

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
ADDITIONAL BUDGET ESTIMATES 2014

Prime Minister and Cabinet Portfolio

Department/Agency: Australian Public Service Commission

Outcome/Program: Cross portfolio

Topic: Freedom of Information

Senator: Ludwig

Question reference number: 193

Type of question: Written

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Number of pages: 12

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?
15. Since 7 September 2013, how many Freedom of Information requests been shown or alerted to the Minister or their office?
 - a. List those notified request
 - b. How many instances were each of this requests brought to the office or the Minister's attention?
 - c. How many of these items resulted in a separate formal brief being provided to the Minister?
 - d. How many of these items resulted in a separate informal briefing (including by email) being provided to the Minister?
 - e. How many requests have resulted in multiple formal briefs being provided to the Minister or their office?
 - f. How many requests have resulted in multiple informal briefs (including by email) being provided to the Minister or their office?
16. Does the department provide FOI PDFs for download on their website?
17. If not, what is the cost associated with staffing to require monitor email and collate and forward requested FOI documents?
18. How does the department test it is complying with accessibility standards for its websites?
19. Does the department comply with accessibility standards for all its websites?
20. What would be the effect on the accessibility rating of the department's website if FOI PDFs were provided on the department websites?
21. What accessibility testing of the website was done and what were the points of failure

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prior to this change in access for FOI documents?

22. Have the website accessibility standards been solely or partly responsible for not putting FOI PDF documents on the department websites?
23. How does the department facilitate anonymous access to the FOI disclosure files?
24. How many times were the last 20 FOI requests PDFs which were made available on the website downloaded? How often have the FOI requests only available by email request been sent?
25. How long does it take to requests for disclosed FOI files to be processed? What was the average turn around from request to sending of files in the last 3 months?
26. What was the content of communications with other departments about the website accessibility standards and FOI PDFs?
27. Where did advice concerning the website accessibility certification and provision of PDFs come from and what was the content of that advice?
28. Does the department consider that not providing direct download of PDFs is more accessible for people with disabilities and the general public than providing the links?
29. What efforts have been made to make FOI PDFs accessible to members of the public who have disabilities?
30. Has advice from the information commissioner been sought regarding providing FOI requests available by email request only?
31. Has any disability advice group or consultant been contacted regarding making the FOI requests accessible to people with disabilities?
32. Is this compatible with the information commissioners guidelines- specifically that “published information should be accessible — in particular, it should comply with an agency’s obligation to meet the Web Content Accessibility Guidelines (Version 2)“
33. How does email PDF provision meet the information commissioner’s requirement that “13.124 Information that forms part of the IPS must be published ‘to members of the public generally’”?
34. Is not providing the FOI PDFs on the website a means of avoiding not conforming to the WCAG 2.0 or other guidelines?
35. Does the department have a separate email address or inbox for receiving and responding to FOI requests?
 - a. If so, list each email account
 - b. List the officers who can assess and reply from those separate accounts, broken down by staffing classification level
36. Do FOI officers ever receive or respond to applicants from their individual email account as opposed to from a central account?
 - a. If so, how does the officer distinguish between communication related to their task as a decision maker and their primary work task ?
 - b. How do FOI decision makers that receive emails related to FOI decisions in their normal work capacity distinguish these emails from FOI decision emails?

Answer:

1. Staff of the Australian Public Service Commission (Commission) assist four bodies which have a ‘principal officer’ for the purposes of the Freedom of Information (FOI) Act:
 - the Australian Public Service Commissioner
 - the Merit Protection Commissioner
 - the Remuneration Tribunal

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- the Defence Force Remuneration Tribunal.

Each of these are independently responsible for managing their obligations under the FOI Act and for reporting to the Office of the Australian Information Commissioner (OAIC) about FOI matters. Except where otherwise noted, the responses which follow relate to the FOI practices of the Australian Public Service Commissioner, and these form the bulk of the FOI requests processed by staff of the Commission.

All FOI requests are processed in accordance with the requirements of the FOI Act.

2. The Commission does not as a matter of course 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, in accordance with their obligations under the FOI Act.
3. From time to time, the Commission consults other agencies about FOI requests received by the Commission. 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.

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.
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.

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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.
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 'principal officers' 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 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.
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 (two staff).
 - 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.

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- 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 training in association with reform of the FOI Act in 2010-11.
 - 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 training in association with reform of the FOI Act in 2010-11.
 - 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.
15. In September 2013, the Commission received two FOI requests for copies of the Australian Public Service Commissioner's incoming government brief. The Minister's office was notified about the release of material in response to the FOI requests for the incoming government brief.
- a. The Minister's office was notified about the disclosure of material in relation to two FOI requests. Each request was for the Australian Public Service Commissioner's incoming government brief.
 - b. The Minister's office was notified once about the two FOI requests.
 - c. One formal briefing was provided about the two FOI requests.
 - d. No informal briefings about the FOI requests were provided.
 - e. No FOI requests have resulted in multiple formal briefs being provided to the Minister or his office.
 - f. No FOI requests have resulted in multiple informal briefs (including by email) being provided to the Minister or his office.
16. The Commission does not generally publish PDF copies on its web site of documents released in response to FOI requests. The Commission's FOI disclosure log is published on its web site and notes that documents referred to in the disclosure log are available on request.
17. There are negligible costs associated with staffing to monitor email and collate and forward documents referred to in the Commission's FOI disclosure log.
18. The Commission uses a range of methods to assess compliance with accessibility standards for its websites. The Commission subscribes to a third party service which automatically scans the Commission's external websites every three months and provides

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a computer generated report on compliance levels and specific areas of non-compliance. In addition, the Commission has engaged external accessibility specialists to audit its sites and provide a report on non-compliant areas. This method of review can detect areas of non-compliance which cannot be detected by some manual methods. Finally, for commercial software products or third party hosted services, the Commission will accept certification that the product is compliant with accessibility standards where the certification is made by an independent credible accessibility authority.

19. The Commission is currently largely compliant with the Level AA Web Content Accessibility Guidelines (WCAG) for its external websites but not for all of its web applications (which use dynamic database information). In regards to websites, the major issue of non-compliance relates to legacy documents on the Remuneration Tribunal and Defence Force Remuneration Tribunal websites. On these sites, some of the older determinations are available in multiple formats but do not meet the tagging and structuring standards required for full compliance. The Commission offers to provide fully tagged documents on request.
20. If the Commission's FOI disclosure log included PDF versions of the documents, the accessibility compliance levels of its websites would potentially be degraded as PDF documents, even in tagged form, are not generally considered to be fully accessible. In most cases, PDF files would need to be generated from hardcopy documents (i.e. scanned) resulting in information that is not available in an accessible format.
21. The methods of compliance testing undertaken by the Commission are noted in the response to question 18. The areas of non-compliance on the sites are noted in the response to question 19. There were no problems or failures identified.
22. Partly. In light of the relatively small number of FOI requests received by the Commission and the Commission's limited resources, the provision of documents on request is an efficient and effective means of meeting the Commission's obligations in respect of publishing details about documents released in response to FOI requests.

In general the APSC website does not provide PDF versions of information as the format is not considered accessible by the Department of Finance. Further, the minimal cost of providing alternative versions of documents (i.e. HTML and Microsoft Word) outweighs the comparative high resource and implementation cost to correct and tag a PDF version to an accessible level.
23. Interested parties may request copies of documents referred to in the Commission's FOI disclosure anonymously by email, telephone or post.
24. As noted previously, the Commission does not publish documents in PDF form on its disclosure log. The Commission has received only one request for a document referred to in its FOI disclosure log. This request was from another Commonwealth agency and a copy of the document was forwarded by email.
25. In the case of the single request for a copy of a document referred to in its disclosure log, a response was sent within one business day.

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26. The Commission has not engaged directly with other agencies in relation to the website accessibility standards as they relate to publication of PDF files on its FOI disclosure log.
27. As part of the National Transition Scheme (2009), all Commonwealth, State and Territory government websites are required to conform to meet WCAG 2.0 standards. Advice received from the Department of Finance has been that PDF documents do not yet have approved 'Sufficient Techniques' to claim WCAG 2.0 conformance, and that providing information in the format should not be relied upon in providing government information.
28. The Commission accepts that making documents directly available for download provides greater accessibility than making documents available on request. However, in light of the ease with which documents can be requested from the Commission and the fact that documents may be requested anonymously, the present approach is an efficient and effective use of resources.
29. Documents referred to in the Commission's FOI disclosure log are available to any person on request. When making a request, an individual may request documents in electronic or paper form. Where scanned documents are too large to provide electronically by email, an individual may request an electronic copy on compact disc or a printed paper copy. As far as practicable, the Commission will accommodate individual requests for documents in specific formats.
30. The Commission has not requested advice from the Australian Information Commissioner about responding to FOI requests by email only. As far as practicable, the Commission corresponds with its clients by their preferred methods. In some cases, electronic documents are too large to provide by email and must be posted to recipients.
31. The Commission did not contact a disability advice group or consultant specifically about FOI requests and making them available online.
32. The information published in the Commission's FOI disclosure log meets the Web Content Accessibility Guidelines (Version 2) (WCAG 2.0) A-AA and is compatible with the Information Commissioner's guidelines.
33. The Commission publishes information on its website about documents released in response to FOI requests. The information in the Commission's disclosure log is published in HTML form, as a web page, and is also downloadable in a Microsoft Word format. The Commission also publishes details on its website about how documents released in response to FOI requests may be obtained. Information published on the Commission's website is available to members of the public generally.

The Information Public Scheme (IPS) is provided for by Part II of the *Freedom of Information Act 1982* (FOI Act). Subsection 11C(3) of the FOI Act provides that an agency must make either make information in documents released under the FOI Act available for download or publish details about how the information may be obtained.

34. The Commission's current procedures comply with WCAG 2.0 guidelines.

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35. FOI requests may be submitted to the Commission in writing at:

Email: foi@apsc.gov.au

Post: *FOI Contact Officer*

*Australian Public Service Commission
16 Furzer Street, WODEN ACT 2606*

Two employees in the Commission's Legal Services area have access to the Commission's FOI email inbox and requests received by post are forwarded to the Commission's Legal Services area. The Commission's Legal Services area comprises one Executive Level 2 employee and one Executive Level 1 employee.

36. Yes.

- a. When communicating with FOI applicants it is not necessary to distinguish between the subject of the communication and the employee's other tasks. The subject of the communication is generally self-evident. In most cases, employees would include words such as "I refer to your FOI request ..." at the start of email communications about an FOI request.
- b. FOI decision makers in the Commission exercise their professional judgement to distinguish between email messages relating to FOI matters and email messages relating to other matters, including other types of request for access to documents.