



Australian Government
Australian Public Service Commission

D Watson
By email: foi+request-4880-a8fd2cee@righttoknow.org.au

Our reference: C19/559

Dear D Watson,

Freedom of Information request

1. I refer to your request dated 14 March 2019 seeking access to documents held by the Australian Public Service Commission (**the Commission**) under the *Freedom of Information Act 1982 (FOI Act)*.
2. You requested access to the following:

any documents held by the APSC, that relate to my FOI application [Our ref C18/1974], and that were provided to, or received from:

- *the Minister for the Public Service and/or his office;*
- *Senator Michaelia Cash and/or her office;*
- *the Australian Building and Construction Commission; and/or*
- *the Department of Employment.*

Scope of your request

3. In subsequent email correspondence you agreed to exclude documents already considered and released as part of your earlier FOI request C18/1974. You also agreed to:

redacting the personal info of third parties except where that personal info is of public servants and that personal info is included because of their usual duties/responsibilities (see [6.152] onwards of the FOI guidelines) or the personal info is simply the name of a Minister.

4. I confirm that I have interpreted the reference to the 'Department of Employment' as the 'Department of Jobs and Small Business' as it was known at all relevant times.
5. Please note that I have removed identical duplicate email documents from disclosure so you only receive material relevant to your request once. I have also redacted parts of the documents that are irrelevant to the scope of your request.

Consultation pursuant to section 27A of the FOI Act

6. Your request sought access to documents that contain the personal information of persons other than you. On 29 March 2019 the Commission notified you that consultation with relevant third parties would occur in accordance with section 27A of the FOI Act.

7. I confirm that the consultation process is now complete. In the making of my decision I have taken submissions made by all parties, including those provided by you in the making of your request into account while formulating my own view on disclosure.

My decision

8. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.
9. Having caused searches to be undertaken, I have determined that the Commission holds 28 pages of material within the scope of your request.
10. I have decided to grant access in part to all documents.
11. Under section 22 of the FOI Act, an edited version of the documents, with the exempt material deleted has been prepared in response to your request.

Section 47C – Conditional exemption about deliberative processes

12. Section 47C of the FOI Act conditionally exempts documents containing deliberative matter, relating to either an opinion, advice or recommendation that has been obtained, prepared or recorded, or a consultation or deliberation that has taken place in the course of, or for the purposes of, a deliberative process of the government, an agency, or minister.
13. The documents in scope contain deliberative processes for the following reasons:
 - a. The documents include submissions made by the Australian Building and Construction Commission (**ABCC**) to the Commission in relation to your FOI application C18/1974 as a result of consultation;
 - b. These submissions, by their nature, are a ‘deliberative matter’ – that is, they are matters which an FOI decision maker would take into account in making a decision on access under the FOI Act;
 - c. The submissions have been provided by the ABCC to the Commission confidentially and on the basis that its distribution would be limited.
14. Releasing this document is contrary to the public interest because:
 - a. There is a strong public interest in members of the public service being able to communicate frankly with each other, including in submissions regarding the disclosure of documents under the FOI Act.
15. I note that while I have relied on section 47C for redacting large parts of the documents falling within scope, these documents additionally contain personal information of departmental officers which is considered below. I am of the view that parts of the large parts of documents exempt under section 47C would also be exempt under section 47F.
16. I further note that some documents falling within scope also contain references to material in FOI decision C18/1974 that was exempted under that decision. That is, in making submissions about relevant exemptions, the ABCC has described in a level of detail, matters that have already been determined to be exempt under the first FOI decision.

Section 47F – Conditional exemption about personal privacy

17. Documents falling within scope contain personal information of departmental officers. While the personal information relates to public servants performing their official duties, I consider that disclosure of this information would be unreasonable because:
- a. The officers are not SES officers;
 - b. redaction of the officers' personal information would not detract from an understanding of the documents;
 - c. The officers are legal officers and disclosure of direct contact information of the officers would circumvent the relevant agency's established framework and protocols for communicating with the public, noting also that the relevant officers names and contact details are not publicly known;
 - d. The documents' release will be published on a website and disclosure of the officers' name and contact information may expose the officers to potential unwarranted contact and scrutiny by the public, which would impact the officers' ability to discharge their proper functions and duties.
18. Releasing the personal information of the officers is contrary to the public interest because:
- a. it would not shed any light on the workings of government;
 - b. it would not detract from an understanding of the documents;
 - c. it would not encourage public debate or promote oversight of the relevant agencies;
 - d. it could expose the relevant officers' to public scrutiny, cause personal and professional detriment and harm and amount to an unreasonable invasion of privacy;
 - e. it serves no public purpose.
19. In considering this exemption I have taken into account the decision of the Information Commission of 1 December 2017 (*CFMEU and ABCC (Freedom of Information)* [2017], AICmr 125) upholding a decision of the ABCC not to disclose the names and details of ABCC staff members due to unwanted attention and threats to those individuals that could result from disclosure.

Review rights

20. If you are dissatisfied with this decision, you are entitled to seek a review. Your rights are set out at **Attachment A** to this letter.

Publication

21. The Commission must publish information relating to material that has been released in response to each FOI access request. This publication is known as a 'disclosure log'.
22. The disclosure log requirement does not apply to personal information about any person if it would be unreasonable to publish the information or to information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable.
23. The Commission is not required to consult you on any decision to publish information that is released to you and the decision to publish information is not subject to review internally by the Commission

or externally by the Australian Information Commissioner. Any person can however, make a complaint to the Australian Information Commissioner about how an agency handles an FOI request

Contacts

24. If you require clarification of any of the matters discussed in this decision please contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S Grady', written over a horizontal line.

Sayuri Grady
General Counsel
7 May 2019

Enclosures

Attachment A – Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of an FOI decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission, and/or
2. a external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Coordinator
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au