



Australian Government
Department of Employment

By email: foi+request-3025-5800e148@righttoknow.org.au

Dear Sir/Madam,

1. I refer to your correspondence, received by the Department of Employment (the Department) on 6 February 2017, in which you requested access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

"...documents which detail the precise remuneration paid to each of the Department of Employment's (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.

I am willing to agree to the decision maker redacting information relating to the tax file numbers, the home addresses and information relating to the amount of tax withheld for each of the relevant SES officers that may be contained in the relevant documents. I am willing to further narrow 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:

- *Departmental staff who were once SES officers at the Department, but weren't categorised as such at the time of this application; 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 intention to refuse your FOI request

2. I note that you have framed your request initially very broadly as "documents which detail the precise remuneration paid to each of [the Department's] SES officers" in specified financial years, but then appear to qualify your request as being for "group certificates/end-of-year PAYG summaries issued by the Department to each of its SES staff in those years".
3. Therefore, for the sake of clarity, I have interpreted your request to be for "group certificates/end-of-year payment summaries for each of the Department's SES officers for the 2013/14, 2014/15 and 2015/16 financial years".
4. I note that if your request is actually for all documents detailing remuneration paid to the Department's SES officers, it would encompass a much broader range of documents held by the Department (including, for example, each fortnightly payslip). Interpreting the scope in this way would mean that over 3000 pages of material would be likely to fall within the scope of your request.

5. I have consulted with officers in the Department's People Branch regarding the number and nature of documents held by the Department which are likely to be relevant to the scope of your request (as described in paragraph 3), and the work involved in processing your request. On this basis, I have estimated that the Department holds over 165 pages of material falling within the scope of your request, being group certificates relating to approximately 60 SES staff members for 3 years, reduced to account for the fact that some current SES officers will not have worked at the Department for the whole period.
6. I have estimated that it would take in excess of 109 hours to process your request. This includes time for search and retrieval activities, examining documents for decision making, undertaking necessary consultations, preparing and notifying you of the Department's decision on access and preparing any documents for release. I note that if my interpretation of the scope of your request (as set out above) is incorrect and your intention is to seek access to all documents containing the details of SES remuneration, this would have the effect of significantly increasing the volume of documents, and therefore the work required in processing this request.
7. On this basis, I am satisfied that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations.
8. The majority of the time required for processing this request relates to undertaking necessary consultations with third parties. In this regard, I note that you have specifically requested documents containing details of SES remuneration for multiple financial years. It is unclear whether your request relates only to substantive SES officers, or includes officers who are temporarily engaged in higher duties at the SES level. In any event, the documents within the scope of your request by their nature contain information about the personal and professional affairs of individuals.
9. Sections 27 and 27A of the FOI Act provide, relevantly, that if a requested document contains information about the personal or professional affairs of an individual, then the Department is required to consult with that individual if it appears to the Department that they might reasonably wish to make a contention that the document is exempt under the FOI Act.
10. I have had regard to factors relevant in determining whether individuals might reasonably wish to be consulted, including:
 - the extent to which the information is well known;
 - whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the information; and
 - the availability of the information from publicly accessible sources.
11. In particular, I note that whilst a range of general information about SES salaries is publicly available, the precise remuneration paid to individual SES officers is not well known or publicly available. Information about individuals' salary and financial affairs is information of a kind that is generally taken to be more sensitive than other kinds of information. I am satisfied that the nature of your request is such that circumstances exist where SES staff members might reasonably wish to contend that certain material is exempt.
12. On this basis, I am satisfied that the Department would reasonably be required to consult with each relevant SES staff member prior to making the decision on access, in order to provide them with an opportunity to contend that this information is exempt from release under the FOI Act.
13. The consultation process would involve the preparation of correspondence to all affected organisations, liaison with those organisations, consideration of any responses from those

organisations, and incorporation of any responses into the decision. In my view, consultation would be required with 60 individuals and, accordingly, a conservative estimate of 1.5 hours per third party means that the time that would be required to undertake such a process is at least 90 hours.

14. In addition to the time required to undertake these necessary consultations, further resources would be required in order to examine the documents, prepare a decision on access in accordance with the FOI Act, including a full statement of reasons and to prepare any documents for release. A schedule would also need to be prepared that provides a description of the content of the documents and summarises the decision on access in relation to each page.
15. The intention of the FOI Act is that there must be a balance between the public interest in access to documents and the resources which must be employed by an agency to process the request. I consider the work involved in processing your request would unreasonably divert the resources of the Department, both in the Information Law Team and in relevant business areas, from their other operations. In this regard, I note that there is already a range of publicly available information in relation to SES remuneration, including:
 - the Australian Public Service Commission's annual remuneration reports, which outline APS-wide remuneration ranges for all classifications: <http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys>; and
 - the Department's Annual Reports, which outline Department-specific remuneration ranges for all classifications for each financial year: <https://www.employment.gov.au/annual-reports>.
16. I am therefore satisfied that a practical refusal reason exists in relation to your request for the purposes of subsection 24AA(1) of the FOI Act.

17. In view of this, I am writing to you under subsection 24AB(2) of the FOI Act to notify you of my intention to refuse your FOI request, on the basis that a practical refusal reason exists.

Request Consultation Process (section 24AB)

18. Before making a decision to refuse your request on the above grounds, I am providing you with an opportunity to contact me and make submissions in support of your request as currently worded or to revise the scope of your request, so that the practical refusal reason will no longer exist.
19. In revising the scope of your request, you may wish to consider limiting the scope of your request to excluding identifying information of specific individuals.
20. You may also wish to consider the extent to which publicly available information may satisfy your enquiries (see paragraph 15 above).
21. You have **14 days** from the day you receive this letter to contact me and do one of the following:
 - (a) withdraw your request;
 - (b) make a revised request; or
 - (c) indicate that you do not wish to revise the request.
22. You can contact me by writing to the following address:

Attention: Imogen Thomas
 A/g Senior Government Lawyer
 Information Law, Practice Management and Corporate Advising Branch
 LOC: C12MT1-LEGAL

GPO Box 9880
CANBERRA ACT 2601

Alternatively, you can send an email to foi@employment.gov.au.

23. If you do not contact the Department within this period, your FOI request will be taken to have been withdrawn under subsection 24AB(7) of the FOI Act.

24. If you have any questions about this matter, please do not hesitate to contact me via email on foi@employment.gov.au.

Yours sincerely



Imogen Thomas
A/g Senior Government Lawyer
Information Law Team
Information Law, Practice Management and Corporate Advising Branch

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February 2017