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FOI Ref: 201617/65

Email: foi+request-3640-a9f245a9@righttoknow.org.au

Dear Applicant

RE: YOUR FREEDOM OF INFORMATION REQUEST

I refer to your email of 16 June 2017 (Attachment A) in which you sought access to the following information under the *Freedom of Information Act 1982* (FOI Act):

- *'documents which detail the precise monies paid to each of the Australian Bureau of Statistics' (ABS) 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 ABS 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 your request.'*

Response to Your Request

The ABS has conducted an exhaustive search for documents relating to your request. I am now able to notify you that 129 documents exist pertaining to your request. I have decided to refuse you access to all 129 documents. I have provided a Schedule of documents relevant to your FOI request at Attachment B.

I would also like to note the following information is freely available online:

The ABS Organisational Chart:

- <http://abs.gov.au/websitedbs/d3310114.nsf/home/ABS+Organisation+Chart!OpenDocument>

Chapter 6 – *Management of Human Resources* of the ABS Annual Report contains the SES salary ranges. Links to the financial years listed in your request are as follows:

- 2013/14: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1001.02013-14?OpenDocument>
- 2014/15: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1001.02014-15?OpenDocument>
- 2015/16: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/1001.0>

Decision and Reasons for Decision

I am an authorised decision maker under section 23 of the FOI Act. I have taken the following into account in making my decision:

- your email of 16 June 2017;
- the relevant provisions of the FOI Act, specifically sections 47E and 47F;
- the content of the documents that fall in scope of your request;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; and
- the views of the document authors and the relevant facts considered.

Section 47E – certain operations of the Agency

I have decided that all 129 documents contain information which is conditionally exempt under section 47E of the FOI Act. 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 operations of the agency, specifically the management of personnel. As the terms and conditions of SES employment are negotiated on an individual level, the disclosure of remuneration information could reasonably be expected to disadvantage the ABS' ability to conduct this bargaining in a fair and mutually beneficial way.

Disclosure would undermine the ABS's position and fundamentally affect its ability to negotiate the remuneration of SES employees in the future. On this basis I am satisfied that disclosure of these documents would have a substantial adverse effect on the management of personnel by the ABS.

Section 47F – personal privacy

I have decided that all 129 documents contain information which is conditionally exempt under section 47F of the FOI Act. Section 47F provides that a document is conditionally exempt from disclosure if disclosure would involve the unreasonable disclosure of personal information about a person. This exemption is designed to prevent the unreasonable invasion of parties privacy with the test for 'unreasonableness' balancing the public interest in disclosure of information held by government and the private interest of the individuals.

In determining whether the disclosure would involve an unreasonable disclosure of personal information I have considered the following matters set out in section 47F(2):

- the extent to which the information is well-known;
- 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;
- the availability of the information from publicly accessible sources; and
- any other information that the agency considers is relevant.

You have requested documents containing the personal information of individual SES employees, specifically their name and payment summaries which detail individual remuneration. As the names of SES employees are listed on the ABS Organisational Chart which is published on the agency website, I consider this information to be well-known, and publicly available, however the payment summaries themselves which this information is contained on are not.

With respect to the remuneration details, whilst the SES salary scales are published in the ABS Annual Report, the figures of individuals are not. With regards to the matters set out in section 47F(2) I am satisfied the specific remuneration details in the payment summaries are not well-known and are not publicly available. Further, disclosure of the documents would breach the privacy of the individuals whose personal information was requested and cause them stress. On this basis I am satisfied that disclosure of these documents would involve the unreasonable disclosure of personal information about a person.

Public Interest Factors

Section 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access would, on balance be contrary to the public interest. As sections 47E and 47F are conditional exemptions I have considered the following public interest factors in making my decision.

Factors in favour of disclosure

- disclosure would promote the objectives of the FOI Act;
- disclosure would inform public debate on matters such as increases in SES remuneration and whether these are consistent with APS remuneration increases; and
- disclosure would promote effective oversight of public expenditure relating to SES remuneration in the ABS.

Factors against disclosure

- disclosure of these documents would have a substantial adverse effect on the management of personnel by the ABS as set out in my consideration of section 47E;
- disclosure of these documents would involve the unreasonable disclosure of personal information about a person as set out in my consideration of section 47F; and
- information pertaining to SES salary scales and the names of SES employees of the ABS are already publicly available.

In consideration of these issues I am satisfied that the public interest factors against disclosure outweigh the factors in favour. On this basis I have decided that it would, on balance, be contrary to the public interest to disclose the documents requested.

Charges

There is no charge for this request.

Internal Review of the Decision

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision by the ABS. Additionally you may request a review of this decision by the Information Commissioner. Details of both procedures involved in an application to review a decision are set out at Attachment C.

If you have any queries on this matter please contact the ABS FOI Contact Officer at freedomofinformation@abs.gov.au or on (02) 6252 7203.

Yours sincerely



Samantha Palmer

General Manager

People, Culture and Communication Division

Australian Bureau of Statistics

15 August 2017

Name withheld
 <foi+request-3640-a9f245a9@rightt
 oknow.org.au>

16/06/2017 08:07 AM

Send	To FOI requests at ABS <freedomofinformation@abs.gov.au>, cc bcc
Subject	Freedom of Information request - Group Certificates/PAYG payment summaries of the ABS' SES staff - FY2013/14, FY2014/15 and FY2015/16 📎
Protective Mark	DOCUMENT NOT YET CLASSIFIED
Categories	Freedom of Information\Requests

Dear Australian Bureau of Statistics,

The following is an application for the purposes of the FOI Act.

I am conducting research, across a range of Government agencies, into the Government's enterprise bargaining framework for the Commonwealth Public Service. Specifically, in the interests of equity and transparency, whether the Government's policy to reduce the living standards of rank and file public servants (that is, public servants who are not considered senior executive service staff ('SES')) also extends to SES public servants.

Accordingly, I request documents which detail the precise monies paid to each of the Australian Bureau of Statistics' (ABS') 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 ABS 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 ABS who, at the time of my application, were categorised as SES officers, meaning that:

- ABS staff who were once SES officers at the ABS, 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 ABS;

are discounted from the scope of my application.

I make the following submissions in support of my application.

The precise remuneration paid to public servants for performing public duties is a matter of wide and countervailing public interest. That is established by authority including that set out in *Re Ricketson and Royal Women's Hospital* (1989) 4 VAR 10; *Re Forbes and Department of Premier & Cabinet* (1993) 6 VAR 53; *Re Stewart and Department of Transport* (1993) 1 QAR 227; *Re Thwaites and Metropolitan Ambulance Service* (unreported, 13 June 1997); *Re Milthorpe and Mt. Alexander Shire Council* (1997) 12 VAR 105; *Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University*; *Ors* [2001] WAICmr 1 and *Asher and Department of State and Regional Development* [2002] VCAT 609.

In *Re Forbes*, Deputy President Ball said (at page 60):

"Mr Baxter is a senior public servant performing very significant public functions and being paid wholly from money provided by the public. The public is entitled to know precisely how much of its money is received in salary and entitlements by senior public servants for performing functions on behalf of the public."

In *Re Stewart*, at pp.257-258, the Information Commissioner observed:

"It has been held [...] that there is a general public interest in seeing how the taxpayers' money is spent which is sufficient to justify the disclosure of the gross income payable from the public purse to the holder of a public office. [...] see [*Re Ricketson and Royal Women's Hospital* (1989) 4 VAR 10, and *Re Forbes and Department of the Premier and Cabinet* (1993) 6 VAR 53]."

In *Re National Tertiary Education Industry Union*, the Commissioner observed (at [68]):

"I recognise that there is a public interest in the public receiving value for its money spent on public education, especially in the present climate of financial restrictions. I agree with the Tribunal in *Re Ricketson* and *Re Forbes* that the public is entitled to know how much of its money is received in salary and entitlements by senior public officers for performing functions on behalf of the public and that such information is the subject of legitimate public interest and discussion."

In *Asher*, Deputy President McNamara stated:

"The total remuneration paid to senior public officers has been, and continues to be, a matter of public concern and public debate. The authorities referred to above indicate the fact that the taxpayers ultimately meet the remuneration gives them a legitimate interest in this matter, even although it is one that it is clearly a matter relative to the personal affairs to the officers themselves. As Mr Edwards notes, his actions as Secretary must ultimately be regulated by the law which must take precedence over any government policy, or one might say any private assurance that he might give to a particular officer. The existence of authorities such as *Forbes* and *Milthorpe* indicates that conformably with the Freedom of Information Act no officer, certainly no senior officer, could legally obtain an absolute guarantee of confidentiality of his or her total remuneration package figure without some special enabling legislation."

An additional wide public interest aspect that relates to my application is that employment relations (including the regulation of pay and conditions) in the public sector are widely considered to serve as a role model for industrial relations in the private sector (see, for example, Creighton B and Forsyth R [Eds.] *Rediscovering Collective Bargaining*, 2012 at pp.184-185). That is, the way in which a government treats its staff (public servants) can be considered emblematic of the way in which a government considers employees across the broader workforce should be treated by their employers. The current Commonwealth Government has an employment relations policy in place (known as the 'Australian Public Service Bargaining Framework') which necessarily involves reducing the living standards of rank and file (non-SES) public servants. Senior management at the ABS has decided, at its discretion, to adopt and enforce,

against its rank and file staff, the Government's employment relations policy. Part of the purpose of my application is to determine whether the Government's policy to reduce the living standards of rank and file public servants also extends to SES public servants. The documents the subject of my request will shed some light on that issue. It is immutably in the public interest of APS rank and file employees and their families, but also Australian taxpayers and working Australians more generally, to know whether it is the current Government's view that rank and file employees who are not categorised as senior executives (or equivalent) are generally overpaid, and should therefore have their living standards reduced by their employers, while senior executives (or their equivalents) are generally underpaid and should have their living standards increased. Such an insight will augment the public's knowledge of the Government's existing policies concerning the distribution of wealth among Australian society including the Government's policy to reduce the level of penalty rates paid to some of the lowest paid members of the Australian workforce while simultaneously reducing company taxation rates.

Thank you.

[name not required to be provided under the FOI Act]

Please use this email address for all replies to this request:
foi+request-3640-a9f245a9@righttoknow.org.au

Is freedomofinformation@abs.gov.au the wrong address for Freedom of Information requests to Australian Bureau of Statistics? If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=abs

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

Schedule of Documents

Full Name	Grade	2015/2016 PAYG Payment Summary	2014/2015 PAYG Payment Summary	2013/2014 PAYG Payment Summary	Total PAYG Payment Summary Count	FOI Decision
Allen, Bill	SESB1	1	1	1	3	47E, 47F
Beahan, Michael	SESB1	1	1	1	3	47E, 47F
Boland, Justine	SESB1	1	0	0	1	47E, 47F
Bowley, Dean	SESB1	1	1	1	3	47E, 47F
Braskic, Diana	SESB1	1	1	0	2	47E, 47F
Carlton, Denise	SESB1	1	1	1	3	47E, 47F
Clark, Amanda	SESB1	1	0	0	1	47E, 47F
Collett, Stephen	SESB1	1	0	1	2	47E, 47F
Ewing, Ian	SESB1	1	1	1	3	47E, 47F
Fardell, Linda	SESB1	1	1	1	3	47E, 47F
Girvan, Stuart	SESB1	1	1	1	3	47E, 47F
Gould, Phillip	SESB1	1	1	0	2	47E, 47F
Henderson, Andrew	SESB1	1	1	1	3	47E, 47F
Hockman, Bruce	SESB2	1	1	1	3	47E, 47F
Hodges, Jacky	SESB2	1	1	1	3	47E, 47F
Jarvis, Bjorn	SESB1	1	0	0	1	47E, 47F
Jelfs, Paul	SESB2	1	1	1	3	47E, 47F
Jones, Jacqui	SESB2	1	0	0	1	47E, 47F
Joseph, Tom	SESB2	1	1	1	3	47E, 47F
Kalisch, David	Australian Statistician	1	1	0	2	47E, 47F
Kindermann, Bindi	SESB1	1	1	1	3	47E, 47F
Lanyon, Aj	SESB1	1	1	1	3	47E, 47F
Libreri, Chris	SESB2	1	1	1	3	47E, 47F
Mahoney, Paul	SESB1	1	1	1	3	47E, 47F
Marquardt, Michelle	SESB1	1	1	1	3	47E, 47F
Masterton, Lane	SESB1	1	1	1	3	47E, 47F
McCulloch, Luise	SESB3	1	0	0	1	47E, 47F
McKeown, Sybille	SESB1	1	1	1	3	47E, 47F
Meagher, Michael	SESB2	1	1	1	3	47E, 47F
Montgomery, Tim	SESB1	1	1	1	3	47E, 47F
Moss, Celia	SESB2	1	1	1	3	47E, 47F
Nankervis, Julie	SESB1	1	1	1	3	47E, 47F
Nicoll, Gillian	SESB3	1	1	1	3	47E, 47F
Palmer, Jonathan	SESB3	1	1	1	3	47E, 47F
Palmer, Samantha	SESB2	1	0	0	1	47E, 47F
Roberts, Paul	SESB1	1	1	1	3	47E, 47F
Robson, Helen	SESB1	1	1	0	2	47E, 47F
Schubert, Paul	SESB1	1	1	1	3	47E, 47F
Smedes, Michael	SESB1	1	1	1	3	47E, 47F
Stone, Kristen	SESB1	1	0	0	1	47E, 47F
Tam, Siu Ming	SESB2	1	1	1	3	47E, 47F
Telford, Jenny	SESB1	1	1	1	3	47E, 47F
Van Halderen, Gemma	SESB2	1	1	1	3	47E, 47F
Van Kints, Marcel	SESB1	1	1	1	3	47E, 47F
Viertmann, Lily	SESB2	1	0	0	1	47E, 47F
Vitas, Branko	SESB1	1	1	1	3	47E, 47F
Wardlaw-Kelly, Lisa	SESB1	1	1	1	3	47E, 47F
Williams, Christine	SESB1	1	1	1	3	47E, 47F
Young, Duncan	SESB2	1	1	1	3	47E, 47F
Zago, David	SESB1	1	1	1	3	47E, 47F

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

If you disagree with our decision you have the right to apply for an internal review under section 54 of the FOI Act.

Application for a review of the decision must be made within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker were you to set out in the application the grounds on which you consider that the decision should be reviewed.

Application for a review of the decision should be addressed to:

ABS FOI Contact Officer
Policy and Legislation Section
Australian Bureau of Statistics
Locked Bag 10
BELCONNEN ACT 2617

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

Applications for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
Office of the Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
Office of the Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.