



**Australian Government**  
**Department of Jobs and Small Business**

Ref 33636

FOI Applicant

By email: [foi+request-4342-29fa3c32@righttoknow.org.au](mailto:foi+request-4342-29fa3c32@righttoknow.org.au)

Dear FOI Applicant

**Notice of access decision**

We refer to your request of 27 January 2018 to the Department of Jobs and Small Business, formerly the Department of Employment (the Department) for access to documents under the *Freedom of Information Act 1982* (FOI Act) in the following terms:

*'I refer the Department of Employment (the Department) 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](https://www.righttoknow.org.au/request/precise_salaries_paid_to_the_oai)*

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

*Further, I am amenable to the Department providing copies of relevant group certificates or otherwise a payroll report or other summary document with the names of the relevant officers redacted 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).'*

By accessing the request to the Australian Information Commissioner to which you refer, we therefore understand the scope of your request as follows:

*'Documents which detail the precise salary paid to each of the Department'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 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.*

*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.*

*Further, I am amenable to the Department providing copies of relevant group certificates or otherwise a payroll report or other summary document with the names of the relevant officers redacted 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).'*

On 23 February 2018, the Department notified you of a 30-day extension of time in which to process your request to allow for consultation with SES officers who would remain reasonably identifiable notwithstanding replacement of their names with a single unique identifier.

### **Decision on access to documents**

I am authorised to make decisions under the FOI Act.

I have identified one document within the scope of your request. I have decided to refuse access in full to the document. The reasons for my decision are set out below.

Taking into account that there is only one document within scope of your request and my decision to refuse access to it, I have also decided not to charge for processing your request.

### **Reasons for decision on access**

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

- the scope of your request
- your submissions in support of your request
- the content of the documents requested
- the objects and other provisions of the FOI Act
- the FOI guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**), and
- responses from affected individuals regarding to the release of their personal information.

### **Section 47E(c) – public interest conditional exemption – agency operations**

Section 47E(c) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth.

Collated individual salary information directly relates to the Department's management of its personnel. As stated above, salaries at the SES level are not covered by the Department's enterprise agreement and are a matter of individual negotiation between the officer and agency head. Disclosure of information which reveals precise remuneration arrangements between individual SES employees and the Department would diminish the trust SES employees have in their employer to maintain their privacy and confidentiality. It could also reasonably be expected to have a substantial and adverse effect on the

Department's future recruitment of SES officers and salary negotiation or review processes. These comprise an important part of the Department's management or assessment of some of the Department's key personnel, and by extension, is likely to have a detrimental effect on the operations of the Department.

As noted by the Information Commissioner, *'it is not uncommon within agencies that staff at the same level are paid different amounts or have different employment arrangements that have been negotiated with the agency and that are confidential and not known to other staff.'*<sup>1</sup> Public disclosure of individual SES salary information could lead to dissatisfaction and disharmony within the Department's cohort of SES officers, were some officers to unfavourably compare their own salaries against those received by their colleagues. This would have a substantial adverse effect on the Department's management of its personnel.

Further, a widespread expectation that specific details of remuneration will be publicly available may have the real consequence of deterring executives from seeking employment within the senior executive service of the Australian Public Service. A reluctance of qualified individuals to put themselves forward as candidates for SES employment with the Department would substantially and adversely affect the Department's recruitment processes. I therefore find that the relevant material is conditionally exempt under s 47E(c).

#### **Section 47F – public interest conditional exemption – personal privacy**

Section 47F(1) of the FOI Act provides that a document is conditionally exempt from disclosure to the extent that it contains personal information the disclosure of which would be unreasonable.

The FOI Act defines 'personal information' as,

*'Information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not, and whether it is recorded in a material form or not'*

A number of SES Band 1 and 2 staff have not had continuous tenure of an SES position within the Department over the entire three financial years specified in your request. The movements of these officers in and out of the Department, and their periods of service within any financial year, are likely discernible from publicly available information. Additionally, there are only two SES Band 3 staff whose salary information falls within scope of your request. Due to their small number and differing amounts of salary over their SES Band 1 and 2 colleagues, I consider that the precise salary paid to each of the SES Band 3 officers is also readily ascertainable.

I therefore find that the SES officers concerned would be reasonably identifiable from their salary information, notwithstanding the qualification in the scope of your request that their names may be replaced with a single unique identifier. On that basis, and as the relevant material concerns the private salary information of Departmental officers, I find that the information is personal information under the FOI Act.

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<sup>1</sup> 'BA' and Merit Protection Commissioner [\[2014\] AICmr 9](#) at para [91]



The FOI Guidelines provide the following guidance about the test of ‘unreasonableness’<sup>2</sup>:

*‘The personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.’*

Section 47F(2) sets out matters which I must consider in determining whether disclosure of personal information would be unreasonable:

- 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; and
- d. any other matters that the agency or minister considers relevant.

The Guidelines also provide that;<sup>3</sup>

*‘[w]here 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 document falling within the scope of your request is not a document about the relevant SES officers’ performance of their usual duties or responsibilities, but rather the negotiated individual salaries paid for the officers’ performance of those duties. The precise salary information relates to the personal affairs of individuals and, accordingly, there is no presumption that they should be released merely because they relate to public servants.

While the individuals concerned may be known to be employed as Departmental SES during the periods specified in your request, the details of their remuneration is confidential in nature and is not publicly known or available. The information requested is of a different and more personal nature than the more general information that is published on the Department’s website about average SES salaries (available at <https://docs.jobs.gov.au/documents/remuneration-paid-executives-2016-17-financial-year>).

I have considered objections from the SES officers concerned and noted the prejudice to their future salary negotiation positions that would result from public disclosure of their salary information. I also find that these officers have a reasonable expectation that the Department would maintain confidence in relation to their personal affairs. I therefore find that disclosure of the relevant material would be unreasonable and it is therefore conditionally exempt under s 47F(1).

#### *Public interest factors*

Access to conditionally exempt documents must be given unless disclosure is not in the public interest.

In balancing the public interest factors for and against disclosure, I recognise that there is a public interest in transparency about how public money is spent. However, against that I weigh the public interest in

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<sup>2</sup> FOI Guidelines at para [6.138]

<sup>3</sup> FOI Guidelines at para [6.153]



protecting the privacy of individuals concerned and protecting the Department's bargaining position and capability in future recruitment and salary negotiations.

The Secretary of the Department determines remuneration under section 24 (1) of the *Public Service Act 1999* for SES employees, with regard to the Australian Public Service Commission's (APSC) annual Australian Public Service (APS) Remuneration Report (available at <http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys>). This provision allows variations in remuneration between individual jobs, based on market and work-value considerations, which aids in the ability to attract and retain the best qualified people in the employment market for these roles.

I find that the balance of factors for and against release is appropriately struck in the provision of information about remuneration bandwidths and averages such as is published on the Department's website, annual reports and APS Remuneration reports. I therefore give greater weight to the public interest in protecting the Department's ability to effectively manage its staff and source the best applicants for senior positions and maintaining staff confidentiality, cordial intra-staff relations and personal privacy. Further, I am satisfied that disclosing the document containing the information you have requested would not serve the public interest any further than information that is already publicly available. I have therefore decided that disclosure would not be in the public interest and the information is exempt under sections 47E(c) and 47F(1) of the FOI Act.

#### **Further information**

As advised in the Department's previous decisions in relation to SES salaries published on the Right to Know website, the Department has adopted an overarching approach of aligning pay outcomes for SES employees with the pay outcomes of non-SES employees.

In 2014/15, SES staff did not receive any general increase in salary, as was the case for non-SES staff. In 2015/16, SES officers generally received a 3% increase in salary, in line with the 3% salary increase received by non-SES staff under the Department of Employment Enterprise Agreement 2016-2019. In 2016/17, SES officers generally received a 2% increase in salary, in line with the 2% salary increase received by non-SES staff under the Enterprise Agreement.

#### **Review rights**

Information about your review rights regarding my decision is at Attachment A.

If you have any queries, please contact me on (02) 6121 6718 or by email to [foi@jobs.gov.au](mailto:foi@jobs.gov.au).

Yours sincerely



Stuart Plowman  
Senior Government Lawyer  
Information Law Team  
Corporate Legal

28 March 2018

### Information about review rights

If you wish to seek an internal review, you must apply to the Department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to [foi@jobs.gov.au](mailto:foi@jobs.gov.au). Review decisions are new decisions made independently of the original decision. No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the Department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website [www.oaic.gov.au](http://www.oaic.gov.au) or phone the OAIC on 1300 363 992. You may also make a complaint to the Commonwealth Ombudsman. Information is available on the Ombudsman's website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au) or by phone on 1300 362 072.

No charges apply to a review decision either by the Department or by OAIC. An internal review decision must be made within 30 days of your application, but this does not apply to OAIC reviews.

If you have difficulty speaking or understanding English, call the [Translating and Interpreting Service](#) (TIS National) on 131 450 for the cost of a local call. TIS National operates nationally and is available 24 hours a day, 7 days a week for over 160 languages and dialects. Ask TIS National to call the FOI Hotline on (02) 6240 7310 so we can assist you.