

21 August 2017

By email: foi+request-3667-684fe0f9@righttoknow.org.au

ACMA file reference: ACMA2017/616

Dear Sir/Madam

Request for access to documents under the Freedom of Information Act 1982

I refer to your request made under the *Freedom of Information Act 1982* (the **FOI Act**) on 24 June 2017 for:

[...] documents which detail the precise monies paid to each of ACMA'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 ACMA 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.

On 21 July 2017, I wrote to you to confirm that, because the documents the subject of your request contain personal information, third party consultation would be undertaken pursuant to section 27A of the FOI Act.

I am authorised to make decisions under the FOI Act and my decision regarding your request, as well as the reasons for my decision, are set out below.

Material taken into account

In making my decision on access, I have taken the following material into account:

- the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**); and
- the views of third parties consulted under section 27A of the FOI Act.

Decision on access to documents

I have found that the documents held by the Australian Communications and Media Authority (the **ACMA**) that fall within the terms of your request are exempt from disclosure under the FOI Act. The reasons for my decision are as follows.

Reasons for decision

Paragraph 47E(c) of the FOI Act

Section 47E of the FOI Act relevantly states:

A document is conditionally exempt if its disclosure under this Act would, or could be expected to [...]:

[...]

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency [...]

The documents falling within the terms of your request contain information relating to the management of ACMA personnel.

The terms and conditions of employment of the ACMA's SES officers are a matter of individual negotiation between the ACMA's Chief Executive Officer and each SES officer. In the context of confidential negotiations on such matters, public revelation of the precise remuneration paid to each of the ACMA's SES officers would have a substantial adverse effect on the ACMA's capacity to manage its personnel, by seriously undermining the ACMA's bargaining position in respect of its SES officers. Accordingly, I find that the requested documents are conditionally exempt from disclosure under section 47E of the FOI Act.

Under the FOI Act, access to a document covered by a conditional exemption must generally be given unless doing so would be contrary to the public interest. My consideration of the public interest test in relation to the disclosure of the conditionally exempt (under section 47E of the FOI Act) documents the subject of your request is set out below.

Subsection 47F(1) of the FOI Act

Subsection 47F(1) of the FOI Act states:

A document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person [...].

The documents that fall within the terms of your request contain personal information about the ACMA's SES officers.

The Guidelines relevantly state, at paragraph 6.153:

Where 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 terms of your request are not documents about relevant SES officers' performance of their usual duties and responsibilities. The payment summary documents the subject of your request have been produced because of a legal requirement to do so (see s.16-C of the *A New Tax System (Pay As You Go) Act 1999*). Accordingly, there is no presumption that it would be reasonable to release the documents merely because they relate to public servants.

Subsection 47F(2) of the FOI Act relevantly states:

In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must 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;*
- (d) any other matters that the agency or Minister considers relevant.*

The personal information contained within the documents the subject of your request is not publicly available. While the ACMA does publish information about the remuneration ranges of its SES officers and other higher paid staff (see:

<http://www.acma.gov.au/theACMA/About/Corporate/Accountability/executive-remuneration-reporting-2016-17>), that information is not detailed on an individual basis. I consider that the personal information contained within the documents the subject of your request is not well known or publicly available, and I am satisfied that the release of those documents would constitute an unreasonable disclosure of personal information of the affected SES officers.

My consideration of the public interest test in relation to the disclosure of the conditionally exempt (under section 47F of the FOI Act) documents the subject of your request is set out below.

Public interest test

As explained above, I have determined that the documents the subject of your request are conditionally exempt pursuant to paragraph 47E(c) and subsection 47F(1) of the FOI Act.

Under subsection 11A(5) of the FOI Act, the ACMA must give you access to a conditionally exempt document unless (in the circumstances) access to that document would, on balance, be contrary to the public interest.

In making my decision, I have taken into account public interest factors which favour providing access to the conditionally exempt documents the subject of your request. Specifically, whether providing access to those documents would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

I am of the view that disclosure of the relevant documents would broadly promote the objects of the FOI Act by providing access to information held by the Government and by increasing the scrutiny of public expenditure. I also recognise that public expenditure in the context of ongoing enterprise bargaining across the Australian Public Service is a matter of some public importance and that disclosure of documents about remuneration SES at the ACMA's requested may inform public debate on that matter, to a limited degree.

However, there is already a range of publicly available material in relation to SES remuneration (both within the ACMA and across the Australian Public Service), including information contained in the ACMA's annual reports (available here: <http://www.acma.gov.au/theACMA/annual-report>), on the ACMA's website (<http://www.acma.gov.au/theACMA/About/Corporate/Accountability/executive-remuneration-reporting-2016-17>) and as set out in the Australian Public Service Commission's Remuneration Reports (available here: <http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys>). In light of that information already being in the public domain, I am of the view that providing access to the documents the subject of your request would not make a significant contribution to public discussion of the issues mentioned above. On that basis, I consider that the public interest factors favouring disclosure should be afforded only limited weight, when compared to the factors against disclosure discussed below.

I have also considered factors indicating that access would be contrary to the public interest and weighed these against the above-mentioned factors, including to the extent to which disclosure could reasonably be expected to:

- reveal sensitive personal information which is not publicly available;

- would prejudice affected individuals' rights to privacy;
- adversely affect the interests of affected individuals; and
- have a substantial adverse effect on the ACMA's management of its personnel including by adversely affecting the ACMA's ability to negotiate the remuneration of its SES officers.

Having regard to the relevant factors mentioned above (and not having taken into account any of the irrelevant factors listed in subsection 11B(4) of the FOI Act), I have decided that the factors against disclosure outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release the documents the subject of your request.

Your rights of review

Please find enclosed the ACMA's information sheet titled *Freedom of Information Act 1982 – Rights of Review of Applicants*.

Yours sincerely



Shirley Hedditch

Authorised decision maker pursuant to section 23(1) of the FOI Act

INFORMATION SHEET

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:	foi@acma.gov.au

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, 175 Pitt Street, Sydney, NSW
Post:	PO Box 5218, Sydney, NSW, 2001
Email:	enquiries@oaic.gov.au

On-line: www.oaic.gov.au

Facsimile: 02 9284 9666

Australian
Communications
and Media Authority

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, email, online or facsimile (see the details set out above at 1.2).

