



**Australian Government**  

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**Australian Public Service Commission**

Our reference: LEX 705 (LEX 640)

NTS

By email: [foi+request-10673-c78a76b9@righttoknow.org.au](mailto:foi+request-10673-c78a76b9@righttoknow.org.au)

Dear Applicant

**Freedom of Information Internal Review Request – LEX 705 (640)**

1. I am writing about your request for internal review, dated 8 November 2023, regarding a decision made by the Australian Public Service Commission (**Commission**) under the *Freedom of Information Act 1982 (FOI Act)*.

**Background**

2. On 8 September 2023, you wrote to the Commission, requesting access to the following documents:  
  
*‘Under the FOI Act, I seek a copy of any document prepared by the APSC from 1 January 2023 onwards, and provided to any of the following:  
i) media organisations, ii) Commonwealth agency heads, or iii) lobby groups such as the IPA or the Centre for Independent studies in relation to the working conditions of the non-SES employees.’*
3. On 27 September 2023, the FOI decision maker, Ms McIntyre, wrote to you advising that a practical refusal reason existed for your FOI request under section 24AA of the FOI Act, as the work involved in processing the request would substantially and unreasonably divert the resources of this agency from its other operations due to its size and broad scope, and initiated a ‘request consultation process’ in which you had 14 days to notify the Commission, in writing, that you either:
  - a) Withdraw your request;
  - b) Make a revised request;
  - c) Indicate that you do not wish to revise the request.
4. In your response on 28 September 2023 you revised your request, requesting access to the following documents:  
  
*‘A copy of any document prepared by the APSC from 1 January 2023 onwards, and provided to:  
i) media organisations, or  
ii) the Institute of Public Affairs (ie. [www.ipa.org.au](http://www.ipa.org.au))  
in relation to the working conditions of the non-SES APS employees.’*

5. On 3 November 2023 Ms McIntyre determined that a practical refusal reason still existed and made a decision to refuse access under paragraph 24(1)(b) of the FOI Act.
6. On 8 November 2023, you sought an internal review of Ms McIntyre's decision with respect to part of your revised request. You provided the following regarding the scope of your request:

*'In her decision with reference 'LEX 677' Ms McIntyre confirmed that there were no relevant documents in the APSC's possession that were prepared for the Institute of Public Affairs meaning that Ms McIntyres practical refusal decision relates solely to 'document[s] prepared by the APSC from 1 January 2023 onwards, and provided to....media organisations...in relation to the working conditions of non-SES APS employees.'*

*I note that all APSC media requests and responses are dealt with by the APSC's media team and that staff within that team would have the requisite knowledge to readily identify and locate documents within that fell within the scope of my request. I further note that on 28 September I made clear that I was willing to treat, as irrelevant to my request, the personal information of any person who isn't, or wasn't at the relevant time, a Commonwealth public servant or a statutory officer. And that noting paragraphs 6.153 and 6.154 of the FOI Guidelines there'll therefore be no need to consult with any person whose personal information is included in a relevant document.'*

### **Documents relevant to your request**

7. I understand the scope of your request to be *'document[s] prepared by the APSC from 1 January 2023 onwards, and provided to....media organisations...in relation to the working conditions of non-SES APS employees.'*
8. I have identified 52 documents in scope of your request.

### **Decision**

9. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
10. I am satisfied that all reasonable steps have been taken to locate documents relevant to your request.
11. I have decided to grant you full access to 13 documents and partial access to 39 documents because I consider some content in scope of your request is exempt from release under section 47F of the FOI Act. The copies of the requested documents that I am releasing to you have been edited to remove the material that is exempt.
12. A full schedule of documents can be found at **Attachment A**.
13. The reasons for my decision are set out in **Attachment B**.
14. I therefore **vary** Ms McIntyre's decision refusing your requests for access to documents under paragraph 24(1)(b) of the FOI Act.

### **Deletion of exempt matter or irrelevant material**

15. 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 a request.
16. Copies of the requested documents have been edited to remove material that is either exempt or irrelevant material to the scope of your request. The schedule at Attachment A sets out the grounds on which information has been redacted from the documents relevant to your request.

### **Contacts**

17. If you require clarification on matters in this letter, please contact the Commission's FOI Officer by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au).

### **Review rights**

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

Yours sincerely



Dr Nicole Steele  
Authorised FOI decision maker  
7 December 2023

## ATTACHMENT A

## SCHEDULE OF DOCUMENTS

## Documents Part 1

<b>Document</b>	<b>Page Number</b>	<b>Description</b>	<b>Exemptions</b>
1	1-3	Email from APSC Media	None
2	4	Email from APSC Media to Journalist	Section 47F – Personal Privacy
3	5	Email from Workplace Relations Bargaining Taskforce to Journalist	Section 47F – Personal Privacy
4	6	Email from APSC Media to Journalist	Section 47F – Personal Privacy
5	7-9	Email from Workplace Relations Bargaining Taskforce to Journalist	None
6	10	Email from APSC Media to Journalist	Section 47F – Personal Privacy
7	11-13	Email from APSC Media	None
8	14	Email from APSC Media to Journalist	Section 47F – Personal Privacy
9	15	Email from APSC Media to Journalist	Section 47F – Personal Privacy
10	16	Email from APSC Media to Journalist	Section 47F – Personal Privacy
11	17-19	Email from Workplace Relations Bargaining Taskforce to Journalist	None
12	20-23	Email from APSC Media to Journalist	Section 47F – Personal Privacy
13	24	Email from APSC Media to Journalist	Section 47F – Personal Privacy
14	25	Email from APSC Media to Journalist	Section 47F – Personal Privacy
15	26-28	Email from APSC Media to Journalist	Section 47F – Personal Privacy
16	29-30	Email from APSC Media to Journalist	Section 47F – Personal Privacy
17	31	Email from APSC Media to Journalist	Section 47F – Personal Privacy
18	32	Email from APSC Media to Journalist	Section 47F – Personal Privacy

19	33-34	Email from APSC Media to Journalist	Section 47F – Personal Privacy
20	35	Email from APSC Media to Journalist	Section 47F – Personal Privacy

Documents Part 2

21	1	Email from APSC Media to Journalist	Section 47F – Personal Privacy
22	2	Email from APSC Media to Journalist	Section 47F – Personal Privacy
23	3	Email from APSC Media to Journalist	Section 47F – Personal Privacy
24	4-6	Email from APSC Media to Journalist	Section 47F – Personal Privacy
25	7	Email from APSC Media to Journalist	Section 47F – Personal Privacy
26	8	Email from APSC Media to Journalist	None
27	9	Email from APSC Media to Journalist	Section 47F – Personal Privacy
28	10-11	Email from APSC Media to Journalist	Section 47F – Personal Privacy
29	12-13	Email from APSC Media to Journalist	Section 47F – Personal Privacy
30	14	Email from APSC Media to Journalist	Section 47F – Personal Privacy
31	15	Email from APSC Media to Journalist	Section 47F – Personal Privacy
32	16	Email from APSC Media to Journalist	Section 47F – Personal Privacy
33	17	Email from APSC Media to Journalist	Section 47F – Personal Privacy
34	18	Email from APSC Media to Journalist	Section 47F – Personal Privacy
35	19	Email from APSC Media to Journalist	Section 47F – Personal Privacy
36	20	Email from APSC Media to Journalist	None
37	21	Email from APSC Media to Journalist	Section 47F – Personal Privacy
38	22	Email from APSC Media	None
39	23	Email from APSC Media to Journalist	Section 47F – Personal Privacy
40	24-25	APSC Agency Pay Scales – 31/12/23	None
41	26-28	APS Staff Consultation Survey 2023	None
42	29	Email from APSC Media	Section 47F – Personal Privacy

43	31-33	Email from APSC Media	Section 47F – Personal Privacy
44	33	Email from APSC Media	None
45	34-35	Email from APSC Media	Section 47F – Personal Privacy
46	36-37	Email from APSC Media	Section 47F – Personal Privacy
47	39-40	Email from APSC Media	Section 47F – Personal Privacy
48	41-42	Email from APSC Media	None
49	43	Email from APSC Media	Section 47F – Personal Privacy
50	44	Email from APSC Media	None
51	45-46	APS Bargaining News	None
52	47-48	Email from APSC Media to Journalist	Section 47F – Personal Privacy

## Reasons for decision

19. In making this decision I have had regard to:
  - the terms of your requests;
  - the terms of your submissions and responses to the request consultation process;
  - the FOI Act; and
  - the FOI Guidelines issued by the Australian Information Commissioner.
20. In making this decision I have not had regard to (section 24AA(3) FOI Act):
  - any reasons that you have given for requesting access; or
  - the agency's or Minister's belief as to what your reasons are for requesting access; or
  - any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

### Section 47F FOI Act – Personal privacy

21. Section 47F of the FOI Act provides a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information of any person.
22. 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
  - whether the information or opinion is recorded in a material form or not.
23. This requires consideration of all of the circumstances. The Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 AT [51] outlined:

*'...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...'*
24. A number of your requested documents capture the personal information of public servants and other individuals.
25. Under the FOI Act there is no presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and the objects of the FOI Act: *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 at [83].

26. With the substantial increase in electronic requests and related correspondence, a rise in anonymous applications as well as requests affecting the safety and wellbeing of employees, the Commission now assesses whether a disclosure of public servants' personal information in requests is unreasonable under section 47F of the FOI Act.
27. Having regard to the matters I must consider under subsection 47F(2) of the FOI Act, I have identified the following factors that, in my view, do not support release of certain public servants' personal information under section 47F of the FOI Act:
- the individual's personal information, in particular their full names, will identify them;
  - the names and contact details of a number of the individuals is generally not well known or publicly available and the disclosure of this information will not advance scrutiny of any decisions falling within the scope of your FOI request, particularly with regard to staff who are not relevant decision-makers and non-SES staff members who are acting under the direction of senior staff within relevant agencies in the course of their ordinary duties;
  - the release of some of the individual's personal information in connection with the subject matter of the documents would likely cause stress for them or other detriment, including in particular relevant personal information, including emails and mobile phone numbers could result in those individuals being contacted outside of appropriate official channels, including outside of business hours; and
  - no public purpose or interest in increasing transparency of government would be achieved through the release of the information.
28. Considering the above factors, I consider that the disclosure of personal information of certain public servants and of other individuals about would be unreasonable in the circumstances and could result in specific harm.
29. I have therefore decided that to the extent the documents include personal information about non-SES staff members and mobile phone contact details of SES staff members, those parts of the documents are conditionally exempt from disclosure under section 47F of the FOI Act. My consideration of the public interest test is provided separately below.
30. I have therefore decided to the extent that the documents include personal information that would be unreasonable to disclose, those parts are conditionally exempt from disclosure under section 47F of the FOI Act.

### **Sections 11A and 11B - Public Interest Test**

31. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless (in the circumstances) access to the document would, on balance, be contrary to the public interest. I have found that certain material is conditionally exempt on the grounds of section 47F of the FOI Act.
32. In weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure at section 11B(3). In particular, I have considered the extent to which disclosure would:
- promote the objects of the FOI Act;



- allow a person to access his or her own personal information
  - inform debate on a matter of public importance; and
  - promote effective oversight of public expenditure.
33. I have identified the following factors as weighing against disclosure:
- the disclosure of certain personal information (including contact details) of a number of the identifiable individuals will not advance any scrutiny of any decisions falling within the scope of your FOI request;
  - the disclosure of personal information could reasonably be expected to prejudice the protection of certain individual's right to privacy;
  - there is a public interest in APS employers fulfilling their obligations under the *Work Health and Safety Act 2011*, in particular by preventing the exposure of staff members from potential harassment or threats in a public forum;
34. Taking into account the matters above, I find overall that disclosure of some parts of the requested documents would be contrary to the public interest. I therefore find that to the extent that the material contained in the documents is conditionally exempt under section 47F of the FOI Act, those parts of the requested documents are exempt from disclosure under the FOI Act.

## **Rights of Review**

### **Asking for a full explanation of a Freedom of Information decision**

If you are dissatisfied with this decision, you may seek external 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.

### **Applying for external review by the Australian Information Commissioner**

If you do not agree with 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 (**OAIC**) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](http://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](http://www.ombudsman.gov.au)