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Conducting an IC review: Decision writing checklist

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Introduction

This checklist provides general guidance to review officers on matters to consider in progressing a matter to an Information Commissioner decision under s 55K.

Procedural issues to be addressed prior to drafting a decision

- The s 54Z notice has been provided to the agency / minister as it is possible for an application for IC review to have progressed only on the basis of preliminary inquiries made under s 54V.
- The decision under review has been identified (original decision/internal review decision/revised decision).
- The scope of review is settled and that you have identified all of the relevant issues (that is the matters about which the parties are in disagreement) and that clarification has been sought by the applicant about the documents / outcome sought if necessary. The issues have been confirmed with the applicant in circumstances where an agency has made updated exemption contentions / a revised decision under s 55G.
- In access grant IC reviews, the FOI applicant has been notified of the IC review pursuant to s 54Z(b).
- It is clear who bears the onus in the IC review (see s 55D).
- Procedural fairness has been provided to parties – generally through exchange of submissions, use of case appraisal/preliminary views, or a description of the substance of (confidential) submissions. See s 55(4)(b): in conducting a review the Information Commissioner must ensure that each review party is given a reasonable opportunity to present his or her case (consider in particular whether each party has been given an opportunity to respond where the decision is likely to be adverse to them).
- All third parties have been identified (see s 55A for those who are automatically parties and those who can apply to join review) and invited to participate in review (see ss 54P and 54Z regarding notification of IC review).
- All parties (applicant, respondent and any participating third parties) have been advised that the matter is proceeding to a decision and that a preliminary view has been provided if required. Seek final submissions from the parties, in particular, relevant submissions in response to a case appraisal / preliminary view.
- An unredacted copy of the documents at issue has been obtained, where relevant (see s 55U, the Commissioner may potentially make a decision based on agency submissions). Any mark-up on the documents at issue clearly explain which exemptions have been applied to which material (see [3.3] of the [IC review procedure direction](#)) and consider whether updated marked-up copies are required if an agency has changed its exemption contentions / made a revised decision during the course of the IC review.
- If the reasons for decision are inadequate to demonstrate that the agency / minister has discharged its onus under s 55D, the agency / minister has had the opportunity to provide submissions in response to a case appraisal / preliminary view.

- If the agency / minister seeks to make confidential submissions: consider the requirements of the [IC review procedure direction](#) (paragraphs [5.1] – [5.7]; submissions are generally shared unless there are compelling reasons not to, provided ahead of time; if submissions are accepted in confidence, a version should be provided for the applicant). We should be able to explain why we have agreed to accept submissions as confidential in the circumstances.
- The applicant and any third parties have advised if they wish to be identified in the decision. Corporations may be invited to provide reasons as to whether they object to being identified but generally do not have the right to privacy of an individual. Discuss this with your supervisor. Consider whether identification of the third party in the IC review decision would disclose exempt material (under s 55K(5)(b) the Information Commissioner’s published decisions will not include any exempt material).
- If a decision is going to be set aside with respect to s 33, evidence has been sought from the Inspector-General of Intelligence and Security (see s 55ZB).

Undertaking further case management

- If after considering the case plan and the information on the file, you consider further case management may be required, consult with the case officer in the Reviews and Investigations Team who prepared the case plan about whether the procedural steps were taken, and if not, the reasons why they were not taken.
- If after consulting with the case officer you still consider the case management step is necessary, consult with your supervisor about whether to take the step yourself, or whether to refer the matter back to the Reviews and Investigations Team for further case management.
- Given resourcing constraints and the need to finalise IC reviews in a timely manner, matters will only be sent back to the Reviews and investigations Team with the agreement of the Directors of both the Reviews and investigations Team and the Decisions Team.

Commissioner input meeting

- Where a preliminary view has been provided during the course of an IC review, this will usually be the starting point for drafting a decision. Consider any submissions received in response to the preliminary view and whether this changes the proposed recommendation to the Information Commissioner.
- Where a draft decision finds documents/material exempt under one provision, it may not be necessary to consider whether the same document/material is exempt under other exemptions the agency/Minister has relied on in its decision. Form your view about whether it may not be necessary to discuss particular exemptions and discuss this with your supervisor.
- If you consider a Commissioner input meeting would be of assistance, arrange a meeting with your supervisor, the Assistant Commissioner, and Commissioner (or other decision-maker) to discuss the proposed draft decision and the proposed outcome.
- After the meeting, you should send an email to all attendees outlining the action items arising from the meeting, and place a copy of the email on the Resolve file.

Drafting a decision

- The draft 'Reasons for Decision' template on Word should be used for drafting decisions.
- Start by setting out the background and the scope of the IC review, which can be key to determining if obvious case management steps have been missed and correctly identifying the issues in dispute which need to be addressed in the decision.
- Read the relevant provisions of the FOI Act and parts of the FOI Guidelines before starting to draft the decision and think about how you will address the requirements of each provision.
- Ensure references to the legislation and FOI Guidelines are correct. If paraphrasing legislation, ensure it is accurate: where possible, use the wording in the FOI Guidelines or previous IC review decisions if you want to simplify a concept or legal test. For example:
 - Exemptions affirm: *'OL' and Department of Home Affairs (Freedom of information)* [\[2018\] AICmr 36](#) (20 March 2018)
 - Exemptions vary: *'OC' and Australian Building and Construction Commission (Freedom of information)* [\[2018\] AICmr 26](#) (28 February 2018)
 - Exemptions set aside: *Australian Associated Press Pty Ltd and Department of Home Affairs (Freedom of information)* [\[2018\] AICmr 23](#) (14 February 2018)
 - Searches affirm: *David Kalman and Department of Veterans' Affairs (Freedom of information)* [\[2017\] AICmr 86](#) (13 September 2017)
 - Searches set aside: *The Australian and Minister for Foreign Affairs (Freedom of information)* [\[2018\] AICmr 6](#) (9 January 2018)
 - Practical refusal affirm: *'NX' and Australian Trade and Investment Commission (Freedom of information)* [\[2018\] AICmr 18](#) (2 February 2018)
 - Practical refusal set aside: *'NC' and Australian Building and Construction Commission (Freedom of information)* [\[2017\] AICmr 118](#) (17 November 2017)
 - Charges set aside: *Australian Associated Press Pty Ltd and Department of Foreign Affairs and Trade (Freedom of information)* [\[2018\] AICmr 13](#) (19 January 2018)
 - Access grant affirm: *Stryker Australia Pty Ltd and Department of Health (Freedom of information)* [\[2017\] AICmr 69](#) (25 July 2017)
 - Access grant set aside: *'HT' and the Australian Human Rights Commission* [\[2015\] AICmr 82](#) (15 December 2015)
- Consider and refer to OAIC resources, including:
 - overviews of IC review decisions that have addressed the same exemption / issue (check with your supervisor if these are available)
 - draw from a cross section of the most recent published decisions that have addressed the same exemption / issue (use keyword searches in Austlii), and
 - the relevant section of the FOI Guidelines.

- Use the *IC review decisions – Standard wording samples* resource at [Attachment A](#) to consider what information should be included in the background, scope of IC review and issues sections of the draft decision.
- Check that style is consistent with recent decisions of the Australian Information Commissioner:
 - state whether the decision is being affirmed, set aside and substituted or varied (follow wording as used in previous decisions). Include whether decision varied by the agency / minister under s 55G of the FOI Act.
 - identify any third parties participating in the review, along with the applicant and respondent in the title block. Under the ‘Scope of review’ section, refer to any third party consultation and footnote the consultation requirements (ss 27, 27A).
 - review a recent decision relating to similar provisions to check what information has been included in the background and scope of review sections (for example, practical refusal cases will include different information in the background section than exemption cases)
 - follow recent cases when preparing the Catchwords.
- Consider and refer to recent Federal Court, AAT and IC review decisions on relevant issues considered/cited/distinguished if necessary.
- Refer to the [OAIC Style Guide](#) for citing cases and legislation, punctuation and grammar. See also the *IC review decisions proofreading checklist* at [Attachment B](#) for common issues.
- Consider the following key messages when drafting decisions:

Formatting

- Use the OAIC’s formatting styles wherever possible. These are found in ‘Styles’ under the ‘Home’ tab in the FOI reasons for decision word template, or alternatively, under the ‘OAIC’ tab .
- It is important to make use of headings which help to guide the reader. However, too many levels of headings can be confusing. Try to limit this to three levels of headings if possible.
- Avoid one-word headings like ‘Consideration’, as this does not tell the reader anything about what is being discussed.
- Headings and formatting styles need to be consistent.
- When formulating headings, it is better to have a statement of what is coming in the section e.g. the heading could be a conclusion, which then leads to commentary as to how that conclusion was reached.
- If a statement is not appropriate, consider whether to pose the heading as a question that leads into the discussion.
- Consider whether to include the procedural background to the matter in a table/chronology format in an annexure. This may be most useful where the background is lengthy.

- Consider whether to include a table of documents setting out the decision in a table format in an annexure (see below). This may be useful where the decision involves several exemptions and multiple line by line redactions

Doc No.	Description	Decision under review	IC review decision

Language

- Use the *IC review decisions – Standard wording samples* resource at [Attachment A](#).
- Avoid using passive voice.
- Ensure consistent uses of tense and language (for example, when referring to exempt documents or parts of documents use consistent language throughout the decision, such as ‘the material at issue’).
- Use plain English.
- Sentences should be less than 4 lines long.
- In the ‘Scope of IC review’ section, when noting the material the decision-maker has had regard to, do not refer to ‘case law’. Instead refer to IC review decisions and AAT decisions (as relevant).
- Avoid using phrases like ‘I am satisfied that ...’ – instead, when stating a conclusion, we can say ‘I find that...’, or ‘I consider that...’.
- We should refer back to the ‘correct and preferable decision’. In practice, this means we must make the legally correct decision or, where there can be more than one correct decision, the preferable decision.
- Avoid using emotive or overly descriptive language that could display bias.

Referring to the parties submissions

- Make it clear when you are summarising the parties’ submissions by, for example, stating, ‘In summary, the applicant submits...’
- When summarising submissions, ensure that you accurately capture the narrative put forward by each party.
- Avoid lengthy quotes.

- There is no need to include or consider irrelevant submissions, although it may be appropriate to succinctly include or summarise the irrelevant submissions in the decision if you consider it will assist the party to feel they have been heard.
- Where submissions include overly emotive or inflammatory language, summarise and reframe the submissions.
- Avoid including adverse information about an individual that is not relevant to our consideration.

Referring to the agency’s FOI decision/s

- Use the *IC review decisions – Standard wording samples* resource at **[Attachment A](#)** to consider what wording to use when discussing agency FOI decisions
- For instance, in relation to an access refusal decision, the standard wording includes:

On [date], the [agency] advised the applicant that it had identified [x] documents within the scope of the request. The [agency] decided to give the applicant access to [x] documents in full, [x] documents in part and refused access to the remaining [x] documents.¹ In making its decision, the [agency] relied on the [name of exemption] exemption (s [x]) and the [name of exemption] exemption (s [x]).

References to IC review, AAT and court decisions

- Ensure that all references to IC review, AAT and court decisions are relevant to the particular issue and the context. For example, do not refer to a quote from an IC review decision about a conditional exemption when applying the public interest test.
 - Avoid repeating quotes from IC review decisions which restate the FOI Guidelines, where those parts of the FOI Guidelines have already been quoted in the draft decision.
- Do not disclose confidential submissions or content of exempt material, except as described in the agency / minister’s decision, provided to the applicant, or in non-confidential submissions (under s 55K(5)(b) the Information Commissioner’s published decisions will not include any exempt material). Consider including a general description of the confidential submissions and categorising exempt material.
- Review whether previous IC review decisions have considered similar documents / submissions and include a discussion of particularly relevant cases in the body of the decision.
- For example, you could use the NoteUp function and/or a keyword search in the [Austlii](#) Australian Information Commissioner database to search for particular topics (for example, investigation + 47E(c) or “practical refusal” + “reasonable steps”).
 - The OAIC’s [website](#) provides a summary of IC review decisions by year and lists the legislative provisions considered and catchwords.

¹ Identified in the schedule to the [agency]’s [original/internal review/revised] reasons for decision

Preparing the decision for clearance

- Review the reasoning in the draft decision and check that:
 - The background and scope sections only include information that is relevant to the issues in the IC review. If you think that information is not relevant but you are unsure, please include the information and note the relevance of the information in a comment for the decision reviewer's consideration.
 - The draft decision sets out the relevant legislative provisions and refers to relevant paragraphs of the FOI Guidelines.
 - There is appropriate analysis of the submissions put forward by the parties and that this accurately reflects their submissions.
 - That the relevant provisions of the FOI Act and the FOI Guidelines have been properly applied.
 - There is reasoning between the facts and conclusion that set out why (with reference to the particular circumstances of the case) the relevant legislative requirements are / are not satisfied in this case.
 - The interpretation of the legislation is consistent with the wording of the FOI Act, the FOI Guidelines and precedent IC review / AAT / Federal Court decisions. If not, discuss with your supervisor.
 - Each paragraph is clear, concise, accurate and includes only information that is relevant to the reasons for decision.
 - The draft decision includes the review rights and adequately explains what documents or parts of documents are to be exempt and not exempt in a clear and understandable way.
- Closely proof-read the decision**: read out aloud, read for accuracy then reasoning, then read again. Refer to the *IC review decisions proofreading checklist* at **Attachment B**. In summary, check:
 - References to document numbers and FOI Guidelines paragraph numbers are correct.
 - All quotes are accurate.
 - The formatting with respect to font, font size, paragraph indents, spacing and footnotes are all consistent with the style guide.
- Prepare the file using the template at **Attachment C** for electronic clearance using documents on Resolve.
- Draft snapshot and cover email using the template at **Attachment D**. When preparing the email snapshot, use the snipping tool to copy and paste the list of key documents from Resolve into the email.

Clearance of decision

- The draft you send to the reviewer should be decision ready, subject to any feedback from the reviewer. If you have not done so already, **closely proof-read the decision**. Refer to the *IC review decisions proofreading checklist* at **Attachment B**.

- Label the draft document 'Draft decision [surname of applicant] and [agency][IC review ref no.] [your initials][date of draft: DDMMYYYY]' eg '[Draft decision] - 22 [redacted]'
- Snapshot and cover email should be emailed to your supervisor for clearance. The clearance process for decisions is outlined below.

Finalisation of decision

- Commissioner approval sent via email. Save a copy of the Commissioner's email approving the decision to the 'Documents' tab on Resolve.
- Format and save the files by following the instructions in [Attachment E](#).
- The publications officer will then prepare the files for distribution/publication (as set out in [Attachment E](#)).
- Circulate the summary to FOI team with the links in TRIM.
- Provide decision to parties (including affected third parties participating in the review and any joined parties). This should happen on the same day that the decision is approved by the Commissioner unless the decision is finalised late in the day or after hours.

Closing the Resolve file

- Ensure copies of all correspondence to and from the parties is saved to the 'Documents' tab.
- Delete/destroy all exempt material (electronic and hard copies).
 - If documents received electronically, destroy.
 - If documents received in hardcopy, ask agency/minister whether it requires the documents to be returned. Note that we do not currently have a secure method of destroying USBs and therefore USBs should be returned.
 - Destroy electronic copies by deleting the files from all locations (for example, Resolve, Outlook, 47E(d) [redacted]).
 - Destroy hardcopy documents by shredding.
 - Return hardcopy documents as arranged with the agency.
- Update 'Exempt material' action on Resolve to record whether exempt material has been destroyed or returned and the date that the action was completed.
- Create 'Ad hoc' action to close file and complete necessary steps to update Resolve (see *IC reviews – Resolve user guide*).
- Close Resolve file.

Attachment A – IC review decisions – Standard wording examples

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Purpose		. . .
The purpose of this document is to provide examples of wording that is commonly used in IC review decisions. This resource should be read alongside recently published IC review decisions and in light of any recent feedback provided during the decision drafting process.		. . .
General		. . .
Referring to sections of the FOI Act		. . .
Section [x] of the FOI Act provides:		. . .
[insert]		. . .
Referring to the FOI Guidelines		. . .
The FOI Guidelines explain:		. . .
[insert]		. . .
Referring to the reasons for decision		. . .
In its [original/internal review/revised] reasons for decision, the [agency] said:		. . .
[insert]		. . .
Referring to the parties' submissions		. . .
In the IC review application, the applicant said:		. . .
[insert]		. . .
The applicant submits:		. . .
[insert]		. . .
The [agency] submits:		. . .
[insert]		. . .
Referring to the information before the Commissioner		. . .
Based on the information before me, ... [rather than 'Based on the information before the OAIC']		. . .

Decision section

Affirm decisions

I affirm the decision of [agency] of [date], [if relevant] as varied on [date].

Charges decision – set aside

I set aside the decision of the [agency] of [date]. I substitute my decision that the charge of \$ [x] be [reduced to \$ [x] / waived in full].

Practical refusal decisions – set aside

I set aside the decision of [agency] of [date]. I substitute my decision that a practical refusal reason does not exist.

The [agency] must now process the applicant’s request and notify the applicant of its decision no later than 30 days after it receives this decision.²

Searches decision – set aside

I set aside the decision of [agency] of [date].

The [agency] must conduct further searches for documents falling within the scope of the applicant’s FOI request and provide a response to the applicant in accordance with s 26 of the FOI Act within 30 days of receipt of this decision.³

Exemptions decision – vary

I vary the decision of the [agency]. I consider that the document that the [agency] decided is exempt under s [x] is exempt under [x].

Exemptions decision – set aside

I set aside the decision of the [agency] of [date], [if relevant] as varied on [date(s)]. I substitute my decision that the material that the [agency] decided is exempt under s [x] is not exempt. [use bullet points if there are multiple exemptions].

The [agency] must now provide the applicant with a copy of the document[s], [if relevant] edited under s 22 of the FOI Act only to the extent necessary to delete [exempt and/or irrelevant] material, within 28 days of this decision.

Irrelevant material – set aside

I set aside the decision of the [agency] of [date], [if relevant] as varied on [date(s)]. The [material / documents] that the [agency] found to be irrelevant to the request is not irrelevant to the request.

² On the question of the processing deadlines that now apply, see *Fletcher and Prime Minister of Australia* [2013] AlCmr 11 [33] – [38].

³ On the question of the processing deadlines that now apply, see *Fletcher and Prime Minister of Australia* [2013] AlCmr 11 [33] – [38].

Background section

Extension of time under s 54T

On [date], the applicant sought IC review of the [agency]'s decision under s 54L of the FOI Act.⁴

Charges decisions

On [date], the applicant applied to the [agency] for access to _____.

On [date], the [agency] gave notice to the applicant of its intention to impose a charge and provided a preliminary estimate of the amount of the charge of \$[insert], pursuant to s 29(1) of the FOI Act.

On [date], the applicant wrote to the [agency] and requested that the charge be waived or reduced on [insert grounds under [s 29(5)(a) and/or s 29(5)(b)] of the FOI Act.

On [date], the [agency] advised the applicant of its decision to impose a charge of \$[x] to process the request. [if relevant] The [agency] reduced the charge on the basis that [insert].

[if relevant] On [date], the applicant sought internal review of the [agency]'s decision to impose the charge.

On [date], the [agency] advised the applicant of its decision [to reduce the charge to \$[x] on the basis that [insert] / not to further reduce or waive the charge].

On [date], the applicant sought IC review of the [agency]'s decision to impose a charge under s 54L of the FOI Act.

Practical refusal decisions

On [date], the [agency] issued the applicant with a request consultation notice under s 24AB of the FOI Act. In that notice, the [agency] informed the applicant that the request [insert details of practical refusal reason].⁵

On [date], the applicant responded to the request consultation notice to [insert details of response]. [if relevant] This ended the request consultation period.⁶

Searches decisions

On [date], the applicant applied to the [agency] for access to _____.

On [date], the [agency] made a decision to refuse the request under s 24A of the FOI Act on the basis that the document[s] could not be located or do[es] no exist.

⁴ The applicant sought and was granted an extension of time under s 54T of the FOI Act.

⁵ This started a request consultation period. Under s 24AB(3), if the applicant contacts the contact person specified in the notice during the consultation period in accordance with the notice, the agency must take reasonable steps to assist the applicant to revise the request so that a practical refusal reason no longer exists.

⁶ Under s 24AB(8), the consultation period starts on the day an applicant is given notice under s 24AB(2) and continues until the applicant either, makes a revised request, or indicates that they do not wish to revise the request.

Deemed decisions

Pursuant to s 54Y of the FOI Act, where a substantive decision is made by an agency after the commencement of an IC review of a deemed refusal decision, the substantive decision becomes the decision under review.

Section 55F agreements

During the course of this IC review, the possibility of finalising this IC review by way of an agreement under s 55F was considered.⁷ However, as the parties have been unable to reach an agreement under s 55F, I will proceed to make a decision under s 55K.

Third party consultation

Section 26A – Commonwealth-State relations

On [date], [agency] undertook consultation with [insert] under s 26A of the FOI Act.⁸

On [date], [insert] responded to [agency] submitting that it objected to the disclosure of [certain material / the documents].

OR On [date], [insert] responded to [agency] submitting that it has no objection to disclosure.

OR, Based on the information before the OAIC, [insert] did not respond to the [agency]'s consultation.

Section 27 – business affairs

On [date], [agency] undertook third party consultation with [name of third party business [unless we have decided to de-identify the business] under s 27 of the FOI Act.⁹

On [date], [name of third party business] responded to [agency] submitting that it objected to the disclosure of [certain material / the documents].

OR On [date], [name of third party business] responded to [agency] submitting that it has no objection to disclosure.

OR, Based on the information before the OAIC, the third party did not respond to the [agency]'s consultation.

Section 27A – personal privacy

⁷ Section s 55F provides that I may, if satisfied that the terms of an agreement are appropriate, make a decision in accordance with the terms without completing an IC review (s 55F(2)).

⁸ If arrangements have been entered into between the Commonwealth and a State under s 26A, agencies and ministers are required to consult the State in accordance with the arrangements, before deciding to release a document where the State or the Commonwealth may reasonably contend that the document is conditionally exempt and that disclosure of the document would be contrary to the public interest.

⁹ Under s 27 of the FOI Act, where it appears to the agency that the organisation concerned might wish to make an exemption contention that the document is exempt under s 47; or the document is conditionally exempt under s 47G and access to the document would, on balance, be contrary to the public interest, the agency must not decide to give access to the document without giving the organisation a reasonable opportunity to make submissions in support of the exemption contention, and without having regard to any submissions so made.

On [date], [agency] undertook third party consultation with [number] individual(s) under s 27A of the FOI Act (documents affecting personal privacy) in relation to documents it had identified within the scope of the request.¹⁰

On [date], the third party responded to [agency] submitting that it objected to the disclosure of [certain material / the documents].

OR On [date], the third party responded to [agency] submitting that it has no objection to disclosure.

OR, Based on the information before the OAIC, the third party did not respond to the [agency]'s consultation.

Exemptions decisions

On [date], the [agency] advised the applicant that it had identified [x] documents within the scope of the request. The [agency] decided to give the applicant access to [x] documents in full, [x] documents in part and refused access to the remaining [x] documents.¹¹ In making its decision, the [agency] relied on the [name of exemption] exemption (s [x]) and the [name of exemption] exemption (s [x]).

Irrelevant material

The [agency] also deleted some material from the documents that it considers irrelevant to the request.

Revised decisions

On [date], [agency] made a revised decision under s 55G of the FOI Act.¹² The [agency] decided [insert].

Updated exemption contentions

During the course of this IC review, the [agency] advised that it no longer relies on s [x] in relation to [insert]. However, the [agency] introduced new contentions under the [name of exemption] exemption (s [x]) in relation to [insert].

¹⁰ Under s 27A of the FOI Act, where it appears to the agency that a person might wish to make a contention that a document is conditionally exempt under s 47F, and access to the document would, on balance, be contrary to the public interest, the agency must not decide to give access to the document without giving the person a reasonable opportunity to make submissions in support of the exemption contention, and without having regard to any submissions so made.

¹¹ Identified in the schedule to the [agency]'s [original/internal review/revised] reasons for decision

¹² Section 55G(1)(a) of the FOI Act provides that at any time during an IC review, an agency or Minister may vary (or set aside and substitute) an access refusal decision in relation to a request, if the variation would have an effect of giving access to a document in accordance with the request.

Issues section

Exemptions

The [agency] decided that [x] documents are exempt in full and [x] documents are exempt in part under s [x] of the FOI Act.

[if relevant] As I discussed above at [x – use cross-referencing tool **Error! Reference source not found.**], I have found [x] documents to be irrelevant to the request¹³ and five documents exempt under s [x] of the FOI Act.¹⁴ Accordingly, I need only consider the application of s [x] to the remaining [x] documents.

The material/documents that the [agency] found exempt under this provision comprise [insert] OR

The material/documents that the [agency] found exempt under this provision can be characterised as:

- [insert]

As discussed in the FOI Guidelines and previous IC review cases, [insert with reference to most recent IC review decision that discusses this exemption].

The FOI Guidelines explain:

[insert]

For these reasons, I am satisfied that the disclosure of the material/documents that the [agency] decided is exempt under s [x] would [insert wording of relevant provision – for example ‘would be an unreasonable disclosure of personal information’]. The documents are exempt under s [x].

[if the agency has not discharged its onus] For these reasons, I am not satisfied that the [agency] has discharged its onus of establishing that its decision under s [x] is justified.

The documents that the [agency] decided are exempt under s [x] of the FOI Act are not exempt under this provision.

Where the Information Commissioner decides that a different exemption applies

Under s 55K(2) of the FOI Act, for the purposes of implementing a decision on an IC review, I may perform the functions, and exercise the powers, of the person who made the IC reviewable decision. It is therefore open to me to consider any exemption that was available to the person who made the IC reviewable decision.

In this case, the [agency] has found material in [x] documents exempt under s [x] of the FOI Act. In my view, it is more appropriate to consider whether this material/document is exempt under s [x].

Where public interest considerations are irrelevant because the documents are not conditionally exempt

As I have found that the document is not conditionally exempt under s [x], I do not need to consider whether giving access to a conditionally exempt document is contrary to the public interest for the purposes of s 11A(5) of the FOI Act.

¹³ [refer to document numbers in schedule of documents]

¹⁴ [refer to document numbers in schedule of documents]

Where public interest considerations must be considered after finding a document conditionally exempt

As I have found that the documents are conditionally exempt, I must consider whether, on balance, it would be contrary to the public interest to give access to conditionally exempt documents at this time.

Where public interest considerations are irrelevant because it is a non-conditional exemption

The applicant submits that disclosure of the material/documents is in the public interest. However, as s [x] of the FOI Act is not a conditional exemption, submissions relating to the public interest are not relevant when considering whether s [x] applies.

Irrelevant material

Section 22 of the FOI Act provides that an agency may prepare an edited copy of a document by deleting information that is exempt or that could reasonably be regarded as irrelevant to the request.¹⁵

The [agency] decided that [x] documents contain material that is irrelevant to the request.¹⁶

[insert reasoning]

Accordingly, I am [satisfied / not satisfied] that the [description of material] that the [agency] decided is irrelevant to the request is irrelevant to the request.

Charges decisions

Assessment of the amount of the charge

The FOI Guidelines explain that the decision to impose a charge is discretionary. A charge must be as fair and accurate as possible to reflect the work involved in providing access to the documents requested and must not be used to unnecessarily delay access or discourage an applicant from exercising the right of access conferred by the FOI Act.¹⁷

The FOI Guidelines further explain that in exercising the discretion to impose a charge, an agency should take into account the ‘lowest reasonable cost objective’ in s 3(4) of the FOI Act, which provides that ‘functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost’. The FOI Guidelines relevantly explain:

Agencies and ministers should interpret the ‘lowest reasonable cost’ objective broadly in imposing any charges under the FOI Act. That is, an agency or minister should have regard to the lowest reasonable cost to the applicant, to the agency or minister, and the Commonwealth as a whole. Where the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate not to impose a charge ...¹⁸

[refer to recently published practical refusal decisions for guidance on the structure and content of the draft decision]

¹⁵ Section 22(1)(b)(ii) of the FOI Act.

¹⁶ [refer to document numbers in schedule of documents]

¹⁷ FOI Guidelines [4.5] and [4.54].

¹⁸ FOI Guidelines [4.4].



Practical refusal decisions

Section 24 of the FOI Act allows an agency or minister to refuse access to a document if satisfied that a ‘practical refusal reason’ exists in relation to the request, following a ‘request consultation process’ in accordance with s 24AB.¹⁹

[refer to recently published practical refusal decisions for guidance on the structure and content of the draft decision]

Searches decisions

Section 24A requires an agency to take ‘all reasonable steps’ to find a requested document before refusing access to it on the basis that it cannot be found or does not exist. Whether ‘all reasonable steps’ have been taken is a question of fact in the individual case to be decided having regard to matters such as the terms of an applicant’s request, the document creation and retention practices in an agency, and the steps taken by the agency to identify and locate documents requested by the applicant.²⁰

[refer to recently published searches decisions for guidance on the structure and content of the draft decision]

Reasoning – general statements

Onus

In an IC review of an access refusal decision, the agency bears the onus of establishing that its decision is justified, or that I should give a decision adverse to the IC review applicant (s 55D(1)).

In an IC review of an access grant decision, it is the IC review applicant that bears the onus of establishing that a decision refusing the request is justified, or that I should give a decision adverse to the FOI applicant (s 55D(2)).

¹⁹ ‘Practical refusal reason’ is defined in s 24AA of the FOI Act; ‘request consultation process’ is defined in s 24AB.

²⁰ *FOI Guidelines* [3.85] – [3.94].



Attachment B – IC review decisions proofreading checklist

Quotes

Tip	Example	Check
Quotes should be verbatim (exactly the same words used originally): cut and paste and then proofread (if text in PDF can't be copied, open in Adobe Pro – Go to Tools – Click on Text Recognition – Select In This File – Click OK to recognise text).		
If names or details that require de-identification appear in quote text, you can replace with square brackets and a formal description.	The applicant sought access to 'all document relating to a complaint made by [a named individual] about him'	
Use single quotation marks '...' unless it's a quote within a quote, then use double "..."	The applicant submits 'the respondent's contention that "the documents would cause significant harm" is misconceived.'	
Place quotation mark after full stop or comma (unless the punctuation is not within the quote).	See above.	
Use ellipses to indicate the omission of words; the format is as space on each side of the '...'	Section 3(2) of the FOI Act provides '[t]he Parliament intends ... to promote Australia's representative democracy by ... increasing scrutiny, discussion, comment and review of the Government's activities'	
Block quotes shouldn't run across multiple documents; ellipses indicates text missing from same document. Sentences should be in the order they appear in the document.		
Use square brackets at the end of a quote to indicate where emphasis added.	Section 24AB states: If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists [emphasis added].	
Keep quotes and the introductory sentence on the same page by selecting 'Paragraph', 'Line and page breaks' and 'Keep with next' (e.g. to keep 'The applicant submits:' and the quote on the same page).		

Footnotes

Tip	Example	Check
Footnotes generally go after punctuation mark.	The FOI Guidelines explain that an agency should have regard to the lowest reasonable cost objective in imposing charges under the FOI Act. ¹	
Follow previous decisions for citing FOI Guidelines and decisions in the body of decisions and footnotes.	The first reference to the FOI Guidelines should always include the full name of the FOI Guidelines. See a recently published decision as an example.	
Check that case citations and references to the FOI Guidelines are correct, particularly where you have referred to a previous published decision in preparing your draft.		
Check that footnotes are accurate where you have referred to document numbers with reference to the schedule of documents attached to an agency's decision. Check that the number of documents listed is consistent with the number in the body of the decision.		

Formatting

Tip	Example	Check
Follow the formatting on the Word template reasons for decision. Use the 'OAIC' tab at the top left hand corner for headings and bullet points.		
When listing items, use only a comma and 'and' after the second last bullet point (not a series of semi-colons) (this list is an example). Spacing before bullets should be 6pt, and 10pt after the last bullet.	The issues I have considered are: <ul style="list-style-type: none"> • issue x • issue y, and • issue z. 	
Check the numbering of your paragraphs once decision is drafted.		
Spell out numbers in words from zero to nine (except for references to sections in	The Department identified 12 documents as falling within the scope of the request and gave the applicant access to four documents in full, four documents in part	

Tip	Example	Check
legislation); use numerals for all numbers from 10 on.	and refused access to the remaining two documents.	
Use one space after a full stop (not two). Use the 'Show/Hide' function by clicking ¶ on the Home toolbar to assist you to check whether spacing throughout the document is correct.		
Use a non-breaking space (Ctrl+Shift+space bar) to prevent breaking titles or section references across lines (eg this should be used when writing s 47F to prevent the 's' from appearing on one line and the '47F' on the next line).		
Department (capital D)	The Department submits ...	
departmental (lower case D)	The Department submits that the names of departmental officers are exempt under s 47F.	
First mention of our office, say 'Office of the Australian Information Commissioner (OAIC)' then use OAIC throughout.	The Office of the Australian Information Commissioner (OAIC) requested that the Department provide documents. The Department provided the OAIC with the documents on 3 March 2018.	
In setting out catchwords make sure they are evenly spaced and use the same length em dash — ; use capital letter after each '—'	Freedom of Information — Whether disclosure would cause damage to the security of the Commonwealth — (CTH) Freedom of Information Act 1982 s 33(a)(i)	
Check references to documents/document/material throughout decision.	The issue in this IC review is whether the document that the Department found exempt under s 47F is conditionally exempt, and if so, whether giving the applicant access to a conditionally exempt document [not conditionally exempt documents] at this time would be contrary to the public interest.	

Tip	Example	Check
Check for consistency in terminology used throughout the decision (e.g. consistently use staff / officers / employees / personnel in a decision relating to s 47E(c)).		
For a specific minister use capital M but references to obligations of a minister under the FOI Act is lower case m (even if capitalised in the legislation)	The issue in this IC review is whether the document was brought into existence for the dominant purpose of briefing a minister on a document to which s 34(1)(a) applies. In this case, the relevant minister is the Minister for Foreign Affairs (the Minister).	
Title of 'the Honourable' or 'the Hon' applies to ministers and some ex ministers, not to senators/members generally.		
Do not use a full stop after short forms, for example 'p 7' not 'p. 7' and 'APPA', not 'A.P.P.A.'	<ul style="list-style-type: none"> • 's 47' not 's.47' or 's. 47' • 'ss 47 and 47F' not 'ss.47 and 47F' • 'p 7' not 'p. 7' • 'APPA' not 'A.P.P.A.' • 'Mr Smith' not 'Mr. Smith' 	

Attachment C – Instructions for assisting with electronic clearance using documents on Resolve

Once the cover sheet is prepared, the case officer tabs the key documents in the Resolve file and saves the draft decision for Executive clearance onto Resolve.

- The draft decision that the Information Commissioner will review is the draft decision on Resolve.
- Ensure that each document in the coversheet is in the 'Documents' tab on the Resolve case file and can be easily identified. For example:
 1. verbal submissions from a party recorded in a file note of a telephone conversation in the 'Actions' tab can be printed to pdf and saved onto the 'Documents' tab
 2. if a large number of *different* key documents are attached to one email, one or more attachment(s) can be separately saved onto the 'Documents' tab.
 3. if a single email and multiple attachments comprise the *same* key document, the attachments do not have to be separately saved but can be identified in the name on the 'Documents' tab. For instance: *Tab 6(d). A's submissions (30 January 2014 email and attachments B and C)
 4. where the key document is located in the middle of an attachment, note the page numbers. For instance: *Tab 4. Internal review decision (pp 61-73)
 5. where the key document is embedded in a Word document, these individual embedded document(s) can be separately saved onto the Documents tab.
- On the 'Documents' tab in Resolve, categorise each document in the coversheet as a 'Key Document' or 'Exempt Material' if the document includes exempt matter. Number the documents between 1 and 9. If there are more than 9 key documents, use alphabets to identify documents that can be grouped together.
- Use the following naming convention as a guide to name each key document in the 'Documents' tab:
 - *Tab 0. Cover sheet
 - *Tab 1. Draft decision
 - *Tab 2. FOI request
 - *Tab 3. FOI decision(s)
 - *Tab 3(a). Primary decision
 - *Tab 3(b). Internal review decision
 - *Tab 4. IC review application
 - *Tab 5. Revised decision
 - *Tab 6
 - *Tab 6(a). A's submissions (delivered to Reception 5.02.2018)
 - *Tab 6(b). A's submissions
 - *Tab 6(c). A's submissions
 - *Tab 6(d). A's submissions (evidence only - 30 January 2014 email and attachments)
 - *Tab 7
 - *Tab 7(a). R's submissions
 - *Tab 7(b). R's submissions (evidence only)
 - *Tab 7(c). R's submissions
 - *Tab 8. IGIS

- *Tab 9. Document in issue – [short form name of document]
- Only documents that are key documents in the IC review will be:
 - 1. listed or numbered in the coversheet, and
 - 2. categorised as a **'Key Document'** or **'Exempt Material'** on the Resolve case file. . . .
- For instance, if there is no internal review decision, '*Tab @. Internal review decision' will not be listed on the cover sheet. . . .
- Check that the relevant files are categorised and organised appropriately by sorting the 'Comments' column then sorting the 'Categories' Column. The documents relevant to the draft decision should appear at the top of the page in numerical order. . . .



Attachment D – Template Snapshot

The drafter will use the following Snapshot template at the top of the email to seek clearance from the Director.

Subject: [IC review decision] [insert parties' names] (OAIC ref no [insert])

Snapshot	
Due date	[1 week] [standard]
Fixed or flexible	Flexible
If fixed, why?	N/A
Topic for clearance	[insert parties' names] (OAIC ref no [insert])
Product	Draft IC Review decision
Scope / exemptions	[insert provisions at issue]
Length / no. of pages*	<p>Draft decision – [insert] pages.</p> <p>Key documents on Resolve record [reference no]</p> <ul style="list-style-type: none"> • *Tab 0. Cover sheet • *Tab 1. Draft decision • *Tab 2. FOI request • *Tab 3. FOI decision(s) <ul style="list-style-type: none"> ○ *Tab 3(a). Primary decision ○ *Tab 3(b). Internal review decision • *Tab 4. IC review application • *Tab 5. Revised decision • *Tab 6 <ul style="list-style-type: none"> ○ *Tab 6(a). A's submissions (delivered to Reception 5.02.2018) ○ *Tab 6(b). A's submissions ○ *Tab 6(c). A's submissions ○ *Tab 6(d). A's submissions (evidence only - 30 January 2014 email and attachments) • *Tab 7 <ul style="list-style-type: none"> ○ *Tab 7(a). R's submissions ○ *Tab 7(b). R's submissions (evidence only) ○ *Tab 7(c). R's submissions • *Tab 8. IGIS • *Tab 9. Document in issue – [short form name of document]
Third parties	Yes – see above
Issues for Commissioner	[flag any particular issues for the Commissioner]
Review officer	[insert]
Clearance	[insert e.g. Director, Assistant Commissioner]
Final clearance	FOI Commissioner / Information Commissioner

Attachment D1 – Clearance process

Steps	Action	Lead
1	Draft the decision	drafter
2	Email sent to Director requesting comments/feedback including the snapshot, copying in the Executive officer to the relevant Commissioner or Assistant Commissioner.	drafter
3	Once Director has reviewed and included comments, the Director will forward the snapshot by email to the decision maker, copying in the drafter (and ACFOI@oaic.gov.au where the Assistant Commissioner is not the decision maker)	Director
5	Once the decision maker has reviewed, they will either approve the decision, or request that the drafter action comments in the draft in Resolve, by replying to all in the email thread.	FOIC or delegate
6	<p>In circumstances where the FOIC has requested the drafter to action comments, the drafter will action the comments by:</p> <ul style="list-style-type: none"> • adding their track changes in the document on Resolve, and • responding to the comments by providing additional information (as necessary) and/or confirming each of the comments has been actioned. <p>Once all comments have been actioned, the drafter will reply all to the FOIC's email (see step 5 above) to confirm that the comments have been actioned and the matter is ready for the FOIC to final review.</p>	FOIC/delegate and drafter

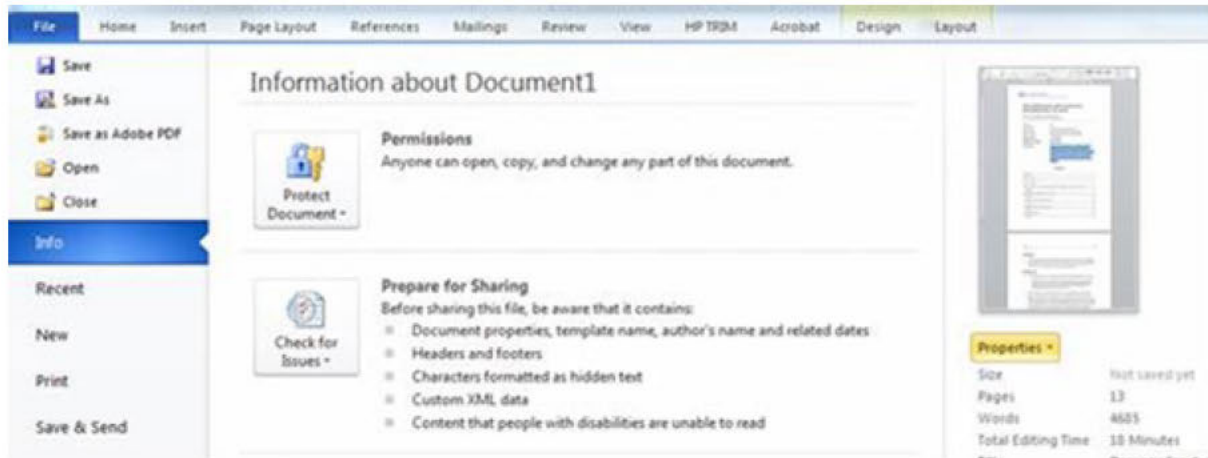
Attachment E – Finalisation/publication process

Once Commissioner approval is received, the case officer saves the approval to the Resolve file and prepares the decision for delivery to the parties/publication.

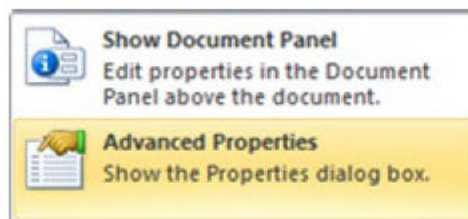
- Check that the Director and Publications Officer are copied into the approval from the Commissioner ('I approve this decision' etc), if not, forward them the approval.
 - The Publications Officer will then register the decision in the master list ([D2018/003448](#)) and send the citation to the case officer.
- Update the decision with the date and citation (the date is the date of the approval).
- Fix up the metadata. See below instructions on saving files.
- Create three files: docx, rtf and pdf. The file name should be '2016-AICmr59' for example). See below for instructions on saving files.
- Save the three versions to TRIM [14/000082-13](#).
- The Publications Officer will send the rtf version to AustLII 1-2 days after the decision has been sent to the parties (instructions set out below).
- Send the pdf version to the parties on the same day as the decision. The covering email should note that the decision will be published on AustLII shortly.
- Send the case summary and short summary to the FOI team with a [link](#) to the PDF and CC to the following teams and individuals around the office:
 - FOICommissioner@oaic.gov.au
 - Toni.Pirani@oaic.gov.au
 - elizabeth.tydd@oaic.gov.au
 - Legal: Legal@oaic.gov.au
 - Media: media@oaic.gov.au

Saving files

When saving the decision as different files, please make sure the properties are as per the steps below.



When you click on 'Properties' a drop down box like this will appear. Click on 'Advanced Properties'.



Once you do this, the following will appear:



The only tab you need to be concerned with is the summary tab. Click on that tab and when you do, it should now look like this:

Document5 Properties

General Summary Statistics Contents Custom

Title:

Subject:

Author:

Manager:

Company:

Category:

Keywords:

Comments:

Hyperlink base:

Template: Reasons for Decision.dotm

Save Thumbnails for All Word Documents

OK Cancel

You need to fill in each of the following sections, which is duplicating information from the body of the decision. The end result should look like this:

Document5 Properties

General Summary Statistics Contents Custom

Title:

Subject:

Author:

Manager:

Company:

Category:

Keywords:

Comments:

Hyperlink base:

Template: Reasons for Decision.dotm

Save Thumbnails for All Word Documents

OK Cancel

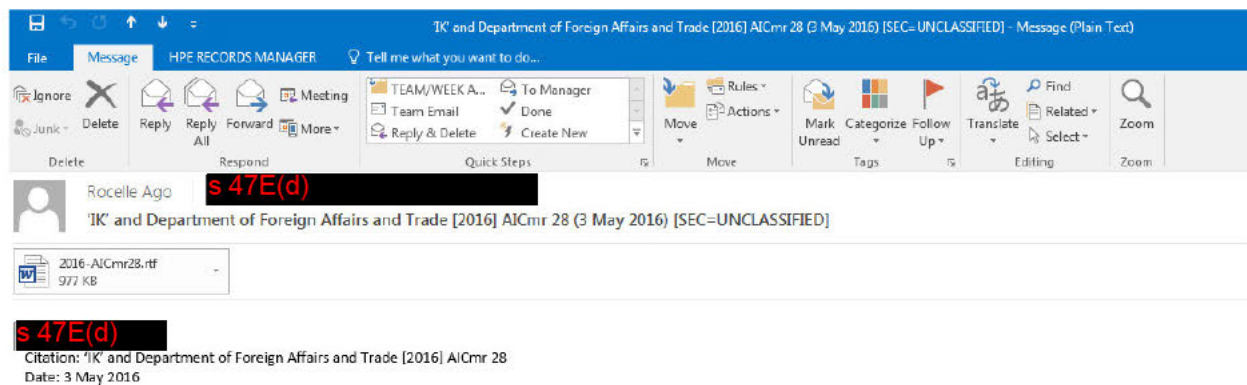
Publication of decision on AustLII

The decision will be sent to AustLII for publication.

To send a decision:

- New email – set the email to plain text. AustLII does not recognise any other email formats.
- Attach rtf file.
- Subject: Decision name/citation [Sec = UNCLASSIFIED]
- To: s 47E(d)
- Email content:
 - Password: s 47E(d)
 - Citation: [citation]
 - Date: [insert]

Example



* Each decision must be sent separately. AustLII cannot process bulk decisions in a single email.

* Where a decision needs to be re-issued (e.g due to errors in the decision):

1. Create a new email and follow the steps above
2. Attach the updated rtf decision file
3. Keep the same details (such as citation in the subject and body of the email) as the original email. AustLII will automatically recognise the entry and overwrite the original entry with the updated decision.

Publication of decision on OAIC website

The OAIC also publishes a table of IC review decisions that also link to AustLII. To update the table:

Send an email to Website@oaic.gov.au that contains the following content:

- Decision*
- Legislative provision
- Catchword summary (from the decision)
- Decision under review
- IC review decision

Example

RE: 2016 IC review decisions 23-26 [DLM=For Official-Use-Only]

Hi Amanda

Could you please publish the following entries? The decisions will be available on AUSTLII tomorrow.

Decision	Legislative provision/s	Catchword summary	Decision under review	IC review decision
David Spinks and Department of Veterans' Affairs [2016] AICmr 40 [22 April 2016]	ss 11A(5), 476, 55D	Freedom of Information — Whether disclosure would unreasonably affect an organization's business affairs — Whether disclosure would unreasonably affect a person's professional affairs — Whether contrary to the public interest to release conditionally exempt documents — Whether the agency has discharged its onus of establishing that its decision is justified	Access refusal	Set aside and substituted
Australian Associated Press Pty Ltd and Department of Immigration and Border Protection [2016] AICmr 25 [22 April 2016]	ss 11A, 42, 47E(4), 47F, 55C	Freedom of Information — Whether document subject to legal professional privilege — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether disclosure of personal information is unreasonable — Whether contrary to public interest to release conditionally exempt documents	Access refusal	Varied
JL and Department of Immigration and Border Protection [2016] AICmr 28 [23 April 2016]	s 24A	Freedom of Information — Whether reasonable steps were taken to locate documents	Access refusal	Affirmed
Patrick Leahy and Australia Post [2016] AICmr 23 [20 April 2016]	ss 11A, 22, 47F	Freedom of Information — Whether disclosure of personal information is unreasonable — Whether contrary to public interest to release conditionally exempt documents — Whether reasonably practicable to prepare edited copy of video	Access refusal	Set aside and substituted

Many thanks
Rocelle Ago | Director | FOI Dispute Resolution
 Office of the Australian Information Commissioner
 Level 3, 175 Pitt Street, SYDNEY NSW 2000
 GPO Box 5128 SYDNEY NSW 2001 | www.oaic.gov.au
 Phone: +61 2 9284 9621 | E-mail: rocelle.ago@oaic.gov.au

For Official Use Only-DLM-ONLY

* The decision will need to be hyperlinked to AustLII – You can copy and paste the link to the most recent decision on AustLII and manually update the citation number to the corresponding citation number in the decision to be published (ie. <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AICmr/2019/19.html>)



Attachment F – Template summary of IC review decision

Review officers need to prepare a summary when a decision has been finalised under s 55K.

The subject line of the email will be ‘Case summary:’ followed by the citation.

The summary in the body of the email should include the following:

- The citation
- 3 trim links to a word, RTF and PDF version of the decision
- Key points
- Catchwords
- Decision
- Whether changes are recommended to the FOI Guidelines

Example

Subject: Case summary: ‘AEY’ and Department of Climate Change, Energy, the Environment and Water (Freedom of information) [2023] AICmr 95 (18 October 2023)

Dear All

Please find below the TRIM links for the Acting FOI Commissioner’s decision: ‘AEY’ and *Department of Climate Change, Energy, the Environment and Water (Freedom of information)* [2023] AICmr 95 (18 October 2023):

Word: [D2023/025259](#)

RTF: [D2023/025261](#)

PDF: [D2023/025258](#)

Key points: [insert key points]

Catchwords: Freedom of Information — Whether disclosure of personal information unreasonable — Whether disclosure would have a substantial adverse effect on the management of personnel (CTH) *Freedom of Information Act 1982* ss 11A(5), 47F, 47E(c)

Decision: Set aside

No updates to the FOI Guidelines are required.

Regards



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NOTE:

This document is intended to serve as a quick guide of the key provisions/references for each provision only. Additional references to the legislation, cases, and FOI Guidelines will need to be added on a case-by-case basis depending on which issues arise in that case. This document also needs to be updated upon the issuance of new FOI Guidelines. This version incorporates v1.6 of Part 5 and v1.4 of Part 6 of the FOI Guidelines.

Annexure A (s 22)

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Irrelevant material (s 22)

Section 22 of the FOI Act authorises an agency to prepare and to give an applicant access to an edited copy of a document if:

- an agency or Minister decides:
 - to refuse to give access to an exempt document (s 22(1)(a)(i)), or
 - that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, and
- it is possible for the agency or Minister to prepare an edited copy of the document (s 22(1)(b)), and
- it is reasonably practicable to prepare an edited copy, having regard to the nature and extent of the modification required, and the resources available to modify the document (s 22(1)(c)), and
- it is not apparent, from an applicant's request or consultation with the applicant, that the applicant would decline access to the edited copy (s 22(1)(d)).

The FOI Guidelines state:

A request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used.¹

¹ FOI Guidelines at [3.54] footnoting *Re Gould and Department of Health* [1985] AATA 63.

Annexure A (Practical refusal - ss 24, 24AB, and 24AA(1)(a))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Whether a request consultation process was undertaken (s 24AB)

Section 24AB of the FOI Act relevantly states:

What is a request consultation process ?

Scope

(1) This section sets out what is a **request consultation process** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the **consultation period**) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), **reasonable steps** includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

(5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
- (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or

(b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period. [emphasis in original]

The FOI Guidelines relevantly state:

Where an agency or minister is satisfied that a practical refusal reason exists, they must undertake a request consultation process with the applicant before making a decision to refuse the request (s 24AB).

...

The agency or minister must give the applicant a written notice that states:

- an intention to refuse access to a document in accordance with a request
- the practical refusal reason
- the name and contact details of an officer with whom the applicant may consult during the process, and details of how the applicant may contact them
- that the consultation period during which the applicant may consult the contact person is 14 days after the day the applicant is given the notice (s 24AB(2)).

Agencies and ministers are only obliged to undertake a request consultation process once for any particular request (s 24AB(9)), but they may choose to continue discussions with an applicant in order to refine a request that is still too large or vague.

...

If an applicant contacts a contact officer during the consultation period, the contact officer must take reasonable steps to help them revise the request so that the practical refusal reason no longer exists (s 24AB(3)). For example, a contact officer could provide a breakdown of the time estimated for each step of the process, explain the difficulties the agency will have in dealing with the request and suggest what would be a reasonable request in the circumstances.²

Whether a practical refusal reason exists (ss 24 and 24AA)

Section 24 of the FOI Act enables an agency or Minister to refuse access to a document where the agency has undertaken a request consultation process in accordance with s 24AB of the FOI Act, and after that process the agency or Minister is satisfied that the practical refusal reason still exists.

Subparagraph 24AA(1)(a) of the FOI Act lists the following practical refusal reason:

(1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:

(a) the work involved in processing the request:

- (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
- (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;

Subsection 24AA(2) of the FOI Act lists matters which a decision maker must consider where relevant in deciding whether or not a practical refusal reason exists. It is a non-exhaustive list.

Subsection 24AA(3) of the FOI Act states:

² FOI Guidelines at [3.127], [3.129], [3.132], and [3.133].

(3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:

- (a) any reasons that the applicant gives for requesting access; or
- (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
- (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

As set out in *'ACW' and Australian National Maritime Museum* [2023] AICmr 4 (*'ACW'*), a decision maker must consider the following 3 elements in determining the issue of whether a practical refusal reason exists for the purposes of s 24AA(1)(a)(i) of the FOI Act:

- First, I must determine whether a request consultation process has been undertaken in accordance with s 24AB of the FOI Act. In many cases, this element of the decision-making task may be dealt with briefly because it is clear that a relevant process has been validly conducted and no agreement as to validity arises between the parties to the IC review.
- Secondly, if I determine that a request consultation process has been validly undertaken, I must determine whether I am 'satisfied' that the work involved in processing the applicant's request (as revised, if at all, during the request consultation process) would 'substantially' divert the resources of the agency from its other operations.
- Thirdly, if I am satisfied of a substantial diversion of resources, I must determine whether I am also 'satisfied' that the work involved in processing the applicant's request would 'unreasonably' divert the resources of the agency from its other operations.³

To be 'satisfied' for the purposes of s 24(1) of the FOI Act that a practical refusal reason exists, a decision maker must 'feel' an 'actual persuasion' that the reason exists. They cannot be satisfied simply as a result of a 'mere mechanical comparison of probabilities independently of any belief in its reality'.⁴ Moreover, a decision maker's 'satisfaction' as to the existence of a practical refusal reason cannot be arbitrary or capricious; it must be formed 'according to law and not humour'.⁵

A diversion of an agency's resources will be considered to be 'substantial' if the diversion can be characterised as 'real or of substance' rather than 'large'.⁶

The FOI Guidelines explain:

In deciding if a practical refusal reason exists, an agency or minister must have regard to the resources required to perform the following activities specified in s 24AA(2):

- identifying, locating or collating documents within the filing system of the agency or minister

³ *'ACW' and Australian National Maritime Museum* [2023] AICmr 4 at [10].

⁴ *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 at 361 (Dixon J)

⁵ *Federal Commissioner of Taxation v Bayly* [1952] HCA 31; (1952) 86 CLR 506 at 510 (Williams J). See also *Minister for Immigration and Multicultural Affairs v Eshetu* [1999] HCA 21; (1997) 197 CLR 611 at [145] (Gummow J).

⁶ See *Langer and Telstra Corporation Ltd* [2002] AATA 341 ('Langer') applied in *Cambridge; Chief Executive Officer, Services Australia and (Freedom of information)* [2021] AATA 1142 and *Farrell; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 2390, noting that at the time of the decision in *Langer*, the reference to processing a request 'substantially and unreasonably' diverting the resources of an agency was contained in s 24 rather than s 24AA. However, there is nothing in the terms of s 24 as enacted at that time which would negate the application of the view reached by Forgie DP in the context of s 24AA(1).

- examining the documents
- deciding whether to grant, refuse or defer access
- consulting with other parties
- redacting exempt material from the documents
- making copies of documents
- notifying an interim or final decision to the applicant.

Other matters that may be relevant in deciding if a practical refusal reason exists include:

- the staffing resources available to an agency or minister for FOI processing
- whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities
- the impact that processing a request may have on other work in an agency or minister's office, including FOI processing
- whether an applicant has cooperated in framing a request to reduce the processing workload
- whether there is a significant public interest in the documents requested
- other steps taken by an agency or minister to publish information of the kind requested by an applicant
- as to a request to a minister — other responsibilities of the minister and demands on the minister's time, and whether it is open to the minister to obtain assistance from an agency in processing the request.⁷

⁷ FOI Guidelines at [3.116] – [3.117] (footnote omitted).

Annexure A (s 24A – searches)

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Searches – s 24A

Section 24A of the FOI Act requires that an agency take ‘all reasonable steps’ to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

The FOI Guidelines state:

The Act is silent on what constitutes ‘all reasonable steps’. The meaning of ‘reasonable’ in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s operating environment or the minister’s office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents, and
- the record management systems in place
- the individuals within an agency or minister’s office who may be able to assist with the location of documents, and
- the age of the documents.⁸

⁸ FOI Guidelines at [3.88] – [3.89]. For further information, see FOI Guidelines at [3.85] – [3.94]; ‘RD’ and Comcare (Freedom of information) [2019] AICmr 61; ‘PK’ and Department of the Prime Minister and Cabinet (Freedom of information) [2018] AICmr 65; ‘PI’ and Department of Human Services (Freedom of information) [2018] AICmr 62; ‘PF’ and Department of Human Services (Freedom of information) [2018] AICmr 59; ‘OP’ and Department of Home Affairs (Freedom of information) [2018] AICmr 43; Josh Taylor and Prime Minister of Australia (Freedom of information) [2018] AICmr 42.

Annexure A (s 33(a)(i))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

National Security of the Commonwealth (s 33(a)(i))

Section 33(a)(i) of the FOI Act states that a document is an exempt document if its disclosure:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth...

As discussed in the FOI Guidelines⁹ and IC review and AAT decisions¹⁰, the term ‘security of the Commonwealth’ refers to the protection of:

- Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests, and
- the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth’s international relations.¹¹

The FOI Guidelines further state:

It is well accepted that securing classified government information forms part of the security of the Commonwealth. The assessment that s 33(a)(i) requires must be made at the time the decision is made and in the environment that exists at the time. Where a request is received for classified government information, the documents must be considered both individually and collectively.¹²

⁹ Generally, see FOI Guidelines at [5.25] – [5.34] and the cases referenced there.

¹⁰ See *Prinn and Department of Defence (Freedom of information)* [2016] AATA 445; *Jonathan Kearsley and Australian Federal Police (Freedom of information)* [2022] AICmr 55; *Rex Patrick and Department of Defence (Freedom of information)* [2022] AICmr 40; ‘OZ’ and *Department of Defence (Freedom of information)* [2018] AICmr 49; ‘OL’ and *Department of Home Affairs (Freedom of information)* [2018] AICmr 36; ‘LD’ and *Department of Defence (Freedom of Information)* [2017] AICmr 32; and ‘HK’ and *Department of Defence* [2015] AICmr 72.

¹¹ FOI Guidelines at [5.30] (footnotes omitted).

¹² FOI Guidelines at [5.34].

Annexure A (s 33(a)(iii))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

International relations (s 33(a)(iii))

Section 33(a)(iii) of the FOI Act relevantly states a document is an exempt document if disclosure of the document under this Act would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.

As discussed in the FOI Guidelines and IC review cases,¹³ for a document to be exempt under s 33(a)(iii), it must be shown that disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them.¹⁴

The FOI Guidelines explain:

the phrase does encompass intangible or speculative damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.¹⁵

In *Secretary, Department of Foreign Affairs and Trade v Paul Whittaker*,¹⁶ the Full Federal Court considered the predecessor to s 33(a)(iii).¹⁷ The Full Court reiterated the following propositions which the AAT had accepted:

- Damage to international relations might reasonably be expected where the disclosure of a document may disclose sensitive information so as to cause, or reasonably be expected to cause, actual and significant damage.
- The concept of damage is not to be confined and may include damage to intangibles, such as personal relationships between high level officials and politicians.
- There is no public interest test criterion extending beyond the terms of the exemption provision, in that a document is either within the provision or it is not.

¹³ FOI Guidelines at [5.38] – [5.44].

¹⁴ FOI Guidelines at [5.39].

¹⁵ FOI Guidelines at [5.40].

¹⁶ [2005] FCAFC 15; (2005) 143 FCR 15.

¹⁷ Prior to amendments made to s 33 of the FOI Act by the *Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009*, s 33(a)(iii) appeared in the FOI Act as s 33(1)(a)(iii). The terms of s 33(a)(iii) are identical to those of s 33(a)(iii).

- The test is not whether there is a risk of damage to international relations: the test requires a higher degree of certainty of damage.
- The test is to be applied to the documents at the time of decision and not at the time of creation of the documents.¹⁸

¹⁸ At [17].

Annexure A (s 37(2)(b))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Prejudice to law enforcement methods and procedures (s 37(2)(b))

Section 37(2)(b) of the FOI Act states:

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

...

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

...

As discussed in the FOI Guidelines and in IC review cases,¹⁹ for a document to be exempt under s 37(2)(b) of the FOI Act, it would need to be shown that disclosure would, or could, reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures.

The FOI Guidelines explain:

This exemption requires satisfaction of 2 factors. There must be a reasonable expectation that a document will disclose a method or procedure and a reasonable expectation or a real risk of prejudice to the effectiveness of that investigative method or procedure.¹¹⁴ If the only result of disclosing the methods would be that those methods were no surprise to anyone, there could be no reasonable expectation of prejudice. However, where a method might be described as 'routine', but the way in which it is employed can reasonably be said to be 'unexpected', disclosure could prejudice the effectiveness of the method.²⁰

¹⁹ Generally, see FOI Guidelines at [5.124] – [5.129]; 'AED' and *Australian Criminal Intelligence Commission (Freedom of information)* [2023] AICmr 67; 'LR' and *Australian Federal Police (Freedom of information)* [2017] AICmr 58; and 'DP' and *Department of Immigration and Border Protection* [2014] AICmr 125.

²⁰ FOI Guidelines at [5.127] (footnotes omitted).

Annexure A (s 38)

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Documents to which secrecy provisions of enactments apply (s 38)

Section 38 of the FOI Act states:

- (1) Subject to subsection (1A), a document is an exempt document if:
- (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment or a Norfolk Island law; and
 - (b) either:
 - (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that enactment or law or any other enactment or Norfolk Island law.

(1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment or law concerned or any other enactment or Norfolk Island law.

(2) Subject to subsections (3) and (3A), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.

The FOI Guidelines state:

A document is exempt if its disclosure is prohibited under a provision of another Act (s 38(1)(a)) and either:

- that provision is specified in Schedule 3 to the FOI Act (s 38(1)(b)(i)) or
- s 38 prohibits disclosure of the document or information contained in the document, where s 38 is expressly applied to the document, or information by that provision, or by another provision of that or other legislation (s 38(1)(b)(ii)).²¹

[Relevant secrecy provisions]

[...]

²¹ FOI Guidelines at [5.134].

Annexure A (s 42)

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Legal professional privilege (s 42)

Section 42 of the FOI Act states:

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.
- (3) A document is not an exempt document under subsection (1) by reason only that:
 - (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
 - (b) the information is operational information of an agency.

As discussed in the FOI Guidelines and in IC review cases,²² a document will be exempt under s 42 if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege (s 42(1)) and privilege has not been waived (s 42(2)).

Legal professional privilege protects confidential communications between a lawyer and a client from compulsory production. The FOI Guidelines relevantly explain that, at common law, determining whether a communication is privileged requires consideration of the following:

1. whether there is a legal adviser-client relationship
2. whether the communication was for the dominant purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
3. whether the advice given is independent, and
4. whether the advice given is confidential.²³

The FOI Guidelines explain that a communication may have been brought into existence for more than one purpose but will be privileged if the main purpose of its creation was for

²² Generally, see FOI Guidelines at [5.144] – [5.182]; ‘VO’ and Northern Australia Infrastructure Facility (Freedom of information) [2020] AICmr 47; ‘VH’ and Australian Taxation Office (Freedom of information) [2020] AICmr 43; ‘PQ’ and Australian Taxation Office (Freedom of information) [2019] AICmr 1; ‘PO’ and Australian Federal Police (Freedom of information) [2018] AICmr 72; Chris Lewis and Australian National University (Freedom of information) [2018] AICmr 63; Rex Bashford and Department of Jobs and Small Business (Freedom of information) [2018] AICmr 55 and ‘OL’ and Department of Home Affairs (Freedom of information) [2018] AICmr 36.

²³ FOI Guidelines at [5.149].

giving or receiving legal advice (legal advice privilege), or for use in connection with actual or anticipated litigation (litigation privilege).²⁴

In relation to whether a legal adviser client relationship exists, the FOI Guidelines relevantly explain:

A legal adviser-client relationship exists where a client retains the services of a lawyer for the purpose of obtaining professional advice. If the advice is received from an independent external legal adviser, establishing the existence of the relationship is usually straightforward.²⁵

The FOI Guidelines further explain that the following factors are relevant to establishing whether a legal adviser-client relationship exists:

- the legal adviser must be acting in their capacity as a professional legal adviser
- the dominant purpose test must be satisfied
- the giving of the advice must be attended by the necessary degree of independence
- the advice must be confidential
- the fact that the advice arose out of a statutory duty does not preclude the privilege from applying
- whether the lawyer is subject to professional standards can be relevant.²⁶

If the communications were confidential communications between a professional legal adviser and client for the dominant purpose of giving or receiving legal advice, they will attract the privilege.²⁷

²⁴ FOI Guidelines at [5.160].

²⁵ FOI Guidelines at [5.150].

²⁶ FOI Guidelines at [5.154] (footnotes omitted).

²⁷ *AWB v Cole (No. 5)* (2006) 155 FCR 30 at 44; *Waterford v Commonwealth* (1986) 163 CLR 54 at 95.

Annexure A (s 47)

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Trade secrets (s 47(1)(a))

Section 47(1) of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would disclose:

(a) trade secrets; or

...

The FOI Guidelines state:

The term 'trade secret' is not defined in the FOI Act. The Federal Court [in *Department of Employment, Workplace Relations and Small Business v Staff Development and Training Company* [2001] FCA 1375 at [14]; (2001) 114 FCR 301] has interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown. has interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown.

The Federal Court referred to the following test in considering whether information amounts to a trade secret:

- the information is used in a trade or business
- the owner must limit the dissemination of it or at least not encourage or permit widespread publication
- if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the secret.²⁸

The FOI Guidelines further state:

Factors that a decision maker might regard as useful guidance, but which do not constitute an exhaustive list of factors to consider include:

- the extent to which the information is known outside the business of the owner of that information
- the extent to which the information is known by persons engaged in the owner's business
- measures taken by the owner to guard the secrecy of the information
- the value of the information to the owner and to their competitors
- the effort and money spent by the owner in developing the information
- the ease or difficulty with which others might acquire or duplicate the secret.²⁹

²⁸ FOI Guidelines at [5.229] – [5.230].

²⁹ FOI Guidelines at [5.231].

Commercially valuable information (s 47(1)(b))

Section 47(1) of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would disclose:

...

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The FOI Guidelines state:

It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.³⁰

The FOI Guidelines further state:

The second requirement of s 47(1)(b) — that it could reasonably be expected that disclosure of the information would destroy or diminish its value — must be established separately by satisfactory evidence. It should not be assumed that confidential commercial information will necessarily lose some of its value if it becomes more widely known. Nor is it sufficient to establish that an agency or person would be adversely affected by disclosure; for example, by encountering criticism or embarrassment. It must be established that the disclosure would destroy or diminish the commercial value of the information.³¹

³⁰ FOI Guidelines at [5.235].

³¹ FOI Guidelines at [5.237].

Annexure A (s 47B(a) and 11A(5))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Commonwealth–State relations exemption (s 47B(a))

Subsection 47B(a) of the FOI Act states:

A document is conditionally exempt if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State;

The FOI Guidelines explain:

A decision maker may consider that disclosure would, or could reasonably be expected to, damage the relations of the Commonwealth and one or more States (s 47B(a)). The term ‘relations’ has received judicial consideration under the term ‘working relations’, which was found to encompass all interactions of the Australian Government and the States, from formal Commonwealth-State consultation processes such as the National Cabinet through to any working arrangements between agencies undertaken as part of their day-to-day functions.³²

The FOI Guidelines further explain that disclosure of a document may cause damage by:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (not merely modifying) Commonwealth-State programs²³
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth.³³

Furthermore, the FOI Guidelines clarify that:

Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects.

The potential damage need not be quantified, but the effect on relations arising from the disclosure must be adverse.³⁴

³² FOI Guidelines at [6.25] (footnote omitted).

³³ FOI Guidelines at [6.26] (footnotes omitted).

³⁴ FOI Guidelines at [6.27] – [6.28] (footnotes omitted).

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.³⁵

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.³⁶

³⁵ FOI Guidelines at [6.229] – [6.233].

³⁶ FOI Guidelines at [6.238] (footnote omitted).

Annexure A (s 47B(b) and 11A(5))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Information communicated in confidence (s 47B(b))

Subsection 47B(b) of the FOI Act states:

A document is conditionally exempt if disclosure of the document under this Act:

...

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth;

The FOI Guidelines explain:

This exemption only applies if disclosure would divulge information that is communicated in confidence by a State Government or authority to the Commonwealth Government or agency, and not the reverse.³⁷

As discussed in the FOI Guidelines:

When assessing whether the information was communicated in confidence, the test is whether the communication was considered to be confidential at the time of the communication. The circumstances of the communication may also need to be considered, such as:

- whether the communication was ad hoc, routine, or required
- whether there were any existing, implied or assumed arrangements or understandings between the Commonwealth and State concerning the exchange or supply of information
- how the information was subsequently handled, disclosed or otherwise published.³⁸

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance

³⁷ FOI Guidelines at [6.35] (footnote omitted).

³⁸ FOI Guidelines at [6.36] (footnotes omitted).

- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.³⁹

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.⁴⁰

³⁹ FOI Guidelines at [6.229] – [6.233].

⁴⁰ FOI Guidelines at [6.238] (footnote omitted).

Annexure A (s 47C and 11A(5))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Deliberative processes (s 47C)

Section 47C of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth.

Section 47C(2) of the FOI Act declares that deliberative matter does not include operational information (defined in section 8A of the FOI Act) or purely factual material.

Section 47C(3) of the FOI Act states:

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

As discussed in the FOI Guidelines, a decision maker must be satisfied of 3 requirements for this conditional exemption to apply:

Firstly, the decision maker must be satisfied that information within the scope of the request includes deliberative matter. Secondly, if the decision maker is satisfied, they are then required to be satisfied that the deliberative matter was obtained, prepared or recorded in the course of, or for the purposes of, deliberative processes. Thirdly, the decision maker must be satisfied that the deliberative processes were involved in the functions exercised by or intended to be exercised by an Australian Government agency or minister.⁴¹

The FOI Guidelines further explain that:

Deliberative matter is content that is in the nature of, or relating to either:

- an opinion, advice or recommendation that has been obtained, prepared or recorded or

⁴¹ FOI Guidelines at [6.46].

- a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister (s 47C(1)).

‘Deliberative matter’ does not include operational information or purely factual material (s 47C(2)). ‘Operational information’ is defined in s 8A and is information that an agency must publish under the Information Publication Scheme (see Part 13 of the FOI Guidelines).⁴²

The FOI Guidelines state that the conditional exemption does not apply to:

- reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters (see [6.73] – [6.72] below)
- reports of a body or organisation, prescribed by the regulations, that is established within an agency (currently none are prescribed)
- the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function (s 47C(3)).⁴³

The FOI Guidelines provide:

Agencies and ministers should only claim this conditional exemption in clearly applicable circumstances, noting that s 47C is subject to an overriding public interest test that is weighted toward disclosure. Not every document generated or held by a policy area of an agency is ‘deliberative’ in the sense used in this provision, even if it appears to deal with the development or implementation of a policy. This is reinforced by the language of the FOI Act which describes what does not constitute ‘deliberative matter’. A decision maker should ensure that the content of a document strictly conforms with the criteria for identifying ‘deliberative matter’ prepared or recorded for the purposes of a ‘deliberative process’ before claiming this conditional exemption (see [6.46] above and [6.59] – [6.58] below).⁴⁴

In relation to assessing ‘deliberative matter’ the FOI Guidelines explain:

The presence or absence of particular words or phrases is not a reliable indication of whether a document includes deliberative matter. The agency should assess the substance and content of the document before concluding it includes deliberative matter. Similarly, the format or class of the document, such as a ministerial brief or submission, or the document being a draft version of a later document does not automatically designate the content as deliberative matter.

Material that is not deliberative matter, where not already excluded as operational information, purely factual material or a scientific report, would include:

- content that is merely descriptive
- incidental administrative content
- procedural or day to day content
- the decision or conclusion reached at the end of the deliberative process
- matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.⁴⁵

The FOI Guidelines explain that a deliberative process involves the exercise of judgement in developing and making a selection from different options:

⁴² FOI Guidelines at [6.48].

⁴³ FOI Guidelines at [6.49].

⁴⁴ FOI Guidelines at [6.52].

⁴⁵ FOI Guidelines at [6.61] – [6.62] (footnotes omitted).

The action of deliberating, in common understanding, involves the weighing up or evaluation of competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

It is not enough for the purposes of s 47C(1) that an opinion, advice or recommendation is merely obtained, prepared or recorded; it must be obtained, prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of the agency, minister or government.

The functions of an agency are usually found in the Administrative Arrangements Orders or the instrument or Act that established the agency. For the purposes of the FOI Act, the functions include both policy making and the processes undertaken in administering or implementing a policy. The functions also extend to the development of policies in respect of matters that arise in the course of administering a program. The non-policy decision making processes required when carrying out agency, ministerial or governmental functions, such as code of conduct investigations, may also be deliberative processes.

...

An opinion or recommendation does not need to be prepared for the sole purpose of a deliberative process. However, it is not sufficient that an agency or minister merely has a document in its possession that contains information referring to matters for which the agency or minister has responsibility.⁴⁶

In relation to 'purely factual material', the FOI Guidelines explain:

'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the 2 elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.⁴⁷

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

⁴⁶ FOI Guidelines at [6.54] – [6.58] (footnotes omitted)

⁴⁷ FOI Guidelines at [6.70] – [6.71] (footnotes omitted).

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.⁴⁸

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.⁴⁹

⁴⁸ FOI Guidelines at [6.229] – [6.233].

⁴⁹ FOI Guidelines at [6.238] (footnote omitted).



Annexure A (s 47E(c) and 11A(5))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Certain operations of agencies exemption (s 47E(c))

Section 47E(c) of the FOI Act states a document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

The FOI Guidelines explain:

the predicted effect needs to be reasonably expected to occur... There must be more than merely an assumption or allegation that damage may occur if the document is released.

...

An agency cannot merely assert that an effect will occur following disclosure. The particulars of the predicted effect should be identified during the decision-making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied on, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt matter (s 26, see Part 3).⁵⁰

As stated in the FOI Guidelines:

For this conditional exemption to apply, the document must relate to either:

- the management of personnel – including broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and work health and safety
- the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.⁵¹

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure

⁵⁰ At [6.90] and [6.92].

⁵¹ FOI Guidelines at [6.103] (footnote omitted).

(d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

(a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

(b) access to the document could result in any person misinterpreting or misunderstanding the document

(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made

(d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.⁵²

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.⁵³

⁵² FOI Guidelines at [6.229] – [6.233].

⁵³ FOI Guidelines at [6.238] (footnote omitted).

Annexure A (s 47E(d) and 11A(5))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Certain operations of agencies exemption (s 47E(d))

Section 47E(d) of the FOI Act states a document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

As discussed in the FOI Guidelines⁵⁴ and in IC review decisions,⁵⁵ a document is conditionally exempt under s 47E(d) if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

With respect to the term ‘substantial adverse effect’, the FOI Guidelines also explain:

The term ‘substantial adverse effect’ broadly means ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person’. The word ‘substantial’, in the context of substantial loss or damage, has been interpreted as including ‘loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal’.

A decision maker should clearly describe the expected effect and its impact on the usual operations or activity of the agency in the statement of reasons under s 26 to show their deliberations in determining the extent of the expected effect. It may sometimes be necessary to use general terms to avoid making the statement of reasons itself an ‘exempt document’ (s 26(2)).⁵⁶

Further, in *Re James and Others and Australian National University* (1984) 6 ALD 687; [1984] AATA 501, Deputy President Hall explained:

As a matter of ordinary English, I think that the expression “the conduct of the operations of an agency” is capable of extending to the way in which an agency discharges or performs any of its functions.⁵⁷

⁵⁴ See FOI Guidelines at [6.90] – [6.92], and [6.112] – [6.118] and the cases referenced there.

⁵⁵ See, *Raymond Williams and Department of Defence (Freedom of information)* [2023] AICmr 26; *Refugee Advice & Casework Service and Department of Foreign Affairs and Trade (Freedom of information)* [2023] AICmr 16; *Christis Tombazos and Australian Research Council (Freedom of information)* [2023] AICmr 14; *‘ACF’ and Australian Public Service Commission (Freedom of information)* [2022] AICmr 73; *Rex Patrick and Department of the Prime Minister and Cabinet (No. 2) (Freedom of information)* [2022] AICmr 66; *‘ZA’ and Department of Veterans Affairs (Freedom of information)* [2021] AICmr 83; *Australian Society for Kangaroos and Rural Industries Research and Development Corporation trading as AgriFutures Australia (Freedom of information)* [2019] AICmr 31; and *‘PR’ and Comcare (Freedom of information)* [2019] AICmr 2.

⁵⁶ FOI Guidelines at [6.18] – [6.19] (footnotes omitted).

⁵⁷ At page 699.

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.⁵⁸

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.⁵⁹

⁵⁸ FOI Guidelines at [6.229] – [6.233].

⁵⁹ FOI Guidelines at [6.238] (footnote omitted).

Annexure A (s 47F and 11A(5))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Personal privacy exemption (s 47F)

Section 47F of the FOI Act states ‘A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).’

Section 4(1) of the FOI Act states ‘personal information’ has the same meaning as the *Privacy Act 1988*, which provides:

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.⁶⁰

Section 47F(2) of the FOI Act states that in determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister decision maker must have regard to the following matters:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly available sources, and
- any other matters that the agency or Minister considers relevant.

As discussed in the FOI Guidelines and IC review cases,⁶¹ the main requirements of this public interest conditional exemption are that a document contains ‘personal information;’ disclosure in response to the applicant’s FOI request would be ‘unreasonable’ (s 47(1)); and it would be ‘contrary to the public interest’ to release the material at the time of the decision (s 11A(5)).

The FOI Guidelines explain that the test of ‘unreasonableness’ in s 47F ‘implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals’.⁶²

⁶⁰ Section 6(1) of the *Privacy Act 1988* (Cth) (emphasis in original).

⁶¹ Generally, see FOI Guidelines at [6.119] – [6.155]; ‘AEE’ and *Department of Defence (Freedom of information)* [2023] AICmr 69; ‘AED’ and *Australian Criminal Intelligence Commission (Freedom of information)* [2023] AICmr 67; ‘OE’ and *Australian Taxation Office (Freedom of information)* [2018] AICmr 29.

⁶² FOI Guidelines at [6.133].

In addition to the mandatory factors outlined at s 47F(2) of the FOI Act, the FOI Guidelines explain that other relevant factors include:

- a) the author of the document is identifiable
 - b) the document contains third party personal information
 - c) release of the document would cause stress to the third party
 - d) no public purpose would be achieved through release.
- ...
- the nature, age and current relevance of the information
 - any detriment that disclosure may cause to the person to whom the information relates
 - any opposition to disclosure expressed or likely to be held by that person
 - the circumstances of an agency's or minister's collection and use of the information
 - the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
 - any submission an FOI applicant chooses to make in support of their request as to their reasons for seeking access and their intended or likely use or dissemination of the information and
 - whether disclosure of the information might advance the public interest in government transparency and integrity.⁶³

The last-mentioned factor – the public interest in government transparency and integrity – is to be balanced with all other relevant factors arising in the particular case, including the private interest that third party individuals may have in maintaining privacy of their personal information.⁶⁴

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

⁶³ FOI Guidelines at [6.137] – [6.138] (footnotes omitted).

⁶⁴ FOI Guidelines at [6.139].

(b) access to the document could result in any person misinterpreting or misunderstanding the document

(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made

(d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.⁶⁵

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.⁶⁶

⁶⁵ FOI Guidelines at [6.229] – [6.233].

⁶⁶ FOI Guidelines at [6.238] (footnote omitted).

Annexure A (s 47G and 11A(5))

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Business affairs exemption (s 47G)

Section 47G of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

Section 47G(2) – (3) of the FOI Act contain exceptions to the exemption in s 47G(1) of the FOI Act.

As stated in the FOI Guidelines, this conditional exemption does not apply in the following circumstances:

... if the document contains only business information about the FOI applicant (s 47G(3)). Where the business information concerns both the FOI applicant and another business, the provision may operate to conditionally exempt the FOI applicant's information, but only if the FOI applicant's business information cannot be separated from the information of the other business or undertaking.

... to trade secrets or other information to which s 47 applies (s 47G(2)). In other words, a decision maker should consider an exemption under s 47 for documents containing trade secrets or other information to which s 47 applies if the circumstances call for it. This is a limited exception to the normal rule that more than one exemption may apply to the same information (see s 32).⁶⁷

Section 47G(1)(a)

The FOI Guidelines explain that the operation of s 47G of the FOI Act depends on the effect of disclosure, rather than the precise nature of the information itself.⁶⁸ Notwithstanding this, the information must have some relevance to a person in respect of their business or professional affairs or to the business, commercial and financial affairs of the organisation.⁶⁹

The FOI Guidelines state:

⁶⁷ FOI Guidelines at [6.179] – [6.180].

⁶⁸ FOI Guidelines at [6.181].

⁶⁹ FOI Guidelines at [6.181].

The use of the term ‘business or professional affairs’ distinguishes an individual’s personal or private affairs and an organisation’s internal affairs. The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs.’⁷⁰

In relation to the question of unreasonableness, the FOI Guidelines state:

The presence of ‘unreasonably’ in s 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. A decision maker must balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of s 47G(1)(a), but this does not amount to the public interest test in s 11A(5) which follows later in the decision process.⁷¹

The FOI Guidelines further state:

The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. For example, the disclosure of information that a business’ activities pose a threat to public safety, damage the natural environment, or that a service provider has made false claims for government money, may have a substantial adverse effect on that business but may not be unreasonable in the circumstances to disclose. Similarly, it would not be unreasonable to disclose information about a business that revealed serious criminality. These considerations require weighing the public interest against a private interest – preserving the profitability of a business. However at this stage it bears only on the threshold question of whether disclosure would be unreasonable.⁷²

Section 47G(1)(b)

The FOI Guidelines state:

This limb of the conditional exemption comprises 2 parts:

- a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government
- the reduction will prejudice the operations of the agency.⁷³

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

⁷⁰ FOI Guidelines at [6.191] (footnotes omitted).

⁷¹ FOI Guidelines at [6.184] (footnotes omitted).

⁷² FOI Guidelines at [6.185] (footnotes omitted).

⁷³ FOI Guidelines at [6.197] footnoting *Re Angel and the Department of the Arts, Heritage and the Environment; HC Sleigh Resources Ltd and Tasmania* [1985] AATA 314.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.⁷⁴

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.⁷⁵

⁷⁴ FOI Guidelines at [6.229] – [6.233].

⁷⁵ FOI Guidelines at [6.238] (footnote omitted).



@ and [agency] (Freedom of information) [2024]
AICmr @ (@ 2024)

Decision and reasons for decision of

Freedom of Information Commissioner/ Australian Information Commissioner], [name]

Applicant	@
Respondent	@
Third Party	@
Decision date	@ 2024
Reference	MR__/_
Catchwords	Freedom of Information — Whether information protected by secrecy provisions — (CTH) <i>Freedom of Information Act 1982</i> s 38

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I [set aside/affirm/vary] the decision of the [agency] (the [Department / Respondent]) of [date], [if relevant] as varied on [date(s)].
- Within 28 days of this decision:
 - the [Department/ Respondent] must now provide the applicant with a copy of the documents, edited under s 22 of the FOI Act only to the extent necessary to delete exempt or irrelevant material.
 - the [Department/ Respondent] must advise whether it has fully implemented my decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal.

Key points

- This decision discusses [insert summary e.g. the application of s X of the FOI Act and paragraph Y of the FOI Guidelines to documents about Z]. It [is primarily of interest to the parties in relation to the specific documents sought/may have broader implications for agencies in relation to...].

Reasons for decision

4. The background and key procedural steps in this IC review are set out at **Annexure [A/B]**.

Scope of IC review

5. On [date], the applicant applied to the [agency] for access to [...].
6. [Briefly outline the documents at issue, and the parties' current stance – add a footnote that outlines the reviewable decision: see [AIH](#) at [4] and footnote 4 as an example. If the case requires background to be set out in full, do this in an 'Annexure B']
7. The [Department / the Respondent] maintains it is prohibited from disclosing the document under [relevant provision and its enactment] and the [document / documents / material] [is / are] exempt under s 38 of the FOI Act.
8. The applicant contends that the [document/ documents/ material] [is/ are] not exempt under s 38 of the FOI Act.
9. The issue[s] to be decided in this Information Commissioner review (IC review) [is/are] [update with reference to the Standard wording examples in the Decision writing checklist] under the secrecy provisions of enactments exemption (s 38), [is / are] exempt under that provision.
10. In an IC review of an access refusal decision, the agency bears the onus of establishing that its decision is justified, or that I should give a decision adverse to the applicant.¹
11. In making my decision, I have had regard to the following:
 - the [agency]'s decision and reasons for decision of [date]
 - [if relevant] the [agency]'s internal review decision and reasons for decision of [date]
 - [if relevant] the [agency]'s revised decision and reasons for decision of [date]
 - the document[s] at issue
 - the FOI Act²
 - [secrecy act]³
 - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act⁴ to which agencies must have regard in performing a function or exercising a power under the FOI Act,⁵ and
 - the parties' submissions.

¹ FOI Act s 55D(1).

² s 38 as set out in Annexure A.

³ Set out in Annexure A.

⁴ See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

⁵ Set out in Annexure A.

Secrecy provisions – s 38

12. A document is exempt under s 38 of the FOI Act if its disclosure is prohibited under an enactment specified in Schedule 3 of the FOI Act or if s 38 is expressly applied to the document by an enactment.
13. [Specify whether secrecy provision is listed in sch 3 or if part of secrecy provision applies s 38]
14. [Summarise parties' subs].

Is disclosure of the material prohibited?

15. [...].

Does an exception to s 38 of the FOI Act apply?

16. [...].

Finding

17. I [am / am not] satisfied that the [document / documents / material] is exempt under s 38 of the FOI Act.

[Name]

[Freedom of Information Commissioner/ Australian Information Commissioner]

[date]

Annexure A

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Documents to which secrecy provisions of enactments apply (s 38)

Section 38 of the FOI Act states:

- (1) Subject to subsection (1A), a document is an exempt document if:
 - (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment or a Norfolk Island law; and
 - (b) either:
 - (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that enactment or law or any other enactment or Norfolk Island law.

(1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment or law concerned or any other enactment or Norfolk Island law.

(2) Subject to subsections (3) and (3A), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.

The FOI Guidelines state:

A document is exempt if its disclosure is prohibited under a provision of another Act (s 38(1)(a)) and either:

- that provision is specified in Schedule 3 to the FOI Act (s 38(1)(b)(i)) or
- s 38 prohibits disclosure of the document or information contained in the document, where s 38 is expressly applied to the document, or information by that provision, or by another provision of that or other legislation (s 38(1)(b)(ii)).⁶

[Relevant secrecy provisions]

[...]

Review rights

Review by the Administrative Appeals Tribunal

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

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If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#) page on our website.

⁶ FOI Guidelines at [5.134].



@ and [agency] (Freedom of information) [2024]
AICmr @ (@ 2024)

Decision and reasons for decision of

Freedom of Information Commissioner/ Australian Information Commissioner], [name]

Applicant	@
Respondent	@
Third Party	@
Decision date	@ 2024
Reference	MR_/_/_____
Catchwords	Freedom of Information — Whether documents contain deliberative matter prepared for deliberative processes — Whether contrary to public interest to release conditionally exempt documents — (CTH) <i>Freedom of Information Act 1982</i> ss 11A and 47C

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I [set aside/affirm/vary] the decision of the [agency] (the [Department / Respondent]) of [date], [if relevant] as varied on [date(s)].
- Within 28 days of this decision:
 - the [Department/ Respondent] must now provide the applicant with a copy of the documents, edited under s 22 of the FOI Act only to the extent necessary to delete exempt or irrelevant material.
 - the [Department/ Respondent] must advise whether it has fully implemented my decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal.

Key points

- This decision discusses [insert summary e.g. the application of s X of the FOI Act and paragraph Y of the FOI Guidelines to documents about Z]. It [is primarily of interest to

the parties in relation to the specific documents sought/may have broader implications for agencies in relation to...].

Reasons for decision

4. The background and key procedural steps in this IC review are set out at Annexure [A/B].

Scope of IC review

5. On [date], the applicant applied to the [agency] for access to [...].
6. [Briefly outline the documents at issue, and the parties' current stance – add a footnote that outlines the reviewable decision: see AIH at [4] and footnote 4 as an example. If the case requires background to be set out in full, do this in an 'Annexure B']
7. In an Information Commissioner review (IC review) of an access refusal decision, the agency bears the onus of establishing that its decision is justified or that I should give a decision adverse to the applicant.¹
8. The issue to be decided in this IC review is whether the [document / documents / material] that the [agency] maintains [is/are] conditionally exempt under s 47C of the FOI Act [is/are] conditionally exempt under that provision, and if so, whether giving the applicant access to the conditionally exempt material at this time would, on balance, be contrary to the public interest (s 11A(5)).
9. In making my decision, I have had regard to the following:
 - the [agency]'s decision and reasons for decision of [date]
 - [if relevant] the [agency]'s internal review decision and reasons for decision of [date]
 - [if relevant] the [agency]'s revised decision and reasons for decision of [date]
 - the document[s] at issue
 - the FOI Act²
 - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act³ to which agencies must have regard in performing a function or exercising a power under the FOI Act,⁴ and
 - the parties' submissions.

Deliberative processes exemption (s 47C)

10. A document is conditionally exempt under s 47C if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes

¹ FOI Act s 55D(1).

² Section 11A and 47C as set out in Annexure A.

³ See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

⁴ Set out in Annexure A.

involved in the functions of an agency or a Minister or the Government of the Commonwealth.

11. [summarise parties' subs]
12. Deputy President Forgie explained in *Wood; Secretary, Department of Prime Minister and Cabinet (Freedom of information)* [2015] AATA 945 (*Wood*)⁵ that the words 'opinion', 'advice', and recommendations' in s 47C(1) of the FOI Act all involve consideration, followed by the formation of a view either about a certain subject or a course of action, and the subsequent transmission of that view. Similarly, the words 'consultation' and 'deliberation' both involve the notion of consideration but may not necessarily lead to the formation of an opinion, advice, or recommendation.
13. [...]

Finding

14. I [am / am not] satisfied that the [document/ documents/ material] [is / are] conditionally exempt under s 47C of the FOI Act.

Whether access would be contrary to the public interest (s 11A(5))

15. Having found the [document/ documents/ material] to be conditionally exempt under s 47C of the FOI Act, I am required to consider whether it would be contrary to the public interest to give the applicant access to conditionally exempt material at this time. The requirements of the public interest test are set out at Annexure A. I have considered the relevant mandatory factors listed in s 11B(3) of the FOI Act. I have not considered the irrelevant factors as set out in s 11B(4) of the FOI Act.⁶ In considering the public interest, I have had regard to the parties' submissions.
16. [summarise parties' subs].
17. I give [limited/ moderate/ significant] weight to the following factors in favour of disclosure, noting that they reflect the parties' submissions [in part/ in full]:
 - [...].
18. I give [limited/ moderate/ significant] weight to the following factors against disclosure, noting that they reflect the parties' submissions [in part/ in full]:
 - [...].
19. On balance, I consider that the public interest factors [against disclosure/ in favour of disclosure], which I have given [X] weight, outweigh the factors [favouring / against] disclosure.

[Name]

[Freedom of Information Commissioner/ Australian Information Commissioner]

[date]

⁵ *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945.

⁶ Listed in Annexure A.

Annexure A

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Deliberative processes (s 47C)

Section 47C of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth.

Section 47C(2) of the FOI Act declares that deliberative matter does not include operational information (defined in section 8A of the FOI Act) or purely factual material.

Section 47C(3) of the FOI Act states:

(3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

As discussed in the FOI Guidelines, a decision maker must be satisfied of 3 requirements for this conditional exemption to apply:

Firstly, the decision maker must be satisfied that information within the scope of the request includes deliberative matter. Secondly, if the decision maker is satisfied, they are then required to be satisfied that the deliberative matter was obtained, prepared or recorded in the course of, or for the purposes of, deliberative processes. Thirdly, the decision maker must be satisfied that the deliberative processes were involved in the functions exercised by or intended to be exercised by an Australian Government agency or minister.⁷

The FOI Guidelines further explain that:

Deliberative matter is content that is in the nature of, or relating to either:

- an opinion, advice or recommendation that has been obtained, prepared or recorded or

⁷ FOI Guidelines at [6.46].

- a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister (s 47C(1)).

‘Deliberative matter’ does not include operational information or purely factual material (s 47C(2)). ‘Operational information’ is defined in s 8A and is information that an agency must publish under the Information Publication Scheme (see Part 13 of the FOI Guidelines).⁸

The FOI Guidelines state that the conditional exemption does not apply to:

- reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters (see [6.73] – [6.72] below)
- reports of a body or organisation, prescribed by the regulations, that is established within an agency (currently none are prescribed)
- the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function (s 47C(3)).⁹

The FOI Guidelines provide:

Agencies and ministers should only claim this conditional exemption in clearly applicable circumstances, noting that s 47C is subject to an overriding public interest test that is weighted toward disclosure. Not every document generated or held by a policy area of an agency is ‘deliberative’ in the sense used in this provision, even if it appears to deal with the development or implementation of a policy. This is reinforced by the language of the FOI Act which describes what does not constitute ‘deliberative matter’. A decision maker should ensure that the content of a document strictly conforms with the criteria for identifying ‘deliberative matter’ prepared or recorded for the purposes of a ‘deliberative process’ before claiming this conditional exemption (see [6.46] above and [6.59] – [6.58] below).¹⁰

In relation to assessing ‘deliberative matter’ the FOI Guidelines explain:

The presence or absence of particular words or phrases is not a reliable indication of whether a document includes deliberative matter. The agency should assess the substance and content of the document before concluding it includes deliberative matter. Similarly, the format or class of the document, such as a ministerial brief or submission, or the document being a draft version of a later document does not automatically designate the content as deliberative matter.

Material that is not deliberative matter, where not already excluded as operational information, purely factual material or a scientific report, would include:

- content that is merely descriptive
- incidental administrative content
- procedural or day to day content
- the decision or conclusion reached at the end of the deliberative process
- matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.¹¹

The FOI Guidelines explain that a deliberative process involves the exercise of judgement in developing and making a selection from different options:

⁸ FOI Guidelines at [6.48].

⁹ FOI Guidelines at [6.49].

¹⁰ FOI Guidelines at [6.52].

¹¹ FOI Guidelines at [6.61] – [6.62] (footnotes omitted).

The action of deliberating, in common understanding, involves the weighing up or evaluation of competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

It is not enough for the purposes of s 47C(1) that an opinion, advice or recommendation is merely obtained, prepared or recorded; it must be obtained, prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of the agency, minister or government.

The functions of an agency are usually found in the Administrative Arrangements Orders or the instrument or Act that established the agency. For the purposes of the FOI Act, the functions include both policy making and the processes undertaken in administering or implementing a policy. The functions also extend to the development of policies in respect of matters that arise in the course of administering a program. The non-policy decision making processes required when carrying out agency, ministerial or governmental functions, such as code of conduct investigations, may also be deliberative processes.

...

An opinion or recommendation does not need to be prepared for the sole purpose of a deliberative process. However, it is not sufficient that an agency or minister merely has a document in its possession that contains information referring to matters for which the agency or minister has responsibility.¹²

In relation to 'purely factual material', the FOI Guidelines explain:

'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the 2 elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.¹³

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

¹² FOI Guidelines at [6.54] – [6.58] (footnotes omitted)

¹³ FOI Guidelines at [6.70] – [6.71] (footnotes omitted).

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.¹⁴

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.¹⁵

Review rights

Review by the Administrative Appeals Tribunal

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

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If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

¹⁴ FOI Guidelines at [6.229] – [6.233].

¹⁵ FOI Guidelines at [6.238] (footnote omitted).

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@ and [agency] (Freedom of information) [2024]
AICmr @ (@ 2024)

Decision and reasons for decision of

Freedom of Information Commissioner/ Australian Information Commissioner], [name]

Applicant	@
Respondent	@
Third Party	@
Decision date	@ 2024
Reference	MR___/_____
Catchwords	Freedom of Information — Whether disclosure would have a substantial adverse effect on the management or assessment of personnel — Whether contrary to public interest to release conditionally exempt documents — (CTH) <i>Freedom of Information Act 1982</i> ss 11A and 47E(c)

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I [set aside/affirm/vary] the decision of the [agency] (the [Department / Respondent]) of [date], [if relevant] as varied on [date(s)]
- Within 28 days of this decision:
 - the [Department/ Respondent] must now provide the applicant with a copy of the documents, edited under s 22 of the FOI Act only to the extent necessary to delete exempt or irrelevant material.
 - the [Department/ Respondent] must advise whether it has fully implemented my decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal.

Key points

- This decision discusses [insert summary e.g. the application of s X of the FOI Act and paragraph Y of the FOI Guidelines to documents about Z]. It [is primarily of interest to

the parties in relation to the specific documents sought/may have broader implications for agencies in relation to...].

Reasons for decision

4. The background and key procedural steps in this IC review are set out at Annexure [A/B].

Scope of IC review

5. On [date], the applicant applied to the [agency] for access to [...].
6. [Briefly outline the documents at issue, and the parties' current stance – add a footnote that outlines the reviewable decision: see AIH at [4] and footnote 4 as an example. If the case requires background to be set out in full, do this in an 'Annexure B']
7. In an Information Commissioner review (IC review) of an access refusal decision, the agency bears the onus of establishing that its decision is justified or that I should give a decision adverse to the applicant.¹
8. The issue to be decided in this IC review is whether the [document / documents / material] that the [agency] maintains [is/are] conditionally exempt under s 47E(c) of the FOI Act [is/are] conditionally exempt under that provision, and if so, whether giving the applicant access to the conditionally exempt material at this time would, on balance, be contrary to the public interest (s 11A(5)).
9. In making my decision, I have had regard to the following:
 - the [agency]'s decision and reasons for decision of [date]
 - [if relevant] the [agency]'s internal review decision and reasons for decision of [date]
 - [if relevant] the [agency]'s revised decision and reasons for decision of [date]
 - the document[s] at issue
 - the FOI Act²
 - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act³ to which agencies must have regard in performing a function or exercising a power under the FOI Act,⁴ and
 - the parties' submissions.

Management of personnel exemption (s 47E(c))

10. Subsection 47E(c) of the FOI Act provides that a document is exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

¹ FOI Act s 55D(1).

² Section 11A and 47E(c) as set out in Annexure A.

³ See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

⁴ Set out in Annexure A.

11. [summarise parties' subs]
12. [...]

Finding

13. I [am / am not] satisfied that the [document/ documents/ material] [is / are] conditionally exempt under s 47E(c) of the FOI Act.

Whether access would be contrary to the public interest (s 11A(5))

14. Having found the [document/ documents/ material] to be conditionally exempt under s 47E(c) of the FOI Act, I am required to consider whether it would be contrary to the public interest to give the applicant access to conditionally exempt material at this time. The requirements of the public interest test are set out at Annexure A. I have considered the relevant mandatory factors listed in s 11B(3) of the FOI Act. I have not considered the irrelevant factors as set out in s 11B(4) of the FOI Act.⁵ In considering the public interest, I have had regard to the parties' submissions.
15. [summarise parties' subs].
16. I give [limited/ moderate/ significant] weight to the following factors in favour of disclosure, noting that they reflect the parties' submissions [in part/ in full]:
 - [...].
17. I give [limited/ moderate/ significant] weight to the following factors against disclosure, noting that they reflect the parties' submissions [in part/ in full]:
 - [...].
18. On balance, I consider that the public interest factors [against disclosure/ in favour of disclosure], which I have given [X] weight, outweigh the factors [favouring / against] disclosure.

[Name]

[Freedom of Information Commissioner/ Australian Information Commissioner]

[date]

Annexure A

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Certain operations of agencies exemption (s 47E(c))

Section 47E(c) of the FOI Act states a document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

⁵ Listed in Annexure A.

The FOI Guidelines explain:

the predicted effect needs to be reasonably expected to occur... There must be more than merely an assumption or allegation that damage may occur if the document is released.

...

An agency cannot merely assert that an effect will occur following disclosure. The particulars of the predicted effect should be identified during the decision-making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied on, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt matter (s 26, see Part 3).⁶

As stated in the FOI Guidelines:

For this conditional exemption to apply, the document must relate to either:

- the management of personnel – including broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and work health and safety
- the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.⁷

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

⁶ At [6.90] and [6.92].

⁷ FOI Guidelines at [6.103] (footnote omitted).

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.⁸

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.⁹

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If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

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If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#) page on our website.

⁸ FOI Guidelines at [6.229] – [6.233].

⁹ FOI Guidelines at [6.238] (footnote omitted).



@ and [agency] (Freedom of information) [2024]
AICmr @ (@ 2024)

Decision and reasons for decision of

Freedom of Information Commissioner/ Australian Information Commissioner], [name]

Applicant	@
Respondent	@
Third Party	@
Decision date	@ 2024
Reference	MR___/_____
Catchwords	Freedom of Information — Whether disclosure would have an adverse effect on the proper and efficient conduct of the operations of an agency — Whether contrary to public interest to release conditionally exempt documents — (CTH) <i>Freedom of Information Act 1982</i> ss 11A and 47E(d)

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I [set aside/affirm/vary] the decision of the [agency] (the [Department / Respondent]) of [date], [if relevant] as varied on [date(s)].
- Within 28 days of this decision:
 - the [Department/ Respondent] must now provide the applicant with a copy of the documents, edited under s 22 of the FOI Act only to the extent necessary to delete exempt or irrelevant material.
 - the [Department/ Respondent] must advise whether it has fully implemented my decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal.

Key points

- This decision discusses [insert summary e.g. the application of s X of the FOI Act and paragraph Y of the FOI Guidelines to documents about Z]. It [is primarily of interest to

the parties in relation to the specific documents sought/may have broader implications for agencies in relation to...].

Reasons for decision

4. The background and key procedural steps in this IC review are set out at Annexure [A/B].

Scope of IC review

5. On [date], the applicant applied to the [agency] for access to [...].
6. [Briefly outline the documents at issue, and the parties' current stance – add a footnote that outlines the reviewable decision: see AIH at [4] and footnote 4 as an example. If the case requires background to be set out in full, do this in an 'Annexure B']
7. In an Information Commissioner review (IC review) of an access refusal decision, the agency bears the onus of establishing that its decision is justified or that I should give a decision adverse to the applicant.¹
8. The issue to be decided in this IC review is whether the [document / documents / material] that the [agency] maintains [is/are] conditionally exempt under s 47E(d) of the FOI Act [is/are] conditionally exempt under that provision, and if so, whether giving the applicant access to the conditionally exempt material at this time would, on balance, be contrary to the public interest (s 11A(5)).
9. In making my decision, I have had regard to the following:
 - the [agency]'s decision and reasons for decision of [date]
 - [if relevant] the [agency]'s internal review decision and reasons for decision of [date]
 - [if relevant] the [agency]'s revised decision and reasons for decision of [date]
 - the document[s] at issue
 - the FOI Act² in particular ss 11A(5) and 47E(d)
 - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act³ to which agencies must have regard in performing a function or exercising a power under the FOI Act,⁴ and
 - the parties' submissions.

Certain operations of agencies exemption (s 47E(d))

10. A document will be conditionally exempt if:

¹ FOI Act s 55D(1).

² Sections 11A and 47E(d) as set out in Annexure A.

³ See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

⁴ Set out in Annexure A.

- its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency (s 47E(d)), and
- it would be 'contrary to the public interest' to release the material at the time of the decision (s 11A(5)).

11. [summaries parties' subs].

12. [...].

Finding

13. I [am / am not] satisfied that the [document/ documents/ material] [is / are] conditionally exempt under s 47E(d) of the FOI Act.

Whether access would be contrary to the public interest (s 11A(5))

14. Having found the [document/ documents/ material] to be conditionally exempt under s 47E(d) of the FOI Act, I am required to consider whether it would be contrary to the public interest to give the applicant access to conditionally exempt material at this time. The requirements of the public interest test are set out at Annexure A. I have considered the relevant mandatory factors listed in s 11B(3) of the FOI Act. I have not considered the irrelevant factors as set out in s 11B(4) of the FOI Act.⁵ In considering the public interest, I have had regard to the parties' submissions.

15. [summarise parties' subs].

16. I give [limited/ moderate/ significant] weight to the following factors in favour of disclosure, noting that they reflect the parties' submissions [in part/ in full]:

- [...].

17. I give [limited/ moderate/ significant] weight to the following factors against disclosure, noting that they reflect the parties' submissions [in part/ in full]:

- [...].

18. On balance, I consider that the public interest factors [against disclosure/ in favour of disclosure], which I have given [X] weight, outweigh the factors [favouring / against] disclosure.

[Name]

[Freedom of Information Commissioner/ Australian Information Commissioner]

[date]

Annexure A

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

⁵ Listed in Annexure A.

Certain operations of agencies exemption (s 47E(d))

Section 47E(d) of the FOI Act states a document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

As discussed in the FOI Guidelines⁶ and in IC review decisions,⁷ a document is conditionally exempt under s 47E(d) if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

With respect to the term ‘substantial adverse effect’, the FOI Guidelines also explain:

The term ‘substantial adverse effect’ broadly means ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person’. The word ‘substantial’, in the context of substantial loss or damage, has been interpreted as including ‘loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal’.

A decision maker should clearly describe the expected effect and its impact on the usual operations or activity of the agency in the statement of reasons under s 26 to show their deliberations in determining the extent of the expected effect. It may sometimes be necessary to use general terms to avoid making the statement of reasons itself an ‘exempt document’ (s 26(2)).⁸

Further, in *Re James and Others and Australian National University* (1984) 6 ALD 687; [1984] AATA 501, Deputy President Hall explained:

As a matter of ordinary English, I think that the expression “the conduct of the operations of an agency” is capable of extending to the way in which an agency discharges or performs any of its functions.⁹

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance

⁶ See FOI Guidelines at [6.90] – [6.92], and [6.112] – [6.118] and the cases referenced there.

⁷ See, *Raymond Williams and Department of Defence (Freedom of information)* [2023] AICmr 26; *Refugee Advice & Casework Service and Department of Foreign Affairs and Trade (Freedom of information)* [2023] AICmr 16; *Christis Tombazos and Australian Research Council (Freedom of information)* [2023] AICmr 14; *‘ACF’ and Australian Public Service Commission (Freedom of information)* [2022] AICmr 73; *Rex Patrick and Department of the Prime Minister and Cabinet (No. 2) (Freedom of information)* [2022] AICmr 66; *‘ZA’ and Department of Veterans Affairs (Freedom of information)* [2021] AICmr 83; *Australian Society for Kangaroos and Rural Industries Research and Development Corporation trading as AgriFutures Australia (Freedom of information)* [2019] AICmr 31; and *‘PR’ and Comcare (Freedom of information)* [2019] AICmr 2.

⁸ FOI Guidelines at [6.18] – [6.19] (footnotes omitted).

⁹ At page 699.

- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.¹⁰

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.¹¹

Review rights

Review by the Administrative Appeals Tribunal

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

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If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more

¹⁰ FOI Guidelines at [6.229] – [6.233].

¹¹ FOI Guidelines at [6.238] (footnote omitted).

information on 1300 362 072 or visit the Commonwealth Ombudsman’s website at <http://www.ombudsman.gov.au>.

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@ and [agency] (Freedom of information) [2024]
AICmr @ (@ 2024)

Decision and reasons for decision of

Freedom of Information Commissioner/ Australian Information Commissioner], [name]

Applicant	@
Respondent	@
Third Party	@
Decision date	@ 2024
Reference	MR__/_
Catchwords	Freedom of Information — Access grant — Whether disclosure of personal information unreasonable — Whether contrary to public interest to release conditionally exempt documents — (CTH) <i>Freedom of Information Act 1982</i> ss 11A and 47F

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I [set aside/affirm/vary] the decision of the [agency] (the [Department / Respondent]) of [date], [if relevant] as varied on [date(s)].
- Within 28 days of this decision:
 - the [Department/ Respondent] must now provide the applicant with a copy of the documents, edited under s 22 of the FOI Act only to the extent necessary to delete exempt or irrelevant material.
 - the [Department/ Respondent] must advise whether it has fully implemented my decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal.

Key points

- This decision discusses [insert summary e.g. the application of s X of the FOI Act and paragraph Y of the FOI Guidelines to documents about Z]. It [is primarily of interest to the parties in relation to the specific documents sought/may have broader implications for agencies in relation to...].

Reasons for decision

4. The background and key procedural steps in this IC review are set out at Annexure [A/B].

Scope of IC review

5. On [date], the Freedom of Information applicant (FOI applicant) applied to the [agency] for access to [...].
6. [Briefly outline the documents at issue, and the parties' current stance – add a footnote that outlines the reviewable decision: see AIH at [4] and footnote 4 as an example. If the case requires background to be set out in full, do this in an 'Annexure B']
7. [In an Information Commissioner review (IC review) of an access refusal decision, the agency bears the onus of establishing that its decision is justified or that I should give a decision adverse to the applicant.¹ / In an Information Commissioner review (IC review) of an access grant decision, the IC review applicant bears the onus of establishing that a decision refusing the request is justified or that I should give a decision adverse to the FOI applicant.²]
8. The issue to be decided in this IC review is whether the [document / documents / material] that the [agency] maintains [is/are] conditionally exempt under s 47F of the FOI Act [is/are] conditionally exempt under that provision, and if so, whether giving the applicant access to the conditionally exempt material at this time would, on balance, be contrary to the public interest (s 11A(5)).
9. In making my decision, I have had regard to the following:
 - the [agency]'s decision and reasons for decision of [date]
 - [if relevant] the [agency]'s internal review decision and reasons for decision of [date]
 - [if relevant] the [agency]'s revised decision and reasons for decision of [date]
 - the document[s] at issue
 - the FOI Act³
 - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act⁴ to which agencies must have regard in performing a function or exercising a power under the FOI Act,⁵ and
 - the parties' submissions.

¹ FOI Act s 55D(1).

² FOI Act s 55D(2).

³ Sections 11A and 47F set out in Annexure A.

⁴ See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

⁵ Set out in Annexure A.

Personal privacy exemption (s 47F)

10. A document contains 'personal information'; disclosure in response to the applicant's FOI request would be 'unreasonable' (s 47F(1)); and it would be 'contrary to the public interest' to release the material at the time of the decision (s 11A(5)).
11. [summarise parties' subs].

Whether the [document / documents / material] contains personal information

12. 'Personal information' under the FOI Act has the same meaning as the equivalent term in the *Privacy Act 1988*.⁶ That definition is set out in Annexure A.
13. [...]

Finding on personal information

14. I find that the [personal info], being [brief description] [is/are] 'personal information' for the purposes of s 47F(1) of the FOI Act.

Whether disclosure would involve an unreasonable disclosure of personal information

15. I have examined an unedited and unredacted copy of the [document/ documents/ material], as well as the parties' submissions. I have considered the mandatory factors in s 47F(2) of the FOI Act as well as the other relevant factors below.

Consideration of whether disclosure of personal information would be unreasonable

16. [...]
17. Having weighed the relevant factors, I find that disclosure [would/ would not] involve an unreasonable disclosure of personal information. This is because:
 - [...].

Finding

18. I [am / am not] satisfied that the [document/ documents/ material] [is / are] conditionally exempt under s 47F of the FOI Act.

Whether access would be contrary to the public interest (s 11A(5))

19. Having found the [document/ documents/ material] to be conditionally exempt under s 47F of the FOI Act, I am required to consider whether it would be contrary to the public interest to give the applicant access to conditionally exempt material at this time. The requirements of the public interest test are set out at Annexure A. I have considered the relevant mandatory factors listed in s 11B(3) of the FOI Act. I have not considered the irrelevant factors as set out in s 11B(4) of the FOI Act.⁷ In considering the public interest, I have had regard to the parties' submissions.

⁶ *Privacy Act 1988* s 6(1) (definition of 'personal information').

⁷ Listed in Annexure A.

20. [summarise parties' subs].
21. I give [limited/ moderate/ significant] weight to the following factors in favour of disclosure, noting that they reflect the parties' submissions [in part/ in full]:
- [...].
22. I give [limited/ moderate/ significant] weight to the following factors against disclosure, noting that they reflect the parties' submissions [in part/ in full]:
- [...].
23. On balance, I consider that the public interest factors [against disclosure/ in favour of disclosure], which I have given [X] weight, outweigh the factors [favouring / against] disclosure.

[Name]

[Freedom of Information Commissioner/ Australian Information Commissioner]

[date]

Annexure A

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Personal privacy exemption (s 47F)

Section 47F of the FOI Act states 'A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).'

Section 4(1) of the FOI Act states 'personal information' has the same meaning as the *Privacy Act 1988*, which provides:

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.⁸

Section 47F(2) of the FOI Act states that in determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister decision maker must have regard to the following matters:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly available sources, and
- any other matters that the agency or Minister considers relevant.

⁸ Section 6(1) of the *Privacy Act 1988* (Cth) (emphasis in original).

As discussed in the FOI Guidelines and IC review cases,⁹ the main requirements of this public interest conditional exemption are that a document contains ‘personal information;’ disclosure in response to the applicant’s FOI request would be ‘unreasonable’ (s 47(1)); and it would be ‘contrary to the public interest’ to release the material at the time of the decision (s 11A(5)).

The FOI Guidelines explain that the test of ‘unreasonableness’ in s 47F ‘implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals’.¹⁰

In addition to the mandatory factors outlined at s 47F(2) of the FOI Act, the FOI Guidelines explain that other relevant factors include:

- a) the author of the document is identifiable
 - b) the document contains third party personal information
 - c) release of the document would cause stress to the third party
 - d) no public purpose would be achieved through release.
- ...
- the nature, age and current relevance of the information
 - any detriment that disclosure may cause to the person to whom the information relates
 - any opposition to disclosure expressed or likely to be held by that person
 - the circumstances of an agency’s or minister’s collection and use of the information
 - the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
 - any submission an FOI applicant chooses to make in support of their request as to their reasons for seeking access and their intended or likely use or dissemination of the information and
 - whether disclosure of the information might advance the public interest in government transparency and integrity.¹¹

The last-mentioned factor – the public interest in government transparency and integrity – is to be balanced with all other relevant factors arising in the particular case, including the private interest that third party individuals may have in maintaining privacy of their personal information.¹²

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

⁹ Generally, see FOI Guidelines at [6.119] – [6.155]; ‘AEE’ and Department of Defence (*Freedom of information*) [2023] AICmr 69; ‘AED’ and Australian Criminal Intelligence Commission (*Freedom of information*) [2023] AICmr 67; ‘OE’ and Australian Taxation Office (*Freedom of information*) [2018] AICmr 29.

¹⁰ FOI Guidelines at [6.133].

¹¹ FOI Guidelines at [6.137] – [6.138] (footnotes omitted).

¹² FOI Guidelines at [6.139].

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.¹³

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.¹⁴

Review rights

Review by the Administrative Appeals Tribunal

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

Making a complaint to the Commonwealth Ombudsman

¹³ FOI Guidelines at [6.229] – [6.233].

¹⁴ FOI Guidelines at [6.238] (footnote omitted).

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

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@ and [agency] (Freedom of information) [2024]
AICmr @ (@ 2024)

Decision and reasons for decision of

Freedom of Information Commissioner/ Australian Information Commissioner], [name]

Applicant	@
Respondent	@
Third Party	@
Decision date	@ 2024
Reference	MR_/_/_____
Catchwords	Freedom of Information — Access grant — Whether material contains trade secrets — Whether material contains commercially valuable information — Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs — Whether contrary to public interest to release conditionally exempt documents — (CTH) <i>Freedom of Information Act 1982</i> ss 11A, 47, and 47G

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I [set aside/affirm/vary] the decision of the [agency] (the [Department / Respondent]) of [date], [if relevant] as varied on [date(s)].
- Within 28 days of this decision:
 - the [Department/ Respondent] must now provide the applicant with a copy of the documents, edited under s 22 of the FOI Act only to the extent necessary to delete exempt or irrelevant material.
 - the [Department/ Respondent] must advise whether it has fully implemented my decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal.

Key points

3. This decision discusses [insert summary e.g. the application of s X of the FOI Act and paragraph Y of the FOI Guidelines to documents about Z]. It [is primarily of interest to the parties in relation to the specific documents sought/may have broader implications for agencies in relation to...].

Reasons for decision

4. The background and key procedural steps in this IC review are set out at Annexure [A/B].

Scope of IC review

5. On [date], the Freedom of Information applicant (FOI applicant) applied to the [agency] for access to [...].
6. [Briefly outline the documents at issue, and the parties' current stance – add a footnote that outlines the reviewable decision: see [AIH](#) at [4] and footnote 4 as an example. If the case requires background to be set out in full, do this in an 'Annexure B']
7. [In an Information Commissioner review (IC review) of an access refusal decision, the agency bears the onus of establishing that its decision is justified or that I should give a decision adverse to the applicant.¹ / In an Information Commissioner review (IC review) of an access grant decision, the IC review applicant bears the onus of establishing that a decision refusing the request is justified or that I should give a decision adverse to the FOI applicant.²]
8. The issue to be decided in this IC review are whether the:
 - [document / documents / material] that the [IC review applicant / Department/ Respondent] maintains [is/are] exempt under s 47 of the FOI Act are exempt under that provision, and
 - [document / documents / material] that the [IC review applicant / Department/ Respondent] maintains [is/are] conditionally exempt under s 47G of the FOI Act are conditionally exempt under that provision, and if so, whether giving the applicant access to the conditionally exempt material at this time would, on balance, be contrary to the public interest (s 11A(5)).
9. In making my decision, I have had regard to the following:
 - the [agency]'s decision and reasons for decision of [date]
 - [if relevant] the [agency]'s internal review decision and reasons for decision of [date]
 - [if relevant] the [agency]'s revised decision and reasons for decision of [date]
 - the document[s] at issue
 - the FOI Act³

¹ FOI Act s 55D(1).

² FOI Act s 55D(2).

³ Sections 11A, 47, and 47G as set out in Annexure A.

- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act⁴ to which agencies must have regard in performing a function or exercising a power under the FOI Act,⁵ and
- the parties' submissions.

Documents disclosing trade secrets or commercially valuable information (s 47)

Trade secrets (s 47(1)(a))

10. A document will be exempt under this subsection if its disclosure would disclose trade secrets.
11. [summarise parties' subs].

Whether the [document / documents / material] contain[s] trade secrets

12. [...]

Finding

13. I [am / am not] satisfied that the [document/ documents/ material] [is / are] exempt under s 47(1)(a) of the FOI Act.

Commercially valuable information (s 47(1)(b))

14. A document will be exempt under s 47(1)(b) of the FOI Act if its disclosure would reveal information that has commercial value that would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.
15. [summarise parties' subs].

Consideration of the commercial value of the document

16. [...]

Finding

17. I [am / am not] satisfied that the [document/ documents/ material] [is / are] exempt under s 47(1)(b) of the FOI Act.

Business affairs exemption (s 47G)

18. A document will be conditionally exempt if it discloses information (business information) concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the business information would, or could reasonably be expected to:
 - unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs (s 47G(1)(a)), or
 - or prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a

⁴ See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

⁵ Set out in Annexure A.

Territory or the administration of matters administered by an agency (s 47G(1)(b), and

- it would be 'contrary to the public interest' to release the material at the time of the decision (s 11A(5)).

Information in respect of business affairs (s 47G(1)(a))

19. [...]
20. [summarise parties' subs].

Consideration

21. [...]
22. As discussed in the FOI Guidelines, assessing if the impact is unreasonable requires me to balance the public and private interest factors. I [accept/ do not accept] that the private interests of the [third party / third parties / applicant] are such that release of the information could cause them to [...].
23. On balance, I [do/ do not] consider the public interest factors outweigh the private interests of the [third party / third parties / applicant] and I therefore [do/do not] consider that the impact claimed by the [third party / third parties / applicant] would be unreasonable in the circumstances.

Finding

24. I [am/ am not] satisfied that the [document / documents / material] [is/are] conditionally exempt under 47G(1)(a) of the FOI Act.

Prejudice the future supply of information (s 47G(1)(b))

25. [summarise parties' subs]

Consideration

26. [...]

Finding

27. I [am/ am not] satisfied that the [document / documents / material] [is/are] conditionally exempt under 47G(1)(b) of the FOI Act.

Whether access would be contrary to the public interest (s 11A(5))

28. Having found the [document/ documents/ material] to be conditionally exempt under s 47G of the FOI Act, I am required to consider whether it would be contrary to the public interest to give the applicant access to conditionally exempt material at this time. The requirements of the public interest test are set out at Annexure A. I have considered the relevant mandatory factors listed in s 11B(3) of the FOI Act. I have not considered the irrelevant factors as set out in s 11B(4) of the FOI Act.⁶ In considering the public interest, I have had regard to the parties' submissions.

29. [summarise parties' subs].

⁶ Listed in Annexure A.

30. I give [limited/ moderate/ significant] weight to the following factors in favour of disclosure, noting that they reflect the parties' submissions [in part/ in full]:
- [...].
31. I give [limited/ moderate/ significant] weight to the following factors against disclosure, noting that they reflect the parties' submissions [in part/ in full]:
- [...].
32. On balance, I consider that the public interest factors [against disclosure/ in favour of disclosure], which I have given [X] weight, outweigh the factors [favouring / against] disclosure.

[Name]

[Freedom of Information Commissioner/ Australian Information Commissioner]

[date]

Annexure A

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Section 11A(4) of the FOI Act states the agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Trade secrets (s 47(1)(a))

Section 47(1) of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would disclose:

(a) trade secrets; or

...

The FOI Guidelines state:

The term 'trade secret' is not defined in the FOI Act. The Federal Court [in *Department of Employment, Workplace Relations and Small Business v Staff Development and Training Company* [2001] FCA 1375 at [14]; (2001) 114 FCR 301] has interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown. has interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown.

The Federal Court referred to the following test in considering whether information amounts to a trade secret:

- the information is used in a trade or business
- the owner must limit the dissemination of it or at least not encourage or permit widespread publication
- if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the secret.⁷

The FOI Guidelines further state:

⁷ FOI Guidelines at [5.229] – [5.230].

Factors that a decision maker might regard as useful guidance, but which do not constitute an exhaustive list of factors to consider include:

- the extent to which the information is known outside the business of the owner of that information
- the extent to which the information is known by persons engaged in the owner's business
- measures taken by the owner to guard the secrecy of the information
- the value of the information to the owner and to their competitors
- the effort and money spent by the owner in developing the information
- the ease or difficulty with which others might acquire or duplicate the secret.⁸

Commercially valuable information (s 47(1)(b))

Section 47(1) of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would disclose:

...

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The FOI Guidelines state:

It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.⁹

The FOI Guidelines further state:

The second requirement of s 47(1)(b) — that it could reasonably be expected that disclosure of the information would destroy or diminish its value — must be established separately by satisfactory evidence. It should not be assumed that confidential commercial information will necessarily lose some of its value if it becomes more widely known. Nor is it sufficient to establish that an agency or person would be adversely affected by disclosure; for example, by

⁸ FOI Guidelines at [5.231].

⁹ FOI Guidelines at [5.235].

encountering criticism or embarrassment. It must be established that the disclosure would destroy or diminish the commercial value of the information.¹⁰

Business affairs exemption (s 47G)

Section 47G of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

Section 47G(2) – (3) of the FOI Act contain exceptions to the exemption in s 47G(1) of the FOI Act.

As stated in the FOI Guidelines, this conditional exemption does not apply in the following circumstances:

... if the document contains only business information about the FOI applicant (s 47G(3)). Where the business information concerns both the FOI applicant and another business, the provision may operate to conditionally exempt the FOI applicant's information, but only if the FOI applicant's business information cannot be separated from the information of the other business or undertaking.

... to trade secrets or other information to which s 47 applies (s 47G(2)). In other words, a decision maker should consider an exemption under s 47 for documents containing trade secrets or other information to which s 47 applies if the circumstances call for it. This is a limited exception to the normal rule that more than one exemption may apply to the same information (see s 32).¹¹

Section 47G(1)(a)

The FOI Guidelines explain that the operation of s 47G of the FOI Act depends on the effect of disclosure, rather than the precise nature of the information itself.¹² Notwithstanding this, the information must have some relevance to a person in respect of their business or professional affairs or to the business, commercial and financial affairs of the organisation.¹³

The FOI Guidelines state:

The use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been

¹⁰ FOI Guidelines at [5.237].

¹¹ FOI Guidelines at [6.179] – [6.180].

¹² FOI Guidelines at [6.181].

¹³ FOI Guidelines at [6.181].

interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs.’¹⁴

In relation to the question of unreasonableness, the FOI Guidelines state:

The presence of ‘unreasonably’ in s 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. A decision maker must balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of s 47G(1)(a), but this does not amount to the public interest test in s 11A(5) which follows later in the decision process.¹⁵

The FOI Guidelines further state:

The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. For example, the disclosure of information that a business’ activities pose a threat to public safety, damage the natural environment, or that a service provider has made false claims for government money, may have a substantial adverse effect on that business but may not be unreasonable in the circumstances to disclose. Similarly, it would not be unreasonable to disclose information about a business that revealed serious criminality. These considerations require weighing the public interest against a private interest – preserving the profitability of a business. However at this stage it bears only on the threshold question of whether disclosure would be unreasonable.¹⁶

Section 47G(1)(b)

The FOI Guidelines state:

This limb of the conditional exemption comprises 2 parts:

- a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government
- the reduction will prejudice the operations of the agency.¹⁷

Public interest test

Section 11A(5) of the FOI Act states the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure for consideration, those factors being where disclosure of the document would do any of the following:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person access to their personal information.

¹⁴ FOI Guidelines at [6.191] (footnotes omitted).

¹⁵ FOI Guidelines at [6.184] (footnotes omitted).

¹⁶ FOI Guidelines at [6.185] (footnotes omitted).

¹⁷ FOI Guidelines at [6.197] footnoting *Re Angel and the Department of the Arts, Heritage and the Environment; HC Sleigh Resources Ltd and Tasmania* [1985] AATA 314.

Section 11B(4) of the FOI Act also lists the following irrelevant factors that must not be taken into consideration when deciding whether access would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the document could result in any person misinterpreting or misunderstanding the document
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the document could result in confusion or unnecessary debate.

In addition to the factors set out at s 11B(3) of the FOI Act, the FOI Guidelines set out a further non-exhaustive list of public interest factors in favour of disclosure, as well as public interest factors against disclosure.¹⁸

The FOI Guidelines explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts at the time the decision is made.¹⁹

Review rights

Review by the Administrative Appeals Tribunal

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

Making a complaint to the Commonwealth Ombudsman

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If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

¹⁸ FOI Guidelines at [6.229] – [6.233].

¹⁹ FOI Guidelines at [6.238] (footnote omitted).

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#) page on our website.





@ and [agency] (Freedom of information) [2024] AICmr @ (@ 2024)

**Decision and reasons for decision of
Rocelle Ago, Assistant Commissioner Freedom of Information
Delegate of the Australian Information Commissioner for the purposes of s 55K of
the Freedom of Information Act 1982**

Applicant	@
Respondent	@
Decision date	@ 2024
Reference	MR__/_
Catchwords	Freedom of Information — Whether a practical refusal reason exists — Whether work involved in processing the request would substantially and unreasonably interfere with the performance of the Agency’s functions — (CTH) <i>Freedom of Information Act 1982</i> ss 24, 24AA, and 24AB

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I [set aside/affirm/vary] the decision of the [agency] (the [Department / Respondent]) of [date], [if relevant] as varied on [date(s)]. I substitute my decision that a practical refusal reason does not exist. The [Department/ Respondent] must process the applicant’s request and notify the applicant of its decision.¹
- Within 30 days of this decision:
 - the [Department/ Respondent] must advise whether it has fully implemented my decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal.

¹ On the question of the processing deadlines that now apply, see *Fletcher and Prime Minister of Australia* [2013] AICmr 11 at [33] – [38].

Key points

3. This decision discusses [insert summary e.g. the application of s X of the FOI Act and paragraph Y of the FOI Guidelines to documents about Z]. It [is primarily of interest to the parties in relation to the specific documents sought/may have broader implications for agencies in relation to...].

Reasons for decision

4. The background and key procedural steps in this IC review are set out at **Annexure [A/B]**.

Scope of IC review

5. On [date], the applicant applied to the [agency] for access to [...].
6. [set out revised request if there is one].
7. [set out reviewable decision + R's position].
8. [set out A's position].
9. The issue[s] to be decided in this Information Commissioner review (IC review) [is/are] whether the work involved in processing the applicant's request would substantially and unreasonably divert the resources of the [agency] from its other operations.
10. In an IC review of an access refusal decision, the agency bears the onus of establishing that its decision is justified, or that I should give a decision adverse to the applicant.²
11. In making my decision, I have had regard to the following:
 - the [agency]'s decision and reasons for decision of [date]
 - [if relevant] the [agency]'s internal review decision and reasons for decision of [date]
 - [if relevant] the [agency]'s revised decision and reasons for decision of [date]
 - the FOI Act³
 - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act⁴ to which agencies must have regard in performing a function or exercising a power under the FOI Act,⁵ and
 - the parties' submissions.

Whether the [agency] was entitled to refuse access for a practical refusal reason (s 24)

12. Section 24 of the FOI Act sets out the requirements an agency or Minister must satisfy to refuse access to documents because of a practical refusal reason. In deciding on this issue, I am required to consider:

² FOI Act s 55D(1).

³ Sections 24, 24AA, and 24AB as set out in Annexure A.

⁴ See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

⁵ Set out in Annexure A.

- whether a request consultation process has been undertaken in accordance with s 24AB of the FOI Act, and if so
- whether I am satisfied that the work involved in processing the applicant's request would 'substantially' divert the resources of the agency from its other operations, and
- whether I am also satisfied that the work involved in processing the applicant's request would 'unreasonably' divert the resources of the agency from its other operations.⁶

Whether a request consultation process was undertaken (s 24AB)

13. For a request consultation process to have been undertaken for the purposes of s 24(1)(a) of the FOI Act, the applicant must have been notified in accordance with s 24AB(2) of the FOI Act. If the applicant contacts the relevant contact person, then the agency must 'take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists' (s 24AB(3)). What constitutes 'reasonable steps' is informed by s 24AB(4)⁷ and the FOI Guidelines,⁸ but it must be considered on a case-by-case basis.⁹
14. [summarise parties' subs if not in Annexure].
15. [...].

Whether a practical refusal reason exists (s 24AA(1)(a)(i))

16. In determining whether a practical refusal reason exists for the purposes of s 24AA(1)(a)(i) I must first consider whether I am satisfied that the diversion of the [agency's] resources from its other operations would be substantial. If I am satisfied that it would be, I must then consider if that substantial diversion would be 'unreasonable'.¹⁰
17. In answering this question I have had regard to the relevant mandatory factors listed in s 24AA(2) of the FOI Act but I have not considered the factors set out in s 24AA(3) of the FOI Act.¹¹

Whether the work involved in processing the request would substantially divert the resources of [agency] from its other operations

18. [summarise parties' subs if not in Annexure].
19. [...].

⁶ See 'ACW' and Australian National Maritime Museum (Freedom of information) [2023] AICmr 4 at [10] as set out in Annexure A.

⁷ FOI Act.

⁸ At [3.133].

⁹ Justin Warren and Department of Human Services (Freedom of information) [2019] AICmr 22 at [32].

¹⁰ See 'ACW' and Australian National Maritime Museum (Freedom of information) [2023] AICmr 4 at [10] as set out in Annexure A.

¹¹ As set out in Annexure A.

Whether the work involved in processing the request would unreasonably divert the resources of the [agency] from its other operations

20. [summarise parties' subs if not in Annexure].
21. [...].

Finding

22. I find that [agency] [has / has not] established that a practical refusal reason exists for the purposes of s 24(1)(b) of the FOI Act because [...]. The [agency] [was/ was not] authorised under s 24(1)(b) of the FOI Act to refuse access to the documents in accordance with the request.

Rocelle Ago

Assistant Commissioner Freedom of Information

Delegate of the Australian Information Commissioner for the purposes of s 55K of the *Freedom of Information Act 1982*

[date]

Annexure A

Relevant provisions of the FOI Act, FOI Guidelines, and decisions

Whether a request consultation process was undertaken (s 24AB)

Section 24AB of the FOI Act relevantly states:

What is a request consultation process ?

Scope

- (1) This section sets out what is a **request consultation process** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
 - (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the **consultation period**) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), **reasonable steps** includes the following:
 - (a) giving the applicant a reasonable opportunity to consult with the contact person;

- (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- (a) withdraw the request;
- (b) make a revised request;
- (c) indicate that the applicant does not wish to revise the request.

- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:

- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
- (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period. [emphasis in original]

The FOI Guidelines relevantly state:

Where an agency or minister is satisfied that a practical refusal reason exists, they must undertake a request consultation process with the applicant before making a decision to refuse the request (s 24AB).

...

The agency or minister must give the applicant a written notice that states:

- an intention to refuse access to a document in accordance with a request
- the practical refusal reason
- the name and contact details of an officer with whom the applicant may consult during the process, and details of how the applicant may contact them
- that the consultation period during which the applicant may consult the contact person is 14 days after the day the applicant is given the notice (s 24AB(2)).

Agencies and ministers are only obliged to undertake a request consultation process once for any particular request (s 24AB(9)), but they may choose to continue discussions with an applicant in order to refine a request that is still too large or vague.

...

If an applicant contacts a contact officer during the consultation period, the contact officer must take reasonable steps to help them revise the request so that the practical refusal reason no longer exists (s 24AB(3)). For example, a contact officer could provide a breakdown of the time estimated for each step of the process, explain the difficulties the agency will have in dealing with the request and suggest what would be a reasonable request in the circumstances.¹²

Whether a practical refusal reason exists (ss 24 and 24AA)

Section 24 of the FOI Act enables an agency or Minister to refuse access to a document where the agency has undertaken a request consultation process in accordance with s 24AB of the

¹² FOI Guidelines at [3.127], [3.129], [3.132], and [3.133].

FOI Act, and after that process the agency or Minister is satisfied that the practical refusal reason still exists.

Subparagraph 24AA(1)(a) of the FOI Act lists the following practical refusal reason:

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:
- (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;

Subsection 24AA(2) of the FOI Act lists matters which a decision maker must consider where relevant in deciding whether or not a practical refusal reason exists. It is a non-exhaustive list.

Subsection 24AA(3) of the FOI Act states:

- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
- (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

As set out in *'ACW' and Australian National Maritime Museum [2023] AICmr 4* ('ACW'), a decision maker must consider the following 3 elements in determining the issue of whether a practical refusal reason exists for the purposes of s 24AA(1)(a)(i) of the FOI Act:

- First, I must determine whether a request consultation process has been undertaken in accordance with s 24AB of the FOI Act. In many cases, this element of the decision-making task may be dealt with briefly because it is clear that a relevant process has been validly conducted and no agreement as to validity arises between the parties to the IC review.
- Secondly, if I determine that a request consultation process has been validly undertaken, I must determine whether I am 'satisfied' that the work involved in processing the applicant's request (as revised, if at all, during the request consultation process) would 'substantially' divert the resources of the agency from its other operations.
- Thirdly, if I am satisfied of a substantial diversion of resources, I must determine whether I am also 'satisfied' that the work involved in processing the applicant's request would 'unreasonably' divert the resources of the agency from its other operations.¹³

To be 'satisfied' for the purposes of s 24(1) of the FOI Act that a practical refusal reason exists, a decision maker must 'feel' an 'actual persuasion' that the reason exists. They cannot be satisfied simply as a result of a 'mere mechanical comparison of probabilities independently of any belief in its reality'.¹⁴ Moreover, a decision maker's 'satisfaction' as to

¹³ *'ACW' and Australian National Maritime Museum [2023] AICmr 4* at [10].

¹⁴ *Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336* at 361 (Dixon J)

the existence of a practical refusal reason cannot be arbitrary or capricious; it must be formed 'according to law and not humour'.¹⁵

A diversion of an agency's resources will be considered to be 'substantial' if the diversion can be characterised as 'real or of substance' rather than 'large'.¹⁶

The FOI Guidelines explain:

In deciding if a practical refusal reason exists, an agency or minister must have regard to the resources required to perform the following activities specified in s 24AA(2):

- identifying, locating or collating documents within the filing system of the agency or minister
- examining the documents
- deciding whether to grant, refuse or defer access
- consulting with other parties
- redacting exempt material from the documents
- making copies of documents
- notifying an interim or final decision to the applicant.

Other matters that may be relevant in deciding if a practical refusal reason exists include:

- the staffing resources available to an agency or minister for FOI processing
- whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities
- the impact that processing a request may have on other work in an agency or minister's office, including FOI processing
- whether an applicant has cooperated in framing a request to reduce the processing workload
- whether there is a significant public interest in the documents requested
- other steps taken by an agency or minister to publish information of the kind requested by an applicant
- as to a request to a minister — other responsibilities of the minister and demands on the minister's time, and whether it is open to the minister to obtain assistance from an agency in processing the request.¹⁷

¹⁵ *Federal Commissioner of Taxation v Bayly* [1952] HCA 31; (1952) 86 CLR 506 at 510 (Williams J). See also *Minister for Immigration and Multicultural Affairs v Eshetu* [1999] HCA 21; (1997) 197 CLR 611 at [145] (Gummow J).

¹⁶ See *Langer and Telstra Corporation Ltd* [2002] AATA 341 ('Langer') applied in *Cambridge; Chief Executive Officer, Services Australia and (Freedom of information)* [2021] AATA 1142 and *Farrell; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 2390, noting that at the time of the decision in *Langer*, the reference to processing a request 'substantially and unreasonably' diverting the resources of an agency was contained in s 24 rather than s 24AA. However, there is nothing in the terms of s 24 as enacted at that time which would negate the application of the view reached by Forgie DP in the context of s 24AA(1).

¹⁷ FOI Guidelines at [3.116] – [3.117] (footnote omitted).

Review rights

Review by the Administrative Appeals Tribunal

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

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Updated June 2023

Conducting an IC review: Identification of systemic and significant issues

The identification of systemic and significant issues can occur through 4 stages:

- Intake
- Senior assessment: pre-commencement of review
- Senior assessment: post-commencement of review, including review of documents at issue prior to allocation
- IC Review: Case management

The table below sets out the considerations taken at each stage to enable identification of systemic and significant issues and the potential actions and next steps.

IC reviews involving systemic and significant issues are assigned case category 5.

This worksheet should be read in conjunction with IC Review Case Categories ([D2020/000377](#)) and Conducting an IC review: Assessments worksheets: [D2019/002542](#).

Stages	Considerations	Actions/next steps
<ul style="list-style-type: none"> • Intake 	<ul style="list-style-type: none"> • Applications made by parliamentarians • IC review applications relating to Ministers (Respondents or subject matter) • Exemptions: ss 4(1) (whether documents are official documents of a minister/party/political), 25 (Neither confirm nor deny), 33 (National Security), 34 (Cabinet), 46 (Contempt of Parliament), 47B (Commonwealth/State relations), 47D (Financial interests or property interests of the Commonwealth), 47H (Research), 47J (The Economy) • Whether request relate to official documents of a minister, senior officials' diaries, electronic communications, incoming government briefs • Whether request relates to ongoing public debate or highly publicised investigations • Whether exemptions relate to waiver of legal professional • Whether request relates to a <i>Public Interest Disclosure</i> 	<ul style="list-style-type: none"> • Identify appropriate category under 'sensitivity' • Identify relevant exemptions under 'Assessor note' • Add relevant cross-references • If deemed access refusal, proceed with preliminary inquiries process. • For all other matters, proceed to Mail Assessment.

Stages	Considerations	Actions/next steps
<ul style="list-style-type: none"> Senior assessment: pre-commencement of review 	<ul style="list-style-type: none"> In accordance with intake considerations Whether novel issues raised or whether it can be a lead case to address systemic issues Whether there is an application currently before the OAIC for a vexatious applicant declaration to be made in relation to the IC review applicant or an investigation into a complaint 	<ul style="list-style-type: none"> Note in assessment Insert relevant cross-references
<ul style="list-style-type: none"> Senior assessment: post-commencement of review, including review of documents at issue prior to allocation 	<ul style="list-style-type: none"> In accordance with senior assessment: pre-review of documents considerations Whether respondent’s decision or ability to make a revised decision is affected by consultation with other government agencies 	<ul style="list-style-type: none"> Note in assessment Insert relevant cross-references
<ul style="list-style-type: none"> IC Review: Case management 	<ul style="list-style-type: none"> In accordance with intake considerations Whether respondent’s decision or ability to make a revised decision is affected by consultation with other government agencies 	<ul style="list-style-type: none">



Australian Government
Office of the Australian Information Commissioner



Conducting IC reviews: Assessments

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Conducting IC review: Assessments

This worksheet provides guidance to assist with assessing IC review applications. This worksheet should be read in conjunction with the FOI Guidelines and other guidance material, including the IC review case categories ([D2020/000377](#)) and Identification of Systemic and Significant Issues worksheets: [D2019/001898](#).

Preliminary assessments

Once an IC review application has been registered and assessed for validity, it proceeds to preliminary assessment ('FOI – Assessment' queue). The Assessments Queue's function is to determine whether an IC review application will proceed to review or will be declined by the OAIC. The scope of an IC review application may be required to be clarified in order to determine whether an IC review will progress or be declined.

Preliminary assessment involves a review of:

- the FOI request
- the decision under review
- the applicant's reasons for review
- any responses to preliminary requests for information, including submissions
- the coding of the Resolve file to check accuracy

Attachment A: Assessments Process

Attachment A: Assessments Process

Step	Action
Step 1	<p>Review the documents relevant to the IC review including the:</p> <ul style="list-style-type: none"> • IC review application • The decision letter • Any attached correspondence from the applicant or respondent <p>Does the IC review relate to an IC reviewable decision as outlined in s 53A (access refusals) or 53B (access grants) of the FOI Act? If No – Go to Step 2 If Yes – Go to Step 3</p>
Step 2	<p>IC review is invalid.</p> <ul style="list-style-type: none"> • Add Next Action: “Invalid/OOJ” • Add a File Note to the record to explain why the matter is invalid • Assign case to “FOI – Triage” Queue <p>Process Ends Here</p>
Step 3	<p>In order for the scope of an IC review to be clear, you must be able to identify which parts of the IC reviewable decision the applicant disputes and why.</p> <p>Is the scope of the IC review clear?</p> <p>If No – Go to Step 4 If Yes – Go to Step 8</p>
Step 4	<p>Send Request for Information to IC review applicant to clarify scope using the template saved here: Scope Clarification Template.</p> <p>Update the Next Action field with the appropriate option:</p> <ul style="list-style-type: none"> • [Draft] RFI to A • [Draft] RFI to A, possible 54W(a)(i) (Please include a file note explaining why) • Possible 54W(b) (Please include a file note explaining why) <p>Go to Step 5</p>
Step 5	<p>Applicant has responded to RFI by due date?</p> <p>If No – Go to Step 6 If Yes – Go to Step 7</p>
Step 6	<p>Move matter to ‘FOI – IC Reviews – Declines’.</p> <p>Update Next Action note to: [PENDING] Draft 54W(c)</p>

	Procedure Ends Here
Step 7	<p>Is the scope of the IC review clear?</p> <p>If No:</p> <ul style="list-style-type: none"> • If appropriate, send a second RFI to attempt to obtain a clear scope. • If inappropriate to send a second RFI or unable to obtain a clear scope after 2 RFI's, matter can be closed under s 54W(c). Go to Step 6 <p>If Yes – Go to Step 8</p>
Step 8	<p>Is the matter appropriate to decline under s 54W(b)?</p> <p>See FOI Guidelines paragraphs 10.104 – 10.105. Examples may include:</p> <ul style="list-style-type: none"> • Complex matter more appropriately handled by AAT • Perceived or actual conflict of interest in OAIC undertaking review • Strong possibility of IC decision appeal to AAT e.g. <ul style="list-style-type: none"> ○ Strong commercial interests ○ Complex/novel: <ul style="list-style-type: none"> ▪ Volume of documents ▪ International jurisdiction ▪ Matter relates to something of current political or cultural significance <p>If Yes:</p> <ul style="list-style-type: none"> • Move to Declines Queue • Add appropriate Next Action: “A has requested 54W(b)” or “Assessed 54W(b)” • Add a file note to explain the reason for moving to the declines queue • Process Ends Here. <p>If No – Go to Step 9</p>
Step 9	<p>Ensure the Agency decision tab is correct and that the issues accurately reflect the scope of the matter.</p> <p>Go to Step 10</p>
Step 10	<p>Complete summary field on main page of Resolve:</p> <p>[Timeline of key case events]</p> <p>Decision under review: Original decision dated/Deemed refusal dated... Revised decision dated @.</p> <p>[Exemptions use]: @ document/s found within scope of request, released/exempt in full/part under exemption/s @.</p> <p>[Searches use]: No document/s found within scope of request. Access refused under s 24A (insert relevant subsection if known).</p> <p>[Practical refusal use]: @ document/s found within scope of request. (Insert @ hours to process, decision making etc. any key points)</p> <p>[Charges use]: \$@ (insert calculation)</p>

	<p>Number of documents at issue: @ (delete if not applicable)</p> <p>Scope of review: Applicant seeks review of [Practical refusal/Exemptions ss @/Searches]. Applicant states (insert any key statements that allude to applicant's scope of request. If not known request in acknowledgement).</p> <p>FOI Request: [Quote if short or provide summary]</p> <p>For searches matter - Go to step 11</p> <p>For all other matters – Go to Step 12</p>
11	<p>For Searches matters:</p> <p>Consider whether further searches by the respondent are required.</p> <p>Examples where further searches may be required:</p> <ul style="list-style-type: none"> - preliminary inquiries have determined the respondent did not search for the correct document/s - preliminary inquiries have determined the searches were insufficient as the relevant location was not searched or relevant business area did not conduct searches. <p>Where you consider further searches are required by the respondent, make a file note and include '55V required' in your assessor note at step 12.</p> <p>Consider whether the statement of reasons is adequate.</p> <p>Examples where statements of reasons may be inadequate are:</p> <ul style="list-style-type: none"> - Applicant states further relevant documents exist but s 24A (unable to locate docs) is not mentioned in the decision letter - The decision letter includes s 24A but no or minimal explanation of searches undertaken is provided. Appropriate searches explanations should include: <ul style="list-style-type: none"> o Address the interpretation of the scope of the request. The scope of the FOI request should be interpreted broadly. o Which area within the agency undertook the searches and why that business area is the most relevant business area to search for docs o Provide details about the searches undertaken, such as systems searched and/or search terms <p>Where you consider the statement of reasons provided is inadequate, make a file note and include '55E required' in your assessor note at step 12.</p> <p>Go to Step 12</p>
Step 12	<p>Determine which 54Z commencement of IC Review template/s will be required for the matter.</p> <p>To do this, make note of which of the following categories apply:</p>

	<ul style="list-style-type: none"> • Deemed • Access Grant • 54L(2) • Searches • Exemptions • Searches and Exemptions • Practical Refusal • Charges • Amendment of Records • 55E required (D2024/020967) • 55V required (D2024/020986) <p>Go to Step 13.</p>
Step 13	<p>Matter is appropriate to proceed to IC review. Undertake the following actions:</p> <ul style="list-style-type: none"> • Add Assessor note with the category of the case e.g. “[CAT 4]” followed by the sections of the act that are relevant to the scope of the review <ul style="list-style-type: none"> ○ IC review categories are outlined in D2020/000377 • At the end of the assessor note add any key words that apply from the list at step 8 • Check/Update the Issue String for the matter • Check/Update the Category field on the main page of Resolve • Add details of any third party to the IC review to the ‘Parties’ tab • Complete Action Flow steps: <ul style="list-style-type: none"> ○ All assessment info available>Ready for Assessment ○ Decide Path>Conduct Review - 54Z ○ Move to Review Allocation <p>End Process</p>

Email template to Third Party advising it is joined as a party under s55A(1)(c) in access refusal IC review

Our reference:

Agency reference:

Dear [name]

Thank you for your email.

As it appears that [you/entity] were consulted by the [respondent] in processing the FOI request, [You/entity] is a party to this IC review under s 55A(1)(c) of the FOI Act. As [you/entity] is a party to the review, [you/entity] will be given a reasonable opportunity to present [your/its] case under s 55(4)(b) of the FOI Act. [You/entity] will also be notified of any decision by the Information Commissioner under s 55K(6).

At this stage, the IC review is awaiting allocation to a review adviser. Once the IC review is allocated, the review adviser will contact the review parties to discuss the next steps.

If you wish to contact us about this matter, please use the reference number [reference].

Kind regards

Email subject line: OAIC – MRXX/XXXXX - Response required by DD Month 2024 [1 week] - [Applicant name]'s/Your IC review application about the [Respondent Name]

Our reference: MRXX/XXXXX

Agency reference: [Insert reference number]

NAME

By email: [Insert email address OR remove if sent by post]

Your Information Commissioner review application - Request for information

Dear [Name],

On DD Month 2024, you applied to the Office of the Australian Information Commissioner (OAIC) for an Information Commissioner (IC) review of the [Agency's/Minister's] Freedom of Information (FOI) decision of [date].

A copy of your IC review application and the [Agency's/Minister's] decision are attached.

In your IC review application, you asked the OAIC to review:

[insert.quote]

[If applicable]. The OAIC is not able to review [insert part of request that is out of scope] because...

Action required by [1 week date]:

To assist with confirming the basis for your IC review application, please tell us why you disagree with the [Agency's/Minister's] decision, including:

- the parts of the decision you want the Information Commissioner to review.
- which documents you consider have been wrongly refused or which exemptions have been incorrectly applied.

You are required to provide this information under paragraph 2.16 of the Commissioner's written [direction to IC review applicants](#). Paragraph 2.22 of the direction requires you to respond to enquiries from the OAIC within the period provided unless there are circumstances warranting a longer period to respond.

Section 54W(c) of the Freedom of Information Act 2009 allows the Information Commissioner to decide not to undertake an IC review where an applicant fails to comply with a direction of the Commissioner.

If you do not provide this information by **[due date]**, we intend to exercise the discretion to finalise your IC review application.

Should you have any queries, please do not hesitate to contact me at FOIDR@oaic.gov.au.

Kind regards,

If A requests consideration under s54W(b), but does not provide sufficient reasons, please insert the below template replying to their request and attach a copy of the IC review application for their record and reference.

//

Subject line: OAIC – Response Required - MRXX/XXXXX - [Applicant name]'s/Your request for consideration under s54W(b) of the FOI Act

Our reference: MRXX/XXXXX

Agency reference:

Agency/Minister

By email: [Email Recipient's Email Address]

[Applicant name]'s/Your review application about the [Agency/Minister]

Good morning/afternoon [IC review applicant],

On **Click or tap to enter a date.**, you indicated that you wish for the Information Commissioner (IC) reviewable decision to be considered by the [Administrative Appeals Tribunal](#) (AAT), in accordance with [s 54W\(b\)](#) of the FOI Act.

You have not provided sufficient reasons to support whether it is desirable for a delegate of the Information Commissioner to determine that they should finalise the IC reviewable decision.

In order to consider your request please provide further reasons. You may wish to consider [\[10.88\] of the FOI Guidelines](#) [\[10.104 of the FOI Guidelines\]](#), which outlines the circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC reviewable decision in the first instance.

The circumstances outlined in the [FOI Guidelines](#), are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

To consider your request, please provide your fulsome reasons by **Click or tap to enter a date.**

If we do not receive a response by this time, the Office of the Australian Information Commissioner (the OAIC) will continue to review your application.

Due to the number of IC review applications on hand, and the need to prioritise IC review applications that were received earlier, I am unable to provide a timeframe on when you will next receive correspondence from the OAIC.

To assist you in determining an approximate timeframe, the OAIC is currently focusing on the case management and finalisation of aged matters, particularly those IC review applications that were received in 2020, 2021 and any others that remain on hand. The OAIC received your application for IC review on [Click or tap to enter a date.](#)

If you wish to [withdraw your application for IC review](#) please respond to this email stating “I no longer require an IC review of [\[Insert OAIC reference\]](#). There is no penalty for withdrawing.

You can make a new FOI request to the [Agency/Minister](#) at any time. It also may assist to consider the [other ways to access an Agency’s information](#).

Assistance

If you are unable to respond by [Click or tap to enter a date.](#), please respond to this email and request an extension of time to provide your response.

If you require any other assistance regarding your IC review application, please contact us at foidr@oaic.gov.au.

Please quote the reference [\[Insert OAIC reference\]](#) in all correspondence.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: MR

Agency reference:

Applicant Name

Sent by email:

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear

I refer to your request for Information Commissioner review (IC review) of a decision made by the Agency (Agency) on 6 June 2022, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

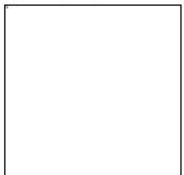
The Office of the Australian Information Commissioner (OAIC) has not received a response from you to our [details and dates of correspondence]. As a delegate of the Information Commissioner, I have decided to not to [undertake/continue to undertake] a review of this IC review under s 54W of the FOI Act. My reasons follow.

Background

[Include the same information in the intention to decline and update to refer to the review officer in the third person]

On [date], the OAIC review officer responsible for this matter, FOI - IC Reviews - Declines, wrote to you to advise you of their intention to recommend to the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(ii) of the FOI Act on the basis that you have failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

FOI - IC Reviews - Declines invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by [date].



Based on the information before me, the OAIC has not received a response.

Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the IC review applicant has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[update as appropriate] The OAIC has not received a response from you to our [insert dates and details of correspondence]. On the basis of the information presently before the Information Commissioner, I am satisfied that you have failed to cooperate in progressing the IC review application without reasonable excuse.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- Based on the information me, including the documents at issue, the **Agency's** submissions, and relevant case law, I consider that the Agency has discharged its onus of establishing that the decision is justified.
- [The OAIC did not receive any submissions/response from you @]
- **Reviewing/continuing** to review this matter will not promote the objects of the FOI Act.

As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you have any questions about this email, please contact FOI - IC Reviews - Declines on or by email . In all correspondence please include OAIC reference MR

Yours sincerely

[First Name Last Name]

Director
Freedom of Information

29 August 2024

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of your IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case, but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the **Access our information**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government

Office of the Australian Information Commissioner

Our reference: **MR**

Agency reference:

Applicant Name

Sent by email:

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear

I refer to your request for Information Commissioner review (IC review) of a decision made by the Agency (Agency) on 6 June 2022, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to [undertake/continue to undertake] a review of this IC review. My reasons follow.

Background

On [date], you applied to the Agency for access to:

[insert quote or for long requests, attach the FOI request].

[insert any details about revision to scope]

On [date], the Agency advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the Agency's decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication].



Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

FOI - IC Reviews - Declines has attempted to contact you on several occasions using the contact details that you provided and we have not received a response.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- The OAIC did not receive any submissions/response from you @
- Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your IC review application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you have any questions about this email, please contact FOI - IC Reviews - Declines FOI - IC Reviews - Declines on or by email . In all correspondence please include OAIC reference MR

Yours sincerely

[First Name Last Name]

Director
Freedom of Information

29 August 2024

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of your IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the **Access our information**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner

Our reference: **MR**
Agency reference:

Sent by email:

Your application for Information Commissioner review of [Agency]'s decision

Dear X

I refer to your request for Information Commissioner review (IC review) of a decision made by the **Agency** on 6 June 2022, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application under s 54W of the FOI Act on the basis the Information Commissioner cannot contact you after making reasonable attempts.

The reasons for my recommendation follow.

Background

On [date], you applied to the **Agency** for access to:

[insert quote or for long requests, attach the FOI request].

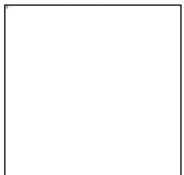
[insert any details about revision to scope]

On [date], the **Agency** advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the **Agency's** decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication]



Discretion not to [undertake/continue to undertake] an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

As discussed above, I have attempted to contact you using the contact details you provided on your IC review application form [and insert other details if relevant] and I have been unable to contact you.

I therefore intend to recommend to the delegate of the Information Commissioner that they exercise the discretion not to [undertake/continue to undertake] a review of this IC review application under s 54W of the FOI Act unless you contact me by [**@ 2 weeks**].

In consideration of the above, it is open to you to withdraw your IC review application by [**@ 2 weeks**].

If I do not hear from you by this date your IC review will be finalised under s 54W and you will be notified of your review rights.

If you have any questions about this email, please contact me on [phone number] or by email [email address]. In all correspondence please include OAIC reference **MR**

Yours sincerely

FOI - IC Reviews - Declines FOI - IC Reviews - Declines

Freedom of Information

29 August 2024



Decision not to **[continue to]** undertake an Information Commissioner review under s 54W(c) of the *Freedom of Information Act 1982*

Information Commissioner review applicant	
Choose an item.	
Decision date	Click or tap to enter a date.
OAIC reference number	
Choose an item. reference number	

Decision

1. I refer to the application made by **[applicant name]** (the applicant) for Information Commissioner review (IC review) of a **decision / internal review decision/ deemed access refusal decision / revised decision** made by the **[Respondent's full name]** (the Agency/Minister) on **DD Month Year**, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. As a delegate of the Information Commissioner, I have decided to exercise my discretion not to **[continue to]** undertake an IC review under s 54W(c) of the FOI Act.
3. The background of this matter is provided at **Attachment A**.

Discretion not to **[continue to]** undertake an IC review

4. If an applicant fails to comply with a direction of the Information Commissioner, including the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews ¹, the Information Commissioner may in some cases decide not to undertake or continue to undertake an IC review. The Direction specifically states:

[contact details of applicant]

An application for IC review must also include the following information (if relevant):

- a. The name and contact details of any person the applicant would like to represent them, as well as evidence that the person has authority to act on the applicant's behalf, where appropriate.
- b. If the applicant requires an interpreter, the language or dialect required.
- c. If the applicant requires any other assistance, the type of assistance required. This is because the IC must provide 'appropriate assistance' to a person

¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [3.1] [3.2]



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who wishes to apply for IC review and requires assistance to prepare the IC review application.²

d. If the applicant has contacted the OAIC previously about the current application or another matter, the reference number previously provided by the OAIC to the applicant.³

[Authority]

An application for IC review may be made by, or on behalf of, the person who made the FOI request to which an access refusal decision relates (s 54L(3)). In relation to access grant decisions, third parties who were consulted under s 26(2), and third parties who were invited to make submissions in support of exemption contentions under ss 27 and 27A and did so, can also apply for an IC review of that access grant decision (s 54M(3)(a)). The IC may require information about the applicant's identity to establish that they are the person who made the original FOI request or evidence that a third party is authorised to seek review of the decision by that person.⁴

[clarity of scope]

An application for IC review should also:

- a. identify the parts of the decision the applicant wants the Information Commissioner to review
- b. state why the applicant disagrees with the agency's or minister's decision
- c. identify which documents the applicant considers have been wrongly refused or which exemptions have been incorrectly applied
- d. if the FOI request has been refused on the ground that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why the applicant believes the FOI request would not have this impact.⁶

[failing to cooperate]

Failure by an applicant to participate in the engagement process without reasonable excuse may in some cases result in the Information Commissioner not continuing to undertake the IC review on the ground that the IC review applicant has failed to cooperate in progressing the IC review application or IC review without reasonable excuse (see s 54W(a)(ii)).⁷

[failure to respond]

Applicants must respond to requests for information from the OAIC within the time provided unless there are exceptional circumstances warranting a longer period to respond. If more time is needed, a request for an extension of time must be made to the OAIC at the earliest opportunity within the period provided for response, and no later than 2 days before that period is due to expire. Requests for more time must explain the exceptional circumstances that necessitate additional time and propose a new date for response. Approval of an extension request is at the discretion of the OAIC.⁸



Australian Government

Office of the Australian Information Commissioner

The OAIC expects that applicants and agencies will engage with the IC review process, with respect and courtesy.^{9,10}

[applicant did not provide submissions]

In seeking submissions from agencies and ministers in support of the IC reviewable decision, the IC will require the agency or minister to send their submissions to the applicant at the same time as they are sent to the IC. The applicant will then have the opportunity to make submissions in response. The applicant will be required to send their submissions to the agency or minister at the same time as they are sent to the IC, within 10 business days of receiving the agency or minister's submissions.¹¹

IC review applicants should be aware that if they do not make submissions when an opportunity to do so has been provided, the review may proceed to a final decision without any further opportunity to make submissions.¹²

[scope of review following revised decision]

A revised decision does not automatically conclude the IC review, and the revised decision becomes the decision under review (s 55G(2)(b)). The OAIC will generally consult the IC review applicant as to whether they want to continue the IC review on the basis of the revised decision. Applicants who are not satisfied with the revised decision must explain why they disagree with the revised decision and the basis on which they wish to proceed with the IC review. If the applicant does not respond to the OAIC's correspondence, the Information Commissioner may decide not to continue to undertake the IC review (s 54W of the FOI Act).¹³

Reasons for decision

5. In deciding whether to exercise the discretion not to **[continue to]** undertake a review, I have considered the participation of the applicant during the IC review process. I am satisfied that the applicant failed to comply with a Direction of the Information Commissioner, as provided above.
6. As such, continuing to review this matter does not promote the objects of the FOI Act.
7. I confirm that this IC review is now closed. Your review rights are set out below.

Yours sincerely,

Hannah Holswilder

Director

Freedom of Information Branch



Australian Government

Office of the Australian Information Commissioner

Office of the Australian Information Commissioner

29 August 2024





Australian Government

Office of the Australian Information Commissioner

ATTACHMENT A

Background

Date	Events
Click or tap to enter a date.	FOI request made to the Agency/Minister .
Click or tap to enter a date.	IC review application received by the Office of the Australian Information Commissioner.
Click or tap to enter a date.	Choose an item. notified of receipt of IC review application and request for documents provided under [s 54Z or 54Z/55T] of the FOI Act.
Click or tap to enter a date.	<p>The Choose an item. issued a [decision / internal review decision / revised decision/ provided access to documents]</p> <p>OR</p> <p>The Choose an item. made submissions that ...</p> <p>[Select relevant option]</p> <p>(Access refusal)</p> <p>... the applicant's FOI request in its current terms would amount to a substantial and unreasonable diversion of the resources of the Agency from its other operations, in accordance with s 24AA(1)(a)(i) of the FOI Act.</p> <p>... the applicant's FOI request in its current terms would substantially and unreasonably interfere with the performance of the Minister's functions, in accordance with s 24AA(1)(a)(ii) of the FOI Act.</p> <p>... the applicant's FOI request in its current terms does not satisfy the requirement in paragraph 15(2)(b) (identification of documents), in accordance with s 24AA(1)(b) of the FOI Act.</p>



Australian Government

Office of the Australian Information Commissioner

... the applicant's FOI request was refused by the Choose an item. as the documents cannot be found, do not exist or have not been received, in accordance with s 24A(1) of the FOI Act.

(Amendment/Annotation)

... the Choose an item. has decided to/decided not to amend the applicant's record, in accordance with s 50(1)(b) of the FOI Act.

... the Choose an item. has decided to/decided not to annotate the applicant's record, in accordance with s 51b of the FOI Act.

Click or tap to enter a date.

The **Agency/Minister** provided the OAIC with copies of communications and correspondence with the applicant demonstrating reasonable attempts made to resolve the issues in dispute.

Click or tap to enter a date.

The OAIC sought the applicant's advice about whether the applicant wished to proceed with the IC review and if so, to provide reasons why they wished to proceed in accordance with the Information Commissioner's written [direction to IC review applicants](#). The OAIC also advised the applicant that their IC review may be finalised under s 54W(c) of the FOI Act, if the applicant failed to comply with the direction by the specified date.

OR

The OAIC sought the applicant's advice about whether the applicant wished to proceed with the IC review and if so, to provide reasons why they wished to proceed in accordance with the Information Commissioner's written [direction to IC review applicants](#). The OAIC also advised the applicant that their IC review may be finalised under **[s 54W(a)(ii)/ s 54W(a)(iii)]** of the FOI Act, if the applicant failed to comply with the direction by the specified date.

Click or tap to enter a date.

[If relevant] The OAIC attempted to phone the applicant as no written response had been received from the applicant.



Australian Government

Office of the Australian Information Commissioner

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of this IC review application under the Freedom of Information Act 1982 (the FOI Act) is not legally correct. You can make this application under the Administrative Decisions (Judicial Review) Act 1977.

The Court will not review the merits of your case, but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information or visit the Federal Court website.²

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website.³

Accessing your information

If you would like access to the information that we hold about you, please [contact us](#).

More information is available on our website.⁴

² See [Federal Court of Australia](#)

³ See [Commonwealth Ombudsman](#)

⁴ See [About us: Access our information](#)



Australian Government

Office of the Australian Information Commissioner

Intention to recommend that an Information Commissioner review not be undertaken / continue to be undertaken under s 54W(a)(i) of the *Freedom of Information Act 1982*

Information Commissioner review applicant	
Choose an item.	
Recommendation date	Click or tap to enter a date.
OAIC reference number	
Choose an item. reference number	

Summary

1. I refer to the application made by [applicant name] (the applicant) for Information Commissioner review (IC review) of a [decision / deemed access refusal decision / an internal review decision/ revised decision] made by the [Respondent's full name] (the Agency/Minister) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. The purpose of this letter is to advise you of my intention to recommend that the Information Commissioner exercises discretion to decide not to undertake/ continue to undertake an IC review under s 54W(a)(i) of the FOI Act, on the basis that this IC review is [lacking in substance, misconceived, frivolous or vexatious].
3. During an IC review, applicant's will be given a reasonable opportunity to present their case¹. As such, you are being provided an opportunity to comment or make submissions objecting to this recommendation by Click or tap to enter a date. [**@ 2 weeks**].
4. The background of this matter is provided at **Attachment A**.

Discretion not to undertake / continue to undertake an IC review

5. The Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if:

¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.26]

- a. the applicant fails to comply with a direction by the Information Commissioner (s 54W(c)), or
- b. if the Information Commissioner is satisfied:
 - i. the review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith (54W(a)(i))
 - ii. the review applicant has failed to cooperate in progressing the IC review application or the IC review without reasonable excuse (54W(a)(ii))
 - iii. the Information Commissioner cannot contact the applicant after making reasonable attempts (s 54W(a)(iii)) or
- c. if the Information Commissioner is satisfied the IC reviewable decision should be considered by the Administrative Appeals Tribunal (s 54W(b)).²

Scope of IC review

5. The decision under review is the [Agency's/Minister's] [decision / deemed access refusal decision / internal review decision/revised decision], of Click or tap to enter a date. and the issue/s to be decided is whether...

[select relevant option/s]

[Practical Refusal Reason]

... processing the applicant's request in its current terms would substantially and unreasonably divert the resources of the Agency, in accordance with s 24AA(1)(a)(i) of the FOI Act.

... processing the applicant's request in its current terms would substantially and unreasonably interfere with the performance of the Minister's functions, in accordance with s 24AA(1)(a)(ii) of the FOI Act.

[Where conditional exemptions are used or both exemptions and conditional exemptions are used: s 47B, s 47C, s 47D, s 47E, s 47F, s 47G, s47H, s 47J]

... the documents that the Agency/Minister maintains are exempt under [insert relevant exemption/s being contested] of the FOI Act are exempt under that/those provision/s and if so, whether giving access to conditionally exempt information would, on balance, be contrary to the public interest.

² See [Freedom of Information Guidelines, Part 10: Review by the Information Commissioner](#) [10.100]

[Where only exemptions are used: s 33, s 34, s 37, s38, s 42, s 45, s 45A, s 46, s 47, s 47A]

... the documents that the Agency/Minister maintains are exempt under [insert relevant exemption/s being contested] of the FOI Act are exempt under that/those provision/s.

[Where the document is exempt from the operation of the FOI Act: s 5, s 6A, s 7]

s 5: ... the Agency/Minister have properly characterised the documents as relating to the exercise of the Court's substantive adjudicative functions and powers. In which case, the FOI Act does not apply to the documents requested.

s 6A: ... the Agency/Minister have properly characterised the documents as held by, or on behalf of, the Governor-General, as relating to a substantive power or function of the Governor General. In which case, the FOI Act does not apply to the documents requested.

s 7: ... the documents claimed to be within scope of the request are exempt from the operation of the FOI Act.

[Searches]

s24A:...is whether the Agency/Minister has taken all reasonable steps to find documents within the scope of the request.

Reasons for recommendation

6. Having regard to the reasons for seeking an IC review it appears that the Information Commissioner, or a delegated member of staff, should exercise their discretion to decide **not to undertake / not to continue undertake** an IC review under s 54W(a)(i) of the FOI Act because ...

[Select relevant option]

(Lacking Substance)

... the reasons for seeking an IC review lacks any grounds of substance for challenging the decision under review. This is because it appears that [insert specific reasons]

(Misconceived)

... the reasons for seeking an IC review appears to be primarily for the purposes of voicing a grievance.

(Frivolous)

...the underlying merit in the proposed reasons for seeking an IC review appear to be based on a cause of action and do not appear untenable.

(Not made in good faith)

... the reason for seeking an IC review appears to be determinedly instigated so much so that the claims have not been substantiated by the applicant.

(Searches)

... the reasons for seeking an IC review lacks any grounds of substance for challenging the decision under review. This is because it appears that the **Agency/Minister** has taken all reasonable steps to find documents within the scope of the request as it was required to do so and that relevant documents, if they existed, would have been found.

Evidence of searches undertaken [only relevant for searches]

7. The **Agency/Minister** provided the Information Commissioner with details of the searches undertaken in relation to the FOI request and the outcome of those searches. I have considered these records, which indicate that the **Agency/Minister** undertook searches through:

- Records/Case Management System (for example Content Manager/TRIM, Obejctive)
- Electronic documents (for example emails in shared or individual Outlook accounts, text messages etc)
- Hardcopy files
- Contacting relevant line areas of the Agency such as...
- [If applicable] Documents held or created by contracted service providers such as...

8. I have also considered the records of the above searches undertaken by the **Agency/Minister** which identified:

[select relevant options – add search specific information if search minute cannot be shared]

- The date searches were undertaken
- The locations searched (For example, [insert relevant line areas])
- The search terms used (For example, [insert search terms])
- The outcomes of the searches undertaken
- [If applicable] The reasons as to why searches returned no document results

Next steps

9. It is open to you to withdraw your IC review. There is no penalty for doing so and you can continue to make new FOI requests to the **Agency/Minister**. If you wish to withdraw your IC review, please respond to this correspondence saying, 'I no longer require an IC review'.
10. If you disagree with the recommendation, please provide us **with further information...** **[insert specific reasoning]**.

[Searches]

11. **If you disagree with the recommendation, please list what specific documents you believe are missing, whether you believe other areas of the Agency may hold the documents and if so, identify which business areas these may be to the best of your ability³, what record keeping systems you believe were not searched adequately and any search terms you believe that were not considered which may aid in locating documents.**
12. In the absence of a response by the above date it will be taken that you do not object to the recommendation. Extensions of time to respond to this recommendation will only be granted in exceptional circumstances. However, if the Information Commissioner receives submissions prior to a decision being made, those submissions will be considered.
13. You will be provided review rights if the IC review is finalised by the Information Commissioner under s 54W(a)(i) of the FOI Act.

Yours sincerely,

[Full Name]

Review Advisor / Acting Review Advisor
Freedom of Information Branch
Office of the Australian Information Commissioner

Click or tap to enter a date.

³ To access the Agency's organisational chart, see [Your guide to the structures, organisations and key people in the Australian Government](#)

ATTACHMENT A

Background

Date	Events
<p>Click or tap to enter a date.</p>	<p>FOI request made to the Agency/Minister for:</p> <p><i>[insert scope of request]</i></p>
<p>Click or tap to enter a date.</p>	<p>The Choose an item. issued an original decision in response to applicant's FOI request.</p> <p>OR</p> <p>The Choose an item. made an original decision outside of the allowable timeframe in the FOI Act. As this was not a valid decision, the purported decision was taken to be a submission.</p>
<p>Click or tap to enter a date.</p>	<p>The applicant sought an internal review of the Agency's decision.</p> <p>OR</p> <p>The applicant sought an internal review of the Agency's decision outside of the allowable timeframe in the FOI Act.</p>
<p>Click or tap to enter a date.</p>	<p>The Choose an item. issued an internal review decision in response to applicant's request for internal review.</p> <p>OR</p> <p>The Choose an item. issued an internal review decision outside of the allowable timeframe in the FOI Act. The principal officer of the Agency/Minister was taken to have affirmed the original decision.</p> <p>OR</p>

	The Choose an item. agreed to process the applicant's invalid request for an internal review. As this was not a valid internal review decision, the purported decision was taken to be a submission.
Click or tap to enter a date.	IC review application received by the Office of the Australian Information Commissioner.
Click or tap to enter a date.	Choose an item. notified of receipt of IC review application and request for documents provided under [s 54Z or 54Z/55T] of the FOI Act.
Click or tap to enter a date.	<p>The Choose an item. issued a revised decision in accordance with s 55G of the FOI Act, in response to the Information Commissioner's notice and direction.</p> <p>OR [where a s55G decision could not be issued]</p> <p>The Choose an item. made a submission in response to the Information Commissioner's notice and direction, establishing why the Information Commissioner should make a decision adverse to the applicant under s 55D(1) of the FOI Act.</p>
Click or tap to enter a date.	<p>An officer of the Information Commissioner asked the applicant if they wished to proceed with the IC review and if so, to provide further information as to why they wished to proceed in accordance with the Information Commissioner's written direction to IC review applicants.</p> <p>The OAIC also advised the applicant that their IC review may be finalised under s 54W of the FOI Act, if the requested information was not received by Click or tap to enter a date.</p> <p>The applicant did not provide a response. OR</p>
Click or tap to enter a date.	<p>The applicant provided the Information Commissioner with the following information:</p> <p><i>'[insert proceed submissions]'</i></p>

Click or tap to enter a date.

[Insert further fields if additional submissions were exchanged between the parties (to include all relevant review material in the ITD)]

Subject line: OAIC - Request for Updated Contact Details - **MRXX/XXXXX** – Review application about the **[Agency/Minister]**

//

Our reference: **MRXX/XXXXX**

Agency reference:

By email: **[Email Recipient's Email Address]**

Your review application about the **[Agency/Minister]**

Good **morning/afternoon** X,

On **DD Month Year**, the Office of the Australian Information Commissioner (OAIC) received an automatic email, indicating that the email transmission had not been successful (attached).

To assist us in progressing your Information Commissioner review, please confirm if this is no longer your current or preferable contact address and if so, please provide your updated contact details by **DD Month Year**. *(one week)*

Intention not to continue to undertake your IC review

Section 54W(a)(iii) of the FOI Act provides that the Information Commissioner may decide not to undertake, or continue to undertake, an IC review where the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

Should we not receive a response from you to this email by **DD Month Year** your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(iii).

If I can be of any assistance, please do not hesitate to reach out.

Please quote the OAIC reference number at the top of this email in all correspondence.

Kind regards,



Decision **not to undertake / continue to undertake** an Information Commissioner review under s 54W(b) of the *Freedom of Information Act 1982*

Information Commissioner review applicant	
Choose an item.	
Decision date	Click or tap to enter a date.
OAIC reference number	
Choose an item. reference number	

Decision

1. I refer to the application made by [applicant name] (the applicant) for Information Commissioner review (IC review) of a **decision / internal review decision/ deemed access refusal decision / revised decision** made by the [Respondent's full name] (the **Choose an item.**) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. As a delegate of the Information Commissioner, I have decided to exercise my discretion **not to undertake / continue to undertake** an IC review under s 54W(b) of the FOI Act.
3. The background of this matter is provided at **Attachment A**.

Discretion not to continue to undertake an IC review

4. Under s 54W(b) of the FOI Act, the Information Commissioner may exercise the discretion not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.
5. The effect of such a decision would allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT. AAT filing fees may apply.¹

¹ See [Administrative Appeals Tribunal - Fees](#)

6. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.104] and [10.105], which states:

The Information Commissioner may decline to undertake a review if satisfied ‘that the interests of the administration of the [FOI] Act make it desirable’ that the AAT consider the IC reviewable decision (s 54W(b)). It is intended that the Information Commissioner will resolve most IC review applications. Circumstances in which the Information Commissioner may decide that it is desirable for the AAT to consider the IC reviewable decision instead of the Information Commissioner continuing with the IC review include:²

- where the IC review is linked to ongoing proceedings before the AAT or a court
- where there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- where, should the application progress to an IC review decision, the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
- where the FOI decision under review is of a level of complexity that it will be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Information Commissioner undertaking the IC review, including where:
 - the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
 - the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
 - the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

7. However, the circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

8. Further, the Office of the Information Commissioner (OAIC) may take into account the views of the parties to an IC review before concluding an IC review pursuant to s 54W(b). While the Information Commissioner will consider the views of the review parties before finalising an IC review under s 54W(b), the decision whether it is more appropriate for the AAT to consider the IC reviewable decision ultimately rests with the Information Commissioner. Through the functions conferred on the Information Commissioner under the FOI Act, the Information Commissioner will be in the most informed position to

² See [McKinnon and Department of Immigration and Citizenship \[2012\] AICmr 34](#)

determine whether the interests of the administration of the FOI Act make it desirable for the AAT consider the IC reviewable decision.

Reasons for decision

9. I am satisfied that it is in the interests of the administration of the FOI Act that the IC reviewable decision be considered by the AAT in the first instance because:

- [Insert reasoning]

10. In deciding whether to exercise the discretion not to undertake a review, I have considered:

- the Agency's **decision / internal review decision/ deemed access refusal decision OR submissions** dated **DD Month Year**.
- the documents at issue
- the FOI Act, in particular 54W **[example: s 11A(5), s 22, s33.]**
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act³ to which agencies must have regard in performing a function or exercising a power under the FOI Act, in particular [10.104] and [10.105]
- the views of the parties
- The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009

11. With consideration to the above, I am satisfied, as a delegate of the Information Commissioner, that it would be more appropriate and efficient for the application to be made directly to the AAT. As such, I have decided to exercise my discretion to decide not to **undertake / continue to undertake** an IC review under s 54W(b) of the FOI Act.

12. The applicant has 28 calendar days from the date of this notice to make an application for review of the IC reviewable decision to the AAT, in accordance with s 57A of the FOI Act.

13. I confirm that this IC review is now closed. Your review rights are set out below.

Yours sincerely,

³ See Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the [Freedom of Information Act 1982](#)* (FOI Guidelines).

Hannah Holswilder

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

DD Month 2024

ATTACHMENT A

Background

Date	Events
<p>Click or tap to enter a date.</p>	<p>FOI request made to the Choose an item.</p>
<p>Click or tap to enter a date.</p>	<p>IC review application received by the Office of the Australian Information Commissioner</p>
<p>Click or tap to enter a date.</p>	<p>Choose an item. notified of receipt of IC review application and request for documents provided under s 54Z of the FOI Act</p>
<p>Click or tap to enter a date.</p>	<p>The Choose an item. issued an initial decision in response to the IC review applicant's FOI request.</p> <p>OR</p> <p>The Choose an item. provided access to documents outside of the allowable timeframe in the FOI Act. As this was not a valid decision, they are taken to be submissions. The IC reviewable decision remains the deemed access refusal of Click or tap to enter a date.</p> <p>OR</p> <p>The Choose an item. issued a revised decision in accordance with s 55G of the FOI Act, in response to the Information Commissioner's notice and direction.</p> <p>OR [where a s55G decision could not be issued]</p> <p>Choose an item. submission received to establish why the Information Commissioner should make a decision adverse to the applicant under s 55D(1) of the FOI Act.</p>
<p>Click or tap to enter a date.</p>	<p>IC review applicant provided indication/requested that they wished for the Information Commissioner to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act.</p>

Click or tap to enter a date. Information Commissioner requests IC review applicant provide submissions as to why the Information Commissioner should exercise discretion to finalise IC review application s 54W(b) of the FOI Act

Submissions were requested from the applicant, for consideration by a delegate of the Information Commissioner by [Click or tap to enter a date](#).

Click or tap to enter a date. IC review applicant s 54W(b) submissions received, advising:

“[insert applicant submissions (these may be included in the IC review application)]”

Click or tap to enter a date. Information Commissioner provides the Agency with the applicant’s submissions and recommendation for the Information Commissioner to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act.

Submissions were requested from the [Choose an item.](#), for consideration by a delegate of the Information Commissioner by [Click or tap to enter a date](#).

Click or tap to enter a date. [Choose an item.](#) s 54W(b) submissions received, advising:

“[insert Agency/Minister submissions (these will be in response to the IC’s 54W(b) ITD)]”

Alternative Attachment A – where 54W(b) is requested at the time of making the IC review application.

ATTACHMENT A Background

Date	Events
Click or tap to enter a date.	FOI request made to the Choose an item .
Click or tap to enter a date.	The Choose an item issued an initial decision in response to the IC review applicant's FOI request.
Click or tap to enter a date.	IC review application received by the Office of the Australian Information Commissioner. IC review applicant indicated within their IC review application that they wished for the Information Commissioner to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act.
Click or tap to enter a date.	<p>Choose an item notified of receipt of IC review application and issued a recommendation by an officer of the Information Commissioner for a delegate to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act, advising:</p> <p><i>"[Insert applicant submission from IC review application]"</i></p> <p>The Information Commissioner requested the Choose an item to provide submissions as to why the Information Commissioner should not exercise discretion to finalise IC review application s 54W(b) of the FOI Act.</p> <p>Submissions were requested from the Minister, for consideration by a delegate of the Information Commissioner by Click or tap to enter a date.</p>
Click or tap to enter a date.	Choose an item s 54W(b) submissions received, advising:

Click or tap to
enter a date.

Choose an item. s 54W(b) submissions received, advising:

*“[insert Agency/Minister submissions (these will be in response to the IC’s
54W(b) ITD)]”*

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of this IC review application under the Freedom of Information Act 1982 (the FOI Act) is not legally correct. You can make this application under the Administrative Decisions (Judicial Review) Act 1977.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#)⁴ page on our website.

⁴ www.oaic.gov.au/about-us/access-our-information/.



Australian Government

Office of the Australian Information Commissioner

Intention to recommend that an Information Commissioner review not **be undertaken / continue to be undertaken under s 54W(b) of the *Freedom of Information Act 1982***

Information Commissioner review applicant	
Choose an item.	
Recommendation date	Click or tap to enter a date.
OAIC reference number	
Choose an item. reference number	

Summary

1. I refer to the application made by [applicant name] (the applicant) for Information Commissioner review (IC review) of a **decision / internal review decision/ deemed access refusal decision** made by the [Respondent's full name] (the **Choose an item.**) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. The purpose of this letter is to advise the parties of my intention to recommend that the Information Commissioner should exercise the discretion to decide not to **undertake /continue to undertake** an IC review under s 54W(b) of the FOI Act, as I am of the view that it may be in the interests of the efficient administration of the FOI Act that this review be closed and that the IC review applicant be provided the opportunity of applying directly to the Administrative Appeals Tribunal (AAT) for review, in the first instance.
3. I am writing to both parties in this IC review to offer an opportunity to comment or make submissions objecting this recommendation.

Discretion not to continue to undertake an IC review

4. Under s 54W(b) of the FOI Act, the Information Commissioner may exercise the discretion not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.



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5. The effect of such a decision would allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT. AAT filing fees may apply.¹
6. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.104] and [10.105], which states:

The Information Commissioner may decline to undertake a review if satisfied 'that the interests of the administration of the [FOI] Act make it desirable' that the AAT consider the IC reviewable decision (s 54W(b)). It is intended that the Information Commissioner will resolve most IC review applications. Circumstances in which the Information Commissioner may decide that it is desirable for the AAT to consider the IC reviewable decision instead of the Information Commissioner continuing with the IC review include:²

- where the IC review is linked to ongoing proceedings before the AAT or a court
 - where there is an apparent inconsistency between earlier IC review decisions and AAT decisions
 - where, should the application progress to an IC review decision, the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
 - where the FOI decision under review is of a level of complexity that it will be more appropriately handled through the procedures of the AAT
 - where there may be a perceived or actual conflict of interest in the Information Commissioner undertaking the IC review, including where:
 - the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
 - the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
 - the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
 - where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).
7. However, the circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

Reasons for recommendation

8. In this IC review, it appears that it may be in the interests of the efficient administration of the FOI Act that that a delegate of the Information Commissioner exercises the discretion to

¹ <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

² See *McKinnon and Department of Immigration and Citizenship* [2012] AICmr 34



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decide not to undertake / continue to undertake an IC review under s 54W(b) of the FOI Act because:

- [Insert reasons]

Next steps

9. If you disagree with this proposed recommendation, please write to us by [Click or tap to enter a date. \[minimum 2 weeks\]](#) and advise us of your reasons. If you agree with the proposed recommendation, you are not required to respond. However, should either party wish to provide additional information, for consideration by a delegate of the Information Commissioner, you may do so by the abovementioned date.
10. The Office of the Information Commissioner (OAIC) may take into account the views of the parties to an IC review before concluding an IC review pursuant to s 54W(b). While the Information Commissioner will consider the views of the review parties before finalising an IC review under s 54W(b), the decision whether it is more appropriate for the AAT to consider the IC reviewable decision ultimately rests with the Information Commissioner. Through the functions conferred on the Information Commissioner under the FOI Act, the Information Commissioner will be in the most informed position to determine whether the interests of the administration of the FOI Act make it desirable for the AAT consider the IC reviewable decision.
11. In the absence of a response by the above date it will be taken that the parties do not object to the proposed recommendation. The parties will be notified and provided review rights if the IC review is finalised under s 54W(b) of the FOI Act.

Yours sincerely,

[OAIC Officer]

Review Advisor

Freedom of Information Branch

Office of the Australian Information Commissioner

DD Month 2024

Discretion not to **undertake/ continue to undertake** an IC review

If an applicant fails to comply with the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews ¹, the Information Commissioner may in some cases decide not to undertake an IC review or make a decision at their discretion, not to continue with the review. The Direction specifically states:

[select relevant option/s]

- An application for IC review must also include the following information (if relevant):
 - a. The name and contact details of any person the applicant would like to represent them, as well as evidence that the person has authority to act on the applicant's behalf, where appropriate.
 - b. If the applicant requires an interpreter, the language or dialect required.
 - c. If the applicant requires any other assistance, the type of assistance required. This is because the IC must provide 'appropriate assistance' to a person who wishes to apply for IC review and requires assistance to prepare the IC review application.²
 - d. If the applicant has contacted the OAIC previously about the current application or another matter, the reference number previously provided by the OAIC to the applicant.³

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- An application for IC review may be made by, or on behalf of, the person who made the FOI request to which an access refusal decision relates (s 54L(3)). In relation to access grant decisions, third parties who were consulted under s 26(2), and third parties who were invited to make submissions in support of exemption contentions under ss 27 and 27A and did so, can also apply for an IC review of that access grant decision (s 54M(3)(a)). The IC may require information about the applicant's identity to establish that they are the person who made the original FOI request or evidence that a third party is authorised to seek review of the decision by that person.⁴

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- An application for IC review must be accompanied by a copy of the agency's or Minister's decision (called a s 26 notice) for which review is sought or, if no decision has been made (for example, when the agency or Minister is taken to have refused the FOI request because they have not made a decision within the statutory time period), a copy of the FOI request.⁵

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¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [3.1] [3.2]

² Section 54N(3) of the FOI Act.

³ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.11]

⁴ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.12]

⁵ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.14]

- An application for IC review should also:
 - a) identify the parts of the decision the applicant wants the Information Commissioner to review
 - b) state why the applicant disagrees with the agency's or minister's decision
 - c) identify which documents the applicant considers have been wrongly refused or which exemptions have been incorrectly applied
 - d) if the FOI request has been refused on the ground that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why the applicant believes the FOI request would not have this impact.⁶

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- Failure by an applicant to participate in the engagement process without reasonable excuse may in some cases result in the Information Commissioner not continuing to undertake the IC review on the ground that the IC review applicant has failed to cooperate in progressing the IC review application or IC review without reasonable excuse (see s 54W(a)(ii)).⁷

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- Applicants must respond to requests for information from the OAIC within the time provided unless there are exceptional circumstances warranting a longer period to respond. If more time is needed, a request for an extension of time must be made to the OAIC at the earliest opportunity within the period provided for response, and no later than 2 days before that period is due to expire. Requests for more time must explain the exceptional circumstances that necessitate additional time and propose a new date for response. Approval of an extension request is at the discretion of the OAIC.⁸

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- The OAIC expects that applicants and agencies will engage with the IC review process, with respect and courtesy.^{9 10}

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- In seeking submissions from agencies and ministers in support of the IC reviewable decision, the IC will require the agency or minister to send their submissions to the applicant at the same time as they are sent to the IC. The applicant will then have the opportunity to make submissions in response. The applicant will be required to send their submissions to the

⁶ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.16]

⁷ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

⁸ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.22]

⁹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

¹⁰ See [OAIC service charter](#).

agency or minister at the same time as they are sent to the IC, within 10 business days of receiving the agency or minister's submissions.¹¹

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- IC review applicants should be aware that if they do not make submissions when an opportunity to do so has been provided, the review may proceed to a final decision without any further opportunity to make submissions.¹²

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Revised decision only:

- A revised decision does not automatically conclude the IC review, and the revised decision becomes the decision under review (s 55G(2)(b)). The OAIC will generally consult the IC review applicant as to whether they want to continue the IC review on the basis of the revised decision. Applicants who are not satisfied with the revised decision must explain why they disagree with the revised decision and the basis on which they wish to proceed with the IC review. If the applicant does not respond to the OAIC's correspondence, the Information Commissioner may decide not to continue to undertake the IC review (s 54W of the FOI Act).¹³

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As such, if we do not hear from you by **DD Month 2024** we intend to exercise the discretion to finalise your IC review application.

Assistance

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MR** in all correspondence.

Kind regards,

¹¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

¹² See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

¹³ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.25]

Subject: OAIC – Response Required – MR – Information Commissioner review application about the [Respondent Name]

Our reference:

Agency/Minister reference:

By email: [Email Recipient's Email Address]

Information Commissioner review application about the [Respondent Name]

Good morning/afternoon [Email Recipient Email Address]

I sincerely apologise for the time elapsed between correspondences.

By way of update, the Office of the Australian Information Commissioner (OAIC) is continuing to allocate and review matters received in 2020. As such, given the passage of time and further anticipated delays, I am writing to seek clarification about whether you wish to continue with your review application.

[if relevant] The OAIC has not received correspondence from you since DD Month YEAR, XX days ago.

Action required by you before DD Month 2024: (two -three weeks)

1. If you no longer wish to continue with the IC review, please reply to this email stating “I no longer require an IC review”. There is no penalty for withdrawing and you may continue to submit new FOI requests to the Agency/Minister at any time.
2. If you wish to continue, can you please confirm:
 - Whether any of the material related to the FOI decision under review is linked to ongoing proceedings before the Administrative Appeals Tribunal or court.
 - Whether any of the material you are seeking has been released to you, such as through a more contemporarily made FOI request to the Agency/Minister; and
 - If your reasons for seeking IC review have changed.

Discretion not to continue to undertake an IC review

If an applicant fails to comply with the [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#), the Information Commissioner may in some cases decide not to undertake an IC review or make a decision at their discretion, not to continue with the review. The Direction specifically states:

[insert relevant directions]

-

If we do not hear from you by DD Month 2024 we intend to exercise the discretion to finalise your IC review application.

Assistance

If you are unable to respond by **DD Month 2024**, you must request more time at the earliest opportunity and no later than **DD Month 2024**. **[two days before due date]**. Requests for more time must explain the exceptional circumstances that necessitate additional time and propose a new date for response. Approval of an extension request is at the discretion of the OAIC

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MR** in all correspondence.

Kind regards,

Subject line: OAIC - MR – s 54W(c) - Decision **not to undertake / continue to undertake** an Information Commissioner review

Our reference:

Agency/Minister reference:

Applicant Name
Agency/Minister

By email: Applicant

By email: Agency/Minister

Copied to: [if relevant]

Finalisation of Information Commissioner review application under s 54W(c) of the FOI Act

Dear Parties,

Please find **attached** a decision finalising this Information Commissioner review under s 54W(c) of the FOI Act.

I confirm our file is now closed.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: «CaseNumber»

Agency reference: «Agency_Reference_Number»

The respondent is:	The applicant is:
«RespondentClientTradingName»	«SendToTitleFirstnameSurname»

Notice of IC review and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner (IC) review of a deemed access refusal decision made by the «RespondentClientTradingName» (the «RespondentClientAbbreviation») under the *Freedom of Information Act 1982* (the FOI Act).

The IC will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The IC may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the IC in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The IC may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and unredacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference «CaseNumber») in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Please note, you are required to send any submissions prepared in response to the Direction at **Attachment A**, to the applicant at the same time as to the OAIC.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed by agencies and ministers in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

Hannah Holswilder

Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

29 August 2024

Attachment A



**Direction to
the «RespondentClientTradingName»
under s 55(2)(e)(ii) of the *Freedom of Information Act*
1982**

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to «CaseNumber», I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the «RespondentClientTradingName» (the «RespondentClientAbbreviation») under s 55(2)(e)(ii) of the FOI Act.

Revised decision – full access

1. Should the «RespondentClientAbbreviation» wish to provide full access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC.

Revised decision – partial access

2. Should the «RespondentClientAbbreviation» wish to provide partial access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC.
3. Please also provide the following documents to the OAIC:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the «RespondentClientAbbreviation» formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the «RespondentClientAbbreviation» and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference «CaseNumber») in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» provide the applicant and the OAIC the following:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the «RespondentClientAbbreviation» claims are exempt and the particular provisions of the FOI Act the «RespondentClientAbbreviation» is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the «RespondentClientAbbreviation» contends that the applicant should be refused access to the documents.
- 5. Should the «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» provide the OAIC the following:
 - a. Should the «RespondentClientAbbreviation» wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the «RespondentClientAbbreviation» is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.

- i. The submissions could also refer to any other relevant information that the «RespondentClientAbbreviation» wishes to provide in support of its decision.
- b. The FOI request, and any correspondence that modifies its scope.
- c. The names and contact details of anyone who was consulted by the «RespondentClientAbbreviation» formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the «RespondentClientAbbreviation», and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference «CaseNumber») in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

If «RespondentClientAbbreviation» makes a submission to the OAIC in support of an access refusal decision, it must send the submission to the applicant at the same time (unless there are compelling reasons not to, in which case it must make a prior request to make a submission in confidence). However, it is not required to provide the applicant with copies of other documents requested under this notice.

The requested information is required to be provided to the OAIC by **[15 business days]**.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Attachment B



Notice to produce documents and give information

In relation to «CaseNumber», under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require you [respondent full name], [title] of the «RespondentClientTradingName», to give me the following information by close of business **[15 business days]**:

- a marked up and unredacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au. These documents are not required to be provided to the IC review applicant.

Notice issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Instructions

Drafting Proceed emails for Deemed Matters

Open Case in Resolve & go to the "Documents" tab to review correspondence relevant to the case.

Read through the correspondence to find the following information (and update key days in the summary box on the main page along the way – see below example):

- Date the Agency advised us of a new decision (beneficial if a copy of the correspondence is enclosed).
- Sometimes, Agencies will CC the OAIC into the decision correspondence to the FOI applicant) to assist in resolving the matter in a timely manner.
- If the decision is not enclosed, and you are unsure, it may be useful to send an “RFI” to the Agency.
- If the decision is provided by the Agency to the OAIC we need to establish when the decision was issued to the applicant (or at a minimum, when the decision was dated as some Agencies date decisions days before it is released to the FOI applicant due to complex clearing processes).
- If possible, what email the Agency issued the decision (if provided)
- Whether the new decision is a revised decision under s55G of the FOI Act (in response to the OAIC issuing a 54Z/55T notice and direction. You can check easily by using the CTRL+F function).
- If the decision is not made in accordance with s55G of the FOI Act, the decision will likely be taken to be as a Agency submission under s 55(2)(e)(ii) of the FOI Act.

Locate the Proceed email template saved to your signatures or here: OAIC-Intake and Early Resolution-TEAM>General>Files>Deemed Queue>Proceed Templates

1. Update the email template content
 - a. Ensure the email is being sent from FOIDR mailbox.
 - b. Ensure that the Applicant and/or representative email address is correct.
 - c. Send the email.
2. Once sent, upload the email to the ‘Documents’ tab of Resolve
 - a. right click the document and select ‘Document properties’ from the menu.
 - b. Update the comment to **Proceed due [XX/XX]**
 - c. Ensure you delete the email/documents from desktop.
3. Update the "Assessor Note" on the main page to **Proceed due XX/XX**
4. Update the Next Action Due Date to the due date of the Proceed email.
5. Update summary
 - **XX/XX/XX - FOI requested**
 - **XX/XX/XX - Deemed Refused**
 - **XX/XX/XX - PI issued (response received XX.XX / not received)**
 - **XX/XX/XX - 54Z/55T issued (response received XX/XX)**
 - **XX/XX/XX - Proceed Issued (response due XX/XX)**
6. Update the “open actions” field
 - * Follow through to “send to applicant to proceed (MR PI)” and tick the box
 - * Leave at “Await Response from Applicant (MR PI)
 - * Hit save

Instructions

Drafting s 54Z /55T notices (bulk notices instructions are further below)

1. Check docs for date FOI was lodged with agency and use the date calculator to confirm the deemed date. (Strictly 30 days and includes public holidays and weekends – not next business day)
 - * Also, check all docs to see if we've received the statement of reasons/substantive decision (out of jurisdiction) [what a FOI decision is called when issued after deemed date] as a PI & 54Z/55T notice will not be required. The applicant will be issued a "proceed" requesting if they now wish to withdraw their IC Review or proceed and review the substantive decision/statement of reasons, in which case they will be used as a submission for the IC review. If they withdraw or don't respond, we issue a 54W(c) Closure Decision
 - * Check for EOT's (up to 30 days) and consultation periods or internal reviews (30 days) - if these periods are still ongoing amend the assessor note to internal review due XX/XX
2. Check for a response from the agency to our Preliminary Inquiry (PI) email
3. Once confirmed that it is deemed, proceed to draft 54Z/55T - edit summary file notes if required
4. Select and double click to open Case in Resolve
 - * Change "Method" in the Details Bar to Preliminary Inquiry and hit save
 - * Go to All Actions tab' and click on 'Add Procedure',
 - * Select FOI Letter templates>Early Resolution Letter (FOI)>§ 22 54Z/55T Deemed-Notice of IC review
 - * New Action will appear at the bottom named "§ 22 54z/55t Deemed- Notice of IC review". Select it, right click and select 'Action Tasks' from the pop-up menu.
 - * New Pop-Up window will appear, only 1 line should appear with task named "§ 22 54Z/55T Deemed- Notice of IC review".
 - * Select to highlight and then click 'Merge and Edit'.
 - * New Pop-Up may appear, the respondent or "FOI Contact Officer" will populate. Sometimes only one option is available, if not, please only select one. It does not matter which option is selected. Click OK.
 - * May take some time to load after clicking OK, a Word document template is being generated and will open automatically. You may close the above pop-up window once the document has been generated.
5. Fill in required details in the template (see example with guidance comments saved in § 47E(d)
 - * Obtain the correct FOI Contacts Officer from the shared file in the Teams Channel called 'Details of Agency Directors' (§ 47E(d)) and replace the "FOI Co Ordinator"
 - * Amend opening title to recipient's name i.e. Ms Fletcher
 - * Amend title to letter from Notice of IC... to Notice of Information Commissioner...
 - * Amend the acronym of the Dept, in the third line in the first paragraph to (the Department) as throughout the document it is referred to as 'the department'
 - * Add the acronym (IC) into the second line after .. Information Commissioner
 - * Drop the last sentence in the first paragraph to it's own line
 - * Add paras (see bottom of document for templates for additional paras) as required to 'Scope of IC review'
 - * May add extra information that you may have relevant to this review * workout 30 days from lodgement and if any EOT's were

granted or consulting periods or internal reviews (use date calculator)

EG:

On 13 November 2023, the FOI applicant lodged a FOI request.

On 8 December 2023, the FOI applicant agreed to a 30 day extension until 12 January 2024.

* refer to Hannah's email date 6/2/24 in the 54Z/55T folder re adding paras for the amendment & annotations cases, in the scope and example in the notice attached

- * Replace my name with Hannah Holswilder (Ctl H)
- * Replace [3 weeks] to actual date plus one day (Ctl H)
- * At the end of the letter, **remove REGULATORY** from sig block
- * Amend the first paragraph in attachment B by removing the 'you' and 'title, respondent full name' i.e. *In relation to s 22 [REDACTED], under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require the s 22 [REDACTED], to give me the following information by close of business 8 February 2024:*
- * *In the letter and attachment A & B, the last paragraph, amend the title and branch details to Director, Freedom of Information Branch, Office of the Australian Information Commissioner and add signature block*
- * delete duplicate letter and attachments if it has replicated itself when merging

6. Once you have completed your 54Z 55T notice, save the document and close Word. (DO NOT SAVE TO DESKTOP)

- * Go to the "documents" tab in resolve, right click on the s 54Z/55T notice and from the pop-up menu click "Check In".
- * Right click on the document and select 'Document properties'. In the comment section please write **Draft 54Z/55T**

7. Go to the 'All Actions' Tab in Resolve

- * The notice needs to be cleared by an EL2 Director. (Usually Hannah Holswilder, however, if the agency is Services Australia, then it will have to go to Heath Baker due to conflict of interest)
- * Click on 'Add Action' and select 'Await Clearance – Director' - A new action will generate.
- * Double click on the action to open it and Update the comment text to **Hi Hannah, please see draft 54Z/55T for your clearance. Thanks, SJ** (add any other comments that you want reviewed)
- * Click ok when complete
- * Ensure 'Action' is assigned to correct person. If not, reassign.

8. In the 'Assessor Note' on the main page of Resolve (within the case), please update the comment from '[NOW] Draft 54Z/55T' to **[CLEARANCE] Draft 54Z/55T with HHO**

9. Push "open actions" to correct work step and clear others

10. **When the Draft 54Z/55T notice has been cleared by the Director** the Resolve action you created 'Await Clearance – Director' will be assigned back to you in Resolve and will appear in your Resolve action list.

When this occurs:

1. Check out and edit any changes, esp the date if returned next day. Check back in. Then save a final PDF version of the cleared 54Z/55T notice to your desktop – preferred method. (Or can use the convert to PDF option in Resolve and no need to save to desktop. Right click on the document you want to convert to PDF and click on the Convert to)
2. Create the notification email to the Respondent using the '54Z+55T notice email' template saved in your inbox signature or **§ 47E(d)**
3. Ensure the email is being sent from FOIDR mailbox.
4. Ensure that a copy of the IC review application (called form-receipt.pdf)/email and the PDF version of the 54Z/55T notice is attached to the email.
5. Ensure that the Agency email address is correct. (NOTE: there may be more than one email address to add)
6. Send the email. Once sent, locate the email and drag the email to the 'Documents' tab of Resolve.
7. Once the document has been sent, ensure you delete any case documents from your desktop/folder.
8. Once the email has been uploaded to Resolve, right click on the email and select 'Document properties' from the menu. Update the comment to **54Z/55T due [XX/XX]** inserting the due date of the notice
9. Update the next Assessor Note on the main page of resolve to **54Z/55T due XX/XX (SJ)**
10. Update the Next Action Due Date to the due date of the 54z/55t notice and hit save.
11. Update the last "Open Actions" item in the main page to "Await response to notice from respondent (MR PI). [Either tick the other actions and they will drop off or double click them and complete the status]. Then Double click on the await response action and amend the date to the correct due date
12. Amend/Add brief timeline summary (and edit) file note i.e
 - a. **XX/XX/XX - FOI requested**
 - b. **XX/XX/XX - Deemed Access Refusal**
 - c. **XX/XX/XX - PI response received / not received.**
 - d. **XX/XX/XX -54Z/55T issued**
13. Keep in Deemed queue so Supervisor and Director can see

Templates for additional paragraphs

“Scope of IC Review” - Insert as 2nd paragraph

Where agency has provided incorrect deemed date in reply to PI

On DD Month/ YEAR, the Department/Agency confirmed to the OAIC that the applicant’s request was deemed to have been refused on DD Month/ YEAR.

I note that the FOI applicant made an FOI request to the Department (Your ref: s 22) on 10 October 2023. Therefore, under s 15(5)(b), the correct deemed refusal date is 9 November 2023.

Where agency has advised they have provided a decision to the applicant (after the PI has commenced)

On DD Month 2023, the Department/Agency/Office notified the Office of the Australian Information Commissioner (OAIC) it provided the FOI applicant with a decision [if provided within 30 day prescribed timeframe]/statement of reasons [preferred] or substantive decision (out of jurisdiction) [if provided outside 30 day prescribed timeframe].. The FOI applicant has advised the OAIC that they disagree with the decision and wish to proceed with their IC review application.

Where applicant has advised they were provided with a decision (after the PI has commenced or lodged IC review same day as receiving the decision)

On DD Month 2023, the Department/Agency/Office provided the FOI applicant with a decision [if provided within 30 day prescribed timeframe]/statement of reasons [preferred] or substantive decision (out of jurisdiction) [if provided outside 30 day prescribed timeframe]. The FOI applicant has advised the OAIC that they disagree with the decision/statement of reasons and wish to proceed with their IC review application.

Where applicant is seeking a review of an agency’s internal review

On 15 January 2024, the Department advised the OAIC that the applicant’s internal review request was deemed to have been affirmed on 15 December 2024.

(Add this para if the agency has advised the incorrect deemed date) I note that the FOI applicant made an FOI request to the Department (Your ref: s 22) on 21 July 2023 and an internal review was due 15 December 2023. Therefore, under s 54D, the correct deemed affirmation date is 15 December 2023.

FOR DHA BULK Notices

1. Look for cases marked "[NOW] Draft 54Z/55T" and matters flagged as "[NOW] Pls In" (most if not all of these will need to be added to this bulk notice. You will need to jump into each, see the rego/triage officer note in the documents tab or open the correspondence from the respondent and check whether the request is deemed and then add them to the bulk notice).
2. Open spread sheet and clear previous data. Gather all information from Resolve (sort by deemed date from earliest to oldest) and
 - * In the Main screen change 'Method' to Preliminary Inquiry
 - * Edit the 'Assessor Note' to **[NOW] Draft 54Z/55T with SJ**
 - * Hit Save
3. Check docs and to ensure they are deemed
 - * amend summary notes and hit save
 - a. **XX/XX/XX - FOI requested**
 - b. **XX/XX/XX - Deemed Refused**
 - c. **XX/XX/XX - PI response received / not received.**
4. Prepare notice from template saved in the teams channel (open it in Word and formatting will sort itself out). Make same amendments as above notices and send to Director to sign
 - * Save to desktop as 'Bulk 54Z 55T Notice Deemed - Notice of Information Commissioner Review as at XX.XX '
 - * Save the draft to the oldest matter.
 - * Right click on the document and select 'Document properties. In the comment section write **Draft 54Z/55T**
 - * Go to the 'All Actions' Tab and 'Add Action' > 'Await Clearance – Director'.
 - * Double click on the action to open it.
 - * Update the comment text to **Hi Hannah, please see draft bulk 54Z/55T for your clearance. Thank you [Initial]** (add any other comments that you want reviewed)
 - * Click ok when complete
 - * Ensure 'Action' is assigned to Hannah. If not, reassign.
 - * In the 'Assessor Note' on the main page of Resolve (within the case), please update the comment from '[NOW] Draft 54Z/55T' to **[CLEARANCE] Draft 54Z/55T with HHO**
5. **When cleared by Director,** amend any edits (change dates where applicable) then save as a PDF and issue email to DHA (Use the template saved in your signature or in teams channel. (Same as above template but tweak to add plurals) No need to attach copy of IC review application
6. Upload email to each case.
7. Once the email has been uploaded, right click on the email and select 'Document properties' from the menu. Update the comment to **54Z/55T due [XX/XX]** inserting the due date of the notice
8. In the Main screen

- * update the "Assessor Note" to 54Z/55T due 27/02 (SJ)
- * update the Next Action Date to the due date and hit save
- * Add to timeline in summary that XX/XX/XX -54Z/55T issued and hit save
- * update the "Open Actions" to "Await Response to Notice from Respondent (MR PI), then double click on it and change the due date
 - *(if no actions added, ask Hannah Hunter to complete - if she's unavailable, right click in box and select 'add a procedure' then select 'add triage' then follow nose through to correct work step)
- * Keep in DHA Deemed queue so Supervisor and Director can see

Instructions

- **ITD (Intention to decline) no longer closed off under s54W(a)(i)** – frivolous, vexatious, misconceived, lacking in substance, not in good faith. Rocelle would like them closed off as 54W(c) so when the applicant does not reply, case can be closed off as “failure to comply”.

Draft 54W(c) Decision

Look for the decision and how the agency finalised their FOI request i.e. Through FOI/Privacy Act/Administrative closure, as you will need to tweak the decision to suit

- If information is not in the decision, check for responses from 54Z/55T and the ‘Proceed’ email
- Tweak summary on main page as you go along as the dates will help when completing the timeline in the decision i.e.
 - XX/XX/XX - FOI requested
 - XX/XX/XX - Deemed Refused (10/30 day EOT granted - if applicable)
 - XX/XX/XX - PI issued (response received XX.XX / not received)
 - XX/XX/XX - 54Z/55T issued (response received XX/XX)
 - XX/XX/XX - Proceed email Issued (response due XX/XX - received XX.XX/not received)
- Hit save

In the “all Actions” tab, select “add Procedure”

- Select FOI Letter template>Early resolution Letters (FOI)>MR – 210 s 54W(c) decision to both parties

Right click and select “action tasks” – merge and edit

- Amend/remove highlighted line in heading and **expand IC**
- Add applicant's name
- Change date to next working day (unless last day of the month)
- Convert first paragraph to the first bullet point and add applicant’s name before the brackets and after the brackets amend wording to ‘for an Information ‘; also add the date (the deemed date)
- Amend/remove point 3 or 4 (edit to either the Dept made a decision under Administrative Access/Privacy Act 1988/ or a substantive decision (out of jurisdiction) under FOI Act 1982 – can copy and paste the wording used from agency)
- Edit wording in point 4 to I have decided not to continue to undertake an IC review under s 54W(c)
- Amend highlighted wording above point 6 and in paragraph “discretion not to continue to undertake...”
- Add date in point 8 i.e. ...to our subsequent correspondence dated [14 December 2023](#), to advise...
- Add date in point 9 (due date to Proceed email)
- Remove first point in point 10,

- in the new first point, add and edit the line from point 3 and
- edit the next point
- Amend point 11 to ... I have decided to exercise my discretion to decide not to continue to undertake an IC review ...
- Drop signature block to the next page and leave a blank space for Hannah to add her signature and amend date to next business day
- Complete timeline in attachment A
 - In the first date when the applicant lodged the FOI request,
 - copy and paste their scope and change to *italics (scope can be found in the dept's decision/letter)*
 - When noting the date of the full access in the 4th point,
 - If this predates the IC review commencement date, cut and paste into chronological order
 - add the line from point 3 above (tweak so it flows),
 - then cut and paste copy of schedule from agency's decision/letter if provided – if it's not provided, remove "to" at the end of the sentence
 - 5th point is the date of the 'Proceed' email
 - Add in correct order any other significant dates/matters i.e a 2nd revised decision made by respondent to provide another revised decision under s 55G of the FOI Act, providing the applicant further access to documents.
 - Remove the last point as we don't make outgoing calls
- Remove blank page
- Ensure all font is same format – Source Sans Pro / 11
- Save the document and close Word (Do not save to desktop)

Check in document into Resolve

- Right click on the document and select 'Document properties'. In the comment section please write **Draft 54W(c)**
- The decision needs to be cleared by an EL2 Director. (Usually Hannah Holswilder, however, if the agency is Services Australia, then it will have to go to Heath Baker due to conflict of interest)
 - Go to the "All Actions" tab in Resolve and click on 'Add Action' and select 'Await Clearance – Director' - A new action will generate. Double click on the action to open it. Update the comment text to **Hi Hannah, please see 54W(c) for your clearance. Thank you, SJ 19/02** (add any other comments that you want reviewed).
 - Click Ok
- Ensure the 'Action' is assigned to the correct person. If not, reassign.
- Amend the 'Assessor Note' in the main tab to **[CLEARANCE] 54W(c)**

Also, in the 'Open Actions' in the main tab or on the Action tab – click through and complete the following actions:

- a. Sent to applicant to proceed
- b. Await Response from Applicant
- c. No response – proceed to s 54w(a) - (c)
- d. ITD – Choose Appropriate Content I (MR DE)

- e. No ITD Required – Proceed to Close

When the Draft 54W(c) notice has been cleared by the Director, the Resolve action you created 'Await Clearance – Director' will be assigned back to you in Resolve and will appear in your Resolve action list. Plus you will have received an email notification.

When this occurs:

1. Edit any amendments (check out, edit and check back in) and save a final PDF version to your desktop.
2. Create one notification email to both the Respondent and Applicant using template saved in email signature or saved here: OAIC-Intake and Early Resolution-TEAM>General>Files>Deemed Queue>Closure to both parties– 54W(c)
 - a. Ensure the email is being sent from FOIDR mailbox.
 - b. Ensure that a PDF version of the 54W(c) letter is attached to the email.
 - c. Ensure that the Applicant and Agency email addresses are correct.
 - d. Send the email.
3. Once sent, go to the FOIDR sent folder and locate the email.
 - a. Click and drag the email to the 'Documents' tab of Resolve to save a copy to the Resolve file.
 - b. Once the document has been uploaded to Resolve, ensure you delete any case documents from your desktop.
 - c. Right click the document in Resolve and select 'Document properties' from the menu. Update the comment to **54W(c) closure**
4. Update/complete the issue strings attached to the 'Agency Decisions' (at bottom of the main page). Will need to review the decision and then come back to the issue string and double click on it and add and exempts etc (if you can't access it then attempt accessing it in the 'Agency Decision' tab)
 - a. For decisions issued under the Privacy Act or Administrative Access, there should be one string attached as shown below (no need to amend as issues only relate to decisions released under FOI Act but may need to add an outcome like below)

 access refused - 53A(a) s15AC - no reasons Substituted Y Deemed Initial

5. On the resolve main tab
 - a. Ensure the prefilled mandatory (orange) fields are at correct work step
 - b. Move the case from the Deemed Queue into your name
 - c. Ensure the IC Decision is "**s54W(c) - failure to comply**"
 - d. Ensure the 55G Decision is complete if applicable (refer to decision if released under FOI Act)
 - e. Update the Assessor Note on the main page of resolve to **54W(c) close**
 - f. Amend/Add brief timeline summary (and edit) file note i.e
 - i. **XX/XX/XX - FOI requested**
 - ii. **XX/XX/XX - Deemed Refused**
 - iii. **XX/XX/XX - PI issued (response received XX.XX / not received)**
 - iv. **XX/XX/XX - 54Z/55T issued (response received XX/XX)**
 - v. **XX/XX/XX - Proceed email Issued (response due XX/XX - received XX.XX/not received)**
 - vi. **XX/XX/XX - 54W(c) Closure Decision issued**

- g. Hit save
- 6. Complete all actions until you are able to close the matter – the action sequence is:
 - a. Tick 'Approve 54W Letter(MR DE) and select '54W Draft Approved'
 - b. Notify relevant parties of intent to close
 - c. Await response from parties
 - d. View Unchanged
 - e. Choose Appropriate Content I (MR DE)
 - f. No Contact/Response - 54W(a)(iii)
 - g. Send 54W(a)(iii) Decline Decision Notice (MR DE)
 - h. Notify relevant parties of closure
 - i. Close case

SES Band 1 54Z/55T notices instructions

For when refusing EOT's requested by agencies to respond to 54Z/55T notices

or

the response to 54Z/55T notice is overdue

1. Draft Template-SES band 1 – 54Z 55T Deemed – Notice of IC Review located in Teams Channel>54z 55t folder>SES Band 1 54Z55T folder\
 - a. Download then open in word and save a copy to your desktop as **MRXX XXXXX SES Band 1 – 54Z 55T Deemed – Notice of IC Review**
 - b. Edit as required
 - i. When you get to the attachments, it's easier to CTRL "H" and replace "MR" with the case number and replace [2 weeks] with the date
 - c. To be cleared and signed by the Director – usually Hannah Holsdwilder (Heath Baker for Support Services cases)
2. Upload to case in Resolve
 - a. Once uploaded, right click and select "Document Properties" and add the following comment **Draft SES Band 1 54Z/55T Notice**
 - b. Delete letter from desktop
3. Draft the template email – do not create a new email if responding to an EOT request. Reply to the email received
 - a. attach a copy of the IC review application
 - b. Do not include the email address in the "TO:" section
 - c. Upload the draft email into Resolve
 - i. Right click on it and select "Document Properties" and add the following comment **Draft email - SES Band 1 due 16/01**
4. Go to the "All Actions" tab and select "Add Action">"Await clearance – Director"
 - a. Double click on that action and add the following comment **Hi Hannah, Please see draft SES Band 1 54Z/55T Notice and draft email below the notice for your clearance and to issue to the dept. Please convert notice to PDF and attach to the email before sending. Also, please upload the sent email replacing the draft email. Thank you, SJ 19/02** (Add any other comments you wish the Director to review)
5. In the main page, remove the "next action" comment and change the "Assessor Note" to **[CLEARANCE] DRAFT SES Band 1 54Z/55T with HHOL**
6. Update summary notes as follows:
 - i. **XX/XX/XX - FOI requested**
 - ii. **XX/XX/XX - Deemed Refused (10/30 day EOT granted - if applicable)**
 - iii. **XX/XX/XX - PI issued (response received XX.XX / not received)**
 - iv. **XX/XX/XX - 54Z/55T issued (response due XX/XX)**
 - v. **XX/XX/XX - EOT request rec'd from agency (if applicable)**
 - vi. **XX/XX/XX - Draft SES Band 1 54Z/55T Notice awaiting clearance**

When cleared by Director

7. The Director will issue the SES Band 1 Notice if all in order and upload to Resolve and make necessary updates within Resolve
8. If an action item is sent back to you to make any amendments (You will receive both a task and email)
 - a. Check out the document, make amendments and check back in
 - b. This time you can convert the notice to PDF and attach it to the email
 - c. Send another action for the Director to clear
 - d. Go to the "All Actions" tab and select "Add Action">"Await clearance – Director"
 - i. Double click on that action and add the following comment **Hi Hannah, please see amended SES Band 1 54Z/55T notice now attached in the email (uploaded to Resolve) for you to review and send. The email addresses are in the body of the email. Also, please upload the sent email replacing the draft email and update the main page in Resolve. Thank you, SJ 19/02**

For Bulk SES Band 1 54Z/55T notices – for cases marked 54Z/55T overdue

1. Prepare spread sheet. AS you go along, update the summary in each case
 - * Change 'Method' to Preliminary Inquiry'
 - * Change Assessor note to **[NOW] Draft BULK SES Band 1 54Z/55T with SJ**
 - * remove notes from next action and remove date from next action due date
2. Create notice. Use the BULK SES Band 1 54Z/55T template in the SES folder (open in Word format and save to desk top to edit)
 - * once uploaded to the oldest case (sort by column F in excel), add **Draft BULK SES Band 1 54Z/55T Notice** in document properties (delete from desktop)
3. Create outgoing email. Use the Bulk SES Band 1 email template in signatures and upload the draft
 - * do not add email addresses to the "TO" field
 - * once uploaded add **Draft email - SES Band 1 due 16/01** in document properties
4. Update the actions to "Issue s55R Notice to Respondent (MR PI)
5. Go to the "All Actions" tab and select "Add Action">"Await clearance – Director"
 - e. Double click on that action and add the following comment **Hi Hannah, Please see draft BULK NSES Band 1 54Z/55T Notice and draft email below the notice for your clearance and to issue to the dept. Please convert notice to PDF and attach to the email before sending. Also, please upload the sent email replacing the draft email**

and update the amin page in Resolve. Thank you, SJ 19/02 (Add any other comments you wish the Director to review)

6. In the main page, remove the “next action” comment and change the “Assessor Note” to [CLEARANCE] DRAFT BULK SES Band 1 54Z/55T with HHOL

7. Update summary notes as below example:
 - i. XX/XX/XX - FOI requested
 - ii. XX/XX/XX - Deemed Refused (10/30 day EOT granted - if applicable)
 - iii. XX/XX/XX - PI issued (response received XX.XX / not received)
 - iv. XX/XX/XX - 54Z/55T issued (response due XX/XX)
 - v. XX/XX/XX - EOT request rec'd from agency (if applicable)
 - vi. XX/XX/XX - Draft BULK SES Band 1 54Z/55T Notice awaiting clearance



Decision not to [continue to] undertake an IC review under s 54W(c) of the *Freedom of Information Act 1982*

IC review applicant	«ApplicantClientName2»
Respondent	«RespondentClientTradingName»
Decision date	29 August 2024
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Decision

1. I refer to the application made by «ApplicantClientName2» (the applicant) for Information Commissioner review (IC review) of a deemed access refusal decision made by the «RespondentClientTradingName» («RespondentClientAbbreviation») on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. As a delegate of the Information Commissioner, I am authorised to make decisions under s 54W(c) of the FOI Act.
3. [If a revised decision issued] On [date] the «RespondentClientAbbreviation» made a revised decision under s 55G of the FOI Act, providing the applicant [partial/full/further] access to documents.
4. [If an alternative substantive response provided] On [date] the «RespondentClientAbbreviation» provided a substantive response to the applicant's FOI request, providing the applicant [partial/full/further] access to documents.
5. The Office of the Australian Information Commissioner (OAIC) has not received a response from the applicant to our subsequent correspondence to advise whether they wished to proceed with the IC review. As a delegate of the Information Commissioner, I have decided not to [continue to] undertake an IC review under s 54W(c) of the FOI Act. My reasons follow.

Background

6. The key procedural steps in this IC review are set out at **Attachment A**.

Discretion not to [continue to] undertake an IC review



Australian Government

Office of the Australian Information Commissioner

7. Under s 54W(c) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the IC review applicant fails to comply with a direction of the Information Commissioner.
8. The Direction as to certain procedures to be followed by applicants in Information Commissioner reviews issued by the Australian Information Commissioner under s 55(2)(e)(i), provides:

Applicants must respond to requests for information from the OAIC within the time provided unless there are exceptional circumstances warranting a longer period to respond. If more time is needed, a request for an extension of time must be made to the OAIC at the earliest opportunity within the period provided for response, and no later than 2 days before that period is due to expire. Requests for more time must explain the exceptional circumstances that necessitate additional time and propose a new date for response. Approval of an extension request is at the discretion of the OAIC.

The OAIC will generally consult the IC review applicant as to whether they want to continue the IC review on the basis of the revised decision. Applicants who are not satisfied with the revised decision must explain why they disagree with the revised decision and the basis on which they wish to proceed with the IC review. If the applicant does not respond to the OAIC's correspondence, the Information Commissioner may decide not to continue to undertake the IC review (s 54W of the FOI Act).¹

9. The OAIC has not received a response from the applicant to our correspondence asking whether they wished to proceed with the IC review, or the basis on which they wished to proceed.

Reasons for decision

10. I am satisfied that the IC review should be finalised under s 54W(c) of the FOI Act as the OAIC notified the applicant that in the absence of a response from them by [date], their IC review would be finalised by a delegate of the Information Commissioner under s 54W(c) of the FOI Act.
11. In deciding whether to exercise the discretion not to undertake a review, I have considered:
 - The OAIC attempted to contact the applicant by phone on [date] but was unable to reach the applicant.
 - The applicant has not provided any indication to the OAIC that they disagree with the «RespondentClientAbbreviation»'s revised decision [or, that they remain dissatisfied with

¹ Direction as to certain procedures to be followed by applicants in Information Commissioner reviews | OAIC) [2.16]



Australian Government

Office of the Australian Information Commissioner

the deemed decision in light of the «RespondentClientAbbreviation»'s substantive response].

- It does not appear that reviewing this matter will promote the objects of the FOI Act [if relevant: particularly noting that access to documents has now been provided to the applicant].

12. As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [continue to] undertake an IC review under s 54W(c) of the FOI Act.

13. I confirm that this IC review is now closed. Your review rights are set out below.

14. If either party would like to discuss this matter, please contact us by email at FOIDR@oaic.gov.au. In all correspondence, please quote «CaseNumber».

Yours sincerely,

Hannah Holswilder

Director

Freedom of information Branch

29 August 2024



Australian Government

Office of the Australian Information Commissioner

ATTACHMENT A

Key procedural steps

Date	Events
	FOI request made to the respondent for access to documents
	IC review application received by the OAIC
	IC review commenced by OAIC
	Revised decision made by respondent to provide access to documents
	The OAIC sought the applicant's advice about whether the applicant wished to proceed with the IC review and provide grounds about the basis on which the applicant wished to proceed. The OAIC also advised the applicant that their IC review may be finalised under s 54W(c) if no response was received by the specified date.
	The OAIC attempted to phone the applicant as no written response had been received from the applicant



Australian Government

Office of the Australian Information Commissioner

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of this IC review application under the Freedom of Information Act 1982 (the FOI Act) is not legally correct. You can make this application under the Administrative Decisions (Judicial Review) Act 1977.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#)² page on our website.

² www.oaic.gov.au/about-us/access-our-information/.

Subject: OAIC – MRXX/XXXXX – Your Ref: XXXXXXXX - Notice issued under 54Z – 55T – Due XX xxxx
XXXX

Our reference: MRXX/XXXXX

Agency reference: XXXXX

Applicant:

Agency:

Applicant email:

Agency email:

Notice of Information Commissioner review and request for documents

Dear parties,

Please find attached a notice of Information Commissioner review (IC Review) and request for documents.

As outlined in the attached notice, a decision was not made within time (as defined by section 15AC of the FOI Act) and thus the IC reviewable decision was a deemed access refusal.

We refer the parties to the directions issued by the FOI Commissioner which outline the obligations of applicants and respondents:

- [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#)
- [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#)

In order to simplify the IC review process, we encourage the respondent agency to make a revised decision, which specifies the decision is made under section 55G of the FOI Act. A decision made under the Privacy Act 1988 or administrative access, is not a valid FOI decision and does not comply with the FOI request.

Please note, a response from the Respondent Agency is requested in this matter by **[3 weeks]**. The Agency must send any submissions to the Applicant at the same time as the OAIC. No action is required by the IC Review Applicant at this time.

If the Respondent Agency requires an extension of time, they must make a request in writing to the Information Commissioner with supporting evidence of the need for extension prior to the due date.

Kind regards,

[Signature Block]

BULK NOTICE EMAIL

Subject: OAIC – Bulk Notice issued under 54Z – 55T – Due XX Month 2024

Our reference: See Attachment A

Agency reference: See Attachment A

XXNAMEXX

XXTITLEXX

XXNAME OF TEAM/BRANCH/SECTIONXX

XXName of Department/AgencyXX

By email: XXXAgency/Department FOI emailXX

Bulk notice of Information Commissioner reviews and request for documents

Dear Mr/Ms/Mrs XXSURNAMEXX,

Please find attached a notice of Information Commissioner review (IC Review) and request for documents.

As outlined in the attached notice, a decision was not made within time (as defined by section 15AC of the FOI Act) and thus the IC reviewable decision was a deemed access refusal.

We refer you to the directions issued by the FOI Commissioner which outline the obligations of respondents:

- [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#)

In order to simplify the IC review process, we encourage the respondent agency to make a revised decision, which specifies the decision is made under section 55G of the FOI Act. A decision made under the Privacy Act 1988 or administrative access, is not a valid FOI decision and does not comply with the FOI request.

Please note, a response from the Respondent Agency is requested in this matter by **[3 weeks]**. The Agency must send any submissions to the Applicant at the same time as the OAIC.

If the Respondent Agency requires an extension of time, they must make a request in writing to the Information Commissioner with supporting evidence of the need for extension prior to the due date.

Kind regards,

[Signature Block]

54Z/55T issued to SES band 1 template – forward on from agency's email requesting EOT if responding to an EOT request and declining

Subject: OAIC – MR - Direction and Notice to produce – Due [2 weeks]

OAIC ref: MR

Agency ref:

Dear [SES band 1 title and surname]

Please find attached a direction under s 55 and notice to produce under s 55T of the FOI Act.

The [Agency name] (the Agency) is required to comply with the specifics set out in the notice by [2 weeks].

I note that the FOI request relevant to this IC review was received by the Agency on XXdateXXX, XX months ago.

The Department became aware of the IC review on XXdateXX when the OAIC conducted preliminary inquiries.

[If relevant] As such, I do not consider that the extension requested (in trail below) to the previous and now overdue ss 54Z and 55T notice and direction is appropriate.

[If relevant] As such, I note that the response to the ss 54Z and 55T notice and direction is overdue and I do not consider it appropriate that any extension of time to respond is granted.

Should you wish to request an extension to respond to this direction and notice, I request that you provide evidence of communication with the applicant regarding the ongoing delays and the proposed revised decision date, including their response.

If the Agency does not provide a response to this notice and direction by the due date, or any approved extended due date, please note that a s 55R notice will be issued to the SES band 2 responsible for FOI within the Agency. A person who fails to comply with a s 55R notice commits an offence.

Kind regards,

[Director Signature block]

Subject Line: OAIC - MR00/00000 – s54W(a) Decision Not to Continue to Undertake an IC Review -
Agency reference: *Insert Agency Reference*

//

Our reference: MR00/00000
Agency reference: *Insert Agency Reference*

Applicant Name

By email: Applicant email

Finalisation of IC review application under s 54W(a) of the FOI Act

Dear Mr/Ms/,

Please find **attached** a decision finalising this IC review under s 54W(a) of the FOI Act.

I confirm our file is now closed.

Kind regards,

[Signature Block]

//

Resolve Naming Convention: Closure to A

Resolve Assessor Note Naming Convention: Closed – 54W(a)(i) / 54W(a)(ii) / 54W(a)(iii)

Subject line: OAIC - MR – s 54W(c) - Decision **not to undertake / continue to undertake** an Information Commissioner review

Our reference:

Agency/Minister reference:

Applicant Name
Agency/Minister

By email: Applicant

By email: Agency/Minister

Copied to: [if relevant]

Finalisation of Information Commissioner review application under s 54W(c) of the FOI Act

Dear Parties,

Please find **attached** a decision finalising this Information Commissioner review under s 54W(c) of the FOI Act.

I confirm our file is now closed.

Kind regards,

[Signature block]

//

Resolve Naming Convention: Closure to A & R

Resolve Assessor Note Naming Convention: Closed – 54W(c)

*As at 01.07.24 - If a Right to Know applicant has applied for IC review using a verified, but alternative email address that the Agency has not been provided, please BCC the applicant when issuing the closure email.

Instructions

Drafting Preliminary Inquiry (PIs) emails for Deemed Matters

Open Case in Resolve

Go to the "Documents" tab to review correspondence relevant to the case.
Read through the correspondence to find the following information:

- The Respondent Agency
- The OAIC reference number
- The Agency reference number
- What type of FOI request was lodged by the applicant:
 - An original FOI access request (deemed decision under s 15AC(3))
 - An amendment/annotation request (deemed decision under s 51DA(2))
 - An internal review request (deemed affirmed under s 54D(2))

Save the [Preliminary Inquiry email template](#) to your outlook signatures.

Create a new email with the template wording.

Update the content of the email according to your findings in resolve.

Ensure the Sender is set at the FOIDR mailbox.

Ensure the recipient email address is correct.

Send the email.

Go to the sent folder of the FOIDR mailbox and locate the email (search via the OAIC reference is required).

Drag and drop the email from outlook into the Documents tab of Resolve.

A pop-up window will appear, ensure you click OK.

The sent email should now appear on the documents list in Resolve.

Right click on the document in resolve and select 'Document properties'

In the Comments section of the pop-up window add 'PIs due **XX/XX**' (add the due date for response), then click OK.

Action flow and allocate to Deemed Queue

In the 'Assessor Note' on the main page of Resolve, please update the comment from '[NOW] Issue Proceed' to '**PIs due**' and update the next action due date to the due date of the PIs email response.

Ensure the following actions are marked as complete in Resolve:

- Deemed refused under ss15AC(3), 51DA(2) or 54D(2)? > Preliminary Inquiry Required
- Send PI to Respondent

Change Case Officer to Relevant Deemed Queue.



Australian Government

Office of the Australian Information Commissioner

Our reference numbers: See Attachment A

Agency references: See Attachment A

Notice of IC review and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an applications for Information Commissioner (IC) review of a deemed access refusal decisions made by the 22 (the Agency) under the *Freedom of Information Act 1982* (the FOI Act).

A copy of the respective IC review applications has previously been provided to the Agency at the time of conducting preliminary inquiries pursuant to s 54V of the FOI Act.

The IC will commence review of the deemed access refusal decisions and provides this notice under s 54Z of the FOI Act.

Scope of IC review

The IC review applicant[s] contest that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The IC may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the IC in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment B**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The IC may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review[s] involve exempt material, please provide a marked up and unredacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference «CaseNumber») in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment C**.

Please note, you are required to send any submissions prepared in response to the Direction at **Attachment B**, to the applicant at the same time as to the OAIC.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed by agencies and ministers in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

Hannah Holswilder

Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

29 August 2024

Attachment A

IC review applications relevant to this Notice

Applicant name	OAIC reference	Your Agency reference	Date of FOI request	Date of deemed refusal decision

Attachment B



**Direction to
the «RespondentClientTradingName»
under s 55(2)(e)(ii) of the *Freedom of Information Act*
1982**

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to «CaseNumber», I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the «RespondentClientTradingName» (the «RespondentClientAbbreviation») under s 55(2)(e)(ii) of the FOI Act.

Revised decision – full access

1. Should the Agency wish to provide full access to the documents within the scope of the request, I request that the Agency make a revised decision[under s 55G of the FOI Act and provide the revised decision[s] to the applicant[s] and the OAIc.

Revised decision – partial access

2. Should the Agency wish to provide partial access to the documents within the scope of the request, I request that the Agency make a revised decision under s 55G of the FOI Act and provide the revised decision[s] to the applicant[s] and the OAIc.
3. Please also provide the following documents to the OAIc:
 - a. The FOI request[s], and any correspondence that modifies the scope.
 - b. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).
 - c. If any third parties have been notified of this IC review a copy of the written notifications.

- d. Copies of any correspondence between the Agency and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Agency wish to refuse access, I request that the Agency provide the applicant[s] and the OAIC the following:
 - a. Submissions explaining the access refusal decision[s]. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Agency claims are exempt and the particular provisions of the FOI Act the Agency is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Agency contends that the applicant[s] should be refused access to the documents.
- 5. Should the Agency wish to refuse access, I request that the Agency provide the OAIC the following:
 - a. Should the Agency wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Agency is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Agency wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.
 - c. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
 - d. If any third parties have been notified of this IC review a copy of the written notifications.

- e. Copies of any correspondence between the Agency, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

If the Agency makes a submission to the OAIC in support of an access refusal decision, it must send the submission to the applicant[s] at the same time (unless there are compelling reasons not to, in which case it must make a prior request to make a submission in confidence). However, it is not required to provide the applicant[s] with copies of other documents requested under this notice.

The requested information is required to be provided to the OAIC by **[15 business days]**.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Attachment C



Notice to produce documents and give information

In relation to «CaseNumber», under ss 55T of the FOI Act, I, [REDACTED], delegate of the Australian Information Commissioner, require you [respondent full name], [title] of the «RespondentClientTradingName», to give me the following information by close of business **[15 business days]**:

- a marked up and unredacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au. These documents are not required to be provided to the IC review applicant[s].

Notice issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024



Australian Government

Office of the Australian Information Commissioner

Our reference: «CaseNumber»

Agency reference: «Agency_Reference_Number»

The respondent is:	The applicant is:
«RespondentClientTradingName»	«SendToTitleFirstnameSurname»

Notice of IC review and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner (IC) review of a deemed access refusal decision made by the «RespondentClientTradingName» (the «RespondentClientAbbreviation») under the *Freedom of Information Act 1982* (the FOI Act).

The IC will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The IC may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the IC in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The IC may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and unredacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference «CaseNumber») in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Please note, you are required to send any submissions prepared in response to the Direction at **Attachment A**, to the applicant at the same time as to the OAIC.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed by agencies and ministers in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

Hannah Holswilder

Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

29 August 2024

Attachment A



**Direction to
the «RespondentClientTradingName»
under s 55(2)(e)(ii) of the *Freedom of Information Act*
1982**

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to «CaseNumber», I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the «RespondentClientTradingName» (the «RespondentClientAbbreviation») under s 55(2)(e)(ii) of the FOI Act.

Revised decision – full access

1. Should the «RespondentClientAbbreviation» wish to provide full access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC.

Revised decision – partial access

2. Should the «RespondentClientAbbreviation» wish to provide partial access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC.
3. Please also provide the following documents to the OAIC:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the «RespondentClientAbbreviation» formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the «RespondentClientAbbreviation» and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference «CaseNumber») in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» provide the applicant and the OAIC the following:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the «RespondentClientAbbreviation» claims are exempt and the particular provisions of the FOI Act the «RespondentClientAbbreviation» is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the «RespondentClientAbbreviation» contends that the applicant should be refused access to the documents.
- 5. Should the «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» provide the OAIC the following:
 - a. Should the «RespondentClientAbbreviation» wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the «RespondentClientAbbreviation» is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.

- i. The submissions could also refer to any other relevant information that the «RespondentClientAbbreviation» wishes to provide in support of its decision.
- b. The FOI request, and any correspondence that modifies its scope.
- c. The names and contact details of anyone who was consulted by the «RespondentClientAbbreviation» formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the «RespondentClientAbbreviation», and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference «CaseNumber») in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

If «RespondentClientAbbreviation» makes a submission to the OAIC in support of an access refusal decision, it must send the submission to the applicant at the same time (unless there are compelling reasons not to, in which case it must make a prior request to make a submission in confidence). However, it is not required to provide the applicant with copies of other documents requested under this notice.

The requested information is required to be provided to the OAIC by **[15 business days]**.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Attachment B



Notice to produce documents and give information

In relation to «CaseNumber», under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require you [respondent full name], [title] of the «RespondentClientTradingName», to give me the following information by close of business **[15 business days]**:

- a marked up and unredacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au. These documents are not required to be provided to the IC review applicant.

Notice issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

OAIC ref: Refer to attachment A
Agency ref: Refer to attachment A

By email: [SES email address](#)
CC: [email address initial 54Z/55T notice issued to](#)

Dear [Name of SES band 1](#),

Please find attached a direction under s 55 and notice to produce under s 55T of the FOI Act.

The [\[Agency name\]](#) (the [Agency/office](#)) is required to comply with the specifics set out in the notice by [\[2 weeks\]](#).

I note that part 3.163 of the FOI Guidelines states “Where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the FOI request”.

Your [agency/office](#) became aware of the IC reviews when the OAIC conducted preliminary inquiries. (refer to attachment A)

I note that the responses to the ss 54Z and 55T notices and directions are overdue, and I do not consider it appropriate that any extension of time requested be granted.

If an extension of time is required to respond to the attached notices of IC reviews, you must make a request in writing to the Information Commissioner with supporting evidence of the need for extension prior to the due date.

If the Department does not provide a response to this notice and direction by the due date, or any approved extended due date, please note that a s 55R notice will be issued to the SES band 2 responsible for FOI within the Agency. A person who fails to comply with a s 55R notice commits an offence.

Kind regards,

Hannah Holswilder

Director - Freedom of Information Branch
Office of the Australian Information Commissioner
GPO Box 5288 Sydney NSW 2001
P: 1300 636 992 E: foidr@oaic.gov.au

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

[Subscribe to Information Matters](#)

Subject Line: OAIC – MR - Response due **DD Month YEAR (one week)** - Notice of request for Information Commissioner review and Preliminary Inquiries under s 54V - Agency Reference

//

Our reference:

Agency/Minister reference:

By email: [Insert Agency/ Minister Email Address]

Notice of request for Information Commissioner review and Preliminary Inquiries under s 54V

Dear FOI Contact Officer,

Response required by **5:00pm, Day of week DD Month YEAR. (one week)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review (IC review) of a purported deemed access refusal decision made by the [Agency/Minister] (the Minister/Agency) under **s 15AC(3), s 51DA(2) or s 54D(2)** of the *Freedom of Information Act 1982* (the FOI Act).

A copy of the IC review application is attached.

Preliminary Inquiries (s 54V)

To assist the OAIC in progressing the applicant's IC review application, pursuant to s 54V of the FOI Act, please provide a response to the following by **5:00pm, Day of week DD Month YEAR(5 business days)**:

1. What date was the FOI request received by the Agency/Minister and were any provisions under the FOI Act utilised which would affect the due date of the FOI decision?
 - a. If provisions were utilised under the FOI Act that affected the timeframe for processing the request (such as s24AB, s 15AA or s 15(6)), please provide a copy of all relevant correspondence between the Agency/Minister and FOI applicant.
2. Is the applicant's FOI request deemed to have been refused pursuant to **s 15AC(3), s 51DA(2) or s 54D(2)**?
 - a. If yes, please advise the date the decision became deemed pursuant to **s 15AC(3), s 51DA(2) or s 54D(2)** and when it is anticipated that the applicant will receive a decision.

- b. If a decision has since been provided to the applicant, please provide a copy of the correspondence enclosing the decision so that we may contact the applicant with regard to next steps.
3. If the decision is not deemed to have been refused, please provide a submission addressing why the **Agency/Minister** considers that **s 15AC(3), s 51DA(2) or s 54D(2)** does not apply.

Kind regards,

//

Resolve Document Naming Convention: PIs due DD/MM

Resolve Assessor Note Naming Convention: [DD/MM] PIs due

Email subject line: OAIC – MRXX/XXXXX - Response required by DD Month 2024 - [Applicant name]'s/Your IC review application about the [Respondent Name]

Our reference: MRXX/XXXXX

Agency reference: XXXXXXX

Applicant Name

[Represented by:]

By email: [Email Recipient's Email Address]

[Applicant name]'s/Your review application about the [Respondent Name]

Good morning/afternoon [Email Recipient Name],

[IF APP HAS IDENTIFIED REQUIREMENT FOR INTERPRETER IN APPLICATION – You have previously stated you may need the help of an interpreter. You may wish to call the Translating and Interpreting Service on 131 450, and ask for help speaking with the Office of the Australian Information Commissioner]

On DD Month 2023, you made a Freedom of Information (FOI) request to the [Respondent name] (the Department/Agency/Office)[on behalf of if there is a representative].

On DD Month 2023, you requested an Information Commissioner (IC) review of your Freedom of Information [or information access] request to the Department/Agency/Office because you had not received a decision by the due date.

On DD Month 2023, the Department/Agency/Office notified the Office of the Australian Information Commissioner (OAIC) it has now provided you with a decision, dated DD Month 2024.

[If possible, i.e. R has provided the relevant info] The Department/Agency/Office notified the OAIC that the decision was provided to the email address 'XXX@emailaddress.com.au' on DD Month 2023.

OR//

On DD Month 2023, the Department/Agency/Office notified the OAIC that it provided the documents administratively, in accordance with the *Privacy Act 1988*.

The Department/Agency/Office notified the OAIC that the decision was provided to the email address 'XXX@emailaddress.com.au' on DD Month 2023.

As you have now received a decision, the reason for your IC review application appears to be resolved.

[If decision is access refusal in full] : The OAIC would like to confirm whether you wish to proceed with your IC review application, noting that the Department's decision is to, refuse access in full.

Action required by you before [DD Month 2023 - 2 weeks from send date]:

1. If [the decision has satisfied your request and] you no longer require an IC review, please reply to this email stating “I no longer require an IC review”.
2. If you wish to proceed with your IC review application, you must tell us which parts of the decision you disagree with and why, including:
 - which documents you consider were not provided or should have been provided, or
 - which exemptions you consider should not have been applied.

OR// [only if processed under the Privacy Act]

- if you disagree with the decision to process the request under the *Privacy Act 1988*.

OR// [only if related to an amendment or annotation request]

- state why you disagree with the decision not to amend or annotate the record.

Intention not to continue to undertake Applicant name's/your IC review

The Commissioner's written [direction to IC review applicants](#) provides that:

- where an applicant wishes to proceed with a review of a substantive [or revised] decision they **must explain** why they disagree with the decision and the basis on which they wish to proceed with the IC review [2.25], and
- applicants **must respond** to enquiries from the OAIC within the period provided unless there are circumstances warranting a longer period to respond [2.22].

Section 54W(c) of the *Freedom of Information Act 1982* provides that the IC may decide not to continue to undertake a review where an applicant fails to comply with a direction of the IC.

As such, if we do not hear from you by [DD Month 2023 -- 2 weeks from send date], we intend to exercise the discretion to finalise your IC review application.

Assistance

If you are unable to respond by [DD Month 2023 - 2 weeks from send date], please respond to this email and request an extension of time to provide your response.

If you require an interpreter, please call the Translating and Interpreting Service on 131 450, and ask for help speaking with the Office of the Australian Information Commissioner. Alternatively, you may wish to be supported by a person of your choosing anytime throughout this process.

Third Party Authority

It appears from our records we do not yet have an authority authorising you to act on the applicant's behalf.

The Information Commissioner must be satisfied that a third party has authority to act on behalf of the FOI applicant. As such, may I please request a written authority signed by the FOI applicant that indicates you will be acting on their behalf for the purposes of the IC review.

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MRXX/XXXXX** in all correspondence.

Kind regards,

[Signature Block]



Australian Government

Office of the Australian Information Commissioner

Our reference numbers: See Attachment A

Agency references: See Attachment A

Name

Title

Department Team

Name of Agency

By email:

CC: [email where original notice sent]

Notice of Information Commissioner reviews and requests for documents

Dear [NAME]

The Office of the Australian Information Commissioner (OAIC) has received applications for Information Commissioner review (IC review) of deemed access refusal decisions made by the [INSERT AGENCY NAME] (the Agency) under the *Freedom of Information Act 1982* (the FOI Act).

A copy of the respective IC review applications has previously been provided to the Agency at the time of conducting preliminary inquiries pursuant to s 54V of the FOI Act.

The Agency has been asked to respond to confirm it has failed to meet the statutory processing timeframe in respect to the FOI requests. Based on the information before the OAIC, we are satisfied the Agency is deemed to have refused access to documents in each request pursuant to s 15AC(3) of the FOI Act.

As such, the Information Commissioner commenced IC review for each of the deemed access refusal decisions.

Scope of IC review

The IC review applicant[s] contest that the Agency has not provided a decision within the processing timeframe as set out in the FOI Act.

The IC review process will consider the Agency's reasons for refusing access and will also provide the Agency with an opportunity to issue each FOI applicant a revised decision under s 55G of the FOI Act, where appropriate.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing these IC reviews, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment B**).

Information as to the method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether documents are exempt documents, require the documents to be produced (s 55T of the FOI Act).

Should the scope of any particular IC review[s] (as outlined in **Attachment A**) involve exempt material (excluding exempt material under ss 33, 34 and/or 45A), a marked up and un-redacted copy of all documents identified within the scope of the respective FOI request[s] is required pursuant to the notice issued under s 55T of the FOI Act (see **Attachment B**).

Obligations during the IC review process

The obligations of the Agency during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

Hannah Holswilder

Director
Freedom of Information Branch
Office of the Australian Information Commissioner

29 August 2024

Attachment A

IC review applications relevant to this Notice

Applicant name	OAIC reference	Your Agency reference	Date of FOI request	Date of deemed refusal decision	Date OAIC conducted preliminary inquiries with your agency

Attachment B



**Direction to
the [INSERT AGENCY NAME]
under s 55(2)(e)(ii) and notice to produce under s 55T
of the *Freedom of Information Act 1982***

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to IC review applications identified in **Attachment A**, I, Hannah Holswilder, delegate of the Australian Information Commissioner, issue the following direction to you, **[Insert name of person notice issued to]**, under s 55(2)(e)(ii) of the FOI Act and require your production of documents, where indicated, under s 55T of the FOI Act:

Revised decision – full access

1. Should the Agency wish to provide full access to the documents within the scope of a particular request, I request that Agency make a revised decision under s 55G of the FOI Act and provide the revised decision[s] to the respective applicant[s] and the OAIC by **[2 weeks]**.

Revised decision – partial access

2. Should the Agency wish to provide partial access to the documents within the scope of a particular request, I request that Agency make a revised decision under s 55G of the FOI Act in respect to the relevant request[s] and provide the revised decision[s] to the respective applicant[s] and the OAIC by **[2 weeks]**.
3. Please also provide the following documents to the OAIC by **[2 weeks]**.
 - a. The FOI request[s], and any correspondence that modifies the scope of each request[s].
 - b. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies) in relation to the request[s].

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Agency and anyone who was consulted, including file notes of any relevant telephone conversations in relation to the request[s].
- e. A marked up and un-redacted copy of all documents identified within scope of the request[s] that is subject of IC review, as identified in Attachment A, in an electronic format (under s 55T of the FOI Act).

Submissions – access refusal and amendment or annotation refusal

- 4. Should the Agency wish to refuse access to documents or refuse the amendment or annotation requested in any request[s] in their entirety, I request that the Agency provide the respective applicant[s] and the OAIC the following documents by **[2 weeks]**.
 - a. Submissions explaining the refusal decision[s]. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Agency claims are exempt, and the particular provisions of the FOI Act the Agency is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Agency contends that the applicant should be refused access to the documents, including circumstances where the Agency contends a practical refusal reason exists.
 - include clear particulars about why the Agency contends that the record should not be amended or annotated.
 - b. The FOI request[s] and any correspondence (including informal or formal consultations) that modifies its scope.
 - c. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A 27A, or informally (including consultations with other government or foreign government agencies).
 - d. If any third parties have been notified of this IC review a copy of the written notifications.

- e. Copies of any correspondence between the Agency, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material (except material claimed to be exempt under ss 33, 34 and/or 45A) we require the production of a marked up and un-redacted copy of all documents identified that is subject of the IC review[s] as outlined in Attachment A, in an electronic format (under s 55T of the FOI Act).
- g. Should the Agency wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A the Agency is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A.

If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.

Compliance with this Direction can be met by delivering the responses electronically to foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Agency provides during the IC reviews with the applicants unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document[s] at issue.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch,
Office of the Information Commissioner

Signed:

Hannah Holswilder

Intake and Early Resolution Team
Freedom of Information Branch
Office of the Australian Information Commissioner

29 August 2024



Australian Government

Office of the Australian Information Commissioner

Our reference:

Agency reference:

SES Band 1 Name

Role

Branch/Group/Division

Department/Agency

By email: **SES Band 1 Email Address**

Copied to: **Agency FOI Email Address**

Notice of Information Commissioner review and request for documents

Dear **SES Band 1 Name**,

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review (IC review) of a deemed access refusal decision made by the **[Agency Name] (the Agency)** under the *Freedom of Information Act 1982* (the FOI Act).

On **DD Month 20XX**, the Information Commissioner notified, the Agency of the commencement of the review of the deemed access refusal decision, providing notice under s 54Z of the FOI Act.

In the absence of compliance with the initial notice and direction issued, the OAIC issues the attached notice and direction. A copy of the IC review application is attached.

A timeline of correspondence with the Agency regarding this IC review is listed below.

Scope of IC review

The IC review applicant contests that the Agency has not provided a decision within the processing timeframe as set out in the FOI Act.

On **DD Month 20XX**, the Agency confirmed to the OAIC that the applicant's request was deemed to have been refused on **DD Month 20XX**.

On **DD Month 20XX**, the Information Commissioner commenced a review of the deemed access refusal decision and notified the Agency that a response to the written direction was due on **XX Month 20XX**.

[Example]

On DD Month 20XX, in the absence of a response, the Information Commissioner sought an update from the Agency and granted an extension of time to provide an update to DD Month 20XX.

Optional

On DD Month 20XX, in the absence of a response, the Information Commissioner sought a final response to our notice and granted an extension of time to provide this by DD Month 20XX. At this time, the Agency was advised that if they fail to provide a response to the notice and direction as requested, the Information Commissioner may proceed to require the provision of information and the production of documents pursuant to s 55R(3) of the FOI Act.

Since this time, no response to our notice has been received.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference **MR**) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Department during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the [Guidelines issued under s 93A of the FOI Act](#), which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- [Direction as to certain procedures to be followed in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely,

Hannah Holswilder

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

[Enclosed: IC review application].

29 August 2024

Attachment A



**Direction to
the [Insert Agency]
under s 55(2)(e)(ii) of the *Freedom of Information Act*
1982**

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR, I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the [Agency] (the Agency) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Agency wish to provide full access to the documents within the scope of the request, I request that the Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **[2 weeks]**.

Revised decision – partial access

2. Should the Agency wish to provide partial access to the documents within the scope of the request, I request that the Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **[2 weeks]**.
3. Please also provide the following documents to the OAIC by **[2 weeks]**:
 - a. The FOI request, and any correspondence that modifies its scope.

- b. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).
- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Agency and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference **MR**) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Agency wish to refuse access, I request that the Agency provide the applicant and the OAIC the following by **[2 weeks]**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Agency claims are exempt, and the particular provisions of the FOI Act the Agency is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Agency contends that the applicant should be refused access to the documents including include clear particulars about why the contends that the applicant should be refused access to the documents including circumstances where the Agency contends a practical refusal reason exists.
 - include clear particulars about why the Agency contends that the record should not be amended or annotated.

5. Should the Agency wish to refuse access, I request that the Agency provide the OAIC the following by **[2 weeks]**:
- a. Should the Agency wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Agency is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Agency wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.
 - c. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
 - d. If any third parties have been notified of this IC review a copy of the written notifications.
 - e. Copies of any correspondence between the Agency, and anyone who was consulted, including file notes of any relevant telephone conversations.
 - f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference **MR**) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Agency provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Yours sincerely,

Hannah Holswilder

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024

Attachment B



Notice to produce documents and give information

In relation to **MR**, under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Information Commissioner, require you, **[Role, Insert SES Band 1 Name, Branch/Group/Division] of the [Agency]** (the Agency), to give me the following information by close of business **[2 weeks]**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Yours sincerely,

Hannah Holswilder

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024



Australian Government
Office of the Australian Information Commissioner

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Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to [undertake/continue to undertake] a review of your IC review application. My reasons follow.

Background

[Include the same information in the intention to decline and update to refer to the review officer in the third person]

On [date], the OAIC review officer responsible for this matter, [name], wrote to you to advise you of their intention to recommend to the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(i) of the FOI Act on the basis that [insert].

[Name] invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by [date].

[if relevant] Based on the information before me, the OAIC has not received a response.

OR [insert details of response or that no response was received]

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Scope of IC review

The issues in this IC review are [insert wording from intention to decline letter].

In making a decision about whether to finalise this matter under s 54W(a)(i), I have had regard to the following [insert wording from intention to decline letter and any other relevant information].

[use heading to introduce discussion about the issues in the IC review]

[insert discussion from the intention to decline letter]

[discuss any submissions received in response to the intention to decline letter]

Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

I have had regard to:

- the [agency/minister]'s decision and reasons for decision
- [if relevant insert details of internal review decision / revised decision]
- [if relevant] an unedited copy of the documents identified as falling within the scope of the request
- the FOI Act, in particular [insert section(s)]
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [insert]
- [if relevant] relevant case law, in particular [insert], and
- the parties' submissions.

[Set out summary of reasons for findings as set out in intention to decline letter and consideration of any submissions received in response to intention to decline letter].

On this basis, I am satisfied that the matter is [frivolous, vexatious, misconceived, lacking in substance, or not made in good faith].

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- Based on the information me, including the documents at issue, the [agency/minister]'s submissions, and relevant case law, I consider that the [agency/minister] has discharged its onus of establishing that the decision is justified.
- [The OAIC did not receive any submissions/response from you @]
- [Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact [name] on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[date]

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of your IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the **Access our information**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The Office of the Australian Information Commissioner (OAIC) has not received a response from you to our [insert dates and details of correspondence]. As a delegate of the Information Commissioner, I have decided to not to [undertake/continue to undertake] a review of this IC review under s 54W of the FOI Act. My reasons follow.

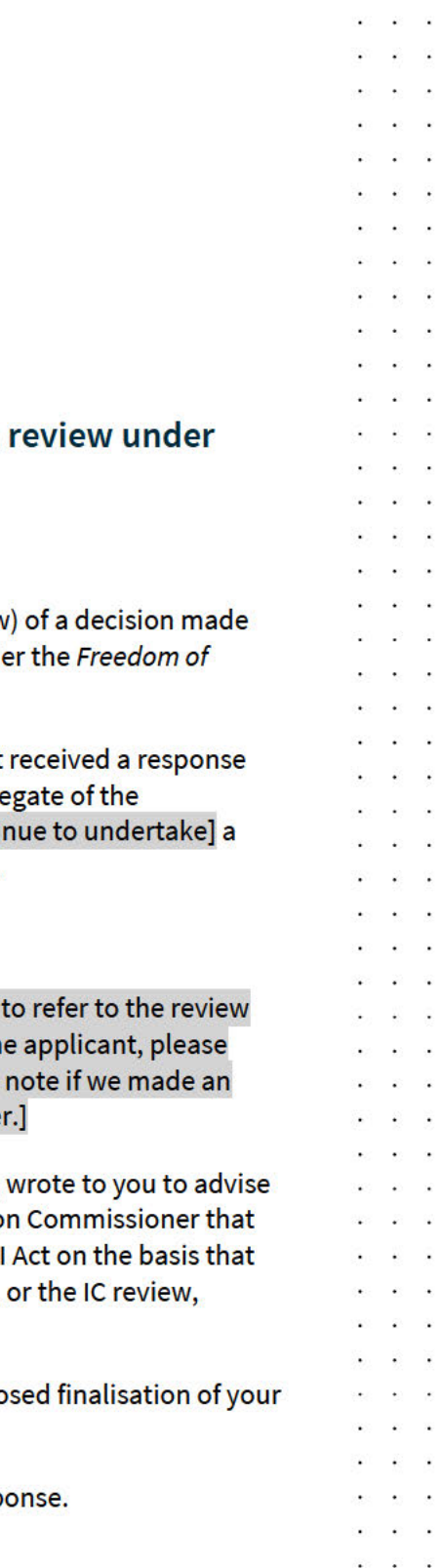
Background

[Include the same information in the intention to decline and update to refer to the review officer in the third person. If we made multiple attempts to contact the applicant, please outline each attempt (with a new paragraph for each attempt. Please note if we made an effort to call and note if the applicant did not provide a phone number.)]

On [date], the OAIC review officer responsible for this matter, [name], wrote to you to advise you of their intention to recommend to the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(ii) of the FOI Act on the basis that you have failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[Name] invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by [date].

Based on the information before me, the OAIC has not received a response.



Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the IC review applicant has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[update as appropriate] The OAIC has not received a response from you to our [insert dates and details of correspondence]. On the basis of the information presently before the Information Commissioner, I am satisfied that you have failed to cooperate in progressing the IC review application without reasonable excuse.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- Based on the information me, including the documents at issue, the [agency/minister]'s submissions, and relevant case law, I consider that the [agency/minister] has discharged its onus of establishing that the decision is justified.
- [The OAIC did not receive any submissions/response from you @]
- Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact [name] on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[date]

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of your IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the **Access our information**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our references: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to [undertake/continue to undertake] a review of this IC review. My reasons follow.

Background

On [date], you applied to the [agency/minister] for access to:

[insert quote or for long requests, attach the FOI request].

[insert any details about revision to scope]

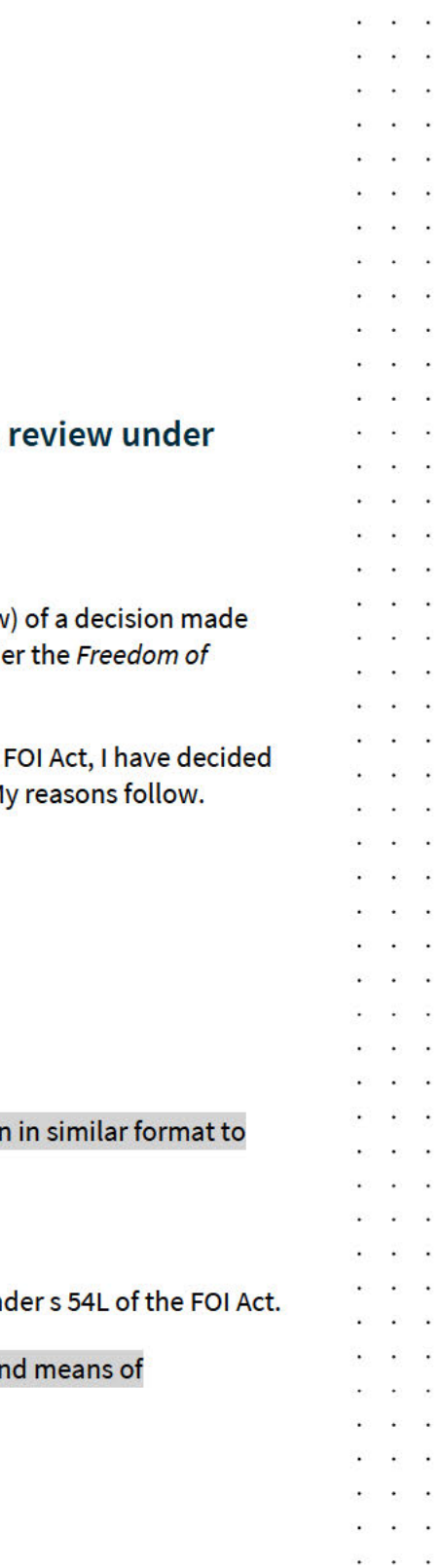
On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication. E.g.

On [DATE] the OIAC sent you an email asking...



On [DATE] we sent you an email following up, and advising if you did not respond...

On [DATE] we sent you a further email advising you that if we did not hear from you we intend to decline to continue the IC review...

We have not been able to call you as you did not provide a phone number in your IC review application].

Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

[Name of review officer] has attempted to contact you on several occasions using the contact details that you provided and we have not received a response.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- The OAIC did not receive any submissions/response from you @
- Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your IC review application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact [name] on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[date]

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of your IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the **Access our information**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Your application for Information Commissioner review of [agency/minister]'s decision

Dear [Mr/Ms Name]

I refer to your application for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application under s 54W of the FOI Act on the basis that your IC review application is [is frivolous, vexatious, misconceived, lacking in substance or not made in good faith], and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

The reasons for my recommendation follow.

Background

On [date], you applied to the [agency/minister] for access to:

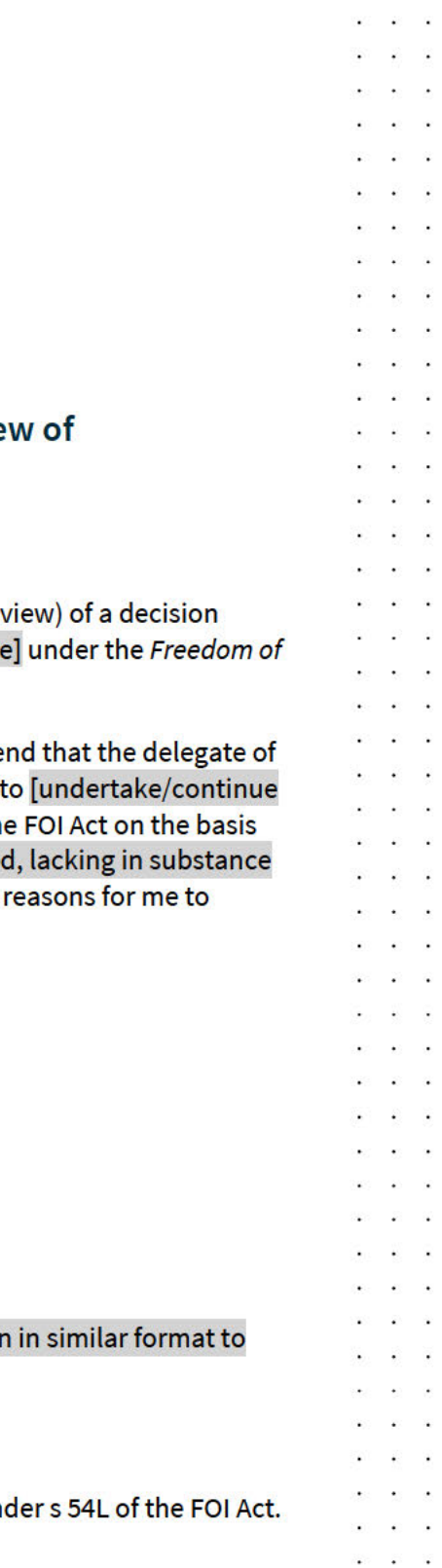
[insert quote or for long requests, attach the FOI request].

[insert any details about revision to scope]

On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.



[insert any other relevant background information, such as a revised decision under s 55G of clarification of the issues in the IC review]

Scope of IC review

The issues in this IC review are [insert].

In forming my view as review officer, I have had regard to the following:

- the [agency/minister]'s decision and reasons for decision
- [if relevant insert details of internal review decision / revised decision]
- [if relevant] an unedited copy of the documents identified as falling within the scope of the request
- the FOI Act, in particular [insert section(s)]
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [insert]
- [if relevant] relevant case law, in particular [insert], and
- the parties' submissions.

[use heading to introduce discussion about the issues in the IC review]

Discuss the following, using headings where appropriate:

- the applicant's IC review application and/or submissions
- the agency/minister's reasons for decision and submissions
- any evidence you have had regard to (e.g. the documents at issue, evidence of searches)
- relevant sections of the FOI Act and paragraphs of the FOI Guidelines
- relevant IC review/AAT/Federal Court decisions

Discretion not to [undertake/continue to undertake] an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

[Insert reasons for your view about why the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith].

For these reasons, I intend to recommend that the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] this IC review under s 54W,

because I am of the view that this IC review application is [frivolous, vexatious, misconceived, lacking in substance or not made in good faith].

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide [not to undertake a review/not to continue to undertake a review] in this case.

If you disagree with this proposed recommendation, please write to us by [**@ 2 weeks**] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review may be finalised under s 54W and you will be notified of your review rights.

If you would like to discuss this matter, please contact me on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

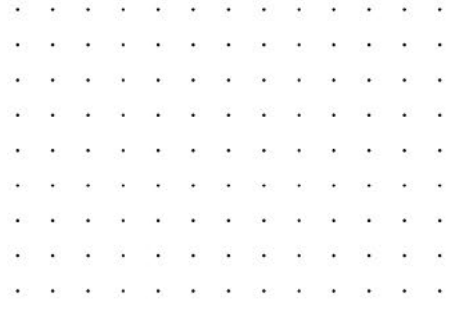
[First Name Last Name]

[Position Title]

[date]



Australian Government
Office of the Australian Information Commissioner



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Your application for Information Commissioner review of [agency/minister]'s decision

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application on the basis that you have failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

The reasons for my recommendation follow.

Background

On [date], you applied to the [agency/minister] for access to:

[insert quote or for long requests, attach the FOI request].

[insert any details about revision to scope]

On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.



[insert history of contact with the applicant throughout the IC review process with reference to dates, a summary of the information provided to or sought from the applicant and whether responses were received]

Discretion not to [undertake/continue to undertake] an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the IC review applicant has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[update as appropriate] As I have not received your response to my correspondence of [insert], I am unable to progress your IC review application. I therefore intend to recommend to the delegate of the Information Commissioner that they exercise the discretion to decide not to [undertake/continue to undertake] a review of this IC review under s 54W of the FOI Act.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide [not to undertake a review/not to continue to undertake a review] in this case.

If you disagree with this proposed recommendation, please write to us by [**@ 2 weeks**] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your review request will be closed and you will be notified of your review rights.

If you would like to discuss this, please contact me on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[**First Name Last Name**]

[Position Title]

[date]



Australian Government
Office of the Australian Information Commissioner



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

Your application for Information Commissioner review of [agency/minister]'s decision

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application under s 54W of the FOI Act on the basis the Information Commissioner cannot contact you after making reasonable attempts.

The reasons for my recommendation follow.

Background

On [date], you applied to the [agency/minister] for access to:

[insert quote or for long requests, attach the FOI request].

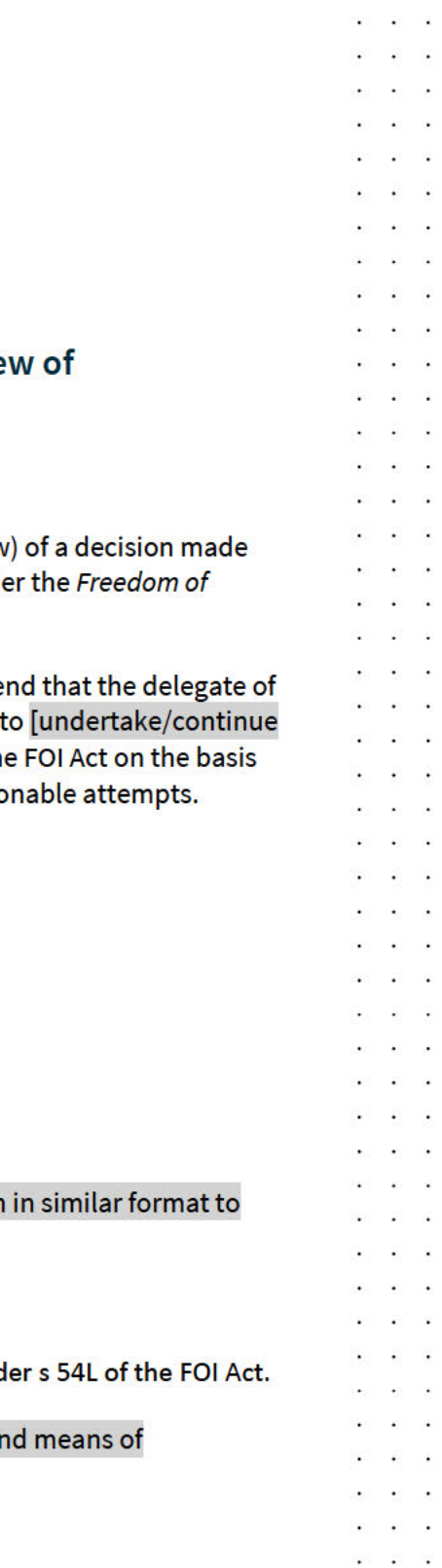
[insert any details about revision to scope]

On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication].



Discretion not to [undertake/continue to undertake] an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

As discussed above, I have attempted to contact you using the contact details you provided on your IC review application form [and insert other details if relevant] and I have been unable to contact you.

I therefore intend to recommend to the delegate of the Information Commissioner that they exercise the discretion not to [undertake/continue to undertake] a review of this IC review application under s 54W of the FOI Act unless you contact me by [**@ 2 weeks**].

If I do not hear from you by this date your IC review will be finalised under s 54W and you will be notified of your review rights.

I can be contacted on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[date]



Australian Government

Office of the Australian Information Commissioner



Direction to the Australian Public Service Commission under s 55(2)(e)(ii) of the *Freedom of Information Act 1982*

In relation to [insert reference number] 1, , Director, Freedom of Information, Delegate of the Australian Information Commissioner for the purposes of the [Freedom of Information Act 1982](#), issue the following direction to the [insert name of agency] under s 55(2)(e)(ii) of the FOI Act:

1. To make further reasonable attempts to engage with the IC review applicant to resolve or narrow the issues in dispute in the IC review.
2. To provide information regarding engagement with the applicant, or attempts to engage the applicant, by [2 weeks] to the OAIC via FOIDR@oaic.gov.au.

I draw your attention to the following matters:

Compliance with this direction

Section 55(2)(e)(ii) of the FOI Act provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

Compliance with this direction can be met by taking the steps set out above. I draw your attention to your positive obligation under the FOI Act. Section 55DA requires your agency to use your best endeavours to assist the Information Commissioner to make a decision.

Non-compliance may result in:

- a decision adverse to your interests may be made in the absence of the information requested; and
- further regulatory action including examination of your agency's performance of functions under the FOI Act.

FOI Guidelines and procedure direction

The Information Commissioner has issued guidelines under s 93A of the FOI Act that Australian Government agencies and Ministers must have regard to when performing a function or exercising a power under the FOI Act. For information about the IC review process, see [Part 10 of the FOI Guidelines](#).

The '[Direction as to certain procedures to be followed in IC reviews](#)' applies to agencies and Ministers during IC reviews and during preliminary inquiries prior to the commencement of an IC review, if such inquiries are undertaken. The Procedure Direction sets out the procedures that agencies and ministers must follow in respect of the production of documents, the provision of a statement of reasons where access has been deemed to be refused and the provision of submissions.

The IC Review Procedure Direction also explains that:

- because the model litigant obligation under the Legal Services Directions 2017 extends to Commonwealth entities involved in merits review proceedings, failure to adhere to the requirements of this Direction may amount to non-compliance with the model litigant obligation.
- the IC may report non-compliance with this Direction in the OAIC's Annual Report.
- the IC may also report non-compliance with this Direction to the Office of Legal Services Coordination in the Attorney-General's Department
- the IC may also consider non-compliance within this Direction as part of investigations they conduct under Part VIIB of the FOI Act.

Direction issued by [name], Director, Freedom of Information

Signed:

Date: 29 August 2024



Our reference:
Agency reference:

[SES BAND 1/EL2]

Sent by email:

Notice to produce information and documents under s 55U

Dear [NAME]

The Office of the Australian Information Commissioner (OAIC) is conducting an Information Commissioner review (IC review) of a decision of the [AGENCY/MINISTER] (the Department) to refuse access to documents requested By [NAME] (the applicant). For ease of reference, the Department's decision and the application for IC review are attached.

Background

On [DATE], the applicant applied to the Department for access to:

...

On [DATE], the Department was deemed to have made a decision under s 15AC of the FOI Act.

On [DATE], the applicant sought IC review of the Department's decision under s 54L of the FOI Act.

On the same date, the Department identified XX documents within the scope of the request and refused access to X documents in full based on the Cabinet submissions exemption (s 34(1)(a)). The Department refused to give access to one document in part based on the deliberative processes exemption (s 47C) and its consideration that certain material in that document is irrelevant to the request (s 22).

On [DATE], the applicant advised that they wish to proceed with their IC review application.

During the course of the IC review, the Department has provided submissions which the OAIC has reviewed and considered.

The Department has not provided the OAIC with a copy of the documents it claims are exempt under s 34 of the *Freedom of Information Act 1982* (FOI Act).

Production of documents and information under s 55U(3) of the FOI Act

As a delegate of the Information Commissioner, I am authorised to exercise the Information Commissioner's powers under s 55U of the FOI Act.

Section 55U(3) of the FOI Act provides that if the Information Commissioner is not satisfied by evidence on affidavit or otherwise that documents are exempt documents under [s 33, 34 or 45A], the Commissioner may require that the document be produced for inspection.

[insert reasoning e.g.:]

s 22
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I am not satisfied, based on the submissions and reasons provided by the Department to date, that the Department has provided sufficient evidence to establish that the relevant documents are exempt under s 34 of the FOI Act.

Therefore, under s 55U of the FOI Act, I require you to produce a marked up and unredacted copy of the documents that the Department found to be exempt under s 34 of the FOI Act.

Compliance with this notice

Compliance with this notice can be met by delivery of the required documents via safe-hand delivery. Please contact [CASE OFFICER] on [PHONE NUMBER] to arrange safe-hand delivery.

I require you to produce the documents requested no later than **close of business [DATE]**.

Yours sincerely

Director
Freedom of Information
Office of the Australia Information Commission

29 August 2024



Australian Government

Office of the Australian Information Commissioner

Our reference numbers: [MRYX/XXXXX / See Attachment A]

Agency references: [XXXXXXX / See Attachment A]

Name

Title

Branch

Agency

By email:

CC:

Information Commissioner reviews request for documents

Dear [Name],

The Office of the Australian Information Commissioner (OAIC) is conducting Information Commissioner reviews (IC reviews) of decisions made by **the Agency** (the Agency) under the *Freedom of Information Act 1982* (the FOI Act) for the matter/s listed in **Attachment A**.

The OAIC provided the agency a copy of the respective IC review applications at the time of issuing a notice of IC review under section 54Z of the FOI Act.

When the OAIC issued these notices, it requested information in line with paragraph 10.100 of Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act.

Based on the information before me, it appears that the agency has not provided the information the OAIC requested from the agency for these IC reviews.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing these IC reviews, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment B**).

Information as to the method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether documents are exempt documents, require the documents to be produced (s 55T of the FOI Act).

Should the scope of any particular IC review[s] (as outlined in **Attachment A**) involve exempt material (excluding exempt material under ss 33, 34 and/or 45A), a marked up and unredacted copy of all documents identified within the scope of the respective FOI request[s] is required pursuant to the notice issued under s 55T of the FOI Act (see **Attachment B**).

Obligations during the IC review process

The obligations of the Agency during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the [Guidelines issued under s 93A of the FOI Act](#), which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- [Direction as to certain procedures to be followed in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

Heath Baker

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024



Attachment A

IC review applications relevant to this Notice

Applicant name	OAIC reference	Your reference	Due date for requested documents	
			Original	Extended



Australian Government

Office of the Australian Information Commissioner

Attachment B



Direction to the Agency under s 55(2)(e)(ii) and notice to produce under s 55T of the *Freedom of Information Act 1982*

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to IC review applications identified in **Attachment A**, I, Heath Baker, delegate of the Australian Information Commissioner, issue the following direction to you, **[Name]**, under s 55(2)(e)(ii) of the FOI Act and require your production of documents, where indicated, under s 55T of the FOI Act:

Documents required if no revised decision made

1. Paragraph 10.100 of the Guidelines issued under s 93A of the FOI Act sets out the information that the Agency must provide to the OAIC. Please provide the information outlined in paragraph 10.100 of the Guidelines that relate to these reviews by **[3 WEEKS]**.

Documents required if revised decision made granting full access

2. Should the Agency wish to provide full access to the documents within the scope of a particular request, I request that Agency make a revised decision under s 55G of the FOI Act and provide the revised decision[s] to the respective applicant[s] and the OAIC by **[3 WEEKS]**.

Documents required if revised decision made granting partial access

3. Should the Agency wish to provide partial access to the documents within the scope of a particular request, I request that Agency make a revised decision under s 55G of the FOI Act in respect to the relevant request[s] and provide the revised decision[s] to the respective applicant[s] and the OAIC by **[3 WEEKS]**.
4. Please also provide the following documents to the OAIC by **[3 WEEKS]**.
 - a. The FOI request[s], and any correspondence that modifies the scope of each request[s].
 - b. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies) in relation to the request[s].
 - c. If any third parties have been notified of this IC review a copy of the written notifications.
 - d. Copies of any correspondence between the Agency and anyone who was consulted, including file notes of any relevant telephone conversations in relation to the request[s].
 - e. A marked up and un-redacted copy of all documents identified within scope of the request[s] that is subject of IC review, as identified in Attachment A, in an electronic format (under s 55T of the FOI Act).

Compliance with this Direction can be met by delivering the responses electronically to foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Agency provides during the IC reviews with the applicants unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document[s] at issue.

Direction issued by Heath Baker, Director, Freedom of Information Branch, Office of the Information Commissioner

Signed:

Heath Baker
Director,
Freedom of Information Branch
Office of the Australian Information Commissioner

29 August 2024

Attachment C



Notice to produce documents and give information

In relation to IC review applications identified in **Attachment A**, under ss 55T of the FOI Act, I, Heath Baker, delegate of the Information Commissioner, require the [AGENCY NAME] to give me the following information by close of business [**3 WEEKS**]:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Heath Baker, Director, Freedom of Information Branch

Signed:

Heath Baker

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024



Australian Government
Office of the Australian Information Commissioner

Review Case Plan – Intake and Early Resolution

The purpose of the review case plan – Intake and Early Resolution is to:

- ensure that all relevant procedural fairness steps are taken in a timely manner at the appropriate stage of the IC review process
- prevent unnecessary delays by ensuring procedural issues are addressed when they arise
- increase efficiency and prevent replication by giving staff the tools to build on the work done and knowledge gained by their colleagues at each stage of the case management process and
- provide confidence to staff and the Executive that matters allocated to the Reviews and Investigations Team are ready for case management.

Review advisers in the Intake and Early Resolution Team should complete the review case plan prior to transferring the matter to the Reviews and Investigations Team.

Overview/Application details «CaseNumber» [Map to Resolve]	
Applicant	«ApplicantFirstnameFamilyname» [Map to Resolve – applicant details]
Respondent	«RespondentClientTradingName» [Map to Resolve – respondent details]
Third parties (s 55A)	[Map to Resolve - see additional parties tab]
Date received	[Map to Resolve – see received date]
FOI request	[Map to Resolve]
Decision under review	<ul style="list-style-type: none"> Advise what decision is under review eg the internal decision dated X [Map to Resolve - See Agency Decisions tab – ‘Decision type’ field and ‘Date field’]
Scope of review	<ul style="list-style-type: none"> Explain what exemptions are within scope of this IC review Explain any modifications to scope that have occurred during the Intake and Early Resolution process (e.g., the applicant agrees to narrow scope, documents are released by agency informally, s 55G decision, partial s 54W etc).
Case category as originally assessed	<ul style="list-style-type: none"> Explain whether it is Category 1, Category 2 etc. [Map to Resolve]

Actions	Action (All applicable actions must be completed before transfer)	Notes (optional)
1. Review commenced and information requested under s 54Z (and parties advised of the commencement of the Review)	Choose an item.	

Actions	Action (All applicable actions must be completed before transfer)	Notes (optional)
2. All documents under review (marked up and with the relevant exemptions flagged) received	Choose an item.	
3. Exempt material action generated	Choose an item.	
<p>4. Agency has provided the OAIC with a schedule of documents flagging which exemption applies to each document</p> <p><i>A schedule will not be required in all cases, for example, where there are only a small number of documents. If you consider a schedule is not required please note this in the 'Notes' column, and mark the action complete</i></p>	Choose an item.	
5. Scope of IC review identified/settled	Choose an item.	
<p>6. Third parties notified of the IC review</p> <p><i>If there are no third parties, please mark the action not applicable</i></p> <p><i>If there is a third party but you consider a procedural fairness step is not required because it appears sufficiently clear that the decision will not be adverse to the them, please mark the action complete and note this in the 'Notes' field</i></p>	Choose an item.	
7. Requests for <u>confidential submissions</u> addressed and where relevant, a non-confidential version of the submission has been provided by the agency.	Choose an item.	

Actions	Action (All applicable actions must be completed before transfer)	Notes (optional)
<i>If there have been no requests for confidential submissions, please mark the action not applicable</i>		

Completed by	[insert name and position] [Map to Resolve – case officer]
Date of completion	

Dear [Name],

Your matter is currently awaiting allocation to a review advisor. When this happens the review advisor will contact you.

Please note, we are unable to give an estimate of the time it will take to finalise your IC review. As a guide, the OIAC is working through a large backlog and is currently prioritising 2020 matters.

Regards,

Use below example where we are waiting for R response – Short Version:

Dear [Name],

Thank you for your email.

We are currently awaiting information from the [Respondent name] in relation to this matter. We anticipate receiving this information in [date e.g. month and year OR specific date such as 1 July 2024].

However, due to the number of IC review applications on hand, and the need to prioritise IC review applications that were received earlier, we are unable to provide a timeframe on when you will receive an outcome for this matter.

To assist you in determining an approximate timeframe, the OAIC is currently focusing on the case management and finalisation of aged matters, particularly those IC review applications that were received in 2020 and any others that remain on hand. The OAIC received your application for IC review in [date eg October 2023].

If you have any questions regarding this matter, please do not hesitate to contact us at foidr@oaic.gov.au

Kind Regards

Use below update to A where we have received R s54Z resp and docs but need to review to ensure we have all we need to progress to Reviews Team:

Dear [Name],

Thank you for your request[s] for an update on [xx month 202X], and please accept my sincere apologies the delayed response.

We have received information from [Respondent] in response to our notice of commencement of IC review and request for documents. Your matter is awaiting review of that information to ensure we have all information required for progression to the Reviews and Investigation team where it will wait allocation to a Review Adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.

Please note as the OAIC is currently focussing on the case management and finalisation of aged matters, we are unable to provide an indicative timeframe at this stage. To assist you in determining an approximate timeframe, the OAIC is focussing on progressing the 2020 IC review applications and which remain on hand. Your IC review was received on [date month year], and it will take some time before your IC review is allocated and progressed. However, once your matter is allocated to a Review Adviser, they will contact you to provide a further update and advise of the next steps.

Further information about [the IC review process](#) is available in [Part 10](#) of the FOI Guidelines.

Kind Regards

Use below update to A where have not yet received R s54Z response/have followed up R for s54Z response and waiting for it

Dear [Name],

Thank you for your request[s] for an update on [xx month 202X], and please accept my sincere apologies the delayed response.

Options 1-3 below for second paragraph:

Option 1: We will be contacting the Respondent for further information in order to progress your matter. Once we have received the information it will be reviewed to ensure it can be progressed to the Reviews and Investigation team where it will wait allocation to a Review Adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.

OR

Option 2: We have requested further information from the Respondent which we expect to receive by [date]. Once we receive this further information, it will be reviewed to ensure all material requested is received for progression to the Reviews and Investigation team and await allocation to a Review Adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.

OR

Option 3: The document requested from the [Respondent name] have now been received. The requested documents are awaiting review to ensure all material requested has been received. Once this is complete, your matter will move to the Reviews and Investigation team and await allocation to a review adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.

Please note as the OAIC is currently focussing on the case management and finalisation of aged matters, we are unable to provide an indicative timeframe at this stage. To assist you in determining an approximate timeframe, the OAIC is focussing on progressing the 2020 IC review applications and which remain on hand. Your IC review was received on [date month year], and it will take some time before your IC review is allocated and progressed. However, once your matter is allocated to a Review Adviser, they will contact you to provide a further update and advise of the next steps.

Further information about [the IC review process](#) is available in [Part 10](#) of the FOI Guidelines.

Kind Regards

Allow

Dear [name]

I will allow you to make confidential submissions for this matter because [reason].

However, you should keep the confidential submission as brief as possible and it should only contain the information that cannot be shared with the applicant. Everything else should be in the open submission.

Regards,
[EL2 name]

Email template to Third Party advising it is joined as a party under s55A(1)(c) in access refusal IC review

Our reference:

Agency reference:

Dear [name]

Thank you for your email.

As it appears that [you/entity] were consulted by the [respondent] in processing the FOI request, [You/entity] is a party to this IC review under s 55A(1)(c) of the FOI Act. As [you/entity] is a party to the review, [you/entity] will be given a reasonable opportunity to present [your/its] case under s 55(4)(b) of the FOI Act. [You/entity] will also be notified of any decision by the Information Commissioner under s 55K(6).

At this stage, the IC review is awaiting allocation to a review adviser. Once the IC review is allocated, the review adviser will contact the review parties to discuss the next steps.

If you wish to contact us about this matter, please use the reference number [reference].

Kind regards

Email subject line: OAIC – MRXX/XXXXX - Response required by DD Month 2024 - [Applicant name]'s/Your IC review application about the [Respondent Name]

Our reference: MRXX/XXXXX

Agency reference: XXXXXXX

Applicant Name

[Represented by:]

By email: [Email Recipient's Email Address]

[Applicant name]'s/Your review application about the [Respondent Name]

Good morning/afternoon [Email Recipient Name],

[IF APP HAS IDENTIFIED REQUIREMENT FOR INTERPRETER IN APPLICATION – You have previously stated you may need the help of an interpreter. You may wish to call the Translating and Interpreting Service on 131 450, and ask for help speaking with the Office of the Australian Information Commissioner]

On DD Month 202X, you requested an Information Commissioner (IC) review of the FOI decision made by the Department/Agency/Office.

The Department/Agency/Office has notified the Office of the Australian Information Commissioner (OAIC) it made a revised decision on DD Month 2024.

Action required by you before [DD Month 2023 - 2 weeks from send date]:

1. If you no longer require an IC review, please reply to this email stating “I no longer require an IC review”.
2. If you wish to proceed with your IC review application, you must tell us which parts of the decision you disagree with and why, including:
 - which documents you consider were not provided or should have been provided, or
 - which exemptions you consider should not have been applied.

Intention not to continue to undertake Applicant name's/your IC review

The Commissioner's written [direction to IC review applicants](#) requires that:

- where an applicant wishes to proceed with a review of a revised decision they **must explain** why they disagree with the decision and the basis on which they wish to proceed with the IC review [2.25], and
- applicants **must respond** to enquiries from the OAIC within the period provided unless there are circumstances warranting a longer period to respond [2.22].

Section 54W(c) of the *Freedom of Information Act 1982* provides that the IC may decide not to continue to undertake a review where an applicant fails to comply with a direction of the IC.

As such, if we do not hear from you by **[DD Month 2023 -- 2 weeks from send date]**, we intend to exercise the discretion to finalise your IC review application.

Assistance

If you are unable to respond by **[DD Month 2023 - 2 weeks from send date]**, please respond to this email and request an extension of time to provide your response.

If you require an interpreter, please call the Translating and Interpreting Service on 131 450, and ask for help speaking with the Office of the Australian Information Commissioner. Alternatively, you may wish to be supported by a person of your choosing anytime throughout this process.

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MRXX/XXXXX** in all correspondence.

Kind regards,

[Signature Block]



Australian Government
Office of the Australian Information Commissioner



**Direction to the Australian Public Service Commission
under s 55(2)(e)(ii) of the *Freedom of Information Act 1982***

In relation to MR23/01470, I, , Director, Freedom of Information, Delegate of the Australian Information Commissioner for the purposes of the [Freedom of Information Act 1982](#), issue the following direction to the [Agency] under s 55(2)(e)(ii) of the FOI Act:

1. To provide information in response to the request for further information provided to the Department on [date sent], by [2 weeks] to the OAIC via FOIDR@oaic.gov.au.

Your obligations

I draw your attention to the following matters:

Freedom of Information Act 1982

Section 55(2)(e)(ii) of the FOI Act provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

Compliance with this direction can be met by taking the steps set out above.

FOI Guidelines and procedure direction

The Information Commissioner has issued guidelines under s 93A of the FOI Act that Australian Government agencies and Ministers must have regard to when performing a function or exercising a power under the FOI Act. For information about the IC review process, see [Part 10 of the FOI Guidelines](#).

The '[Direction as to certain procedures to be followed in IC reviews](#)' applies to agencies and Ministers during IC reviews and during preliminary inquiries prior to the commencement of an IC review, if such inquiries are undertaken. The Procedure Direction sets out the procedures that agencies and ministers must follow in respect of the production of documents, the provision of a statement of reasons where access has been deemed to be refused and the provision of submissions.



The IC Review Procedure Direction also explains that:

- in the event of non-compliance with the IC review Procedure Direction, the Information Commissioner may proceed to make a decision under s 55K of the FOI Act on the basis that the agency or minister has failed to discharge their onus under s 55D of the FOI Act
- as the model litigant obligation under the Legal Services Directions 2017 extends to Commonwealth entities involved in merits review proceedings, failure to adhere to the requirements of the IC Review Procedure Direction may amount to non-compliance with the model litigant obligation.

Direction issued by Heath Baker, Director, Freedom of Information

Signed:

Date: 29 August 2024



OAIC reference: [include reference]
Department reference: [include reference]

[Name of agency or minister contact]

[Title of agency or minister contact]

[Name of agency or minister]
Sent by email: [include email address]

Written direction and notice – *Freedom of Information Act 1982* – s 55V(2)

Dear [name of agency or minister contact]

I refer to Information Commissioner (IC) review of the [agency or minister] decision made [date of decision], under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am writing to advise that in order to assist the Information Commissioner in progressing this IC review, I am issuing the attached notice under s 55V(2), for the [agency or minister]’s compliance by [2 weeks].

The purpose of the notice is to require the [agency or minister] to conduct further searches for documents relevant to the FOI request under s 55V(2).

Key issue

The key issue in this IC review is whether the [agency or minister] has taken all reasonable steps to identify the documents relevant to the scope of the applicant’s FOI request.

Evidence of searches undertaken for documents

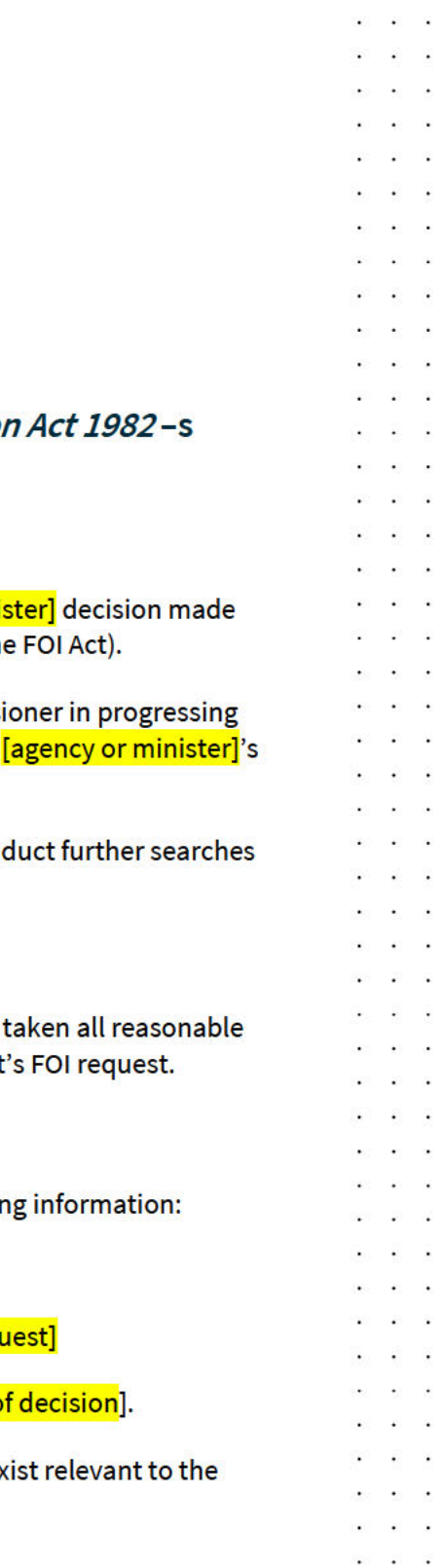
On [date of FOI request], the applicant made a request for the following information:

[Quote the FOI request]

[If relevant, include details about the amendment of scope of FOI request]

On [date], the [agency or Minister] made a decision to [insert details of decision].

The applicant contends that [documents/further documents] should exist relevant to the scope of their request.



In an IC review of an access refusal decision, the [agency or minister] bears the onus of establishing that their decision is justified or that I should give a decision adverse to the IC review applicant (s 55D(1)).

Section 24A of the FOI Act requires that an agency take 'all reasonable steps' to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

Based on the [agency or minister's] decision, I am not satisfied that the [agency or minister] has demonstrated that it has taken all reasonable steps to find the requested document[s] and that the document[s] cannot be found or does not exist/ no further documents can be found.

This is because: [provide reasons as to why the OAIC is not satisfied that the agency/minister has complied with s 24A,]

For example:

The scope of the applicant's request appears to have been misinterpreted

It is not evident that any steps have been taken to search for relevant documents

Accordingly, to assist the Information Commissioner in progressing this IC review, I am issuing the attached notice under ss 55V(2) (**Attachment A**), and a checklist to be completed by the [agency or minister] in conducting further searches (**Attachment B**).

Yours sincerely

[Name of delegate]

Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Date]

Attachment A



Notice to [agency or minister] to conduct further searches under s 55V of the *Freedom of Information Act 1982*

In relation to [case reference], I, [name of delegate], [role title], delegate of the Australian Information Commissioner for the purposes of the *Freedom of Information Act 1982* (Cth) (FOI Act), require the [agency or minister] to:

- conduct further searches under s 55V(2) of the FOI Act for documents relevant to the scope of the applicant's FOI request
- complete the attached checklist (**Attachment B**), as evidence of completion of the further searches
- Return the completed checklist to the OAIC via FOIDR@oaic.gov.au, by **[2 weeks]**

Notice issued by [name of delegate], [role title], Freedom of Information Branch

Signed:

[Date]

ATTACHMENT B

Branch/section/team/officer[s] within the agency that conducted searches:

Search location	Has search been undertaken?	If search has not been undertaken, provide reasons why not.	If search has been undertaken, provide details of who did the search, when, the parameters of the search and the outcome of the search.
Internal record management system [insert name]	Y <input type="checkbox"/> N <input type="checkbox"/>		
Digital files in group drives and Home drives	Y <input type="checkbox"/> N <input type="checkbox"/>		
Any stand-alone computers, laptops or tablets	Y <input type="checkbox"/> N <input type="checkbox"/>		
Mobile phones (text messages and instant messaging applications)	Y <input type="checkbox"/> N <input type="checkbox"/>		
Hand written notes in diaries or notebooks	Y <input type="checkbox"/> N <input type="checkbox"/>		
Records in Microsoft Outlook Calendars and digital diaries	Y <input type="checkbox"/> N <input type="checkbox"/>		
Hardcopy files	Y <input type="checkbox"/> N <input type="checkbox"/>		
Email accounts	Y <input type="checkbox"/> N <input type="checkbox"/>		
All documents currently with an external provider (solicitors, consultants etc)	Y <input type="checkbox"/> N <input type="checkbox"/>		
Any other locations	Y <input type="checkbox"/> N <input type="checkbox"/>		

Subject: OAIC – Response Required – MR – Information Commissioner review application about the [Respondent Name]

Our reference:

Agency/Minister reference:

By email: [Email Recipient's Email Address]

Information Commissioner review application about the [Respondent Name]

Good morning/afternoon [Email Recipient Email Address]

I sincerely apologise for the time elapsed between correspondences.

By way of update, the Office of the Australian Information Commissioner (OAIC) is continuing to allocate and review matters received in 2020. As such, given the passage of time and further anticipated delays, I am writing to seek clarification about whether you wish to continue with your review application.

[if relevant] The OAIC has not corresponded with you since DD Month YEAR.

Action required by you before DD Month 2024: (two -three weeks)

1. If you no longer wish to continue with the IC review, please reply to this email stating “I no longer require an IC review”. There is no penalty for withdrawing and you may continue to submit new FOI requests to the Agency/Minister at any time.
2. If you wish to continue, can you please confirm:
 - Whether any of the material related to the FOI decision under review is linked to ongoing proceedings before the Administrative Appeals Tribunal or court.
 - Whether any of the material you are seeking has been released to you, such as through a more contemporarily made FOI request to the Agency/Minister; and
 - If your reasons for seeking IC review have changed.

Discretion not to continue to undertake an IC review

If an applicant fails to comply with the [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#), the Information Commissioner may in some cases decide not to undertake an IC review or make a decision at their discretion, not to continue with the review. The Direction specifically states:

[insert relevant directions]

-

If we do not hear from you by DD Month 2024 we intend to exercise the discretion to finalise your IC review application.

Assistance

If you are unable to respond by **DD Month 2024**, you must request more time at the earliest opportunity and no later than **DD Month 2024**. **[two days before due date]**. Requests for more time must explain the exceptional circumstances that necessitate additional time and propose a new date for response. Approval of an extension request is at the discretion of the OAIC

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MR** in all correspondence.

Kind regards,

Our reference:
Agency reference:

Name

By email:

Withdrawal of IC review application

Dear

Thank you for your response.

This matter is now considered withdrawn under s 54R of the *Freedom of Information Act 1982* (Cth).

Section 54R(2) states that if an IC review application is withdrawn, it is taken never to have been made.

The matter is now closed.

Kind regards

Subject line: OAIC – MR - Response due DD Month YEAR - Notice of request for Information Commissioner review and request for documents

//

Our reference:

Agency/Minister reference:

FOI Contact Officer

Agency/Minister

By email: [Agency/Minister email]

Notice of request for Information Commissioner review and request for documents

Dear FOI Contact Officer,

Please find **attached** notice of Information Commissioner (IC) review and request for documents. A response is required by **DD Month YEAR**.

The Information Commissioner will share the submissions you provide during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the documents at issue. Should you wish to provide submissions in confidence, please refer to the [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) which sets out the process for making such a request.

Extensions of time to comply with a notice issued by the Office of the Australian Information Commissioner (OAIC) will only be granted in exceptional circumstances. Please note, in the absence of the OAIC advising you that the requested extension has been granted, the original due date applies.

Kind regards,

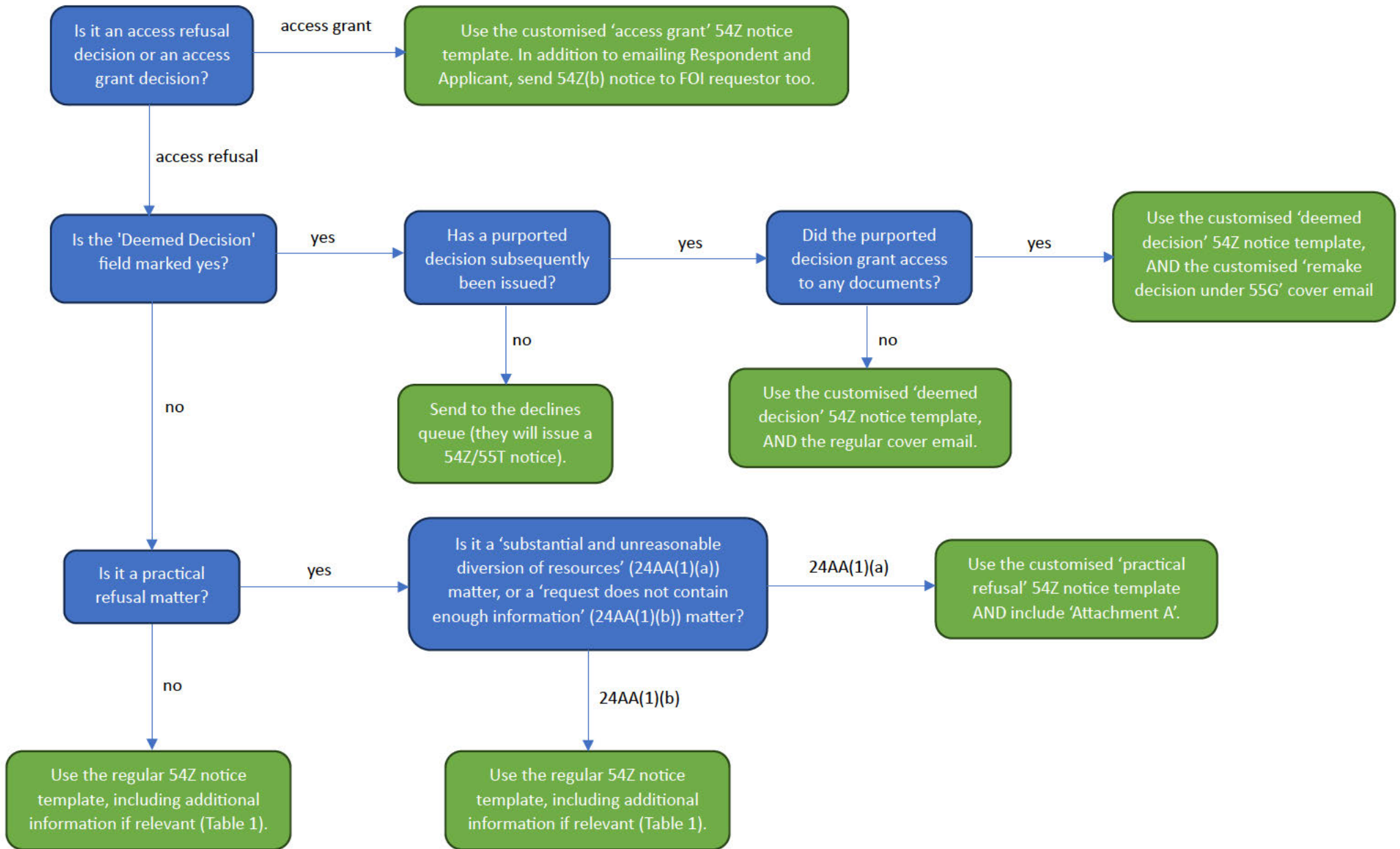


Table 1: scope of IC review in standard 54Z notice

	Scope of IC Review
Searches	The IC review applicant contests that further documents exist within the scope of their request (s 24A(1)).
Exemptions	The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review.
Searches <u>and</u> Exemptions	The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review and that further documents exist within the scope of their request (s 24A(1)).
Practical Refusal (24AA(1)(b))	The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review.
Charges	<p>The issue to be decided in this IC review is whether the respondent's decision in relation to the imposition of a charge was the correct and preferable decision in the circumstances.</p> <p>In this regard, we draw the respondent's attention to a recent decision made by the Freedom of Information Commissioner; <i>ABX' and Department of Veterans' Affairs (Freedom of information)</i> [2022] AICmr 57 (29 July 2022).</p> <p>In ABX, the FOI Commissioner noted that agencies should reconsider whether a charge should be imposed having regard to the amount of the charge imposed and the public resource applied to date.</p> <p>Accordingly, we invite the respondent to consider making a revised decision under s 55G of the FOI Act relieving the applicant from liability to pay the charge.</p>
Amendment of Records	The IC review applicant contests the respondent's reasons for refusing to amend records under review as provided in s 53A(g) of the FOI Act.



Australian Government
Office of the Australian Information Commissioner

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Our reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

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Notification of application for IC review

Dear Mr/Ms [Last name]

On date, the Office of the Australian Information Commissioner (the OAIC) received an application for Information Commissioner review (IC review) of an **internal review access grant decision** made by the **Department (the Department)** on **date** under the *Freedom of Information Act 1982* (the FOI Act) from an affected third party.

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Commencement of IC review

I write under s 54Z(b) of the FOI Act to notify you that the Information Commissioner (IC) will conduct a review of the **Department's** decision of **date** to grant access to documents that are the subject of your FOI request.

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At this stage, the matter is awaiting allocation to a review adviser. Due to the number of IC review applications on hand, and the need to prioritise IC review applications that were received earlier, this may not occur for some time. After the file is allocated, the review adviser will contact you to advise of next steps in the matter.

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Next steps

Please advise by **date** whether you would like to apply to the IC to become a party to the IC review. Following your application, the IC may make you an IC review party in writing under s 55A(3) of the FOI Act.

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If you are joined as a party to the review, you will be given a reasonable opportunity to present your case under s 55(4)(b) of the FOI Act. You will also be notified of any decision by the Information Commissioner under s 55K(6).

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Please note, at this stage we do not require any submissions from you. Once allocated, the review officer will review any documentation or submissions provided by the affected third party and **Department**. The review officer may then contact you to advise you of their view on the appropriate next steps in the matter.

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Further information

Further information about the [IC review process](#) is available in [Part 10](#) of the FOI Guidelines (at [\[10.1\]](#) – [\[10.157\]](#)).

Further information about [access grant decisions](#) is available at [\[10.9\]](#) of the FOI Guidelines, while further information about applying to become a review party is available at [\[10.54\]](#) – [\[10.57\]](#) of the FOI Guidelines.

Should you wish to discuss this matter, please contact the OAIC enquiries line on 1300 363 992 or email foidr@oaic.gov.au and quote the reference number at the top of this email.

Yours sincerely,

To add Signature:
Right-click and select 'Replace Picture'.

[First Name Last Name]

[Position Title]

Date

Submissions in support of claiming a practical refusal exists under s 24 of the FOI Act

Please provide the completed document to the OIAC with the information the respondent is required to provide in accordance with paragraph [3.14] of the [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) (the Procedure Direction). Completion of the following tables will be taken as the respondent's submissions in this IC review. The respondent is required to send these submissions to the applicant at the same time as they are sent to the OIAC (see the Procedure Direction at [3.23]).

Details of submission	
Agency reference	
OIAC reference	
Date submitted to OIAC	

Processing timeline and request consultation process (s 24AB)	
Event	Date
FOI request received	
Request consultation notice sent	
Applicant's response	
Further contacts with applicant (if relevant)	
Applicant notified of decision	
Internal review request received (if relevant)	
Internal review decision made (if relevant)	

Request consultation process (s 24AB) – Assistance provided to applicant (s 24AB(3))	
Information provided to applicant to assist revision of request. (For example, suggestions as to a scope that can be processed, directing to applicant to publicly available information, explanation about difficulties processing request. Please provide detail.)	
Telephone contact attempted with applicant. (Yes/no – if Yes please provide detail)	
Request revised during request consultation process (yes/no)	

Breakdown of estimated processing time (minutes/hours)			
Total number of documents		Total estimated processing time	
Identifying, locating or collating		Consulting	
Examining		Making a copy	
Deciding to grant, refuse or defer access		Notifying decision	
Any relevant additional information related to the estimated processing time			

Sampling	
Sample examined? (Yes or No)	
Sample size (as a %)	
Number of electronic documents	
Number of hardcopy documents	
Number of non-exempt documents	
Number of partially exempt documents	
Number of fully exempt documents	
Exemptions proposed applied	
Number of documents to which a consultation requirement applies (s 26A, 27 or 27A)	
Any relevant additional information related to sampling	

Whether processing the request would be unreasonable	
Size of the agency (in terms of number of employees).	
Number of employees dedicated to FOI processing	
Number or requests received in the last financial year	