



Australian Government

Department of Communications and the Arts

[name not required to be provided under the FOI Act]
Right to Know

(Via email: foi+request-2878-df719870@righttoknow.org.au)

Dear Applicant

Freedom of Information Request 15 - 1617

I refer to your email dated 22 December 2016, seeking access under the *Freedom of Information Act 1982 (FOI Act)* to:

"...documents which detail the precise remuneration paid to each of the Department's SES officers in the following financial years - FY2013/14, FY 2014/15 and FY2015/16. The group certificates/end-of-year PAYG payments summaries issued by the Department, to each of its SES staff in those years, can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request."

Notice of intention to refuse

I am writing pursuant to subsection 24AB(2) of the FOI Act to notify you of my intention, as an authorised decision-maker under section 23 of the FOI Act, to refuse your FOI request on the basis that I am satisfied that a practical refusal reason under subsection 24AA(1) exists.

Please note that normally, in circumstances such as these, the Department would have contacted you by telephone, to discuss the scope of your request informally. However, as you have opted to make the application anonymously and have not provided the Department with any telephone or a personal email contact, we have not been able to do this.

Reasons for my intention

In making my decision I have had regard to the:

- content of the documents within the scope of your request, i.e. *'PAYG payment summaries issued by the Department to each of its SES staff'* employed by the Department during the financial year periods 2013-14, 2014-15, 2015-16;
- provisions of the FOI Act and case law considering those provisions;
- the *Information Commissioner's FOI Guidelines* issued under section 93A of the FOI Act;
- the Department's *FOI Policy*;
- information and advice from the Departmental officer responsible for the processing of FOI requests; and
- publicly available material, including that available on the Department's website, including Annual Reports for the years 2013-14, 2014-15 and 2015-16.

Noting that each of the 88 PAYG Pay Summary documents for the SES Officers employed by the Department during the relevant period contain personal information, including the full name and address, tax file number and the amount of salary payments and tax withheld of an identifiable natural person,

I consider that the work involved in consulting the relevant SES Officers (estimated to involve 2 hours per consultation and at least 30 individuals to be consulted), including the effort required to determine current contact details of SES Officers that are not currently employed by the Department, and the time and resources that would be required to prepare the documents for consultation, would substantially and unreasonably divert the resources of the agency in accordance with section 24AA(1)(a)(i).

In deciding that this practical refusal reason exists, I consider it relevant that there is only one Departmental officer assigned to FOI processing and that processing of your request would impact the processing of other FOI requests and other work undertaken by that officer.

In forming my decision above, I have taken into consideration that whilst some of the personal information within the documents is information that is already publicly available; (i.e. first names and surnames of SES Officers), and therefore potentially able to be released to you, the documents contain other personal information (middle names, home address details, tax file numbers and salary information¹ of SES Officers) that is information that is not well known. As the disclosure of this information would or could be expected to, unreasonably affect each relevant person in respect of his or her personal, business or professional affairs, I consider it reasonable to expect that each of the relevant SES Officers named in the documents (including those no longer employed by the Department) might reasonably wish to make an exemption contention. Accordingly, I consider that the processing of your request would require the Department to consult each of the relevant SES Officers identified within the documents captured by your request.

In addition, I have also considered whether it would be possible to provide de-identified salary information to you as an alternative form of release, i.e. by providing a list of annual salaries for unnamed SES Officers. However, as the number of SES Officers at each salary band is small, the disclosure of this information would make the individual to whom this material relates identifiable. Accordingly, I consider that, even in these circumstances, each of the SES Officers concerned might reasonably wish to make an exemption contention and therefore that consultation with each of the SES Officers is required to process your request.

Please note that I have also had regard to your submission that:

“...that the names position titles of the Department's SES officers are in the public domain...”

It is correct that the first names and surnames of SES Officers and their respective nominal classification levels are publicly available from a number of sources, including the Australian Government Directory website; the Department's website (in particular the organisational chart), and in some cases on the APS employment gazette.

I have also had regard to the fact SES Officers' salary and total remuneration packages are set through a confidential process of negotiation; and that whilst there is no legislative requirement under Commonwealth law for agencies to publish the salaries of SES Officers, the aggregated salary information for the Department's SES Officers is available through public sources (for example, the Department's Annual Reports and Remuneration Tribunal determinations).

The publicly available information relating to SES Officers provides an estimated range of the actual dollar amount each SES Officer receives. The range of salaries paid to SES (across each SES classification level) between:

- (a) 1 July 2013 and 30 June 2014 is set out in the Department's 2013-2014 Annual Report at Appendix 3;

¹ The decisions 'BA' and Merit Protection Commissioner [2014] AICmr 9 (30 January 2014) and 'HV' and Department of Finance [2015] AICmr (18 December 2015) support the position that salary information is personal information.

- (b) 1 July 2014 and 30 June 2015 is set out in the Department's 2014-2015 Annual Report at Appendix 3; and
- (c) 1 July 2015 and 30 June 2016 is set out in the Department's 2015-2016 Annual Report at Appendix 3.

Each of these Annual Reports is publicly available on the Department's website:
<https://www.communications.gov.au/who-we-are/departments-annual-reports>

Consultation process

In accordance with section 24AB(2)(e), the consultation period during which you may consult with me to revise the scope of your request is 14 days after the day you are given this notice and therefore your response is due by 20 January, 2017.

Please note that if you do not take this opportunity to consult, in accordance with section 24AB(7)(a), your request will be taken to have been withdrawn under section 24AB(6).

In order to provide you with information to assist you to revise your request, you may wish to consider narrowing the timeframe and reframing the request to capture documents that do not contain personal information.

The Department's FOI Coordinator, Felicia Nevins, phone (02) 6271 1277, is available to provide you, so far as is reasonably practicable, with any information to assist you in amending your request under the FOI Act.

Any submissions should be sent in writing either by email to (foi@communications.gov.au) or by ordinary post:

FOI Coordinator
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

I have attached a copy of sections 24, 24AA and 24AB of the FOI Act for your information.

Yours sincerely



Shireen Sekhon
Legal Director
Office of the General Counsel
6 January, 2017