



Australian Government
Australian Public Service Commission

L Marsten

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

Our reference: SHC22-27311

Dear L Marsten

Freedom of Information request

1. I am writing about your 24 April 2022 internal review request made under the *Freedom of Information Act 1982* (FOI Act), of a decision issued 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.

Background

3. On 2 March 2022 you requested access to the following documents under the FOI Act:

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 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. On 25 March 2022 Ms Giorgina Strangio, Assistant Commissioner, Integrity, Performance & Employment Policy Group responded to your request. Ms Strangio identified five (5) documents that fell within scope of your request.
5. Ms Strangio granted you access in part to these documents. Ms Strangio’s decision was based on a consideration of the conditional exemptions outlined in section 47F of the FOI Act and the public interest factors outlined in section 11B of the FOI Act.

Decision on your request for internal review

6. I am authorised under subsection 23(1) of the FOI Act to make FOI internal review decisions.

7. My role is to make a new decision on your request for internal review independently and impartially from the original decision maker. I was not involved or consulted in the making of Ms Strangio's decision. Internal review is a merit review process and I may exercise all the powers available to the original decision maker.
8. After considering your request, I have decided to affirm Ms Strangio's decision.

Reasons for decision

9. In making my decision on your internal review, I have had regard to:
 - a) the terms of your request
 - b) the content of the document you requested
 - c) relevant provisions of the FOI Act
 - d) The FOI guidelines on the Office of the Australian Information Commissioner (OAIC) website
10. I am satisfied that your request was valid under subsection 15(2) of the FOI Act and the scope of your request was sufficiently defined so that the Commission could locate the document that you were seeking access to.

Searches

11. I am satisfied that the searches undertaken were sufficient. No documents were identified setting 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.

Section 47F of the FOI Act – Personal privacy

12. A document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (section 47F).
13. In reviewing your request, I am satisfied that the documents contains personal information about public servants.
14. The AAT case of *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 at [83] notes that 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.
15. With the significant 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.

16. I have had regard to the matters in subsection 47F(2) of the FOI Act and consider that the release of personal information of public servants would be unreasonable because:

- the names are generally not well known or publicly available;
- the personal information will readily identify the individuals;
- release of the personal information of some individuals may cause stress or be detrimental to those individuals; and
- the disclosure of this information will not advance scrutiny of any decisions falling within the scope of your request, particularly with regard to staff who are not relevant decision makers and non-SES staff members who are acting under the direction of more senior officials in the course of their ordinary duties.

17. I have decided that to the extent the documents include personal information of non-SES staff, those parts of the documents are conditionally exempt from disclosure under section 47F of the FOI Act.

Section 11A & B of the FOI Act – Public Interest test

18. An agency must give access to a document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest (Subsection 11A(5) of the FOI Act).

19. I have considered the public interest factors set out in section 11B of the FOI Act.

20. I consider the following factors favouring disclosure, as set out in in subsection 11B(3) of the FOI Act, are relevant:

- access would promote the objects of the FOI Act; and
- access would inform debate on a matter of public importance.

21. However, I consider the following factors do not favour disclosure:

- access could reasonably prejudice the privacy of the individuals;
- disclosure may undermine the Commission's relationship with agencies and third party individuals, and would do little to enhance scrutiny of government decisions;
- there is a public interest in APS employers satisfying their obligations under the *Work Health and Safety Act 2011* by preventing APS staff members from exposure to potential harassment or threats in a public forum; and
- release of the information does not advance scrutiny of any decisions falling within the scope of your request.

22. I have not had regard to any irrelevant factors as set out in subsection 11B(4) of the FOI Act.

23. In this instance, I consider that the public interest factors against disclosure of the conditionally exempt material in the documents outweigh the public interest factors favouring providing access.
24. I therefore find that certain material in the documents are subject to conditional exemptions under section 47F of the FOI Act and that disclosure is not in the public interest.
25. Based on the reasoning above, I am satisfied that the Commission has taken appropriate steps in processing your request under the FOI Act and reasonably applied exemptions to redact certain parts of the documents prior to release.
26. On this basis, affirm the original decision made by Ms Strangio on 25 March 2022 to provide access in part to four (4) documents and one (1) document in full.

Contacts

27. 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

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

Yours sincerely



Marco Spaccavento

Authorised FOI decision maker

17 May 2022

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.

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