



**Australian Government**  
**Australian Public Service Commission**

DB

By email: [foi+request-4391-4e7283ed@righttoknow.org.au](mailto:foi+request-4391-4e7283ed@righttoknow.org.au)

Our reference: C18/617

Dear DB,

**Decision on your Freedom of Information Request**

I refer to your request dated 24 February 2018, seeking access to documents under the *Freedom of Information Act 1982* (the **FOI Act**), as originally received by the Office of the Australian Information Commissioner (**OAIC**) and transferred to the Australian Public Service Commission (the **Commission**).

You have requested access to the following:

*I seek access to email correspondence between the Information and Privacy Commissioner, Mr Timothy Pilgrim, and the Australian Public Service Commissioner, Mr John Lloyd (in his capacity as Public Service Commissioner or otherwise), between the period of 1 January 2015 to [24 February 2018].*

**Acceptance of Transfer**

On 24 February 2018 you emailed the OAIC seeking access to the above-mentioned documents.

In consultation with the OAIC, the Commission accepted transfer of your request, in the form above. As noted by the OAIC, the subject-matter of the documents are more closely connected with the functions of the Commission than with those of the OAIC.

On 8 March 2018 the OAIC wrote to you pursuant to section 11(4) of the FOI Act, to inform you that the transfer occurred. The date your request falls due is unchanged by the transfer.

**Documents relevant to your request**

Having caused searches to be undertaken, I have identified 18 documents falling within the scope of your request. The documents are listed in the schedule of documents provided at **Attachment A**.

## Decision

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests. This letter sets out my decision on your FOI request and provides the reasons for my decision.

I have decided to grant you access in part to all documents. The reasons for my decision are set out at **Attachment B** to this letter.

Redacted versions of the documents within scope are enclosed with this correspondence.

## Review Rights

You are entitled to seek review of this decision. Your rights are set out at **Attachment C** to this letter.

## Publication

Subject to certain exceptions, section 11C of the FOI Act requires the Commission to publish on its website information within documents released in response to an FOI request. This publication is known as a disclosure log. The Commission is not required to consult with the original applicant during this process and must consider separately to the making of each decision the appropriateness of the documents for publication on the disclosure log.

## Contacts

If you require clarification of any of the matters discussed in this letter you should contact the Commission's FOI Officer by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au).

Yours sincerely



Kerren Crosthwaite  
Group Manager, Employment Policy  
26 March 2018

## SCHEDULE OF DOCUMENTS

| Applicant Name: DB<br>File no. C18-617 |            |         |  |                        |                   |
|--|------------|---------|--|------------------------|-------------------|
| Document                               | Date       | Pages   | Description  | Access                 | Exemption applied |
| 1                                      | 22-05-2015 | 1-3     | Email regarding Integrity Agencies Group                                 | Access granted in part | 47F               |
| 2                                      | 27-06-2017 | 4-5     | Email chain regarding Data + Privacy Asia Pacific conference             | Access granted in part | 47F               |
| 3                                      | 13-06-2017 | 6       | Email regarding APS remuneration report 2016                             | Access granted in part | 47F               |
| 4                                      | 9-06-2017  | 7 – 80  | Email regarding APS remuneration report 2016                             | Access granted in part | 47<br>47F         |
| 5                                      | 05-05-2017 | 81      | Email regarding reporting of terminations for misconduct                 | Access granted in part | 47F               |
| 6                                      | 06-02-2018 | 82-84   | Email regarding workplace bargaining policy 2018                         | Access granted in part | 47F               |
| 7                                      | 20-02-2018 | 85-86   | Email regarding notifiable data breaches scheme                          | Access granted in part | 47F               |
| 8                                      | 14-09-2016 | 87-89   | Email regarding Australian Public Service Commissioner's Directions 2016 | Access granted in part | 47F               |
| 9                                      | 22-05-2015 | 90-91   | Email regarding Integrity Agencies Group                                 | Access granted in part | 47F               |
| 10                                     | 02-12-2016 | 92      | Email regarding Australian Public Service Commissioner's Directions 2016 | Access granted in part | 47F               |
| 11                                     | 10-11-2016 | 93-100  | Email regarding social media discussion paper                            | Access granted in part | 47F               |
| 12                                     | 06-10-2016 | 101     | Email regarding workplace bargaining policy                              | Access granted in part | 47F               |
| 13                                     | 28-06-2016 | 102     | Email regarding Integrity Agencies Group                                 | Access granted in part | 47F               |
| 14                                     | 23-12-2015 | 103-105 | Email regarding 2016 SES Leadership Development Program                  | Access granted in part | 47F               |
| 15                                     | 21-10-2015 | 106     | Email regarding bargaining policy  | Access granted in part | 47F               |
| 16                                     | 21-10-2015 | 107-111 | Email regarding bargaining   | Access granted in part | 47F               |
| 17                                     | 16-06-2015 | 112-122 | Email regarding Integrity Agencies Group                                 | Access granted in part | 47E(d)<br>47F     |
| 18                                     | 02-06-2015 | 123-126 | Email regarding Integrity Agencies Group                                 | Access granted in part | 47F               |

## REASONS FOR DECISION

### Your request

1. On 24 February 2018 you requested access to the following:

*I seek access to email correspondence between the Information and Privacy Commissioner, Mr Timothy Pilgrim, and the Australian Public Service Commissioner, Mr John Lloyd (in his capacity as Public Service Commissioner or otherwise), between the period of 1 January 2015 to [24 February 2018].*

2. Having caused searches to be undertaken, I have identified 18 documents falling within the scope of your request. I have determined to grant you access in part of all documents.

### Material taken into account

3. In making my decision, I took into account a number of factors, including:
  - the terms of your request as transferred to the Commission;
  - the content of the documents to which you sought access;
  - the nature of the documents sought;
  - the purpose for which the documents to which you have sought access were created;
  - advice from Commission employees with responsibility for matters concerning the documents to which you have sought access;
  - the communications made to third parties at the time of collection of the information contained within certain documents in scope;
  - whether release of each of the documents is in the public interest;
  - the relevant provisions of the *Freedom of Information Act 1982* (Cth) (FOI Act); and
  - guidelines published by the Office of the Australian Information Commissioner (OAIC) (the FOI Guidelines).

### Findings of fact and reasons for decision

4. I am an officer authorised to make decisions under section 23(1) of the FOI Act.
5. I have determined that sections 47 and 47F apply to portions of the documents. My findings of fact and reasons for applying the relevant exemption provisions are set out below.
6. Pursuant to section 22 of the FOI Act, edited versions of the relevant documents, with the exempt material deleted have been prepared in response to your request. I have included annotations in the edited copy indicating the relevant exemption where claimed.

### Section 47 – Commercial value

7. Section 47 of the FOI Act provides that a document is exempt if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be diminished if the information were disclosed.
8. Document 4 comprises of email communications between Mr John Lloyd and Mr Timothy Pilgrim attaching remuneration reports issued to the Office of the Australian Information Commission (OAIC) (AEC) under a funding arrangement, namely the MoU relating to funding for Learning and

Development and Workplace Relations Framework that exists between participating agencies and the Commission.

9. I have determined that the agency-specific remuneration report wholly contains information that has a commercial value to the Commission, the participating agency and more generally to the Commonwealth. I note that section 47 does not require that the commercial value in the document be held by our agency, but to an agency or another person or body.
10. Further, I have determined that the commercial value of the remuneration report is retained on release to the relevant agency, as the document is prepared and supplied under the above-mentioned funding arrangements; its confidentiality is noted on delivery of the document; access is not publically available, and the report is not available for purchase by an agency other than the responding agency.
11. The agency-specific remuneration reports are prepared on an annual basis. The preparation and consideration of such material sits under the Australian Public Service Commissioner's statutory functions to develop, promote, review and evaluate APS employment policies and practices (s41(1)(g) Public Service Act 1999), to co-ordinate and support APS-wide training and career development opportunities within the APS, and to facilitate continuous improvement in people management throughout the APS. The relevant functions of the Commission are partly funded through the above-described MoU.
12. The agency remuneration report is supplied on a strictly confidential basis, only to the agency head directly or a person expressly authorised by the agency head to receive the report. It is reasonably foreseeable that provision of the remuneration report, in full or in part, in response to FOI requests could impact on the commercial value, dissuading agencies from participation in the MoU and having a substantial adverse effect on the Commissioner's abilities to undertake prescribed statutory functions.
13. The information within the report is not publically available, and wholly relates to comparative data specific to the relevant agency. It is reasonably foreseeable that release under FOI of any portion of the document could compromise or otherwise diminish its commercial value, and the willingness of agencies to participate in the data collection process. I have determined that the entire of the document is relevant to the Commission's continued commercial activities, and that the funding received is relied on to undertake the relevant function.
14. As noted, the agency-specific remuneration report is only supplied to the agency head, or an employee expressly authorised by the agency head to receive the report. Due to highly limited audience to whom the requested documents are available, and particularly due to the provision of the requested documents being linked to the above-mentioned funding arrangements, I have determined that the commercial value of the reports, should access be available by means other than the funding arrangement would be greatly diminished, if not destroyed.

#### **Section 47E(d) – Operations of an agency**

15. Section 47E(d) 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 proper and efficient conduct of the operations of an agency.
16. Document 17 comprises of email communications between Mr John Lloyd and a number of senior Commonwealth public service personnel regarding a scheduled Integrity Agencies Group meeting, attaching relevant papers for the consideration of the attendees.

17. I have determined that the attachments to the email communication relate solely to the operations of the Commission, specifically the Australian Public Service Commissioner's (the **Commissioner's**) statutory functions prescribed at section 41(1)(e) of the Public Service Act 1999 (Cth) (the **PS Act**) to promote the APS Values and the Code of Conduct and at section 41(1)(a) to evaluate the extent to which agencies incorporate and uphold the APS Values.
18. Further, I have determined that the information contained within the documents is not in the public domain, nor widely known. The information has been shared with a discrete number of senior Commonwealth public service personnel, to inform them of sensitive matters relevant to participation in the noted scheduled meeting.
19. The Commissioner holds a number of responsibilities under the PS Act that require the dissemination of sensitive data or information to senior personnel to assist agencies to develop, discuss and improve internal procedures and policy on matters relating to its workforce engagement and participation.
20. It is essential, in the undertaking of the Commissioner's statutory functions that the Commission be able to assure stakeholders, whether internal to the Commonwealth or otherwise, that information collected or used for the purposes of such functions be disclosed only to properly authorised persons, and that the integrity of the Commission's processes be maintained.
21. I have determined that disclosure to the public, through release under the FOI Act would, or could reasonably be expected to have a substantial impact on the Commission's ability to disseminate information to senior Commonwealth personnel, and to compromise the efficient and effective conduct of the agency.
22. Further, I have determined that disclosure of the meeting papers, prepared for a discrete audience to facilitate discussion, would, or could reasonably have a substantial adverse effect on the provision of information to the Commission and the future ability of the Commissioner, and other statutory office holders to communicate confidential or candid information about matters of common concern.

#### **Section 47F – Personal privacy**

23. 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.
24. I am satisfied that each of the documents contains personal information about individuals, including external third persons, current and former employees of the Commission, employees of the OAIC and other public servants.
25. Section 47F(2) of the FOI Act requires the following factors to be considered in determining whether disclosure of personal information would be unreasonable:
  - the extent to which the information is well-known;
  - 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;
  - the availability of the information from publically available sources;
  - any other matters that the agency considers relevant.
26. On consideration, I have determined that certain personal information, including the names of third parties, and junior staff members are not well-known, that the persons to whom the information

relates are not known to be associated with the matters within the document, that the personal information is not otherwise available from public sources, and that the personal information is not pertinent to the matters contained within the document. Accordingly I have determined that disclosure would be unreasonable and that the conditional exemption at section 47F of the FOI Act applies.

27. Further personal information contained within the documents, including the contact information of Mr Timothy Pilgrim, Mr John Lloyd and personal information of Senior Executive Service employees are well-known and available through public resources, including the Commission's own website. I have therefore determined that certain personal information within each of the documents is suitable for release.

### **Section 11A(5) – Public interest considerations**

28. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless (in the circumstances) access to the document would, on balance, be contrary to the public interest (the public interest test).
29. In making my decision, I have also taken into consideration part 6 of the FOI Guidelines with respect to personal privacy and the application of the public interest factors to this conditional exemption. I confirm that I have not considered any factors deemed to be irrelevant to determining whether access would be in the public interest, as set down at section 11A(4) of the FOI Act.
30. In weighing up the public interest factors relevant to the operations of the Commission, I have determined that there is a strong public interest in preserving the integrity of the Commissioner's ability to undertake their statutory functions expediently. I have determined that on occasion it is necessary for the Commission to provide information to senior Commonwealth personnel, or statutory office holders on sensitive matters and to communicate privately in such circumstances.
31. In weighing up the public interest factors relevant to personal privacy, I have determined that disclosure of the personal information within the document would not facilitate any of the objects of the FOI Act, as disclosure of the names and contact information of the relevant agency employees would not promote agency transparency, inform debate or otherwise promote the objects of the FOI Act.
32. I have considered section 6.152-6.157 of the FOI Guidelines relating to agency employees. I have determined that the disclosure of the relevant personal information in this instance would be unreasonable, as disclosure would amount to an unreasonable invasion of the privacy of the individuals concerned, does not enhance the objects of the FOI Act and the persons named are not public-facing.
33. I have determined that such release would unduly expose junior agency employees to public scrutiny and that it is reasonably foreseeable that such release could lead to such individuals being reviewed, or targeted through online social media channels.
34. I have additionally considered whether it is necessary for the applicant to have access to the names and contact information of all agency employees named within the document. Where an individual has reason to contact the Commission, methods of contact are available by a number of means, including but not limited to switchboard services, group mailboxes and the publication of senior personnel names, titles and contact information on our website and the Australian Government Directory.

35. Further, in relation to both conditional exemptions I have considered that release under the FOI Act is without limitation on subsequent use of materials, and note that release in this instance will cause the immediate publication of the personal information on a publically-accessible website.
36. In weighing up the considerations mentioned above I have concluded that that the public interest in maintaining the personal privacy of certain individuals outweighs public interest factors in favor of release

## **Conclusion**

37. I have determined that a portion of document 4, namely the agency-specific remuneration report is exempt under section 47 of the FOI Act.
38. I have determined that a portion of document 17, namely the meeting papers attached to the correspondence between Mr Lloyd and other senior Commonwealth personnel and statutory office holders are conditionally exempt under section 47E(d) of the FOI Act, and that on balance, it would be contrary to the public interest to release the conditionally exempt material.
39. Further, I am satisfied that each of the documents contain personal information that is conditionally exempt under section 47F of the FOI Act, and that, on balance, it would be contrary to the public interest to release the conditionally exempt material.
40. It is therefore my decision that each of the documents be released to you in part. An edited version the document is therefore provided to you, pursuant to section 22 of the FOI Act. A PDF copy of the documents is enclosed with this correspondence.



## REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you.

### Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you a right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of this decision you must apply for the review, in writing, by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access.

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.

Applications for internal review can be lodged in one of the following ways:

**Email:** [foi@apsc.gov.au](mailto:foi@apsc.gov.au)

**Post:** The FOI Coordinator  
Australian Public Service Commission  
B Block, Treasury Building  
Parkes Place West  
PARKES ACT 2600

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commission for review of the internal review decision if required.

### Review by the Office of the Australian Information Commissioner

Section 54L of the FOI Act gives you a right to apply directly to the Australian Information Commissioner (the Information Commissioner) for review of certain decisions made under the FOI Act. If you wish to have the decision reviewed by the Information Commissioner you must apply for the review within 60 days of receiving this notice (decision).

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).

To assist the Information Commissioner, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision. You can also complain to the Information Commissioner about how an agency handled an FOI request, or about other actions the agency took under the FOI Act.

You can contact the Information Commissioner to request a review of a decision or lodge a complaint in one of the following ways:

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Post: GPO Box 2999  
CANBERRA ACT 2601

### **The Commonwealth Ombudsman**

You can complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. No particular form is required to make a complaint to the Ombudsman, but the request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the FOI request should be investigated. The Ombudsman may be contacted in one of the following ways:

Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Post: 1300 362 072 (local call charge)