

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
SUPPLEMENTARY BUDGET ESTIMATES 2013

Prime Minister and Cabinet Portfolio

Department/Agency: Australian Public Service Commission

Outcome/Program: Cross Portfolio

Topic: Freedom of information

Senator: Ludwig

Question reference number: 191

Type of question: Written

Date set by the committee for the return of answer: 17 January 2014

Number of pages: 5

Question:

- 1) Can the department please outline the process it under goes to assess Freedom of Information requests?
- 2) Does the department consult or inform the Minister when it receives Freedom of Information requests?
 - a. If so, when?
 - b. If so, how does this occur?
- 3) Does the department consult or inform other departments or agencies when it receives Freedom of Information requests?
 - a. If so, which departments or agencies?
 - b. If so, when?
 - c. If so, how does this occur?
- 4) Does the department consult or inform the Minister when or before it makes a decision on a Freedom of Information request?
 - a. If so, when?
 - b. If so, how does this occur?
- 5) Does the department consult or inform other departments or agencies when or before it makes a decision on a Freedom of Information request?
 - a. If so, which departments or agencies?
 - b. If so, when?
 - c. If so, how does this occur?
- 6) What resources does the department commit to its Freedom of Information team?
- 7) List the staffing resources by APS level assigned solely to Freedom of Information requests
- 8) List the staffing resources by APS level assigned indirectly to Freedom of Information requests
- 9) Does the department ever second addition resources to processing Freedom of Information requests?
 - a. If so, please detail those resources by APS level
- 10) How many officers are currently designated decision makers under the Freedom of Information Act 1982 within the department?
 - a. How does this differ to the number of officers designated as at 6 September 2013?
- 11) How many officers are currently designated decision makers under the Freedom of Information Act 1982 within the Minister's office?

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- a. How does this differ to the number of officers designated as at 6 September 2013?
- 12) Of the officers that are designated decision makers under the Freedom of Information Act 1982 within the Ministers office, how many are seconded officers from the department?
- 13) What training does the department provide to designated decision makers under the Freedom of Information Act who work within the department?
- a. Of the officers designated as decision makers within the department, how many have received formal training?
- b. Of the officers designated as decision makers within the department, how many have received informal training?
- c. How long after each officers appointment as a designated decision maker did they receive formal training?
- d. What did the training involve?
- e. How long was the training?
- f. By whom was the training conducted?
- 14) What training does the department provide to designated decision makers under the Freedom of Information Act who work within the Minister's office, excluding those officers on secondment from the department?
- a. Of the officers designated as decision makers, how many have received formal training?
- b. Of the officers designated as decision makers, how many have received informal training?
- c. How long after each officers appointment as a designated decision maker did they receive formal training?
- d. What did the training involve?
- e. How long was the training?
- f. By whom was the training conducted?

Answer:

- 1) Staff of the Australian Public Service Commission (Commission) assist four bodies which are 'agencies' for the purposes of the Freedom of Information (FOI) Act:
- the Australian Public Service Commissioner
 - the Merit Protection Commissioner
 - the Remuneration Tribunal
 - the Defence Force Remuneration Tribunal.

The Commission generally receives FOI requests electronically by email. The Commission has a dedicated FOI inbox for such requests established in accordance with guidance from the Office of the Australian Information Commissioner (OAIC) and this mailbox is monitored by staff.

Some FOI requests are made by post or by email directly to Commission employees at their work email addresses. In general, requests are registered by the Commission's Legal Services Team which oversees the reporting requirements associated with FOI requests and assists policy areas and decision-makers with responding to requests. Further handling of the request depends on the nature of the request. Guidance issued by the OAIC is closely followed.

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The Commission's Executive (currently the Public Service Commissioner, the Merit Protection Commissioner, the Deputy Public Service Commissioner and the Chief Human Capital Officer) is notified of most requests. A preliminary assessment is made as to whether the request is a valid request and, if appropriate, whether a practical refusal reason exists. A valid request is passed to the relevant policy area(s) which conducts a search for relevant documents. Once relevant documents have been identified they are examined and assessed for any sensitive information in the documents, for example, third party personal information. Depending on the nature of the request consideration may be given to offering the applicant the documents in their entirety outside of the provisions of the FOI Act. Other documents may require closer consideration and may require consultation with third parties or other agencies. A decision maker is then identified. Consultation with the person making the request is generally undertaken by staff in the Legal Services Team.

Generally, a decision maker consults staff from the relevant policy areas and the Commission's Legal Services Team before making a decision. Decision-makers also have regard to the OAIC guidelines.

Once the decision-maker has made their decision, the response is generally despatched electronically. Copies are sent by post on request.

- 2) The Commission does not generally consult or inform the Minister when it receives FOI requests unless the subject matter concerns the Minister's affairs or it is otherwise necessary to do so to respond properly to a request. For example, if a request was received for copies of correspondence between the Australian Public Service Commissioner and the Minister, the Commission may consult the Minister about disclosure of the material. If such a case arose, the Minister's views would be a relevant consideration for the decision maker to take into account. The purpose of any such consultation would be to ensure that the FOI decision maker is aware of any relevant considerations before reaching a decision. In addition, consistent with Commission practice on matters which may be reported by the media, if an FOI request is likely to generate media interest, the Minister will be informed of the request.
- 3) From time to time, the Commission consults other agencies about FOI requests received by the Commission. In some cases, an FOI request may be more properly handled by another agency and the Commission would consult the other agency for the purpose of determining whether the request should be transferred to the other agency. The FOI Act provides for the transfer of a request to another agency in circumstances, including where the subject matter of a request is more closely connected with the operations of the other agency. In other cases, the request may cover documents held by the Commission relating to internal matters of another agency. In these circumstances, the Commission would consult the other agency to ensure that the decision maker is aware of all relevant considerations before reaching a decision. Guidelines issued by the OAIC recommend this approach.

In some cases, the Commission consults or seeks advice from the OAIC about FOI requests. The Commission consults the Department of the Prime Minister and Cabinet about requests connected with Cabinet. Consultation with other agencies may be by mail, email or telephone.

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- 4) The Commission does not generally consult or inform the Minister when or before an FOI decision is made. The Commission would consult or inform the Minister about an FOI decision in circumstances such as those set out under the response to question two. Consistent with Commission practice on matters which may be reported by the media, if an FOI decision is likely to generate media interest, the Minister will be informed of the decision.
- 5) The Commission does not generally consult or inform other agencies when or before an FOI decision is made. The Commission may consult or inform other agencies about a decision in circumstances such as those set out under in response to question three.
- 6) The Commission does not have a dedicated FOI Team. The Commission has a Legal Services Team comprising one Executive Level 2 employee and one Executive Level 1 employee. The duties of the Legal Services Team include supporting and coordinating the handling of the Commission's FOI requests. The FOI caseload is highly variable and recently cases have accounted for between 5 and 20% of these employees' time.
- 7) There are no staffing resources assigned solely to FOI matters (see response to question six).
- 8) The staffing resources referred to in response to question six comprise the majority of staffing resources devoted to the handling of FOI requests.

Resources are allocated to an FOI request on an 'as needs' basis. For each FOI request received, generally the practice has been for one or two employees at APS 6 or higher level in the relevant line area(s) to identify and collate documents as well as advise on matters relevant to disclosure of requested documents. Requests have frequently required some input from employees at SES Band 1 level.

The authorised FOI decision makers for the four 'agencies' assisted by Commission staff range from Executive Level 1 to SES Band 3 and for each FOI request the decision-maker will spend some time considering the requested material, the OAIC guidelines and advice from the relevant line area and from the staff of Legal Services Team.

At the end of each financial year the Commission compiles and reports certain labour and non-labour FOI costs to the OAIC for the purposes of the OAIC's annual report. These reports are published on the OAIC website. For example, for the financial year 2012-13, the Commission reported that 25 staff spent more than 0% but less than 75% of their time on Public Service Commissioner FOI work, totalling an estimated 740 staff hours. For the Merit Protection Commissioner, it was reported that 12 staff spent more than 0% but less than 75% of their time on FOI work, totalling an estimated 150 staff-hours.

- 9) Other than the resources referred to above, from time to time the Commission has engaged the Australian Government Solicitor to advise on FOI matters.
- 10) As mentioned in the response to question one, staff of the Commission assist four bodies which are 'agencies' for the purposes of the FOI Act. In addition to standing authorisations under the FOI Act, the relevant principal officers have from time to time authorised a particular person to be a decision maker in respect of a particular

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FOI request. A current standing authorisation for FOI requests made to the Public Service Commissioner authorises five decision makers. There has been no change since 6 September 2013. A current standing authorisation for FOI requests made to the Merit Protection Commissioner authorises four decision makers. There has been no change since 6 September 2013. A current standing authorisation for FOI requests made to the Remuneration Tribunal and the Defence Force Remuneration Tribunal authorises two decision makers. There has been no change since 6 September 2013.

- 11) The Commission is not aware of the arrangements within the Minister's office for dealing with FOI requests.
- 12) The Commission is unaware of the arrangements within the Minister's office for dealing with FOI requests. No employees of the Commission are on secondment to the Minister's office for the purposes of taking decisions on FOI requests.
- 13) As part of their duties, employees within the Commission's Legal Services Team are required to maintain a strong understanding of the FOI legislation and guidance issued by the OAIC. These employees have received formal training from external legal services providers and attend FOI seminars and practitioners' forums from time to time. These employees subscribe to electronic mailing lists, including lists maintained by the OAIC. The Commission's Legal Services Team provides advice and informal training to other employees in the Commission who may be involved in the handling of FOI requests including to decision-makers.
 - a. The Commission's authorised FOI decision makers within the Legal Services Team have received formal FOI training. In addition two authorised decision makers have received formal training.
 - b. Each of the Commission's authorised FOI decision makers receives informal training and advice as needed on a case-by-case basis from the Legal Services Team.
 - c. Of those who have received formal training, the Commission has not maintained full records of when the training was undertaken. In some cases, individuals may have received training before being made an authorised decision maker or may have received relevant training before joining the Commission.
 - d. The Commission has not maintained records of all training undertaken by authorised FOI decision makers. Formal training has generally been provided by the Australian Government Solicitor (AGS), which provided intensive training in association with reform of the FOI Act in 2010-11. In addition the AGS and other law firms offer several courses typically of half and full day length.
 - e. The Commission has not maintained records of all training undertaken by authorised FOI decision makers. Formal training has generally been provided by the AGS, which provided intensive training in association with reform of the FOI Act in 2010-11. In addition, the AGS and other law firms offer several courses typically of half and full day length.
 - f. Commission employees including employees of the Legal Services Team have undertaken formal training provided by the Australian Government Solicitor.
- 14) The Commission is unaware of the arrangements within the Minister's office for dealing with FOI requests. The Commission does not provide or arrange FOI training for FOI decision makers within the Minister's office.