



5 August 2024

Our reference: LEX 79938

Frank N Fearless

By email: [foi+request-11485-acc729fe@righttoknow.org.au](mailto:foi+request-11485-acc729fe@righttoknow.org.au)

Dear Frank N Fearless

### **Decision on your Freedom of Information Request**

I refer to your request, received by Services Australia (the Agency) on 4 June 2024 for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

1. The internal report or document modelling the Agency's ongoing staffing requirements. I am referring to the modelling created 'in the budget context' and referred to by your CEO in the Budget Estimates hearing on the 3rd of June.
2. Any report or summary outputs (powerpoints) produced by Korda Mentha when they were engaged to independently review the performance of the Agency prior to this year's budget.

### **My decision**

The Agency holds 9 documents that relate to your request.

I have decided to **refuse access** to the documents (Documents 1 to 9).

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

- material submitted to the Cabinet for its consideration, and created for the dominant purpose of briefing a Minister on a Cabinet Submission (section 34 exemption), and
- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C conditional exemption).

Please see the schedule at **Attachment A** to this letter for a description 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 [freedomofinformation@servicesaustralia.gov.au](mailto:freedomofinformation@servicesaustralia.gov.au).

Yours sincerely

Cherie  
Authorised FOI Decision Maker  
Freedom of Information Team  
FOI and Reviews Branch | Legal Services Division  
Services Australia



**SCHEDULE OF DOCUMENTS**  
**Frank N Fearless (Right to Know) - LEX 79938**

<b>Doc No.</b>	<b>Date</b>	<b>Description</b>	<b>Decision</b>	<b>Exemption</b>	<b>Comments</b>
1.	November 2023	Budget and Efficiency Review – Interim findings report (draft)	Exempt in full	s47C	Deliberative material deleted under section 47C
2.	November 2023	Budget and Efficiency Review – Interim findings report (draft)	Exempt in full	s47C	Deliberative material deleted under section 47C
3.	December 2023	Budget and Efficiency Review – Interim findings report (draft)	Exempt in full	s47C	Deliberative material deleted under section 47C
4.	January 2024	Budget and Efficiency Review – Interim findings report (draft)	Exempt in full	s47C	Deliberative material deleted under section 47C
5.	January 2024	Budget and Efficiency Review – Steering Committee meeting	Exempt in full	s47C	Deliberative material deleted under section 47C



Doc No.	Date	Description	Decision	Exemption	Comments
6.	February 2024	Budget and Efficiency Review – Key modelling assumptions (draft)	Exempt in full	s47C	Deliberative material deleted under section 47C
7.	February 2024	Budget and Efficiency Review – Report of findings and recommendations (Volume 1)	Exempt in full	s34 s47C	Cabinet material deleted under section 34 Deliberative material deleted under section 47C
8.	February 2024	Budget and Efficiency Review – Analysis and key information (Volume 2)	Exempt in full	s34 s47C	Cabinet material deleted under section 34 Deliberative material deleted under section 47C
9.	February 2024	Budget and Efficiency Review – Appendices (Volume 3)	Exempt in full	s34 s47C	Cabinet material deleted under section 34 Deliberative material deleted under section 47C



## REASONS FOR DECISION

### What you requested

1. The internal report or document modelling the Agency's ongoing staffing requirements. I am referring to the modelling created 'in the budget context' and referred to by your CEO in the Budget Estimates hearing on the 3rd of June.
2. Any report or summary outputs (powerpoints) produced by Korda Mentha when they were engaged to independently review the performance of the Agency prior to this year's budget.

On 12 June 2024, the Agency acknowledged your request.

On 21 June 2024, I emailed you and sought an extension of time under section 15AA of the FOI Act. You responded on 25 June 2024 and declined to agree to the extension of time. On the same day, I responded to your email and advised that I would seek an extension of time from the Office of the Australian Information Commissioner (OAIC) under section 15AB of the FOI Act.

On 26 June 2024, I applied to the OAIC for an extension of time under section 15AB of the FOI Act, and on 28 June 2024, the OAIC granted an extension of time of 30 days. The due date for your request was extended accordingly, with the new due date being Monday 5 August 2024. Please note, as the 30 days fell due on Saturday 3 August 2024 the due date is extended to the next business day (confirmed by OAIC).

### What I took into account

In reaching my decision I took into account:

- your request dated 4 June 2024
- other discussions and correspondence with you
- the documents that fall within the scope of your request
- consultation with the Department of Prime Minister & Cabinet
- 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 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.

### Cabinet documents

I have applied the exemption in section 34 of the FOI Act to the entirety of Documents 7, 8 and 9.

Section 34 of the FOI Act applies to the following classes of documents:

- a. cabinet submissions that have been submitted to Cabinet, proposed for submission or brought into existence for the dominant purpose of submission for consideration of Cabinet (section 34(1)(a))
- b. official records of the Cabinet (section 34(1)(b))
- c. documents prepared for the dominant purpose of briefing a Minister on a Cabinet submission (section 34(1)(c)), and
- d. drafts of a Cabinet submission, official records of the Cabinet or a briefing prepared for a Minister on a Cabinet submission (section 34(1)(d)).

The exemption also applies to full or partial copies of the categories of documents listed above as well as a document that contains an extract from those categories (section 34(2)).

In addition, any document that contains information which, if disclosed, would reveal Cabinet deliberations or a decision is exempt, unless the deliberation or decision has been officially disclosed (section 34(3)).

Section 34(1) of the FOI Act provides that cabinet documents are wholly exempt under the FOI Act, with the exemption extending to a document prepared to inform a Minister about something they want to bring to Cabinet, or used by a Minister to inform themselves about matters Cabinet is considering.

I have consulted with the Department of Prime Minister and Cabinet regarding Documents 7, 8 and 9 and given due regard to their comments in relation to whether the material is subject to Cabinet privilege.

I have also reviewed the documents and consider the material they contain and the reasons for their creation. Based on the factual circumstances surrounding the creation of the documents I am satisfied they were created for the dominant purpose of briefing a Minister and ultimately, to be submitted for consideration by the Cabinet. As such, I have decided the documents are exempt in full under section 34 of the FOI Act.

Section 34 of the FOI Act does provide for some exceptions to Cabinet privilege, including whether the document is attached to a Cabinet document to which a section 34 exemption applies, whether the document refers to a deliberation or decision of the Cabinet which has been officially disclosed, or whether it contains purely factual material and disclosure of the purely factual material would not reveal a Cabinet deliberation or decision, or existence of a deliberation or decision. I am satisfied none of the exceptions apply to the requested documents, as:

- the documents are not an attachment



- the information contained within the requested documents has not been officially disclosed with the authority of Cabinet, and
- the information contained in the documents are not 'purely factual material', but rather comprise deliberative matter for a Minister to consider, ultimately to be submitted to Cabinet for consideration. Further, to the extent the documents cover factual material, it is embedded in the deliberative material and as such, disclosure would reveal a Cabinet deliberation.

Accordingly, I am of the view that Documents 7, 8 and 9 are exempt under section 34 of the FOI Act.

#### Deliberative processes

I have applied the conditional exemption in section 47C of the FOI Act to the entirety of Documents 1 to 9 inclusive.

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 purpose of, the deliberative processes of the 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 am satisfied Documents 1 to 9 contain deliberative material, being opinions, advice and recommendations prepared by Korda Mentha as part of an independent review of the Agency's funding position to inform proposals for the 2024-25 budget submission. These documents comprise of draft interim findings and meeting documents prepared for discussion purposes, as well as final recommendations. I am satisfied that the documents are not operational information or purely factual information and are otherwise not of a kind specifically excluded by the FOI Act. I am also satisfied the documents relate to the Agency's work and if released would disclose the Agency's or Minister's deliberative process in connection with Cabinet.

Accordingly, I am of the view that Documents 1 to 9 inclusive are conditionally exempt under section 47C 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 generally promote the objects of the FOI Act, which is in the public interest. However, I also consider disclosure could reasonably be expected to prejudice the Agency's ability to:

- efficiently and effectively manage the future review of Agency functions and activities by inhibiting the provision of opinions, advice and recommendations
- undertake effective consultations with external contractors in the future and impede the Agency's capacity to receive full and frank disclosure in future processes
- provide recommendations to the Minister and ultimately impede the candour and frankness required for Government decision making, and
- undermine the confidentiality of the Cabinet process and the principle of collective ministerial responsibility, which is fundamental to the Cabinet system.



As such, I find the public interest factor in favour of disclosing the material is 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.





**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 a 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.

**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, or by email to [freedomofinformation@servicesaustralia.gov.au](mailto:freedomofinformation@servicesaustralia.gov.au)

**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](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)

**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 'FOI Review Form' is available at [Information Commissioner Review Application form](#)
- If you have one, you should include with your application a copy of the Agency's 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)  
Smart Form: [FOI Complaint Form](#)

***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.