



24 January 2025
FOI ref: 3781

Ms Harriet Spring
By email: foi+request-12245-ca5f854c@righttoknow.org.au

Dear Ms Spring,

FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 29 October 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 relating to "confirmation of payee".

The timeframe I seek is from 2019 until now. I would like the information requested to include the following:

- Any legal advice, 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).*

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

Decision

The Treasury has identified three documents in the scope of your request. I have decided to refuse access to two documents in full. I have decided to release the remaining document in part (Document 1).

The document for release is attached, edited under section 22 of the FOI Act to delete material which is irrelevant to the scope of your request. The reasons for my decision follow.

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 response, 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.

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. Accordingly, material in Document 1 which is outside the scope of your request has been deleted under section 22 of the FOI Act.

Prejudice to a fair or impartial trial – Section 37(2)(a)

Section 37(2)(a) of the FOI Act relevantly provides that a document is exempt if disclosure would, or could reasonably be expected to, prejudice the impartial adjudication of a particular case.

Documents 2 and 3 contain briefing documents provided by a third-party business. The third party has advised that the documents relate to an ongoing legal matter. I am satisfied that the disclosure of these documents at this time could reasonably be expected to interfere with the Court's power to make non-publication orders in relation to the documents if it considered it appropriate to do so. Such dissemination could, in turn, give a party to the proceedings grounds to make a claim of prejudice to the impartial adjudication of the matter.

Accordingly, I am satisfied that Documents 2 and 3 are of such a nature that their disclosure could reasonably be expected to prejudice the impartial adjudication of a particular case. I have therefore decided Documents 2 and 3 are exempt in full under section 37(2)(a) of the FOI Act.

Material obtained in confidence – section 45

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would give rise to an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

To found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified;
- it must have the necessary quality of confidentiality;
- it must have been communicated and received on the basis of a mutual understanding of confidence;
- it must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information would have or will cause detriment.

Documents 2 and 3 contain confidential business information that was provided to the Treasury by a third party in relation to the confirmation of payee service. The documents were specifically identified as being confidential, were communicated and received on the basis of a mutual understanding of confidence, and disclosure of the documents would be without authority of the third party. Further, I am satisfied that disclosure of the documents will cause detriment to the third party.

Therefore, I have decided Documents 2 and 3 are exempt in full under section 45 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,

A handwritten signature in black ink that reads "Sally Etherington". The signature is written in a cursive, flowing style.

Sally Etherington
A/g Assistant Secretary
Digital, Competition and Payments Division

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.

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.