



Australian Government

Australian Public Service Commission

Scott P

By email: foi+request-9878-84ff216f@righttoknow.org.au

Our reference: LEX 457

Dear Scott P,

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 February 2023 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:

Can I please request any documents or email correspondence from September 2022 related to the following?

Has Senator Gallagher or any other government member tasked the APSC to instruct APS agencies and departments to review their reliance and spending on Consultants and contractors? Or has the senator issued instructions to the APSC to develop policies to review contractor hiring processes within the APS?

4. Your request was accompanied by the following context:

Regarding the speech ALBANESE GOVERNMENT'S APS REFORM AGENDA delivered on the 13th of October 2022 at the Institute of Public Administration Australia by Senator the Hon. Katy Gallagher. In the speech, Senator Gallagher referred to the shift from the APS's reliance on consultants and contractors within the APS.

“Too many resources flowed away from the APS and towards contractors, consultants and labour-hire firms, decimating functions that should sit at the heart of a strong public service – like critical and creative thinking.

In some departments, the public service became more like an administrative service to ministers, with core work like policy development being shipped out to consultants.

There was the public downplaying of policy development.

The devaluing or disposal of years of experience and knowledge.

And a casualisation of the workforce.

A lack of interest in investing, nurturing, planning of the public service as an institution in itself.

This changes under the Albanese Government”

Gallagher, K. (2022). ALBANESE GOVERNMENT'S APS REFORM AGENDA.

Decision on your FOI request

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I have identified three (3) documents within scope of your request.
7. These documents are:
 - Document 1: Ministerial Submission signed by the Minister for Finance re: The Audit of Employment.
 - Document 2: Attachment A to the Ministerial Submission – Milestones and Timeframes for the Audit of Employment; and
 - Document 3: Attachment B to the Ministerial Submission – Government Sector agencies in scope of the Audit of Employment.
8. I have decided to:
 - grant partial access to Documents 1 and 2; and
 - grant full access to Document 3.
9. **Attachment A** sets out the grounds on which Documents 1 and 2 are partially 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 the request.
12. Relevant to deleting exempt or irrelevant content from a document, the Guidelines provide:

3.98 Applying those considerations, an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be

served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

13. I consider the objects of the FOI Act will not be served by providing access to edited versions of the documents because extensive editing is required that would leave only a skeleton of the former documents, conveying little content or substance.
14. I also consider it is not reasonably practicable to prepare edited versions of the documents, having regard to the nature and extent of the modification required, and the resources available to modify the documents.

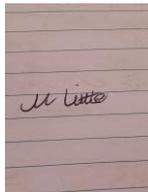
Contacts

15. 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

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

Yours sincerely

A rectangular image showing a close-up of a handwritten signature 'M Little' on a piece of lined paper. The signature is written in dark ink and is centered on one of the lines.

Mitchell Little

Authorised FOI decision maker

3 March 2023

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Description	Exemptions
1	Ministerial Submission signed by the Minister for Finance re: The Audit of Employment.	Sections 47C (deliberative process) and 47F (personal privacy) of the FOI Act apply.
2	Attachment A to the Ministerial Submission – Milestones and Timeframes for the Audit of Employment.	Section 47C (deliberative process) of the FOI Act applies.
3	Attachment B to the Ministerial Submission – Government Sector agencies in scope of the Audit of Employment.	No exemptions apply.

ATTACHMENT B

Reasons for decision

1. In making my decision on your request, 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.

Section 47C – Documents subject to deliberative processes

2. Section 47C of the FOI Act conditionally exempts documents containing deliberative matter. Deliberative matter generally consists of:
 - an opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - a consultation or deliberation that has taken place

in the course of, or for the purposes of, the deliberative purposes involved in the functions of an agency, Minister or the Commonwealth Government.

3. A deliberative process includes the recording or exchange of opinions, advice, recommendations, a collection of facts or opinions and interim decisions and deliberations.
4. On review, Documents 1 and 2 contain deliberative material. Both Documents 1 and 2 contain material that includes opinions expressed by government staff on the options available for how the Minister for Finance could progress the Audit of Employment.
5. For the reasons outlined above, I am of the view that both documents contain deliberative matter and those parts are therefore conditionally exempt under section 47C of the FOI Act.

Section 47F – personal information

6. 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.
7. 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.
8. I consider that Document 1 contains such personal information. Specifically, the name, position title, and direct phone number of a non-SES level staff member.

9. 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 personal information would involve the unreasonable disclosure of personal information.

10. In considering what is unreasonable, the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at [51] 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...

11. 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]).

12. 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.

13. In relation to the question of whether disclosure would be unreasonable, the FOI Guidelines provide, at paragraph 6.144:

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 to contrary to s 11(2).

14. 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].

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

- the individual's personal information, in particular their name, will identify them;
- the personal information is unique and relates specifically to the individual, and is generally not well known or publicly available; 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 scope of your FOI request;
- the disclosure of this information could expose the individual 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;
- release of the individual's personal information may cause stress for them or other detriment; and
- disclosure would prejudice the individual's right to privacy.

16. I have therefore decided to the extent that the documents include personal information of the non-SES level staff member, those parts are conditionally exempt from disclosure under section 47F of the FOI Act because disclosure would involve the unreasonable disclosure of their personal information.

Section 11A – public interest test

17. 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.

18. 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 and inform debate on a matter of public importance.

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

- disclosure of the individual's personal information will not advance any scrutiny of any decisions falling within the scope of your FOI request;
- disclosure would prejudice the individual's right to privacy;
- disclosure could lead to unwarranted approaches to the individual which would adversely impact their ability to perform their role and functions, noting that general enquiry phone numbers and email addresses are available;
- 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;
- disclosure could reasonably interfere with the cooperation between agencies;

- a precedent of public disclosure of advice given as part of a Ministerial Submission would result in concerns existing in the open and honest nature of advice being provided, which may then hinder future deliberations and decision making processes for agencies and the minister's office as a whole, and future Ministerial Submissions being prepared with a different audience in mind, which would compromise the quality of the advice being prepared for the minister; and
- endangering the proper working relationship that an agency has with its minister and its ability to provide the minister with honest advice confidentially would be contrary to the public interest.

20. 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.

21. On balance, I find disclosure of some parts of Documents 1 and 2 would be contrary to the public interest. To the extent that the material contained in Documents 1 and 2 are conditionally exempt under sections 47C and 47F of the FOI Act, those parts are exempt from 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
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