

Michael
By email: foi+request-5307-35dd7077@righttoknow.org.au
Our Reference :2019/02

Dear Michael

Freedom of Information (FOI) Request no: Ref 2019/02

Thank you for your email of 14 May 2019 requesting an internal review of the Workplace Gender Equality Agency's decision to refuse access to documents you requested under the Freedom of Information Act 1982 (FOI Act).

Response to your request

I, Libby (Elizabeth) Lyons, Director, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to documents relating to the decision to grant the Australian Football League (AFL) status of 2018-19 WGEA Employer of Choice for Gender Equality (EOCGE) citation on 13 March 2019.

Specifically you sought access to:

All documents relating to the decision to grant the Australian Football League (AFL) status of 2018-19 WGEA Employer of Choice for Gender Equality (EOCGE) citation holder.

This should include the application for Employer of Choice for Gender Equality status and any documentation (including emails) relating to the decision making and approval process.

You were advised on 3 May 2019 of the decision to refuse access to the documents you requested. You asked for internal review of that decision on 14 May 2019.

Specifically you have revised your request for documents as following:

I understand the confidentiality provisions between the applicant and the agency when submitting an EOCGE application and will not be asking for a review on the decision not to release any documents submitting by the AFL as part of their application.

I am however requesting a review on the decision not to release any internal correspondence or deliberations within the WGEA in assessing and deciding on the application of the AFL. I believe that internal correspondence and agency decision making is separate to the application from the AFL and does not come until the confidentiality provided by the application process.

In reviewing our earlier decision and considering your revised request, I identified documents which fell within the scope of your request. I did this by searching the Agency's electronic records of its internal interactions in relation to an application for an EOCGE citation by the Australian Football League.

Applicants for WGEA's EOCGE citation either meet the criteria or do not. In assessing applications the Agency may go back to the applicant to seek clarification on information

provided or clarification on any publically available information that may be relevant to the EOCGE criteria.

I am now able to notify you that three documents exist within the scope of this revised request. I have decided to grant access in part to all three documents. I have provided the documents relevant to your FOI request at Attachment B.

Decision and Reasons for Decision

I have taken the following into account in making my decision:

- your email of 14 May 2019;
- the content of the documents that fall within the scope of your revised request;
- the relevant provisions of the FOI Act
- the WGEA 2018-19 EOCGE Guide to Citation
- the views of a third party consulted by the WGEA under section 26A of the FOI Act
- the FOI Guidelines by the Office of the Australian Information Commissioner (OAIC Guidelines)

I have decided that one document contains information that is exempt from disclosure under s45(1) of the FOI Act. The section prescribes that:

Section 45 (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

The 2018-19 EOGGE Guide to Citation expressly states that EOGGE applications are confidential. One of the documents identified within the scope of this revised request include details of the AFL EOCGE application. On that basis, I am satisfied that disclosure of this content would be found to be a breach of confidence. I have therefore removed the exempt content from the document provided at Attachment B.

Additionally section 47G of the FOI Act provides that an agency may refuse a request for access to a document if disclosure of the information could reasonably be expected to prejudice the future supply of information for the purposes of the administration of matters administered by an agency.

All three documents contain information that is irrelevant and out of scope of your request and as provided under s22 of the FOI Act I have therefore decided it would be unreasonable to disclose and have removed this content from the documents provided at Attachment B.

Please be aware that WGEA has reviewed the EOCGE citation process and new criteria comes into effect this year. From this year, all applicants will be required to provide their application, minus remuneration data, to all employees.

The relevant provisions applicable to your FOI request can be found in **Attachment A**.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. 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: <https://forms.business.gov.au/aba/oaic/foi-review-/>
email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 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/freedom-of-information/foi-reviews.

If you wish to discuss this decision, or have any questions with reference to this decision please contact the Agency by email at foi@wgea.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ML' with a stylized flourish.

Libby Lyons
Director
18 June 2019

The following provisions of the FOI Act is relevant to this matter:

45 Documents containing material obtained in confidence

(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

47G Public interest conditional exemptions—business

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

(a) the Commonwealth or a State; or

(b) an authority of the Commonwealth or of a State; or

(c) a Norfolk Island authority; or

(d) a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

From: DELMAS, Lesley
Sent: Wednesday, 20 February 2019 1:32 PM
To: BERRIGAN, Monica [REDACTED] s22(1)(a)(iii)
Cc: BURTON, Julie [REDACTED] s22(1)(a)(ii)

Subject: Australian Football League 2018-19 EOC [SEC=UNCLASSIFIED]

Hi Mon

Australia Football League completed an EOC application apparently last September for the 2018-19 submission. The system from their side and our side shows that the application hasn't been started.

I've checked the EOGE instance and there's no record of the application being started. I logged into the portal from the back end and it shows they haven't started. I got her to send me a screen shot from her side as well because she'd gone a step further and again it showed as not started.

However, if you click on the link to 'Download draft application' link, you can download a completed application. I got [REDACTED] s22(1)(a)(ii) to send me a copy of what she downloaded and I also tested this from our side and was able to download a completed application. See attached.

Julie's checking the EOGE tracking reports to see if they came up on those as having started but not submitted.

Kind regards

Lesley Delmas
Senior Adviser
(Mon-Fri, 8.00am-4.00pm)

Workplace Gender Equality Agency
Level 7, 309 Kent Street, Sydney, NSW, 2000
T [REDACTED] s22(1)(a)(ii)
www.wgea.gov.au



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I support flexible work arrangements and do not expect you to reply outside your usual hours.

From: DELMAS, Lesley
Sent: Thursday, 21 February 2019 12:55 PM
To: BERRIGAN, Monica [REDACTED] s22(1)(a)(ii)
Cc: PATERSON, Vanessa [REDACTED] s22(1)(a)(ii)
Subject: How to process AFL's EOCGE application [SEC=UNCLASSIFIED]

Hi Mon

I am putting the AFL's EOCGE assessment in a case as we do with all applicants. Will be able to process the EOCGE instance to reflect that the application was submitted and granted at some point? If not would we have you have an alternative system process for this?

Kind regards

Lesley Delmas
Senior Adviser
(Mon-Fri, 8.00am-4.00pm)

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From: DELMAS, Lesley
Sent: Friday, 22 February 2019 8:56 AM
To: PATERSON, Vanessa <[REDACTED]> S22(1)(a)(ii); LYONS, Libby <[REDACTED]> S22(1)(a)(ii)
Cc: LEE, Kate <[REDACTED]> S22(1)(a)(ii)
Subject: Where we're at with outstanding information for AFL [SEC=UNCLASSIFIED]

Hi Libby and Vanessa

I received the payment form this morning but I'm still waiting on:

[REDACTED] The advice from the report contact that the CEO has sent a communication to all employees to cover Q 4.1 (gender equality strategy), Q 4.2 (committed to achieving gender equality in the workplace) and Q 4.4 (commitment to gender pay equity in the workplace). [REDACTED]

[REDACTED] s45; s47.

- The CEO's signed copy of the EOCGE application.

I will contact [REDACTED] S22(1)(a)(ii) now to see where they are at with these.

Kind regards

Lesley Delmas
Senior Adviser
(Mon-Fri, 8.00am-4.00pm)

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From: PATERSON, Vanessa <[REDACTED]> S22(1)(a)(ii)
Sent: Thursday, 21 February 2019 4:46 PM
To: LYONS, Libby <[REDACTED]> S22(1)(a)(ii); DELMAS, Lesley <[REDACTED]> S22(1)(a)(ii)
Cc: EADE, Elizabeth <[REDACTED]> S22(1)(a)(ii)
Subject: RE: Updated executive summary [SEC=UNCLASSIFIED]

Definitely. Shall we catch up at 9 in the morning to go through the specific issues we want him to address (in addition to the questions)? That way we won't overlook anything.

Cheers.
Vanessa.

Vanessa Paterson

Advice and Reporting Executive Manager

Workplace Gender Equality Agency
Level 7, 309 Kent Street, Sydney, NSW, 2000

T [REDACTED] S22(1)(a)(ii)
www.wgea.gov.au



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From: LYONS,Libby [REDACTED] > S22(1)(a)(ii)
Sent: Thursday, 21 February 2019 4:30 PM
To: DELMAS,Lesley [REDACTED] > S22(1)(a)(ii); PATERSON,Vanessa
<[REDACTED]> S22(1)(a)(ii)
Cc: EADE,Elizabeth [REDACTED] > S22(1)(a)(ii)
Subject: RE: Updated executive summary [SEC=UNCLASSIFIED]

Hi there

Can we refer to this in the interview tomorrow?

LL

December 12, 2017

[Legal](#) / [Sport](#) /

An AFL staff member has been forced to leave the code's head office following a string of sexual harassment complaints.

The unnamed male employee was accused of making inappropriate comments towards his female colleagues.

As reported by Melbourne newspaper *The Herald Sun*, the male employee was accused of making inappropriate comments towards his female colleagues.

An initial complaint was made by one woman before others came forward to share similar incidents, prompting the male employee to hand in his resignation last week.

The latest resignation caps off a challenging year for AFL Chief Executive Gillon McLachlan, following the resignation of senior executive Simon Lethlean and Richard Simkiss in July over separate inappropriate sexual relationships with junior female AFL staff members.

Ali Fahour, the AFL's former diversity manager, quit the same month after he was suspended for 14 weeks for a striking incident during a Northern Football League match that resulted in criminal charges.

Tanya Hosch, AFL General Manager of Inclusion and Social Policy, told *The Herald Sun* in response to questions about the latest incident that the sport "continues to strive for the highest standards at all times."

"Our organisation's responsibility is to provide an environment that is inclusive and free from any form of discrimination.

"We know that people reporting inappropriate behaviour with confidence that they will be taken seriously and responded to fairly and thoroughly is crucial to us meeting these standards."

Kate Jenkins, Sex Discrimination Commissioner at the Australian Human Rights Commission, was making a speech at the Safer Workplaces Strategies Forum for NSW Women in Film and TV today.

Jenkins, who is also a Carlton FC board member, said in the public speech that more needed to be done to prevent sexual harassment in the workplace.

Jenkins stated "there needs to be an organisational culture within the workplace of zero tolerance for sexual harassment.

"This must be promoted at all levels of leadership.

"In my experience, it is rarely 'one bad apple' within a workplace causing these issues - it is a broader, systemic tolerance of sexual harassment."

Libby Lyons

Director

Workplace Gender Equality Agency

Level 7, 309 Kent Street, Sydney, NSW, 2000

T

 S22(1)(a)(ii)

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From: DELMAS, Lesley <[REDACTED] S22(1)(a)(ii)>
Sent: Thursday, 21 February 2019 3:54 PM
To: LYONS, Libby <[REDACTED] S22(1)(a)(ii)>; PATERSON, Vanessa
<[REDACTED] S22(1)(a)(ii)>
Cc: EADE, Elizabeth <[REDACTED] S22(1)(a)(ii)>
Subject: Updated executive summary [SEC=UNCLASSIFIED]

Hi Libby and Vanessa

I have updated the attached executive summary and here is a link to the article on SBH issue at the Fremantle Football Club and the unfortunate remark that Gillon McLachlan allegedly made in relation to hush money and settlements.

<https://www.foxsports.com.au/afl/ross-lyon-sexual-harassment-video-emerges/news-story/885d55a2f22e964f4889c6e00125bc89>

I've also added to the summary the report contact's response to this article clarifying that the AFL commission does not have jurisdiction over the football clubs and were not privy to the complaint or settlement.

Kind regards

Lesley Delmas
Senior Adviser
(Mon-Fri, 8.00am-4.00pm)

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