

Our ref: FOI-2018-50019

28 February 2018

Anonymous FOI applicant

By email to: Name withheld <foi+request-4343-36573c7d@righttoknow.org.au>

Dear FOI applicant

Your Freedom of Information (FOI) request dated 27 January 2018

I refer to your email received by the Ombudsman's Office on 29 January 2018, in which you sought access to certain information under the *Freedom of Information Act 1982* (the FOI Act). Your request was framed in the following way:

'...I refer the Office of the Commonwealth Ombudsman (the Ombudsman) 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 the Ombudsman albeit such that every reference to 'OAIC' in the OAIC request should be read as a reference to the 'Ombudsman'. 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...'

This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our Office under s 23 of the FOI Act.

Decision

You requested access to documents which detail the precise salary paid to each of the Commonwealth Ombudsman's SES officers in 2014/15, 2015/16 and 2016/17.

You advised that your request should be read in the same way as your previous request to the Office of the Australian Information Commissioner (OAIC) for information about salaries paid to the SES officers of that agency.

You provided access to a copy of the OAIC's response to your request in the same terms. The OAIC's response excluded the names of individual SES officers from your request. The OAIC provided a table setting out information about its SES officers for the purposes of your request.

I have decided to treat your request to this Office in the same manner as the OAIC treated your request in the same terms. Accordingly, this Office has prepared the attached table setting out the salary paid to its SES officers in 2014/15, 2015/16 and 2016/17, excluding superannuation payments.

Information about remuneration paid to the Commonwealth Ombudsman and the Deputy Commonwealth Ombudsman is available from the Remuneration Tribunal website at: <http://www.remtribunal.gov.au/media/documents/2018/2017-compilations/full-time-compilations/remuneration-and-allowances-for-holders-of-full-time-public-office-compilation-12/2017-11-FTOH-Determination-Compilation-12-18.12.2017.pdf>.

Review rights

Internal review

Under s 54 of the FOI Act, you may apply in writing to our Office for an internal review of my decision. The internal review application must be made within 30 days of the date on which you were notified of my decision.

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

Review by the Australian Information Commissioner

Under s 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 at <https://forms.australia.gov.au/forms/oaic/foi-review/>
- via email to enquiries@oaic.gov.au
- by overland mail to GPO Box 5218 SYDNEY NSW 2001
- in person to Level 2, 175 Pitt Street, Sydney NSW.

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/foi-portal/review_complaints.html#foi merit reviews](http://www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews).

Complaints to the Information Commissioner

You may complain to the Information Commissioner about action taken by the Ombudsman in relation to your FOI request.

While there is no particular form required to make a complaint, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way in which your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

You may lodge your complaint in one of the following ways

- online at www.oaic.gov.au
- by overland mail to GPO Box 5218 SYDNEY NSW 2001
- by email to enquiries@oaic.gov.au.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact me using the contact information set out at the foot of the first page of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Parkhurst', written in a cursive style.

Gregory Parkhurst
Senior Legal Officer

ATTACHMENT A – Relevant FOI Act provisions

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister 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 at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

54 Internal review—access refusal decision

- (1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The applicant in relation to the request may apply under this Part for the review (the *internal review*) of the access refusal decision.

54L IC reviewable decisions—access refusal decisions

- (1) An application may be made to the Information Commissioner for a review of a decision covered by subsection (2).
- (2) This subsection covers the following decisions:
 - (a) an access refusal decision;
 - (b) a decision made by an agency on internal review of an access refusal decision (see section 54C);
 - (c) a decision refusing to allow a further period for making an application for internal review of an access refusal decision (under section 54B).

Note 1: An application for the review of an access refusal decision made for the purposes of paragraph (a) may be made regardless of whether the decision was the subject of internal review.

Note 2: If no decision is made on internal review within 30 days, a decision to affirm the original access refusal decision is taken to have been made (see section 54D).

- (3) The IC review application may be made by, or on behalf of, the person who made the request to which the decision relates.