



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.”

On 19 January 2017, following the issue of a Notice of Intention to Refuse under section 24AB of the FOI Act, you advised by email:

“...[14] Notwithstanding that I consider that your decision has been made in error, I am, in good faith, willing to revise the scope of my application. Your decision letter makes numerous references to the inclusion of personal information such as the address details and tax file numbers of SES staff contained in the PAYG pay summary documents/group certificates the subject of my application. Had you had regard to my application, you would have noted that I indicated that I am “willing to agree to the decision maker redacting information relating to the tax file numbers and home addresses of the relevant SES officers that may be contained in the relevant documents”. In addition to this, I am willing to further agree to the decision maker redacting information that may be contained in the documents the subject of my request relating to the middle names of relevant SES staff, as well as the amount of tax withheld. Assuming that tax has been paid in accordance with relevant laws, then I do not consider the release of such information to be in the public interest (at least for the purposes of my particular request). In addition, I am willing to further reduce the scope of my request by limiting it to officers employed by the Department who, at the time of my application, were categorised as SES officers - meaning that the scope of my request has been narrowed such that:

- Departmental staff who were once SES officers at the Department, but weren't categorised as such at the time of my request; and*
- the documents the subject of my request that pertain to SES officers who are no longer employed by the Department;*

are discounted from the scope of my application.”

Notice of refusal

I am writing pursuant to subsection 24(1)(b) of the FOI Act to notify you of my decision as an authorised decision-maker under section 23 of the FOI Act, to refuse to give access to the documents outlined in your request as amended by your email of 19 January 2017.

Reasons for my decision

In making my decision I have had regard to:

- (a) the submissions made in your email of 19 January 2017;
- (b) the content of the documents within the scope of your request (as revised by your email of 19 January 2017);
- (c) relevant provisions of the FOI Act and case law considering those provisions;
- (d) the *Information Commissioner's FOI Guidelines* issued under section 93A of the FOI Act;
- (e) the Department's *FOI Policy*; and
- (f) information and advice from the Departmental officer responsible for the processing of FOI requests.

Your email of 19 January 2017 indicates that you wish to refine your request to capture only PAYG Summary documents for the 33 SES Officers employed by the Department at the time of your application (i.e. December 2016) for the financial years 2013-14, 2014-15 and 2015-16. Your email also indicates that you are not seeking access to the following personal information contained within the PAYG Summary documents: Tax File Numbers, middle names, home addresses or the amounts of tax withheld in respect of each of the officers.

Taking into account:

- (i) that each of the 33 SES Officers would need to be consulted in relation to the personal information contained within their PAYG Summary documents for the relevant periods (estimated to involve a minimum of 1 hour for each consultation, including the time spent in preparing the documents for consultation and processing responses);
- (ii) that the processing of your request, as revised, would require us to determine whether each of the 33 SES Officers employed by the Department at the time of your request was also employed by the Department during the financial years 2013-14, 2014-15 and 2015-2016;
- (iii) the likelihood that disclosure of personal information about the specific salary and other entitlements paid to each officer would involve the unreasonable disclosure of personal information contrary to the public interest under section 47F of the FOI Act;
- (iv) the fact that a range of information concerning Departmental SES salaries is already publicly available through the Department's annual reports and relevant Remuneration Tribunal determinations¹, and that aggregate SES salary information is publicly available through the Australian Public Service Commission²;
- (v) that the first names, surnames and classification levels of the Department's SES Officers is also publicly available information;
- (vi) that only one Departmental officer is 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; and
- (vii) the likelihood that disclosure of specific salary information for each of the Department's current SES Officers would have a substantial adverse effect on:
 - a. the management of the Department's personnel; and
 - b. the proper and efficient conduct of the operations of the Department contrary to the public interest under section 47E;

¹ See: *Determination 2016/13: Departmental Secretaries - Classification Structure and Terms and Conditions*

² See: *APS Remuneration Report 2015*

I am satisfied, despite the modification of your request, that processing of your request would involve a substantial and unreasonable diversion of the Department's resources and, accordingly, that a practical refusal reason under subsection 24AA(1) still exists.

Review rights

As previously advised, the FOI Act provides for rights of review of decisions. A copy of the *Office of the Australian Information Commissioner's FOI fact sheet 12 – Your review rights* is attached.

Yours sincerely



Stuart Kerr
Legal Director
Office of the General Counsel
25 January, 2017