



Australian Government
**Department of Industry,
Innovation and Science**

Our ref: IEF17/1162

Mr Mathew Smith

By email: foi+request-3443-ac2339d0@righttoknow.org.au

Dear Mr Smith

Freedom of Information Act 1982 – Notice of Decision

I refer to your request received by the Department of Industry, Innovation and Science (the department) on 24 April 2017, in which you sought access under the *Freedom of Information Act 1982* (the FOI Act) to:

“...correspondences between your bargaining representatives and the APSC that document the discussion surrounding this pay point increase, and any other supporting documentation that explains how the removal of the lowest pay points and the introduction of new higher pay points was brought into line with the Workplace Bargaining Policy 2015”.

By email correspondence dated 22 May 2017, the department sought your agreement to a one week extension of time under section 15AA of the FOI Act and you agreed to the extension on the same day.

Decision

I am an authorised decision maker under section 23 of the FOI Act.

I am satisfied that reasonable searches have been undertaken for documents relevant to your request. I am advised that the department has in its possession 3 documents (consisting of 7 folios) that are relevant to your request.

Having considered these documents, I have decided to grant access in part to the 3 documents.

I have decided that one of the documents contains material that is exempt under:

- section 47C(1) of the FOI Act on the basis that release of the documents would disclose deliberative processes and that access would, on balance, be contrary to the public interest; and
- section 47E(d) of the FOI Act on the basis that release of the documents would have a substantial adverse effect on the proper and efficient conduct of the operations of the department and that access would, on balance, be contrary to the public interest.

The reasons for my decision are set out below, as required by section 26 of the FOI Act.

Reasons for Decision

Evidence/Material on which my findings were based

In reaching my decision to exempt material from the documents in part, I relied on the following documentary evidence:

- FOI Act;
- your correspondence setting out the particulars of the request;
- the documents identified to be within the scope of the request;
- consultations with departmental officers as to the nature of the documents;
- consultations with a relevant Commonwealth agency; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act

Section 22 – Deletion of exempt or irrelevant material

I have decided that certain documents relevant to your request contain material that is irrelevant or exempt. Subsections 22(1) and (2) of the FOI Act provide that:

Scope

- (1) *This section applies if:*
- (a) *an agency or Minister decides:*
 - (i) *to refuse to give access to an exempt document; or*
 - (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*
 - (b) *it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:*
 - (i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*
 - (ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*
 - (c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*
 - (i) *the nature and extent of the modification; and*
 - (ii) *the resources available to modify the document; and*
 - (d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

Access to edited copy

- (2) *The agency or Minister must:*
- (a) *prepare the edited copy as mentioned in paragraph (1)(b); and*
 - (b) *give the applicant access to the edited copy.*

By email dated 4 May 2017, you were advised that it is the department's policy to treat the mobile phone numbers of Senior Executive Service (SES) officers and the names and contact details of departmental staff who are not in the SES as being excluded from the scope of FOI requests. You responded by agreeing to withhold the names, signature block and contact details of departmental employees but asked the department to replace persons' positions/roles. Accordingly, I have redacted these names and contact details as irrelevant material pursuant to section 22 of the FOI Act.

Where possible, I have deleted exempt and irrelevant material and have decided to release the balance of the documents to you. These deletions are identified in the Schedule of Documents (Schedule).

Section 47C – Deliberative Matter

Subsection 47C(1) of the FOI Act provides that:

A document is conditionally exempt if disclosure under the FOI Act would disclose a matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth.

The documents identified in the Schedule set out opinions, advices and recommendations regarding the department's remuneration proposal. The documents were prepared to enable consideration of the relevant issues and to provide options. I am satisfied that the documents identified in the Schedule were prepared for the purpose of informing the deliberative processes of the department.

In considering the documents, I have had regard to subsection 47C(2) of the FOI Act which provides that "deliberative material" does not include operational information or purely factual material. The documents identified in the Schedule were prepared to advise the department and other Commonwealth agencies on matters of policy.

To the extent that the documents contain factual material, that material has been included to "set the scene" for the deliberative process to be undertaken. I have decided that the analysis and views expressed in the documents and the factual material in the documents are so integrated that it is not practical to separate them. I am also satisfied that the separate disclosure of the factual material would be likely to in effect disclose the deliberative matters to which it relates. I have therefore decided that the documents identified in the Schedule are conditionally exempt under subsection 47C(1) of the FOI Act.

I am aware that under the FOI Act, access must generally be given to a conditionally exempt document unless it would be contrary to the public interest. My consideration of the public interest factors for and against disclosure is set out later in these reasons.

Section 47E(d) – Certain operations of agencies

Subsection 47E(d) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

The documents contain commentary and policy advice on issues that required consideration by the department and other Commonwealth agencies. The ability of Australian Public Service Commission (APSC) to provide this advice to Commonwealth agencies would be substantially adversely affected if the confidential advice contained in the documents was publicly disclosed.

As noted above, the documents identified in the Schedule contain options, advice and recommendations in relation to the department's remuneration proposal. The APSC's ability to provide comprehensive advice that critically assesses policy options will be compromised if confidential communications are publicly disclosed. I note that the communications were identified as being provided in confidence when provided to Commonwealth agencies by the APSC.

For these reasons, I have decided that material contained in the documents identified in the Schedule is conditionally exempt under section 47E(d) of the FOI Act.

Public interest test

Subsection 11A(5) of the FOI Act requires that access to a conditionally exempt document, including a document that is conditionally exempt under section 47C and 47E(d), must be given to the applicant unless disclosure of the document would, on balance, be contrary to the public interest.

In applying the public interest test, I have considered the factors in favour of the disclosure of the documents, namely that disclosure would:

- promote the objects of the FOI Act;
- provide the community with access to government information;
- inform debate on matters of public importance; and
- assist in the effective scrutiny of government decisions.

However, I consider that these interests are outweighed by the public interest factors against disclosure. In regard to the disclosure of material conditionally exempt under section 47C and 47E(d), I am satisfied that disclosure would potentially:

- impede the effective and productive working relationship between the department and the APSC by releasing confidential communications and assessment of the issues and policy options to be considered;
- prejudice the ability of the APSC to provide comprehensive advice on important issues to Commonwealth agencies and may result in desensitised correspondence rather than a full and candid assessment of issues if there is a likelihood of the material being made public;
- risk that future correspondence will be tailored to audiences other than Commonwealth agencies, thereby compromising the quality and value of the material and making it less relevant to its specific purpose which is to provide necessary advices to fully inform of Commonwealth's decisions; and
- prejudice the interests of the government by disclosing candid deliberative advice which may still be under consideration by other agencies and disclosure of which, has the potential to hamper the ability of those agencies to consider the advice.

Having considered the strengths of the public interest factors for and against disclosure, I am of the view that, on balance, the public interest factors against fully disclosing the documents identified in the Schedule outweigh those in favour of disclosure. I therefore find that the documents identified in the Schedule are partially exempt from disclosure under sections 47C and 47E(d) of the FOI Act.

Where possible and as identified in the Schedule, I have deleted the exempt material in these folios and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

If you are dissatisfied with my decision, your review rights are set out in **ATTACHMENT A**.

Please do not hesitate to contact the FOI team on (02) 6102 8104, or by email to foi@industry.gov.au if you require any further clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Natalie Marsh', written in a cursive style.

Natalie Marsh
General Manager
People and Planning

26 May 2017

Application for Internal Review

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter, or within 15 days of receipt of the documents to which this decision relates (whichever is the longer period). You do not have to pay any fees or processing charges for an internal review, except for charges relating to the provision of any additional relevant material located as a result of the review (for example photocopying). While a specific form is not required, it would assist the decision maker if your application specifies the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator
Department of Industry, Innovation and Science
GPO Box 2013
CANBERRA ACT 2601

or by e-mail to: FOI@industry.gov.au.

Review by the Australian Information Commissioner

If any decision on internal review were not satisfactory to you, section 54L of the FOI Act gives you the right to apply for review of my decision by the Information Commissioner.

An application for review by the Information Commissioner may be made regardless of whether the decision was the subject of a departmental internal review. An application for review by the Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Information Commissioner.

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: enquirxxx@xxxx.xxx.xx

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Australian Information Commissioner will make a completely independent investigation of your complaint. A complaint to the Australian Information Commissioner must be made in writing and can be lodged online using the Information Commissioner Complaint Application form on the Australian Information Commissioner's website at www.oaic.gov.au.