



I Whittaker

By email: foi+request-3638-df48df2b@righttoknow.org.au

Our reference: C17/1255

Dear I Whittaker,

Freedom of Information Request

I write in response to your email request dated 16 June 2017, seeking access to documents held by the Australian Public Service Commission (the Commission) under the *Freedom of Information Act 1982* (FOI Act).

You have requested access to the following:

- "1) access to any documents held by the APSC that expressly support the decision-maker's statement that the Government's Bargaining Policy for rank and file Commonwealth public sector staff is not intended to diminish the real wages and conditions of rank and file Commonwealth public servants.*
- 2) assuming the decision-maker's statement defending the Liberal National Government's policy (on the basis that that policy is not intended to diminish the real wages of rank and file Commonwealth public servants) is factually correct, I seek access to any documents held by the APSC that explain why the APSC's management bargaining team negotiated the current APSC agreement in full knowledge that the current APSC agreement runs contra to the claimed objective of the Government's Bargaining Policy for rank and file Commonwealth public sector staff (being that that policy is not intended to diminish the real wages of rank and file Commonwealth public servants)".*

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.

Following consultation and searches, I have identified **2** documents (totaling **57** pages) as falling within the scope of your request. Document 1 is the current policy bargaining policy, as published in 2015, titled *Workplace Bargaining Policy 2015*, and Document 2 is the previous bargaining policy as at 2014, titled *Australian Government Public Sector Workplace Bargaining Policy*.

I have decided to grant access in full to both Document 1 and 2. A copy of each document has been provided to you together with this correspondence.



Relevant material

In making my decision, took into account a number of factors, including:

- the terms of your request as submitted to the Commission;
- submissions and statements made by you in the making of your request;
- the content of the documents to which you sought access;
- the relevant provisions of the FOI Act; and
- guidelines published by the Office of the Australian Information Commissioner (OAIC) (the FOI Guidelines).

Background

I note that in making your request, you put forward a number of claims related to bargaining both within the Commission and, more generally, in reference to the current Bargaining Policy which the Commission administers across the Australian Public Service.

Following consultations with the relevant business areas, the Commission provides the following background to this decision.

Neither of the Government's two bargaining policies that have been in place since 2014 require a reduction in wages. They provide the employer guidance for agencies seeking to offer wage increases. The use of 'real wages' is not terminology used in either the Government's two bargaining policies or in the *Fair Work Act 2009*.

Bargaining requires a trade-off between the wages the employer is willing to pay versus the effort employees are willing to provide, with increased effort in exchange for higher wages providing productivity growth.

Cost of living indices have no basis in productivity and, while they may be of interest to employees and unions, are not a required consideration for employers in packaging their wages offer. Cost of living is not considered a relevant factor in enterprise bargaining under the objects of the *Fair Work Act 2009*, nor has it been a consideration under successive APS bargaining policies since devolution to agencies in the mid-1990s.

The Consumer Price Index and similar indices have some relevance to minimum wage adjustments, and is one of many factors that the Minimum Wage Panel of the Fair Work Commission takes into account in the Annual Wage Review, but those are the safety net minima above which bargained outcomes sit.

An assessment of the real wage impact of wage adjustments is influenced by the period chosen for the assessment. In choosing a medium term combined with early adoption of an enterprise agreement it is clear that real wages would have been increased or maintained.

The data to support this position is found in a range of Australian Bureau of Statistics publications recording price and earnings movement in the Australian economy.

Review rights

You are entitled to seek review of this decision. Your rights are set out at **Attachment A** to this letter.

Since my decision is to release all relevant documents to you in full, an application for review would be limited to a situation where you consider that I have not identified all documents in the Commission's possession that are relevant to your request.

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 Brazel
Authorised FOI decision maker
17 July 2017

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

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)