



27 November 2024

Our reference: LEX 81846

Frank N Fearless (Right to Know)

By email only: foi+request-12134-fdfcd5f0@righttoknow.org.au

Dear Frank N Fearless

Freedom of Information Request – Statement of Reasons

I refer to your request dated and received by Services Australia (the Agency) on 3 October 2024 for access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

Dear Services Australia,

This request relates to the cohort of debts 'indirectly' affected by income apportionment. A number of such cases were paused by the Agency in April. I believe at the time, it was 42,000 debts affecting 31,000 people.

I seek the most recent document prepared by the Agency which describes:

- The potential extent and nature of the cohort (breakdown by payment type etc)
- the manner in which income apportionment affected or may have affected the calculation.

This request is in the public interest as it will assist the public to understand what full remediation of income apportionment will actually look like. In 2020, the secondary effects of unlawful robodebt received no systemic remedy, as the Agency chose lowest cost options. With the agency proposed recalculation method now lying under a legal cloud, these documents will assist an improved policy conversation.

Deemed refusal

The Agency was required to provide you with a decision in relation to your request by 4 November 2024. As a decision was not provided to you by this date, the principal officer of the Agency is deemed to have refused your request under section 15AC of the FOI Act.

We apologise for the delay in processing your request. Although your request is deemed to be refused, I am providing you with the documents that were the subject of your FOI request and releasing them to you administratively. The documents are redacted as though the Agency had made a decision within time.

I am providing you with a statement of reasons which explains the documents that are being released. The detailed schedule of documents the statement of reasons is at **Attachment A**.

You can ask for a review of our deemed refusal decision

If you disagree with the deemed refusal of your request you can ask for an external review by the Office of the Australian Information Commissioner. See **Attachment B** for more information about how to request a review.

Summary of the statement of reasons

The Agency holds two documents (totalling 14 pages) relevant to your request.

If I had made a decision on your FOI request by 4 November 2024, I would have decided to:

- **grant you full access** to 1 document (Document 2), and
- **grant you part access** to 1 document (Document 1) with some of the content removed as it contains personal information of individuals, the disclosure of which would be unreasonable and contrary to the public interest (section 47F(1)).

In accordance with section 24A of the FOI Act, I am satisfied that all reasonable searches were undertaken in response to your FOI request and that these two documents have been appropriately identified in scope of your request.

How we will send your documents to you

The documents are attached.

Further assistance

If you have any questions please email FOI.Legal.Team@servicesaustralia.gov.au

Yours sincerely

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



SCHEDULE OF DOCUMENTS FOR RELEASE
Frank N Fearless (Right to Know) - LEX 81846

Doc No.	Pages	Date	Description	Outcome	Exemption	Comments
1.	1 – 3	14 June 2024	Total Debt Pause 2 by Debt Benefit Type as at June 14, 2024	Release in part	s 47F(1)	Personal information of individuals removed under section 47F(1).
2.	4 – 14	5 April 2024	Agency PowerPoint presentation – ‘Income Apportionment Debt Pause Expanded Scope’	Release in full	N/A	N/A



STATEMENT OF REASONS

What you requested

On 3 October 2024, you requested the following:

Dear Services Australia,

This request relates to the cohort of debts 'indirectly' affected by income apportionment. A number of such cases were paused by the Agency in April. I believe at the time, it was 42,000 debts affecting 31,000 people.

I seek the most recent document prepared by the Agency which describes:

- The potential extent and nature of the cohort (breakdown by payment type etc)
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This request is in the public interest as it will assist the public to understand what full remediation of income apportionment will actually look like. In 2020, the secondary effects of unlawful robodebt received no systemic remedy, as the Agency chose lowest cost options. With the agency proposed recalculation method now lying under a legal cloud, these documents will assist an improved policy conversation.

On 9 October 2024, the Agency acknowledged your request.

A decision was due on 4 November 2024. Unfortunately, the agency was not in a position to finalise a decision by this date and was not able to obtain an extension of time under sections 15AA or 15AB of the FOI Act. As such, pursuant to section 15AC of the FOI Act, the matter was deemed refused as of 5 November 2024.

What I took into account

In writing this statement of reasons, I took into account:

- your original request dated 3 October 2024
- the documents which fall within the scope of your request
- consultation with another Agency about documents falling within scope of your request
- 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.

Statement of reasons

I am satisfied parts of documents you requested are exempt under the FOI Act.

The Agency consulted with the Income Apportionment Response Branch (the Branch), in the Payments and Integrity Division in relation to your request. The Branch identified two (2) documents in scope of your request. I am satisfied that this was the appropriate business area to conduct searches in relation to your request and that all relevant documents have been identified in response to your request.

I am satisfied that parts of Document 1 are exempt under the FOI Act. My findings of fact and reasons for applying those exemptions to Document 1 are discussed below.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to part of Document 1.

Section 47F of the FOI Act relevantly provides:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

Personal Information

The term 'personal information' is defined as follows:

'...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.'

Paragraph 6.125 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

Where Document 1 details a small cohort of debtors and the associated total amount of debt attached to that cohort, I find that this information is appropriate for conditional exemption

under section 47F of the FOI Act. In applying this exemption, I note that release of information under the FOI Act is considered to be 'release to the world at large' and that the future use and dissemination of this document cannot be controlled once access has been granted. I have also considered the large amount of material already in the public domain relating to the topic of your request, which could be read in conjunction with the data contained in Document 1. In this regard, I have determined that where a particular data point relates to a small number of individuals, the disclosure of this information could reasonably be expected to identify certain third-party individuals and therefore meets the definition of personal information.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.133 of the Guidelines provides:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

In determining if the disclosure of the third-party personal information would be unreasonable, I have considered the following factors:

- the information relates to aspects of individuals' personal affairs
- you do not have the consent from these individuals for the release of their personal information
- the nature, age and current relevance of the information
- the public availability of information relating to these particular data points and other related topics
- the ability to identify the people to whom the information relates through publicly available or otherwise obtained information
- any detriment that disclosure may cause to the people to whom the information relates
- the circumstances of the Agency's collection and use of the information, and
- the fact the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

On this basis, I am satisfied the personal information included in Document 1 is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and inform the debate on a matter of public importance.

I have also considered the relevant factors weighing against disclosure, indicating access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- prejudice individuals' right to privacy, and
- adversely affect or harm the interests of an individual or group of individuals, including current customers of the Agency.

Based on these factors, I am satisfied in this instance the public interest in disclosing the information in Document 1 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 forming this view.

Conclusion

In summary, I am satisfied parts of Document 1 are exempt under section 47F(1) of the FOI Act. Furthermore, I am satisfied on balance it would be contrary to the public interest to release this information. Accordingly, if I had made a decision on your FOI request by 4 November 2024, I would have decided not to release the document in full to you.

Summary of my statement of reasons

In conclusion, if I had made a decision by 4 November 2024, I would have:

- granted you part access to Document 1, and
- granted you full access to Document 2.



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 deemed refusal decision and statement of reasons to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of a Freedom of Information decision

If you believe that the deemed refusal of your request is incorrect, the FOI Act gives you the right to apply for a review of that decision. Under section 54L of the FOI Act, you can apply for a review of the deemed refusal decision by the Australian Information Commissioner. Please note that a statement of reasons is not reviewable by the Australian Information Commissioner.

Applying for external review by the Australian Information Commissioner

If you do not agree with the deemed refusal of your request, 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

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Important:

- If you are applying online, the application form the 'FOI Review Form' is available at [Information Commissioner Review Application form](#)
- 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
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

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