



Our ref: FOI22/019-IR; CM22/4494

2 May 2022

By email: foi+request-8377-e93f6b18@righttoknow.org.au

Dear Stoyan

Freedom of Information Request FOI22/019 – Internal Review decision

The purpose of this letter is to advise you of my decision following your request under the *Freedom of Information Act 1982* (FOI Act) for internal review of the Attorney-General's Department's (the department's) decision of 8 March 2022.

Your request

On 6 February 2022, you requested access to:

- a) the APS role evaluation summary record (i.e. the completed record of the template set out on pages 3 – 5 of the "Australian Public Service Role evaluation tool" – see <https://www.apsc.gov.au/working-aps/aps-employees-and-managers/classifications/aps-role-evaluation-guidance-and-tool>) for the EL1 position that the AGD employee making \$145,000 was engaged to fill; and
- b) the APS role evaluation summary record (i.e. the completed record of the template set out on pages 3 – 5 of the "Australian Public Service Role evaluation tool" – see <https://www.apsc.gov.au/working-aps/aps-employees-and-managers/classifications/aps-role-evaluation-guidance-and-tool>) for the EL2 position that the AGD employee making \$203,408 was engaged to fill; and
- c) other pertinent documents, such as position descriptions, setting out the scope of the EL1 and EL2 roles for which the relevant AGD employees are paid \$145,000 and \$203,408 respectively; and
- d) vacancy notices published in the *Public Service Gazette* for the EL1 and EL2 positions for which the relevant AGD employees are paid \$145,000 and \$203,408 respectively; and
- e) if, and only if, the role evaluation summary records referred to in a) and b) have not been maintained, any and all documents setting out the research (e.g. interviews with other staff, analysis of similar roles in other agencies, analysis of going market rates in relation to the work to be performed etc.) undertaken by appropriate staff members in the AGD to determine the proper scope of the relevant EL1 and EL2 positions; and
- f) a written record of any individual flexibility arrangement entered into between the EL1 non-AGS AGD employee and the Secretary of the AGD (or an approved delegate); and
- g) a written record of any individual flexibility arrangement entered into between the EL2 non-AGS AGD employee and the Secretary of the AGD (or an approved delegate); and h) in respect of f) and g) above, any documents recording how the arrangements meet the genuine needs of the AGD and the relevant employees in relation to i) arrangements about when the work is performed, ii) overtime rates, iii) penalty rates, iv) allowances, v) employer superannuation contributions, vi) remuneration and/or vii) leave entitlements.

In relation to f) and g), you are welcome to redact the names, residential addresses, and email addresses of the relevant employees. Otherwise, I do not, at least pre-emptively, agree to redactions other than what is permitted by, and necessary according to, the law.

On 10 February 2022, the department acknowledged your request.

On 21 February 2022, the department wrote to you to clarify the scope of your request due to the potential number of documents falling with parts (f) and (g) of your request. In relation to parts (a), (b), (c) and (d) of your request which relate to the salaries of \$145,000 and \$203,408, the department sought your agreement to confine parts (e), (f) and (g) of your request to the same salaries, or a specific date range.

On 22 February 2022, you provided the following response:

I confirm that my intention was that the scope of the request for parts (e), (f) and (g) are limited to the \$145,000 EL1 position and the \$203,408 EL2 position.

On 8 March 2022, the department made a decision in response to your request. The department decided to refuse access in full to three documents on the basis that the material they contain is exempt pursuant to sections 47E(c) and 47F.

The department advised you under 'Additional Information' of the decision letter that Parts (a), (b) and (c) of your request, seeking the APS role evaluation summary records and other pertinent documents do not exist within the department's record holdings. The department also noted that Part (d) the Executive Level 1 and Executive Level 2 positions were not advertised and therefore no vacancy notices were published in the Public Service Gazette.

On 2 April 2022, you requested internal review of that decision. In particular, you stated:

I am writing to request an internal review of Attorney-General's Department's handling of my FOI request 'Documents relating to certain positions in AGD'.

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.righttoknow.org.au/request/documents_relating_to_certain_po

A decision in relation to your internal review request is due on 2 May 2022.

My decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests made to the department.

In making my decision, I have taken the following material into account:

- the terms of your request
- the content of the documents identified as within scope of your request
- the provisions of the FOI Act
- the department's decision under the FOI Act
- the terms of your internal review request, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

I have decided to affirm the original decision.

Additional information

Departmental staff conducted a detailed search of the department's record-keeping systems. Electronic files were interrogated via the use of particular search terms developed with reference to the scope of your request.

While you were refused access in full to three documents identified within scope of your request, I note that the department, in order to assist you with your request, took significant steps to address your request scope by providing you with detailed background and information regarding the EL1 and EL2 employee classifications (Attachment D: Additional Information), in lieu of access to the documents exempt in full under 47E(c) and 47F(1) of the FOI Act.

I am of the view the documents within scope contain material regarding the operations of the department, specifically the personal information of employees, which is not available in the public domain. I consider there to be significant harm in releasing these documents, and would adversely affect the personal privacy of the employees involved and the ongoing operations of the department.

In reviewing Attachment D 'Additional Information', I note there was a drafting error at Page 3, with the inclusion of the wording: '*A copy of the IFA has been provided*'. This may have given you cause to believe documents were released in response to your FOI request. After making further enquiries, I confirm this wording was a mistake and should not have been included in the decision package. I affirm the original decision to refuse access in full to the documents listed at Attachment B 'Schedule of documents' of the original decision package.

I am satisfied the information you were provided in the department's original decision accords with the provisions of the FOI Act.

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Mila, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Cameron Gifford
Chief Operating Officer
Enabling Services Group

Attachments

Attachment A: Review rights – Information Commissioner Review



Australian Government
Attorney-General's Department

Attachment A - FOI Review rights

If you are dissatisfied with the decision of the department, you may apply for Information Commissioner review of the decision.

Information Commissioner review

Under section 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 the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>