



22 December 2022

Our reference: LEX 70430

Mr Jon Lawrence (Right to Know)

Only by email: foi+request-9520-0679da5e@righttoknow.org.au

Dear Mr Lawrence

Decision on your Freedom of Information Request

I refer to your request dated and received by Services Australia (the Agency) on 2 November 2022 for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

I request access to any documents relating to any cost-benefit analysis or privacy risk assessment relating to the decision to develop an inhouse authentication app - myGov Code Generator.

My decision

The Agency holds one document (totalling 12 pages) that relates to your request.

I have decided to:

- **refuse access** to this one document (Document 1), and
- **refuse** your request for any document relating to a cost-benefit analysis, under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the document that you have requested and I am satisfied it does not exist.

I have decided that Document 1 is exempt in its entirety because it contains:

- material subject to legal professional privilege (section 42 of the FOI Act), and
- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C of the FOI Act).

Please see the schedule at **Attachment A** to this letter for a detailed 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 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

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



SCHEDULE OF DOCUMENTS
LAWRENCE, Jon (Right to Know) - LEX 70430

Doc No.	Pages	Date	Description	Decision	FOI Exemption	Comments
1.	1-12	20 October 2017	Privacy Assurance Advice - myGov MAP, WAP and Authentication App project	Exempt in full	s 42 s 47C	Material subject to legal professional privilege. Deliberative material.



REASONS FOR DECISION

What you requested

I request access to any documents relating to any cost-benefit analysis or privacy risk assessment relating to the decision to develop an inhouse authentication app - myGov Code Generator.

What I took into account

In reaching my decision I took into account:

- your request dated 2 November 2022
- other discussions and correspondence with you
- the documents that fall within the scope of your request
- whether the release of material is in the public interest
- consultations with Agency officers about:
 - the nature of the documents
 - searches conducted for the documents requested
 - 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 that the document you requested is exempt in its entirety under section 42 and section 47C of the FOI Act. My findings of fact and reasons for deciding that the exemptions apply to the document are discussed below.

Legal professional privilege

I have applied the exemption in section 42 of the FOI Act to Document 1 in its entirety.

This section of the FOI Act allows the Agency to exempt a document from disclosure if it is subject to legal professional privilege (LPP).

The FOI does not define LPP. Courts have held that deciding whether a communication is privileged requires a consideration of:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation

- whether the advice given is independent, and
- whether the advice given is confidential.

The document you have requested contains legal advice provided by the Agency's in-house Legal Services Division.

I am satisfied that:

- the Agency's Legal Services Division were acting in their capacity as professional legal advisers that there was a clear adviser-client relationship in relation to Document 1
- Document 1 was prepared for the dominant purpose of providing legal advice on specific matters
- the Agency's organisational structure affords independence to the Legal Services Division, allowing members to provide independent legal advice, and
- the advice given in Document 1 was confidential and has not been used in any way which is inconsistent with maintaining that confidentiality.

Therefore, I am satisfied that Document 1 is a document to which LPP attaches.

I am also satisfied that privilege in these communications has not been waived as the document has not been distributed further than is reasonably necessary for internal operational purposes.

For the reasons set out above, I am satisfied that the document is exempt under section 42 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 matter. 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 am satisfied Document 1 contains deliberative matter, being advice and recommendations, which have been prepared by the Agency's Legal Services Division. I am also satisfied the document is not operational information or purely factual information, and otherwise not of a kind specifically excluded by the FOI Act.

Accordingly, I find that the document is also conditionally exempt, in full, under section 47C(1) of the FOI Act.

I consider the disclosure of the material may generally promote the objects of the FOI Act, which is in the public interest. However, I also consider disclosure is likely to inhibit frankness and candour, including in the provision of comprehensive legal advice, in relation to the assessment of privacy issues. This would in turn compromise the Agency's capacity to deliberate on the options available to mitigate privacy management risks associated with the implementation of new and existing projects.

As such, I find that any public interest in favour of disclosing the material is outweighed by the public interest against disclosure.

Documents do not exist

Section 24A of the FOI Act permits an Agency to refuse a request for access to documents if all reasonable steps have been taken to find the document, and the Agency is satisfied the document cannot be found, or does not exist.

The Data Online Systems Branch (the Branch) conducted searches of the Agency's electronic and paper files for the documents requested. This Branch did not identify any documents relating to a cost benefit analysis. The Branch advised that no cost benefit analysis was conducted, as the Authenticator App was an enhancement measure based on customer feedback and complaints.

On the basis of the searches conducted, and the information provided by the Branch, I am satisfied that in accordance with section 24A of the FOI Act, all reasonable steps have been taken to find the document and the document requested does not exist.

Summary of my decision

In conclusion, I have decided to:

- refuse access to one document (Document 1), and
- refuse your request for access to any document relating to any cost-benefit analysis under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the document that you have requested and I am satisfied it does not exist.

I have decided that Document 1 is exempt, in full, under sections 42 and 47C of the FOI Act, and disclosure of conditionally exempt material would be contrary to the public interest for the purposes of section 11A(5) of the FOI Act.



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 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 (the Agency); and/or
2. the Australian Information Commissioner.

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: 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: 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.