



22 December 2021

Our reference: LEX 64959

G Griffiths
Right to Know

Only by email: foi+request-7989-1b70b7c6@righttoknow.org.au

Dear Sir / Madam

Decision on your Freedom of Information Request

I refer to your request to Services Australia (the agency) dated 19 October 2021 for access under the *Freedom of Information Act 1982* (FOI Act) to:

...copies of any documents relating to the selection of the hold music for the Services Australia phone lines, including Centrelink, Medicare, and the Australian Immunisation Register.

My decision

The agency holds 9 documents relating to your request. Most of these documents relate to hold music arrangements which are part of the agency's telecommunications provider contract.

I have decided to **refuse access** to all 9 documents.

I have decided the documents you have requested are exempt under the FOI Act, as they contain:

- information having a commercial value that could reasonably be expected to be destroyed or diminished if the information were disclosed (section 47)
- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C)
- information which could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency and release is contrary to the public interest (section 47E(d))
- personal information about another person, the disclosure of which would be unreasonable and contrary to the public interest (section 47F(1)), and
- information concerning the business, commercial or financial affairs of an organisation and disclosure of this information could reasonably be expected to unreasonably affect the organisation in respect of its lawful business, commercial or financial affairs, and release is contrary to the public interest (section 47G).

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 the agency, or an external review by the Office of the Australian Information Commissioner. 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

Philippa

Authorised FOI Decision Maker
Freedom of Information Team
Information Access Branch | Legal Services Division
Services Australia

SCHEDULE OF DOCUMENTS
GRIFFITHS, G (Right to Know) - LEX 64959

Doc No.	Description	Decision	Exemption	Comments
1.	CSSC Minute	Exempt in full	s 47C s 47E(d)	Deliberative material (section 47C). Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d)).
2.	Project Timeline	Exempt in full	s 47E(d)	Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d)).
3.	Response	Exempt in full	s 47E(d)	Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d)).
4.	Survey Responses	Exempt in full	s 47E(d)	Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d)).
5.	Hold Music Survey correspondence	Exempt in full	s 47E(d)	Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d)).

Doc No.	Description	Decision	Exemption	Comments
6.	Deputy Secretary Service Delivery Operations Brief	Exempt in full	s 47C	Deliberative material (section 47C).
7.	Chief Executive Officer Brief – Hold Music	Exempt in full	s 47C s 47F(1)	Deliberative material (section 47C). Personal information (section 47F(1)).
8.	Managed Telephony Services contract extract	Exempt in full	s 47E(d) s 47G	Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d)). Information concerning the business, commercial or financial affairs of an organisation (section 47G).
9.	Music on Hold – Production Deployment	Exempt in full	s 47 s 47C s 47E(d) s 47G	Commercially valuable information (section 47). Deliberative material (section 47C). Information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency (section 47E(d)). Information concerning the business, commercial or financial affairs of an organisation (section 47G).

REASONS FOR DECISION

What you requested

Please provide copies of any documents relating to the selection of the hold music for the Services Australia phone lines, including Centrelink, Medicare, and the Australian Immunisation Register.

Charges

On 5 November 2021, the agency notified you in accordance with section 29 of the FOI Act you were liable to pay a charge for the processing of your request. Our preliminary assessment of the charge was \$110.00.

In accordance with Regulation 10 of the *Freedom of Information (Charges) Regulations 2019* (Regulations), I have considered the actual time taken to process your request. Pursuant to the Regulations, the agency must consider whether the amount paid equals the actual amount you would be liable to pay in respect of the charge. I consider the charge of \$110.00 to be a fair and accurate reflection of the time taken to process your request.

On this basis, I have fixed the charge at \$110.00 under Regulation 9 of the Regulations.

What I took into account

In reaching my decision I took into account:

- your request dated 19 October 2021
- the documents falling within the scope of your request
- consultation with third parties about documents containing information concerning their organisation's business and commercial affairs
- whether the release of material is in the public interest
- consultations with agency officers about:
 - the nature of the documents
 - the agency'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 the documents you have requested are exempt under the FOI Act. My findings of fact and reasons for deciding this are discussed below.

Commercially valuable information

I have applied the exemption in section 47(1)(b) of the FOI Act to Document 9.

This section of the FOI Act allows the agency to exempt material from release if disclosure would reveal trade secrets or destroy or diminish commercially valuable information.

Commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved.

Document 9 is a Project Request for the provision of managed telecommunication services. This document is confidential and is not in the public domain. I am satisfied this information has commercial value as it includes commercial quotations and fees for scoping of work. Further, I am satisfied parts of this document contain technically sensitive information, strategies and solutions that remain the intellectual property of a telecommunications vendor, and this information is commercially valuable.

Should this document be released, competitors of the telecommunications vendor could be provided information about the technical and commercial specifics of the services provided to the agency by this business. Dissemination of this information would enable competitors to emulate the technical services and provide them at a lower price point, damaging the commercial viability of the services provided.

I consulted with the telecommunications vendor who provided this document to the agency. In its submissions, the vendor confirmed the confidentiality of the information, the commercial value of the information and the advantageous nature of this information should it be disclosed to competitors. Specifically, the vendor submitted that competitors would be able to gain a commercial advantage over the vendor when competing on similar projects in the future.

Having considered the vendor's submission and the material in question, I am satisfied the commercial value of Document 9 would be, or could reasonably be expected to be, destroyed or diminished if the information was disclosed.

For the reasons set out above, I am satisfied Document 9 is exempt in full under section 47(1)(b) of the FOI Act.

Deliberative processes

Section 47C of the FOI Act provides a document is conditionally exempt if it would disclose deliberative matter. Deliberative matter is an opinion, advice or

recommendation, or a consultation or deliberation that has taken place in the course of, or for the purposes of, the deliberative processes of an agency. Material which is operational or purely factual information is not deliberative. The deliberative exemption also does not apply to reports of scientific or technical experts, reports of a body or organisation prescribed by the regulations, or a formal statement of reasons.

I have applied this exemption to Documents 1, 6, 7 and 9. I am satisfied Documents 1, 6 and 7 are briefing documents containing information to be considered by senior agency staff about on hold music and commercial agreements to obtain this service. This includes opinions, advice and recommendations.

Further, I am satisfied Document 9 contains recommendations to senior staff about engaging the telecommunications vendor and recommendations around procuring the vendor's services. I am satisfied the documents are not operational information or purely factual information and are otherwise not of a kind specifically excluded by the FOI Act.

Accordingly, I am of the view that the information is also conditionally exempt under section 47C of the FOI Act.

Operations of the agency

I have applied the exemption in section 47E(d) of the FOI Act to Documents 1 – 5, and 8 – 9.

This section of the FOI Act allows the agency to redact material from a document if its disclosure would have a serious or significant effect on the agency's ability to conduct its operations efficiently and properly.

The relevant documents contain information about the selection of hold music and in queue announcements for telephony queues, including selection methodology, project timelines, outcomes, vendor sourcing arrangements and cost. I am satisfied this information is relevant to the implementation, delivery and management of a process administered by the agency, and is therefore relevant to the conduct of the agency's operations.

I consider providing the exempt material to you, which is not publicly available, would negatively affect the conduct of the operations of the agency because it would reveal information about vendor sourcing and commercial arrangements of the agency, and compromise the agency's ability to effectively obtain tenders from suitably qualified telecommunication service vendors.

Should this information be released, there is a significant risk third parties will not consider tendering for projects if a precedent of the agency releasing technical and commercially valuable information under FOI is established. Alternatively, third parties may not provide all relevant information (out of fear of commercially valuable information being disclosed), impacting delegates' decisions to spend money on appropriate government services. This, in turn, would seriously affect the agency's ability to obtain commercial services.

Personal information

I have applied the exemption in section 47F(1) of the FOI Act to parts of Document 7.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable. It can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature. I am satisfied Document 7 contains person information, being the personal information of a member of the public, including their full name and contact number.

I am satisfied the disclosure of this personal information would be unreasonable as you do not have consent from this individual for the release of their personal information. Further, I am satisfied the information is private, not well known to you, and not publicly available. In my view disclosure of this information is unreasonable and no public purpose would be achieved through release.

Business information

I have applied the exemption in section 47G for the FOI Act to Documents 8 and 9.

This section of the FOI Act allows the agency to withhold material if disclosure of information concerning the business, commercial or financial affairs of an organisation would adversely affect the organisation in respect of its lawful business, commercial or financial affairs.

I am satisfied Documents 8 and 9 contain the business and commercial information of a telecommunications vendor.

In considering whether this conditional exemption applies to the material held by the agency, I conducted a consultation with the telecommunications vendor. Document 8 is an extract from the Managed Telecommunications Service Contract for Music on Hold and, as outlined above, Document 9 is a Project Request.

These documents outline specific services provided to the agency, and provide technical specifications required to complete work in accordance with the contract. I am satisfied the disclosure of these documents would disclose the business affairs of the telecommunications vendor.

I consider providing the exempt material to you, which is not publicly available, would adversely affect this organisation because it would inhibit the vendor's ability to provide services to its clients in the future. Disclosure of the information would place the vendor at a considerable disadvantage in its future business affairs, as it would reveal confidential commercial intelligence to competitors. Furthermore, I have also considered that a Managed Telephone Services Tender is currently in progress, which increases the likelihood that other telecommunications vendors may gain an unfair competitive advantage over the vendor in question if its commercial information is disclosed pursuant to your FOI request.

While I have no reason to believe you would misuse the exempt material in this way, the FOI Act does not control or restrict use or dissemination of the information once released in response to an FOI request, so I must consider actions any member of the public might take.

Public Interest

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

I consider the disclosure of the material would generally promote the objects of the FOI Act, which is in the public interest. In addition, disclosure would promote effective oversight of and scrutiny public expenditure and increase discussion on Australian businesses supporting local musicians by using their music for Music on Hold. Further, I consider disclosure would improve government transparency by facilitating access to government information and increase the understanding of government decision making.

However, I also consider disclosure would:

- prejudice individuals' right to privacy
- adversely affect or harm the interests of an individual
- harm the business interests of a telecommunications vendor
- place a telecommunications vendor at a commercial disadvantage in providing future services to the agency and other clients
- inhibit the provision of opinions, advice and recommendations within the agency, which is reasonably likely to diminish decision makers' capacity to make correct value for money decisions
- change the way vendors approach respond to tenders and result in the agency receiving less comprehensive project plans
- prejudice the agency's ability to obtain confidential information from vendors in the future, and
- prejudice the agency's ability to obtain commercial services from vendors in the future, which would in turn significantly prejudice the agency's ability to obtain commercial services at the best value for the Australian tax payer.

On balance, and having weighed the competing factors, I find the public interest factors in favour of disclosing the material are outweighed by the public interest factors 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 Documents 1 - 9.

I have decided:

- Document 9 is exempt in full under section 47 of the FOI Act
- Documents 1, 6 – 7 and 9 are conditionally exempt in full under section 47C of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5)
- Documents 1 - 5 and 8 – 9 are conditionally exempt in full under section 47E(d), and disclosure would be contrary to the public interest for the purposes of section 11A(5)
- Document 7 is conditionally exempt in part under section 47F(1), and disclosure would be contrary to the public interest for the purposes of section 11A(5), and
- Documents 8 and 9 are exempt in full under section 47G of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).

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 agency 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

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 the agency'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.