



13 September 2024  
FOI ref: 3675

Ms Watson

By email: [foi+request-11723-xxxxxxx@xxxxxxxxxxx.xxx.xx](mailto:foi+request-11723-xxxxxxx@xxxxxxxxxxx.xxx.xx)

Dear Ms Watson,

### FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 21 July 2024 for access, under the *Freedom of Information Act 1982 (FOI Act)*, to the following:

*I request briefing information either sought by, or provided to the Government in relation to the responsibility or liability of the ABA/the banks and/or the government in money scams facilitated through the banks (that is, scams that use the banks to process payments/move money). A particular focus on Authorised Push Payments is sought.*

*The timeframe I seek is from 2021 until now.*

*I would like the information requested to include the following:*

- Any reports, or briefings requested, to or from the Public Service or Government, including any provided by or to the Banks or the ABA to the Government;*
- Any briefs provided regarding discussions between the Government and the Banks (whether through the ABA or individual Banks) relating to this subject matter;*
- Any briefs to the Government relating to this (including any Ministerial signed documents).*

*Exclusions:*

- 1. Please do not provide documents that are duplicates wholly or in substance (eg emails to multiple stakeholders with the same content, reply emails).*
- 2. Also, please redact any content that would require consultation with third parties.*

I am an authorised decision maker under section 23 of the FOI Act.

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## ***Decision***

The Treasury has identified 37 documents within scope of your request, listed in the attached schedule. I have decided to release 1 document in full. I have decided to release 29 documents in part. I have decided to refuse access to 7 documents in full. Irrelevant information in the documents has been deleted under section 22 of the FOI Act. My decision on each document is shown in the schedule. The documents for release are attached.

Further information regarding my decision is set out below.

## ***Material Considered***

The material to which I have had regard in making this decision includes the scope of the request and content of the documents subject to your request, third party consultation responses, the relevant provisions in the FOI Act and Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines), and advice from subject matter experts within the Treasury and the Department of the Prime Minister and Cabinet.

## ***Reasons for decision***

### Material deleted pursuant to Section 22

Section 22 of the FOI Act allows information that is irrelevant to your request to be deleted.

The documents contain the names, signatures and direct phone numbers of government employees. We informed you in our acknowledgement email that it is our usual practice not to include the personal information of government employees and invited you to inform us if you did not agree with us processing the request on this basis. As we did not hear from you, the personal information of government employees has been deleted under section 22 of the FOI Act.

The documents also contain material that is irrelevant to your request. This material has been deleted under section 22 of the FOI Act.

### Cabinet – Section 34

Section 34(1) of the FOI Act provides that a document is exempt if:

- (a) both of the following are satisfied:
  - i. the document has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted; and
  - ii. the document was brought into existence for the dominant purpose of submission to Cabinet.
- (b) it is an official record of the Cabinet; or
- (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
- (d) it is a draft of a document to which paragraph (a),(b) or (c) applies.

Documents 19, 29, 30, 31, and 32 are drafts of documents to which subsection (1) applies. The documents were brought into existence for that purpose. I have decided that Documents 19, 29, 30, 31 and 32 are exempt in full under section 34(1)(d) of the FOI Act.

Section 34(3) of the FOI Act provides a document is exempt to the extent that it contains information the disclosure of which would reveal a Cabinet decision or deliberation, unless the existence of the deliberation or decision has been officially disclosed. This applies to part of Documents 8, 33 and 34. I have therefore decided that Documents 8, 33 and 34 are exempt in part under section 34(3) of the FOI Act.

#### Section 42 – legal privilege

Section 42(1) of the FOI Act provides that a document is exempt if it would be privileged from production in legal proceedings on the ground of legal professional privilege (**LPP**), and the privilege has not been waived (section 42(2)).

Paragraphs [5.129] and [5.131] of the FOI Guidelines provide LPP applies where there is a legal adviser-client relationship (including with in-house counsel), the communication was for the dominant purpose of giving or receiving legal advice, and the advice is independent and confidential.

Part of Document 35 contains legal advice. The privileged material was confidential, known only to a select class of persons, and there has been no conduct or disclosures inconsistent with the maintenance of confidentiality.

I am satisfied the relevant material is of such a nature that it would be privileged from production in legal proceedings on the ground of LPP. I have therefore decided Document 35 is exempt in part under section 42 of the FOI Act.

#### Section 47C – deliberative matter

Section 47C(1) of the FOI Act provides a conditional exemption for documents that, if disclosed, would reveal an opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth (**deliberative matter**).

Document 25 and 33 are briefs to the Assistant Treasurer. They include the Treasury's advice to the Assistant Treasurer, provided for consideration as part of a consultation in the course of the deliberative process intended for Cabinet. I am therefore satisfied that the relevant material contained in these documents is deliberative matter for the purposes of section 47C. In this respect, I find the deliberative material includes factual information which is inextricably intertwined with, and cannot be separated from, the deliberative material and deliberative process.

Accordingly, Document 25 is conditionally exempt in full and Document 33 is conditionally exempt in part under section 47C of the FOI Act. My considerations of the public interest are set out below.

#### Section 47E(d) – prejudice to agency operations

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I have applied this exemption to Documents 33 and 34 in part and to Document 25 in full. One of Treasury's core functions is to provide sound, confidential and authoritative policy advice on issues of significance to the government. I find public disclosure of this material would compromise this confidential process, including the future handling of the Treasury's policy recommendations.

Further, the relevant information informed, and was a precursor to, the development of Cabinet-related advice, briefs and submissions. Disclosure of this material would have a substantial adverse effect on the proper and efficient conduct of the Treasury's operations and adversely impact the confidential Cabinet process. I therefore find parts of Documents 33 and 34 and the whole of Document 25 are conditionally exempt under section 47E(d) of the FOI Act. My public interest considerations follow.

#### Public Interest Test

Section 11A(5) of the FOI Act provides that conditionally exempt material must be released unless its disclosure would, on balance, be contrary to the public interest. Section 11B(3) sets out public interest factors favouring release. I have not taken into account any irrelevant factors set out in section 11B(4) of the Act in making this decision. The FOI Guidelines also set out factors in favour of, and against, releasing conditionally exempt material.

In favour of release, I find disclosure would promote the objects of the FOI Act by increasing scrutiny of government activities.

Against release, I find a public interest in preserving confidential government processes, including the Cabinet deliberation process and related advice to Ministers, in circumstances where disclosure of the relevant material would undermine the effectiveness of those processes and inhibit the free and unqualified advice of agencies to government.

On balance, I consider there are overriding public interest factors against disclosure of the conditionally exempt material. I have therefore decided Documents 33 and 34 are exempt in part, and Document 25 is exempt in full, under sections 47C and/or 47E(d) of the FOI Act.

#### ***Rights of Review***

A statement setting out your rights of review in this matter is attached.

#### ***Disclosure Log***

The Treasury publishes documents disclosed in response to FOI requests on the Treasury website. This is consistent with the arrangements established by section 11C of the FOI Act. In this instance, I consider that the documents released to you are appropriate for publication on the Treasury's FOI disclosure log.

Yours sincerely



Aidan Storer  
Assistant Secretary  
Market Conduct Division

**FOI 3675 Document Schedule**

<b>Doc No.</b>	<b>Description</b>	<b>Decision</b>
<b>1</b>	EC23-002235	Release in part Section 22 - irrelevant
<b>2</b>	EC23-002298	Release in part Section 22 - irrelevant
<b>3</b>	EC23-002563	Release in part Section 22 - irrelevant
<b>4</b>	EC23-002585	Release in part Section 22 - irrelevant
<b>5</b>	MB22-000371	Release in part Section 22 - irrelevant
<b>6</b>	MB22-000389	Release in part Section 22 - irrelevant
<b>7</b>	MB22-000493	Release in part Section 22 - irrelevant
<b>8</b>	MB23-000186	Release in part Section 34(3) - Cabinet Section 22 - irrelevant
<b>9</b>	MB23-000319	Release in part Section 22 - irrelevant
<b>10</b>	MB23-000423	Release in part Section 22 - irrelevant
<b>11</b>	MB23-000425	Release in part Section 22 - irrelevant
<b>12</b>	MB23-000583	Release in part Section 22 - irrelevant
<b>13</b>	MB23-000595	Release in part Section 22 - irrelevant
<b>14</b>	MB23-000608	Release in part Section 22 - irrelevant
<b>15</b>	MB24-000054	Release in part Section 22 - irrelevant
<b>16</b>	MB24-000057	Release in part Section 22 - irrelevant
<b>17</b>	MB24-000244	Release in part Section 22 - irrelevant
<b>18</b>	MB24-000263	Release in part Section 22 - irrelevant
<b>19</b>	MS23-000692	Exempt in full Section 34(1)(d) - Cabinet
<b>20</b>	MB24-000291 - Attachment B	Release in part Section 22 - irrelevant

<b>21</b>	MS23-001808	Release in part Section 22 - irrelevant
<b>22</b>	MS23-002177	Release in part Section 22 - irrelevant
<b>23</b>	MS23-002386 – Attachment A	Release in part Section 22 - irrelevant
<b>24</b>	MS23-002386 - Attachment B	Release in full
<b>25</b>	MS23-002486	Exempt in full Section 47C - deliberative Section 47E(d) - operations of agencies
<b>26</b>	MS24-000215	Release in part Section 22 - irrelevant
<b>27</b>	MS24-000233	Release in part Section 22 - irrelevant
<b>28</b>	MS24-000629 - Attachment C	Release in part Section 22 - irrelevant
<b>29</b>	MS24-000482 –Cabinet Submission	Exempt in full Section 34(1)(d) - Cabinet
<b>30</b>	EC24-0000887 - Attachment C.	Exempt in full Section 34(1)(d) - Cabinet
<b>31</b>	EC24-0000887 - Attachment C1.	Exempt in full Section 34(1)(d) - Cabinet
<b>32</b>	EC23-002739	Exempt in full Section 34(1)(d) - Cabinet
<b>33</b>	MS24-000756	Release in part Section 34(3) – Cabinet Section 47C - deliberative Section 47E(d) - operations of agencies Section 22 - irrelevant
<b>34</b>	MS24-000756 - Attachment A	Exempt in full Section 34(3) - Cabinet Section 47E(d) - operations of agencies Section 22 - irrelevant
<b>35</b>	MS24-000756 - Attachment B - External Dispute Resolution	Release in part Section 42 - legal privilege Section 22 - irrelevant
<b>36</b>	SB23-000122	Release in part Section 22 - irrelevant
<b>37</b>	SB24-000067	Release in part Section 22 - irrelevant

## INFORMATION ON RIGHTS OF REVIEW

### 1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to [FOI@Treasury.gov.au](mailto:FOI@Treasury.gov.au).

**OR**

### 2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

**AND/OR**

### 3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the FOI Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.