



Australian
Competition &
Consumer
Commission

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3 July 2017

www.accc.gov.au

Anonymous

Via email to: foi+request-3612-4e3ace6c@righttoknow.org.au

Dear Anonymous

Decision on freedom of information request

I refer to your email dated 8 June 2017 in which you request access, under the *Freedom of Information Act 1982 (Cth)* (the Act), to the following:

'I request documents which detail the precise monies paid to each of the ACCC'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 ACCC 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.

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 ACCC who, at the time of my application, were categorised as SES officers, meaning that:

- ACCC staff who were once SES officers at the ACCC, 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 ACCC; are discounted from the scope of my application.'*

Decision

Overview

I have decided to **refuse** these documents to you on the basis that they are exempt under sections 47E and 47F of the Act. Detailed reasons are set out below. Your review rights are set out in Attachment A.

I am authorised under s.23 of the Act to make this decision.

Section 47E – substantial adverse effect on the management or assessment of ACCC personnel

The requested documents record information relating to the ACCC's management of SES personnel.

Section 47E provides that a document is conditionally exempt from disclosure if its disclosure would, or could reasonably be expected to, do any of the following:

...

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by the ACCC; or

...

The document relates to the management of personnel as it is about the remuneration paid to SES personnel.

Disclosure of the document would or could reasonably be expected to have a substantial adverse effect on the ACCC's management or assessment of personnel by interfering with the ACCC's ability to effectively negotiate SES salaries.

SES salaries are not covered by the ACCC's 2016 -2019 Enterprise Agreement. Terms and conditions of employment, including remuneration, are individually negotiated between the ACCC and each individual SES and recorded in an individual determination. Given that this is a confidential negotiation process, revealing the precise remuneration paid to individual SES employees would undermine the ACCC's bargaining position. I am therefore satisfied that the documents are conditionally exempt under s.47E.

The public interest

Section 11A(5) provides that where a document is conditionally exempt, access to the document must be given, unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Factors in favour of disclosure, as set out in section 11B(3) of the Act, include:

- promoting the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (section 3(2)(b) of the Act); and
- facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the ACCC.

Factors against disclosure:

- adversely affecting the ACCC's bargaining position with SES personnel
- adversely affecting the ACCC's ability to effectively negotiate SES salaries
- preserving reasonably held expectations of confidentiality;
- harming the interests of a group of individuals;

In weighing these factors, I have taken into account the range of information publicly available through the ACCC's annual report regarding SES salaries; the terms of the request; the relevant provisions of the Act and the Information Commissioner's guidelines. I give more weight to the ACCC's need to be able to effectively bargain with SES personnel. I have not taken into account any of the irrelevant factors set out in section 11B(4) of the Act, such as seniority of the author, embarrassment to the Commonwealth, misinterpretation or misunderstanding of the document, or confusion or unnecessary debate resulting from disclosure of the document.

On balance, I have concluded that disclosure of the information contained in the documents would be unreasonable. There is minimal public interest in this information being known.

I have considered the competing public interest in disclosure and am not satisfied that the public interest in access to the information outweighs the public interest in the ACCC being able to effectively manage and assess its personnel. Accordingly, I have decided that the documents are exempt under section 47E of the Act.

Section 47F - Documents affecting personal privacy

Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information

Section 4(1) of the Act defines 'personal information' as including information about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. The documents contain the person's name and salary both of which are 'personal information' under the Act as it is information about individuals whose identities are readily apparent.

Disclosure unreasonable

If information is considered personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In determining whether disclosure would be unreasonable, I have considered the following factors:

- the objects of the Act (section 3), which include an intention that functions and powers are to be exercised as far as possible to facilitate and promote public access to information promptly and at the lowest reasonable cost;
- that the information relates to the personal affairs of individuals;
- other than names, which are publicly available, information in payment summaries is private and not publicly available;
- that the information includes financial information specific to individuals; and
- the adverse impact that disclosure would have on the individuals concerned.

I am satisfied from the nature of the information and my own enquiries that the information in question is not well known or publicly available. On that basis, I have concluded that disclosure of the information would be unreasonable.

I find that the documents conditionally exempt under section 47F of the Act.

The public interest

Section 11A(5) provides that where a document is conditionally exempt, access to the document must be given, unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest. In balancing the public interest in this case, I have considered the following factors for and against disclosure.

Factors in favour of disclosure, as set out in section 11B(3) of the Act:

- promoting the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (section 3(2)(b) of the Act); and
- facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the ACCC.

Factors against disclosure:

- other than names, which are publicly available, information in payment summaries is private and not publicly available;
- preserving reasonably held expectations of confidentiality;
- protecting individuals from unreasonable interferences with their privacy; and
- could reasonably be expected to harm the interests of group of individuals.

In weighing these factors, I have taken account of the documents within scope, the extent to which the information is publicly available, the relevant provisions in the Act and the Information Commissioner's guidelines. In this regard, I note that paragraph 6.140 of the guidelines makes clear that "[w]here public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed". The financial information contained in the documents is not relevant to the SES officers' performance of their duties or responsibilities so there is no presumption that they should be released merely because they relate to public servants.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the Act, such as seniority of the author, misinterpretation or misunderstanding of the document, or confusion or unnecessary debate resulting from disclosure of the document.

On balance, I have concluded that disclosure of the personal information contained in the documents would be unreasonable. There is minimal public interest in this information being known. By contrast, the interference with the privacy of individuals is in my view significant. I am satisfied that the relevant SES staff are identifiable, the documents contain third party personal information, release of the documents would cause stress on the third parties, and no public purpose would be achieved through release.

Taking into account the above matters, on balance, I consider that disclosure of the information in the documents is contrary to the public interest. Accordingly, I have decided that the documents are exempt under section 47F of the Act.

Yours sincerely



Heather Thomas

Principal Lawyer
ACCC Legal Group

Sent by email 3/07/2017

ATTACHMENT A

INFORMATION ON RIGHTS OF REVIEW

1. ACCC Internal Review

Under s.54 of the FOI Act, you can apply for an internal review of my decision by writing to the ACCC within 30 days of receipt of this letter indicating that you seek an internal review of this decision.

If you make an application for review, another officer of the ACCC will review and make another decision in regards to these documents.

There is no charge payable for requesting an internal review. No particular form is required to apply for review. You will need to set why the decision should be changed.

Please send any correspondence to:

FOI Coordinator

Australian Competition & Consumer Commission

GPO Box 3131

Canberra ACT 2601

If you make an application for internal review and we do not make a decision within 30 days or such further period as the IC allows, the original decision is considered affirmed. In such circumstances, you can seek review of our deemed decision by the IC.

2. Review by the Information Commissioner

You may ask for a review of a decision by the Australian Information Commissioner (IC). You do not have to go through our internal review process first for this process. If you do choose to seek an internal review, you can still seek IC review for the internal review decision if we refuse access to the documents.

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: enquiries@oaic.gov.au

If you disagree with the Information Commissioner's review decision, you can appeal to the Administrative Appeals Tribunal (AAT).

The Tribunal is a completely independent review body with the power to make a fresh decision. A filing fee of \$861.00 (as at 1 July 2014) should accompany your application, unless you are granted legal aid or you come within an exempt category of persons (check with the Tribunal registry in your State). The Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded if you are successful.

3. Complaint to the Information Commissioner

You may request the Information Commissioner to investigate action taken by the ACCC in relation to this Freedom of Information request. There is no fee for making a complaint. The Information Commissioner will consider your complaint and, if appropriate, conduct an investigation into it. Any investigation will be completely independent.

You must lodge your complaint in writing and do so in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au