



Australian Government

Australian Public Service Commission

L Marsten

By email: foi+request-8541-cd9edf95@righttoknow.org.au

Our reference: SHC22-4369

Dear L Marsten

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on 2 March 2022 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents in the following terms:

“Please provide any documents (including any record management protocols) that set out how records, including records of consultations of new or revised broadbanding proposals submitted to the APSC by other agencies, are to be maintained by staff members of the APSC.

I would also like to know how consultations between agencies and the APSC about new or revised broadbanding proposals are supposed to take place (e.g. in writing, orally, a combination of of the two etc). Please also provide any documents that set out the processes by which consultations between agencies and the APSC about new or revised broadbanding proposals are to take place.”

4. I have attached a schedule at **Attachment A** to this letter setting out the documents identified relevant to your request.

Decision

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I have decided to grant you access in part to the documents identified at **Attachment A**.
7. If a broadbanding proposal is received, the Commission’s general records management policies and procedures apply.

8. I have not identified any other documents that set out:
- how consultations for new or revised broadbanding proposals submitted to the Commission by other agencies are to be maintained by staff; or
 - processes by which consultations between agencies and the Commission about new or revised broadbanding proposals are to take place.
9. I note that the Commission is working to update the guidance on its website which states the following:
- “An agency with new or revised broadbanding proposals are required under the bargaining framework for APS enterprise agreements to consult with the Australian Public Service Commission (the Commission) to ensure that the proposals:*
- *meet the APS Values and Employment Principles - relating to merit, community access to employment opportunities and leadership*
 - *meet the APS legislative requirements - such as the Classification Rules*
 - *are consistent with the bargaining framework for APS enterprise agreements. This includes that salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance.”*
10. The current bargaining policy does not have an explicit requirement for agencies to consult with the Commission on any new or revised broadbanding proposals.
11. In practice, agencies consult with the Commission on any new or revised broadbanding proposals which will be incorporated into a collective workplace arrangement (i.e. an enterprise agreement, common law arrangement or a determination made under relevant legislation). However, outside of this process, there is no requirement for agencies to consult with the Commission on new or revised broadbanding proposals.

Deletion of exempt matter or irrelevant material

12. Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of a request.
13. A copy of the documents have been edited to remove material that is either exempt or irrelevant material to the scope of your request.
14. The schedule at **Attachment A** sets out the grounds on which information has been redacted from the documents.
15. My reasons are set out in **Attachment B**.

Contacts

16. If you require clarification on matters in this letter please contact the Commission’s FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au.

Review rights

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

Yours sincerely

A handwritten signature in black ink, appearing to be the name 'Giordina'.

Giordina Strangio

Authorised FOI decision maker

25 March 2022

SCHEDULE OF DOCUMENTS

Document	Description	Basis of redactions
1	Commission Information and Records Management Intranet Page	Sections 22 and 47F of the FOI Act apply
2	Commission Information and Records Management Policy (Draft) (Current)	Sections 22 and 47F of the FOI Act apply
3	Commission Information Records Management Procedure (Draft) (Current)	Sections 22 and 47F of the FOI Act apply
4	Commission Recordkeeping Business Rules (Draft) (Current)	Sections 22 and 47F of the FOI Act apply
5	APSC National Archives of Australia Records Authority	Not applicable

Reasons for decision

1. I have decided to refuse access to parts of the documents because I have determined it is exempt from the operation of the FOI Act or irrelevant material to the scope of your request.
2. In making my decision I have had regard to:
 - the terms of your request;
 - the content of the document;
 - the relevant provisions of the FOI Act; and
 - FOI guidelines issued by the Australian Information Commissioner and published on the Office of the Australian Information Commissioner (the OAIC) website.

Section 47F – personal information

3. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
4. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether:
 - the information or opinion is true or not; and
 - the information or opinion is recorded in a material form or not.
5. I consider the documents contain personal information of public servants.
6. I have had regard to the matters I must consider under subsection 47F(2) of the FOI Act in determining whether the disclosure of the document would involve the unreasonable disclosure of personal information.
7. Relevant to personal information of public servants, under the FOI Act there is no presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and the objects of the FOI Act: *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 at [83].
8. With the substantial increase in electronic requests and related correspondence, a rise in anonymous applications as well as requests affecting the safety and wellbeing of employees, the Commission now assess whether a disclosure of public servants' personal information in requests is unreasonable under section 47F of the FOI Act.
9. I have identified the following factors that, in my view, do not support release of certain public servants' personal information under section 47F of the FOI Act:
 - the individuals' personal information, in particular their names, will or may identify them;
 - the names and contact details are generally not well known or publicly available;
 - the disclosure of this information will not advance scrutiny of any decisions falling within the scope of your FOI request, particularly with regard to staff who are not

- relevant decision-makers and non-SES staff members who are acting under the direction of senior staff within relevant agencies in the course of their ordinary duties;
- the release of some of the individuals' personal information may cause stress for them or other detriment; and
 - no public purpose or interest in increasing transparency of government would be achieved through the release of the information.

10. Considering the above factors, I have decided that to the extent Documents 1, 2, 3 and 4 include personal information about non-SES staff members, those parts of the documents are conditionally exempt from disclosure under section 47F of the FOI Act.

Section 11A – public interest test

11. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.

12. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the document would promote the objects of the FOI Act.

13. I have identified the following factors as weighing against disclosure:

- disclosure of certain personal information (including contact details) will not advance any scrutiny of any decisions falling within the scope of your FOI request;
- disclosure of personal information could reasonably be expected to prejudice the protection of the individuals' right to privacy;
- there is a public interest in APS employers fulfilling their obligations under the *Work Health and Safety Act 2011*, in particular by preventing the exposure of staff members from potential harassment or threats in a public forum; and
- disclosure may undermine the Commission's relationship with agencies and third party individuals, and would do little to enhance scrutiny of government decisions.

14. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.

15. On balance, I find disclosure of some parts of the requested documents would be contrary to the public interest. To the extent that the material contained in the documents is conditionally exempt under 47F of the FOI Act, those parts are exempt from disclosure. Edited versions of the documents are therefore provide pursuant to section 22 of the FOI Act.

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 a Freedom of Information (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* (the FOI Act) may give 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. 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 Officer
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 (the 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