



Australian Government

Australian Public Service Commission

Anselmo Cristobal Hernandez y Pinal

By Email: foi+request-10699-9542a246@righttoknow.org.au

Our Reference: LEX 1009 (683)

Dear Applicant

Freedom of Information request

1. The purpose of this correspondence is to advise you of a revised decision the Australian Public Service Commission (Commission) has made under section 55G of the *Freedom of Information Act 1982* (FOI Act) in relation to LEX 683.
2. My decision applies in relation to the release of ten (10) documents in full that were previously found to be exempt in full under sections 47E(d) and 47F of the FOI Act.
3. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Revised Decision

4. I have made a decision to vary the internal review decision made by Shyam Raghupathi, FOI decision maker, on 17 November 2023.
5. In varying this decision, I have decided to release documents 1 to 10 to you in full. The documents released to you in accordance with this revised decision are enclosed.
6. The documents that I have chosen to grant access to are set out in Schedule 1 at **Attachment A**.

Authority to make decision

7. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
8. On 19 September 2023, you requested access to the following:

“According to a document on the FOI disclosure log on the APSC website (LEX 559), documents were released administratively under LEX 540 (reference SHC23-4379), LEX 544 (reference SHC23-4513), LEX 545 (reference SHC23-4540), and LEX 546 (SHC23-4521).”

Subject to those documents being released administratively pursuant to this request for access, under the FOI Act, I request access to the administratively released documents associated with LEX 540, LEX 544, LEX 545, and LEX 546.’”

9. On 18 October 2023, I as Authorised Decision Maker, refused access to all ten (10) documents in full (the original decision). In providing the decision, I noted that once relevant exemptions were applied (section 47E- certain operations of agencies, section 47F- personal privacy) the objects of the FOI Act would not be served by providing access to the edited version as extensive editing was required and would leave only a skeleton of the former documents.
10. On 18 October 2023, you sought an internal review of the original decision.
11. On 17 November 2023, you were provided with a decision relating to your internal review request which affirmed my earlier decision to refuse your request for access to the documents under sections 47E and 47F of the FOI Act.
12. On 8 May 2024, the Office of the Australian Information Commissioner (OAIC) sent the Commission a notice under s 54Z of the FOI Act advising that the OAIC had commenced a review of the Commission’s internal review decision as it applies to all ten documents. In your application, you stated:

“I think the decision is wrong because the agency has already granted access to the documents in the past under administrative release. I think that they are being discriminatory towards me.”
13. I have reviewed this matter and consider I am in a position to grant access to the documents in accordance with your request. Accordingly, I have decided to make a revised decision under section 55G of the FOI Act.
14. The Commission will provide the OAIC with a copy of this revised decision.

Reasons for Decision

15. In making my revised decision on your request, I have had regard to:
 - the terms of your request;
 - the primary and internal review decisions;
 - the terms of your application for IC review through the OAIC;
 - the contents of the documents;
 - the FOI Act; and
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

16. Ten documents have been identified as falling within scope of your request. These documents were in the possession of the Commission when your request was received on 19 September 2023.
17. I have reviewed all of the material available to me, as outlined at paragraph 15 of this letter, and I have decided to grant access to all ten (10) documents in full.
18. Upon further review of this material, I no longer consider that it would be contrary to the public interest to release the personal information contained within the documents at this time or that disclosure could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission, for the purposes of sections 47F, 47E(d) and 11A(5)) of the FOI Act. In particular, I note that some of the decision letters falling within scope of your request are published online on Archive.com or were previously published on Right to Know.
19. Accordingly, I have decided to release the documents to you in full.

Application for Information Commissioner Review – Review Rights

20. The OAIC is currently conducting an IC review of the Commission’s internal review decision to refuse access to the documents requested. Under section 55G(2)(b) of the FOI Act, the Information Commissioner (IC) must deal with your IC review application as if it were an IC review application of this revised decision.
21. The scope of your IC review emphasised that you are seeking access to documents 1 – 10 without any redactions. This revised decision has provided you with full access to all of the documents falling within scope of your request. I therefore kindly ask you to consider withdrawing your application for IC review on the basis that your concerns have been addressed.
22. You can contact the OAIC by email at foidr@oaic.gov.au or by phone on 1300 363 992 to advise whether you wish to proceed with your application.

Contacts

23. If you require clarification on matters in this letter please contact the Commission’s FOI Officer by email at foi@apsc.gov.au.

Yours sincerely,



Melanie McIntyre
Authorised FOI decision maker
31 May 2024

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Pages	Description	Exemptions
1	1 - 4	LEX 540 – FOI Request (LEX 189)	Released in full
2	5 - 8	LEX 540 – Decision Notice (LEX 189)	Released in full
3	9 - 12	LEX 544 – FOI Request (LEX 190)	Released in full
4	13 - 16	LEX 544 – Decision Notice (LEX 190)	Released in full
5	17 - 27	LEX 545 – Decision Notice (LEX 187)	Released in full
6	28 - 36	LEX 545 – Internal Review Decision (LEX 230)	Released in full
7	37 – 40	LEX 545 – FOI Request (LEX 190)	Released in full
8	41 – 44	LEX 545 – Decision Notice (LEX 190)	Released in full
9	45 – 53	LEX 546 – Internal Review Decision (LEX 230)	Released in full
10	54 - 64	LEX 546 – Decision Notice (LEX 187)	Released in full