



I Whittaker

By email: foi+request-3471-14347b58@righttoknow.org.au

Our reference: C17/1026

Dear I Whittaker,

Freedom of Information Request

I refer to your request dated 7 May 2017 and received by Australian Public Service Commission (the **Commission**) on the same date, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

'documents held by the APSC as a result of those documents being sent by any member of staff at the APSC who is categorised as SES, or as the 'Public Service Commissioner', to:

- (a) the Institute of Public Affairs;*
- (b) the H.R. Nicholls Society; or*
- (c) any person in their as capacity as a member, staffer or affiliate of those organisations.*

Additionally, I seek access to any documents held by the APSC as a result of those documents being received by any member of staff at the APSC who is categorised as SES, or as the 'Public Service Commissioner', because those documents have been sent to a relevant person by the:

- (a) the Institute of Public Affairs;*
- (b) the H.R. Nicholls Society; or*
- (d) any person in their as capacity as a member, staffer or affiliate of those organisations.'*

Consultation pursuant to section 27A of the FOI Act

Your request was received by the Commission on 7 May 2017. The statutory period for processing an FOI request is 30 days, meaning your decision originally fell due on 6 June 2017.

The Commission informed you on 30 May 2017 that pursuant to section 27A of the FOI Act an extension applied to the timeframe for the processing of your request to allow for consultation with third parties. Your decision then fell due on 6 July 2017.



My 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.

The Commission holds **7** documents (totaling **32** pages) that relate to your request. These documents are listed in the schedule of documents provided at **Attachment A**.

I have decided to:

- Grant access in full to Documents 2 and 3; and
- Grant access in part to Documents 1 and 4-7.

The documents are **enclosed**.

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.

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.

Yours sincerely

Damien
Authorised FOI decision maker
6 July 2017

SCHEDULE OF DOCUMENTS

| Applicant Name: I Whittaker File no: C17/1026 | | | | | | |
|--|-------|------------------|----------------------------|-----------------|-----------|---|
| Document | Pages | Date | Description | Decision | Exemption | Comment |
| 1 | 1-6 | 26 October 2016 | Email chain | Release in part | S47F | Personal information deleted under s 47F(1) |
| 2 | 7 | 13 August 2015 | Letter from the Commission | Release in full | | |
| 3 | 8 | 5 August 2015 | Letter to the Commission | Release in full | | |
| 4 | 9-11 | 27 May 2016 | Email chain | Release in part | S47F | Personal information deleted under s 47F(1) |
| 5 | 12-14 | 13 April 2015 | Email chain | Release in part | S47F | Personal information deleted under s 47F(1) |
| 6 | 15-28 | 13 April 2015 | Email chain | Release in part | S47F | Personal information deleted under s 47F(1) |
| 7 | 29-32 | 25 February 2015 | Email chain | Release in part | S47F | Personal information deleted under s 47F(1) |

REASONS FOR DECISION

Your request

1. You requested access to the following:

“documents held by the APSC as a result of those documents being sent by any member of staff at the APSC who is categorised as SES, or as the ‘Public Service Commissioner’, to:

- (a) the Institute of Public Affairs;*
- (b) the H.R. Nicholls Society; or*
- (c) any person in their as capacity as a member, staffer or affiliate of those organisations.*

Additionally, I seek access to any documents held by the APSC as a result of those documents being received by any member of staff at the APSC who is categorised as SES, or as the ‘Public Service Commissioner’, because those documents have been sent to a relevant person by the:

- (a) the Institute of Public Affairs;*
- (b) the H.R. Nicholls Society; or*
- (d) any person in their as capacity as a member, staffer or affiliate of those organisations.”*

Material taken into account

2. In making my decision, I took into account a number of factors, including:
 - the terms of your request dated 7 May 2017 as submitted to the Commission;
 - the content of the documents to which you sought access;
 - the purpose for which the documents to which you sought access were created, and where applicable, provided to the Commission;
 - submissions from third parties who were consulted under section 27A of the FOI Act about the release of personal information;
 - whether release of the material is in the public interest;
 - 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

3. Where the schedule of documents at **Attachment A** indicates an exemption has been applied to a document, or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document, or part of document, are set out below.

Deletion of exempt matter or irrelevant material

4. Sub paragraph 22(1)a(ii) of the FOI Act provides that where a decision is made to refuse access to a document on the ground that it contains exempt material, it is possible for an agency to make an edited copy of the document with the exempt, or irrelevant material modified by deletion.
5. You have been provided with such edited copies of documents, with the relevant provisions of the FOI Act under which the exempt material has been deleted identified in the schedule of documents provided at **Attachment A**.

47F – Public interest conditional exemptions - personal privacy

6. Section 47F of the FOI Act provides that a document is conditionally exempt if such disclosure would involve the unreasonable release of personal information about any person.
7. I have applied the conditional exemption in section 47F to parts of documents 1 and 4-7.
8. 'Personal information' is defined as follows:

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and*
- (b) whether the information or opinion is recorded in a material form or not.*

9. Paragraph 6.130 of the Guidelines provides:

Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

10. Documents 1 and 4-7 comprise of correspondence between relevant employees of the Commission, or the Australian Public Service Commissioner and any relevant person within the scope of your request. Given this, I have determined that the relevant documents contain the personal information of third parties.
11. In determining whether the disclosure of a document would involve an unreasonable disclosure of personal information, subsection 47F(2) of the FOI Act provides that an agency must have regard to the following matters (the unreasonableness test):
 - 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 document;
 - the availability of the information from publicly accessible sources; and
 - any other information that the agency considers is relevant.
12. Further, paragraph 6.138 of the FOI Guidelines states the following about the unreasonableness test in section 47F:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

13. I accept that the full names of the Commission's SES employees are available through public resources, including but not limited to organisation structure charts published by the Commission on its website. As such, I consider that such information is suitable for inclusion in response to your FOI request.

14. I am otherwise satisfied that the disclosure of the third party personal information within Documents 1 and 4-7 would be unreasonable as:
- it is not well-known;
 - it relates to aspects of an individual's personal affairs;
 - you do not have consent from the relevant individuals for the release of their personal information; and
 - the information is private and not available in full or in part from publicly-accessible sources.
15. On this basis, I have determined that the personal information included in the documents referenced in the Schedule is conditionally exempt under section 47F(1) of the FOI Act.

Section 11A – public interest considerations

16. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless (in the circumstances) access to the document would, on balance, be contrary to the public interest (the public interest test).
17. The public interest test is defined at paragraph 6.5 of the FOI Guidelines, with reference to relevant case law to be something that is of serious concern or benefit to the public, not merely of individual interest and not something of interest to the public, but in the interest of the public.
18. When weighing up the public interest factors for and against disclosure under section 11A(5) of the FOI Act, I have taken the following factors into consideration in favor of disclosure, reflecting on the extent to which disclosure would:
- promote the objects of the FOI Act (including all the matters set out in sections 3 and 3A) including;
 - inform debate on a matter of public importance; and
 - promote agency transparency.
19. I have also considered the following factors against disclosure, reflecting on the extent to which disclosure would:
- reasonably be expected to prejudice an individual's right to privacy;
 - release into the public forum information which is not otherwise well known;
 - be contrary to the circumstances in which the information was obtained; and
 - be limited in its application to a matter of public, as opposed to private, concern.
20. In making my decision, I have further taken into consideration part 6 of the FOI Guidelines with respect to personal privacy and the application of the public interest factors to the personal privacy conditional exemption.
21. Based on the above considerations I have decided that in this instance, disclosure of the information in the relevant documents is outweighed by the public interest against disclosure.
22. I have not considered any factors deemed to be irrelevant to determining whether access would be in the public interest, as set down at section 11B(4) of the FOI Act.

Conclusion

23. For the reasons set out above, I am satisfied that parts of Documents 1 and 4-7, as set out in the Schedule, contain information that is conditionally exempt under section 47F of the FOI Act. I have further concluded that, on balance, it would be contrary to the public interest to release this information. Accordingly, I have decided to grant access to the relevant documents in part.

24. In conclusion, I have decided to:

- Grant access in full to Documents 2 and 3; and
- Grant access in part to Documents 1 and 4-7.

INFORMATION ON 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

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.

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

Post: GPO Box 2999
CANBERRA ACT 2601

Complaints to 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

Post: 1300 362 072 (local call charge)