



**Australian Government**  

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**Australian Public Service Commission**

Gary Moorcroft

By email: [foi+request-11605-5692d5ab@righttoknow.org.au](mailto:foi+request-11605-5692d5ab@righttoknow.org.au)

Our reference: LEX 1077

Dear Mr Moorcroft

**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 **2 July 2024** for access to documents held by the Australian Public Service Commission (the 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 on the following terms:
  - *I seek the briefing pack prepared for the Australian Public Service Commissioner for the Senate Finance and Public Administration Committee's 2024-25 Budget Estimates hearings.*

**Decision**

4. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
5. I am satisfied that all reasonable steps have been taken to locate documents relevant to your request.
6. I have identified one (1) document within scope of your request.
7. This document is:
  - Document 1: Budget Estimates Briefing Pack
8. I have decided to grant you partial access to Document 1.
9. **Attachment A** sets out the grounds on which Document 1 is partially exempt.
10. My reasons are set out in **Attachment B**.

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

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. Page 63 contains duplicate material. To this extent, such information has been removed under section 22 of the FOI Act.

### **Contacts**

13. If you require clarification on matters in this letter please contact the Commission's FOI Officer by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au).

### **Review rights**

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'A O'Brien', with a long horizontal flourish extending to the right.

Adam O'Brien

Authorised FOI decision maker

30 September 2024

## ATTACHMENT A

### SCHEDULE OF DOCUMENTS

<b>Document</b>	<b>Description</b>	<b>Exemptions</b>
1	Budget Estimates – Briefing Pack	<ul style="list-style-type: none"><li>• Section 47F (personal privacy)</li><li>• Section 47 (trade secrets or commercially valuable information)</li></ul>

## Reasons for decision

1. In making my decision I have had regard to:
  - the terms of your request;
  - the content of the documents;
  - the *Public Service Act 1999* (PS Act);
  - the FOI Act; and
  - the FOI Guidelines issued by the Australian Information Commissioner.

## Exemptions

### Section 47(1)(b) – Documents disclosing commercially valuable information

2. Section 47 provides that a document is exempt if its disclosure would disclose:
  - trade secrets; or
  - any other information having commercial value that would be, or could reasonably be expected to be, destroyed, or diminished if the information were disclosed.
3. Applying the FOI Guidelines, I have considered the following factors to assist in deciding whether the information contained in pages 89, 177-182 and 185 has commercial value:
  - Whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
  - Whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
  - Whether a genuine ‘arm’s-length’ buyer would be prepared to pay to obtain that information
  - Whether the information is still current or out of date (out of date information may no longer have any value)
  - Whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.
4. I am satisfied that pages 89, 177 – 182 and 185 contain commercially valuable information, as disclosure about supplier pricing would be valuable to competitors, and may result in a competitive advantage for other suppliers in the market, and thereby potentially diminishing the commercial value of the information.
5. I also consider the disclosure of this information may diminish the commercial value of the information by negatively impacting the negotiating position of both the Commission and other parties when approaching the market, or submitting tenders for contracts for similar services. For these reasons, I have decided to exempt such information from Document 1 from disclosure.

## Section 47F – Personal privacy

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 pages 15, 18, 22, 27, 30, 36, 41, 44, 47, 51, 54, 56, 59, 62, 66, 69, 70, 74, 82, 87, 91, 98, 107, 112, 116, 122, 135, 144, 146, 150, 156, 159, 161, 169, 174, 191, 195, 199 and 205 in Document 1 contains such matter; specifically, the names and contact information of non-SES APS employees as well as the contact information of SES APS employees.
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 individuals’ personal information, in particular their name, will identify them;
- the personal information is unique and relates specifically to the individuals, 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 concerned individuals to unsolicited and inappropriate approaches by external parties;
- release of the individuals’ personal information may cause stress for them or other detriment; and
- disclosure would prejudice the individuals’ right to privacy.

16. I have therefore decided to the extent that Document 1 includes personal information of non-SES level staff members, as well as contact information of SES level staff members, 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 documents 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 individuals' personal information will not advance any scrutiny of any decisions falling within the scope of your FOI request;
- disclosure would prejudice individuals' 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;

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 Document 1 would be contrary to the public interest. To the extent that the material contained in Document 1 is conditionally exempt under sections section 47F, 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 agency authorised officer 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)