



**Australian Government**  
**Department of Employment**

I. Whittaker

By email: [foi+request-3370-7bebc90e@righttoknow.org.au](mailto:foi+request-3370-7bebc90e@righttoknow.org.au)

Dear Sir/Madam

1. I refer to your correspondence of 12 April 2017 in which you sought access under the *Freedom of Information Act 1982* (Cth) (**the FOI Act**) to the following:

*[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 the Department's SES Band 3 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).*

2. I note that you have advised you are not interested in the names of the SES officers, and would be happy for that information to be removed from the relevant document.

**Decision on access to documents**

3. 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.
4. Pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act, I have decided to refuse your request for access to documents on the basis that the documents you are requesting do not exist.
5. However, I have decided to provide you with certain information relating to your request outside of the FOI Act. That information is contained in paragraph 16 below.

**Reasons for decision**

*Documents do not exist*

6. An agency or Minister may refuse a request for access to a document under subsection 24A(1) of the FOI Act if:
  - (a) *all reasonable steps have been taken to find the document; and*
  - (b) *the agency or Minister is satisfied that the document:*
    - (i) *is in the agency's or the Minister's possession but cannot be found; or*
    - (ii) *does not exist.*
7. I have liaised with the relevant business areas and I am advised that the Department does not hold any documents within the scope of your request, as the Department does not keep records of staff salaries in the form requested – that is, containing the year-on-year increase in remuneration expressed as a percentage.

8. Notwithstanding this, appropriate searches for documents within the scope of your request were undertaken, and these searches did not identify any documents in the possession of the Department.

*Production of a document under section 17*

9. The FOI Act provides individuals with access to documents, rather than to information, held by Commonwealth government agencies. As explained above, the Department does not hold any documents containing the specific information you have described.
10. In your request you have suggested that the Department is obliged to calculate the information requested from the Group Certificates or PAYG Payment Summaries of the relevant staff members and produce a document under section 17 of the FOI Act. However, I do not consider this to be correct.
11. Section 17 of the FOI Act provides:

***Requests involving use of computers etc.***

(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*
- (ba) *it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disc on which the information is recorded; 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.*

[...]

12. The guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**the FOI Guidelines**) explain the operation of section 17 further. At paragraph 3.182, the FOI Guidelines state:

*Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if the applicant does not wish to be provided with a computer tape or disk. Examples include a transcript of a sound recording or a written compilation of information held across various agency databases.*

13. The effect of section 17 is to require the Department to convert information that is stored electronically to print, or to convert a sound recording to text, and only where it is clear that the applicant does not wish to be provided with an electronic version of the information. Section 17 does not require the Department to produce or calculate new information based on information it already holds, and then produce a document containing the new information.

14. Accordingly, the Department has not produced a document under section 17 of the FOI Act for the purposes of your FOI request.


**Further information - general information in relation to SES remuneration**

15. I understand that you are interested in information about SES salary increases compared to non-SES salary increases over the relevant period. I have therefore decided to provide you with the following information outside of the operation of the FOI Act.
16. The Department has adopted an overarching approach of aligning pay outcomes for SES employees with the pay outcomes of non-SES employees. I can confirm that in 2014/15, SES staff (including SES Band 3 staff) did not receive any general increase in salary, as was the case for non-SES staff. In 2015/16, SES officers generally received a 3% increase in salary, in line with the 3% salary increase received by non-SES staff under the Department of Employment Enterprise Agreement 2016-2019.

**Rights of review**

17. I have set out your rights to seek a review of my decision at **Attachment A**.
18. Should you have any enquiries concerning this matter, please contact the Department via email at [foi@employment.gov.au](mailto:foi@employment.gov.au).

Yours sincerely



Oliver Shepherd  
Government Lawyer  
Information Law Team  
Information Law, Practice Management and Corporate Advising Branch

10 May 2017.

### Attachment A - 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](mailto: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](http://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](http://www.oaic.gov.au)  
Post:           GPO Box 5218  
                  Sydney NSW 2001  
Fax:            +61 2 9284 9666  
Email:          [enquiries@oaic.gov.au](mailto: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.