

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
ADDITIONAL BUDGET ESTIMATES 2011-2012

Prime Minister and Cabinet Portfolio

Department/Agency: Australian Public Service Commission

Outcome/Program: Cross Portfolio

Topic: Freedom of Information

Senator: Ryan

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Type of question: Written

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Question:

1. **Has the Department/agency received any advice on how to respond to FOI requests?**
2. **What was the total cost to the department to process FOI requests for 2009-10 and 2010-11?**
3. **What is the total cost to the department to process FOI requests for this financial year to date?**
4. **How many FOI requests did the Department receive for the financial year 2009-10 and 2010-11? For each financial year, how many requests were denied and how many were granted? Did the department fail to meet the processing times outlined in the FOI Act for any requests? If so, how many? Do any of these requests remain outstanding?**
5. **How many FOI requests has the Department received for this financial year to date? How many requests have been denied and how many have been granted? Has the department failed to meet the processing times outlined in the FOI Act for any requests? If so, how many? Do any of these requests remain outstanding?**
6. **How many conclusive certificates have been issued in relation to FOI requests for this financial year to date?**

Answer:

1. Yes.

The Australian Public Service Commission (APSC) subscribes to a number of electronic mailing lists that provide information on Freedom of Information (FOI). For example, the Office of the Australian Information Commissioner (OAIC) regularly provides information through its OAICnet Email service. This information frequently includes advice on FOI matters, including general advice on how to

respond to FOI requests. In addition to its OAICnet Email service, the OAIC also provides information to Commonwealth agencies through its Govdex site.

On 30 April 2009, Senator the Hon John Faulkner, wrote to all agency heads, outlining the government's FOI reform objectives and asking that agency heads seek to enhance a culture of disclosure by making it clear to FOI decision makers that the starting point for considering FOI requests should be a presumption in favour of giving access. At that time, the Public Service Commissioner wrote to all employees of the APSC to raise awareness of the government's FOI reform objectives and to encourage decision makers to embrace a culture of disclosure. In addition the Department of the Prime Minister and Cabinet issued guidance to agencies prior to November 2010. A further letter of advice was received from the then Minister for Privacy and Freedom of Information in October 2010, updating agencies on progress with FOI reform. After November 2010 the Australian Information Commissioner issued guidelines under the *Freedom of Information Act 1982* (the FOI Act). FOI decision-makers must have regard to those guidelines when making a decision on a request. In July 2011, the Department of the Prime Minister and Cabinet provided FOI Guidance Notes to all agencies. Where relevant, these guidelines are also taken into account by authorised decision makers within the APSC.

The APSC subscribes to electronic mailing lists provided by a number of law firms as well as the Australian Government Solicitor. The material received occasionally includes information about FOI.

In accordance with the provisions of the FOI Act, the APSC consults with third parties, where necessary, about the release of business documents or documents affecting personal privacy. In these circumstances, the APSC often receives submissions from those third parties. Where necessary, the APSC also consults with other Government agencies about particular FOI requests. In these circumstances, the Commission often receives advice and submissions from those agencies.

The APSC has requested and received advice directly from the OAIC about matters concerning the processing of FOI requests. The APSC has requested and received external legal advice in relation to individual FOI requests when considered necessary.

2. For the financial years 2009-10 and 2010-11, the total costs to process FOI requests by the Public Service Commissioner, the Merit Protection Commissioner, the Remuneration Tribunal and the Defence Force Remuneration Tribunal were as follows:

	2009-10	2010-11
Public Service Commissioner	\$3,613	\$28,118
Merit Protection Commissioner	\$4,569	\$18,860
Remuneration Tribunal	\$0	\$2,037
Defence Force Remuneration Tribunal	\$0	\$0

Note: the figures included in the table above are the figures reported in the annual report on the operation of the FOI Act. For 2009-10, this report was prepared by the

Department of the Prime Minister and Cabinet and for 2010-11 this report was prepared by the OAIC. The annual report is based on FOI statistics reported by each agency. The APSC is not familiar with the methodology used to arrive at the reported costs. The figures include the statistics for the Remuneration Tribunal and the Defence Force Remuneration Tribunal, which are separate bodies for the purposes of the FOI Act and which became the responsibility of the Department of the Prime Minister and Cabinet and the APSC following machinery of government changes in 2010.

3. The costs for the FYTD are not supplied for the following reasons:
 - the data required to fully respond to this question is not readily available and an unreasonable diversion of resources would be required to compile this data ahead of the regular FOI reporting cycle;
 - the APSC's internal costing methodologies differ to those used by the OAIC for the preparation of the annual report on the operation of the FOI Act (this agency is not familiar with the methodology used by the OAIC); and
 - costs calculated internally by the APSC would not be directly comparable with the whole-of-year data reported in the FOI Act Annual Report (ie. the costs reported under item two above).

Due to increases in the number of FOI requests, the FOI processing costs for the FYTD are expected to be approximately 40% greater than the costs for 2010-11 on a year-to-date pro-rata basis.

4. In 2009-10, the Public Service Commissioner received two FOI requests. One request was granted in full and one was granted in part. Both requests were processed within the relevant statutory timeframes.

In 2009-10, the Merit Protection Commissioner received three FOI requests. One of these requests was granted in full and two were granted in part. One request was processed within the relevant statutory timeframes, one response exceeded the statutory timeframe by 5 days and one exceeded the timeframe by 10 days.

In 2009-10, the Remuneration Tribunal and the Defence Force Remuneration Tribunal did not receive any FOI requests.

In 2010-11, the Public Service Commissioner received three FOI requests. One of these requests was granted in full, one was refused and one was withdrawn. The request that was refused was done so on the basis that the APSC did not possess any documents falling within the scope of the request. All requests were processed within the relevant statutory timeframes.

In 2010-11, the Merit Protection Commissioner received twelve FOI requests. Of these requests, three were granted in full, two were granted in part and seven were withdrawn. With respect to the seven requests that were withdrawn, documents were released to six of the applicants outside the provisions of the FOI Act. One response exceeded the statutory timeframe by five days and one exceeded the timeframe by 18 days—each of these requests was received prior to the commencement of the FOI reforms of 1 November 2010. All other requests were finalised within the relevant statutory timeframe.

In 2010-11, the Remuneration Tribunal received six FOI requests. Of these, four were granted in full, one was granted in part and one was refused on the basis that the Remuneration Tribunal did not possess any documents falling within the scope of the request. All requests were processed within the relevant statutory timeframes. The Defence Force Remuneration Tribunal had no requests in 2010-11.

5. For the financial year-to-date (FYTD), the Public Service Commissioner has received 27 FOI requests. The status of these requests is as follows:
- full access provided: nine responses finalised;
 - partial access granted: five responses finalised;
 - withdrawn: five requests were withdrawn—documents were provided to three of these applicants outside the provisions of the FOI Act;
 - refused: five requests were refused in full, each on the basis that the APSC did not possess any documents falling within the scope of the request;
 - transferred in full: two requests were transferred in full to another agency;
 - outstanding: one request remains outstanding.

For the FYTD, the Merit Protection Commissioner has received six FOI requests. The status of these requests is as follows:

- full access: a decision was made to provide full access to documents requested by one applicant—this decision is currently subject to review as indicated below;
- partial access provided: three requests;
- refused: one request was refused in full; and
- withdrawn: one request was withdrawn.

One decision was made to provide full access to documents held by the Merit Protection Commissioner. A review of this decision was requested by a third party whose personal information is included in the documents requested. The third party was consulted in accordance with section 27A of the FOI Act and the third party's submissions were taken into account before the decision to release documents was made. This decision is currently under review by the OAIC and no documents will be released until third party review rights are exhausted.

For the FYTD, the Remuneration Tribunal has received one FOI request, for which documents were provided in full.

For the FYTD, the Defence Force Remuneration Tribunal has not received any FOI requests.

6. Nil. The power to issue conclusive certificates under the FOI Act was abolished on 7 October 2009.