



Australian Government
Australian Public Service Commission

Anonymous

By email: foi+request-10788-0cdf4ab5@righttoknow.org.au

Our reference: LEX 690

Dear Applicant

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 **24 October 2023** for access to documents held by the Australian Public Service Commission (the Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.
3. On 20 November 2023, the Commission notified you that the time frame for responding to your request was extended to allow consultation with affected third parties. The time frame was extended by 30 days to **27 December 2023**.

Documents relevant to your request

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

‘On 24 October 2023, in his opening address to the Senate’s Finance and Public Affairs Committee, Dr Gordon de Brouwer stated that the APSC was working closely with the Secretaries Board and the Minister for the Public Service on “strengthening integrity in the public service.” He claimed that he and his colleagues take their responsibilities “seriously.” He then stated that “the conduct of senior APS leaders and employees is an issue of heightened public interest ...”

Under the Freedom of Information Act 1982 (Cth), I request access to:

a) documents, prepared for the October 2023 round of Senate Estimates in the form of briefing notes and the like, in respect of the APSC’s programmes on “strengthening integrity in the public service”,

b) documents, prepared for the October 2023 round of Senate Estimates in the form of briefing notes and the like, in relation to the APSC’s Code of Conduct inquiries, which Dr De Brouwer referred to in his opening address,

c) other than in respect of Code of Conduct inquiries arising out of the Robodebt debacle, documents, prepared for the October 2023 round of Senate Estimates in the form of briefing notes and the like, relating to the Agency Heads and senior APS

employees and officials being investigated through Code of Conduct inquiry processes, and

d) documents, prepared for the October 2023 round of Senate Estimates in the form of briefing notes and the like, in respect of “corruption prevention in the workplace” and “roadmap[s] for strengthening pro-integrity culture within the APS.”

5. I have identified six (6) documents in scope of your request.

Decision

6. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.

7. I have decided to:

- a) grant full access to documents 1, 2, 3, 5 and 6 (subject to the deletion of irrelevant material); and
- b) give partial access to document 4 because I consider some content in these documents are exempt from release under paragraphs 47E(c) and 47E(d) of the FOI Act.

8. A schedule of documents is at **Attachment A**.

9. My reasons are set out in **Attachment B**.

Deletion of irrelevant material

10. 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 material that is irrelevant to the scope of a request (for example, junior staff names).

11. Copies of the requested documents have been edited to remove material that is irrelevant material to the scope of your request.

Contacts

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

Review rights

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

Yours sincerely



Tom Georgilas

Authorised FOI decision maker

21 December 2023

ATTACHMENT A

SCHEDULE OF DOCUMENTS		
DOCUMENT	DESCRIPTION	BASIS OF REDACTIONS
1	Integrity Initiatives and Robodebt	s22
2	Estimates Opening Statement	Nil
3	APVMA Investigation	s22
4	Kathryn Campbell AUKUS appointment	s47E(c) and (d) s22
5	Executive Brief - Integrity	s22
6	Michael Pezzullo referral to the APS Commissioner	s22

Reasons for decision

1. In making my decision I have had regard to:
 - the terms of your request;
 - the content of the document you requested;
 - the FOI Act;
 - the FOI Guidelines issued by the Australian Information Commissioner;
 - consultation with relevant agencies and third parties and their submissions.
2. I have also taken into account the nature of the request being in relation to Senate Estimates; an important feature of democracy in examining the expenditure and actions of government.
3. Keeping this in mind, I have decided to grant access in full to documents 1, 2, 3, 5 and 6 and grant partial access to document 4.

Paragraphs 47E(c) and (d) – Certain operations of agencies – substantial adverse effect on the proper and efficient conduct of the operations of an agency

4. Paragraphs 47E(c) and 47E(d) of the FOI Act provide that a document is conditionally exempt from disclosure if its disclosure would, or could be reasonably expected to have a substantial adverse effect on the management or assessment of personnel by an agency, or on the proper and efficient conduct of the operations of an agency.
5. The Administrative Appeals Tribunal (AAT) has accepted that it is important to maintain candour in relation to management of personnel (see: *De Tarle and Australian Securities and Investments Commission (Freedom of Information)* [2016] AATA 230 [42].), particularly where, in such cases, staff may be reluctant to cooperate if they were aware that the subject matter of those discussions would be disclosed through the FOI process. Further, it is important that an agency is able to continue working effectively with all stakeholders in order to maintain proper and efficient conduct of the operations of an agency.
6. I am satisfied the document relates to both:
 - the management of staff within an agency (and proceedings in relation to them); and
 - the operations of an agency (including working relationships).
7. I consider the release of parts of document 4 would have the effect of significantly diminishing the ability of an agency to manage working relationships in a productive manner.
8. Accordingly, I have decided that release of parts of this document under the FOI Act, would likely undermine an agency's ability to manage personnel and properly and efficiently conduct operations.
9. However, in accordance with section 11(A)5 of the FOI Act, I must nevertheless give access to the conditionally exempt information unless in the circumstances it would be, on balance, contrary to the public interest to do so. My consideration of the public interest is below.

Sections 11A and 11B - Public Interest Test

10. Subsection 11A(5) of the FOI Act provides:

'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'.

11. 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;
- inform debate on a matter of public importance; and
- promote effective oversight of public expenditure.

12. I have identified the following factors as weighing against disclosure:

- disclosure could reasonably be expected to prejudice the fair treatment of individuals in regard to allegations of improper conduct;
- disclosure could reasonably be expected to impede the administration of justice generally, including procedural fairness; and
- disclosure could reasonably be expected to prejudice the management function of an agency.

13. I thus consider the public interest factors weigh strongly against disclosure of the conditionally exempt material in document 4 and have decided that disclosure of the conditionally exempt material in the document would be contrary to the public interest. To the extent that the material contained in document 4 is conditionally exempt under sections 47E(c) and 47E(d), those parts of the requested document are therefore conditionally exempt from disclosure under the FOI Act.

14. For all other documents in scope, I have granted access in full and only removed material irrelevant to the scope of the request.

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.a

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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