



Name Withheld

By email: foi+request-4278-b0789ecb@righttoknow.org.au

Freedom of Information Request – Decision

Dear Name Withheld,

I refer to your request sent to the Treasury on 18 September 2017, for access under the Freedom of Information Act 1982 (the Act) to the following:

I refer Treasury 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_oai

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

Your original request to the OAIC sought access to:

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.

On 4 January 2017 you provided the following clarification to the scope of your request:

I am amenable, however, to the Department redacting the names of the SES officers concerned but only on the condition that each relevant officer's name be replaced by a single unique identifier such that each relevant SES officer's precise salary can be tracked over the three relevant financial years (eg. SES officer #1, SES officer #2, SES officer #3 etc). If the Department is not willing to replace the SES officers' names with a single unique identifier for each relevant SES officer, then I revert to the terms of my original request.

Decision

I have considered the documents you have requested access to, and decided to refuse access in full. I have also considered a document that could be created to meet the terms of your request, and decided to refuse access to such a document. I am an authorised decision maker under section 23 of the Act.

Material Considered

The material to which I have had regard in making this decision includes:

- The terms of your request
- The relevant provisions of the Act
- Consultations with relevant third parties
- Guidelines issued by the Australian Information Commissioner (the Guidelines)
- The documents within the scope of your request

Reasons for the Decision

In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for my decision to refuse access to the documents, follows.

PERSONAL PRIVACY (SECTION 47F)

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

While I agree there is a strong public interest in the spending of public money, I consider pay summaries disclose an amount of personal information that is far more substantial than just disclosing the general amount of money allocated to salaries of SES officers. This information goes well beyond the individuals' duties and responsibilities as a public servant.

Additionally, tracking individuals' salaries over time discloses further personal information (such as promotion, higher duties, or periods of unpaid leave) that, even if deidentified, could be used to reconstruct the exempted information.

This information is not public knowledge and, where the persons are performing their regular duties in an expected manner, I see no public purpose in disclosing their personal information. I do not consider it appropriate to disclose personal information where it is not otherwise available. If this information were disclosed there is a reasonable expectation these details could be subject to misuse, contrary to the public interest.

Accordingly, I have decided that parts of the documents which are listed as exempt in accordance with this provision meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test

Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- a) Disclosure would promote the objects of the FOI Act
- b) Disclosure would inform debate on a matter of public importance
- c) Disclosure would promote effective oversight of public expenditure
- d) Disclosure would allow a person to access his or her personal information.

I agree that disclosure would promote the objects of the FOI Act.

I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, we have no basis to assume the information relates to the applicant. These public interest considerations are therefore irrelevant in this circumstance.

I also considered the following factor which does not favour disclosure:

- a) Disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy

As set out in section 11B(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the document would on balance, be contrary to the public interest:

- a) Access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government
- aa) Access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island
- b) Access to the document could result in any person misinterpreting or misunderstanding the document
- c) The author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made
- d) Access to the document could result in confusion or unnecessary debate

I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

CREATION OF A DOCUMENT (SECTION 17)

In your email of 4 January 2017 you provided parameters of a report that you believed would address your request. I can confirm that the Treasury does not already maintain such a document.

Section 17 of the Act states that where "it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency" and "the agency could produce a written document containing the information in discrete form", then "the agency shall deal with the request as if it were a request for access to a written document so produced". However, the Act also states that "an agency is not required to comply [...] if compliance would substantially and unreasonably divert the resources of the agency from its other operations".

While I note your request has specifically excluded employee names, for the reasons above, I still consider that removing names would not remove all personal information. While it is likely that some SES officers would consent to the details of their salaries being released in such a report, I'm not in a position to speak on behalf of all SES officers, so would need to consult with each affected person to give them the opportunity to provide objections to their information being released. I consider that such consultation would likely be so voluminous as to constitute a practical diversion of the department's resources.

Accordingly, I have decided that the department is not obligated to create a document to fulfil your request.

Publicly available information

While I have refused access to the documents you have request, I would note that much of the information you're seeking is available in a general form on the Treasury's website: www.Treasury.gov.au

The information includes:

- the Executive Remuneration page at <https://treasury.gov.au/the-department/accountability-reporting/executive-remuneration/>
- Annual Report 2016/17 page 48
- Annual Report 2015/16 page 55
- Annual Report 2014/15 page 85

Rights of Review

A statement setting out your rights of review in this matter is attached.

Yours sincerely,



Phoebe Burgess
Division Head
People and Organisational Strategy Division

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

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

No particular form is required but it would assist the decision-maker if you could 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:

The Secretary
The Treasury
Langton Crescent
PARKES ACT 2600
Attention: Parliamentary and Legal Services Unit

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 Australian 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 Australian 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.