



Australian Government

Australian Public Service Commission

Marius

By email: foi+request-10761-3027694e@righttoknow.org.au

Our reference: LEX 679

Dear Marius

Freedom of Information request

1. I am writing about your request dated **16 October 2023** for access to documents under the *Freedom of Information Act 1982* (FOI Act) held by the Australian Public Service Commission (Commission).
2. I am an authorised officer under subsection 23(1) of the FOI Act to make decisions in relation to Freedom of Information (FOI) requests.

Your request

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

I am making this request for access to documents that may be in the control of the Office of the APSC. If the documents are not in the control of the APSC, do not transfer this request to the agency that officials in the APSC believe has the documents. If the requested documents are not in the control of the APSC, please simply refuse access to the documents under section 24A of the FOI Act.

*As to my right to elect whether I would like the Office of the Commonwealth Ombudsman to deal with this request and not transfer it to another agency, I refer you to the Federal Court of Australia's judgment in *Bienstein v Attorney-General* [2007] FCA 1174, [38]. The law on the matter is settled and clear.*

Under the Freedom of Information Act 1982 (Cth), I request access to the role evaluation record, prepared between 1 January 2017 and 31 December 2020, that shows that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Queensland District Registry of the Federal Court was, in the light of the work value of the group of duties described in the work level standards and a proper job analysis, lawfully reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000 (Cth).

My decision

4. As I advised you on **13 November 2023**, I decided that a practical refusal reason existed for your FOI request under section 24AA of the FOI Act and initiated a ‘request consultation process’. In that letter I requested you withdraw your request, revise it or tell us you do not wish to revise it.
5. You wrote to me on **13 November 2023**, where you provided submissions and did not revise the scope of your request.
6. In your response you made a submission that:

Having considered your letter, I am not inclined to and, thus, will not revise my FOI request.

The reasons you have provided are incoherent and irrelevant. Also, the time estimate you have provided to process the request is beyond excessive. The estimate is orders of magnitude beyond what would reasonably be required to handle such a straightforward request.

Paragraphs 13 and 14 of your decision suggest to me that you have not read my FOI request well enough.

Paragraph 11 is just strange. Why would the contents of a role review document, that would contain no personal information (it’s a review of a role, which is independent of any person who holds the role), need to be redacted? It’s an impersonal document that, in the ordinary course, would be made available to any member of the public. Also, why would there be such a “volume of material” in respect of a role review for a single role that you would need 78 hours to process the request?

Of what relevance is paragraph 12 to my FOI request? The FOI process is not suspended because an agency has a priority matter to deal with. If this were the case, then, by way of example, Services Australia would have suspended all FOI processing during the Robodebt Royal Commission. That did not happen. There is no basis in law for what you have noted in paragraph 12 of your decision.

There’s nothing difficult about the request. I note that an article published in The Australian on 10 February 2022 provides the following in relation to the role review of the SES Band 1 classified National Judicial Registrar & District Registrar role in Queensland:

Ms McMullen’s investigation concluded that “a role review process ... had resulted in certain positions being found suitable for either (classification)” (i.e. Legal 2 or SESB1).

(See: https://www.fedcourt.gov.au/__data/assets/pdf_file/0010/99370/PA2925-0656-4.-Email-to-Ms-Vine-Camp-dated-3-May-2022.pdf)

Ms McMullen was provided with the role review document/s and made a material decision based on the role review document/s. It's just a matter of providing the role review document (or documents), isn't it? Why would there be a practical refusal ground in respect of a request for documents in relation to a single role review process?

You are clearly aware that there have been decisions made in respect of the same document/s, which means the documents would also be close to hand. And if there have been decisions made in respect of the same document/s by the APSC, what's this about needing 78 hours to process the request?

All a bit odd.

7. I am writing to you now to advise that following a request consultation process, and taking into account your submission, I am satisfied that a practical refusal reason still exists. I am therefore refusing your request under paragraph 24(1)(b) of the FOI Act.
8. In making this decision I have had regard to:
 - the terms of your request.
 - the terms of your submissions in response to the request consultation process.
 - the FOI Act; and
 - the FOI Guidelines issued by the Australian Information Commissioner.
9. I have not had regard to:
 - any reasons that you give for requesting access; or
 - the Commission'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.

Reasons

10. I am of the view that processing your request would be a substantial diversion of the Commission's resources because:
 - collecting and reviewing the volume of material involved would be significant;
 - identifying, locating and/ or collating documents would particularly be onerous as it is estimated that documents from multiple sources will be found that may be captured by the form the request takes; and
 - many of these documents relate to previous FOI requests on related or similar matters.
11. I am also of the view that processing your request would be an unreasonable diversion of the Commission's resources because:
 - you have stated in your request that you do not wish for the request to be transferred to the Federal Court of Australia. Given the nature of your request, relating to recruitment in the Federal Court, this is the agency most likely to hold the records you are seeking in your request, not the Commission or the Office of the Commonwealth Ombudsman;

- the Commission is a portfolio agency, with limited staffing resources available. For example, it does not have the resources of Services Australia, referred to in your submissions, available to it for the processing of FOI requests;
- the Commission does not have, nor has ever previously required, any permanent dedicated FOI staffing resources as it has historically received a low number of FOI requests that are capable of being managed within the existing resources;
- at present the Commission has received a higher than usual number of FOI Act requests; and applications for internal review. Many of the requests relate to similar or related matters and I have taken this into account in making my decision (subsection 24(2) FOI Act);
- the Commission has limited capacity to obtain temporary resourcing in considering the impact of processing your request; and
- the Commission is currently working on a number of priority matters related to its functions and the Government's public service reform agenda, as recently announced by the Minister for the Public Service the Hon Senator Katy Gallagher. Processing your request would unreasonably divert resources that would otherwise be dedicated to performing the essential operations of the agency.

12. The amount of time estimated to process your request remains the same as the consultation notice, as you have declined to revise the request.

Review rights

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

Contacts

14. If you require clarification on matters in this letter please contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Yours sincerely



Melanie McIntyre
Authorised FOI decision maker
17 November 2023

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 agency authorised officer 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 (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