



Australian Government
**Australian Building and
Construction Commission**

21 December 2017

FOI Applicant

By email: foi+request-4179-458c23ff@righttoknow.org.au

Dear FOI Applicant

Freedom of Information Request – Decision

Your FOI request

By email dated 28 October 2017 you wrote to the Australian Building and Construction Commission (**ABCC**) and sought access to documents under the *Freedom of Information Act 1982* (**FOI Act**). Your request was for documents which detail the precise salary paid to each of the ABCC's SES officers in the following financial years - FY2014/15, FY 2015/16 and FY2016/17 (**FOI request**).

We note that you made a similar request to the Office of the Australian Information Commissioner (**OAIC FOI request**). As outlined in your email dated 28 October 2017, your FOI request was the same as the OAIC FOI request, except that every reference to the 'OAIC' in the OAIC FOI request should be read as a reference to the 'ABCC' or the 'FWBC' in the FOI request.

The FOI request also adopts the same scope as the OAIC FOI request. Relevantly, the scope of your request was limited to officers who were, at the time of your FOI application, SES officers, meaning that:

- staff who were once SES officers but weren't categorised as such at the time of the FOI application; and
- documents that pertain to SES officers who are no longer employed by agency are discounted from the scope of the FOI application.

Further, by email dated 22 November 2017, you agreed that the ABCC could redact the names of the SES officers concerned but only on the condition that each officer's name be replaced by a single unique identifier (e.g. 'SES1') such that each relevant SES officer's precise salary can be tracked over the three financial years.

The ABCC acknowledged receipt of the FOI request by email on 10 November 2017. In that email the ABCC also informed you that, pursuant to section 15(5) of the FOI Act, the ABCC has 30 days to deal with an FOI request.

It should be noted, however, that the FOI Act provides for processing times to be extended for particular purposes. As explained below, your request was extended for one such purpose.

Consultations: extended period, notice of decision and review rights

By email dated 21 November 2017, the ABCC notified you of an extended timeframe to process the FOI request pursuant to section 15(6)(a). The relevant section provides:

Extension of processing period to comply with requirements of section 26A, 27 or 27A

(6) Where, in relation to a request, the agency or Minister determines in writing that the requirements of section 26A, 27 or 27A make it appropriate to extend the period referred to in paragraph (5)(b):

- (a) the period is extended by a further period of 30 days; and
- (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been so extended.

The email communicated to you that the required further time arose because it was appropriate to consult relevant parties.

Those consultations are now complete. However, for the purposes of notifying a decision to you and of disclosure of the relevant document that may follow, it should be noted that relevant third-parties with whom we consulted are accorded review or appeal rights under the FOI Act. The relevant section is 27A(6):

Access not to be given until review or appeal opportunities have run out

(6) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have **run out**, see subsection 4(1).

...

In other words, this section provides that in respect of the relevant document, the review or appeal rights that are available to the consulted parties are to "run out" before access to the document is provided to the FOI applicant.

Decision

I am authorised to make a decision under the FOI Act (s 23). This authority is derived from a delegation made by the ABC Commissioner on 8 September 2017.¹

I have decided to grant you access to the information you requested, subject to the names of specific SES officers being replaced by a unique identifier (consistent with your correspondence dated 22 November 2017), and subject to the review period.

¹ The delegation is accessible on the ABCC website - <https://www.abcc.gov.au/about/delegation-and-appointments>.

The ABCC has prepared a document which identifies the precise salary paid to each of the ABCC's SES officers in the following financial years - FY2014/15, FY 2015/16 and FY2016/17 (**Document A**). The salaries exclude superannuation payments.

Conditional exemption: section 47F of the FOI Act

I note that Document A (in its unmodified form) contains the 'personal information' (as defined in section 4 of the FOI Act) of a number of third parties.

This enlivens the conditional exemption in section 47F(1) of the FOI Act which provides:

A document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

It is clear that the personal information of a number of SES officers is recorded in Document A (in its unmodified form). Specifically, their names are expressly recorded.

However, in circumstances where you have consented to the names of specific SES officers being replaced by a unique identifier, I consider the public interest balance favours the disclosure of the requested information.

In summary, subject to the review period, I have decided to grant you access to Document A which identifies the salaries paid to the ABCC's SES officers in the FY2014/15, FY 2015/16 and FY2016/17 financial years (with the names of specific SES officers being replaced by a unique identifier).

No charges

I confirm that there are no charges for this FOI request.

Internal Review and Complaints

I am not the principal officer of the ABCC.

As a result, you are entitled to seek an internal review of my decision. You have 30 days from the date of this letter to seek an internal review application. You may do so in writing to: **Freedom of Information (ABCC)**, at either of the following contact addresses:

By post: GPO Box 9927 MELBOURNE VIC 3001 Australia
By email: foi@abcc.gov.au

Please note in your application the decision you wish to be reviewed.

You may also submit an information review request to the OAIC about the processing of your FOI request. More details are accessible from the OAIC's website: www.oaic.gov.au/

Access to documents

Section 27A(6) of the FOI Act provides that an agency must not give access to documents until all the opportunities a third party may have for review have run out, and the decision to give access still stands, or is confirmed. As such, we cannot disclose Document A to you until such time that the review period expires, being 30 days from the date of this decision.

If you have any questions about this matter, please contact the ABCC's FOI Section (contact addresses listed above).

Yours sincerely



Franz Baldo

Australian Building and Construction Commission