



Australian Government

Australian Public Service Commission

Watson Norwood

By email: foi+request-10246-772a02e5@righttoknow.org.au

Our reference: LEX 559

Dear Mr Norwood,

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on Saturday 06 May 2023 for access to documents held by the Australian Public Service Commission (the Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents on the following terms:

I am writing to make a request under the Freedom of Information Act for a complete copy of the departments' Freedom of Information (FOI) logs for the period 2013-2023, including any secondary departments controlled by the agency.

I request that this is provided as a document and not a simple redirect to the agency website as I am of the view that your online disclosure logs do not actively reflect your FOI requests that you have received in this period.

I would appreciate it if you could provide me with this information in an electronic format, such as a PDF or spreadsheet, if possible.

Timeframe for processing your request

4. Your request was received by the Commission on Saturday 06 May 2023. The statutory period for processing your request is 30 days. On Monday 05 June 2023, the Commission applied to the Australian Information Commissioner (**Information Commissioner**) under section 15AB of the FOI Act for an extension of 25 days to 30 June 2023 to process your request. On Wednesday 14 June 2023, the Information Commissioner decided to extend the processing period to Friday 30 June 2023.

Decision

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I am satisfied that all reasonable steps have been taken to locate documents relevant to your request.
7. I have identified three (3) documents in scope of your request.
8. These documents are:
 - Document 1: Remuneration Tribunal FOI log
 - Document 2: Commission active matters spreadsheet
 - Document 3: Collection of screenshots regarding FOI matters
9. I have decided to:
 - grant full access to Document 1 and
 - grant partial access to Documents 2 and 3.
10. **Attachment A** sets out the grounds on which Documents 2 and 3 are partially exempt.
11. My reasons are set out in **Attachment B**.

Deletion of exempt matter or irrelevant material

12. Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of the request.
13. Relevant to deleting exempt or irrelevant content from a document, the Guidelines provide:

3.98 Applying those considerations, an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.
14. I consider the objects of the FOI Act will not be served by providing access to edited versions of the documents because extensive editing is required that would leave only a skeleton of the former documents, conveying little content or substance.
15. I also consider it is not reasonably practicable to prepare edited versions of the documents, having regard to the nature and extent of the modification required, and the resources available to modify the documents.

Contacts

16. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3720 or by email at foi@apsc.gov.au.

Review rights

17. You are entitled to seek review of this decision. Your review rights are set out at **Attachment C**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Hagan', written in a cursive style.

Martyn Hagan

Authorised FOI decision maker

30 June 2023

SCHEDULE OF DOCUMENTS

Document	Description	Exemption grounds
1	Remuneration Tribunal FOI disclosure log – Dated 19 January 2022.	No exemptions apply.
2	Commission active matters spreadsheet – Dated 21 May 2023.	Section 47F (personal information) applies.
3	Collection of screenshots regarding FOI matters - Dated 22 May 2023.	Section 47F (personal information) applies.

Reasons for decision

1. In making my decision I have had regard to:
 - the terms of your request;
 - the content of the documents;
 - the *Public Service Act 1999* (PS Act);
 - the FOI Act;
 - the FOI Guidelines issued by the Australian Information Commissioner; and
 - advice from relevant officers within the Commission.

Conditional exemptions

Section 47F – personal privacy

2. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
3. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether:
 - the information or opinion is true or not; and
 - the information or opinion is recorded in a material form or not.
4. I consider that Documents 2 and 3 contain such matter; specifically the names of non-SES Commission staff and the names of third parties. The information constitutes ‘personal information’ within the meaning of section 4 of the FOI Act.

Disclosure is unreasonable

5. Section 47F(2) of the FOI Act sets out matters to which a decision maker must have regard in determining whether disclosure of a document would involve the unreasonable disclosure of personal information. It states:

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.*

6. In considering what is unreasonable, the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at [51] stated:

...whether a disclosure is 'unreasonable' requires... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...

7. Other factors to be considered include the nature, age and current relevance of the information, any opposition to disclosure held by the person that the personal information relates to, and the circumstances of an agency's collection and use of the information ('FG' and *National Archives of Australia* [2015] AICmr 26 at [47]).
8. I note that in *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 (9 November 2020), Deputy President S A Forgie found (at [130]):

An individual may include his or her direct telephone number in correspondence directed to other persons. Unless published on an agency's website or made public in some other way, such as on a pamphlet or report available to the public, I consider that disclosure of an individual's telephone number in his or her place of employment is unreasonable. Its disclosure will provide an avenue by which others may choose to express their displeasure with the individual or with that for which he or she is responsible but its disclosure does not make any positive contribution to increasing public participation in Government processes or in increasing scrutiny, discussion, comment and review of the Government's activities.

9. The FOI Guidelines further provide, at paragraph 6.144:

*For example, in *Colakovski v Australian Telecommunications Corp*, Heerey J considered that '... if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed ... disclosure would be unreasonable'. This illustrates how the object of the FOI Act of promoting transparency in government processes and activities needs to be balanced with the purpose of s 47F to protect personal privacy, although care is needed to ensure that an FOI applicant is not expected to explain their reason for access to contrary to s 11(2).*

9. Finally, in *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557, Deputy President Forgie observed at [83] that:

The whole of the FOI Act is a finely tuned balance between two interests. In one side of the balance is the facilitation and promotion of access to a national resource that is information held by Government, which enables increased public participation in Government processes and increased scrutiny, discussion, comment and review of the Government's activities. In the other is the protection of the national interest, the essential operation of government and the privacy of those who deal with government. It is most important, therefore, that its provisions be read very carefully and that presumptions should not be introduced that are not expressed, or necessarily implicit, in the words Parliament has chosen to achieve the balance that it wants. Those words should be the starting point of any consideration rather than any presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and increases the objects of the FOI Act.

10. I have identified the following factors which, in my view, do not support the release of this personal information under section 47F of the FOI Act:

- the documents contain the names of third parties and non-SES staff members;
- the parties' personal information will identify them;
- there is no legitimate reason why you, or other members of the public would need to contact the public servants or third parties named in these documents;
- the personal information is generally not well known or publicly available;
- the FOI Act does not control or restrict the subsequent use or dissemination of information released under the FOI Act;
- the disclosure of third party information could expose those concerned parties to unsolicited and inappropriate approaches by external parties;
- release of third party personal information may cause stress for them or other detriment; and
- disclosure would prejudice the third parties' right to privacy.

11. I have therefore decided to the extent that Documents 2 and 3 include personal information of third parties as well as a number of public servants. I am satisfied that those parts are conditionally exempt from disclosure under section 47F of the FOI Act because disclosure would involve the unreasonable disclosure of their personal information.

Section 11A – public interest test

12. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.
13. At paragraphs [6.17] and [6.22] the FOI Guidelines set out non-exhaustive lists of factors favouring and against disclosure. At paragraph [6.138] it is recognised that some factors considered in the context of determining whether disclosure would be unreasonable may also need to be considered again in assessing whether disclosure would on balance be contrary to the public interest.
14. To the extent that the documents contain information about individual third parties, I cannot see that there are any public interest factors in favour of disclosure.
15. For Commission staff, I accept the general public interest in access to documents as expressed in sections 3 and 11 of the FOI Act indicates there is at least some element of the public interest, including in transparency and accountability, which can be said to favour disclosure. Namely:
 - inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
 - reveal the reason for a government decision and any background or contextual information that informed the decision; and
 - enhance the scrutiny of government decision making.
16. However, that public interest in those objects would be furthered only in the most marginal and technical way in the present case by the release of the information. The release of third party applicant names or public servant names would not raise or answer crucial questions about the operation of the Commission. As the FOI Guidelines make clear at [6.5], the public interest test is

not something of interest to the public, but in the interest of the public

17. In the present case, I have taken into account that the FOI Act does not limit or restrain further dissemination of any information disclosed to the applicant. I have identified the following factors as weighing against disclosure:
 - disclosure of the concerned parties' personal information will not advance any meaningful scrutiny of the matters falling within the scope of your FOI request;
 - disclosure would prejudice the parties' right to privacy;
 - disclosure could lead to unwarranted approaches to the parties which would adversely impact their ability to perform their role and functions; and
 - disclosure could reasonably be expected to cause anxiety to the parties that their information is publicly available indefinitely. The anxiety may be heightened by the recent data breaches, including the Optus and Medicare data breaches and the misuse of information about them.

18. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.
19. On balance, I find disclosure of some parts of Documents 2 and 3 would be contrary to the public interest. To the extent that the material contained in these documents are conditionally exempt under section 47F, those parts are exempt from disclosure.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give 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 seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental 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 within 30 days of receiving this letter to:

Email: foi@apsc.gov.au
Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

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 FOI decision or the internal review 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 Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

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

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the 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 Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the 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 Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

