



FOI17/198, 17/16535

4 January 2018

Name withheld

By email only: [foi+request-4271-e17723d7@righttoknow.org.au](mailto:foi+request-4271-e17723d7@righttoknow.org.au)

Dear Sir/ Madam,

**Freedom of Information request FOI17/198 – Departmental SES remuneration**

I, Helen Daniels, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Attorney-General's Department (the department).

On 17 December 2017, you requested documents in relation to the remuneration of departmental SES officers. Specifically, you sought access to:

*"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 salary paid to each of the Attorney-General's Department's (the department) 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 department 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 department who, at the time of my application, were categorised as SES officers, meaning that:*

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

I have identified that the department holds a number of documents within the scope of your request. I did this by arranging for a comprehensive search of the department's electronic document management system and making inquiries of staff likely to be able to identify relevant documents. I have identified that the documents held by the department within scope of your request are exempt from disclosure under the FOI Act. My reasons for this are set out below.

### **Material taken into account**

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request
- the FOI Act (specifically section 47E and section 47F), and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

### **Exemption – certain operations of agencies (section 47E)**

Section 47E(c) relevantly provides:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

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

The department's SES employees are not covered by the *Attorney-General's Department Enterprise Agreement 2016*. The remuneration of SES employees is a matter of negotiation between the Secretary and each SES employee. In the context of a confidential negotiation process, revealing the precise remuneration paid to specific SES employees would have the substantial and adverse effect of undermining the department's negotiations with individual employees.

The disclosure of information about remuneration paid to departmental SES officers could reasonably be expected to undermine the department's negotiating position with current and future SES employees. I am satisfied that the disclosure of parts of the requested documents would have a substantial adverse effect on the management of personnel by the department. Consequently, I find that the requested documents are conditionally exempt from disclosure under section 47E of the FOI Act.

### **Exemption – personal privacy (s47F)**

Section 47F(1) relevantly provides:

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

The documents falling within the scope of the request contain personal information about remuneration information of specific employees.

The Freedom of Information Guidelines provide at paragraph 6.153 that "*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*". The documents falling within the scope of the request are not documents that have been produced because of SES officers' performance of their usual duties or responsibilities. The payment summaries have been produced

because of a legal requirement to provide a payment summary under the *A New Tax System (Pay As You Go) Act 1999*.

Section 47F(2) of the FOI Act relevantly provides:

*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 each payment summary is not available from publicly accessible sources. The department's various annual reports do provide salary ranges for employees at each classification, the information is not detailed on an individual basis. Therefore, the information within the scope of the request is not well known. I am satisfied that release of the requested information would constitute the unreasonable disclosure of personal information and would be inconsistent with the department's obligations under the *Privacy Act 1988*.

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 weighing of the public interest factors is detailed below.

### ***Public interest factors***

Section 11B(3) of the FOI Act lists public interest factors favouring access. I have considered these factors and I have not taken into account any of the irrelevant factors listed in section 11B(4).

Of the factors favouring access, I consider that the release of the relevant information would promote the objects of the FOI Act: section 11B(3).

With respect to factors against access, my opinion is that there is considerable public interest in maintaining the confidentiality of information in these documents about remuneration.

Though the FOI Act does not list any specific factors weighing against disclosure, paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of factors against disclosure that the decision-maker must consider, in addition to any other relevant factors. I have identified the following factors as relevant against disclosure in relation to the documents in question:

- Could reasonably be expected to prejudice an individual's right to privacy
- Could reasonably be expected to prejudice the management function of an agency

I am satisfied that the documents within the scope of your request, if released, could reasonably be expected to prejudice an individual's right to privacy and the effective management of this agency.

I have also considered that there is a presumption of confidentiality between the Secretary and SES in relation to individual contractual arrangements, in particular details regarding remuneration.

It is vital to the effective management of this agency that I uphold the reasonably held personal privacy expectations of our employees and the broader community expectations of the Australian

workforce by protecting these documents from public disclosure. I note that there is no requirement for any public servant (nor any individual employed in the private sector) to publically disclose PAYG summaries and the remuneration details contained within them.

In making the decision to decline access to this particular material, I have considered the general public interest in providing greater transparency of remuneration of our senior executives to the Australian community. I am able to advise that the department publishes relevant information relating to the remuneration of all senior executives from our department for each financial year on the department's website.

The department's SES employees' remuneration and other conditions of employment are set by a collective section 24(1) Determination under the *Public Service Act 1999*. You have noted that the determination may have the information that you are seeking. However, the Determination provides for a salary range for each classification that officers must be paid within. The Determination does not provide the precise salary for each individual.

I consider the factors against access outweigh the factors favouring access and that access to the relevant information in the documents at this time would be contrary to the public interest.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Australian Information Commissioner Review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### **Internal review**

Under section 54 of the FOI Act, you may apply in writing to the department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

Email:      foi@ag.gov.au  
Post:        Freedom of Information and Parliamentary Section  
              Strategy and Delivery Division  
              Attorney-General's Department  
              3-5 National Circuit  
              BARTON ACT 2600

Where possible please attach reasons why you believe review of this decision is necessary. The internal review will be carried out by another officer within 30 days.

### **Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: <http://forms.business.gov.au/aba/oaic/foi-review/>  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Post: GPO Box 5218, SYDNEY NSW 2001  
In person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website.

Go to: <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

### **Questions about this decision**

If you wish to discuss this decision, please contact Courtney, Freedom of Information case manager, by telephone on (02) 6141 6666 or by email at [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



Helen Daniels  
Assistant Secretary

