



Australian Government
Department of Finance

Reference: FOI 17/43
Contact: FOI Team
Telephone: (02) 6215 1783
e-mail: foi@finance.gov.au

via email: foi+request-3183-dd1f5df6@righttoknow.org.au

Dear Sir/Madam,

Freedom of Information Request – FOI 17/43

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following documents under the *Freedom of Information Act 1982* (FOI Act):

Accordingly, I request documents which detail the remuneration paid to each of the Department of Finance'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. Accordingly, those documents are 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.

Request Consultation Process

On 28 March 2017, Finance wrote to you under s24AB of the FOI Act and asked you to clarify the scope of your FOI request to enable it to continue to be processed.

On 10 April 2017, you responded to the request consultation process and amended the scope of your FOI request as follows:

Pursuant to paragraph 24AB(6)(b) of the FOI Act, my revised request is for 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.

Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

I have decided to refuse in full access to the documents falling within the scope of the revised FOI request.

In making my decision, I have had regard to the following:

- the terms of your revised FOI request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act;
- Annual Reports of the Department of Finance; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

Reasons for Decision

I consider the documents within the scope of your request contain information that is exempt under s47F of the FOI Act which prescribes that:

(1) 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).

Personal information is defined in subsection 4(1) of the FOI Act as:

...information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The documents requested contain the personal information of SES officer's salary information. Although you have agreed to remove some identifying information (such as the names and tax file numbers of each individual), given the small number of officers that fall within the scope of this request, I consider that it would be possible to reasonably ascertain the identity of these individuals. In being able to ascertain the identity of the individuals the documents would contain the following information about those individuals: salary, employer, and employment level. Therefore, I am satisfied that the documents contain personal information within the meaning of s4 of the FOI Act.

Subsection 47F(2) of the FOI Act prescribes that:

(2) In determining whether the disclosure of a document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;*
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
- (c) the availability of the information from publicly accessible sources;*
- (d) any other matters that the agency or Minister considers relevant.*

Having regard to subsection 47F(2), I consider that there is a reasonable expectation that Finance maintains the privacy of individuals who receive payment summaries. The personal information contained within each document is not available from publicly accessible sources and it is not widely known that the individuals are associated with the matters dealt with in the document. While I note that the Finance's Annual Report does provide details of the total remuneration for senior management (*Department of Finance: Annual Report 2015-16*, page 141) I note that the information is not detailed on an individual basis. Therefore, the information within the scope of the request is not well known, and I consider that disclosure of this information would be inconsistent with Finance's obligations under the *Privacy Act 1988*. As such, I am of the view that the information would be unreasonable to disclose.

Having regard to the above, I consider that the information is not well known, and that its release would constitute an unreasonable disclosure of personal information. Therefore, having formed the view that the documents are conditionally exempt under section 47F of the FOI Act, I am now required to consider whether disclosure of such information would be contrary to the public interest (see 'Public Interest Test' below).

Public Interest Test

Having formed the view that the document contains conditionally exempt information, I am now required to consider the public interest test for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest.

I have considered that the following factors favour disclosure as prescribed by subsection 11B(3) of the FOI Act.

- *Release of the document would promote the objects of the Act:* I note that disclosure of the document would give the community access to information that would not otherwise be publicly available, although it would be revealing private information about various individuals.
- *Release would promote effective oversight of public expenditure:* I note that the document does relate to expenditure of public money, however, it does not provide oversight of the processes around that expenditure and therefore there would be limited benefit to the public in release of the document. Furthermore, information providing greater transparency and oversight of the remuneration of senior management officers is publicly available in Finance's Annual Reports.

Subsection 11B(5) of the FOI Act prescribes that:

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

As such, I consider the following factors, set out in the OAIC Guidelines, are against disclosure of the document:

- *Release of the document could be expected to prejudice an individual's right to privacy:* This is a strong consideration. The document is not otherwise publicly available and I consider disclosure could prejudice the individuals' right to privacy by revealing their personal salary information. This is both inappropriate and unnecessary, as it does not add to the public interest value of the contents of the document, particularly as detailed information on the remuneration of senior management is provided in Finance's Annual Reports. Noting this, I do not consider that compelling reasons exist in order to override this right to privacy.
- *Disclosure could reasonably be expected to prejudice the management of the information function of a Commonwealth agency:* I consider that disclosure of the exempt document could undermine Finance's ability to manage information held within the department, particularly of a sensitive, personal nature. There is a reasonable expectation of confidentiality from departmental staff that their individual remuneration details will not be publicly released, and disclosure could result in a loss of confidence in Finance's ability to handle this type of information appropriately. This could reasonably be expected to prejudice Finance's operations in relation to its recruitment and retention of staff.

I have not given any consideration to the irrelevant factors prescribed in subsection 11B(4) of the FOI Act. Taking into account all the factors set out above, I have determined that the document contains information that is conditionally exempt and that the factors against disclosure of the documents outweigh the factors in favour of disclosure. As such, I have decided that the document is conditionally exempt, in full, under section 47F of the FOI Act.

Charges

No charges were imposed for the processing of your request.

Review and appeal rights

You are entitled to request an internal review or a review by the OAIC of my decision. The process for review and appeal rights is set out at [Attachment A](#). If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely



Rachael Jackson
Assistant Secretary, People Branch
Department of Finance

April 2017



Australian Government
Department of Finance

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) 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 you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, 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 Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance 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 Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why. You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

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

review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant

decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

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 IC 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.

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

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance 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. Review by the IC is currently free.

How do I apply?

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

Post: Office of the Australian Information Commissioner
GPO Box 2999
CANBERRA ACT 2601
Email: enquiries@oaic.gov.au
Fax: 02 9284 9666
In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (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.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is currently \$884 (from 1 July 2016), although there are exemptions for

health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal Services Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html