



6 February 2023

Our reference: LEX 71196

Rex Banner

By email: foi+request-9759-2c6ed3db@righttoknow.org.au

Dear Sir / Madam,

Decision on your Freedom of Information Request

I refer to your request received by Services Australia (the Agency) dated 22 December 2022 for access under the *Freedom of Information Act* 1982 (Cth) to the following documents:

...the Privacy Impact Assessment (PIA) #39159 for the "COVID-19 Immunisation Readiness Project" under the Freedom of Information Act 1982 (Cth).

My decision

The Agency holds one document (totalling 62 pages) that meets the scope of your request.

I have decided to refuse your request in full on the basis that:

- the material contained within the document is subject to legal professional privilege (section 42 exemption), and
- disclosure of the document would have a substantial and adverse effect on the Agency's operations, and disclosure is against 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 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 freedomofinformation@servicesaustralia.gov.au.

Yours sincerely

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



SCHEDULE OF DOCUMENTS FOR RELEASE

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Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1 - 62	28 September 2022	Privacy Impact Assessment – COVID-19 Immunisation Readiness Project	Exempt in full	Section 42 Section 47E(d)	Material subject to legal professional privilege Disclosure would have substantial and adverse effect on Agency operations



Attachment A

REASONS FOR DECISION

What you requested

On 22 December 2022, you requested:

...the Privacy Impact Assessment (PIA) #39159 for the "COVID-19 Immunisation Readiness Project" under the Freedom of Information Act 1982 (Cth).

You agreed to an extension of time for the Agency to process your request on 22 December 2022 and the Agency acknowledged your request on 5 January 2023.

What I took into account

In reaching my decision I took into account:

- your original request dated 22 December 2022
- correspondence with you
- the document falling 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, and
 - 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 decision

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

I have decided to refuse access to the document in full. My findings of fact and reasons for deciding the exemption applies to that document are discussed below.

Section 42 of the FOI Act – legal professional privilege

This section of the FOI Act allows the Agency to redact documents or parts of documents subject to legal professional privilege (LPP). I have applied this exemption to the document in full.

Section 42 of the FOI Act provides:

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.



(2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.

(3) A document is not an exempt document under subsection (1) by reason only that:

- (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
- (b) the information is operational information of an agency.

Paragraphs 5.129 of the Guidelines provides the following guidance in relation to the application of section 42:

At common law, determining 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
- whether the advice given is confidential. (*internal references omitted*)

The document is legal advice provided to the Agency in the development of the COVID-19 Immunisation Readiness Project. I am satisfied the document is advice provided by legal advisers acting with the required level of independence from the client and there is a clear legal adviser-client relationship.

I am satisfied LPP attaches to this document and LPP has not been waived. The documents have not been distributed further than reasonably necessary for internal operational purposes. I am also satisfied the substance of the legal advice contained in the document has not been used in any way which is inconsistent with the maintenance of the confidentiality of the advice.

I am satisfied there is a possibility of real harm resulting from release as the document contains detailed legal analysis about the Agency's cyber operations and environment. Disclosure of this information creates the real risk of third party actors gaining insight into the Agency systems and architecture, and exploiting this knowledge for malicious purposes.

Additionally, I am of the view that the Agency's ability to obtain legal advice on issues (such as COVID-19 projects) would be substantially prejudiced if these documents were to be made publicly available through FOI processes. I am satisfied real harm is likely to result from release of the documents as doing so would waive privilege and disclose the particular legal provider's approach to the interpretation, analysis and application of legislation administered by the Agency.

Conclusion

I have decided to refuse you access to the document on the basis it is exempt in full under section 42 of the FOI Act as it contains material subject to LPP.



Section 47E(d) of the FOI Act – operations of the Agency

This section of the FOI Act provides a document is conditionally exempt if it would have a substantial adverse effect on the Agency's ability to conduct its operations efficiently and properly.

The requested document contains detailed analysis about the Agency's cyber operations and its measures to securely protect the information it stores in line with legislative requirements. The Agency holds a vast amount of private and personal information relating to its own staff and members of the Australian community, and I am satisfied the protection of this information is clearly related to the Agency's operations.

I consulted with Agency officers in the Health Programmes Division who advised me that disclosure of the document poses a real and substantial risk of compromising the Agency's cybersecurity measures and exposing the Agency to greater risk of cyber-attacks. I am of the view that disclosure of the material would have a substantial and adverse effect on the Agency's proper and efficient conduct of operations as the security of the information the Agency holds would be severely jeopardised.

Whilst I am not suggesting that you would misuse this information, the FOI Act does not control or restrict the use or spread of information once released through FOI. I must therefore take the perspective that the information could enter the public domain and create the identified risk.

I am satisfied that disclosure of this material would have a substantial and adverse effect on the proper and efficient conduct of the Agency's operations.

Public interest considerations

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

I acknowledge there is public interest in favour of disclosure to promote the objects of the FOI Act, and inform debate on a matter of public importance. However I consider that the integrity of Agency systems and the protection of the private and personal information the Agency holds about members of the public and its staff weigh heavier against disclosure. Given the heightened risk environment regarding cyber-attacks, I consider that on balance, disclosure would be contrary to the public interest,

Conclusion

I am of the view that disclosing the material in the document would have a substantial and adverse effect on the proper conduct of the Agency's operations. I am further satisfied that the public interest against disclosure outweighs the public interest in favour of disclosure.

Summary of decision

I have decided to refuse your request in full on the basis that:

- the material contained within the document is subject to legal professional privilege (section 42 exemption), and
- disclosure of the document would have a substantial and adverse effect on the Agency's operations, and disclosure is against the public interest (section 47E(d) conditional exemption)



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.



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 (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