



**Australian  
Human Rights  
Commission**

Our Ref: FOI-2023/0906111354

6 November 2023

A Q-S

**By email:** [foi+request-10664-f4d53dxx@xxxxxxxxxxxxx.xxx.xx](mailto:foi+request-10664-f4d53dxx@xxxxxxxxxxxxx.xxx.xx)

Dear A Q-S

**Notice of Decision: Request under the *Freedom of Information Act 1982 (Cth)***

1. I refer to your *Freedom of Information Act 1982 (Cth)* (FOI Act) request to the Australian Human Rights Commission (Commission) dated 5 September 2023.
2. In the request, you have sought access to the following:

...any documents or correspondence held by the AHRC which include any of the following three excerpts, or material which is substantially similar to any of the following three excerpts. I seek only documents that are dated prior to 14 March 2022.

Excerpt one:

"...some merit-based criteria are provided in the relevant enabling laws, and that the process for the assessment of candidates is specified in the 'Government's Merit and Transparency Policy' of the Australian Public Service Commission (APSC). The APSC policy includes requirements to advertise vacancies, provide detailed selection criteria, and assess candidates by a panel that includes an APSC representative, whose role is to ensure that the process is in accordance with the policy. On the completion of the assessment process, the panel determines a pool of suitable candidates and provides a report to the APSC Commissioner for endorsement and transmission to the Attorney-General. Subsequently, the Attorney-General seeks the Prime Minister's approval for the appointment of the candidate by the Governor-General as AHRC President or Commissioner."

Excerpt two:

"...the APSC policy provides for circumstances where the Attorney-General may consider that a full selection process is not required. This includes where there is an urgent requirement to fill a position, as was the case for the Disability Discrimination Commissioner in 2019. It is also relevant in relation to the availability of an eminent person 'where there would be little value in conducting a selection process', as was the case for the Human Rights Commissioner in 2021."

Excerpt three

"The appointment of two Commissioners without additional funding being provided (in particular, funding was removed for the Disability Discrimination Commissioner in 2014, and was not restored when appointments to this role were made in 2016 and 2019; funding was not provided when the Human Rights Commissioner was appointed in 2016, and is yet to be confirmed following the appointment of a Human Rights Commissioner in 2021);

- A sustained increase in complaints of discrimination and human rights violations without dedicated additional funding;
- A substantial increase in complaints during the COVID-19 pandemic, with no additional funding support; and
- No general increase in the AHRC overall budget, requiring increased property and staffing costs to be met through the existing appropriation."

3. As part of your request, you also provided clarification that:

I do not seek personal information of any person below SES level. However, if email addresses or names are redacted, I ask that the domain name be included in any documents released.

4. Further, you requested that in the reasons for decision that I set out the searches done, including any searches of emails held on the Commission's server.
5. I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to Freedom of Information requests.

6. As the Commission was required to undertake third-party consultation, the timeframe for the Commission to make a decision on the FOI request was extended to 6 November 2023.<sup>1</sup>

## 1. Scope of your request

7. By email correspondence sent between yourself and the Commission between 29 September and 6 October 2023, you confirmed that you were agreeable to redactions of names of officers below the SES level and that the scope of your FOI request included 'working versions' of documents.

## 2. Decision

8. The FOI Act requires documents identified as falling within the scope of an FOI Act request to be produced in response to an FOI request, unless the Act provides an exemption for a particular type of document.<sup>2</sup>
9. The FOI Act sets out categories of documents that are wholly exempt and categories of documents that are conditionally exempt. Conditionally exempt documents must be produced in response to an FOI Act request unless it would be contrary to the public interest to do so.<sup>3</sup>
10. Given the nature of your request for documents containing particular excerpts or substantially similar material, searches were conducted of the Commission's systems (including in SharePoint<sup>4</sup> and Outlook email inbox) for documents dated prior to 14 March 2022.<sup>5</sup> The search phrases used included:

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<sup>1</sup> FOI Act s 15(6).

<sup>2</sup> FOI Act ss 11 and 11A.

<sup>3</sup> FOI Act s 11A(5).

<sup>4</sup> SharePoint is the Commission's document management system.

<sup>5</sup> Documents were also obtained by Commission staff with familiarity with the drafting of those excerpts, which also appear in the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA) report dated 29 March 2022.

- (a) 'merit-based criteria'
- (b) 'Government's Merit and Transparency Policy'
- (c) 'APSC representative'
- (d) 'pool of suitable candidates'
- (e) 'approval for the appointment of the candidate'
- (f) 'full selection process'
- (g) 'urgent requirement to fill a position'
- (h) 'as was the case for the Disability Discrimination Commissioner in 2019'
- (i) 'availability of an eminent person'
- (j) 'as was the case for the Human Rights Commissioner in 2021'
- (k) 'funding was removed for the Disability Discrimination Commissioner in 2014'
- (l) 'funding was not provided when the Human Rights Commissioner was appointed in 2016'
- (m) 'sustained increase in complaints of discrimination'
- (n) 'no additional funding support'
- (o) 'substantial increase in complaints during the COVID-19 pandemic'
- (p) 'no general increase in the AHRC overall budget'
- (q) 'increased property and staffing costs to be met through the existing appropriation'.

11. I have reviewed each of the documents retrieved by the above searches and identified documents containing any of the excerpts provided in the request, or whether the material was substantially similar to those excerpts. From my review, I have decided as follows:

- (a) to grant access in full to documents 1, 2A, 2B, 6

(b) to partially release documents 2, 3 – 5, 7 (with edited versions provided under s 22 of the FOI Act)

12. The attached schedule provides a description and access decision outcome for each document.

13. In my decision, I have had regard to the following material:

(a) the content of the documents within the scope of the request

(b) the FOI Act

(c) guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (Guidelines) including guidelines 6.23 and 6.24 on ensuring that irrelevant factors are not taken into account;<sup>1</sup>

(d) submissions made by third parties as consulted by the Commission under s 27 of the FOI Act

(e) relevant case law.

### 3. Reasons for Decision

14. In relation to the consultation under s 27 of the FOI Act undertaken with the Attorney-General's department (Department) in relation to document 2A. No objection and the Department expressed the view that no sensitivities arose.

15. I refer to the schedule setting out each access decision.

16. In particular, I note that edited versions of documents 2, 3 – 5, 7 have been produced pursuant to s 22 of the FOI Act, which provides:

(1) This section applies if:

(a) an agency or Minister decides:

(i) to refuse to give access to an exempt document; or

(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and

(b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:

(i) access to the edited copy would be required to be given under section 11A (access to documents on request); and

- (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
  - (i) the nature and extent of the modification; and
  - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

17. In short, the provision allows for an agency or Minister to provide an edited copy of a document, where the agency or Minister decides that part of the document is irrelevant to the scope of the request (ensuring that the matters in ss 22(1)(b) – (d) are satisfied).

18. As set out in the schedule, I have considered the contents of the Documents in light of the scope of the request and consider that particular pages in documents in 1, 2 and 5 and attachments in documents 4 and 7, are irrelevant to the scope of the request and have prepared edited copies with the irrelevant pages deleted. That is, in my view, these pages or documents do not relate to the matters relating to the 'Government's Merit and Transparency Policy' of the Australian Public Service Commission, appointments of the Disability Discrimination Commissioner in 2019 and the Human Rights Commissioner in 2021, and related funding of the Commission as set out in the excerpts of the request. I also consider that it is not apparent in the request that the applicant would decline access to the edited copy.

19. In addition to these redactions, and as previously agreed, I have redacted all non-SES officer names and personal details in documents 3, 4 and 7.

#### **4. Your review rights**

##### *Internal Review*

20. You may apply for an internal review of my decision by writing to the Commission within 30 days of the date of this letter stating the reasons why you believe the review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

*Information Commissioner Review*

21. You may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online:

[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

Email:

[foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Post:

GPO Box 5218, Sydney NSW 2001

In Person:

Level 3, 175 Pitt Street, Sydney NSW

Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/> for more information about a review by the Information Commissioner.

Yours sincerely



Jessica Tran  
**Senior Lawyer**

T: +61 2 9284 9726

E: [jessica.tran@humanrights.gov.au](mailto:jessica.tran@humanrights.gov.au)