



I Whittaker

By email: [foi+request-3130-0b46e6ee@righttoknow.org.au](mailto:foi+request-3130-0b46e6ee@righttoknow.org.au)

Dear Sir/Madam,

### Freedom of Information Request

I write in response to your email request dated 21 February 2017, seeking access to documents held by the Australian Public Service Commission (the Commission) under the *Freedom of Information Act 1982* (FOI Act).

You have requested access to the following:

*I've been following the FOI request titled 'Group Certificates/PAYG payment summaries of APSC SES staff - FY2013/14, FY2014/15 and FY2015/16' here:*

*[https://www.righttoknow.org.au/request/group\\_certificatespayg\\_payments](https://www.righttoknow.org.au/request/group_certificatespayg_payments) where the APSC has refused to release information relating the amount of taxpayer funds paid to APSC SES on the basis that it might upset APSC SES staff.*

...

*I request a document or documents (likely prepared under s.17 of the FOI Act) that details the year on year increase in remuneration (as a percentage, rounded to the nearest decimal point) paid to each of its SES staff for the financial years: 2013/14 to 2014/15 and 2014/15 to 2015/2016 as determined from the group certificates/PAYG summaries issued to those SES staff (pro-rated, to reflect full year amounts, if necessary). I'm not interested in the names of the SES officers and so I'm happy for you to de-identify those.*

### Response to allegations made in your correspondence dated 21 February 2017.

The Commission rejects the premise of your request that the Government's policy is to 'strip away the real wages and conditions of Commonwealth public servants'.

### Apprehension of potential bias and conflict of interest

The Commission notes that you have requested documents regarding its Senior Executive Staff (SES) employees. I am the Group Manager (SES Band 1) of Corporate Group, with responsibility for the Human Resources team. I oversaw the preparation and creation of the document sought, and can verify the correctness of the information contained therein.



As I am a Group Manager, your request seeks access to a created document that includes my own personal information, as well as that of my peers and immediate supervisor. I have determined that it is not appropriate to disqualify myself from considering your request, as any other Group Manager within the Commission would be in a similar position. The Commission also considers that passing delegation to a more junior member of staff is not appropriate and would not eliminate the potential for bias or conflict of interest. You are, of course, free to seek external review of this decision, as identified in your Review Rights included at Attachment C.

### **Consultation pursuant to section 27A of the FOI Act**

Your request was received by the Commission on 21 February 2017. The statutory period for processing an FOI request is 30 days, meaning your decision originally fell due on 23 March 2017.

The Commission informed you on 22 March 2017 that pursuant to section 27A of the FOI Act an extension applied to the timeframe for the processing for your request to allow for consultation with persons concerned with the documents to which you sought access. Your decision then fell due on 24 April 2017 (section 36(2)(b) of the *Acts Interpretation Act 1901* (Cth)). I confirm that such consultations have been finalised.

### **Creation of a document in response to your request pursuant to section 17 of the FOI Act**

Having undertaken searches across the agency, the Commission advises that the document sought is not available in discrete form in any written documents. I have considered your submissions within your FOI request dated 21 February 2017 and have determined that, in the circumstances, creation of such a document is appropriate in response to your request.

I have therefore identified **1** document falling within the scope of your request. This document is listed in the Schedule of Documents provided at **Attachment A**.

### **Decision**

This letter sets out my decision on your request for access. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

As aforementioned, I have identified **1** document relevant to your request. Having considered the document, I have decided that Document 1 shall be released in full. The reasons for my decision are set out at **Attachment B** to this letter.

### **Review rights**

You are entitled to seek review of this decision. Your rights are set out at **Attachment C** to this letter.

### **Relevant provisions**

I have enclosed copies of the provisions of the FOI Act relevant to your request at **Attachment D** to this letter.

## Publication

The Commission must publish information relating to material that has been released in response to each FOI access request subject to certain exceptions. This publication is known as a 'disclosure log'. The disclosure log requirement does not apply to personal information about any person if it would be unreasonable to publish the information or to information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable. The Commission is not required to consult you on any decision to publish information that is released to you and the decision to publish information is not subject to review internally by the Commission or externally by the Australian Information Commissioner. Any person can however, make a complaint to the Australian Information Commissioner about how an agency handles an FOI request

## Contacts

If you require clarification of any of the matters discussed in this letter you should contact the Commission's FOI Officer by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au).

Yours sincerely



Clare Page

Authorised FOI decision maker

24 April 2017

**SCHEDULE OF DOCUMENTS**

<b>Applicant Name: I Whittaker</b>			
<b>File no: C17/709</b>			
<b>Document</b>	<b>Date</b>	<b>Description</b>	<b>Comment / FOI Act exemptions applicable</b>
1	April 2017	Document created in response to FOI request C17/709	S17

## REASONS FOR DECISION

### Material taken into account

1. In making my decision, I had regard to the following:
  - the terms of your request dated 21 February 2017 as submitted to the Australian Public Service Commission (the Commission);
  - your request that a document be created pursuant to section 17 of the FOI Act;
  - the content of the document to which you sought access;
  - the purpose for which the document to which you sought access where created and provided to the Commission;
  - submissions from third parties who were consulted under section 27A of the FOI Act about the release of personal information;
  - advice from APSC employees with responsibility for matters concerning the document you have requested;
  - the relevant provisions of the FOI Act; and
  - guidelines published by the Office of the Australian Information Commissioner (OAIC) (the FOI Guidelines).

### Findings of fact and reasons for decision

2. As shown in the Schedule of Documents at **Attachment A** I am satisfied that Document 1 be released to you in full, noting that Document 1 has been created pursuant to your request dated 21 February 2017.

### Considerations in creating the document under section 17 of the FOI Act

3. Section 17 of the FOI Act provides that where a document is sought that is not available in discrete form in the written documents of the agency, and the agency could produce a written document containing the information in discrete form by the use of a computer, that the agency shall deal with the request as though it were a request for access to a written document so produced.
4. I have determined that it is not unreasonable for the Commission to conduct take the steps necessary to produce the document requested. I have further concluded that the creation of such a document will not substantially or unreasonably divert the resources of the Commission.
5. You have sought access to a document disclosing the year on year increase in remuneration (as a percentage, rounded to the nearest decimal point) paid to each of the Commission's Senior Executive Service (SES) employees for the financial years 2013/14 to 2014/15 and 2014/15 to 2015/16.
6. In preparing the created document under section 17 of the FOI Act, I have determined that it is unreasonable to prepare particularised percentage data for each SES employee, due to the risk of reidentification. The Commission has a small number of SES level employees, and production of the individual data would pose, in our view, a real and substantial risk of reidentification, making such data likely to be subject to conditional exemptions under section 47E and 47F of the FOI Act.
7. Both section 47E and 47F of the FOI Act are conditional exemptions, requiring the application of further considerations pursuant to section 11 of the FOI Act. Having considered the public interest factors for and against disclosure of the individual remuneration data sought, I have determined that there are factors in favour of disclosure, including but not limited to informing debate on

matters of public importance, including the extent to which SES remuneration within the Commission is consistent with the *Bargaining Policy 2015*, and enhance scrutiny of decision-making by the Commission as it relates to remuneration of its senior staff.

8. I have additionally determined that there are factors against disclosure, including but not limited to the extent to which disclosure would involve an unreasonable disclosure of personal information, the interest in preserving the efficient and proper functions of the Commission, and the extent to which disclosure would likely have a substantial adverse effect on the management of personnel by the Commission.
9. So as to enable disclosure of the information sought by you in your request dated 21 February 2017, the Commission has determined that provision of percentage data in the manner sought, provided on a grouped basis for each of the SES employees at the Commission is appropriate in the circumstances.
10. It is my view that release of the information sought, in a grouped form, is in the public interest, in that release will inform debate on matters of public importance, inform the community of the operations of the Commission, and promote effective oversight of public expenditure, by showing the extent to which SES remuneration within the Commission is consistent with the remuneration of Australian Public Service employees generally, and the *Bargaining Policy 2015*.

## **Conclusion**

11. For clarity, it is therefore my decision that Document 1 be released in full.

## REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you.

### Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you a 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 this decision you must apply for the review, in writing, by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access.

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:

**Email:**            [foi@apsc.gov.au](mailto:foi@apsc.gov.au)

**Post:**             The FOI Coordinator  
                      Australian Public Service Commission  
                      16 Furzer Street  
                      WODEN ACT 2606

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commission for review of the internal review decision if required.

### Review by the Office of the Australian Information Commissioner

Section 54L of the FOI Act gives you a right to apply directly to the Australian Information Commissioner (the Information Commissioner) for review of certain decisions made under the FOI Act. If you wish to have the decision reviewed by the Information Commissioner you must apply for the review within 60 days of receiving this notice (decision).

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).

To assist the Information Commissioner, 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 Information Commissioner about how an agency handled an FOI request, or about other actions the agency took under the FOI Act.

You can contact the Information Commissioner to request a review of a decision or lodge a complaint in one of the following ways:

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Post: GPO Box 2999  
CANBERRA ACT 2601

**\*Please note:** On 13 May 2014, the Australian Government announced a decision to disband the Office of the Australian Information Commissioner (OAIC). However, the OAIC remains operational until further notice. Information on the OAIC public website advises that Information Commissioner Reviews will continue to be handled by the OAIC and FOI complaints will be referred to the Commonwealth Ombudsman. Please contact the OAIC on the details above if you require further information.

### **The Commonwealth Ombudsman**

You can complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. No particular form is required to make a complaint to the Ombudsman, but the request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the FOI request should be investigated. The Ombudsman may be contacted in one of the following ways:

Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Post: 1300 362 072 (local call charge)



**FREEDOM OF INFORMATION ACT 1982  
RELEVANT PROVISIONS**

**17 Requests involving the use of computers**

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
  - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - (c) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
    - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.



## **DOCUMENT 1**

**April 2017**

Document created in response to FOI request C17/709 pursuant to section 17(1) of the FOI Act.

Year on year increase in remuneration (as a percentage, rounded to the nearest decimal point) paid to the Australian Public Service Commission's (the Commission's) Senior Executive Service (SES) employees for the financial years 2013/14, 2014/15 and 2015/16.

### **2013/14 to 2014/15 financial year**

No remuneration increases were awarded to any SES employees during the abovementioned period.

### **2014/15 to 2015/16 financial year**

A remuneration increase was awarded to all SES employees in the abovementioned period. Percentage figures provided are true as awarded; no pro-rata amounts have been calculated.

Percentage increase awarded to SES employees during financial year: General increase of 2%, with some SES employees receiving a 5% remuneration increase.

