



Australian Government
Department of Employment

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

Dear Sir/Madam

1. I refer to your correspondence, dated 28 February 2017, in which you revised the scope of your request under the *Freedom of Information Act 1982* (Cth) (the FOI Act) in the following terms:

"the group certificates/end of year payment summaries for the Department's SES Band 3 officers for the 2013/14, 2014/15 and 2015/16 financial years".

Background

2. On 6 February 2017, you wrote to the Department of Employment (the Department) seeking access under 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."

3. On 27 February 2017, I wrote to you to notify you of the Department's intention to refuse your request under section 24 of the FOI Act because a practical refusal reason existed. That is, processing your request would have substantially and unreasonably diverted the resources of the Department from its other operations, largely due to the number of third party consultations that would be required.

4. On 28 February 2017, the Department received your email revising the scope of your request in the terms set out at paragraph 1 above.
5. On 6 March 2017, the Department advised you of its intention to consult with certain third parties because the requested documents contain information that third parties might wish to contend should not be disclosed.
6. Due to the number of documents falling within the scope of your revised request, in this instance I have decided not to impose a charge for processing your request.

Decision on access to documents

7. I am authorised to make decisions under the FOI Act and my decision regarding your request and the reasons for my decision are set out below. The Schedule of Documents at **Attachment A** (the Schedule) summarises my decision as it applies to the documents covered by your request.
8. I am advised that the Department has in its possession six documents, each of which is one page long, that fall within the scope of your revised request.
9. Having considered these documents, I have decided to exempt all six documents in full. In particular, I have decided that the documents contain:
 - material that is conditionally exempt under subsection 47E(c) of the FOI Act because release would have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency; and
 - material that is conditionally exempt under subsection 47F(1) of the FOI Act because release would involve the unreasonable disclosure of personal information about a person other than you; andpursuant to subsection 11A(5) of the FOI Act, this material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.
10. In reaching my decision, I took the following material into account:
 - your correspondence of 6 February 2017 and 28 February 2017 outlining the particulars of your request;
 - documents falling within the scope of your request;
 - the FOI Act;
 - submissions made by third parties consulted under sections 27 and 27A of the FOI Act;
 - factors relevant to my assessment of whether or not disclosure of the relevant material would be in the public interest;
 - consultations with Departmental officers about:
 - the nature of the documents;
 - the Department's operating environment and functions; and
 - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for Decision

Subsection 47E(c) of the FOI Act

11. Section 47E of the FOI Act relevantly provides that:

"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to... have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency".

12. I have found that the documents falling within the scope of your revised request contain information relating to the management of personnel, being information about remuneration paid to Departmental officers employed in SES Band 3 roles.
13. I am satisfied that the disclosure of this information would have a substantial adverse effect on the management or assessment of personnel by the Department by interfering with the Department's ability to effectively negotiate SES salaries.
14. The Department's SES employees are not covered by the Department of Employment Enterprise Agreement 2016-2019. The terms and conditions of employment of SES employees are a matter of individual negotiation between the Secretary and each SES employee which is then outlined in an individual determination. In the context of a confidential negotiation process, revealing the precise remuneration paid to specific SES employees would have the substantial and adverse effect of undermining the Department's bargaining position.
15. On this basis, I have decided that this material, as referred to in the Schedule, is conditionally exempt under subsection 47E(c) of the FOI Act. My consideration of the public interest test in relation to the disclosure of this conditionally exempt material is set out below at paragraphs 22-29.

Subsection 47F(1) of the FOI Act

16. Subsection 47F(1) of the FOI Act provides that:

"A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person)."

17. The term, 'personal information', is defined in section 4 of the FOI Act to have the same meaning as in the *Privacy Act 1988* (Cth), that is:

"...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and*
(b) whether the information or opinion is recorded in material form or not."

18. I have decided that the documents falling within the scope of your revised request contain personal information about persons other than yourself, namely remuneration information and employee numbers of specific Australian public servants.

19. The Guidelines relevantly provide at paragraph 6.153 that “[w]here public servants’ personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed”. However, the documents falling within the scope of your revised request are not documents about the relevant SES officer’s performance of their usual duties or responsibilities. The payment summaries are documents that relate to the personal affairs of individuals and, accordingly, there is no presumption that they should be released merely because they relate to public servants.
20. Further, I have decided that the disclosure of this information would be unreasonable for the following reasons:
- it relates to aspects of individuals’ personal affairs;
 - other than the names of the SES employees, which are publicly available, the information in the payment summaries is private and not available from publicly accessible sources;
 - the identities of the individuals concerned are readily apparent;
 - the information includes financial information specific to individuals;
 - the disclosure may have an adverse effect on the relevant individuals; and
 - the relevant individuals have opposed the disclosure of the material.
21. On this basis, I have decided that this material, as referred to in the Schedule, is conditionally exempt under subsection 47F(1) of the FOI Act. My consideration of the public interest test in relation to the disclosure of this conditionally exempt material is set out below at paragraphs 22-29.

Public interest test

22. As set out above, I have found that certain material is conditionally exempt under subsections 47E(c) and/or 47F(1) of the FOI Act. Under subsection 11A(5) of the FOI Act, the Department must give you access to conditionally exempt material unless in the circumstances it would be, on balance, contrary to the public interest to do so.
23. I have taken into account factors in favour of disclosure, including those I am obliged to take into account under subsection 11B(3) of the FOI Act, namely the extent to which disclosure would:
- promote the objects of the FOI Act;
 - inform debate on a matter of public importance;
 - promote effective oversight of public expenditure; and
 - allow a person to access his or her personal information.
24. I consider that disclosure would broadly promote the objects of the FOI Act by providing access to information held by the Government, thereby informing the community of the Government’s operations and enhancing the scrutiny of government decision-making. Disclosure may also promote oversight of public expenditure in that it would reveal money spent on salaries for public servants. I also recognise that this public expenditure and the context of ongoing enterprise bargaining within the Australian Public Service are matters of some public importance and, therefore, that disclosure may inform any public debate on these matters.
25. However, there is a range of material that is already publicly available in relation to SES remuneration, including the Department’s Annual Reports and the Australian Public Service Commission’s Remuneration Reports (available at <http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys>). I am not satisfied that disclosing the documents

you have requested would serve the public interest any further than this publicly available information. Accordingly, I have afforded limited weight to these factors.

26. I have also considered factors indicating that access would be contrary to the public interest and weighed these against the above factors, including the extent to which disclosure could reasonably be expected to:
- reveal sensitive personal information which is not publicly accessible;
 - would prejudice individuals' rights to privacy;
 - adversely affect the interests of individuals; and
 - have a substantial adverse effect on the management of personnel by the Department, including by adversely affecting the Department's ability to effectively negotiate remuneration with SES and increasing public expenditure in relation to incoming SES employees by undermining the Department's bargaining position.
27. I have decided that, in this instance, the factors against disclosure outweigh the factors in favour of disclosure.
28. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act in making this decision.
29. In summary, I am satisfied that information in these documents is conditionally exempt under subsections 47E(c) and 47F(1) of the FOI Act. Furthermore I have decided that, on balance, it would be contrary to the public interest to release this information.

Section 22 of the FOI Act

30. I have decided that the documents falling within the scope of your revised request also contain material that is irrelevant to the scope of your request. In particular, in your correspondence dated 6 February 2017 you indicated that tax file numbers, home addresses and information relating to the amount of tax withheld for each relevant SES officer could be redacted. I understand that this material is also outside the scope of your revised request.
31. Where I have decided that material is irrelevant or an exemption applies under the FOI Act, I have considered whether it is possible to delete the exempt or irrelevant material under section 22 of the FOI Act and release to you the balance of the documents.
32. From the terms of your original and revised requests, I have understood that you are specifically seeking the remuneration information contained in the payment summaries in order to determine the rates of any salary increase for the Department's SES cohort. For your reference, I have provided some general information in relation to rates of any SES salary increase below. On this basis, and in accordance with paragraph 22(1)(d) of the FOI Act, it is apparent to me that you would decline access to an edited copy that does not contain the specific remuneration information you are seeking. I have therefore decided not to provide you with an edited copy of the documents.

Further information - general information in relation to SES remuneration

33. From your letter of 6 February 2017 and the nature of the documents you requested through the FOI Act process, I understand that you may be interested in information relating to the rate of any salary increase received by the Department's SES cohort in recent years. Therefore, in addition to

the information already publicly available, I can confirm that the Department has adopted a general approach of providing pay increases to SES that are in line with Department of Employment Enterprise Agreement 2016-2019.

Rights of review

34. I have set out your rights to seek a review of my decision at **Attachment B**.
35. Should you have any enquiries concerning this matter, please contact the Department via email at foi@employment.gov.au.

Yours sincerely



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

7 April 2017

Schedule of Documents

No.	Pages	Date	Description of Document	Decision
1.	1	FY 2013/14	PAYG payment summary – Mr Martin Hehir	Exempt in full.
2.	2	FY 2014/15	PAYG payment summary – Mr Martin Hehir	Exempt in full.
3.	3	FY 2015/16	PAYG payment summary – Mr Martin Hehir	Exempt in full.
4.	4	FY 2013/14	PAYG payment summary – Ms Sandra Parker	Exempt in full.
5.	5	FY 2014/15	PAYG Payment summary – Ms Sandra Parker	Exempt in full.
6.	6	FY 2015/16	PAYG Payment summary – Ms Sandra Parker	Exempt in full.

Attachment B - Your rights of review

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post: The Information Law Coordinator
 Information Law, Practice Management and Corporate Advising Branch
 Department of Employment
 Location Code: C12MT1-LEGAL
 GPO BOX 9880
 CANBERRA ACT 2601
Email: foi@employment.gov.au

External Review by the Australian Information Commissioner

Section 54L of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC or the Commonwealth Ombudsman about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

We are advised by the AIC that applications for review or complaint must be lodged with the AIC in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218
 Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street
 SYDNEY NSW 2000

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.