

TRIM Ref: D17/24535
MDBA Ref: FOI 76

17 July 2017

Name withheld

By Email: foi+request-3639-6af3c41e@righttoknow.org.au

Dear Sir/Madam,

Request for documents under the *Freedom of Information Act 1982 (Cth)*

1. I refer to your *Freedom of Information Act 1982 (Cth)* request of 16 June 2017 to the Murray–Darling Basin Authority (MDBA), which was received by MDBA on 16 June 2017 and in which you sought access to:

‘Documents which detail the precise monies paid to each of the Murray Darling Basin Authority’s (MDB’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 MDB 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.’

Authority

2. I am, pursuant to arrangements authorised by the Chief Executive of the Murray–Darling Basin Authority (MDBA) under section 23 of the FOI Act, authorised to make a decision in relation to this request on behalf of the MDBA.

Decision

3. In respect of the documents I have identified and located that are within the scope of your request, I have made a decision that I will refuse access to all documents in accordance with s 47F (Personal Privacy) of the FOI Act.
4. I also advise that I have decided to waive charges applicable to processing your request.

Statement of reasons

5. I am required under section 26 of the FOI Act to provide a statement of reasons for my decision.
6. My general comments and reasons for my decision in relation to the relevant exemptions that I have decided apply to the documents are set out below.

General comments

Material considered in making the decision

7. In making my decision in relation to each document I have considered:
 - a) the documents
 - b) the FOI Act
 - c) the Australian Information Commissioner's FOI Guidelines
 - d) legal advice.

I set out below my detailed reasons for my decision regarding your request.

Access to documents under the FOI Act

8. Under section 11A of the FOI Act, the MDBA must give the applicant access to the documents which are the subject of a FOI request except in the circumstances set out in the FOI Act under Division 2 of Part IV where a document is exempt, conditionally exempt, or both.

Reasons for my decision

9. In respect of the documents I have identified and located that are within the scope of your request, I have made a decision that I will refuse access to the documents in their entirety in accordance with the relevant exemptions under the FOI Act as outlined in the detailed reasons for my decision below.
10. In making my decision I have also considered whether it would be reasonably practicable to prepare an edited copy of the documents for release with relevant deletions as provided by the FOI Act. From your FOI request, I have understood that you are specifically seeking the remuneration information contained in the payment summaries in order to determine the rates of any salary increase for the MDBA's SES cohort.
11. In accordance with subsection 22(1)(d) of the FOI Act, it is apparent to me that you would decline access to an edited copy that does not contain the specific remuneration information that you are seeking.

Personal privacy (section 47F)

12. Section 47F(1) of the FOI Act provides that a document is a conditionally exempt document if its disclosure would involve the unreasonable disclosure of personal

information about any person.

13. In order to determine whether this exemption applies in relation to information in the documents, I must be satisfied that:
 - (a) the information is 'personal information' about an individual as defined in the FOI Act; and
 - (b) disclosure of the information would be unreasonable in the circumstances.
14. Personal information is defined in section 4(1) of the FOI Act as "information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion".
15. In determining whether the disclosure of the document would be unreasonable in the circumstances I note that I am also required, under sub-section 47F(2) of the FOI Act, to have regard to the following matters:
 - (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 MDBA considers relevant.
16. I have decided that the documents falling within the scope of your request contain personal information about persons other than yourself, namely remuneration information and employee numbers of specific Australian public servants.
17. The Guidelines relevantly provide at paragraph 6.153 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". However, the documents falling within the scope of your request are not documents about the relevant SES officer's performance of their usual duties or responsibilities. The payment summaries are documents that relate to the personal affairs of individuals. Accordingly, there is no presumption that they should be released merely because they relate to public servants.
18. I have further decided that the disclosure of this information would be unreasonable for the following reasons:
 - it relates to aspects of individuals' personal affairs;
 - the information in the payment summaries is private and not available from publicly accessible sources, other than the names of the SES employees which are publicly available;
 - the identities of the individuals concerned are readily apparent, and this is even more so the case given that the MDBA has a small SES cohort;
 - the information includes financial information specific to individuals;
 - the disclosure is likely to have an adverse effect on the relevant individuals; and
 - the relevant individuals have opposed the disclosure of the material.

19. On this basis, I have decided that this material is conditionally exempt under subsection 47F(1) of the FOI Act. My consideration of the public interest test in relation to the disclosure of this conditionally exempt material is set out below.

Public interest test

20. I have taken into account the factors in favour of access, including those section 11B(3) of the FOI Act, namely the extent to which disclosure would do any of the following:

- promote the objects of the FOI Act (including all the matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

21. I have not taken into account the following factors (see section 11B(4) of the FOI Act):

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the document could result in any person misinterpreting or misunderstanding the document
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the document could result in confusion or unnecessary debate.

22. In my view, I consider that disclosure would broadly promote the objects of the FOI Act by providing access to government held information. Disclosure may also promote oversight of public expenditure by revealing the amount spent on salaries for public servants. I recognise that this expenditure and the context of ongoing enterprise bargaining within the Australian Public Service are matters of some public importance and therefore, disclosure may inform any public debate on these matters.

23. I have also considered that the Chief Executive's remuneration is available on the Remuneration Tribunal's website. Information on how SES pay generally is decided is also available in the MDBA's Annual Report 2015-16 which is accessible on the MDBA's website. I note that there are also annual remuneration reports which are available on the Australian Public Service Commissioner's website. These reports specify a broad range of SES remuneration figures across the APS. I am therefore not satisfied that the information you have requested would serve the public interest any further than this publicly available information. Accordingly, I have afforded limited weight to these factors.

24. There are a number of factors indicating that access would be contrary to the public interest and I have weighed these against the above factors. In my view, disclosure could reasonably be expected to:

- reveal sensitive personal information which is not publicly accessible;

- prejudice individuals' right to privacy and confidentiality;
- cause stress on individuals whose personal information has been requested; and
- adversely affect the interests of individuals.

25. I have decided that, in this instance, the factors against disclosure outweigh the factors in favour of disclosure. I am satisfied that the information in these documents is conditionally exempt under subsection s 47F(1) of the FOI Act, and that on balance, it would be contrary to the public interest to release this information.

26. I have therefore made a decision to exempt all documents in their entirety in accordance with section 47F of the FOI Act.

Review Rights

27. Under the FOI Act there are two ways to seek a review of my decision:

- an internal review that is conducted by the MDBA, or
- a review by the Australian Information Commissioner.

28. I have **enclosed** FOI Fact Sheet 12 *Freedom of Information – Your review rights* published by the Office of the Australian Information Commissioner and which provides further information on your review rights. I note that the option to seek an internal review does not prevent you from seeking a review by the Information Commissioner at a later stage as the Information Commissioner can also review an internal review decision. No fees apply for either of these review requests.

Internal review

29. If you wish to seek an internal review, you must apply to the MDBA within 30 days of being notified of this decision. An application for internal review of my decision must be made in writing. No particular form is required but it is helpful if you set out the grounds on which you consider that the decision should be reviewed. Your application for an internal review should be sent to the FOI Officer and can be lodged in one of the following ways:

Post: Murray-Darling Basin Authority, GPO Box 1801, Canberra ACT 2601

Fax: (02) 6248 8053

Email: foi@mdba.gov.au

Review by the Australian Information Commissioner

30. If you wish to seek a review of my decision by the Information Commissioner, you must apply within 60 days of being notified of this decision.

31. Your application must be in writing, must provide details on how to contact you and should include a copy of this decision letter. You should also set out why you are objecting to the decision. Your application can be lodged with the Information Commissioner in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Fax: (02) 9284 9666
Email: enquiries@oaic.gov.au

Administrative Appeals Tribunal (AAT)

32. If you disagree with the Information Commissioner's decision you may apply to the AAT for a review of that decision. This application must be made within 28 days of the date on which you received the Information Commissioner's decision. Fees apply. Contact details for the AAT are:

Post: Refer to the AAT website for your nearest city's postal address.
Phone: Refer to the AAT website for your nearest city's postal address.
Online: www.aat.gov.au

Complaints

33. If you have any concerns about how the MDBA handled your request, you can make a complaint to the Information Commissioner (contact details above). The Information Commissioner is of the view that it is usually better for you to complain to the MDBA first, so as to give us the opportunity to resolve concerns and provide an appropriate remedy. It may also be possible to make a complaint to the Commonwealth Ombudsman. The Commonwealth Ombudsman must consult with the Information Commissioner before deciding to investigate a complaint that is or could be dealt with more appropriately or effectively by the Commissioner. No fees apply. Contact details for the Commonwealth Ombudsman are:

Post: GPO Box 442, Canberra ACT 2601
Phone: 1300 362 072
Online: www.ombudsman.gov.au

Yours sincerely


Annette Blyton
Authorised Officer