of fraud or suspected fraud.

I am also satisfied release of the requested documents would substantially prejudice the capacity of the agency's Chief Executive Officer to comply with section 10 of the PGPA Rule.

² Ibid, page 62.

Therefore, I am satisfied the requested documents are conditionally exempt under section 47E(d) of the FOI Act.

Can an edited copy be provided?

I note the terms of your request for internal review of the original decision includes the following:

I don't believe literally the entire documents would be unable to be released.

Relevantly, paragraph 3.98 of the Guidelines provides:

... an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

I am satisfied:

- the overwhelming majority of material contained within the requested documents is conditionally exempt under section 47E(d) of the FOI Act
- the remaining material would leave only a skeleton of the former document which conveyed little of its content or substance, and
- releasing the skeleton of the requested documents would not promote the objects of the FOI Act.

Conclusion

As a consequence, I am satisfied the requested documents in their entirety are 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
- inform debate on a matter of public importance, and
- promote effective oversight of public expenditure.

I have also considered the relevant factors weighing against disclosure, indicating access would be contrary to the public interest. In particular, I have considered the extent to which

disclosure of the requested documents could reasonably be expected to prejudice the agency's capacity to prevent, detect and deal with fraud.

As indicated above, the agency is responsible for the payment of claims which totalled in excess of \$203.7 billion during the 2019-2020 financial year. The agency's capacity to prevent, detect and deal with potential fraud is a crucial element in the efficient processing of payments of this magnitude.

After consideration of advice received from the agency's Taskforce Integrity and Fraud Investigation Branch, I am satisfied the requested documents contain investigative methodology which if released could assist in the commission of criminal offences against the agency. Should the capacity of the agency to prevent, detect and deal with fraud be diminished in any way, the agency's capacity to implement government policy will similarly be diminished.

Consequently, I have formed the view there is a strong public interest in the non-disclosure of the requested documents.

Based on these factors, I have decided in the circumstances of this particular matter, the public interest in the non-disclosure of the requested documents outweighs the public interest factors favouring 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 the requested documents are conditionally exempt in their entirety under section 47E(d) of the FOI Act. Furthermore, I have decided on balance it would be contrary to the public interest to release this information. Accordingly, I have decided not to release the requested documents 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 contacting the Office of the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for external review by the Office of the Australian Information Commissioner

If you do not agree with the internal review decision, you can ask the Office of the Australian Information Commissioner to review the 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

Important:

- If you are applying online, the application form the 'FOI 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 of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the Services Australia's decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the 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 Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also 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

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.