



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2017/035

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Name withheld

DECISION BY: Emma Greenwood
Chief People Officer
People Branch

FOI request

In an email dated 6 February 2017 to the Department of the Prime Minister and Cabinet ('the Department'), the applicant sought to make a request under the *Freedom of Information Act 1982* ('the FOI Act'), in the following terms:

I request documents which detail the precise remuneration paid to each of the Department of the Prime Minister and Cabinet'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.

On 20 February 2017 the Department issued a Practical Refusal Consultation Notice to the applicant seeking the applicant's agreement to narrow the FOI request. By email dated 20 February 2017, the applicant confirmed to narrow the scope of the request. The revised scope is to seek access in the following terms:

You've indicated that Ms Greenwood "advises that over 400 documents have been found to be in scope to [my] request [...]".

My request of 6 February 2017 was for the group certificates/PAYG summaries of the Department's SES officers (who, at the time of my application, were employed by the Department and categorised as SES officers) for the 2013/14, 2014/15 and 2015/16 financial years.

Having regard to the Department's organisational structure (as published on the Department's website), I'm finding it difficult to reconcile Ms Greenwood's assertion that over 400 group certificates/PAYG summaries fall within the scope of my request. Is Ms Greenwood able to confirm that over 400 group certificates/PAYG summaries fall within the terms of my request?

Only on the basis that Ms Greenwood's assertion is factually correct, I am willing to, pursuant to paragraph 24AB(6)(b) of the FOI Act, narrow the scope of my request such that it only applies to SES Band 3 officers.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Searches for documents undertaken by the Department

Having regard to my knowledge of where documents potentially relevant to the applicant's request would be held, if they existed, I arranged for searches to be undertaken of the Department's payroll system. Documents relating to officers with a classification of SES Band 3 and were employed with the Department at the time the request was made were identified.

Decision

I have decided to refuse access in full to the Document under section 47F of the FOI Act.

In reaching my decision I have had regard to the 'Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*' ('the FOI Guidelines').

Reasons for decision

Section 47F – Public interest conditional exemptions – personal privacy

A document is conditionally exempt under section 47F of the FOI Act if its disclosure would involve the unreasonable disclosure of personal information about any person.

Do the documents contain personal information?

'Personal information' under the FOI Act has the same meaning as in the *Privacy Act 1988* and is defined as 'information or an opinion about an identified individual, or an individual

who is reasonably identifiable ... whether the information or opinion is true or not and ... whether the information or opinion is recorded in a material form or not.'

The documents requested contain the personal information of SES officer's salary information. Although the applicant agreed to remove any identifying information, given the small number of officers the scope of this request relates to it would be possible to identify individuals. I am therefore satisfied the documents contain personal information within the meaning of section 4 of the FOI Act.

Would disclosing the information be unreasonable?

In determining whether disclosing the personal information would be unreasonable, I have had regard to the factors identified in section 47F(2) of the FOI Act, namely:

- 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 documents;
- the availability of the information from publicly accessible sources;
- any other factors the Department considers relevant.

I am satisfied that the specific personal information in the documents is not well known, however I note that the Department's Annual Report does provide a 'Workforce Profile' (Annual Report 2015-16 page 55) and 'Trends in Base Salary' (Annual Report 2015-16 page 60) information which can provide the applicant with a median of income for officers. I am satisfied that disclosure of this personal information would be unreasonable in the circumstances.

Accordingly, subject to the application of the public interest test, I consider that all documents identified in scope to this request to be conditionally exempt under section 47F of the FOI Act.

Section 11A(5) – Public interest

Section 11A(5) of the FOI Act provides that access must generally be given to a conditionally exempt document unless it would, on balance, be contrary to the public interest.

In determining whether disclosing the documents would, on balance, be contrary to the public interest, I have not taken into account any irrelevant factors identified in section 11B(4) of the FOI Act. I have considered the public interest factors favouring disclosure identified in section 11B(3) and have had regard to the FOI Guidelines.

Public interest factors favouring disclosure

I consider that the only public interest factor favouring disclosure of the conditionally exempt material is that it would broadly promote the objects of the FOI Act.

Public interest factors favouring non-disclosure

I consider that the critical factor favouring non-disclosure of the conditionally exempt material is that such disclosure would intrude on the personal privacy of the public interest advocates as it would reveal their personal salary information. This is not only inappropriate

but also unnecessary as it does not add to the public interest value of the contents of the documents particularly as base salary information is available through the Departments Annual Reports.

Balancing the public interest

In weighing the public interest factors for and against disclosure, I note the FOI Guidelines provide that the pro-disclosure principle declared in the objects of the FOI Act is given specific effect in the public interest test, as the test is weighted towards disclosure.¹ Notwithstanding the weighting towards disclosure, in this case, I attach more weight to the public interest factors against disclosure. In weighing the factors, I therefore consider the public interest against disclosure outweighs the public interest for disclosure.

I am satisfied that disclosing the conditionally exempt matter in the documents would, on balance, be contrary to the public interest.

Processing and access charges

I have decided not to impose processing charges in respect of the applicant's request.

Review rights

Information about the applicant's rights of review is attached to this decision.

Complaint rights

The applicant may make a complaint to the Information Commissioner about the Department's actions in relation to this decision. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/foi-complaints>.



Emma Greenwood
Chief People Officer
People Branch

30th March 2017

¹ FOI Guidelines, 'Part 6 – Conditional Exemptions' (version 1.2, March 2013), [6.12].



Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see [How do I make an FOI complaint?](#)

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.


Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

online: www.oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001
fax: +61 2 9284 9666
email: enquixxx@xxxx.xxv.au
in person: Level 3
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: xxxxxxxxx@xxxx.xxx.au

write: GPO Box 5218, Sydney NSW 2001
or visit our website at www.oaic.gov.au