

Mr James Smith  
c/- Right to know

By email:  
foi+request-1934-6f63579b@righttoknow.org.au

Reply to: GPO Box 4889  
Sydney NSW 2001  
Our reference: 1-8L2MHDI  
Contact: Tel: 13 28 69  
Email: foi@ato.gov.au

15 July 2016

## Your request for access to documents

Dear Mr Smith,

I refer to your request for an internal review of the ATO decision of 17 June 2016 (erroneously dated 17 May 2016) under the *Freedom of Information Act 1982* (FOI Act) regarding your request for access to documents.

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

On 10 May 2016 you requested access to:

*....all emails sent from the Commissioner, Second Commissioners, or Deputy Commissioners, to any recipient, in the last week of April 2016 (ie. 25 April onwards), on the topic of communicating messages to all ATO employees about the proposed ATO Enterprise Agreement.*

*.... any 'toolkits', 'frequently asked questions', 'fact sheets', or similar, which may have been provided to assist managers address employees' questions on the ATO offer, if such document(s) exist.*

On 17 June 2016 you were advised of the decision to grant access to 20 documents in full and 2 documents in part.

On Saturday 18 June 2016 you requested an internal review of the decision to withhold the information the decision maker considered exempt (being the redacted parts of documents 12 and 18).

Your request included the following submissions:

- In my view a valid and sufficient argument has not been made to exempt any material....I think the public interest clearly outweighs any preference of the ATO on this occasion.*
- .....the material I seek is, quite clearly, concerned only in relation to 'selling the agreement' to employees. This is quite separate from any internal discussion that may focus more specifically on 'bargaining tactics', or 'negotiation strategies'.*
- I think it ought to be quite a stretch of the imagination to - even remotely -suggest that the release of such information would, or could reasonable be expected to 'have a substantial adverse effect' on the ATO.*

I have decided to affirm the decision of 17 June 2016 and deny access in full to parts of the documents the subject of your request for review.

## **Evidence/Material on which my findings were based**

In reaching my decision I relied on the following documentary evidence:

- the contents of the documents requested
- the submissions made in your request for internal review dated 18 June 2016
- relevant provisions of the FOI Act including sections 3, 11B and 47E
- Guidelines issued by the Australian information Commissioner under s93A of the FOI Act.

## **Reasons for Decision**

In assessing the material above, my findings were:

I have decided to refuse access to the redacted parts of documents 12 and 18 under sections 47E(c) and 47E(d) of the FOI Act.

I consider that a valid and sufficient argument was made to exempt this material under those sections in the original FOI decision. For example the decision stated that:

- *"The negotiation and establishment of a new EA is a key function of a government agency, which has a fundamental impact on the operations of the agency for a significant period of time. I consider that divulging one party's negotiation strategy in the context of a multi-party negotiation would have a substantial adverse effect on the agency's prospects of concluding a bargaining outcome, and would give other parties to the enterprise bargaining process an unfair advantage".*
- *"These messages were not intended for a broader audience. Given that the messages were delivered in the context of the negotiation of an EA which will impact on the majority of the agency's employees, the Commissioner's management of his SES would be undermined if key messages intended only for his SES were disclosed under the FOI Act. In the circumstances I am of the view that disclosing this information would, or could reasonably be expected to have a substantial adverse effect on the management of personnel by the ATO".*
- *"Taking into consideration the fact that I am releasing the majority of information subject to your request, disclosing the small portion of content which I have decided to exempt is likely to have a relatively insignificant effect on promoting Australia's representative democracy. Conversely, the information could reasonably be expected to prejudice both the management and industrial relations functions of the agency and have a lasting impact on the proper and efficient conduct of the operations of the ATO. In the circumstances I consider the factors against disclosure of the conditionally exempt information to be significant, and to outweigh the factors in favour of disclosure."*

I have therefore decided to adopt the reasoning that was set out in the original FOI decision.

## **Your rights of review**

If you are unhappy with my decision the following rights of review are available to you. In any application for review you should quote the reference number **1-8L2MHD1**.

You may seek an independent review of this decision within 60 days of receiving this notice. You should provide a copy of this notice and an address where notices can be sent to you (eg by providing your e-mail address). The Information Commissioner can be contacted at:

GPO Box 5218  
Sydney NSW 2001

## **Complaints**

Any complaint about the processing of your FOI request can be forwarded to the Information Commissioner. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

online: [https://forms.business.gov.au/aba/landing.htm?formCode=ICCA\\_1](https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1)  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001  
in person: Level 3, 175 Pitt Street, Sydney NSW

The Information Commissioner can be contacted on 1300 363 992 for the cost of a local call.

**For more information**

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for ATO General Counsel.

Yours Sincerely

**ATO General Counsel**

Tel: 13 28 69

Email: [foi@ato.gov.au](mailto:foi@ato.gov.au)