

10 December 2024

John Smith

By email only: foi+request-12353-048b77c4@righttoknow.org.au

Dear Mr Smith,

FREEDOM OF INFORMATION REQUEST 2025-00380

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982 (Cth)* (“**FOI Act**”) which you submitted to Australia Post.

Your request

On 20 November 2024, you request access to document/s matching the following description:

1. *The minimum and maximum salary ranges for Bands 4 and 5, as defined in Australia Post’s classification system for employees.*
2. *The number of employees currently classified within Band 4 and Band 5, respectively, as [at 20 November 2024].*

You have also told us you do not require any information about specific employees, such as names, identifiers or job titles, nor do you require draft documents or internal deliberative materials.

A decision is due on 20 December 2024.

My decision

I am an officer under section 23(1) of the FOI Act authorised to make decisions in relation to FOI requests made to Australia Post.

In making my decision, I have taken the following into account:

- the terms of your request,
- the provisions of the FOI Act,
- the FOI Guidelines issued by the Australian Information Commissioner (“**Guidelines**”).

Section 11A(4)

I am of the view that the documents sought are exempt documents as defined in section 11A(4) of the FOI Act.

Non-award remuneration (which includes remuneration for Band 4 and Band 5 staff) is an integral part of the running of Australia Post – a commercial business.



Section 11A(4) of the FOI Act provides that an agency is not required to give a person access to a document if the document is an exempt document.

Section 4 of the FOI Act defines an exempt document as:

- *a document that is exempt for the purposes of Part IV (exempt documents) (see section 31B); or*
- *a document in respect of which by virtue of section 7, an agency, person or body is exempt from the operation of this Act; or*
- *an official document of a Minister that contains matter that does not relate to the affairs of an agency or of a Department of State.*

I believe that by virtue of section 7 – commercial activities – the documents sought are exempt from the operation of the FOI Act.

Section 7(2) in conjunction with Schedule 2, Part II of the FOI Act entirely exempts Australia Post from the operation of the FOI Act in respect of documents relating to its commercial activities.

Under section 26 of the Australian Postal Corporations Act 1989 (“**APC Act**”) Australia Post has an obligation to act commercially. Thus, outside its reserved services, Australia Post engages in profit seeking activities in all its ventures.

Australia Post has devised and implemented pay classifications, including Band 4 and Band 5 classifications in respect to its management and assessment of personnel which best support the efficient and effective discharge of its responsibilities and enhance and support its commercial, reserved activities and operations.

Whilst pay for Australia Post Award staff is determined by an Enterprise Bargaining Agreement, which is publicly available, this is not the case with non-award staff (which includes Band 4 and Band 5 classifications). The remuneration of non-award staff is of commercial value and relates to Australia Post’s commercial activities. The remuneration can be influenced by a range of factors including negotiation, company policies, experience and skillset, individual performance, and industry-specific factors including, importantly, market forces. Accordingly, I believe the documents sought fall within the scope of exempt documents and subsequently exempt from disclosure.

The Guidelines confirm this at paragraph 2.14, Part 2 which state:

Exemptions applying to commercial activities, security and defence intelligence documents and other matters

Section 7(2) (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the FOI Act in relation to particular types of documents.

The list includes Australia Post – a body exempt from the operation of the FOI Act in relation to documents in respect of its commercial activities.

Section 7(3) of the FOI Act defines commercial activities in Part II of Schedule 2 as being:

- a) activities carried on by an agency on a commercial basis in competition with persons other than governments or authorities of governments; or

- b) activities carried on by an agency that may reasonably be expected in the foreseeable future to be carried on by the agency on a commercial basis in competition with persons other than governments or authorities of governments.

For this exemption to apply, the commercial activity must be carried out in competition with persons other than governments and government authorities.

As a commercial business, Australia Post competes against private enterprise in the non-reserved products and services it offers. Australia Post's parcel logistics business faces intense competition from major parcel delivery entities and other couriers such as DHL Express, FedEx, Global Express, Direct Couriers. Amazon, to name a few. Australia Post's retail business faces direct competition from banks, stationary stores, department stores, mail processing entities (Officeworks, Big W, Kmart, Woolworths, Coles, DHL Express, Amazon) to name a few.

Section 7(4) continues by providing that a reference to documents in respect of particular activities (commercial activities) should be read as "*documents received or bought into existence in the course of, for the purposes of, the carrying on of those activities*".

The documents to which you seek access, clearly were bought into existence "*for the purpose of*" the carrying on of commercial profit seeking activities. Australia Post sets and ensures that the appropriate rate of remuneration is set to attract and retain employees who will contribute and support Australia Post in its commercial objectives and obligations. If non-award salaries, in this case Band 4 and Band 5 were disclosed, competitors of Australia Post may obtain a commercial advantage over Australia Post. If disclosed, competitors of Australia Post could use this knowledge to make salary offers to potential and/or current Australia Post staff to the detriment of Australia Post's commercial business. Details of the number of employees within the various bands would also assist them in their business management or strategies.

Further, I believe Australia Post engages in commercial activities as defined in the FOI Act because it:

- is not part, or component, of the letter service which is reserved to Australia Post by section 29 of the Australian Postal Corporation Act (1989) ("**APC Act**"); and
- is operated separately to the letter service.

I note that the inclusion of Australia Post (in respect of its commercial activities) in Part II of Schedule 2 of the FOI Act demonstrates a clear intention on the part of the Federal Government that Australia Post is both entitled, and under an obligation, to protect operational (and other) documents pertaining to its commercial activities.

Also, my view that Australia Post carries on activities on a commercial basis in competition with private sector entities is supported by the decision of the Administrative Appeals Tribunal in *Re Papps and Australian Postal Corporation [2004] AATA 833*. In that case Senior Member Dwyer suggested that apart from the reserved letter service "*it would be hard to imagine what activities of Australia Post would not be commercial activities*".

I also note that in a decision of the Federal Court *Australian Postal Corporation v Allan Johnston (26 March 2007)*, the Federal Court found that where there is more than one purpose for the existence of documents, and if more than one of the purposes for creation or existence included the

carrying on of Australia Post's commercial activities, it would be regarded that the documents were brought into existence for the substantial and operative purpose of those commercial activities.

Having regard to the above, I am satisfied that the documents sought, by virtue of section 7 are exempt from the operation of the FOI Act and their disclosure is not required.

Section 47

Furthermore, and alternatively to the exemption detailed above, I am also of the view that the documents sought are exempt under section 47 of the FOI Act – Trade secrets.

Under section 47(1) of the FOI Act, a document is and exempt document if it's disclosure under the FOI Act would disclose:

- a) trade secrets;
- b) or any other information having a commercial value that would be, or could reasonably be expected to be destroyed or diminished if the information were disclosed.

The documents sought have commercial value to Australia Post.

To be exempt under section 47, two criteria must apply:

- the document must contain information that has commercial value either to an agency or to another person or body, and
- the commercial value of the information would be, or could be reasonably be expected to be destroyed or diminished if it were disclosed.

Commercial value to an agency

I have regard to the factors outlined in the Guidelines, Part 5, paragraph 5.205 to determine whether the documents sought is commercially valuable.

Australia Post is a commercial business, and its sole shareholder, the Australian Government expects Australia Post to act commercially and expects Australia Post to deliver a commercial rate of return. Australia Post has implemented a non-award pay structure (including Band 4 and Band 5 rates of pay and classification) which best supports the efficient and effective discharge of its responsibilities and enhance and support its commercial, reserved activities and operations. Australia Post Band 4 and Band 5 salary ranges have been set so that Australia Post attracts, engages and retains relevant staff so that it remains competitive in a heavily flooded logistics and retail market.

If the documents sought were disclosed under the provisions of the FOI Act, it would give a competitor a competitive advantage over Australia Post. The value can be assessed by the advantage a competitor may have offering similar or higher salaries in bidding for staff or potential staff for its own business, and/or in its own business strategies, to the detriment of Australia Post. It is my view that as the documents offer a commercial advantage, they would therefore be commercially valuable to a competitor. Rates of pay of non-award staff, and the numbers of such staff, are relevant to Australia Post as part of the day-to-day running of Australia Post. Thus, the documents sought are relevant to Australia Post's commercial activities and remain valuable.

Disclosure would, or could reasonably destroy or diminish commercial value

To satisfy section 47(1)(b) of the FOI Act, the disclosure must diminish or destroy the commercial value of the information disclosed.

The documents sought contain non-award rates of pay and classification which could be adapted by third parties. It is my view that a competitor would be prepared to pay for the information in the documents sought (or would pay for the development of that information for its own use). Any competitive advantage that Australia Post has through the establishment of non-award rates of pay and classification would be undermined if the documents were disclosed, and the commercial value contained the documents diminished.

Furthermore, I note that if the documents sought were to be released, they would be published on a Disclosure Log, where any organisation, including direct competitors of Australia Post would be able to access it. This would further diminish and destroy the commercial value of the information.

For the above stated reasons, I believe the documents sought should not be released.

Your review rights are set out in **Attachment A** to this letter.

Yours sincerely,

Anna

Anna

Freedom of Information Officer
Australia Post

ATTACHMENT A – FOI Review

Rights Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Australia Post for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by the FOI Review officer within 30 days.

Please send your review request in writing or email to:

FOI Review Officer
Australia Post
GPO Box 1777
Melbourne VIC 3001 or

foi@auspost.com.au

Information Commissioner Review

If you are dissatisfied with my decision, under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: <https://webform.oaic.gov.au/prod?entitytype=ICReview&layoutcode=ICReviewWF>

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about an Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to

<https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/freedom-of-information-reviews/quick-guide-to-the-direction-applicants-follow-in-an-information-commissioner-review>