# **Submission to the Australian Information Commissioner**

# Disclosure of public servants’ names and contact details under the FOI Act

# Response to discussion paper questions

These responses encompass the Australian Public Service Commission’s (the Commission’s) views on the discussion paper questions both in relation to the Commission’s policy responsibility for Australian Public Service (APS) workforce and in relation to Commission employees.

### **Does your agency have concerns about releasing the names and contact details of staff in response to FOI requests? If so, what are your concerns? Has your agency experienced any specific work health and safety issues as a result of a person’s name or contact details being released in response to an FOI request?**

1. Yes, the Australian Public Service Commission (the Commission) has concerns about disclosure of personal information about Australian Public Service (APS) employees. These concerns include:

* disclosure can and does cause APS employees unnecessary stress and anxiety;
* disclosure can and does expose APS employees to unjustified and repeated criticism online, including defamatory, trolling-type commentary and unsubstantiated allegations made online by anonymous individuals;
* disclosure can expose APS employees to unwanted attention, not just online but in person; and
* disclosure achieves no public purpose that cannot be addressed by other, ordinary means of contacting APS agencies.

1. The Commission is aware that a number of other agencies will be making submissions outlining specific work health and safety issues that arise as a result of an APS employee’s name and/or contact details being released in response to an FOI request and does not propose to repeat those here.
2. At the Commission specifically, the release of APS employees’ names has resulted in personal information being published on the Right to Know (RtK) website. The consequences of this has included:
   * APS employee’s names being used as pseudonyms for subsequent RtK FOI requests;
   * Personal information of APS employees being researched online and used in a harassing manner in commentary associated with subsequent RtK FOI requests.
3. As can be expected, these consequences can have a serious effect on an individual’s health and wellbeing in the workplace. The Commission submits that even the potential for this to occur can have an effect on APS staff. Some employees strongly object to disclosure and have stated that the release of their personal information would cause stress and anxiety. It is acknowledged that this is also in a context where any personal information published on a website can stay available online for an indefinite period.
4. As an employer, the Australian Government has a duty of care to ensure the health and safety of its employees and the Commission is of the view that this is relevant when considering the impact of disclosure of APS employees’ personal information.

### **Have your agency’s views on this issue changed over time? If so, please describe any factors that have affected your agency’s approach, including technological, environmental or legal factors.**

1. Yes, the Commission’s views on this issue have changed over time. Some of the factors influencing the Commission’s views are as follows.
2. Between 5 to 10 years ago, the Commission routinely disclosed employees’ personal information in documents released to FOI applicants. During this period, the Commission commonly provided hardcopy documents to applicants by post. Anonymous or pseudonymous requests were only a small proportion of requests during this period. Few, if any, requests were received through the RtK website.
3. During the last five years, Commission FOI requests have been made almost exclusively by email and responses are provided almost exclusively in electronic form by email. Anonymous or pseudonymous requests are a substantial proportion of requests received, largely made through the RtK website. The Commission started receiving requests through this website in around 2014.
4. In the Commission’s experience, anonymous and pseudonymous FOI applicants are more likely to use aggressive language and make unsubstantiated allegations in pursuit of speculative theories and agendas. For RtK FOI requests, this discourse is conducted publicly on that website and remains there as a lasting record, personally connecting APS employees with that commentary.
5. During the last 10 years, the Commission has shifted from a paper-based records management system to an electronic records management system. FOI requests for paper based files typically involved fewer documents, smaller documents and less repetition and duplication of employees’ personal information on files.
6. Electronic records management seems to have resulted in many records being captured that may not have been captured previously. For example, many copies of long email threads may be captured which contain numerous copies of signature blocks, commonly now containing personal mobile phone numbers. Multiple recipients may capture slightly different versions of email threads with overlapping identical portions.

### **Does your agency advise staff, including contractors undertaking functions on behalf of the agency, that names and contact details may be released in response to an FOI request as part of your agency’s training and induction programs?**

1. This information is not included in the Commission’s induction programs. However, the Commission’s Legal Services team, which manages the FOI function, periodically provides FOI training which alerts staff to the wide application of the FOI Act, including the potential for disclosure of personal information.

### **How do you balance work health and safety considerations with the objects of the FOI Act, which include increasing public participation in Government processes with a view to promoting better-informed decision making and increasing scrutiny, discussion, comment and review of the Government’s activities? ‘**

1. The Commission acknowledges that the objects of the FOI Act involve increasing public participation in government decision making and to increase scrutiny, discussion, comment and review of government activities. However, those objects need to be balanced with the right of an individual not to have their identity and contact details made publicly available simply by virtue of the fact that they are an employee with the APS.
2. In deciding whether disclosure is unreasonable for the purposes of section 47F of the FOI Act, decision makers in the Commission usually attach very strong weight to work health and safety considerations of its employees.
3. In practice the disclosure of most employees’ personal information generally would not advance the objects of the FOI Act to any significant degree. The objects of the FOI Act are primarily achieved through disclosure of the substantive content of documents rather than the specific identities of authors or contributors.
4. For reasons explained in **Attachment A** (the Commission’s submission), the Commission considers that disclosure of SES employees’ personal information that is available publicly, in most circumstances, would not be unreasonable. SES employees are generally subjected to, and expect, a higher level of transparency and public scrutiny. There also are a number of distinctions both practically and legally that distinguish SES from non-SES APS employees. However, SES employees’ personal information that is not available publicly (for example, through the Government Online Directory) such as mobile numbers, are usually not disclosed under the FOI Act.
5. This is to be distinguished from the identity and designation of decision makers which the Commission considers it reasonable to disclose, and reflects the approach set out in sections 26, 29 and 24AB of the FOI Act which makes it mandatory to provide certain personal information about decision makers or consultation contacts.
6. The Commission is of the view that work health and safety considerations are relevant to disclosure of the personal information, including identity and contact details, of all APS employees. While a particular employee may not object to disclosure at a particular time, disclosure is not something that can be undone. Negative consequences arising from disclosure may not occur until some time after disclosure. The Commission submits that it is reasonable to assume that work health and safety considerations may become relevant for any employee at any time in future even if such concerns may not be apparent at the time of responding to an FOI request.

### **If your agency considers that disclosure of a public servant’s name or contact details will negatively impact their health or safety, what evidence do you require before deciding that their name or contact details are exempt from disclosure?**

1. The Commission submits that it is reasonable to assume that individuals would object to disclosure of their personal information. In light of the Australian Privacy Principles (APPs) and general community standards, the Commission submits that public servants reasonably expect that their employer will take steps to protect their privacy and work, health and safety. Public servants also are generally aware of a range of negative consequences that can flow from disclosure of their personal information online, particularly if it is associated with a topic of public controversy or where an FOI applicant is pursuing a particular grievance.
2. Commission employees have, on numerous occasions, objected to disclosure of their personal information in connection with an FOI request. If a non-SES APS employee expresses concerns that disclosure, particularly if the FOI request is sensitive or controversial, would cause stress or anxiety, Commission decision makers would generally accept these concerns at face value. The Commission considers that requiring further proof from employees would unnecessarily cause further stress and anxiety.

### **Do you consider the FOI Guidelines provide enough guidance for agencies when considering these issues?**

1. The FOI Guidelines provide sufficient guidance for agencies to make decisions in accordance with OAIC’s existing policies concerning disclosure of APS employees’ personal information. However, for reasons provided in **Attachment A**, the Commission is of the view that these policies should be revised and greater emphasis is placed on the test as expressed in s 47F(1).

### **In what circumstances do you consider that a public servant’s personal information (name and contact details) are irrelevant to the FOI request?**

1. The circumstances in which Commission decision makers usually treat personal information about APS employees as irrelevant to an FOI request include:

* where it is apparent that an FOI applicant is seeking information of a certain nature, and the personal information of APS employees is not information of that nature; and/or
* the FOI applicant has not specifically indicated that he or she requires the personal information of APS employees and no public purpose would be achieved by disclosure of that particular information.

### **Where you have withheld the names and contact details of public servants, what impact does deleting this information from documents have on the time it takes to process FOI requests?**

1. The nature of Commonwealth records has changed significantly over the last 10 to 15 years with developments in technology. Commonwealth records are now commonly comprised of long email threads.
2. Redacting the names and contact details of public servants from documents typically involves a significant investment of time and effort. Redaction of this information usually involves using a computer mouse to draw boxes around each occurrence of individuals’ names, telephone numbers and email addresses. This can be a highly repetitive, labour-intensive activity.
3. Section 22 of the FOI Act generally requires that only exempt parts of a document be redacted. This can result, for example, in several redactions to a single signature block within a single email message. A single document may comprise numerous individual email messages within a longer email thread.
4. In light of the manner in which long email threads develop, a single document may contain many instances of individuals’ personal information. Moreover, multiple documents may contain identical portions of different email threads.
5. Identifying and removing duplicate materials may involve greater effort than redacting the relevant portions. Moreover, agencies may not have the discretion to omit duplicate materials without the consent of FOI applicants.