



Australian Government
Australian Public Service Commission

Name Withheld

By email: foi+request-4172-b3c42854@righttoknow.org.au

Our reference: C17/2064

Dear Applicant,

Freedom of Information Request - Determination of the Charge

1. On 28 November 2017 you wrote to the Australian Public Service Commission (the **Commission**), pursuant to section 29(1)(f)(ii) of the *Freedom of Information Act 1982* (Cth) (the **FOI Act**), to contend a preliminary charges assessment sent to you on 15 November 2017.
2. This correspondence sets out my determination about the applicable charges in your matter and to offer you access to documents via administrative release.

Background

3. I refer to your email correspondence dated 30 October 2017 received by the Commission, requesting access under the FOI Act to the following documents:

I refer the APSC to my FOI request made of the Office of the Australian Information Commissioner here (the 'OAIC request'):

https://www.righttoknow.org.au/request/precise_salaries_paid_to_the_oaic

By this application I make the same request of the APSC albeit such that every reference to 'OAIC' in the OAIC request should be read as a reference to the 'APSC' for the purposes of this request. I rely on all my submissions contained in the OAIC request, in support of this request made of the APSC under s.15 of the FOI Act.

4. You reference a further related FOI request made by you to the Office of the Australian Information Commissioner (**OAIC**), dated 2 August 2017. Relevant extracts from the OAIC FOI request are also transcribed below.

I request documents which detail the precise salary paid to each of the Office of the Australian Information Commissioner's (OAIC's) SES officers in the following financial years - FY2014/15, FY 2015/16 and FY2016/17. That information might be included in the group certificates/end-of-year PAYG payments summaries issued by the OAIC to its SES officers, or common law contracts relating to the employment of the relevant SES officers or, any relevant determinations made under subsection 24(1) or 24(3) of the Public Service Act 1999 in respect of those relevant SES officers or, perhaps a document prepared pursuant to s.17 of the FOI Act.

Such documents 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 all information contained in any relevant document with the exception of the following:

- information that discloses the relevant SES officer's name;*
- information that discloses that officers precise salary for the relevant financial year; and*
- information that identifies what the document is (eg. a group certificate/payment summary, an employment contract or a s.23(1) Determination) and the period that it covers.*

I am willing to further narrow the scope of my request by limiting it to officers employed by the OAIC who, at the time of my application, were categorised as SES officers, meaning that:

- OAIC staff who were once SES officers at the OAIC, 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 OAIC;*
- are discounted from the scope of my application.*

(your FOI request)

5. On 15 November 2017, the Commission sent you correspondence detailing its preliminary assessment of an applicable charge of \$235.00. I note that the preliminary assessment was calculated in line with Schedule 1 of the *Freedom of Information (Charges) Regulations 1982* (the **FOI Regulations**); accordingly, as provided under the FOI Act, the first 5 hours of decision-making time were calculated at a nil charge.

Alternative administrative release

6. In your submissions you note that on 20 February 2017 the Commission released an FOI decision on a substantially related request, providing redacted copies of the relevant payment summaries.
7. I have determined that the *administrative release* of particular documents may satisfy your request. This administrative release would include the following:
 - a. payment summaries considered and released under your previous FOI request;
 - b. a link to data published on the Commission's website regarding SES remuneration for the 2016/17 financial year.
8. Release of these documents to you under administrative access arrangements would be in satisfaction of your FOI request; accordingly we would ask that you withdraw your present FOI request.
9. Please contact the Commission by reply email within 30 days of receiving this notice to advise whether an administrative release of these documents would satisfy your FOI request.

Charges Determination

10. I am an officer authorised under s23(1) of the FOI Act to make decisions in relation to FOI requests.

11. On 28 November 2017 you wrote to the Commission contending that under section 29(1)(f) of the FOI Act that the preliminary charge assessment in respect of your FOI request should be reduced, or not imposed: in short, you said that the preliminary charge has been wrongly assessed.
12. You made a number of submissions in support of your contention. I confirm that I have considered all comments and references you have supplied. Paragraph 4.70 of the FOI Guidelines states that where the applicant contends that a charge has been wrongly assessed, the central issue to be considered is whether relevant provisions of the FOI Act and Charges Regulations have been correctly understood and applied.
13. Section 29(4) of the FOI Act provides that, where an applicant has notified an agency that the applicant contends that the charge should be reduced or not imposed, the agency may decide that the charge is to be reduced or not to be imposed.
14. The FOI Act does not limit the matters that the agency may take into account in determining whether or not to reduce or not to impose the charge; it does however specify that consideration must be given to whether the payment of the charge, or part of it, would cause financial hardship to the applicant, and also to whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public. I will address these considerations below.

Financial Hardship

15. Consideration of whether payment of a charge would cause financial hardship means more than an applicant having to meet a charge from their own resources. Consideration is given to the applicant's financial circumstances and the amount of the estimated charge.
16. You did not provide submissions regarding any hardship that may be incurred by payment of the charge, nor have you elected to provide evidence of any financial hardship in support of a reduction to, or waiver of the charge. Accordingly, I am satisfied that the payment of the charge would not cause you financial hardship.

Public Interest

17. Section 29(5)(b) of the FOI Act requires consideration of whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public. This is different test to the public interest test considered in relation to conditionally exempt documents under the FOI Act.
18. Where an applicant seeks to rely on this consideration for reduction or waiver of the charge, paragraph 4.81 of the FOI Guidelines notes that the 'general public interest' or the 'substantial section of the public' should be identified with specificity. You did not provide submissions regarding the public interest.
19. Consideration of a waiver or reduction of the charge will not be satisfied by a general contention that release of a document to an individual with a special interest in it will be in the public interest, nor by a contention that transparency in itself is in the public interest.
20. Assessment of what the public interest is in this context requires consideration of both the content of the documents requested and the context in which the public release would occur. In

determining the public interest in reducing or waiving the charge, I have given consideration to the publicly available published material provided in annual reporting and in other forms on the Commission's website.

21. I have determined that release of the requested documents would not advance public debate or discussion in light of the material and reporting presently available in the public domain
22. I have determined that release of the document would not provide a notable benefit to the general public interest or a substantial section of the public; accordingly I have decided not to reduce (or not impose) the estimated charge on public interest grounds.
23. I refer to your related previous FOI request of 22 December 2016, and to the Commission's decision released to you on 20 February 2017. I agree with the decision-maker's view in the 20 February 2017 decision that a number of accountability measures exist in relation to expenditure including, but not limited to, existing policy, Agency Head accountability, budget processes run by the Department of Financial and annual reports issued by each Commonwealth entity. The 20 February 2017 decision referred to Rule 27 of the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*.
24. I note that Rule 27 requires reporting in respect of senior executive remuneration, but does not require each individual's specific data to be reported. Accordingly, I have found that the release of the documents is unlikely to advance public debate and reduction or waiver of the assessed charge is not in the public interest.

Your submissions

25. In making your submissions, you contended that the charge has been wrongly assessed and consequently should be reduced or not imposed.
26. I note your submissions regarding and extracts provided from the recent IC decision, '*MZ*' and *Department of Communications and the Arts (Freedom of Information) [2017] AICmr 109*.
27. I disagree with your assertion that the time and corresponding charge in respect of the Commission processing your FOI request should reflect only a portion of that considered by the Information Commissioner in the above decision.
28. In determining the preliminary charge I have consulted with the relevant line area; and determined the likely amount of time it will take to:
 - a. undergo third party consultations;
 - b. draft the decision;
 - c. have the decision settled.
29. I further note that your present FOI request differs to that made to the Department of Communications and the Arts.

Further considerations

30. As previously noted, the FOI Act does not limit the considerations of an agency, and an agency is entitled to consider matters that weigh against those relied upon by the applicant.

31. You have requested access to documents that are not ordinarily accessible outside of the confidential employment relationship that exists between each SES employee and the Commission. I consider that obtaining and considering such documents would temporarily require the diversion of resources within the Commission from ordinary, statutory functions and other operations.
32. I have also taken into consideration the cost to the Commission in processing your FOI request, noting that the processing charges do not compensate the actual costs associated with the processing of your request: the true processing time for your request is larger than the total considered for the purposes of determining the preliminary assessment of charges.

Charges determination

33. In your FOI request of 30 October 2017, you advised that you are agreeable to receiving information sought by release of any of a number of suggested documents, including by way of a written document produced in accordance with section 17 of the FOI Act.
34. As noted in the preliminary assessment of the charge, regulation 8 of the FOI Regulations provides that if access to a document to which the FOI request relates may be provided in any of two or more forms, the amount of the charge shall be no greater than the applicant would have been liable to pay in response of the request and the provision of access to the document if access had been given in some other form.
35. The preliminary assessment notice considered the availability of, and sensitivities relevant to the alternative forms, namely provision of payment summaries of current SES employees for the financial years 2014/15, 2015/16 and 2016/17, or contracts or relevant determinations under section 24 of the *Public Service Act 1999* (Cth) of current SES employees for the same period. The preliminary assessment notice determined that additional charges would likely apply if access was considered in such forms, noting the requirement to draft a statement of reasons where (any) redactions would be applied, having regard to any considered exemptions and the relevant public interest factors.
36. I confirm that the preliminary assessment of the charge is for the creation of a document pursuant to section 17 of the FOI Act, which would set out, in a form similar to what is publicly available through the Commission's website; namely, the salary details of relevant SES employees in banded, de-identified form. I have also considered the response that would most appropriately meet the objects of the FOI Act.
37. I have independently considered the calculation of the preliminary charges assessment, and I am satisfied that the estimated charge is valid, based on discussions with the relevant line area and my own knowledge of the time required to undertake third party consultations, and to draft and settle a decision. Please note that in the event the work undertaken to respond to your request takes less time than originally estimated, an appropriate reduction or refund will be assigned to your matter.

Your action is required

38. Please notify the Commission in writing within 30 days of receiving this notice if you would like the Commission to continue processing your request.

39. Please indicate whether you:
- a. Intend to pursue administrative access to the documents;
 - b. Agree to pay the affirmed charge;
 - c. Wish to seek review of the charge determination; or
 - d. Withdraw the request.

Further information on each of these options is set out below.

40. If, within 30 days of receiving this notice you do not provide a written response in accordance with one of the options listed above, your request will be taken to have been withdrawn.

Option A – Administrative access

41. Please contact the Commission by reply email within 30 days of receiving this notice, indicating your agreement to administrative access release of the publicly available documents. If you accept this option, you will need to withdraw your request.

Option B - Pay the charge

42. As the preliminary assessment of the charge exceeds \$25.00, you are required to pay a deposit of \$58.75 (being 25% of the preliminary charge) within 30 days of receiving this notice. You may elect to pay the charge in full if preferred.
43. The amount due should be paid by cheque or money order made out to the Collector of Public Monies. Please quote the reference number FOI C17/2064 with your payment. Details for alternative payment methods are available on request.
44. Should you elect to pay the charge please email FOI@apsc.gov.au once you have posted your cheque or money order to advise us of your payment. You will be notified of the final determination of applicable charges on release of the Commission's decision in this matter.

Option C - seek review of the charge

45. If you disagree with my decision to impose a charge, you may seek review in the following ways:
- a. You can ask for an internal review of the decision; or
 - b. You can seek external review of the decision by the Australian Information Commissioner.
46. If you wish to seek internal review of this decision, section 54 of the FOI Act gives you a right to apply. You must apply in writing within 30 days of you receiving this notice. Applications for internal review can be lodged by email to FOI@apsc.gov.au, or by post to the FOI Coordinator at the Australian Public Service GPO Box 3176 Canberra ACT 2601.
47. If you choose to seek internal review, you will subsequently have a right to apply to the Australian Information Commissioner for review of the internal review decision if desired.
48. If you wish to seek external review, section 54L of the FOI Act confers a right to apply directly to the Australian Information Commissioner. You must apply for such a review in writing within 60 days of receiving this notice. Applications can be made to enquiries@oaic.gov.au. Further information about the Australian Information Commissioner at www.oaic.gov.au.

Option D - withdraw your request

49. If you wish to withdraw your request you may do so in writing.

Time limits for processing your request

50. Section 31 of the FOI Act provides that, where a notice is sent to an applicant regarding the payment of a charge in respect of a request, the time limit for processing the request is suspended from the date the notice is received until either:

- a) the day following payment of the charge (in full or the required deposit); or
- b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

Contacts

51. 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. Please note that this mailbox will be unattended in the period 23 December 2017 to 1 January 2018 inclusive.

Yours sincerely

A handwritten signature in black ink, appearing to be a stylized 'A' or similar character.

Authorised FOI decision maker
22 December 2017