



17 May 2023

Our reference: LEX 73077

Me (Right to Know)

By email: [foi+request-9846-79834e52@righttoknow.org.au](mailto:foi+request-9846-79834e52@righttoknow.org.au)

Dear Me

### **Freedom of Information Request - Internal Review Decision**

I refer to your request for internal review of the Freedom of Information (FOI) decision made by an authorised decision maker of Services Australia (the Agency) under the *Freedom of Information Act 1982* (FOI Act) on 17 March 2023 (LEX 71589) (the original decision).

#### **Background**

On 31 January 2023, you made a revised request under the FOI Act for the following documents:

There are amendments to s 67CC(2) of the A New Tax System (Family Assistance) (Administration) Act 1999, contained in the Family Assistance Legislation Amendment (Cheaper Childcare) Act 2022. In particular, the amendment that adds 'claimant' to s 67CC(2).

For that amendment, please produce:

1. The earliest in time document in Services Australia's possession that relates directly to the above amendment
2. The latest in time document, but on or before 26 September 2022, in Services Australia's possession that relates directly to the above amendment
3. A document in Services Australia's possession that describes the origin of the idea to pursue the amendment.

On 17 March 2023, the decision maker decided to:

- grant you **full access** to 1 document (Document 3), and
- grant you **part access** to 2 documents (Documents 1 and 2) with some of the content removed

On 17 April 2023, you sought internal review of the original decision, stating:

I am writing to request an internal review of Services Australia's handling of my FOI request 'Reason for amendments to s 67CC(2)'.

I understand that my request for internal review is within time. In the alternative, I request my internal review be considered out of time, on the basis that it is more efficient for all parties than if I were to file a new request on the grounds below.

Information about who is emailing whom is relevant and necessary context to the information in the body of the emails.

I seek review of the decision to redact any/all information in the 'from', 'to', 'cc', and 'bcc' fields of all released emails, excluding information redacted on the basis of s 22.

To the extent information is redacted under s 47E(d), I submit there is no requirement to redact the email domain (e.g., '@servicesaustralia.gov.au' or similar). Releasing the domain will not reveal the positional mailbox, therefore, there is no lawful basis to redact the information. I submit the domains must be released.

To the extent information is redacted under s 47F(1), I infer these are names of EL and/or SES staff (cf 'agency junior staff details redacted under section 22 (out of scope)').

It is well established that SES names are not exempt from disclosure under the FOI Act, least of all solely on the basis that an SES' name is their personal information. In part, this is because SES are meant to be subject to a higher level of accountability. Accountability is literally part of their job description; if they do not want their names released, they are free to become junior staff or resign. I submit that names of SES must be released.

The names of EL staff are a grey area. My submission is they must be released, along with the SES names. However, I would accept a decision where only their first name was released (e.g., 'joe.[redacted]@servicesaustralia.gov.au'). This sufficiently protects their privacy and furthers the public interest by providing the necessary context to the bodies of the emails.

### **Summary of my internal review decision**

Having considered the material before me, I have decided to affirm the original decision. That is, I have decided to:

- grant you **full access** to 1 document (Document 3), and
- grant you **part access** to 2 documents (Documents 1 and 2) with some of the content removed.

I have decided that certain documents, or parts of documents, you have requested are exempt under the FOI Act, as they include:

- personal information of another person, the disclosure of which would be unreasonable and contrary to the public interest, and
- operational information, the disclosure of which would be contrary to the public interest and have a serious or significant effect on the Agency's ability to conduct its operations efficiently and properly.

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.

### **How we will send your documents to you**

The documents are attached.

**You can ask for a review of our decision**

If you disagree with any part of the decision you can ask for a 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](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

Yours sincerely

Amanda  
Authorised FOI Decision Maker  
Freedom of Information Team  
FOI and Ombudsman Branch | Legal Services Division  
Services Australia



**SCHEDULE OF DOCUMENTS FOR RELEASE**  
**INTERNAL REVIEW – Me (Right to Know) – LEX 73077– LEX 71589**

<b>Doc No.</b>	<b>Pages</b>	<b>Date</b>	<b>Description</b>	<b>Decision</b>	<b>Exemption</b>	<b>Comments</b>
1.	1-3	28 July 2022	Emails received by Services Australia from Department of Education	Release in part	s 47E(d) s 47F(1)	Agency positional mailbox redacted under section 47E(d) Personal information of staff of Department of Education redacted under section 47F(1) Agency junior staff details redacted under section 22 (out of scope) Out of scope information redacted under section 22 (not related to amendment of paragraph 67CC(2)(d))

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
2.	4-13	August - September 2022	<p>Emails correspondence between Services Australia and Department of Education and attachment:</p> <p>Family Assistance legislation Amendment (Cheaper Child Care) Bill 2022</p>	Release in part	<p>s 47E(d)</p> <p>s 47F(1)</p>	<p>Agency positional mailbox redacted under section 47E(d)</p> <p>Personal information of staff of Department of Education redacted under section 47F(1)</p> <p>Agency junior staff details redacted under section 22 (out of scope)</p> <p>Attachment: Cover page and relevant page of Bill provided – out of scope material redacted (not related to amendment of paragraph 67CC(2)(d))</p> <p>Full document and information available here:</p> <p><a href="#">Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022</a></p> <p>Out of scope information redacted under section 22 (not related to amendment of paragraph 67CC(2)(d))</p>
3.	14-15	2022	<p>Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022</p> <p>Explanatory memorandum</p>	Relevant section - release in full		<p>Cover page and relevant page of Explanatory Memorandum provided – out of scope material redacted under section 22 (not related to amendment of paragraph 67CC(2)(d))</p> <p>Full document and information available here:</p> <p><a href="#">FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHEAPER CHILD CARE) BILL 2022 Explanatory Memorandum (austlii.edu.au)</a></p>

# REASONS FOR DECISION

## What you requested

On 25 January 2023 you wrote to the Agency to make a FOI request. On 31 January 2023 you revised this request in the following terms:

There are amendments to s 67CC(2) of the A New Tax System (Family Assistance) (Administration) Act 1999, contained in the Family Assistance Legislation Amendment (Cheaper Childcare) Act 2022. In particular, the amendment that adds 'claimant' to s 67CC(2).

For that amendment, please produce:

1. The earliest in time document in Services Australia's possession that relates directly to the above amendment
2. The latest in time document, but on or before 26 September 2022, in Services Australia's possession that relates directly to the above amendment
3. A document in Services Australia's possession that describes the origin of the idea to pursue the amendment.

On 17 March 2023, the Agency provided you with the original FOI access decision, to

- grant you **full access** to 1 document (Document 3), and
- grant you **part access** to 2 documents (Documents 1 and 2) with some of the content removed

## Your request for internal review

In your correspondence to the Agency dated 17 April 2023, and received by the Agency on the same day, you requested an internal review of the original decision. You submitted the following reasons for seeking internal review:

I am writing to request an internal review of Services Australia's handling of my FOI request 'Reason for amendments to s 67CC(2)'.

I understand that my request for internal review is within time. In the alternative, I request my internal review be considered out of time, on the basis that it is more efficient for all parties than if I were to file a new request on the grounds below.

Information about who is emailing whom is relevant and necessary context to the information in the body of the emails.

I seek review of the decision to redact any/all information in the 'from', 'to', 'cc', and 'bcc' fields of all released emails, excluding information redacted on the basis of s 22.

To the extent information is redacted under s 47E(d), I submit there is no requirement to redact the email domain (e.g., '@servicesaustralia.gov.au' or similar). Releasing the domain will not reveal the positional mailbox, therefore, there is no lawful basis to redact the information. I submit the domains must be released.

To the extent information is redacted under s 47F(1), I infer these are names of EL and/or SES staff (cf 'agency junior staff details redacted under section 22 (out of scope)').

It is well established that SES names are not exempt from disclosure under the FOI Act, least of all solely on the basis that an SES' name is their personal information. In part, this is because SES are meant to be subject to a higher level of accountability. Accountability is literally part of their job description; if they do not want their names released, they are free to become junior staff or resign. I submit that names of SES must be released.

The names of EL staff are a grey area. My submission is they must be released, along with the SES names. However, I would accept a decision where only their first name was released (e.g., 'joe.[redacted]@servicesaustralia.gov.au'). This sufficiently protects their privacy and furthers the public interest by providing the necessary context to the bodies of the emails.

### **What I took into account**

In reaching my decision I took into account:

- your original request dated 25 January 2023
- Your revised request dated 31 January 2023
- the original decision dated 17 March 2023
- your request for internal review dated 17 April 2023
- documents falling within the scope of your request
- whether the release of material would be in the public interest
- consultations with Agency officers about:
  - the nature of the documents
  - the Agency's operating environment and functions
- consultation with the Department of Education in relation to documents which contain information concerning that Department and its staff
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines), and
- the FOI Act.

### **Reasons for my decisions**

I am authorised to make decisions under section 23(1) of the FOI Act, including internal review decisions under section 54C of the FOI Act.

I have decided certain parts of the documents you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemption applies to the documents are discussed below.

#### Section 47F - Unreasonable disclosure of personal information

I have considered your internal review request, in which you indicated that you had inferred that, to the extent information had been redacted under section 47F(1) of the FOI Act, this related to the names of EL and/or SES staff (cf 'agency junior staff details redacted under section 22 (out of scope)').

However, noting that section 22 redactions were only applied to the details of junior staff *of the Agency*, I confirm that the section 47F(1) redactions in the documents provided to you related to the personal information of individuals that are not employees of the Agency (specifically the names and email addresses of Department of Education employees).

I have decided not to release the names and contact details of these individuals to you as I am of the view that this would amount to an unreasonable disclosure of personal information. Accordingly, I have applied the conditional exemption in section 47F(1) of the FOI Act to parts of Documents 1 and 2.

This section of the FOI Act allows the Agency to redact material from a document if its disclosure would result in the unreasonable disclosure of personal information about another person.

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 and financial information. I am satisfied the documents contain personal information relating to Department of Education employees, including their names and contact details.

Having carefully reviewed the documents in question, I consider disclosure of the personal information of Department of Education staff, such as names and contact details, would be unreasonable because:

- you do not have the consent from these individuals to the release of their personal information
- the information is private and not freely available in full or in part from publicly accessible sources
- the identity of the individuals concerned are readily apparent or could be easily ascertained, and
- revealing this information is likely to pose a real and unacceptable risk of rendering those individuals vulnerable to threats and unauthorised contact from members of the public, which could jeopardise their physical safety and compromise their mental health.

For the reasons outlined above, I am satisfied disclosure of the third party personal information would be unreasonable.

#### *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. Whilst disclosure of the material would generally promote the



objects of the FOI Act, I am of the view that the factors against disclosure outweigh this. In my opinion, the disclosure of Department of Education employee details in this matter would prejudice the individuals' right to privacy, may adversely affect the individuals' interests including prejudicing their personal safety, and would prejudice the Department of Education's ability to attract and retain staff if personal details were to be routinely disclosed through FOI.

As such, I find the public interest in disclosing the material is outweighed by the public interest 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.

#### Section 47E(d) - Operations of the Agency

I have considered your internal review request with respect to the positional mailbox information redacted under section 47E(d) of the FOI Act.

I have applied the conditional exemption in section 47E(d) of the FOI Act to Documents 1 and 2.

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 5.20 of the Guidelines provides:

The term 'substantial adverse effect' broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'. The word 'substantial', taken in the context of substantial loss or damage, has been interpreted as 'loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal'.

Further, in *Re James and Australian National University* (1984) 6 ALD 687 the phrase 'conduct of operations' was interpreted to extend 'to the way in which an agency discharges or performs any of its functions.'

#### *Internal positional mailboxes*

I have applied the exemption in section 47E(d) of the FOI Act to parts of Documents 1 and 2 as they contain internal Agency contact information for positional mailboxes.

The Agency's purpose is to provide high-quality government services and payments to Australians. It is a large, public facing, government organisation with many points of contact designed to facilitate its purpose. The Agency has established channels of communication for customers and members of the public, which have been put in place to ensure the effective management of the significant volume of communication received.

Having regard to the above, I am satisfied this information is relevant to the Agency's operations. Moreover, releasing this information would have a substantial adverse effect on those operations.

Specifically, releasing positional email addresses in Documents 1 and 2 would have a substantial adverse effect on the proper and efficient conduct of the operations of Services Australia, for the following reasons:

- these details are not in the public domain, and are intended to be used to facilitate confidential and prompt communications within the Agency
- given the dedicated contact points currently available to customers and members of the public, if other contact details of identified teams were released to the world at-large, there would be a potential increase in the workloads for those teams, therefore reducing the efficiency of the Agency. Customers would not be contacting the most appropriate service area, which may compromise communication within the Agency, and would require staff to be diverted from their duties in order to respond to or redirect enquiries
- from time to time, positional email addresses are deleted or changed due to operational requirements, and if a member of the public sends an email to such an address, there is a high probability that the email would not be actioned. This may result in services not being administered correctly, or administered at all, and
- providing direct contact details may result in incorrect advice or inconsistent service being provided by the Agency and would also inhibit the management of data and undermine the Agency's efforts to provide services as efficiently and effectively as possible.

That is, the Agency has established procedures for managing specific types of customer interactions. Communication misdirected due to the disclosure of internal positional email addresses will likely lead to these communications being lost, duplicated or double-handled on account of it not being directed to the most appropriate team. When discussing the interactions that number in the hundreds of millions, diverting people from correct channels cannot be appropriately categorised as insubstantial or nominal.

While I have no reason to believe you would misuse the exempt material in any 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 once the information enters the public domain.

For reasons detailed above, I am satisfied that positional mailbox addresses in full are conditionally exempt under section 47E(d) of the FOI Act.

#### *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 consider the disclosure of the material would promote the objects of the FOI Act to a limited extent. On the other hand, I also consider disclosure would increase the risk of unauthorised access to information held by the Agency and individuals circumventing the Agency's established communication channels for their own benefit, which would in turn significantly prejudice the Agency's ability to promptly and effectively deliver services to the Australian public. Therefore, I am of the view that disclosure of the conditionally exempt material is not, on balance, in the public interest.

#### **Summary of my decision**

I have decided to:

- grant you **full access** to 1 document (Document 3) and

- grant you **part access** to 2 documents (Documents 1 and 2) with some of the content removed

## 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 section 54L of the FOI Act, you can apply for a review of an FOI decision by contacting the Office of the Australian Commissioner.

#### **Applying for external review by the Australian Information Commissioner**

If you do not agree with the internal review decision, you can ask 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](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)

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

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