

5 July 2017

By email: [foi+request-3614-14a2db6d@righttoknow.org.au](mailto:foi+request-3614-14a2db6d@righttoknow.org.au)

ACMA file reference: ACMA2017/596

Dear Sir/Madam

1. I refer to your application of 8 June 2017 in which you sought access under the *Freedom of Information Act 1982* (the "FOI Act") to:

*[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 ACMA's SES 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). I'm not interested in the names of the SES officers and so I'm happy for you to de-identify those.*

2. I confirm that I am an authorised decision maker within the meaning of section 23 of the FOI Act.

**Material taken into account**

3. I have taken the following material into account in making my decision on access:
  - the FOI Act; and
  - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the "Guidelines"), available here: <https://oaic.gov.au/freedom-of-information/foi-guidelines/>.

**Decision on access to documents requested**

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 document you have requested does not exist.

**Reasons for decision**

*Documents do not exist*

5. Subsection 24A(1) of the FOI Act provides that an agency may refuse a request for access to a document 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 Minister's possession but cannot be found;*
    - or
    - (ii) *does not exist.*
6. As the Manager of the People and Workplace team in the ACMA, I have detailed knowledge of the documents and information held by the ACMA in connection with payroll matters. In the course of processing your request, I consulted with ACMA staff with knowledge of, and expertise in, the ACMA's records management and payroll

systems and I organised for searches to be undertaken for documents falling within the scope of your request.

7. I am satisfied that these steps constitute reasonable steps for the purpose of paragraph 24A(1)(a) of the FOI Act, having regard to the subject of matter of the request and to my knowledge of the relevant records and records management systems.
8. I am further satisfied that the result of these steps is that the ACMA does not hold any document that falls within the scope of your request. Accordingly, I have decided to refuse your request pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act.

*Section 17 of the FOI Act*

9. Your request suggests that the ACMA may be required, pursuant to section 17 of the FOI Act, to produce a document that meets the terms of your request.

10. I note that the Guidelines, at paragraph 2.33, state:

***The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information. [emphasis added]***

11. Subsection 17(1) of the FOI Act deals with information stored in computer systems, and it states:

***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 disk 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, at paragraph 3.182, further explain the operation of section 17 of the FOI Act:

*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. As mentioned above, I am satisfied that the ACMA does not hold any documents containing information that falls within the scope of your request. As described above, I reached that view having regard to the information held by the ACMA in its payroll and other records management systems, which are in the form of electronic records.

That is, I am satisfied that the ACMA does not store electronically any document (or documents) containing the requested information.

14. Further, my view is that the ACMA could not use its payroll or other records management systems to collate the information you seek from the documents and information regarding SES remuneration that are stored in those systems. Accordingly, I am satisfied that section 17 does not apply to your request.

**Information concerning the remuneration of the ACMA's SES officers**

15. The ACMA publishes a range of information related to the remuneration of its SES personnel in its annual reports. The ACMA's annual reports for the last four financial years can be accessed here: <http://www.acma.gov.au/theACMA/annual-report>.

**Rights of review**

16. Please find enclosed the ACMA's Information Sheet entitled *Freedom of Information Act 1982 - Rights of Review of Applicants*. Should you have any queries in relation to this matter, please contact me.

Yours sincerely



**Shirley Hedditch**

Manager - People and Workplace

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## ***Freedom of Information Act 1982 - Rights of Review***

The purpose of this information sheet is to set out the rights of applicants to seek review of decisions made by the ACMA under the *Freedom of Information Act* (FOI Act).

### **1. Review of decisions**

If you are dissatisfied by any decision made by an ACMA decision maker concerning access to documents or charges imposed for processing your request you can ask the ACMA to conduct a review of the decision or you may apply to the Australian Information Commissioner (the Information Commissioner) for a review.

#### **1.1 Application for review by the ACMA**

If you want the ACMA to conduct a review of the decision you must write to the ACMA. You should set out why you are dissatisfied with the decision made. The review will be undertaken by a different ACMA decision maker.

#### **Time within which to seek review**

Generally, your request must be made within 30 days of receiving notice of the decision (see section 54B of the FOI Act).

The application may be sent to the ACMA in any of the following ways:

Hand delivery:	Level 5, The Bay Centre, 65 Pirrama Road, Pyrmont, NSW, 2000  Red Building, Benjamin Offices, Chan Street, Belconnen, ACT, 2617  Level 32, Melbourne Central Tower, 360 Elizabeth Street, Melbourne, VIC, 3000
Post:	PO Box Q500, Queen Victoria Building, NSW, 1230  PO Box 78, Belconnen, ACT, 2616  PO Box 13112 Law Courts, Melbourne, VIC, 8010
E-mail:	<a href="mailto:foi@acma.gov.au">foi@acma.gov.au</a>

An application hand delivered or posted to the ACMA should also be marked to the attention of the FOI Co-ordinator.

If, after this review, you remain dissatisfied you may ask the Information Commissioner to conduct a review (see the discussion below).

#### **1.2 Application for review by the Information Commissioner**

If you are dissatisfied by a decision made by an ACMA decision maker you may ask the Information Commissioner to conduct a review.

The request for review by the Information Commissioner must be made in writing and you should set out why you are dissatisfied with the decision. You must give details of how notices may be sent to you and include a copy of the relevant the decision.

#### **Time within which to seek review**

If it relates to an access refusal decision (which includes a decision under section 29 relating to the imposition of a charge or the amount of a charge) your request should generally be made within 60 days of receiving notice of the decision (see sections 53A and 54S of the FOI Act).

The application may be sent to the Office of the Australian Information Commissioner (the OAIC) in any of the following ways:

Hand delivery:	Level 3, 25 National Circuit, Forrester, ACT  Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney NSW
Post:	PO Box 2999, Canberra, ACT, 2601

PO Box 5218, Sydney, NSW, 2001

E-mail: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
On-line: [www.oaic.gov.au](http://www.oaic.gov.au)  
Facsimile: 02 92849666

**Australian  
Communications  
and Media Authority**  
[www.acma.gov.au](http://www.acma.gov.au)

## **2. Right to make a complaint**

If you have concerns about any action taken by the ACMA in the performance or exercise of its functions or powers under the FOI Act, you may make a complaint to the Information Commissioner.

You are encouraged by the OAIC to contact the ACMA directly to try to resolve any concerns of that kind before making a complaint to the Information Commissioner.

If you make a complaint, it must be in writing and identify the ACMA as the agency about which you wish to complain.

A complaint may be sent to the Information Commissioner by post, e-mail, online or facsimile (see the details set out above at 1.2).

