



Australian Government
Department of Finance

Reference: FOI 23-24/017
Contact: FOI Team
E-mail: foi@finance.gov.au

Dr Exmond DeCruz
Development Catalyst
ProSocial World
via Right to Know website

By email only: foi+request-10529-55486aab@righttoknow.org.au

Dear Dr DeCruz,

Freedom of Information Request – FOI 23-24/017

On 4 August 2023, the Department of Finance (Finance) received your email, in which you sought access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) as outlined in **Attachment A**.

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Publicly available information which may assist your request

While at a higher level of aggregation than sought in your request, the Australian Public Service Commission publishes information including:

- ‘State of the Service’ reports which are tabled before each House of Parliament and published on the APSC website at <https://www.apsc.gov.au/initiatives-and-programs/workforce-information/research-analysis-and-publications/state-service>.
- Data from Australian Public Service (APS) Census surveys which can be accessed on the data.gov website at <https://data.gov.au/organisations/org-dga-f1e2677b-b377-42b0-a492-6dc88330a79a>.

Authorised decision-maker

I am authorised by the Secretary of Finance to grant or refuse access to documents.

Decision

I have identified four (4) documents as falling within the scope of your request.

I have decided to refuse to release all four documents as they contain information that, if released, would affect certain operations of Finance.

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Documents exempt as they affect certain operations of agencies

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:

...

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

The FOI Guidelines provide that for this exemption to apply, the documents must relate to either:

the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety

the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

The APS Census is a voluntary annual survey of all APS staff which seeks to confidential attitude and opinion information from APS employees on important issues in the workplace. The APS Census is a key mechanism through which employees may provide candid and confidential feedback to Finance in a de-identified form. It is an important tool used by Finance to make improvements to the workplace and inform workforce strategies, which I consider to relate to both the management and assessment of personnel.

I consider that the release of this information could reasonably be expected to reduce employee response rates and candour in responding to the survey, and therefore consider that these documents are exempt under section 47E of the FOI Act.

Public interest test

Having formed the view that the four documents are exempt under both sections 47E of the FOI Act, I am now required to consider the public interest test for the purposes of determining whether access to the conditionally exempt documents would, on balance, be contrary to the public interest.

Section 11A of the FOI Act provides:

5. 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.

Factors favouring disclosure

Section 11B of the FOI Act provides:

3. Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - a. promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - b. inform debate on a matter of public importance;
 - c. promote effective oversight of public expenditure;
 - d. allow a person to access his or her own personal information.

I consider that giving access to the documents would promote the objectives of the FOI Act by providing access to documents held by an agency. I attribute minimal weight to this factor as this objective applies to all documents, regardless of the effect of releasing the documents.

Factors against disclosure

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of factors against disclosure, of which, I consider the following could reasonably be expected to apply:

- could reasonably be expected to prejudice the protection of an individual's right to privacy,
- could reasonably be expected to prejudice an agency's ability to obtain confidential information
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future
- could reasonably be expected to prejudice the management function of an agency

The APS Census also collects and reports on personal information of employees including sensitive personal information about disability and racial or ethnic characteristics. Further, the opinions expressed by staff in the census survey, including of their managers, are also personal information to which I consider employees (both respondents and the staff who feedback is provided on) would have a reasonable expectation of privacy. Given the reports you have requested have a relatively small number of surveyed respondents (less than 100 people), I consider that release could reasonably be expected to prejudice the protection of employees right to privacy as there is meaningful risk that personal information could be reidentified within the report particularly if used together with other sources of information.

The APS Census collects employee attitudes as to their role, workplace and management. Employees are asked to provide candid reflections on their managers, observed or experienced instances of harassment and bullying, experience of burnout and intentions to leave their current position. I consider that, if these reports were to be released, it can be reasonably expected that that some employees would elect not to provide voluntary responses or be less candid in their responses, particularly if they are concerned that they are expressing an unfavourable or minority opinion. I place substantial weight on these factors, as I consider that protecting the ability for Finance to receive candid and confidential feedback in such circumstances is particularly important to effectively manage staff.

The information you have requested would be released to the world at large as it would be published on the Right to Know website, and the FOI Act does not control or restrict any subsequent use or dissemination of any information that is released to you. I consider that this heightens the factors against disclosure I have identified above, as it would increase the likelihood of the information being accessed by a person able to match the reports to other sources, and widely publishing these reports would be reasonably expected to reduce employees confidence that the confidentiality of their feedback will be appropriately handled by Finance.

Irrelevant considerations

I have not taken into account any of the irrelevant factors listed under Section 11B of the FOI Act:

4. The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest;
 - a. access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - b. access to the document could result in any person misinterpreting or misunderstanding the document;
 - c. the author of the document was (or is) a high seniority in the agency to which the request for access to the document was made;
 - d. access to the document could result in confusion or unnecessary debate.

Balancing the public interest factors

The FOI Guidelines provide:

[6.25] The decision maker must determine whether access to a conditionally exempt document is, at the time of the decision, contrary to the public interest, taking into account the factors for and against disclosure.

[6.27] To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

Having identified one factor in favour of disclosure and multiple reasons against exposure, including one factor which I place substantial weight on, I consider that on balance it is contrary to the public interest to release the documents you have requested.

Charges

I have decided that a charge is not payable in this matter.

Review and appeal rights

You are entitled to request an internal review or an external review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at **Attachment B**.

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,



Abby Whiting
Assistant Secretary
Human Resources Branch
Department of Finance
24 August 2023

SCHEDULE OF DOCUMENTS RELEVANT TO FOI 23-24/017

Document No.	Date of Document	No. of Pages	Description of Document	Decision
1	-	15	2015 APS Employee Census – Agency Benchmark Report: Property and Construction Division	Exempt in Full – s47E
2	-	33	Australian Public Service Employee Census 2018 – Highlights Report: Property and Construction Division	Exempt in Full – s47E
3	-	33	Australian Public Service Employee Census 2019 – Highlights Report: Property and Construction Division	Exempt in Full – s47E
4	-	23	Australian Public Service Employee Census 2020 – Highlights Report: Property and Construction Division	Exempt in Full – s47E



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foi@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 17 February 2023 it is \$1,011).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be, or has been, investigated by the IC, the Ombudsman will consult with the IC to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.