



**Australian Government**  
**Australian Public Service Commission**

Someone

By email: [foi+request-8836-d60f135c@righttoknow.org.au](mailto:foi+request-8836-d60f135c@righttoknow.org.au)

Our reference: LEX 86

Dear Someone

**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 1 May 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](http://www.legislation.gov.au)

**Documents relevant to your request**

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

“ ...

*I refer to the Commonwealth Ombudsman’s investigation report ... which was, in October 2020, provided to the Australian Public Service Commissioner... Peter Woolcott. That report states, pursuant to s.51(2)(d) of the Public Interest Disclosure Act 2013:*

*“That the Commonwealth Ombudsman recommends to the [APSC] that it: (i) reviews any internal guidance materials for [APSC] staff relating to dissemination limiting markers; and (ii) provides further training to its Legal Services area with respect to their correct usage. “*

*Under the FOI Act, I seek a copy of any document(s) that demonstrates the the APSC gave effect to those two statutory recommendations made by the Commonwealth Ombudsman in accordance with s.51(2)(d) of the Public Interest Disclosure Act 2013.*

...”

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

5. Documents 1-4 relate to Part 1 of your request. Documents 1 and 2 show the Commission encouraging its staff to undertake additional security awareness training. Documents 3 and 4 show the Commission staff positively engaging with undertaking this additional security awareness training.
6. Documents 5-8 relate to Part 2 of your request. Document 5 was extracted from the Commission's training database and contains material relating to Legal Services staff attending the Commission's Security Awareness Training, which covers dissemination limiting markers. Documents 6-8 contain material which shows Legal Services staff being asked to undertake additional security awareness training and attend security awareness training sessions.

### **Decision**

7. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
8. I have decided to grant you access to the documents in part because I consider parts of the documents are exempt.
9. **Attachment A** sets out the grounds on which the documents are exempt.
10. My reasons are set out in **Attachment B**.

### **Deletion of exempt matter or irrelevant material**

11. 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.

### **Contacts**

12. 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](mailto:foi@apsc.gov.au).

### **Review rights**

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

Yours sincerely



Giordina Strangio

Authorised FOI decision maker

31 May 2022

## SCHEDULE OF DOCUMENTS

Document	Description	Exemption
<b>Part A of your request</b>		
1	Corporate update for October 2021 encouraging staff to take additional security awareness training	Sections 22 and 47F (personal privacy) of the FOI Act apply.
2	Corporate update for November 2021 encouraging staff to take additional security awareness training	Sections 22 and 47F (personal privacy) of the FOI Act apply.
3	Executive update	Sections 22 and 47F (personal privacy) of the FOI Act apply.
4	Attachment to executive update	Section 22 of the FOI Act apply
<b>Part B of your request</b>		
5	Extract from the Commission's training database showing legal staff who attended the updated Security Awareness Training Session.	Sections 22 and 47F (personal privacy) of the FOI Act apply.
6	Email to Legal Services staff regarding additional security awareness training	Sections 22 and 47F (personal privacy) of the FOI Act apply.
7	Email to Legal Services staff regarding additional security awareness training	Sections 22 and 47F (personal privacy) of the FOI Act apply.
8	Email to Legal Services area staff regarding security awareness training	Sections 22 and 47F (personal privacy) of the FOI Act apply.

## Reasons for decision

1. I have decided to refuse access to some material in the documents because I have determined those parts are exempt.
2. In making my decision I considered:
  - the terms of your request;
  - the contents of the documents;
  - the FOI Act; and
  - the FOI Guidelines issued by the Australian Information Commissioner.

### 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. Other than document 4, the documents contain the names, positions, email addresses and phone numbers 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 documents 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 assesses 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 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. I have therefore decided to the extent that the documents include personal information, those parts are conditionally exempt from disclosure under section 47F of the FOI Act because disclosure would involve the unreasonable disclosure of personal information.

### **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 email addresses) will not advance any scrutiny of any decisions falling within the scope of your FOI request;
- disclosure of the 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) you may be able 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](mailto: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](http://www.oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Email: [enquiries@oaic.gov.au](mailto: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](http://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](http://www.ombudsman.gov.au)