

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
BUDGET ESTIMATES 2012-2013

Prime Minister and Cabinet Portfolio

Department/Agency: Australian Public Service Commission
Outcome/Program: Cross Portfolio
Topic: Freedom of Information

Senator: Ryan

Question reference number: 88

Type of question: Written

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Number of pages: 3

Question:

1. Has the Department/agency received any updated advice on how to respond to FOI requests?
2. What is the total cost to the department to process FOI requests for this financial year to date?
3. 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 and why? Do any of these requests remain outstanding? If so, how many and why?
4. 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 (the Commission) 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 Commission 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 Commission.

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

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

2. The costs for this financial year to date are not supplied because the data required to respond to this question fully is not readily available and an unreasonable diversion of resources would be required to compile this data ahead of the regular FOI reporting cycle. It is anticipated the costs will be higher than the 2010-11 financial year due to a large increase in FOI requests received by the Commission.
3. For the financial year to date (FYTD), the Public Service Commissioner has received 35 FOI requests. The status of these requests is as follows:
 - full access provided: nine responses finalised;
 - partial access granted: seven responses finalised;
 - withdrawn: seven requests were withdrawn—documents were provided to four of these applicants outside the provisions of the FOI Act;
 - refused: six requests were refused in full, each on the basis that the Commission 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: four requests remain outstanding.

One response was provided one day late owing to an administrative error. All other responses were provided within the statutory timeframes. None of the requests that remain outstanding are beyond the statutory timeframe for a response.

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

- full access provided: three responses finalised;
- partial access granted: three responses finalised;
- refused: one request was refused in full; and
- withdrawn: one request was withdrawn.

All responses were provided within the statutory timeframes.

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 the documents was made. This decision is currently under review by the OAIC and no documents will be released until the third party's 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 received one FOI request which was refused as it did not meet the requirements for a valid request.

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