



**Australian Government**  

---

**Australian Public Service Commission**

Stephanie

By email: [foi+request-9381-8dacf2ea@righttoknow.org.au](mailto:foi+request-9381-8dacf2ea@righttoknow.org.au)

Our reference: LEX 323

Dear Stephanie

**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 16 September 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. On 16 September 2022, you requested access to documents in the following terms:
  - a) any and all documents in the possession of the APSC in relation to selection process that saw Colin Campbell promoted from an Executive Level 2 classified role to fill an SES Band 2 “Senior Registrar” vacancy (see Promotion Notice OC-031524); and
  - b) any and all certifications in the possession of the APSC issued under either s 21 of the Australian Public Service Commissioner’s Directions 2016 or s 26 the Australian Public Service Commissioner’s Directions 2022 by the Australian Public Service Commissioner’s representatives who participated in selection processes for the SES Band 2 “Senior Registrar” vacancy.

*You are welcome to redact the Australian Public Service Commissioner’s representatives’ signatures from the certificates.*

4. I have identified nineteen (19) documents exclusively in scope of Part (a) of your request.
5. I have identified two (2) documents in scope of both Part (a) and Part (b) of your request. These are Documents 4c and 5b.

**Decision**

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

7. I have decided to:

- grant full access to one (1) document, being Document 6;
- grant part access to three (3) documents, being Document 4c, 5d and 7, because I consider parts of the document are exempt; and
- refuse access in full to seventeen (17) documents, being Documents 1, 1a, 1b, 2, 2a, 3, 4, 4a, 4b, 4d, 4e, 4f, 4g, 5, 5a, 5c, and 5d because I consider the documents are exempt in full.

8. A Schedule of Documents is provided at **Attachment A**.

9. My reasons are set out in **Attachment B**.

#### **Requests involving use of computers etc.**

10. Section 17 of the FOI Act provides that an agency can produce a written document containing the requested information in discrete form by the use of a computer system ordinarily available for retrieving or collating stored information.

11. Pursuant to section 17 of the FOI Act, the Commission has used its computer systems to produce two written discrete documents that contain information to which your FOI request relates. Documents 6 and 7 were produced under section 17 by extracting data and information relevant to the request that was not otherwise available in discrete form.

#### **Contacts**

12. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3720 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

*Charmaine Sims*

Charmaine Sims

Authorised FOI decision maker

19 October 2022

**ATTACHMENT A**

**SCHEDULE OF DOCUMENTS**

Document	Description	Exemptions
1	Email chain between Federal Court and Commission dated 13 December 2019	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
1a	Attachment 1a	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
1b	Attachment 1b	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
2	Email chain between Federal Court and the Commission dated 14 April 2020 - 5 May 2020	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
2a	Attachment 2a	Section 47E (certain operations of agencies) of the FOI Act applies
3	Email chain between Federal Court and the Commission dated 14 April 2020 - 5 May 2020	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
4	Email from Federal Court to the Commission dated 23 June 2020	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
4a	Attachment 4a	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
4b	Attachment 4b	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
4c	Attachment 4c <i>[in scope of Part (a) and Part (b) of your request]</i>	Released in part. Section 47F (personal privacy) of the FOI Act applies
4d	Attachment 4d	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
4e	Attachment 4e	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
4f	Attachment 4f	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies

4g	Attachment 4g	Sections 47E (Certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
5	Email from Federal Court to the Commission dated 22 December 2020	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
5a	Attachment 5a	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
5b	Attachment 5b [ <i>in scope of Part (a) and Part (b) of your request</i> ]	Released in part. Section 47F (personal privacy) of the FOI Act applies
5c	Attachment 5c	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
5d	Attachment 5d	Sections 47E (certain operations of agencies) and 47F (personal privacy) of the FOI Act applies
6	Promotion Notice OC-031524 – Colin Campbell	Document created under section 17 of the FOI Act. Released in full
7	APSED Promotion details – Colin Campbell	Document created under section 17 of the FOI Act. Released in part. Section 47F (personal privacy) of the FOI Act applies

**Reasons for decision**

1. The following paragraphs outline my reasons for determining the specified exemptions set out in **Attachment A** for the documents falling within scope of your request.
2. In making my decision I have had regard to:
  - the terms of your request;
  - the contents of the documents;
  - the FOI Act; and
  - the FOI Guidelines issued by the Australian Information Commissioner (the Guidelines).

**Conditional exemptions**

**Section 47E of the FOI Act – Certain operations of agencies**

3. Subsection 47E(c) of the FOI Act provides that a document is conditionally exempt from disclosure if its disclosure would, or could be reasonably expected to, have a substantial adverse effect on the management or assessment of personnel by an agency.
4. The Guidelines provide at paragraph 6.114:

For this exemption to apply, the documents must relate to either:

  - the management of personnel - including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; or
  - the assessment of personnel - including the broader performance management policies and activities concerning the competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.
5. Subsection 47E(c) is relevant for all documents that I have exempted in full.
6. To my knowledge, these documents have never been released previously and relate to a recruitment process undertaken by the Federal Circuit and Family Court of Australia (FCFCOA), with the support of the Commission. The documents directly concern the management and assessment of personnel and therefore relate to subsection 47E(c) of the FOI Act.
7. The release of these documents would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by undermining trust in the confidentiality and integrity of the recruitment process of the FCFCOA. This could make it more difficult to attract high quality candidates for future recruitment processes.
8. For the reasons above, I consider the documents are conditionally exempt from disclosure under subsection 47E(c) of the FOI Act.

## **Section 11B – public interest test**

9. 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.
10. I have considered the public interest factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the documents would promote the objects of the FOI Act and inform debate on a matter of public importance.
11. I have identified the following factors as weighing against disclosure:
  - disclosure could prejudice the Commission's and FCFCOA's ability to obtain confidential information;
  - disclosure could prejudice the Commission's and FCFCOA's ability to obtain similar information in the future;
  - disclosure could harm the interests of an individual or group of individuals;
  - disclosure could prejudice the management function of the Commission and the FCFCOA; and
  - disclosure could prejudice the confidentiality and integrity of future recruitment processes of the FCFCOA.
12. 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.
13. On balance, I find that the public interest factors against disclosure outweigh the public interest factors favouring disclosure.

## **Section 47F – personal information**

14. Section 47F of the FOI Act provides a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information of any person.
15. 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
  - whether the information or opinion is recorded in a material form or not.
16. I consider the nature of the documents, being documents relating to the application, consideration, and employment of persons to the FCFCOA contain personal information of public servants that is not publicly known or accessible. Specifically, the names, position details, direct work email and work number of non-SES level staff, and personal information of three senior and judicial staff members of the FCFCOA.
17. Documents 4d, 4e, 4f and 5c specifically contain full names, home addresses, mobile numbers and other identifiable information for persons exercising judicial powers and functions, including a current judge and three Senior Judicial Registrars.
18. I consider Documents 4c and 5b contain personal information of a former public servant, namely their signature.

19. I consider Document 7 contains personal information of Mr Colin Campbell, namely his previous and current Australian Government Staffing Number (AGSN).

20. I have had regard to the matters I must consider under subsection 47F(2) of the FOI Act in determining whether disclosure would involve the unreasonable disclosure of personal information.

21. In considering what is unreasonable, the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated:

*...whether a disclosure is 'unreasonable' requires... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...*

22. Other factors to be considered include the nature, age and current relevance of the information, any opposition to disclosure held by the person that the personal information relates to, and the circumstances of an agency's collection and use of the information ('FG' and *National Archives of Australia* [2015] AICmr 26 at [47]).

23. I note that in *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 (9 November 2020), Deputy President S A Forgie found (at [130]):

*An individual may include his or her direct telephone number in correspondence directed to other persons. Unless published on an agency's website or made public in some other way, such as on a pamphlet or report available to the public, I consider that disclosure of an individual's telephone number in his or her place of employment is unreasonable. Its disclosure will provide an avenue by which others may choose to express their displeasure with the individual or with that for which he or she is responsible but its disclosure does not make any positive contribution to increasing public participation in Government processes or in increasing scrutiny, discussion, comment and review of the Government's activities.*

24. In relation to the question of whether disclosure would be unreasonable, the FOI Guidelines provide, at paragraphs 6.144 and 6.145:

*For example, in Colakovski v Australian Telecommunications Corp, Heerey J considered that '... if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed ... disclosure would be unreasonable'. This illustrates how the object of the FOI Act of promoting transparency in government processes and activities needs to be balanced with the purpose of s 47F to protect personal privacy, although care is needed to ensure that an FOI applicant is not expected to explain their reason for access contrary to s 11(2).*

25. Relevant to personal information of certain 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].

26. It was found in the decision of *Colin James Corkin and Department of Immigration and Ethnic Affairs* [1984] AATA 448 (16 October 1984) that release of an individual's signature would amount to the unreasonable disclosure of information relating to the personal affairs of the person, where the Hon. Sir William Prentice (Senior Member) said:

*“The signature is of paramount importance in one's activities in banking and financial matters, correspondence, the making of applications, the giving of receipts. It constitutes the bond whereby one may be held responsible to others, to corporations, to government; and the authorization upon which others may depend for providing goods or services. Its exclusiveness and privity to the individual are the essence of its worth to him. The owner of a signature is entitled to control the extent of its circulation. One may therefore use differing signatures for different purposes. The maker of a signature does not readily make it available to others who might take advantage of its possession to imitate it without permission. It is I consider, in an especially marked way - private to the individual, one's own. Its making, its characteristics, its privacy constitute part of the individual's pursuits of life, his commercial, professional and public business. I take it to be part of his “personal affairs”...”*

27. I have identified the following factors that, in my view, do not support release of the personal information under section 47F of the FOI Act:

- the individuals' personal information, in particular their names, will or may identify them;
- the names, signatures, position details, direct work emails and work numbers are generally not well known or publicly available;
- it would prejudice the relevant persons' right to privacy;
- the FOI Act does not control or restrict the subsequent use or dissemination of information released under the FOI Act;
- the disclosure of this information will not advance scrutiny of any decisions falling within the scope of your FOI request;
- the disclosure of this information could expose public servants to unsolicited and inappropriate approaches by external parties, despite the existence of more appropriate channels designed specifically for receiving and actioning general calls and enquiries;
- the disclosure of this information could adversely impact the safety of relevant individuals and the FCFCOA, noting that there are heightened risks in the area of family law, with judicial officers and other staff regularly threatened personally;
- 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 this personal information.

28. Considering the above factors, I strongly consider it would be unreasonable to disclose the specific personal information of public servants in the documents. Therefore, I have decided that to the extent the documents include these types of personal information, those parts of the documents are conditionally exempt from disclosure under section 47F of the FOI Act.

## **Section 11B – public interest test**

29. In relation to the specific personal information of public servants contained in the documents, I have considered the public interest 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 and inform debate on a matter of public importance.
30. I have identified the following factors as weighing against disclosure:
- disclosure could be expected to interfere with the privacy of individuals;
  - disclosure could prejudice the protection of public servants' right to privacy;
  - disclosure of certain personal information will not advance any scrutiny of any decisions falling within the scope of your FOI request;
  - disclosure could lead to unwarranted approaches to public servants which would adversely impact their ability to perform their role and functions, noting that general inquiry phone numbers and email addresses are available; and
  - 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.
31. 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.
32. On balance, I find that the public interest factors against disclosure outweigh the public interest factors favouring disclosure.

## **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](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)