



Australian Government
**Department of Employment
and Workplace Relations**

Our Ref LEX 1306

Jenny Bree

By email: foi+request-12470-dfa2aa4c@righttoknow.org.au

Dear Ms Bree

Your Freedom of Information request - decision

I refer to your request, received by the Department of Employment and Workplace Relations (department) on 4 December 2024, for access under the *Freedom of Information Act 1982* (FOI Act) to the following document:

"I request unredacted pages 23 - 29 of the documents published on your disclosure log on 10 September 2024 re bullying and harassment by Workforce Australia providers."

My decision

The department holds 1 document (totalling 7 pages) that falls within the scope of your request.

I have decided to grant you **access in part** to the document on the basis that the remaining parts of the document contain deliberative material, certain operations of an agency and personal privacy.

A schedule of the document and the reasons for my decision are set out at **Attachment A**.

How we will send your document

The document being released is attached to my email to you.

You can ask for a review of my decision

If you disagree with any part of the decision, you can ask for a review. There are 2 ways you can do this. You can ask for an internal review by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment B**.

Further assistance

An extract of relevant legislation is available at **Attachment C**.

If you have any questions, please email foi@dewr.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris', written in a cursive style.

Chris
Authorised decision maker
Department of Employment and Workplace Relations
20 December 2024

SCHEDULE OF DOCUMENTS – JENNY BREE

Number	Pages	Date	Description	Decision	Exemptions and Comments
1.	1-7	5 July 2024	Email providing options re providers requesting payslips to Ministers Office	Grant access in part	Deliberative material deleted under subsection 47C(1). Operations of agencies material deleted under subsection 47E(d). Personal information deleted under subsection 47F(1).

REASONS FOR DECISION

What you requested

1. On 4 December 2024 the department received your request, seeking access under the FOI Act to:

"I request unredacted pages 23 - 29 of the documents published on your disclosure log on 10 September 2024 re bullying and harassment by Workforce Australia providers."

What I took into account

2. In reaching my decision, I took into account:
 - your request dated 4 December 2024
 - the document that falls within the scope of your request
 - consultations with departmental officers about the nature of the document and the operating environment and functions of the department
 - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
 - the FOI Act.

Reasons for my decision

3. I am authorised to make decisions under subsection 23(1) of the FOI Act.
4. I have decided that parts of the document that you requested are conditionally exempt under the FOI Act. My findings of fact and reasons for deciding that exemptions apply to that document are discussed below.

Section 47C of the FOI Act – deliberative processes

5. I have applied the conditional exemption in section 47C of the FOI Act to parts of the document.
6. Subsection 47C(1) of the FOI Act conditionally exempts documents containing deliberative processes. Deliberative process is content that is in the nature of, or relating to, either:
 - a. an opinion, advice or recommendation that has been obtained, prepared or recorded, or
 - b. a consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes of the government, an agency, or minister.
7. The FOI Guidelines provide at paragraph 6.54, that:

'... a deliberative process involves the exercise of judgement in developing and making a selection from different options... [The term] 'deliberative process' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'

8. I have reviewed the document and I have consulted with the Funds and Payments Branch and the Workforce Australia for Individuals Division. I am satisfied that the document contains material in the nature of advice and recommendations recorded. The recommendations relate to the department's proposed policy response to Workforce Australia Service Providers requiring participants to provide payslips.
9. I am satisfied that the recommendations were compiled with the purpose of being reviewed and deliberated by the Minister. The recommendations had been created for this discrete purpose.
10. This deliberative process relates to the functions of the department in respect to the department's responsibility over delivery of the Workforce Australia program. A component of this delivery is the development and implementation of compliance and assurance measures for parties within the program.
11. For completeness, I am satisfied that the exceptions in subsections 47C(2) and 47C(3) of the FOI Act do not apply.
12. Accordingly, I have decided that parts of the document contain deliberative process which is conditionally exempt under subsection 47C(1) of the FOI Act.
13. I have discussed the public interest considerations below.

Public interest

14. Section 11A(5) provides that 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.
15. When weighing the public interest for and against disclosure under subsection 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, specifically by informing public debate on the department's response to the matter of Workforce Australia providers requesting participants to provide payslips.
16. I have also considered the factors against disclosure. Specifically, the material relates to policy recommendations and options for managing non-compliance or mitigating risk of non-compliance with contracted services providers. Release of this information would detrimentally affect the department's ability to manage or mitigate risk of non-compliance in relation to employment services providers which, in turn, would harm the interests of members of the public that use employment services. Such an outcome would be contrary to the public interest.

17. In balancing the factors for and against disclosure of the deliberative matter, I consider that the factors against disclosure outweigh those in favour of disclosure at this time.
18. I am therefore satisfied that parts of the document are conditionally exempt under subsection 47C(1) the FOI Act.
19. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act in making this decision.

Section 47E of the FOI Act – certain operations of agency

20. I have applied the conditional exemption in subsection 47E(d) of the FOI Act to parts of the document.

21. Section 47E of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

22. The document contains internal positional email addresses which are not publicly available. The department administers services to a significant number of members of the public. It also receives a significant volume of correspondence from members of the public each day.
23. To ensure the department can respond to and manage correspondence with the public effectively, it has established designated contact points for members of the public to use when communicating with the department. These established channels are monitored to ensure quality of service, and that the department is able to respond to increased demand in a particular service as required.
24. Noting that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act, in my view, disclosure of the above-mentioned email addresses could reasonably be expected to result in additional or misdirected communications with those positional internal mailboxes. This would result in correspondence being mishandled, misdirected, lost, duplicated or double-handled on account of it not being directed to the most appropriate teams through the established channels of communication.
25. Moreover, with the view of attempting to obtain a faster or preferential service, members of the public may contact specific internal positional mailboxes rather than directing their query to the dedicated channel for contacting the department. This practice would unfairly prejudice other members of the public who use the appropriate channels.
26. I consider that disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of the department within the meaning of subsection 47E(d) of the FOI Act, as I am satisfied disclosure would impede the department's ability

to direct and respond to incoming correspondence. I have considered the public interest test below.

27. The document also contains dissemination limiting markers, which are not publicly available. These markers are designed for internal use by the agency to indicate the level of information security required for a particular document or communication. Over time these markers may become less relevant or incorrect as information increases or decreases in sensitivity.
28. As discussed above, the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act. Release of department documents with incorrect or out of date markers interfere with the ability of the department to operate its information management procedures.
29. Accordingly, I consider that parts of the document are conditionally exempt under subsection 47E(d) of the FOI Act.
30. I have discussed the public interest considerations below.

Public Interest

31. When weighing the public interest factors for and against disclosure under subsection 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, increase scrutiny of the Government's activities and, to a limited degree, inform public debate on a matter of public importance.
32. I have considered the factors that weigh against disclosure by considering the extent to which disclosure could reasonably be expected to harm the interests of an individual or a group of individuals.
33. As discussed above, I consider that disclosure of this material could reasonably be expected to result in harm to the interests of individuals who receive services from the department, and the broader public, given the adverse operational impact of disclosure which could be reasonably expected.
34. In assessing the factors for and against disclosure of the relevant information, I consider that the factors against disclosure outweigh those in favour of disclosure at this time. I have not taken into account any of the irrelevant factors pursuant to subsection 11B(4) of the FOI Act in making this decision.
35. Accordingly, I am satisfied that parts of the document are conditionally exempt from release under subsection 47E(d) of the FOI Act.

Section 47F of the FOI Act - personal privacy

36. I have applied the conditional exemption in subsection 47F(1) of the FOI Act to the document.
37. Subsection 47F(1) of the FOI Act relevantly provides that a document is conditionally exempt if disclosure would involve the unreasonable disclosure of personal information

about any person (including a deceased person). In determining whether disclosure involves the 'unreasonable disclosure of personal information', I must have regard to the matters under subsection 47F(2).

38. I am satisfied the document contains 'personal information' noting 'personal information' under the FOI Act has the same meaning as in the *Privacy Act 1988*. This is because the document contains the names and contact details of identified individuals and individuals who are reasonably identifiable.

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

The personal privacy conditional 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.

40. I am satisfied that the disclosure of the personal information would be unreasonable for the following reasons:

- the information is not well known
- the person/s to whom the information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the information is not available from publicly accessible sources
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- the individuals concerned have not consented to the release of their personal information.

41. On this basis, I have decided that parts of the document contain personal information which is conditionally exempt under subsection 47F(1) of the FOI Act.

42. I have discussed the public interest considerations below.

Public interest

43. When weighing the public interest for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered that the disclosure would, to an extent, promote the objects of the FOI Act

44. I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the prejudice to the right of an individual to privacy.

45. Based on these factors, I have decided that, in this instance, the public interest in disclosing the information in the abovementioned document is outweighed by the public interest against disclosure. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act in making this decision.

46. For the reasons set out above, I am satisfied that parts of document are conditionally exempt under subsection 47F(1) of the FOI Act.

YOUR RIGHTS OF REVIEW

Asking for an explanation of an FOI decision

Before you ask for a formal review of an FOI decision, you can contact us and we will explain the decision to you.

Asking for a formal review of an FOI decision

If you still believe the decision is incorrect, the 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:

- an internal review officer in the department and/or
- 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 one who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application by either:

Post: Information Law Team
Legal and Assurance Division
Department of Employment and Workplace Relations
Location Code: C50MA1
GPO BOX 9880
CANBERRA ACT 2601
or
Email: foi@dewr.gov.au

Applying for external review by the Australian Information Commissioner

If you do not agree with this decision, you can ask the Australian Information Commissioner to review the decision.

You have 60 days to apply in writing for a review by the Australian Information Commissioner

You can lodge your application in one of the following ways:

Online:
<https://webform.oaic.gov.au/prod?entitytype=ICReview&layoutcode=ICReviewWF>

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Complaints to the Australian Information Commissioner

Australian Information Commissioner

You may complain to the Australian 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 Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

<https://webform.oaic.gov.au/prod?entitytype=Complaint&layoutcode=FOIComplaintWF>

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

RELEVANT LEGISLATION

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, 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:
- (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth.

Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

47F Public interest conditional exemptions—personal privacy

General rule

- (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.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.