



Australian Government
Australian Public Service Commission

Raphael

By email: foi+request-8839-5405b9b1@righttoknow.org.au

Our reference: <SHC22-28430> <LEX 148>

Dear Raphael

Freedom of Information request

1. I am writing about your 23 May 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 1 May 2022 you requested access to the following documents under the FOI Act:

“Part A

Under the FOI Act, I request the following documents:

- a) the position description for the Assistant Commissioner Integrity, Performance and Employment Policy role in the Australian Public Service Commission that Giorgina Strangio applied for and came to fill;*
- b) the classification evaluation for the Assistant Commissioner Integrity, Performance and Employment Policy role in the Australian Public Service Commission that Giorgina Strangio applied for and came to fill;*
- c) the vacancy notification published in the Public Service Gazette or elsewhere for the Assistant Commissioner Integrity, Performance and Employment Policy role in the Australian Public Service Commission that Giorgina Strangio applied for and came to fill;*

d) the position description for the First Assistant Commissioner role in the Australian Public Service Commission that Patrick Hetherington applied for and came to fill;

e) the classification evaluation for the First Assistant Commissioner role in the Australian Public Service Commission that Patrick Hetherington applied for and came to fill; and

f) the vacancy notification published in the Public Service Gazette or elsewhere for the First Assistant Commissioner role in the Australian Public Service Commission that Patrick Hetherington applied for and came to fill.

Part B

To the extent that officials other than the Assistant Commissioner Integrity, Performance and Employment Policy or the First Assistant Commissioner have a role in considering:

i. repeated or systematic contraventions of public service employment policies by APS officials in Commonwealth agencies or Departments; or ii. repeated or systematic contraventions of the Public Service Classification Rules 2000 by APS officials in Commonwealth agencies or Departments; or iii. repeated or systematic attempts to undermine caps placed on the number of SES employees Commonwealth agencies or Departments may have; or iv. repeated or systematic failures by APS officials to maintain records of classification evaluation processes for roles in Commonwealth agencies or Departments,

under the FOI Act, I request the following documents:

a) the position description for the officer/s responsible for considering (i)-(iv) in the Australian Public Service Commission;

b) the classification evaluation for the officer/s responsible for considering (i)-(iv) in the Australian Public Service Commission; and

c) the vacancy notification published in the Public Service Gazette or elsewhere for the officer/s responsible for considering (i)-(iv) in the Australian Public Service Commission.”

4. On 23 May 2022, the Commission sent you an email containing a decision notice from Ms Vidya Vasudevan, Authorised FOI Decision Maker dated 23 May 2022 responding to your request. Ms Vasudevan was unable to identify any documents within the scope of your request.
5. Ms Vasudevan refused your request for access to documents under section 24A 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 Vasudevan'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 Vasudevan'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 and your submissions
 - b) the content of the documents you requested
 - c) relevant provisions of the FOI Act; and
 - 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 attempt to locate the documents that you were seeking access to.

Section 24A - Requests may be refused if documents cannot be found, do not exist or have not been received

11. Section 24A(1) states that the Commission may refuse a request for access to documents if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the Commission is satisfied that the documents:
 - i. are in the Commission's possession but cannot be found; or
 - ii. do not exist.

Part A

12. Your initial request included the position descriptions, classification evaluations and vacancy notifications for the Assistant Commissioner Integrity, Performance and Employment Policy role occupied by Giorgina Strangio as well as the First Assistant Commissioner role occupied by Patrick Hetherington.
13. These documents do not exist as both positions were filled internally via permanent transfer. As such, position descriptions, classification evaluations and vacancy notifications for both roles were not generated.
14. I have had regard to your submission about section 24 of the *Archives Act 1983*. I am satisfied these documents cannot have been destroyed, disposed or transferred from the custody of the Commonwealth because they did not ever exist.

Part B

15. Your initial request also included the position descriptions, classification evaluations and vacancy notifications for the officers responsible for considering the following: repeated or systematic contraventions of public service employment policies as well as *Public Service Classification Rules 2000* by APS officials in Commonwealth agencies or Departments; repeated or systematic attempts to undermine caps placed on the number of SES employees Commonwealth agencies or Departments may have; and repeated or systematic failures by APS officials to maintain records of classification evaluation processes for roles in Commonwealth agencies or Department.
16. The Commission is responsible for setting the policy framework for the Australian Public Service (APS). It is up to each APS agency to ensure that it complies with the APS framework. If the Commission receives a complaint about an agency, the Commission will generally refer that complaint to the relevant agency for investigation. There are no direct positions within the Commission to whom complaints can be made. As such, there are no explicit position descriptions, classification evaluations or vacancy notifications for officers responsible for considering the matters outlined above.
17. 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 exempt the documents in full.
18. On this basis, affirm the original decision to exempt the documents in full.

Contacts

19. 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

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

Yours sincerely



Sita Jackson

Authorised FOI decision maker

20 June 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