



Name Withheld
via email: foi+request-3608-4ccb0adf@righttoknow.org.au

Dear Name Withheld

I refer to your request of 24 June 2017 for access under the *Freedom of Information Act 1982* (FOI Act) to documents detailing the remuneration paid to each of the department's Senior Executive Service (SES) Band 3 employees for the financial years 2013/14, 2014/15 and 2015/16.

In your request you indicated that the PAYG payment summaries issued by the department would be sufficient to provide the information you seek. You excluded the following information from the scope of your request:

- tax file numbers
- employees' home addresses
- the amounts of tax withheld, and
- documents regarding SES Band 3 officers either no longer employed by the department, or no longer working in the capacity of an SES Band 3 officer, as at the date of your request.

Decision on access to documents

I am authorised to make decisions under the FOI Act.

I have identified the following six documents within the scope of your request:

1	Payment summary David Parker 2015-16
2	Payment summary David Williamson 2015-16
3	Payment summary Lyn O'Connell 2015-16
4	Payment summary Phillip Glyde 2013-14
5	Payment summary Phillip Glyde 2014-15
6	Payment summary Phillip Glyde 2015-16

I have decided to refuse access to all of the documents. The reasons for my decision are set out below.

Taking into account the relatively few documents and my decision to refuse access to them, I have also decided not to charge for processing your request.

Reasons for decision on access

In making my decision, I have taken the following into account:

- the scope of your request

- your submissions in support of your request
- the content of the documents requested
- the objects and other provisions of the FOI Act
- the FOI guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**), and
- responses from affected individuals objecting to the release of their personal information.

Section 45 – Documents containing material obtained in confidence

Section 45(1) provides that a document is exempt from disclosure if its disclosure under the Act would found an action for breach of confidence by a person (other than a government agency or the Commonwealth), who provided the confidential information.

The information in question is about each SES employee's pay and entitlements. The terms and conditions of employment, including remuneration, are a matter of individual negotiation between the Secretary and each SES employee. There is a mutual understanding between individual SES employees and the department that employee records, including information relating to tax affairs, will be kept confidential.

PAYG summaries are prepared by the department solely to comply with tax laws and are subject to secrecy provisions in the hands of the ATO. These secrecy provisions underline the confidential nature of the information and I consider the summaries contain the necessary quality of confidentiality.

Other than disclosing PAYG summaries to the ATO as required by law, this information is never disclosed by the department except to or with the employee's consent. In the circumstances, all employees, including those at SES levels, have a reasonable expectation that the information in PAYG summaries is confidential given its close connection with taxation laws, and the secrecy regime which applies to that information in the hands of taxation officers.

The release of information to you and the associated website publication, would involve disclosure outside the confidence.

As discussed further below, the SES officers have not consented to the disclosure of the information. Disclosure would cause detriment to each of the SES employees as its revelation would expose to the public information that is private to each of them and may affect their future salary negotiations with other employers.

I have therefore decided the PAYG summaries are exempt in full under s 45 of the FOI Act.

Section 47E(c) – public interest conditional exemption – agency operations

Section 47E(c) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth.

The PAYG summaries directly relate to the department's management of personnel because salaries at the SES level are not covered by the department's enterprise agreement and are a matter of individual negotiation between the officer and agency head. Disclosure of this information would reveal details of individual SES employee payments and entitlements negotiated between individual SES employees and the department.

Disclosure of information which reveals precise contractual arrangements between individual SES employees and the department would diminish the trust SES employees have in their employer to maintain their privacy and confidentiality. It could also reasonably be expected to have a substantial and adverse effect on future and current recruitment and salary negotiation processes. These comprise an important part of the department's management or assessment of some of the department's key personnel, and by extension, is likely to have a detrimental effect on the operations of the department. I therefore find that the relevant material is conditionally exempt under s 47E(c).

Section 47F – public interest conditional exemption – personal privacy

Section 47F(1) of the FOI Act provides that a document is conditionally exempt from disclosure to the extent that it contains personal information the disclosure of which would be unreasonable. The relevant material concerns the private taxation affairs of departmental officers which is clearly personal information under the FOI Act.

Paragraph 6.138 of the FOI Guidelines provides the following guidance about the test of 'unreasonableness':

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.'

Section 47F(2) sets out matters which I must consider in determining whether disclosure of personal information would be unreasonable:

- 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, and
- d. any other matters that the agency or minister considers relevant.

While the individuals concerned may be known to be employed as departmental SES during the period concerned, the details of their remuneration is confidential in nature and is not publicly known or available. The information requested is of a different and more personal nature than the more general information that is published by the APSC about average SES salaries and information in the department's annual reports. The officers concerned were consulted and objected to the disclosure of their personal information. In these circumstances I consider it is reasonable for them to expect remunerations details to not be disclosed to any person except them and the ATO, reflecting the legal purpose and requirement of PAYG summaries.

I therefore find that the relevant material is conditionally exempt under s 47F(1).

Public interest factors

Access to conditionally exempt documents must be given unless disclosure is not in the public interest.

In balancing the public interest factors for and against disclosure, recognise that there is a public interest in transparency about how public money is spent. However, against that I weigh the public interest in protecting the privacy of individuals concerned and the department's future recruitment and salary negotiations.

As publicised in our annual report and on our webpage¹, the secretary determines remuneration under section 24 (1) of the *Public Service Act 1999* for SES employees, with regard to the Australian Public Service Commission's annual Australian Public Service (APS) Remuneration Report. This provision allows variations in remuneration between individual jobs, based on market and work-value considerations, which aids in the ability to attract and retain the best qualified people in the employment market for these roles.

In my view, the balance of factors for and against release is appropriately struck in the provision of information about remuneration bandwidths and averages such as is published in annual agency reports and the APS Remuneration Report.

For the PAYG summary documents, I give greater weight to the public interest in protecting the department's ability to effectively manage staff and source the best applicants for senior positions and maintaining staff confidentiality and personal privacy. I have therefore decided that disclosure would not be in the public interest and the information is exempt under sections 47E(c) and 47F(1) of the FOI Act.

Review rights

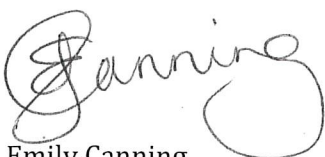
If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@agriculture.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Contact details

Should you wish to discuss any issues arising from this letter, please contact FOI Officer, Melissa Nickols on (02) 6272 3537 or email foi@agriculture.gov.au.

Yours sincerely



Emily Canning
Chief Finance Officer
Financial and Business Support

21 August 2017

¹ <http://www.agriculture.gov.au/about/reporting/annualreport/2015-16/part-3/corporate-governance>