



Australian Government

Department of Finance

Reference: FOI 18/16
Contact: FOI Team
Telephone: (02) 6215 1783
e-mail: foi@finance.gov.au

Name withheld

via email: foi+request-4364-7ffccacb@righttoknow.org.au

Dear FOI Applicant

Freedom of Information Request – FOI 18/16

Thank you for your email, dated 7 February 2018, to the Department of Finance (Finance) in which you sought access to documents under the *Freedom of Information Act 1982* (FOI Act). Specifically your request states:

*I refer 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*

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.

I have extracted the relevant section of the OAIC request to determine the scope as follows:

I request documents which detail the precise salary paid to each of [Finance'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 [Finance] 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 [Finance] who, at the time of my application, were categorised as SES officers, meaning that:

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

I note that you clarified the scope of your request further in your email of 7 February 2018 when you advised:

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).

Authorised decision-maker

I am authorised by the Secretary of Finance under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

I have considered the documents that fall within the scope of your request ([Attachment A](#)) and, consistent with sections 47E and 47F of the FOI Act, I have decided to refuse access to these documents in full.

Material considered in making decision

In making my decision, I have had regard to the following:

- the content of documents that fall within the scope of your request;
- the relevant provisions of the FOI Act;
- 'FG' and National Archives of Australia [2015] AICmr 26 (13 April 2015);
- Paul Cleary and Special Broadcasting Service [2016] AICmr 2 (21 January 2016);
- and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Reasons for decision

Documents that fall within the scope of your request

I consider that the documents that provide the requested information are the PAYG payment summaries for financial years 2014/15, 2015/16, and 2016/17 for all Finance employees who were SES officers as at 7 February 2018 (the date of your application).

I note that you have agreed to receive edited copies of these documents which show the salary amounts and with each name replaced by a unique identifier.

Publicly available information

I note that the Finance Annual Report provides information in relation to SES officer salaries. Both the average salary range and the actual salary range is available for SES officers bands 1-3 at:

- <https://www.finance.gov.au/publications/annual-reports/16-17/appendix-1/>;
- <https://www.finance.gov.au/publications/annual-reports/15-16/appendix-b/>; and
- <https://www.finance.gov.au/publications/annual-reports/2014-15/appendixes/a-workforce-statistics/>.

Finance also publishes information on the aggregate salary of its SES as part of its Executive Remuneration Reporting:

<https://www.finance.gov.au/publications/executive-remuneration-reporting/>

Given your interest in SES remuneration across the Australian Public Service (APS) more generally, I also note that the Australian Public Service Commission provides aggregate reporting on SES remuneration across the APS as part of its Remuneration reports:

<http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys>

Section 47F – personal privacy conditional exemption

Section 47F of the FOI Act provides:

(1) 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).

Consistent with section 4 of the FOI Act and section 6 of the *Privacy Act 1988*, personal information means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual who is reasonably identifiable.

For information to be conditionally exempt under section 47F, I must first be satisfied that the information is personal information. I am satisfied that amounts of salary in respect of a particular individual is information ‘about’ an individual. I am further satisfied that even where the names of each individual were replaced with a unique identifier, a large number of these individuals would still be reasonably identifiable in these particular circumstances.

Furthermore, the salary amounts detailed in PAYG payment summaries may make it possible to discern other personal information about each SES officer. For example, information concerning periods of unpaid leave, salary sacrifice arrangements or other salary deductions may be deduced from this information.

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. Subsection 47F(2) of the FOI Act provides:

(2) In determining whether the disclosure of a 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.*

I am satisfied that the specific salary information in relation to each individual SES officer contained in these documents is not well known or publicly available.

In considering any other matters that are relevant, I have also had regard to the following factors identified in paragraph 6.143 of the FOI Guidelines and the decision of *'FG' and National Archives of Australia* [2015] AICmr 26 (13 April 2015):

- the nature, age and current relevance of the information;
- any detriment that disclosure may cause to the person to whom the information relates;
- any opposition to disclosure expressed or likely to be held by that person;
- the circumstances of an agency's collection and use of the information;
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act;
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information; and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

In addition to the above, I note that the FOI Guidelines provide that personal information about a public servant included in a document as a result of their usual duties or responsibilities will not generally amount to an unreasonable disclosure for the purpose of section 47F (see paragraph 6.153 of the FOI Guidelines). However, I further note that paragraph 6.15 of the FOI Guidelines and the decision of *Paul Cleary and Special Broadcasting Service* [2016] AICmr2 (21 January 2016) also provide that where a document includes information about a public servant's *disposition or private characteristics* such as *the reasons a public servant has applied for personal leave, information about their performance management or whether they were unsuccessful during a recruitment process*, the disclosure is likely to be unreasonable.

In my view, consistent with the *Privacy Act 1988* salary information, like information concerning personal leave, performance management or recruitment, is personal information that forms part of an employee's record. Accordingly, information about individual employee remuneration is generally viewed as a private matter between an employer and an employee and as such is treated as confidential. Therefore I am satisfied that specific salary information in relation to individual SES officers is more is more appropriately characterised as information regarding their private characteristics.

I further consider that disclosure of individual salary amounts may expose the individual SES officers to detriment. Specifically, where individual salary amounts were disclosed, it may affect those SES officers in future salary negotiations with Finance, other APS employers, or private sector employers.

Noting the above I have formed the view that it would be an unreasonable disclosure of personal information to release these documents and therefore the conditional exemption under section 47F of the FOI Act is met.

Section 47E – certain operations of agencies conditional exemption

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

The documents identified as within the scope of your request detail salary amounts for a number of financial years in relation to individual SES officers who are reasonably identifiable. The Finance Secretary in negotiation with each SES officer determines the salary of each SES officer and the Finance Enterprise Agreement 2015-2018, does not cover the salary of SES officers. In addition, an SES officer is not privy to the negotiations of other SES officers. This allows the Secretary to negotiate with each individual SES officer on the basis of experience, performance, level of responsibility and other relevant factors. In my view disclosure of individual SES officer salary amounts will unfairly affect the bargaining positions of the relevant parties and limit the effectiveness of these negotiations.

For these reasons I have formed the view that releasing this information would have a substantially adverse effect on Finance's management or assessment of its personnel and therefore the conditional exemption under subsection 47E(c) is met.

Public interest test

Having formed the view that the requested documents are subject to the conditional exemptions under sections 47E and 47F of the FOI Act, I am now required to consider the public interest test for the purposes of determining whether access to these conditionally exempt documents would, on balance, be contrary to the public interest.

Subsection 11B(3) of the FOI Act provides:

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (c) allow a person to access his or her own personal information.*

In addition to the above I have also had regard to paragraph 6.19 of the FOI Guidelines which provide a non-exhaustive list of further factors that may favour disclosure. In my view, the strongest factors favouring disclosure in this case are:

- promote the objects of the Act; and
- promote effective oversight of public expenditure.

The FOI Guidelines also provide a non-exhaustive list of factors against disclosure at paragraph 6.22. I have considered these factors and have determined that the following are relevant considerations:

- could reasonably be expected to prejudice the protection of an individual's right to privacy; and
- could reasonably be expected to prejudice the management function of an agency.

I have not given any consideration to the irrelevant factors prescribed in subsection 11B(4) of the FOI Act.

Having regard to the factors identified above, I am of the view that the disclosure would promote the objects of the FOI Act and promote effective oversight of public expenditure. However, I have weighed these factors against the factors against disclosure. In particular I consider the disclosure of the information could adversely impact on the relevant SES officers' right to privacy and could also reasonably be expected to prejudice the management function of Finance in salary negotiations. Furthermore I note that salary information in the requested documents is currently provided in an aggregate form in the Finance annual report as a means of providing oversight of public expenditure.

Noting the above I have determined to give greater weight to the factors against disclosure in this case, and consider that it would be contrary to the public interest to provide access to the documents identified at Attachment A under the FOI Act.

Access to edited copy with exempt matter deleted

Consistent with section 22 of the FOI Act, in making my decision, I have also considered whether it would be possible to provide you with access to edited copies of the documents with exempt material under sections 47E and 47F deleted.

In this case, I consider that the documents would require substantive modification to delete exempt material (including salary amounts), such that the edited copies would contain little more information than identifying the documents as PAYG payment summaries.

Therefore I am of the view that due to the nature and extent of the modifications (paragraph 22(1)(c)(i) of the FOI Act) it would not be reasonably practicable to prepare edited copies of the documents as such documents would merely confirm the existence of documents rather than conveying their substantive content.

Review and appeal rights

You are entitled to request an internal review or a review by the OAIC of my decision. The process for review and appeal rights is set out at Attachment B.

Please contact the FOI Team on the contact details provided if you wish to discuss this matter.

Yours sincerely,



Cassie Alexander
Assistant Secretary
Human Resources Branch
Department of Finance
9 April 2018

ATTACHMENT A

SCHEDULE OF DOCUMENTS RELEVANT TO FOI REQUEST No. 18/16

Description of Documents	Decision
PAYG payment summaries for all Finance SES officers as at 7 February 2018 for the following financial years: 2014/15, 2015/16, 2016/17.	Exempt in full under sections 47E and 47F of the FOI Act.



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by Finance, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why. You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can

review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant

decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information
Commissioner
GPO Box 2999
CANBERRA ACT 2601
Email: enquiries@oaic.gov.au
Fax: 02 9284 9666
In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is currently \$884 (from 1 July 2016), although there are exemptions for

health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred. Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html