



Australian Government

Australian Public Service Commission

Gemma

By email: foi+request-10299-e86ad778@righttoknow.org.au

Our reference: LEX 558

Dear Gemma,

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 10 May 2023 for access to documents held by the Australian Public Service Commission (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:

1. Please provide a copy of the APSC's current procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions that is currently in force.^[1]

2. Please provide a copy of the APSC's current social media policy (which covers departmental use and/or private use by employees in an individual capacity).

3. Provide a provide a copy of the APSC's current guidance material which is available for employees to make informed decisions about their private social media use.

4. Provide a copy of guidance/information provided to your employees regarding expectations on their conduct in the lead up to the Voice Referendum.

5. Please advise:

A) In the last 6 months, have you received a complaint regarding social media post made by an employee of the APSC?

B) In the last 6 months, how many complaints have you received regarding social media post made by your employees?

6. Please advise:

A) In the last 6 months, have you received a complaint regarding social media post made by an Australian Public Service (APS) employee?

B) In the last 6 months, how many complaints have you received regarding social media post made by an APS employee?

C) Are you aware of any complaints made, in the last 6 months, to an agency regarding social media post made by an APS employee? If so, please list those agencies that you are aware a complaint has been made.

Decision on your FOI request

4. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
5. I am satisfied that reasonable steps have been taken to locate documents relevant to your request.
6. I have identified seven (7) publicly-available documents within scope of your request.
7. These documents are:
 - Document 1: Australian Public Service Commission – Procedures for determining breaches of the Code of Conduct and for determining sanction.
 - Document 2: Social Media: Guidance for Australian Public Service Employees and Agencies.
 - Document 3: Factsheet: Personal Behaviour on Social Media.
 - Document 4: Social media: Tips for employees.
 - Document 5: Case study – APS employee engagement on social media.
 - Document 6: Frequently Asked Questions: Personal Behaviour on Social Media.
 - Document 7: Engagement in the Voice Referendum in a personal capacity: Guidance for APS employees and agencies.
8. I have decided to:
 - grant full access to Documents 1-7.
9. I have also identified an internal document relating to part 4 of your request. However, since this document post-dates your request, I have deemed it as beyond scope of your request.
10. Hyperlinks to the documents are included in the schedule set out in **Attachment A**.

Invalidity of parts 5-6 of your request

11. On 24 May 2023, the Commission acknowledged your FOI request. In doing so, the Commission offered to provide you with information in response to parts 5-6 of your request administratively outside of the FOI process. We advised you that:

In parts 5 and 6 of your request, you seek access to information by asking a series of questions. The FOI Act gives individuals a right to obtain access to documents, not

information. However, the Commission would ... be willing to answer to your questions administratively outside of the FOI process.

12. The Commission did not receive any response from you in relation to the offer to release information administratively.
13. On 2 June 2023, the Commission advised you that it considered parts 5-6 of your request were invalid as the questions listed did not provide such information as is reasonably necessary to enable the Commission to identify the documents you might be seeking.
14. The Commission invited you to either consent to the administrative release of 'answers' to parts 5-6 or to revise those parts of your request to make a valid FOI request. The Commission also informed you that if you did not consent to the administrative release or revise your request, no further action would be taken in relation to parts 5-6 of your request.
15. The Commission also did not receive a response to our correspondence dated 2 June 2023. As parts 5-6 of your request are invalid, no further action has been taken in respect of them.

Contacts

16. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3500 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 B**.

Yours sincerely

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

Martyn Hagan

Authorised FOI decision maker

9 June 2023

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Description	Hyperlink
1	Australian Public Service Commission – Procedures for determining breaches of the Code of Conduct and for determining sanction – dated 10 March 2021.	Procedures for determining breaches of the Code of Conduct and for determining sanction Australian Public Service Commission (apsc.gov.au).
2	Social Media: Guidance for Australian Public Service Employees and Agencies – dated 17 March 2021.	Social media: Guidance for Australian Public Service Employees and Agencies Australian Public Service Commission (apsc.gov.au).
3	Factsheet: Personal Behaviour on Social Media – dated 17 March 2021.	Factsheet: Personal Behaviour on Social Media Australian Public Service Commission (apsc.gov.au).
4	Social media: Tips for employees – dated 17 March 2021.	Social media: Tips for employees Australian Public Service Commission (apsc.gov.au).
5	Case study – APS employee engagement on social media – dated 17 March 2021.	Case study - APS employee engagement on social media Australian Public Service Commission (apsc.gov.au).
6	Frequently Asked Questions: Personal Behaviour on Social Media – dated 17 March 2021.	Frequently Asked Questions: Personal Behaviour on Social Media Australian Public Service Commission (apsc.gov.au).
7	Engagement in the Voice Referendum in a personal capacity: Guidance for APS employees and agencies – dated 3 April 2023.	Engagement in the Voice Referendum in a personal capacity: Guidance for APS employees and agencies Australian Public Service Commission (apsc.gov.au).

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