

13 January 2025

**John Smith**

by email only: [foi+request-12353-048b77c4@righttoknow.org.au](mailto:foi+request-12353-048b77c4@righttoknow.org.au)

**Our reference: 2025-00380**

**Freedom Of Information Act – Notice of Internal Review Decision**

Dear Mr Smith,

### **Purpose**

This letter constitutes notification of the outcome of an internal review of a Freedom of Information (“**FOI**”) access refusal decision.

The access refusal followed an FOI application received from you on 20 November 2024.

Relevant events and dates are:

- Your FOI request was received by Australia Post on 20 November 2024.
- The relevant access refusal decision was made and served on 10 December 2024.
- An internal review of the access refusal decision was requested on 12 December 2024.
- Under the *Freedom of Information Act 1982* (Cth.) (“**FOI Act**”), the internal review in this case needs to be completed by 13 January 2025.

### **Review Process**

In performing the internal review, I have had regard to your original FOI application, the access refusal decision, the contents of your review application, relevant provisions of the FOI Act and the FOI Guidelines issued by the Australian Information Commissioner under s93A of the FOI Act (“**Guidelines**”), and to case law where relevant.

I confirm I have conducted the internal review as a ‘fresh’ merit review of your original FOI application, as required by the FOI Act and the Guidelines.

The review has been conducted by me, not the person who made the original decision. I note that the FOI Act and the Guidelines specifically state that, as the new decision maker, I am not bound by the earlier decision in any material respect.

I am satisfied that all procedural matters pertaining to the review application have been met, including those specified in s54B(1) of the FOI Act.

### **Review Decision**

My review decision is that:

- the original access refusal decision made by Australia Post’s FOI Officer is confirmed, on the basis that I believe that the documents are exempt from production under the FOI Act; and

- the documents you have requested in this case are exempt from production on the grounds stated in the FOI Act.

### **Reasons for the Review Decision**

In your FOI application you sought 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; and*
2. *The number of employees currently classified within Band 4 and Band 5, respectively, as at [20 November 2024]”.*

The FOI Officer’s decision was to refuse your request on the basis that the documents to which access was sought was exempt under ss7(2) and/or 47 of the FOI Act.

I agree with the decision of the FOI Officer that the document is exempt, on the basis that ss7(2) and/or 47 of the FOI Act applies to these documents. My view is that the documents are exempt from the operation of the FOI Act as:

- (a) they were brought into existence in the course of, or for the purpose of, Australia Post’s commercial activities; and/or
- (b) their disclosure would disclose trade secrets or other information having a commercial value that would be, or could be reasonably expected to be, destroyed or diminished if the information were disclosed.

### Section 7

As noted in the original access refusal decision, s7(2) of the FOI Act – read in conjunction with Schedule 2 Part II of the FOI Act – exempts Australia Post from the operation of the FOI Act in respect to 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.*

Section 7(4) of the FOI Act then provides – read with Part II of Schedule 2 – that a reference to documents in respect of particular activities is to be read as a reference to ‘*documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities*’.

Australia Post is obliged, in accordance with the *Australian Postal Corporation Act 1989*, to act commercially. All of its activities, outside those known as “reserved services”, are conducted in a commercial manner and in competition with other non-government entities and each can be considered a “commercial activity” as defined in the FOI Act.

I hold this view because all of these services:

- are not a part, or component, of the letter service which is “reserved” to Australia Post by s29 of the *Australian Postal Corporation Act 1989*; and
- operate on a competitive basis, in competition with persons other than governments such as other freight, logistic and parcel handling businesses such as DHL and Couriers Please.

The documents that you have requested under the FOI Act are associated with the operation and provision of various Australia Post services and the carrying on of ‘commercial activities’ as described in s7(3) of the FOI Act.

Section 7(4) of the FOI Act provides that documents in respect of such commercial activities should be read as documents received or brought into existence in the course of, or the purposes of, the carrying on of those activities.

As set out in the original Access Decision, the documents in question were brought into existence for the purpose of carrying on commercial, profit-seeking activities. They relate to the appropriate numbers, structures and payments to employees which are required for Australia Post to undertake such commercial activities in an efficient, competitive manner.

#### Section 47

I agree with the FOI Officer’s view that the documents sought additionally and/or alternatively are exempt from disclosure under s47(1) of the FOI Act, as their disclosure would reveal trade secrets or other information with a commercial value that would be, or could be reasonably expected to be, destroyed or diminished if the information were disclosed.

These documents meet both the criteria for exemption under s47, being that they:

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

After considering the FOI Guidelines, Part 5, particularly paragraph 5.205, I have determined that the documents sought contain information that is commercially valuable. As noted above, Australia Post operates as a commercial business in relation to its many activities, save the reserved services. This includes its parcels, retail, digital, bank agency and other services. As set out by the FOI Officer in the Access Decision dated 10 December 2024, Australia Post operates using a non-award structure in relation to a large number of its employees, including those employed within Bands 4 and 5, the subject of your FOI request.

Australia Post regularly reviews and structures its business operations in a certain manner, including the number of employees in various positions of seniority which aligns with the “Band” classifications system. This helps ensure Australia Post operates a manner that not only enables it to discharge its responsibilities commercially and efficiently as would be expected by the government as its sole shareholder but, significantly, in a manner that enables it to compete with private organisations and other competitors on a variety of levels, including not only the pricing and features of its services and products, but in a way that enables it to attract and retain appropriately skilled staff.

I am of the view that the disclosure of the information sought would be valuable to, and provide an advantage to, Australia Post’s various competitors on both these counts – enabling them to consider and

copy and/or otherwise exploit Australia Post's management/employee numbers and structure, and also to use this salary information to their benefit in a number of ways. This could include attempting to poach Australia Post employees or make corresponding or better offers to their own or other potential staff.

Not only would this be of commercial value to such competitors, it would diminish the value and benefit to Australia Post of this information once it became more broadly known. It is not currently otherwise available, so my view is that a competitor or other party may be prepared to pay for these documents to obtain the advantage they provide and accordingly the commercial value of the documents would be destroyed or diminished if they were disclosed.

As noted in the original Access Decision, if this information were released in response to an FOI request, it would be published on a Disclosure Log, making it broadly available to a wide number of people – not just yourself as FOI applicant – diminishing the commercial value of such information.

For clarity, I note that the information sought may be distinguished from the details of payment and other benefits made to award staff which are publicly-available.

In line with the above, it follows that I believe that the documents requested in this case are exempted from the operation of the FOI Act, and their disclosure is not required under the FOI Act.

Please see the statutory review rights notice below.

Yours sincerely



Brett  
**FOI Review Officer**  
Australia Post

## **YOUR REVIEW RIGHTS**

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

### *Information Commissioner Review*

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](mailto: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/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

### **FOI Complaints**

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. Complaints can be lodged in one of the following ways:

online: <https://webform.oaic.gov.au/prod?entitytype=Complaint&layoutcode=FOIComplaintWF>

email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

post: GPO Box 5218, Sydney NSW 2001

More information about complaints is available on the Office of the Australian Information Commissioner website at <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>.

If you are sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the Office of the Australian Information Commissioner has more information available at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.