

Whether processing the request would be unreasonable	
Other factors the Respondent may consider to be relevant (see FOI Guidelines [3.117] and ACW at [22])	
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	

Whether processing the request would be unreasonable	
Steps taken by an agency or Minister to publish information of the kind requested by an applicant	
[Only relevant to Ministers] 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.	



Our reference:
Agency reference:

[name]

Sent by email:

Your application for IC review of an FOI decision

Dear [name]

I refer to your application for Information Commissioner review (IC review) of a [n internal review] access grant decision made by the [agency] (the Department) on [date] under the *Freedom of Information Act 1982* (the FOI Act).

Commencement of IC review

The Information Commissioner has decided to commence review of the Department's decision of [date]. The Office of the Australian Information Commissioner (OAIC) is currently considering your IC review application and is conducting inquiries with the Department.

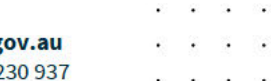
Access grant decisions

Please note that in access grant decisions, only those decisions where the Department has relied on exemptions under ss 47, 47B, 47F and 47G of the FOI Act are reviewable by the Information Commissioner. The FOI Guidelines at [10.9] state as follows:

An 'access grant decision' is defined in s 53B to mean a decision to grant access to a document where there is a requirement to consult with a third party under ss 26A, 26AA, 27 or 27A. The agency or minister will have decided that the document:

- is not exempt under s 47 (trade secrets or commercially valuable information)
- is not conditionally exempt under s 47B (Commonwealth-State relations), s 47G (business documents) or s 47F (personal privacy), or
- is conditionally exempt under ss 47B, 47G or 47F, but access would not be contrary to the public interest (see Part 6 of these Guidelines).

Section 55D(2) of the FOI Act provides that in an IC review of an access grant decision, the affected third party for the document to which the decision was made has the onus of establishing that a decision refusing the FOI request is justified or that the Information should give a decision adverse to the person who made the FOI request.



Next steps

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.

Your review will continue to progress through the initial stages of an IC review. The initial stages of an IC review may include assessment by a senior member of the team, conducting preliminary inquiries with an agency, requesting submissions from the agency in support of their FOI decision or requesting the documents at issue.

Further information about [the steps in the Information Commissioner review process](#) is available in [Part 10](#) of the FOI Guidelines at [\[10.116\]](#).

Please note, during an IC review the OAIC will generally share the submissions you provide with the **Department**.

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

Intake and Early Resolution Team
Freedom of Information Regulatory Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application and decision under review].

29 August 2024



Attachment A

Submissions in support of claiming a practical refusal exists under s 24 of the FOI Act

[Direction as to certain procedures to be followed by agencies and ministers in IC reviews | OAIC](#)

Details of submission

Processing timeline and request consultation process (s 24AB)

Event	Date

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	

Whether processing the request would be unreasonable	
Other factors the Respondent may consider to be relevant (see FOI Guidelines [3.117] and ACW at [22])	
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	

Whether processing the request would be unreasonable	
Steps taken by an agency or Minister to publish information of the kind requested by an applicant	
[Only relevant to Ministers] 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.	



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 the respondent's access grant decision, made on [date] under the *Freedom of Information Act 1982* (the FOI Act). The IC review application and decision under review are attached.

The OAIC will commence a review of the FOI decision and provides this notice under s 54Z of the FOI Act.

Scope of IC review

A key issue in this IC review is whether the respondent has correctly determined that the documents that are the subject of the FOI request are not exempt pursuant to **[ss 47, 47B, 47G, 47F]**.

Onus

Section 55D(2) of the FOI Act provides that when an IC review application is made under s 54M (access grant), the affected third party has the onus of establishing that a decision refusing the request is justified or that the Information Commissioner should give a decision adverse to the person who made the request.

Requirement for parties to engage and share submissions

As part of this process:

- the OAIC requires respondents and applicants to engage with each other to attempt to resolve or narrow the issues in dispute. The respondent should initiate this process
- the respondent has until **[30 business days]** to complete the engagement and share its submission with the OAIC and the applicant. The applicant then has 10 business days to share their submission with the OAIC and the respondent
- the respondent also has until **[30 business days]** to provide the OAIC with the information set out in Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#).

Annexure A has more information for applicants about the engagement process and sharing submissions. **Annexure B** has more information for respondents about the engagement process and sharing submissions.

Request for information from respondent

Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#) sets out the information the respondent must provide to the OAIC. Please provide the information outlined in Table A that relates to this review.

Respondents can comply with this notice by delivering the response to foidr@oaic.gov.au by **[30 business days]**.

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.

The obligations of the applicant during the IC review process are set out under:

- Part 10 the Guidelines issued under s 93A of the FOI Act
- Direction as to certain procedures to be followed by applicants in Information Commissioner reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

[First Name Last Name]

Intake and Early Resolution Team
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application and decision under review].29 August 2024

Annexure A: Further information for applicants

The procedure that applicants are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#). The below summarises your obligations to engage with respondents, and provide submissions to both the OAIC and respondents.

Obligation for you to engage

The respondent must initiate engagement with you and make reasonable attempts to engage.¹ The engagement aims to resolve or narrow the issues in dispute in the IC review.

Engagement could involve a phone call or video conference between you and the respondent. You can tell the respondent if they would prefer to engage another way.²

The respondent must demonstrate to the OAIC what they have done to engage with you to resolve or narrow the issues in dispute in the IC review. If the respondent does not take sufficient actions to engage with you, the OAIC will direct them to engage further.³

If you fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue the IC review. This will be on the ground you have failed to cooperate in progressing the IC review without reasonable excuse.⁴ The OAIC will warn you if we are considering this possibility and give you the opportunity to respond.

We expect that you and the respondent will engage in the IC review process with respect and courtesy.⁵

Sharing submissions between you and the respondent

If respondents make a submission in support of their FOI decision, they must send their submission to you at the same time as sending them to the OAIC. You can then make a

¹ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.17]

² [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.19]

³ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.20]

⁴ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

⁵ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

submission in response. You will have 10 business days⁶ to make a submission about why you disagree with the respondent, and you are required to send your submission to the respondent at the same time as sending to the OAIC.⁷

When it sends its submission to you and the OAIC, the respondent should remind you that you then have 10 business days to make your submission.

The OAIC will generally proceed with making an IC review decision on the basis of the evidence respondents provide in response to this notice, and any submissions the parties make. If you do not make submissions when an opportunity to do so has been provided, the OAIC may make a final decision without giving any further opportunity to make submissions.⁸

You can ask the OAIC to make a submission in confidence. Your request must give reasons why you want to make a confidential submission and the OAIC will consider those reasons and decide whether to accept the submission on a confidential basis. If the OAIC agrees to treat a submission confidentially, you will generally be required to provide a second version of the submission which can be shared.⁹

⁶ Respondents have 30 business days because they must engage with applicants as well as providing information and making submissions. You have 10 business days because you are only required to make submissions.

⁷ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

⁸ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

⁹ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.30]

Annexure B: Further information for respondents

The procedure that respondents are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#). The below summarises the obligations of respondents to engage with applicants, and provide submissions to both the OAIC and applicants.

Obligation for respondents to engage

Respondents are required to engage make reasonable attempts to engage with applicants.¹⁰ The engagement should aim to resolve or narrow the issues in dispute in the IC review.

Engagement may comprise a phone call or video conference between the respondent and the applicant. The OAIC will not be involved in arranging or attending these.¹¹ Applicants can tell respondents if they would prefer to engage another way.¹²

Respondents must provide the OAIC with information to demonstrate the actions they have taken to engage the applicant to resolve or narrow the issues in dispute in the IC review.¹³ The IC has published a checklist to assist agencies and ministers provide relevant information relating to the agency or minister's engagement with the applicant during the IC review: see [IC Review Practice Documents](#).

The OAIC will advise the respondent if they consider the respondent should undertake further engagement with the applicant during the IC review.¹⁴

If applicants fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue their IC reviews.¹⁵

We expect that applicants and respondents will engage in the IC review process with respect and courtesy.¹⁶

¹⁰ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.8]

¹¹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.9]

¹² [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.10]

¹³ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.11]

¹⁴ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.13]

¹⁵ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

¹⁶ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

Sharing submissions between the respondent and applicant

If respondents make submissions in support of their FOI decisions, they must send their submissions to applicants at the same time as sending them to the OAIC.¹⁷ Respondents should include prominent reminders in covering correspondence that applicants will have 10 business days from the date of receiving the correspondence to make submissions.

Applicants will be required to send their submissions to respondents at the same time as they are sent to the IC.¹⁸

Respondents should be aware that if they do not make submissions when an opportunity to do so has been provided, reviews may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions. Respondents should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.¹⁹

The OAIC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue. Where the OAIC accepts a submission in confidence, respondents must provide an open version of the submission to the IC review applicant.²⁰

¹⁷ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

¹⁸ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

¹⁹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.24-5\]](#)

²⁰ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.26-7\]](#)



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 application and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner (IC) review of a decision made by «RespondentClientTradingName» under the *Freedom of Information Act 1982* (the FOI Act). A copy of the IC review application and the decision under review are attached.

The OAIC will commence a review of the FOI decision and provides this notice under s 54Z of the FOI Act.

Scope of IC review

The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review.

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)).

The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review, with the exception of [free text].

Requirement for parties to engage and share submissions

As part of this process:

- the OAIC requires respondents and applicants to engage with each other to attempt to resolve or narrow the issues in dispute. The respondent should initiate this process
- the respondent has until **[30 business days]** to complete the engagement and share its submission with the OAIC and the applicant

- the respondent also has until **[30 business days]** to provide the OAIC with the information set out in Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#)
- the applicant has 10 business days after receiving the respondent's submission to share their submission with the OAIC and the respondent.

Annexure A has more information for applicants about the engagement process and sharing submissions. **Annexure B** has more information for respondents about the engagement process and sharing submissions.

Request for information from respondent

Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#) sets out the information the respondent must provide to the OAIC. Please provide the information outlined in Table A that relates to this review.

Respondents can comply with this notice by delivering the response to foidr@oaic.gov.au by **[30 business days]**.

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.

The obligations of the applicant during the IC review process are set out under:

- Part 10 the [Guidelines issued under s 93A of the FOI Act](#)
- [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

«CurrentUserFirstnameSurname»

Intake and Early Resolution Team
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application and decision under review].29 August 2024

Annexure A: Further information for applicants

The procedure that applicants are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#). The below summarises the obligations to engage with respondents and provide submissions to both the OAIC and respondents.

Obligation for you to engage

The respondent must initiate engagement with you and make reasonable attempts to engage.¹ The engagement aims to resolve or narrow the issues in dispute in the IC review.

Engagement could involve a phone call or video conference between you and the respondent. You can tell the respondent if they would prefer to engage another way.²

The respondent must demonstrate to the OAIC what they have done to engage with you to resolve or narrow the issues in dispute in the IC review. If the respondent does not take sufficient actions to engage with you, the OAIC will direct them to engage further.³

If you fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue the IC review. This will be on the ground you have failed to cooperate in progressing the IC review without reasonable excuse.⁴ The OAIC will warn you if we are considering this possibility and give you the opportunity to respond.

We expect that you and the respondent will engage in the IC review process with respect and courtesy.⁵

Sharing submissions between you and the respondent

If respondents make a submission in support of their FOI decision, they must send their submission to you at the same time as sending them to the OAIC. You can then make a submission in response. You will have 10 business days to make a submission about why you

¹ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.17]

² [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.19]

³ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.20]

⁴ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

⁵ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

disagree with the respondent, and you are required to send your submission to the respondent at the same time as sending to the OAIC.⁶

When it sends its submission to you and the OAIC, the respondent should remind you that you then have 10 business days to make your submission.

The OAIC will generally proceed with making an IC review decision on the basis of the evidence respondents provide in response to this notice, and any submissions the parties make. If you do not make submissions when an opportunity to do so has been provided, the OAIC may make a final decision without giving any further opportunity to make submissions.⁷

You can ask the OAIC to make a submission in confidence. Your request must give reasons why you want to make a confidential submission and the OAIC will consider those reasons and decide whether to accept the submission on a confidential basis. If the OAIC agrees to treat a submission confidentially, you will generally be required to provide a second version of the submission which can be shared.⁸

⁶ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

⁷ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

⁸ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.30]

Annexure B: Further information for respondents

The procedure that respondents are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#). The below summarises the obligations of respondents to engage with applicants, and provide submissions to both the OAIC and applicants.

Obligation for respondents to engage

Respondents are required to engage make reasonable attempts to engage with applicants.⁹ The engagement should aim to resolve or narrow the issues in dispute in the IC review.

Engagement may comprise a phone call or video conference between the respondent and the applicant. The OAIC will not be involved in arranging or attending these.¹⁰ Applicants can tell respondents if they would prefer to engage another way.¹¹

Respondents must provide the OAIC with information to demonstrate the actions they have taken to engage the applicant to resolve or narrow the issues in dispute in the IC review.¹² The IC has published a checklist to assist agencies and ministers provide relevant information relating to the agency or minister's engagement with the applicant during the IC review: see [IC Review Practice Documents](#).

The OAIC will advise the respondent if they consider the respondent should undertake further engagement with the applicant during the IC review.¹³

If applicants fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue their IC reviews.¹⁴

⁹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.8]

¹⁰ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.9]

¹¹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.10]

¹² [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.11]

¹³ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.13]

¹⁴ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

We expect that applicants and respondents will engage in the IC review process with respect and courtesy.¹⁵

Sharing submissions between the respondent and applicant

If respondents make submissions in support of their FOI decisions, they must send their submissions to applicants at the same time as sending them to the OAIC.¹⁶ Respondents should include prominent reminders in covering correspondence that applicants will have 10 business days from the date of receiving the correspondence to make submissions.

Applicants will be required to send their submissions to respondents at the same time as they are sent to the IC.¹⁷

Respondents should be aware that if they do not make submissions when an opportunity to do so has been provided, reviews may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions. Respondents should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.¹⁸

The OAIC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue. Where the OAIC accepts a submission in confidence, respondents must provide an open version of the submission to the IC review applicant.¹⁹

¹⁵ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews \[2.23\]](#)

¹⁶ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

¹⁷ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

¹⁸ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.24-5\]](#)

¹⁹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.26-7\]](#)



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 application and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner (IC) review of a decision made by «RespondentClientTradingName» under the *Freedom of Information Act 1982* (the FOI Act). A copy of the IC review application and the decision under review are attached.

The OAIC will commence a review of the FOI decision and provides this notice under s 54Z of the FOI Act.

Scope of IC review

The applicant has sought a review of the Respondent's decision to refuse the applicant's request under s 24 of the FOI Act, [Option1] on the basis that processing the applicant's request would substantially and unreasonably divert the resources of an agency from its other operations or unreasonably interfere with the performance of the Minister's functions.[Option 2] on the basis that the request did not provide the information reasonably necessary to document/s to be identified.

Requirement for parties to engage and share submissions

As part of this process:

- the OAIC requires respondents and applicants to engage with each other to attempt to resolve or narrow the issues in dispute. The respondent should initiate this process
- the respondent has until [**30 business days**] to complete the engagement and share its submission with the OAIC and the applicant. The applicant then has 10 business days to share their submission with the OAIC and the respondent

- the respondent also has until **[30 business days]** to provide the OAIC with the information set out in Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#).

Annexure A has more information for applicants about the engagement process and sharing submissions. **Annexure B** has more information for respondents about the engagement process and sharing submissions.

Request for information from respondent

Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#) sets out the information the respondent must provide to the OAIC. In relation to decisions made to refuse an applicant's request under s 24, on the basis that a practical refusal reason exists in relation to the documents, the Respondent must provide the following:

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- Copies of any correspondence including file notes of telephone conversations relating to the Respondent's request consultation process, including a copy of; the letter sent to the applicant, and the applicant's response (if any).
- Records that demonstrate the number of documents and/or pages encompassed by the request, including but not limited to notes of any searches conducted, and consultations with relevant staff members
- An estimate of the number of hours processing time involved, and a breakdown of this time to demonstrate how the time was estimated
- Evidence of document sampling if undertaken¹
- The names and contact details of anyone who was consulted by the Respondent, formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies)
- Submissions in support of the respondent's decision in the form prescribed by the OAIC. This is the form set out at **Attachment A**, which will be taken as submissions in support of the practical refusal reason.

¹ See [the FOI Guidelines](#) at [3.121].

Respondents can comply with this notice by delivering the response to foidr@oaic.gov.au by **[30 business days]**.

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.

The obligations of the applicant during the IC review process are set out under:

- Part 10 the [Guidelines issued under s 93A of the FOI Act](#)
- [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

«CurrentUserFirstnameSurname»

Intake and Early Resolution Team
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application and decision under review].29 August 2024

Annexure A: Further information for applicants

The procedure that applicants are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#). The below summarises your the obligations to engage with respondents, and provide submissions to both the OAIC and respondents.

Obligation for you to engage

The respondent must initiate engagement with you and make reasonable attempts to engage.² The engagement aims to resolve or narrow the issues in dispute in the IC review.

Engagement could involve a phone call or video conference between you and the respondent. You can tell the respondent if they would prefer to engage another way.³

The respondent must demonstrate to the OAIC what they have done to engage with you to resolve or narrow the issues in dispute in the IC review. If the respondent does not take sufficient actions to engage with you, the OAIC will direct them to engage further.⁴

If you fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue the IC review. This will be on the ground you have failed to cooperate in progressing the IC review without reasonable excuse.⁵ The OAIC will warn you if we are considering this possibility and give you the opportunity to respond.

We expect that you and the respondent will engage in the IC review process with respect and courtesy.⁶

Sharing submissions between you and the respondent

If respondents make a submission in support of their FOI decision, they must send their submission to you at the same time as sending them to the OAIC. You can then make a

² [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.17]

³ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.19]

⁴ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.20]

⁵ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

⁶ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

submission in response. You will have 10 business days⁷ to make a submission about why you disagree with the respondent, and you are required to send your submission to the respondent at the same time as sending to the OAIC.⁸

When it sends its submission to you and the OAIC, the respondent should remind you that you then have 10 business days to make your submission.

The OAIC will generally proceed with making an IC review decision on the basis of the evidence respondents provide in response to this notice, and any submissions the parties make. If you do not make submissions when an opportunity to do so has been provided, the OAIC may make a final decision without giving any further opportunity to make submissions.⁹

You can ask the OAIC to make a submission in confidence. Your request must give reasons why you want to make a confidential submission and the OAIC will consider those reasons and decide whether to accept the submission on a confidential basis. If the OAIC agrees to treat a submission confidentially, you will generally be required to provide a second version of the submission which can be shared.¹⁰

⁷ Respondents have 30 business days because they must engage with applicants as well as providing information and making submissions. You have 10 business days because you only need to make submissions.

⁸ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

⁹ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

¹⁰ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.30]

Annexure B: Further information for respondents

The procedure that respondents are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#). The below summarises the obligations of respondents to engage with applicants, and provide submissions to both the OAIC and applicants.

Obligation for respondents to engage

Respondents are required to engage make reasonable attempts to engage with applicants.¹¹ The engagement should aim to resolve or narrow the issues in dispute in the IC review.

Engagement may comprise a phone call or video conference between the respondent and the applicant. The OAIC will not be involved in arranging or attending these.¹² Applicants can tell respondents if they would prefer to engage another way.¹³

Respondents must prove the OAIC with information to demonstrate the actions they have taken to engage the applicant to resolve or narrow the issues in dispute in the IC review.¹⁴ The IC has published a checklist to assist agencies and ministers provide relevant information relating to the agency or minister's engagement with the applicant during the IC review: see [IC Review Practice Documents](#).

The OAIC will advise the respondent if they consider the respondent should undertake further engagement with the applicant during the IC review.¹⁵

If applicants fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue their IC reviews.¹⁶

We expect that applicants and respondents will engage in the IC review process with respect and courtesy.¹⁷

¹¹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.8]

¹² [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.9]

¹³ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.10]

¹⁴ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.11]

¹⁵ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.13]

¹⁶ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

¹⁷ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

Sharing submissions between the respondent and applicant

If respondents make submissions in support of their FOI decisions, they must send their submissions to applicants at the same time as sending them to the OAIC.¹⁸ Respondents should include prominent reminders in covering correspondence that applicants will have 10 business days from the date of receiving the correspondence to make submissions.

Applicants will be required to send their submissions to respondents at the same time as they are sent to the IC.¹⁹

Respondents should be aware that if they do not make submissions when an opportunity to do so has been provided, reviews may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions. Respondents should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.²⁰

The OAIC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue. Where the OAIC accepts a submission in confidence, respondents must provide an open version of the submission to the IC review applicant.²¹

¹⁸ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

¹⁹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

²⁰ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.24-5\]](#)

²¹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.26-7\]](#)



Australian Government

Office of the Australian Information Commissioner

Our reference:

Agency reference:

The respondent is:	The applicant is:
By email:	By email:

Notice of IC review application and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a decision made by Respondent (the respondent) under the *Freedom of Information Act 1982* (the FOI Act). A copy of the IC review application and the decision under review are attached.

The OAIC will commence a review of the FOI decision and provides this notice under s 54Z of the FOI Act. As part of this process:

- the respondent has until **[15 business days]** to share its submission with the OAIC and the applicant.
- the respondent also has until **[15 business days]** to provide the OAIC with the information set out in Paragraph 4.1 of Annexure A.2 of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#)
- the applicant has **10 business days** after receiving the respondent's submission to share a submission with the OAIC and the respondent.

Annexure A has more information for applicants about sharing submissions.

Annexure B has more information for respondents about sharing submissions.

[If relevant] Annexure C contains a notice [to conduct further searches under s 55V/to provide an adequate statement of reasons under s 55E] or the FOI Act.

Scope of IC review

The IC review applicant contests that further documents exist within the scope of their request (s 24A(1)).

[Where issuing 55V] On the basis of the information contained in the application for IC review [and the information provided by the respondent during preliminary inquiries] a notice

under s 55V has been included at **Annexure C** requiring the respondent to undertake further searches.

[Where issuing 55E] On the basis of the information contained in the application for IC review [and the information provided by the respondent during preliminary inquiries] a notice under s 55E has been included at **Annexure C** requiring the respondent to provide an adequate statement of reasons.

Request for information

Paragraph 4.1 of Annexure A.2 of the Directions as to certain procedures to be followed by agencies and ministers in IC reviews sets out the information the respondent must provide to the OAIC.¹ Please provide the information that relates to this review.

Respondents can comply with this notice by delivering the response to foidr@oaic.gov.au by **6 August 2024**.

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.

The obligations of the applicant during the IC review process are set out under:

- Part 10 the Guidelines issued under s 93A of the FOI Act
- Direction as to certain procedures to be followed by applicants in Information Commissioner reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

Intake and Early Resolution Team
Freedom of Information Branch

¹ Direction as to certain procedures to be followed by agencies and ministers in IC reviews [A.2, 4.1]

Office of the Australian Information Commissioner
29 August 2024

[Enclosed: IC review application and decision under review].

Annexure A: Further information for applicants

The procedure that applicants are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#). The below summarises the obligations of applicants to engage with respondents, and provide submissions to both the OAIC and respondents.

We expect that you and the respondent engage in the IC review process with respect and courtesy.²

Sharing submissions between you and the respondent

If respondents make a submission in support of their FOI decision, they must send their submission to you at the same time as sending them to the OAIC. You can then make a submission in response. You will have 10 business days to make a submission about why you disagree with the respondent, and you are required to send your submission to the respondent at the same time as sending to the OAIC.³

When it sends its submission to you and the OAIC, the respondent should remind you that you then have 10 business days to make your submission.

The OAIC will generally proceed with making an IC review decision on the basis of the evidence respondents provide in response to this notice, and any submissions the parties make. If you do not make submissions when an opportunity to do so has been provided, the OAIC may make a final decision without giving any further opportunity to make submissions.⁴

You can ask the OAIC to make a submission in confidence. Your request must give reasons why you want to make a confidential submission and the OAIC will consider those reasons and decide whether to accept the submission on a confidential basis. If the OAIC agrees to treat a submission confidentially, you will generally be required to provide a second version of the submission which can be shared.⁵

² [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

³ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

⁴ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

⁵ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.30]

Annexure B: Further information for respondents

The procedure that respondents are to follow in IC reviews is set out in [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#). The below summarises the obligations of respondents to provide submissions to both the OAIC and applicants.

We expect that applicants and respondents will engage in the IC review process with respect and courtesy.⁶

Sharing submissions between the respondent and applicant

If respondents make submissions in support of their FOI decisions, they must send their submissions to applicants at the same time as sending them to the OAIC.⁷ Respondents should include prominent reminders in covering correspondence that applicants will have 10 business days from the date of receiving the correspondence to make submissions.

Applicants will be required to send their submissions to respondents at the same time as they are sent to the IC.⁸

Respondents should be aware that if they do not make submissions when an opportunity to do so has been provided, reviews may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions. Respondents should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.⁹

The OAIC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue. Where the OAIC accepts a submission in confidence, respondents must provide an open version of the submission to the IC review applicant.¹⁰

⁶ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [2.7]

⁷ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.23]

⁸ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.23]

⁹ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.24-5]

¹⁰ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.26-7]

[If relevant] Annexure C: s 55V Notice



**Notice to conduct further searches under s 55V of the
*Freedom of Information Act 1982***

Under s 55V(2) 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 for documents relevant to the scope of the applicant's FOI request [*if relevant*: In particular, documents relating to [update as appropriate]].
- Provide the OAIC with evidence of the further searches conducted and the outcomes of those searches
- Complete and return the searches checklist included below at **Annexure C.1**.

Direction issued by [name of EL1 delegate], Assistant Director, Freedom of Information Branch

Signed:

Date:

Annexure C.1 – searches checklist

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"/>		

[If relevant] Annexure C: s 55E Notice



Notice to provide an adequate statement of reasons under s 55E(2) of the Freedom of Information Act 1982

Section 55(E) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may require an agency or Minister to provide an adequate statement of reasons as mentioned in subsection 26(1) of the FOI Act.

As such, I require you to:

- Provide an adequate statement of reasons under s 26(1) in response to the applicant's FOI request that address the searches undertaken to find relevant documents in accordance with s 24A, as relevant to this IC review.
- Provide the OAIC, and the applicant, with a copy of the statement of reasons by **15 business days**.

Delivery of the response should be made via email to FOIDR@oaic.gov.au.

Notice issued by **[name of EL1 delegate]**, Assistant Director, Freedom of Information Branch

Signed:

29 August 2024

Subject: OAIC – MR - Commencement of Information Commissioner review

Our reference: MR

Agency/Minister reference:

Applicant Name

By email: [Applicant email]

Commencement of Information Commissioner review

Dear [Applicant],

Thank you for your application for Information Commissioner (IC) review about a decision made by the [Respondent Name] (the Agency/Minister).

Today we notified the Agency/Minister that the Information Commissioner will undertake an IC review and has requested further information to assist with progressing the review.

We will provide you with an update when we have heard from the Agency/Minister.

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,

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],

On DD Month 2023, you requested an Information Commissioner (IC) review of your Freedom of Information request to the Agency/Minister (the Agency/Minister) as you contested the FOI decision was incorrect.

The Agency/Minister has notified the Office of the Australian Information Commissioner (OAIC) it has now provided you with a revised decision, dated DD Month 2024.

As you have now received a revised decision, the OAIC would like to confirm whether you wish to proceed with your IC review application.

Action required by you before [DD Month 2024 - 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 revised 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 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 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

Our reference numbers: See Attachment A

Agency references: See Attachment A

FOI Contact Officer

s 22

By email: s 22

Notice of Information Commissioner review and requests for documents

Dear FOI Contact Officer,

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 s 22 (the Agency) under the *Freedom of Information Act 1982* (the FOI Act).

Copies of the respective IC review applications are attached.

Scope of IC review

The IC review applicant contests that the Agency has made a decision that purports to give, in accordance with the applicant's requests, access to documents to which the requests relate, but the Agency has not actually given that access.

In its response to preliminary inquiries, the Agency advised that it has issued decisions to the applicant.

In response to that advice, the applicant has stated:

...

s 22

Guidance relating to forms of access

Section 20 of the FOI Act

- (1) Access to a document may be given to a person in one or more of the following forms:
- (a) a reasonable opportunity to inspect the document;
 - (b) provision by the agency or Minister of a copy of the document;
 - (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
 - (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.
- (2) Subject to subsection (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form.
- (3) If the giving of access in the form requested by the applicant:
- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his or her functions, as the case may be;
 - (b) would be detrimental to the preservation of the [document](#) or, having regard to the physical nature of the [document](#), would not be appropriate; or
 - (c) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an [agency](#) or a [State](#)) subsisting in matter contained in the [document](#), being matter that does not relate to the affairs of an [agency](#) or of a [Department](#) of [State](#);
- access in that form may be refused and access given in another form.
- (4) Subject to [subsection](#) 17(1), where a person [requests](#) access to a [document](#) in a particular form and, for a reason specified in [subsection](#) (3), access in that form is refused but access is given in another form, the [applicant](#) shall not be required to pay a charge in respect of the provision of access to the [document](#) that is greater than the charge that he or she would have been required to pay if access had been given in the form [requested](#).

FOI Guidelines¹

Paragraph 3.206 of the Guidelines provides:

The right to access a document in a particular form may be refused and access given in another form in the following circumstances:

- where access would interfere unreasonably with the agency's operations or the performance of a minister's functions (s 20(3)(a)) — for example, if an applicant asks to inspect documents that an agency requires for everyday operations
- if it would be detrimental to the preservation of the document or not appropriate given the physical nature of the document (s 20(3)(b)) — for example, if a document is fragile or if giving access outside its normal environment might result in damage, or the document cannot be photocopied due to its condition or because it is a painting, model or sculpture
- if giving an applicant access to a document in a certain form would, but for the FOI Act, involve an infringement of copyright in relation to the matter contained in the document (s 20(3)(c)). This provision does not apply where the matter contained in the document relates to the affairs of an agency or department of state or if the copyright holder is the Commonwealth, an agency, or a State.

Paragraph 3.208 of the Guidelines provides:

The FOI Act gives a legally enforceable right of access to documents that already exist, and an agency is not required to create a new document to satisfy an FOI request. However, an agency should consult with an applicant as to the most effective manner of providing access to the information an applicant seeks, including by administrative release of information that has been compiled from documents or a database (see [3.2]).

It appears that the preliminary issue that remains at this stage of the IC review is whether access should be provided in the form requested by the applicant (s 20).

In considering whether access in a different form is justified, I draw your attention to s 20(3) of the FOI Act and the FOI Guidelines as set out above. To assist in progressing this review, the OAIC would like to give the Agency an opportunity to provide documents to the applicant in the form he has proposed. Should the Agency decline to do so, the OAIC would appreciate receiving the below information by **26 March 2024**.

¹ 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,

Request for information

In order to demonstrate the agency has complied with section 20 (3) of the FOI Act, the OAIC requests the information below:

- a submission addressing how giving access in the form requested by the applicant would:
 - interfere unreasonably with the Agency's operations – including
 - an estimate of the processing time involved in providing the documents in the applicant's preferred form,
 - a breakdown of the time to demonstrate what it is based on
 - an estimate of the direct costs the Agency would incur by providing the documents in the form preferred by the applicant
 - evidence of the steps the Agency has taken to negotiate an acceptable method of delivering the documents to the applicant
 - be detrimental to the preservation of the documents or having regard to the physical nature of the documents would not be appropriate or
- but for the FOI Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an agency or State) subsisting in matter contained in the document being matter that does not relate to the affairs of an agency or of a Department of State
- a submission addressing whether the Agency has given a written notice to the applicant stating that the applicant is liable to pay a charge and if so, a submission addressing s 20(4) of the FOI Act.

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 by agencies and ministers 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 Agency reference	Date of IC review application

Email subject line: **OAIC – Response Due DD Month YEAR - MR - Notice of Information
Commissioner review – Agency reference**

Our reference:

Agency/Minister reference:

FOI Contact Officer

Agency/Minister

By email: **[Agency/Minister]**

Copied to: **[if relevant]**

[Applicant]

Represented by: **[if relevant]**

By email: **[Applicant]**

Information Commissioner review - Notice of commencement

Dear parties,

Please find attached notice of commencement for the above referenced Information Commissioner review (IC review).

Please note, Annexure A and B of the notice also provides information about the obligations of parties during the IC review process.

Kind regards,

[Signature Block]

This email is to be used in instances where:

- the decision under review is a deemed decision
- the OAIIC has not issued a 54Z notice
- the Agency makes a subsequent decision providing access.

Subject line: OAIIC – Response due DD Month YEAR - MR - Notice of Information Commissioner review – Agency reference

//

Our reference:

Agency/Minister reference:

FOI Contact Officer

Agency/Minister

By email: [Agency/Minister]

Copied to: [if relevant]

[Applicant]

Represented by: [if relevant]

By email: [Applicant]

Information Commissioner review - Notice of commencement

Dear parties,

Please find attached notice of commencement for the above referenced Information Commissioner review (IC review).

As outlined in the notice, it appears that the Agency's/Minister's decision dated DD Month YEAR, was not made within the statutory timeframe. As such, the IC reviewable decision remains the Agency's/Minister's deemed access refusal decision of DD Month YEAR. The purported decision, taken to be a submission, cannot be considered a variation of an access refusal decision under s 55G of the FOI Act. Should the Agency/Minister decide to grant access during the IC review process, this must be made in accordance with s 55G of the FOI Act.

Please note, Annexure A and B of the notice also provides information about the obligations of parties during the IC review process.

Kind regards,

[Signature Block]



Australian Government
Office of the Australian Information Commissioner

Our reference:

Agency reference:

Director (EL2 of equivalent)

ROLE

AGENCY

By email: [Agency/Minister email]

Copied to: [if relevant]

Request for documents

Dear [Director],

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review (IC review) of a **decision / internal review** made by the [Agency/Minister] (the **Agency/Minister**) under the *Freedom of Information Act 1982 (Cth)* (the FOI Act).

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 **MRXX/XXXXX**) 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 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 by agencies and ministers in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

Heath Baker

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024

Attachment A



**Direction to
the [Agency/Minister]
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 MRXX/XXXXX, I, Heath Baker, delegate of the Information Commissioner, issue the following direction to the [Agency/Minister] (the *Agency/Minister*) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the *Agency/Minister* wish to provide full access to the documents within the scope of the request, I request that *Agency/Minister* make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Day of week, DD Month 2024.**

Revised decision – partial access

2. Should the *Agency/Minister* wish to provide partial access to the documents within the scope of the request, I request that *Agency/Minister* make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Day of week, DD Month 2024.**
3. Please also provide the following documents to the OAIC by **Day of week, DD Month 2024:**
 - 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/Minister* 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/Minister** 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 **MRXX/XXXXX**) 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/Minister** wish to refuse access, I request that the **Agency/Minister** provide the applicant and the OAIC the following by **Day of week, DD Month 2024**:
 - 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/Minister** claims are exempt and the particular provisions of the FOI Act the **Agency/Minister** is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the **Agency/Minister** 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/Minister** contends a practical refusal reason exists.
 - include clear particulars about why the **Agency/Minister** contends that the record should not be amended or annotated.
- 5. Should the **Agency/Minister** wish to refuse access, I request that the **Agency/Minister** provide the OAIC the following by **Day of week, DD Month 2024**:
 - a. Should the **Agency/Minister** wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the **Agency/Minister** 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/Minister** 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/Minister**, 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 **MRXX/XXXXX**) 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/Minister** 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 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

Attachment B



Notice to produce documents and give information

In relation to **MRXX/XXXXX**, under ss 55T of the FOI Act, I, Heath Baker, delegate of the Information Commissioner, require the **[Agency/Minister]**, to give me the following information by close of business **Day of week, DD Month 2024:**

- 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

Subject: OAIC – Response Required - MRXX/XXXXX – 55(2)(e)(ii) Direction and 55T Notice to Produce
- Due DD Month 2024

Our reference:

Agency reference:

Director (EL2 of equivalent)
ROLE
AGENCY

By email: [Agency/Minister email]

Copied to: [if relevant]

s 55(2)(e)(ii) Direction and s 55T Notice to Produce

Dear [Director],

Please find attached written direction and notice to produce, in accordance with s 55(2)(e)(ii) and s 55T of the FOI Act.

The Information Commissioner will share the submissions you provide during Information Commissioner review (IC review) with the applicant unless there are compelling reasons not to. 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 [IC Review Procedure Direction](#) which sets out the process for making such a request.

Please note a response is requested in this matter by **DD Month Year**.

If an extension of time is required to respond to the written direction and notice to produce, you 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,



Australian Government
Office of the Australian Information Commissioner

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* – ss 55(2)(e)(ii) and 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) and the attached written direction under s 55(2)(e)(ii), 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).

The purpose of the direction is to request documents and submissions pursuant to s 55(2)(e)(ii) of the FOI Act, in order to assist the Information Commissioner in progressing this IC review.

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]

For example -

On [date], the applicant amended the scope of their request to the following:

[Quote the amended request]

On [date], the Department refused the applicant's request on the basis that reasonable steps had been taken to find the document requested and the document could not be found.

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

On [date], the Office of the Australian Information Commissioner (OAIC) notified the Department that the Information Commissioner would review the Department's decision and sought information to assist the Information Commissioner to conduct the review.

On [date], the [agency or Minister] responded to the OAIC, providing a submission in relation to the searches conducted for the document requested. In relation to documents the OAIC sought that records the searches the Department undertook in processing the applicant's request, the [agency or Minister] said:

[Quote or summarise the agency/minister's submissions as appropriate]

In an IC review of an access refusal decision, the Department 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.

I am not satisfied that the Department has demonstrated that it has taken all reasonable steps to find the document and that the document cannot be found or does not exist. 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 respondent has not provided particulars about the searches that it has conducted, such as:

- *Notes kept by the individuals conducting searches*
- *Correspondence between the FOI decision maker and individuals who conducted searches*
- *Any other records of searches or recorded consideration of where to search*

Notice pursuant to ss 55V and written direction pursuant to s 55(2)(e)(ii) of the FOI Act

I am a delegate of the Information Commissioner.

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached notices to you under ss 55V(2) of the FOI Act.

Section 55V of the FOI Act provides that the Information Commissioner may require an agency or Minister to conduct further searches for a document.

The Information Commissioner may also 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 notice under ss 55V(2) and the attached written direction under s 55(2)(e)(ii), (see **Attachment A**). I am also issuing a checklist to be completed by the Department in conducting further searches (**Attachment B**). Information as to method and timeframe of compliance are contained in **Attachment A**.

Yours sincerely

[Name of delegate]

Director, Reviews
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, by **[2 weeks]**.

Notice issued by [name of delegate], [role title], Freedom of Information Branch

Signed:

[Date]

Direction to [agency or minister] under s 55(2)(e)(ii) of the *Freedom of Information Act 1982*

In relation to the procedure to be followed in [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), issue the following directions to the Department under s 55(2)(e)(ii) of the FOI Act, to do the following:

[May need to adapt the questions depending on the circumstances of the matter]

1. Complete the attached checklist (**Attachment B**), as evidence of completion of the further searches required to be conducted under s 55V above
2. Return the completed checklist to the OAIC via FOIDR@oaic.gov.au, by [2 weeks].
3. Provide submissions/further submissions as to how [agency or minister] has complied with s 24A of the FOI Act with respect to the applicant's FOI request. [If appropriate, include the following] – Please also include the [agency or minister]'s responses to the questions below:

[List the questions if appropriate]

Your obligations

I draw your attention to the following matters:

Freedom of Information Act 1982

Section 55V of the FOI Act provides that the Information Commissioner may require an agency or Minister to conduct further searches for a document.

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.

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.

In particular, the IC Review Procedure Direction requires agencies and Ministers to:

- justify any requests for the Information Commissioner to inspect documents
- justify any requests for the Information Commissioner to accept submissions in confidence
- provide a response within three weeks to the Information Commissioner's request for information, unless an extension of time has been sought and granted, and
- make a request in writing to the Information Commissioner with supporting evidence prior to the due date if an extension of time is required.

The Information Commissioner will share the submissions you provide during 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.

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 Tania Strathearn, Acting Director, Reviews, 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"/>		

Our reference:
Agency Reference:

FOI Contact Officer
Agency/Minister's Office
By email:

Dear FOI Contact Officer,

On [DD MM YYYY], the applicant lodged an IC review application of a deemed decision by the agency. On [DD MM YYYY], the OAIC issued a Notice of IC review application and a Direction to produce documents (see attached).

On [DD MM YYYY], the Agency made a substantive decision.

The applicant wishes to proceed with the IC review because [they contest the exemptions as per the attached email and/or they contend there are additional documents / or they dispute the practical refusal].

The IC review process will consider the Agency's reasons for refusing access.

Request for information

[If applicant contests exemptions] As per the attached Direction, the OAIC requires the agency to produce documents relating to the access refusal.

[If applicant contests searches] [Annexure A.2](#) of the Guidelines issued under s 93A of the FOI Act sets out the information that the Respondent must provide to the OAIC. Please provide the information outlined in paragraph 10.100 of the Guidelines that relate to s 24A of the FOI Act.

[If applicant contests a practical refusal] Paragraph [Part 3](#) of the Guidelines issued under s 93A of the FOI Act sets out the information that the Respondent must provide to the OAIC. In relation to decisions made to refuse an applicant's request under s 24, on the basis that a practical refusal reason exists in relation to the documents, the Respondent must provide the following:

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- Copies of any correspondence including file notes of telephone conversations relating to the Respondent's request consultation process, including a copy of; the letter sent to the applicant, and the applicant's response (if any).
- Records that demonstrate the number of documents and/or pages encompassed by the request, including but not limited to notes of any searches conducted, and consultations with relevant staff members
- An estimation of the number of hours processing time involved, and a breakdown of this time to demonstrate what this is based on.

- Evidence of document sampling, if undertaken. If no sampling was undertaken, submissions addressing why a sample of the documents requested was not examined.¹
- The names and contact details of anyone who was consulted by the Respondent, formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies)
- Submissions in support of the Respondent's decision, in particular why the Respondent considers that processing the request would involve both a substantial and unreasonable diversion of resources². Completion of the form set out at Attachment A will be taken as submissions in support of the practical refusal reason.

You are required to provide this information by [3 weeks].

Yours sincerely,

Name

Intake and Early Resolution Team
Freedom of Information Branch
Office of the Australian Information Commissioner

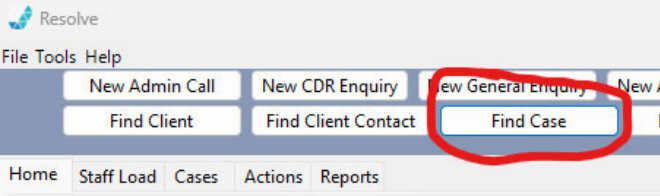
[Enclosed: IC review application and decision under review].

Request for information

You are required to provide this information by 22 May 2024.

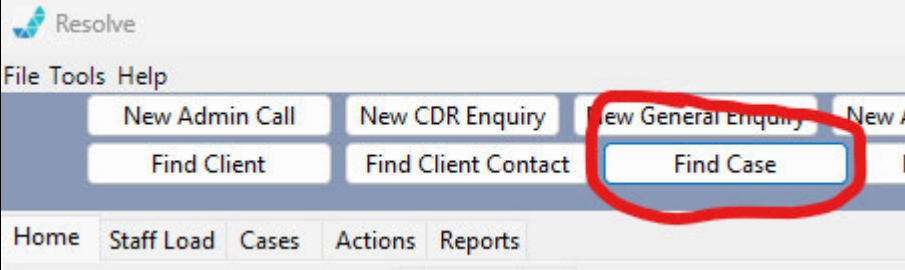
Kind Regards,

Access Grant: Where a third party has sought IC review because they intend to .

Step	Instructions
1	<p>Check resolve for any other IC reviews/requests with the same Agency reference number. This step will also confirm whether any EOT's were made in relation to the request.</p>  <p>If there are other files in relation to the agency reference number (i.e. EOT files, complaints or duplicate IC reviews) Xref to the new resolve file.</p> <p>If there is already an IC review file (eg. MRXX/XXXXX), do not continue with step 2. Confirm whether the file is a duplicate, and close using relevant template:</p> <ol style="list-style-type: none"> 1. App made to IC review applications (i.e. submitted two smartforms, or submitted 1 smartform and 1 email) <ol style="list-style-type: none"> a. The applicant is provided with one week to response. Move matter to Triage Queue while waiting for a response. 2. Duplicate file erroneously registered by the OAIC <p>If the matter is not a duplicate – Go to Step 2.</p>
2	<p>Check validity of application for IC review. Do we have:</p> <ol style="list-style-type: none"> 1. Decision letter by Agency/Department; and 2. An address to send communication to A. <p>Yes? Go to step 3. No? Send RFI to A requesting required information. Allow 1 week for A to respond. If no response, close as s 54N invalid and notify A. Procedure ends here.</p>
3	<p>If the applicant is seeking review of a decision which was issued over 30 days ago? Yes? Go to step 4. No? Go to step 7.</p>
4	<p>Send 54T Invitations – Access Grant Matters to A. Allow 1 week for a response. Add Assessor Note: Substantive Decision Add next action note “54T due” Add next action date: 1 week from issue of email Go to step 5.</p>
5	<p>54T application received by due date? No – Close matter as invalid under s 54N. Procedure ends here. Yes – Go to step 6.</p>
6	<p>Make decision on 54T (See ‘How To – 54T Grant or Refusal’ for more detail) application:</p> <p>Grant 54T – Create EOT (IC request file) record in Resolve. Write 54T Grant decision letter and issue to applicant. Notify applicant of Grant EOT. Go to step 7.</p>

	<p>OR//</p> <p>Decline 54T - Create EOT record in Resolve. Write 54T Decline decision letter and issue to applicant. Notify applicant of Decline EOT. Close IC review as invalid. Procedure ends here.</p>
7	<p>Send email to Respondent requesting FOI Applicant details. Template here > Access Grant Matter Rego - Request for FOIA details to R.docx. Allow 1 week to respond.</p> <p>Assessor Note: Access Grant Next Action: FOIA details due Next Action Date: 1 week</p> <p>Go to step 8.</p>
8	<p>Once details have been received, send access grant review notification email to FOI applicant. Template here: Access Grant review notification to FOI applicant.docx</p> <p>Go to step 9.</p>
9	<p>Prepare Resolve file to progress:</p> <ul style="list-style-type: none"> • Add Assessor note: [CAT] ss [insert relevant sections of the act] • Add Next action note: Access Grant • Add Next Action date: todays date (this marks when matter joined the Assessments queue) • Make sure Agency decision has been added. • Complete action flow until "All assessment info available" • Move matter to IC Reviews – Assessments Queue

TRIAGE PROCESS - ACCESS REFUSALS

Step	Instructions
1	<p>Check resolve for any other IC reviews/requests with the same Agency reference number. This step will also confirm whether any EOT's were made in relation to the request.</p>  <p>If there are other files in relation to the agency reference number (i.e. EOT files, complaints or duplicate IC reviews) Xref to the new resolve file.</p> <p>If there is already an IC review file (eg. MRXX/XXXXX), do not continue with these next steps. Confirm whether the file is a duplicate, and close using relevant template:</p> <ol style="list-style-type: none"> 1. <u>App made to IC review applications (i.e. submitted two smartforms, or submitted 1 smartform and 1 email)</u> <ol style="list-style-type: none"> a. The applicant is provided with one week to response. Move matter to Triage Queue while waiting for a response. 2. <u>Duplicate file erroneously registered by the OAIC</u> <p>If there are no duplicate IC reviews, go to step 2.</p>
2	<p>Check Freedom of Information (FOI) request date.</p> <p>(Refer to IC review application and/or copy of applicant's original FOI request to Agency)</p> <ul style="list-style-type: none"> ○ Make a note of FOI request date in 'Summary' field DD Month Year – FOI request date <p>NOTE:</p> <p>Agencies have 30 days from the date of the FOI request to provide a response unless the timeframe has been extended by a mechanism within the FOI Act. Applicants have 60 days from an access refusal decision to apply for IC review.</p> <p>Go to step 3.</p>
3	<p>Has the IC review applicant sought review (IC review application received date) within 60 days of the <u>FOI decision</u> date?</p> <ul style="list-style-type: none"> • Yes: <ul style="list-style-type: none"> ○ IC review application is valid. ○ Make a note of IC review application received date in 'Summary' field

	<ul style="list-style-type: none"> ○ Go to Step 4 • No: <ul style="list-style-type: none"> • If the applicant has not received a decision from the Agency at all, stop process here. Refer to 'Deemed Access Refusals – Triage Process Guide' instead. • If the applicant has included a request for a s 54T extension in their IC review application, see 'How To – 54T Grant or Refusal'. • Where IC review is lodged out of time and the application does not include a s 54T extension application: <ul style="list-style-type: none"> ○ Send applicant 54T invitation, allow 1 week to respond: 54T Invitation ○ Update Next Action Note: "Invite 54T ○ Update Next Action date: [due date of 54T invitation] ○ Move to Triage Queue ○ Process will pause here until response received and 54T decision has been made. See: How To - 54T Grant of Refusal ○ Once 54T decision has been made (if granted), go to step 4
4	<p>Was the IC review application received via email?</p> <ul style="list-style-type: none"> • Yes <ul style="list-style-type: none"> ○ Send applicant IC review acknowledgement email using Acknowledgement templates for IC reviews.docx • No <ul style="list-style-type: none"> ○ If application was received through website, automatic acknowledgement would have been sent at time of submission. <p>Go to Step 5</p>
5	<p>Action the following before moving the IC review to the Assessments queue:</p> <ul style="list-style-type: none"> • Copy the summary field template Summary Field Template.docx into the 'Summary' field in Resolve. Fill in the details for the case. • Add Assessor note: ss [insert relevant sections of the act] • (as at 23/8) Leave 'Next Action' blank • Check/Add 'Agency decision' via 'Agency Decision' tab • Add appropriate 'Issue' strings. • Add Next Action date: today's date (this marks when matter joined queue) • Complete 'Action flow until 'Open Action' field has 'All assessment info available' as next step. • Move IC Review to 'FOI - IC Reviews – Assessments' queue by updating the 'Case Officer' field



June 2023

IC review case categories

IC review case categories provide an indication of the complexity and range of issues to be determined in an IC review application.

IC review case categories are used to allocate IC reviews efficiently and equitably across all teams and assist in the implementation of strategies to address the backlog in IC reviews awaiting allocation.

The table below sets out the case categories and identifies the range of issues to be determined within each category.

In relation to matters assessed as a categories [cat 4] and [cat 5.4] (most complex and voluminous), consideration may be given as to whether the application should be declined under s 54W(b) in line with part [10.88] of the FOI Guidelines. This worksheet should be read in conjunction with the conducting IC review assessments worksheet: [D2019/002542](#)

Related guidance

These documents contain further guidance about the issues to be determined in IC reviews:

Conducting an IC review: Identification of systemic and significant issues: [D2019/001898](#).

Conducting IC reviews: Assessments: [D2019/002542](#).

Category	Description	Issues
Category 0 [Cat 0]	Invalid applications	<p>Section 54N (Out of Jurisdiction)</p> <p>The IC review application does not meet the requirements of s54N (copy of decision not provided) – after a reasonable opportunity to provide one.</p> <p>The IC review application does not meet the requirements of s 54S and a s54T extension of time has been declined/or not been made following an invitation to make one (IC review application is out of time)</p> <p>The IC review application is intended for a state jurisdiction.</p> <p>Misdirected (Not FOI related)</p> <p>Misdirected (FOI request not yet made)</p> <p>No IC reviewable decision (e.g., in circumstances where an agency has issued a Practical refusal consultation notice)</p>

Category	Description	Issues
Category 0.5 [Cat 0.5]	Deemed access refusal	Access refusal reason: s15AC (decision not made on request within time) – deemed refusal.
Category 1 [Cat 1]	Less complex May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: charges Access refusal reason: searches (sole issue) Access refusal reason: material irrelevant to FOI request (s 22 only) Access refusal reason: exception to FOI Act (s 7 only) Access refusal reason: s 4 Access refusal reason: s 20 Access refusal reason: s 21
Category 2 [Cat 2]	Less complex May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: practical refusal Access refusal reason: searches and s 12 Access refusal reason: searches and s 17 Access refusal reason: s 25 Access refusal reason: single non-conditional exemption (may include s 22) (33, 34, 37, 38, 42, 45, 46, 47) Access refusal reason: searches and single non-conditional exemption (may include s 22) (ss 33, 34, 37, 38, 42, 45, 46, 47) Access refusal reason: single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J) Access refusal reason: searches and single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J)
Category 3 [Cat 3]	Complex May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: various exemptions (more than one) involving a small number (<50) of documents OR < 200 pages of exempt material Access refusal reason: searches and various exemptions (more than one) involving a small number (<50) documents OR < 200 pages of exempt material May involve third party issues
Category 4 [Cat 4]	Most complex and voluminous May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: amendment Access refusal reason: various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material Access refusal reason: searches and various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material May involve third party issues
Category 5 [Cat 5]	IC reviews with systemic and significant issues More likely to be resolved by way of s 55K decision	IC reviews with the following significant and systemic issues: - Access grant decisions - IC review applicant is a Parliamentarian - IC review applications relating to Ministers (Respondents or subject matter).

Category	Description	Issues
		<ul style="list-style-type: none"> - Access refusal reason includes following exemptions (4, 25, 33, 34, 46, 47B, 47D, 47H, 47J) - Request relates to official documents of a minister, senior officials' diaries, electronic communications, incoming government briefs - Requests relates to ongoing public debate or highly publicised investigations - Exemptions relate to waiver of privilege - Whether novel issues raised or whether it can be a lead case to address systemic issues - Request relates to PID complaint
Category 5.1	Category 5.1	Significant and systemic issues identified above and:
[Cat 5.1]	[Cat 5.1]	Access refusal reason: charges
		Access refusal reason: searches (sole issue)
		Access refusal reason: material irrelevant to FOI request (s 22 only)
		Access refusal reason: exception to FOI Act (s 7 only)
		Access refusal reason: s 4
		Access refusal reason: s 20
		Access refusal reason: s 21
Category 5.2	Category 5.2	Significant and systemic issues identified above and:
[Cat 5.2]	[Cat 5.2]	Access grant decisions
		Access refusal reason: practical refusal
		Access refusal reason: searches and s 12
		Access refusal reason: searches and s 17
		Access refusal reason: s 25
		Access refusal reason: single non-conditional exemption (may include s 22) (33, 34, 37, 38, 42, 45, 46, 47)
		Access refusal reason: searches and single non-conditional exemption (may include s 22) (33, 34, 37, 38, 42, 45, 46, 47)
		Access refusal reason: single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J)
		Access refusal reason: searches and single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J)
Category 5.3	Category 5.3	Significant and systemic issues identified above and:
[Cat 5.3]	[Cat 5.3]	Access refusal reason: various exemptions (more than one) involving a small number (<50) of documents OR < 200 pages of exempt material
		Access refusal reason: searches and various exemptions (more than one) involving a small number (<50) documents OR < 200 pages of exempt material
		May involve third party issues

Category	Description	Issues
Category 5.4		Significant and systemic issues identified above and:
[Cat 5.4]		Access refusal reason: amendment
		Access refusal reason: various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material
		Access refusal reason: searches and various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material
		May involve third party issues



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

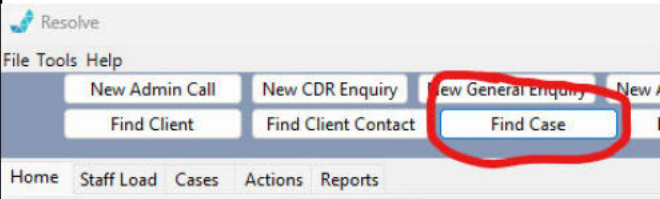
Step	Action
Step 1	<p>Review the documents relevant to the IC review including the:</p> <ul style="list-style-type: none"> • IC review application • The decision letter • Any attached correspondence from the applicant or respondent <p>Does the IC review relate to an IC reviewable decision as outlined 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>

Triage Workflows – Deemed Access Refusals

Step	Instructions
1	<p>Cross reference the agency reference number in the “Find Case” tab within Resolve to determine if any other reviews or requests relate or exist.</p>  <p>If there is already an existing Information Commissioner (IC) review with a matching agency reference number, review the matter to ensure the details of the applicant and respondent match also. If they do, check that the matter is not a duplicate request.</p> <p>If it appears to be a duplicate go to step 2.</p> <p>If it is not a duplicate matter go to step 3.</p>
2	<p>If the matter appears to be a duplicate matter (matching agency reference numbers, identical FOI requests and requests for review email to OAIC):</p> <p>If the duplicate matter has been registered due to OAIC admin error, and the FOI applicant is not aware of the duplicate registration - Email Catherine Walsh with a CC to your Director to have the Resolve file created in error deleted.</p> <p>In all other circumstances, send the relevant duplicate template email to the applicant and prepare matter for closure.</p> <ul style="list-style-type: none"> ➤ App applies for IC review twice.docx ➤ Duplicate file erroneously registered by OAIC.docx <p>Move matter to Triage Queue Next Action Note: “Duplicate of MRXX/XXXXX” Next Action date: Due date of response to duplicate email (if relevant)</p> <p>Procedure Ends here.</p>
3	<p>Is the IC review valid?</p> <p>The validity requirements for IC reviews are set out in s 54N of the FOI Act.</p> <p>The FOI applicant will need to include the following details to complete a valid IC review registration:</p> <ul style="list-style-type: none"> ➤ Their address (generally email); and

	<ul style="list-style-type: none"> ➤ A copy of their original FOI request to the Commonwealth Department/Agency; or ➤ The date of lodgement of their FOI request to the Commonwealth Department/Agency <p>Applicant representatives will also need to include a signed third-party authority form from the applicant for an IC review to be valid. If they have not included this, please send the representative the below OAIC authority template once registration is complete.</p> <ul style="list-style-type: none"> ➤ OAIC Privacy and Authority Consent Form - Feb 2024.pdf ➤ RFI for Authority email.docx <p>Note:</p> <ul style="list-style-type: none"> • The Decision for review must be an IC reviewable decision as prescribed in s 54L and 54M of the FOI Act. • The Agency must be a Commonwealth Agency to be valid. State based Agency's or private/commercial entities are out of jurisdiction for the OAIC. • The Commonwealth Agency must not be an exempt Agency. Exempt Agencies are provided in Schedule 2, Part 1, Division 1 of the FOI Act. <p>You may need to update the Summary field and/or the Agency Decisions/issues tab if you have determined an IC review application is invalid.</p> <p>Go to Step 4</p>
4	<p>Has the IC review application been lodged in time?</p> <p>Time limits for applying for IC review are set out in s 54S of the FOI Act.</p> <p>For Deemed Access Refusal Decisions s54S(1) applies, which allows an applicant 60 days after the day the Deemed Access Refusal occurred.</p> <p>You may need to update the Summary field and/or the Agency Decisions/issues tab if you have determined an IC review application is invalid.</p> <p>Note: Under s 54T of the FOI Act, the OAIC is able to grant extensions of time for applicants to seek IC review.</p>

	Go to Step 5
6	<p>Move to the “Open Actions” tab located at the bottom right-hand corner of the matter.</p> <p>Work through the action items as prompted:</p> <ol style="list-style-type: none"> 1. Record case details and attach docs 2. Allocate to Triage Officer 3. Send Acknowledgement (See Note below) <p>Note: Acknowledgements</p> <p>For Web Case IC reviews, an automatic acknowledgement will have already been sent to the applicant upon submitting the Web Case. Therefore, there is no need to send the applicant the acknowledgement template via email.</p> <p>For registrations that have been received by the FOIDR inbox, please send the acknowledgement template for deemed refusals, below. Ensure a copy of the sent email is uploaded to the Resolve file documents.</p> <p>➤ Acknowledgement templates for IC reviews.docx</p> <p>Please note, if a Request for Information (RFI) is required to be sent to the applicant upon registration, this email can be altered to include a brief acknowledgement of registration instead of sending two separate emails.</p> <p>Go to step 7</p>
7	<p>Continue working through action flow as prompted:</p> <ol style="list-style-type: none"> 4. Generic application info complete 5. Application valid (See Note below) 6. Deemed refused under ss 15AC(3) – select “Preliminary Inquiry Required” <p>Note: Application Valid</p> <p>For deemed refusal decisions that have been submitted out of the statutory timeframe for seeking review, continue to register the application as valid.</p> <p>Go to Step 8</p>
8	Continue working through action flow as prompted:

7. Send PI to Respondent (See Note below)

Note: Send PIs to Respondent

- Send the [preliminary inquiries](#) template to the respondent email address using the below template:
- [PIs to R.docx](#) + attach a copy of the original FOI request or the OAIC registration form.
- Then in the “Next Action” tab of the matter type “PIs due” then in the “Next Action Due Date” set the date for 7 days’ time.

Note: Please double check the Respondent details match the original FOI request email the applicant has sent to the Respondent to ensure they are the same.

Other things to note:

If you are awaiting any other information from the applicant, please include a note in the “Next Action” section on Resolve. See [Naming Conventions](#).

Example:

Next Action:	PIs due; RFI to A due
Next Action Due Date:	27-Feb-2024 ▼

For out of time applications – Go to **Step 9**

For all other applications – Go to **Step 10**

9

Out of time applications:

Determine whether it is appropriate to grant an s 54T extension:

If applicant has not received any purported decision following the deemed refusal, they may be unaware of their review rights and the timeframes under s 54S to apply for IC review.

- If the review has been lodged within a reasonable period of time from lodgement of their FOI request (generally 120 days from lodgement of an FOI request, or 90 days from a deemed refusal decision would be considered reasonable to apply for IC review)
- Or the applicant has provided a reasonable explanation for why they were unable or unaware to lodge their IC review application in time

- And, it is not evident on the face of the IC review application that a closure reason under s 54W would apply if the review was commenced (e.g. frivolous or lacking in substance)

It may be appropriate to consider it is implied the applicant is seeking extension under s 54T by virtue of their application for IC Review.

Where the IC review would attract a closure reason under s 54W if commenced, or the reasons for a protracted delay in lodgement of the IC review application are insufficient to justify the delay, it may be inappropriate for a s 54T to be granted in any event and the IC review should be closed as invalid on the basis it has been lodged outside of the timeframe prescribed in s 54S. Speak to your EL1 for assistance if required.

If you have determined it is appropriate to grant an implied s 54T, proceed with the instructions below.

Granting an implied 54T

Once full registration is completed, select “IC Requests” in the top right-hand section of the matter. Then select “New IC Request” to create an extension of time for the applicant.

Complete the following fields:

1. Request type: “Extension of Time”
2. Request form: “Individual/Organisation”
3. Sub Type: “s54T”
4. Case Officer: “your name”
5. Requestor Details: this should automatically be inputted
6. How received: “Website”
7. Agency reference number
8. Agency request received: the date FOI was received by the agency
9. Original Decision date: the original date that the decision was due to the applicant
10. Extension Date: Determine how many days between the IC review received date and the last day to seek IC review
11. Days extended: how many days the extension was granted
12. Request Decision: “Granted”
13. Note: “Granted”
14. Summary field: “Deemed Decision – s 54T extension application is implied in IC review. Granted.”
15. Once complete click ‘Save’ and then ‘Close ‘Case’

Triage Workflows – Deemed Access Refusals

10	<p>Once the above steps have been completed, draw your attention to the “Case Officer” field located in the top Details banner within the matter in Resolve.</p> <p>If the Respondent is DHA assign to: “FOI – IC Reviews – DHA Deemed” queue.</p> <p>For all other respondents assign to: “FOI – IC Reviews – Deemed” queue.</p> <p>End Triage Process</p>
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Deemed Queue Process

Table 1: Deemed Queue Process

Step	Description
1	<p>Matter is allocated to Deemed Queue (Deemed or s 22 Deemed Queues).</p> <p>The criteria for a matter moving to this queue is:</p> <ul style="list-style-type: none"> • There has been a deemed refusal decision, or based on current information it appears a deemed refusal decision has occurred. • The applicant has not received any decision on their FOI request (whether In jurisdiction or out of jurisdiction). <p>Check if preliminary inquiries issued?</p> <ul style="list-style-type: none"> - Yes. Go to Step 4 - No. Go to Step 2
2	<p>Preliminary inquiries may not be required if we have sufficient information to confirm the matter has been deemed to be refused, e.g:</p> <ul style="list-style-type: none"> - Xrefs checked and an extension of time application confirms the due date of the request has now passed - The applicant has provided correspondence from the respondent that confirms the matter has deemed <p>Preliminary inquiries required?</p> <ul style="list-style-type: none"> - Yes. Go to Step 3 - No. Go to Step 7
3	<p>Issue Preliminary Inquiries using the template email located in s 47E(d)</p> <p>[REDACTED]</p> <p>Go to Step 4</p>
4	<p>Preliminary Inquiries response received by due date?</p> <p>Yes – Go to Step 5 No – Go to Step 7</p>
5	<p>Respondent has confirmed matter is Deemed?</p> <p>Yes – Go to Step 7 No – Go to Step 6</p>
6	<p>Consider the reasons for the respondent advising the request is not deemed.</p> <p>If there is sufficient information to determine the request was not deemed at the time of the IC review application (for example where the processing period has been validly extended) the IC review request is invalid as no IC reviewable decision has yet occurred. Use Email template located in s 47E(d)</p> <p>[REDACTED]</p> <p>If you are unsure whether the Respondent’s views are accurate, discuss the matter with your EL1/2 during your weekly queue discussion meeting.</p>

	<p>If you continue to consider the request is Deemed to be refused despite the respondent's views, go to Step 7.</p>
7	<p>Draft 54Z/55T notice and direction letter.</p> <p>See the instructions saved in s 47E(d)</p> <p>Once EL2 cleared and signed, issue the notice to the respondent.</p> <p>Go to Step 8</p>
8	<p>54Z/55T response received by due date?</p> <p>Yes – Go to Step 11 No – go to Step 9</p>
9	<p>Respondent has sought an extension of time?</p> <p>Yes – Go to Step 10 No – Go to Table 2: Deemed Queue Escalation Process</p>
10	<p>Consider the following factors:</p> <ul style="list-style-type: none"> - What is the explanation for the additional time required? - How long is the extension for? - When was the original FOI request lodged? - Has the respondent provided any evidence of recent contact with the applicant regarding the delay and their response? <p>Is it reasonable to grant the extension requested?</p> <ul style="list-style-type: none"> - Yes – Grant a short extension of up to 2 weeks - Insufficient information provided to determine – Request further information from the respondent regarding the extension requested. - No – Go to Table 2: Deemed Queue Escalation Process
11	<p>Revised or substantive decision issued?</p> <p>Yes – Go to Step 13 No – Go to Step 12</p>
12	<p>Submissions provided?</p> <p>Yes – Go to Step 13 No – Respondent has not complied with the 54Z/55T notice. Go to Table 2: Deemed Queue Escalation Process</p>
13	<p>Ask the Applicant if they wish to proceed.</p> <p>If the Agency has provided non-confidential submissions, share these with the applicant when issuing the proceed. If you are unsure if the submissions are confidential, ask the respondent agency before sharing the submissions with the applicant.</p> <p>See the following resources saved in s 47E(d)</p>

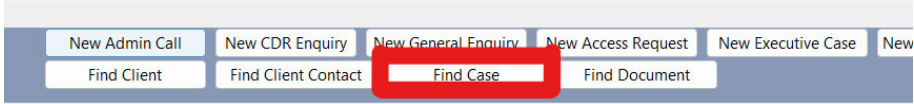
	<ul style="list-style-type: none"> - Instructions – Drafting proceed emails - Proceed email template (Deemed Queue) <p>Go to Step 14</p>
14	<p>Response to proceed email received?</p> <p>Yes – Go to Step 15 No – Go to Step 18</p>
15	<p>Applicant withdraws IC review?</p> <p>Yes – Close the IC review as withdrawn No – Go to Step 16</p>
16	<p>Applicant wishes to proceed?</p> <p>Yes – Go to Step 17 No/Unclear – Issue a further proceed email seeking clarification or further information. Return to Step 14</p>
17	<p>Action the following before moving the IC review to the Assessments queue:</p> <ul style="list-style-type: none"> • Copy the summary field template Summary Field Template.docx into the ‘Summary’ field in Resolve. Fill in the details for the case. • Add Assessor note: [CAT] ss [insert relevant sections of the act] • Add Next action note: [NOW] Assess for 54Z • Check/Add ‘Agency decision’ via ‘Agency Decision’ tab • Add appropriate ‘Issue’ strings. • Add Next Action date: todays date (this marks when matter joined queue) • Complete ‘Action flow until ‘Open Action’ field has ‘All assessment info available’ as next step. • Move IC Review to ‘FOI - IC Reviews – Assessments’ queue by updating the ‘Case Officer’ field
18	<p>Applicant has not responded to the proceed email by the due date.</p> <p>Matter is closed under s 54W(c), see:</p> <ul style="list-style-type: none"> ➤ Instructions - Drafting s54W(c) Decisions.docx ➤ 54W(c) - Decision not to continue to undertake or continue to undertake an IC review (2.0).docx ➤ Email - Closure to both parties - 54W(c).docx

Table 2: Deemed Queue Escalation Process

Step	Description
1	<ul style="list-style-type: none"> • Draft 55R notice to Respondent for EL2 clearance using 55R letter template. • Draft Covering Email using the 55R covering email template. • Send an email to the EL2 containing the completed snapshot template. The template can be located in Attachment A of D2020/005955.

	<p>Once cleared by EL2, the notice will be sent to the FOI Assistant Commissioner for final clearance and their signature.</p> <p>Once the FOI Assistant Commissioner has cleared and signed the notice, issue the notice via email using the cleared covering email.</p> <p>Go to Step 2.</p>
2	<p>Response received by due date?</p> <p>Yes – Go to Step 6 No – go to Step 3</p>
3	<p>Respondent has sought an extension of time?</p> <p>Yes – Go to Step 4 No – Go to Go to Step 5</p>
4	<p>Consider the following factors:</p> <ul style="list-style-type: none"> - What is the explanation for the additional time required? - How long is the extension for? - When was the original FOI request lodged? - Has the respondent provided any evidence of recent contact with the applicant regarding the delay and their response? <p>Is it reasonable to grant the extension requested?</p> <ul style="list-style-type: none"> - Yes – Escalate to EL2. EL2 will escalate to the Assistant Commissioner and if appropriate will respond to grant a short extension. - Insufficient information provided to determine – Escalate to EL2 to request further information. <p>No – Go to Step 5</p>
5	<p>Discuss referral to AFP with your EL2.</p> <p>See Guidance for staff: Referring conduct to the AFP.</p> <p>Procedure ends here.</p>
6	<p>Respondent has provided a compliant response.</p> <p>Procedure ends here.</p>

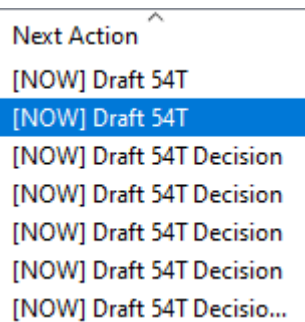
TRIAGE PROCESS – FOI Complaints

Step	Instructions
1	<p>Complete registration using guides:</p> <ol style="list-style-type: none"> 1. Registration of FOI complaint from Web Cases Queue.docx 2. Registration of FOI complaint from Inbox.docx
2	<p>Check resolve for any other IC reviews/requests with the same Agency reference number. This step will also confirm whether any EOT's were made in relation to the request.</p>  <p>If there are other files in relation to the agency reference number (i.e. EOT files, complaints or duplicate IC reviews) Xref to the new resolve file.</p>
3	<p>Is the complaint unrelated to FOI, out of jurisdiction, or relates to a State Agency?</p> <ul style="list-style-type: none"> • No <ul style="list-style-type: none"> ➤ Skip to step 4 • Yes? This will be an instant invalid closure. Follow the below steps <ul style="list-style-type: none"> ➤ Draft email using relevant template from s 70 closure folder in teams: s 70 Closures - out of jurisdiction ➤ Send closure email to C ➤ Update resolve file <ul style="list-style-type: none"> ▪ ██████ INSERT STEPS ➤ Close Resolve file <ul style="list-style-type: none"> ▪ ██████ INSERT STEPS
6	
7	
8	

Under s 54S of the FOI Act, an IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given.

Section 54T of the FOI Act allows the Information Commissioner to extend the time for making an application for IC review if the Information Commissioner is 'satisfied that it is reasonable in all the circumstances to do so'. It is therefore open to the applicant to request an extension of time to make a valid application for IC review.

When these out of time applications come through Triage will issue a 54T invitation. Once the applicant has responded, the Next Action note will be updated to "[NOW] Draft 54T":



Next Action ^

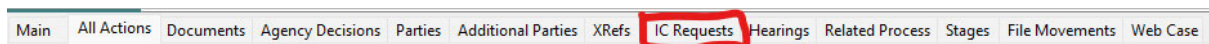
- [NOW] Draft 54T
- [NOW] Draft 54T
- [NOW] Draft 54T Decision
- [NOW] Draft 54T Decision
- [NOW] Draft 54T Decision
- [NOW] Draft 54T Decision
- [NOW] Draft 54T Decision

HOW TO PROCESS:

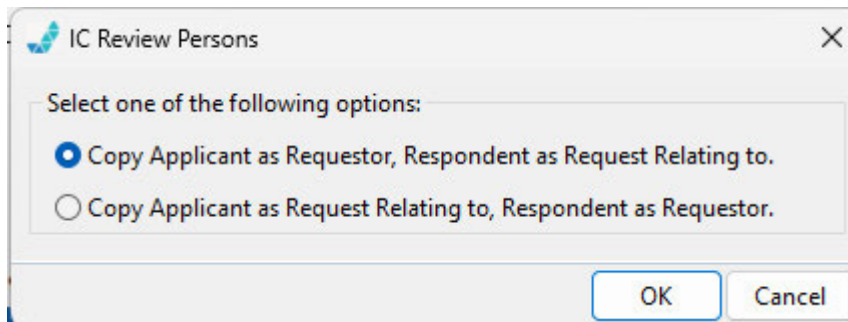
1. If a 54T invite has not already been sent to the applicant, you will need to send one and receive a response before drafting the decision. The template for the 54T Invitation is here: [54T Invitation](#). Provide 1 week to respond before you can move on to the next steps.
 - a. Remember:
 - i. Check if submissions are in original smartform application.
 - ii. Check to see if there are EOT files with the same agency reference number which may tell you the processing period to respond has been extended.
2. Read submissions from A and decide if it's a grant or refusal. Submissions will be saved in Documents as "54T Response from A", or if this not there, they will be included in the original application form. Relevant considerations as to whether a s 54T should be granted include:
 - a. the length of the requested s 54T extension
 - b. Whether the applicant has provided a reasonable explanation for the delay
 - c. Whether the applicant has rested on their rights and allowed the decision maker to believe they would not seek review due to time passed
 - d. Whether the respondent would suffer prejudice as a result of the extension
 - e. The merits of the IC review application (in particular, would a s 54W closure reason apply if we commenced review)
 - f. Whether it is fair and equitable in the circumstances to extend the timeframe.
3. At this stage, action flow should be up to 'Respondent's View Appropriate', as below:

Action	Due Date	Outcome
<input checked="" type="checkbox"/> Record case details and attach docs (MR I&T)	25-Aug-2023	
<input checked="" type="checkbox"/> Allocate to Triage Officer (MR I&T)	28-Aug-2023	
<input checked="" type="checkbox"/> Send Acknowledgement Letter (MR I&T)	28-Aug-2023	
<input checked="" type="checkbox"/> Generic Application Info Complete? (MR I&T)	28-Aug-2023	Application is Complete
<input checked="" type="checkbox"/> Application Valid? (MR I&T)	28-Aug-2023	No, Out of Time
<input checked="" type="checkbox"/> Request Applicant lodge s54T Request (MR OT)	28-Aug-2023	
<input checked="" type="checkbox"/> Await s54T Request (MR OT)	14-Sep-2023	s54T Request Received
<input checked="" type="checkbox"/> Prepare and Send 54T invitation	28-Aug-2023	
<input type="checkbox"/> Respondent's View Appropriate (MR OT)	31-Aug-2023	

4. Create IC EOT Request:
 - a. Click IC Requests



5. Select New IC Request, and the following window will pop up. It will automatically be set as 'Copy Applicant as Requestor, Respondent as Request Relating to.' Select 'OK'



6. The IC Request file will open and look like this.

New IC Request - IC Request Entry

Save Undo Print Print Preview Close IC Request Search Document Content

Details

Request Type: [] Case Number: [] File Security: OFFICIAL []
 Request from: [] Case Officer: [] Destruction Status: []
 Sub Type: [] Target Date: 19-Nov-2023 [] Retention Class: []
 COVID-19 Delay: []

Title: []

Warning: There is an alert for the Request Relating To Client

Main All Actions Documents Parties XRefs File Movements

Requestor Details

[] Find Open Unknown

Request Relating to

[] Find Open Unknown

Contact: FOI Contact Officer Find Open Select

Represented By (Requestor)

[] Find Open

Represented By (Request Relating To)

[] Find Open

IC Request Details

Received Date: 9-Nov-2023 [] Agency Request Received: []
 How Received: [] Original Decision Date: []
 Registered By: [] Extension Date: []

7. Begin filling in required yellow fields on main page of IC request (applicant will already be entered – you do not need to add it again).
 - a. Case officer: you (this will already be set)
 - b. Request Type: extension of time
 - c. Request from: Individual/Organisation
 - d. Sub Type: s54T-to lodge an IC review
 - e. How Received: Email or Website (depending on how 54T request was received)
 - f. Received Date: change date to the date the 54T request was received by OAIC

New IC Request - IC Request Entry

Save Undo Print Print Preview Close IC Request Search Document Content

Details

Request Type: Extension of time [] Case Number: []
 Request from: Individual/Organisati [] Case Officer: Lynch, Claire []
 Sub Type: s54T-to lodge an IC r [] Target Date: 19-Nov-2023 []

IC Request Details

Received Date: 9-Nov-2023 []
 How Received: Email []

8. Begin filling in EOT dates and decision fields (you will need to refer back to A's submissions in main IC review file)
 - a. Agency Request Received: this is the date the original FOI request was made (or request for internal review)

- b. Original Decision Date: This will be the date of the Agency/Department’s decision (or deemed refusal decision)
- c. Extension Date: this will be the date the IC review was requested (not the 54T). Will be the date the smart form was received on the website.
- d. Request Decision: Granted
- e. Summary Window: 54T Granted

IC Request Details

Received Date: 27-Oct-2023
 How Received: Email
 Registered By: Lynch, Claire
 Agency Reference Number:

Agency Request Received: 26-Jun-2023
 Original Decision Date: 26-Jul-2023
 Extension Date: 13-Oct-2023
 Days Extended:
 Request Decision: Granted
 Note:

Summary (Press F2 for Full Screen)
 Granted

Open Actions

Action Name	Due Date

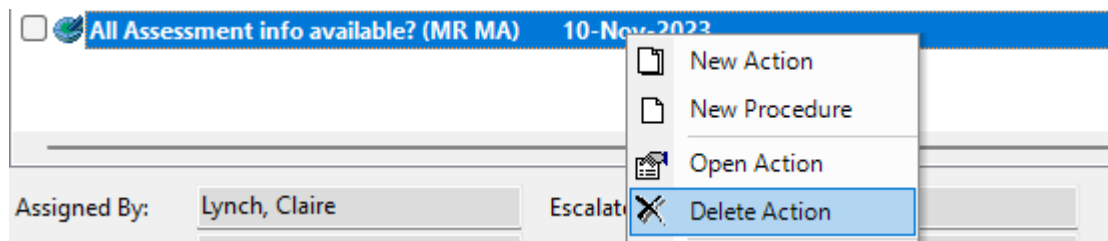
- 9. Save the IC request (Save) this will auto populate more fields
- 10. Then select ‘Close IC Request’



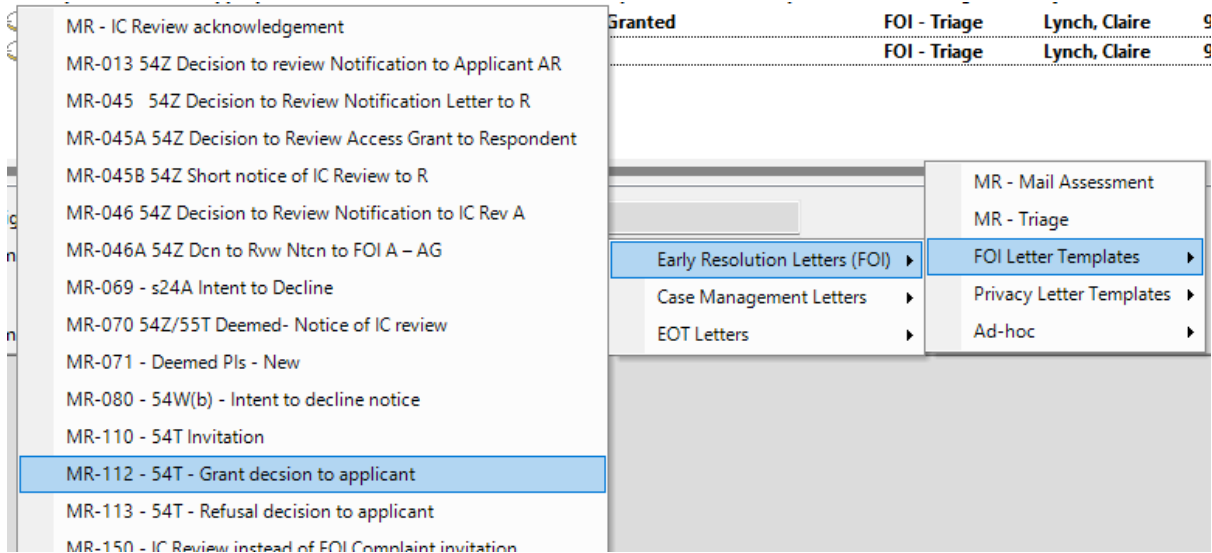
- 11. Return to original IC review MR23/XXXXX file
- 12. Complete actions up to ‘All assessment info available? (MR MA)’. Actions should reflect this:

Action	Due Date	Outcome
<input checked="" type="checkbox"/> Record case details and attach docs (M...	16-Oct-2023	
<input checked="" type="checkbox"/> Allocate to Triage Officer (MR I&T)	18-Oct-2023	
<input checked="" type="checkbox"/> Send Acknowledgement Letter (MR I&...	18-Oct-2023	
<input checked="" type="checkbox"/> Generic Application Info Complete? (M...	18-Oct-2023	Application is Complete
<input checked="" type="checkbox"/> Application Valid? (MR I&T)	18-Oct-2023	No, Out of Time
<input checked="" type="checkbox"/> Request Applicant lodge s54T Request ...	10-Nov-2023	
<input checked="" type="checkbox"/> Await s54T Request (MR OT)	29-Nov-2023	s54T Request Received
<input checked="" type="checkbox"/> Respondent's View Appropriate (MR OT)	10-Nov-2023	No Respondent's View Required
<input checked="" type="checkbox"/> Process 54T Request (MR OT)	10-Nov-2023	s54T Granted
<input checked="" type="checkbox"/> s54T Grant Notification (MR OT)	10-Nov-2023	
<input type="checkbox"/> All Assessment info available? (MR MA)	10-Nov-2023	

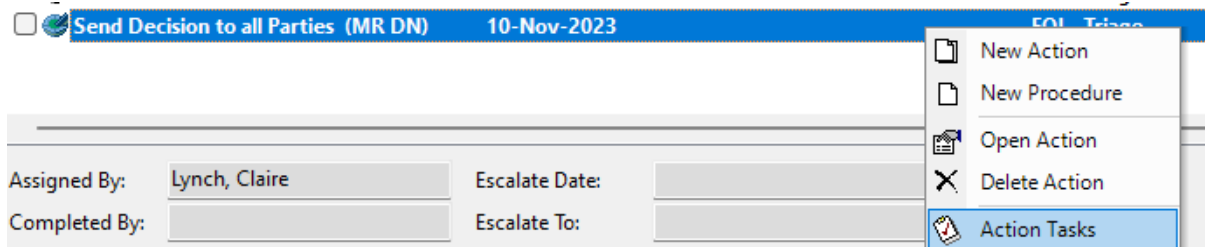
- 13. Delete final action (‘All assessment info available? (MR MA)’). Highlight action > right click > delete action.



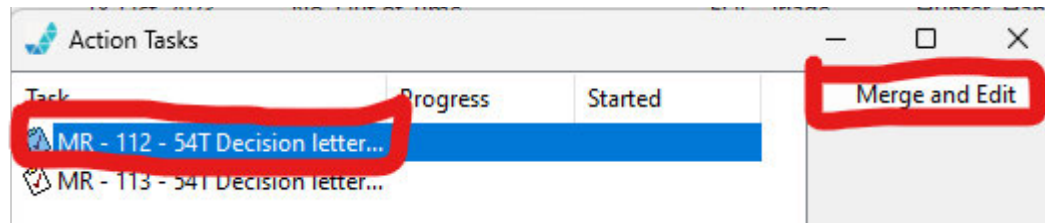
- 14. Right click > new procedure > FOI letter templates > Early resolution letters (FOI) > MR-112 – 54T – Grant decision to A



15. A new action will appear labelled 'Send Decision to all Parties (MR DN)'. Highlight action > right click > action tasks



16. An action tasks window will pop up. The grant decision letter will already be highlighted. Click 'Merge and edit'



17. A recipient's window will pop up. You de-select the respondent and only have the applicant selected. If there is a representative, only have the representative selected. Select ok:

Person	Role
²² [REDACTED]	Respondent Cli...
FOI Contact Officer	Respondent Co...
<input type="checkbox"/> [REDACTED]	Applicant Clie...
<input checked="" type="checkbox"/> [REDACTED]	Represented By ...



18. Resolve will generate letter in Word

19. You will need to amend the layout of the letter, so that the 'Background' section is before the 'Decision' section. Should look like this:

I refer to your request for an extension of time to seek Information Commissioner review (IC review) of the decision deemed to be made by the ²² [REDACTED] under the Freedom of Information Act 1982 (the FOI Act) on Yes.

An IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given (s 54S of the FOI Act).

On the basis that you have been given notice of the Department/Agency's decision on 26 June 2023, the last day for making an application for IC review of Department/Agency's decision was [Date].¹ Your IC review application was received 13 October 2023 and was consequently made outside of the time prescribed in s 54S of the FOI Act.

Background

On [date], you made a request to the Department under the FOI Act for:

FOI request.....

¹ (delete/complete as appropriate)

Under [3.141] of the FOI Guidelines, the processing period refers to calendar days, not business (working) days. If, however, the last day for notifying a decision that falls on a Saturday, Sunday or a public holiday, the timeframe will expire on the first business day following that day. As such the...

On 26 June 2023, the Department made a decision on your FOI request.

On 26 June 2023, the Department was deemed to have refused your FOI request under s 15AC of the FOI Act when it did not make a decision within the statutory processing period.

On 13 October 2023, you made an application for IC review of the Department/Agency's decision.

On [date], you were invited by the Office of the Australian Information Commissioner (the OAIC) to request an extension of time to apply for IC review of the Department/Agency's decision, and to provide reasons why you consider an extension of time should be granted.

On [date], you sought an extension of time and provided the following reasons:

Reasons....

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 54T of the FOI Act.

Section 54T of the FOI Act provides that the Information Commissioner may extend the time for making an IC review application if satisfied that it is reasonable in all the circumstances to do so.

I have considered the reasons provided in support of your request for an extension of time. In particular, I have considered...

- [Insert considerations]

In light of this, I have decided under s 54T of the FOI Act to grant your request.

Based on the information before the OAIC, I am satisfied that granting an extension of time under s 54T of the FOI Act to is reasonable in all the circumstances.

20. For reasons of decisions (where is says '[insert considerations]'), open our I&ER teams channel > files > triage queue > example 54T reasons.docx. Use whatever of these examples fits the decision you're working on
21. Under the 'Next Steps' heading, remove which ever paragraph doesn't apply. If this is IC review of a deemed decision, you will need to keep the paragraph that talks about preliminary inquiries. If it is an access refusal/access grant, you will need to keep the paragraph that talks about assessment by a senior member of the team

Next steps

You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI Team. The assessment by a senior member of the FOI team can take 8-12 weeks and sometimes longer depending on the complexity of the issues raised in the IC review.

The OAIC will conduct preliminary enquiries with the Department regarding the status of your FOI request of . We will contact you once the Department responds to advise the next steps

22. APS 5 and above can put their name on the letter [REMINDER: all letters need to be checked by Hannah or Bernie until otherwise indicated]
23. Save as a copy of the letter as a PDF on your desktop and then save and exit the letter in word. Then make sure document is checked in resolve.
24. Label document in Resolve as 'Draft 54T'
25. Create email and attach PDF from your desktop. Body of email will say:

Subject line – OAIC - MRXX/XXXX - Extension of time request under s 54T of the FOI Act

Our reference: MRXX/XXXX
Agency reference: XXXXXX

Mr/Mrs Applicants name
Represented by XXXXXX

By email:

Extension of time request under s 54T of the FOI Act

Dear XXXXX,
Thank you for your application(s) for an extension of time to apply for Information Commissioner Review (IC review) <on behalf of>.

Please find attached a decision issued under s54T of the FOI Act regarding your extension of time request.
Kind regards,

26. Send email.
27. Save copy of email to resolve
28. Label email as "54T Grant to A"

Draft 54T

OAIC - FOI DR 54T Grant to A

29. Delete all open actions in resolve
 - a. There should only be the send decisions action open from before – you can delete this otherwise it will ruin the action flo
30. Go to All Actions tab in resolve
31. Deselect the action 'Application Valid'

 Application Valid? (MR I&T) 18-Oct-2023 No, Out of Time

32. Then double click the open 'application valid' action
33. Change status to 'application is valid' and click ok

Status:

34. This will open a new action called "deemed refused under ss ..."
35. Complete the action depending on whether the matter needs to move deemed queue or assessments queue (Bernie, Georgia and Hannah hunter can assist with this if unsure)

36. Update summary window to include all possible details about request and progress of review



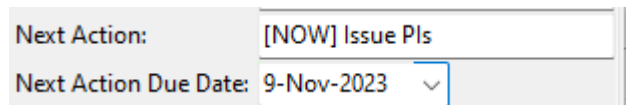
37. Change case office to move matter to correct queue

38. Update 'Next action' note, either:

- a. [NOW] issue PIs; or
- b. If moving to assessment, include exemptions that applicant is having reviewed

39. Next Action Due Date will be the date you moved the matter onto assessments or deemed.

E.g



40. Ensure Issues have been added to resolve file

Issues (To add an issue - open the Agency Decision)					
Issue	Review Reason	Comments	Outcome	Primary Issue	Decision Type
access refused - 53A(a)	s15AC - no reasons			Y	Deemed Initial

Issues (To add an issue - open the Agency Decision)					
Issue	Review Reason	Comments	Outcome	Primary Issue	Decision Type
partial access refused - 53A(...)	disclose lawful methods or pr...			Y	Internal Review
partial access refused - 53A(...)	s42 - legal professional privilege			N	Internal Review
partial access refused - 53A(...)	s47C - Deliberative process - c...			N	Internal Review

41. Save and close resolve file 54



Australian Government

Office of the Australian Information Commissioner

Registration of FOI Extension of Time applications received via Email

Office of the Australian Information Commissioner



2 May 2024

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Summary

This document has been created to provide a step by step guide to registration of Extension of Time applications under s 15AA, 15AB, 15AC, 51DA 54D received by Email.

Part 1: Check for client profile

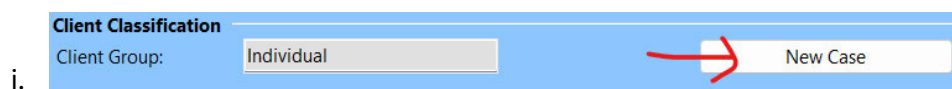
1. Open resolve main page
2. Select 'Find Client' from top bar



3. In 'Display Name' type in the Respondent Agency or Department (for most departments you can use their abbreviation i.e. 'DHA')



- a. Double click on the correct option from the list.
- b. Click 'New Case'



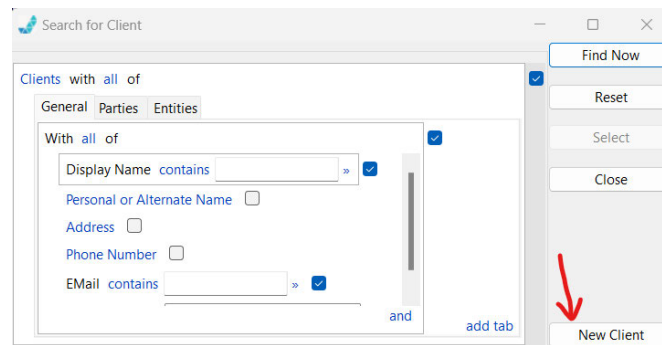
- c. Then select 'IC Request' from the pop-up box.
- i.

4. Then resolve file will generate.

Part 2: setting up Extension of Time file

5. Change Request Type to 'Extension of Time'
6. Request from to 'Agency'
7. Sub-Type - choose the option relevant to the type of extension requested. The extension request will state the type of extension required:
 - a. s 15AA
 - b. s 15 AB
 - c. s 15AC
 - d. s 51DA
 - e. s 54D
8. Add Received Date as date the email was received by the OAIC

9. Add How Received as 'Email' unless the email has been generated by a Smartform error, in which case the correct entry is 'Website'
10. The 'Requestor Details' section will already contain the Agency name but the Requestor Details 'Contact' section will be blank. Click 'Find' and a new window will appear. Use the Display Name field to search for the FOI Officer who is requesting the extension using the format 'Surname, Firstname'. Click 'Find Now' to generate search results.
11. For any search results, check the name relates to the correct Agency. If you locate a profile which matches the details of the FOI Officer, double click on the search result and the Requestor Details Contact will be updated.
12. If you are unable to locate an accurate profile for the FOI Officer, you will need to create a new profile. From the Search window, click 'New Client'.

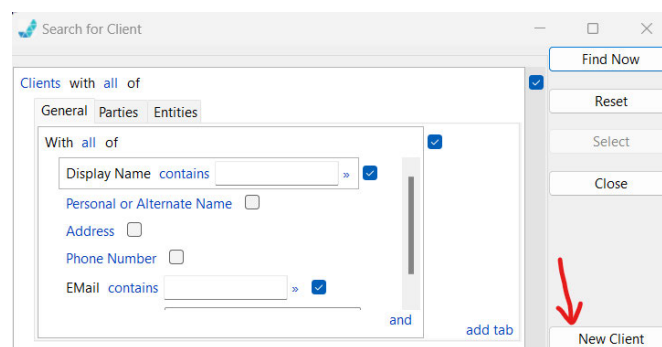


- i.
 - b. Fill in the new client profile using all the information available in the email application. We will always need the first and last name and email address. If it has been provided.
 - c. Once you have entered the details click OK. If Prompted click 'Yes' to copying the Agency contact details to the individual contact.
13. Now Add 'Request Relating to' details. This section relates to the person who has lodged the relevant FOI request to the Agency.
 - a. Select 'Find'
14. Type applicant's name into 'Display Name', using the format 'Surname, Firstname', you may need to search the first and last name separately. REMEMBER: the applicant is the person making the FOI request (or the person authorising another person to lodge an FOI request on their behalf), any representative (migration agent of legal) will be entered later.

a.

15. There will be two options. Either the applicant will already have a profile, or they will not.

- a. Applicant has a profile – Go to Step 16
 - b. Applicant does not already have a profile – Go to Step 17
16. If the **applicant has a profile** in resolve: double-click the profile and confirm the contact details for the FOI applicant from the application are the same as the contact details on the existing Resolve profile.
- a. If the details are correct, double click on the correct profile from the search results list and the details will populate.
17. If the **applicant does not already have a profile**, you will need to create one.
- a. In the same window you opened to find the client (referred to in step 15) select the ‘New Client’ option



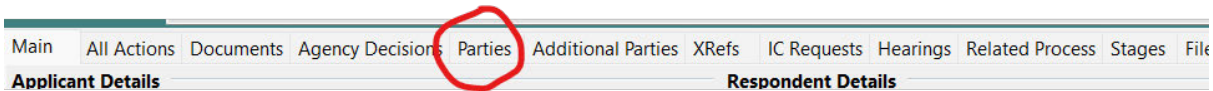
- i.
 - b. Fill in the new client profile using all the information available in the email application. We will always need the first and last name and email address. If it has been provided, then include the phone number and street address.
 - i. ‘Client Group’ will be ‘individual’ in majority of the cases, unless any of the drop-down options apply.
 - c. Once you have entered the details click OK. The details will populate in the ‘Request Relating to’ field.

18. Insert ‘Agency Reference Number’ – this will be found in the application. Either the Agency will have provided it, or it will be within the attached documents.
19. Add ‘Agency Request Received’ Date – This is the date that the Agency received the FOI request.
20. Add ‘Original Decision Date’ -this is the existing FOI due date that the Agency is seeking to be extended. The date should be stated within the extension application. If it is not provided, leave this field blank.

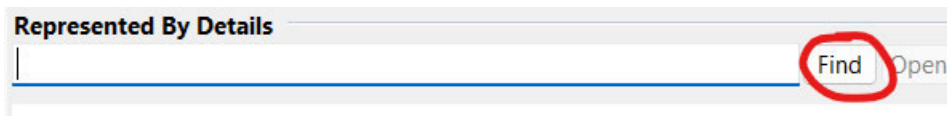
21. Add 'Extension Date' - This is the date of the requested extension.
22. Add 'Days Extended' - This is the number in days from the Original Decision Date to the Extension date e.g. 30
23. Now click 'Save' in the top-left of the file. This will generate an OAIC reference number.

Part 3: If the applicant is represented.

24. If the applicant is represented, you will need to add these details manually.
25. Click on the 'Parties' tab.

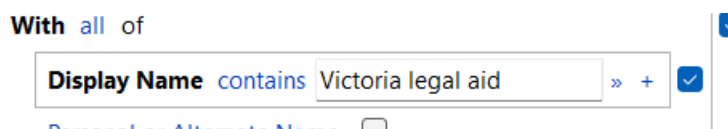



26. Under 'Represented by Details' click on 'Find'



27. Search the representative in 'Display Name' and double click on the correct resolve file listed (details have to be the same as application). Another Contact Options screen will pop up. If the representative is already listed, select them. If the representative is not listed, you will need to add a new contact at the top of the list. If there is no individual representative, only the organisation, select 'Add Contact later'.

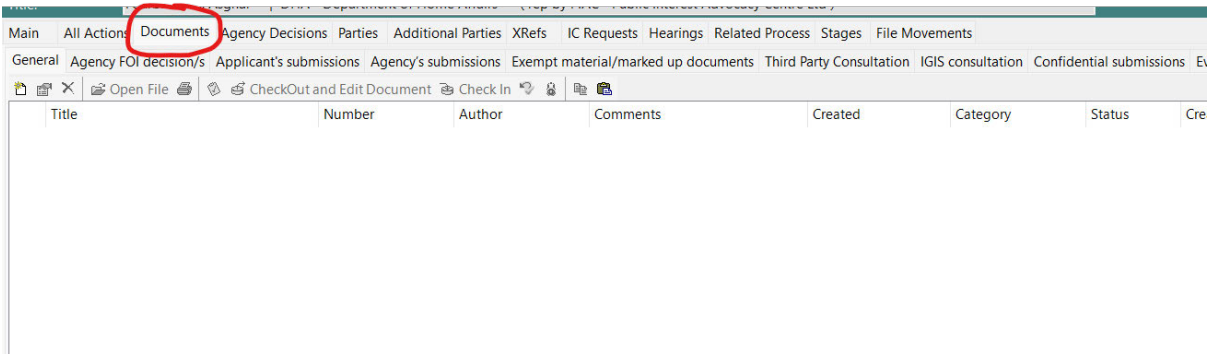
- a. NOTE: if it is an organisation, you will list the organisation as the Party, and then add the individual representative as a contact. i.e. 'Victoria Legal Aid' would be the party, and the contact would be the individual lawyer.



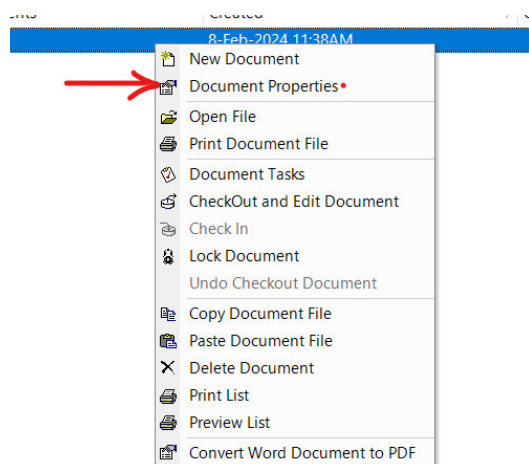
- b. [Personal or Alternate Name](#)
- c. Once you have entered the details click  Save at the top right-hand side of the profile

Part 4: add extension application documents and submissions to file.

28. To save the correspondence to file, open the Documents tab on the Resolve file.



29. Have both your outlook and your Resolve page open side-by-side
30. Drag the Extension application email into the empty white space of the 'documents' tab in the resolve file. Do not copy and paste, or the document will not save with the correct date and time stamp.
31. Now drag each individual attachment from the email into the space of the documents tab in the Resolve file.
32. Your documents will appear as a list.
33. You need to name each individual document. The most common attachments we receive are:
 - a. Extension application
 - b. Original FOI request
 - c. Dept Acknowledgement
 - d. Applicant's agreement to extension
 - e. s 24AB consultation notice
34. To rename documents, left click on each individual document. It will highlight blue, and a list of options will pop-up. Select 'Document Properties'



35. The following box will appear. In the 'Comments' section, name the document. DO NOT: change document title.
36. Press ok.
37. Repeat until all documents are labelled.

Part 5: Check for related matters

38. Copy the Agency Reference number
39. Go to the Xrefs tab.
40. Select 'New'
41. A new window will appear, Select 'Find'
42. A new window will appear, enter the Agency reference number for this field in the corresponding search field and then click 'Find Now'. You may need to attempt slight variations of the Agency reference number to find results e.g. ²² [REDACTED]
43. Review search results.

If no search results appear there are no Xrefs for this matter. Close pop-up windows and move to Part 6.

If search results appear, view the title field in the search results list to check if they relate to the same applicant/complainant and Agency. If you locate related matters, double click on the matter from the search results and then click OK to add the matter to the Xrefs page. You can delete any incorrectly added Xrefs if required. If multiple related matters appeared in the search, repeat steps b – e to add each related matter.

Part 6: move to EOT Queue

28. Change 'Case Officer' at the top of the main page in Resolve to 'FOI – EOT'
29. Click 'Save'

End Process

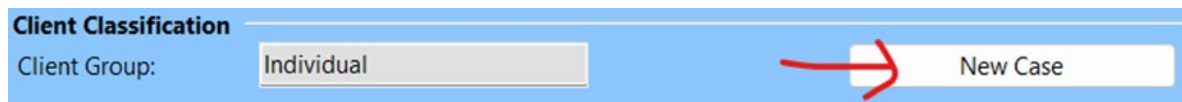
Registration of an FOI complaint – Emails, Post and Fax

1. Open email containing the FOI Complaint.
2. Open resolve main page
2. Select 'Find Client' from top bar
 - a.



3. Type applicant's name into 'Display Name', using the format 'surname, firstname', you may also need to search the first and last name separately. REMEMBER: the applicant is the person making the FOI request (or the person authorising another person to lodge an FOI request on their behalf), any representative (migration agent of legal) will be entered later.
 - a.
4. There will be two options. Either the applicant will already have a profile, or they will not.
 - a. Applicant has a profile – Go to Step 6
 - b. Applicant does not already have a profile – Go to Step 7
5. If the **applicant has a profile** in resolve: double-click the profile and confirm the contact details supplied in the email are the same as the contact details on the existing Resolve profile.
 - a. If the details are correct, you can click 'New Case'

i.



- b. Then select 'Complaint' from the pop-up box.

i.

- c. Go to step 7.
3. If the **applicant does not already have a profile**, you will need to create one.
 - a. In the same window you opened to find the client (referred to in step 2) select the 'New Client' option

i.

Search for Client

Clients with all of

General Parties Entities

With all of

Display Name contains

Personal or Alternate Name

Address

Phone Number

EMail contains

and

Find Now

Reset

Select

Close

New Client

- b. Fill in the new client profile using all the information available in the email application. We will always need the first and last name and email address. If it has been provided, then include the phone number and street address. NOTE: if the applicant is represented, sometimes we will only have their name. This is fine as long as the representative has provided contact details.

i. 'Client Group' will be 'individual' in majority of the cases, unless any of the drop-down options apply.

c. Once you have entered the details click at the top right-hand side of the profile.

d. You will now be able to click 'New Case'

i.

e. Then select 'Complaint' from the pop-up box.

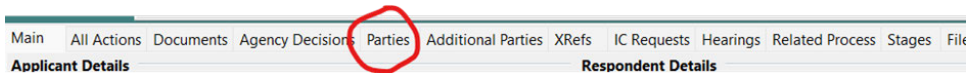
ii. Select "Yes" to proceed

4. The main Resolve Screen for the new complaint will appear. Complaints are assigned the reference CP24/XXXXX
5. Go to the Documents Tab. Drag and drop the email containing the complaint and any attachments individually to the blank Documents list. A pop-up window will appear in each instance, click OK and the document will be uploaded to the Resolve file.
6. Once uploaded, right click on each document and select 'Document properties' from the pop-up window. A pop-up window will appear. Use the comments section to label each document accordingly: e.g:
 - a. 'Complaint'

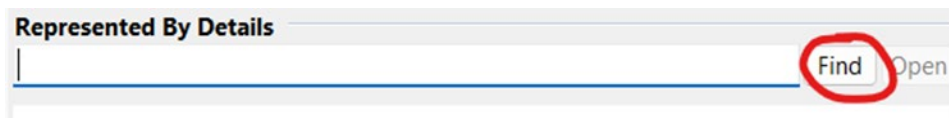
- b. 'FOI Decision'
 - c. 'Internal Review Decision'
 - d. 'FOI Acknowledgement email'
7. Read through the form to assess why the complainant has applied for IC review and determine how the file should at the following steps.

Step 2: If the complainant is represented.

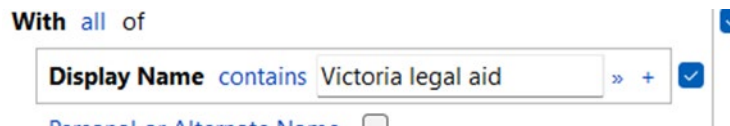
- 8. If the complainant is represented, you will need to add these details manually.
- 9. Click on the 'Parties' tab.



- 10. Under 'Represented by Details' click on 'Find'



- 11. Search the representative in 'Display Name' and double click on the correct resolve file listed in the search results (details have to be the same as application). Another Contact Options screen will pop up. If the individual representative is already listed, select them. If the representative is not listed, you will need to select 'add a new contact' from the top of the list and enter details into pop up window. If there is no individual representative, only the organisation, select 'Add Contact later' (unless there is a generic contact option i.e. admin or FOI contact officer).
 - a. NOTE: if it is an organisation, you will list the organisation as the Party, and then add the individual representative as a contact. i.e. 'Victoria Legal Aid' would be the party, and the contact would be the individual lawyer.



- b. Personal or Alternate Name
 - c. Once you have entered the details click at the top right-hand side of the profile
12. If the representative does not already have a profile, you will need to create one.
- a. Select 'New Client' option

- b. Fill in the new client profile using all the information available in the application.
- c. Once you have entered the details click at the top right-hand side of the profile.
- d. Now press 'OK' at the bottom of the client profile

e.

Step 3: setting up FOI complaint file

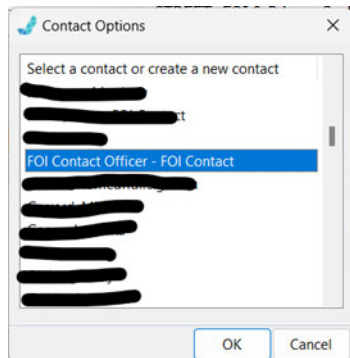
13. Change 'Method' to 'Preliminary Inquiry'
14. Change 'File Security' to 'OFFICIAL'

15. Enter 'Respondent Details' to reflect complaint application and supporting documents.
 - a. Select 'Find'

- b. In 'Display Name' type in the Respondent Agency or Department (for most departments you can use their abbreviation i.e. 'DHA')

- c. Double click on the correct option from the list.
- d. Then the resolve page will take a while to load. Once it does, a 'Contact Options' box will open. In that box, scroll down to 'FOI Contact Officer'. This contact should

already exist in majority of the Respondent files. If there is no 'FOI Contact Officer' you will need to either find the correct officer based on the documents provided in the email application, or select 'Add new Contact' from the top of the list and input FOI Contact Officer as the display name, and the email address of that agency or department's FOI branch (these details will usually be on the decision or acknowledgement provided in the application).



e.

16. On main page of screen, under Respondent Details, enter the 'Agency Reference Number'

Agency Reference Number:

. This reference number will most likely be found in the application or supporting documents.

17. Drop down to 'Complaint Details'

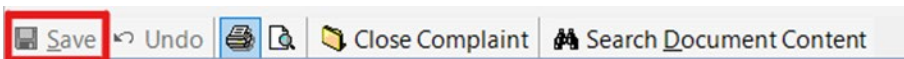
- a. 'Received Date' will be automatically set to the date they made their application.
- b. 'How Received' will be automatically set to 'Website'

18. Go to Xrefs tab. This tab is used to add any related matters as cross references to the complaint file.

- a. Copy the Agency Reference number (See step 22)
- b. Select 'New'
- c. A new window will appear, Select 'Find'
- d. A new window will appear, enter the Agency reference number for this field in the corresponding search field and then click 'Find Now'. You may need to attempt

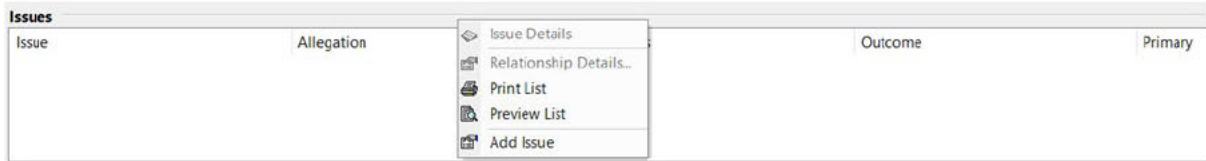
slight variations of the Agency reference number to find results e.g. 22

- e. Review search results.
 - i. If no search results appear there are no Xrefs for this matter. Close pop-up windows and move to Step 25.
 - ii. If search results appear, view the title field in the search results list to check if they relate to the same applicant/complainant and Agency. If you locate related matters, double click on the matter from the search results and then click OK to add the matter to the Xrefs page. You can delete any incorrectly added Xrefs if required. If multiple related matters appeared in the search, repeat steps b –e to add each related matter.
19. Go to ‘Agency FOI Stage’ field on main resolve page. Most, but not all complaints, relate to an FOI request lodged with an Agency. This field indicates the progress of the complainants FOI request, please select the appropriate option based on the application content.
- a. ‘No Reviewable Decision’ - Where the complaint does not relate to a specific FOI Decision.
 - b. ‘Initial Request Sent’ - Complainant has lodged an FOI request and the statutory processing period has not yet passed.
 - c. ‘Initial Decision’ - Complaint relates to an initial FOI request Decision
 - d. ‘Internal Review Sent’ Complainant has received an initial FOI Decision and has request an Internal Review, but the statutory processing period for the internal review (30 days) has not yet passed.
 - e. ‘Internal Review Decision’ - Complaint relates to an Internal Review Decision (The decision letter will note if it relates to an Internal Review).
 - f. ‘IC Review Sent’ - The Complainant has already lodged an IC Review about the FOI Decision to which the complaint relates. If the complainant has lodged an IC Review you will have located the Review during your Xrefs search at step 24.
20. Now click ‘Save’ in the top-left of the file.



Step 4: add Issue string to file.

21. This is where you add to the resolve file WHY the complainant is lodging a complaint with the OAIC.
22. On the main page, right click in the 'Issues' box at the bottom of the page.



23. Select 'Add Issue' and a new window will open.
24. You will need to enter two things here, the 'Issue Description' and the 'Allegation'. You will need to determine which options are most relevant based on the details provided in the application.
25. From the 'Issue Description' drop down box, select the relevant choice. This is the overarching category of the issue.
26. From the 'Allegation' drop down menu, select the most relevant. This is the more focused, precise issue category i.e. customer service.
27. In the comments box, copy and paste relevant parts of the complainant's application that details why they are making a complaint, or provide a brief summary.
28. Leave the Outcome Field blank - No outcome is required at this stage.
29. The issue should look like this:

22

Issue Entry

Issues

Issue Details

Issue Description: > Processing Request

Advice:

Allegation: > unsatisfactory customer service Primary Issue:

Comments

Remedy Provided

Remedy Provided

Agency officer counselled or disciplined

Change policy/procedure

Error corrected

Explanation

Financial remedy

Matter expedited

Other systemic remedy

Publish information

Reduced

Refunded

Outcome

Outcome: >

OK Cancel Apply

30.

31. Select apply and the issue will appear on the main page. Example:

Issues				
Issue	Allegation	Comments	Outcome	Primary
Processing Request	failure to acknowledge request			Y
Processing Request	processing delay	"I am yet to be provided with anything"		N
Processing Request	unsatisfactory customer service	"I have emailed the FOI team multiple t..		N

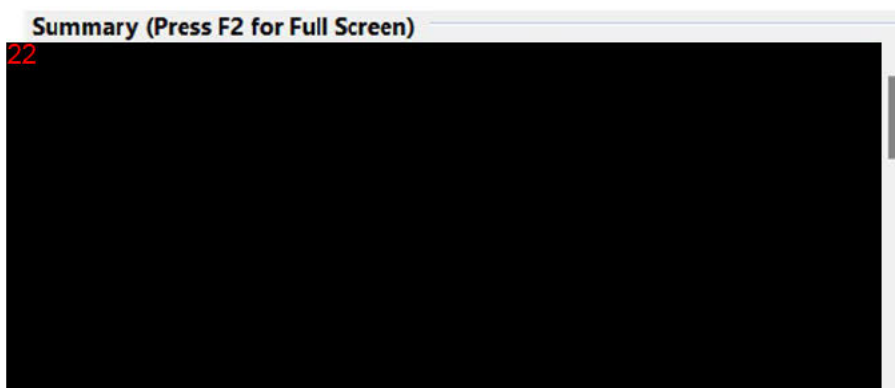
32. If there is more than one issue, repeat steps 26 to 35 for each issue.

Step 5: update summary field in Resolve.

33. The 'Summary' field needs to be updated to provide a simple overview of the Complaint. It should include"

- a. Brief overview e.g. "C lodged complaint having not received response from FOI request".
- b. Preliminary recommendation:
 - i. "Complaint more appropriately addressed through IC review, offer/ITD made to C" – If complaint relates to an FOI Decision, an IC Review is more appropriate as a complaint cannot change the FOI Decision as an outcome.
 - ii. "preliminary inquiry to C" – Complainant has not provided sufficient detail about why they are lodging a complaint
 - iii. "preliminary inquiry to R" – Complainant has provided sufficient detail about their complaint
- c. Quote main points of C's complaint e.g. "C states XXXX"

34. Example:



35. Once you have entered the details click at the top left-hand side of the profile.

Step 6: assess FOI complaint.

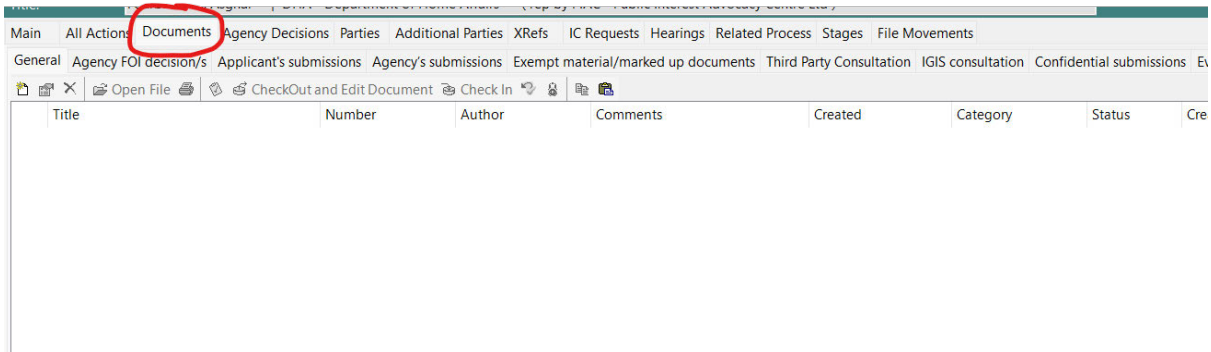
42. Now you are able to assess the complaint for validity and determine the next steps.

43. Access the FOI complaint process guide below to determine next steps:

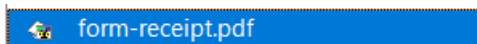
a.

Registration of an FOI complaint – FOI Web Cases Queue

1. Open 'FOI Web Cases' Queue in Resolve
2. Complaints are assigned the reference CP24/XXXXX
3. Double click file to open
4. Locate documents tab. The Application and any supporting documentation will already be uploaded to the file.



5. Open the document titled 'form-receipt.pdf'



6. Read through the form to assess why the complainant has applied for IC review and determine how the file should be set up at the following steps.


Step 1: enter client details

7. At the moment, the complaint SmartForm on the OAIC website does not auto-populate the Resolve 'Complainant Details', you will need to do this manually.
8. Using the SmartForm ('form-receipt.pdf'), identify the IC review complainant and whether they have a representative acting on their behalf for the IC review process.
 - a. NOTE: the complainant will often automatically be registered onto the Resolve file correctly, but you will need to register the representative manually.
 - b. Also, you may need to read the supporting documents to determine who the complainant is and who the representative is. Some legal and migration agencies will accidentally enter their own details into the SmartForm, and not the FOI complainant's details.
9. Return to the Main page
10. Select 'Find' from next to the complainant's Details section

- a.
11. Type complainant's name into 'Display Name' using the format 'surname, firstname', you may also need to search the first and last name separately. REMEMBER: the complainant is the person making the FOI request (or the person authorising another person to lodge an FOI request on their behalf), any representative (migration agent or legal) will be entered later.

- a.
- b. Tip: if no profiles show under complainant's name, search by email address
12. There will be two options. Either the complainant will already have a profile, or they will not.
- a. If the complainant has a profile in resolve: right-click the profile and select 'Open Client'. The client profile will open, and you can confirm the contact details supplied in the application are the same as the contact details on the existing Resolve profile.
- i. If the details are correct, close the client profile window and then double click their profile from the search list.
 - ii. This will automatically add the client profile to the resolve file, and the window will redirect you to the Resolve case main page where you can see this updated.

- b. If the complainant does not already have a profile, you will need to create one.
- i. In the same window you opened to find the client (referred to in step 9) select the 'New Client' option

- ii.
- iii. Fill in the new client profile using all the information available in the application. We will always need the first and last name and email address. If it has been provided, then include the phone number and street address. NOTE: if the complainant is represented, sometimes we will only have their name. This is fine as long as the representative has provided contact details.
- iv. 'Client Group' will be individual in majority of the cases, unless any of the drop-down options apply.
- v. Once you have entered the details click  Save at the top right-hand side of the profile.
- vi. Now press 'OK' at the bottom of the client profile

- vii.
- viii. This will automatically add the client profile to the resolve file, and the window will redirect you to the Resolve case main page where you can see this updated.

13. Then the following window will appear, and you will need to begin filling in all the details in orange based on the application submitted (See Step 3 in process).

Step 2: If the complainant is represented.

- 14. If the complainant is represented, you will need to add these details manually.
- 15. Click on the 'Parties' tab.

- 16. Under 'Represented by Details' click on 'Find'


17. Search the representative in 'Display Name' and double click on the correct resolve file listed in the search results (details have to be the same as application). Another Contact Options screen will pop up. If the individual representative is already listed, select them. If the representative is not listed, you will need to select 'add a new contact' from the top of the list and enter details into pop up window. If there is no individual representative, only the organisation, select 'Add Contact later' (unless there is a generic contact option i.e. admin or FOI contact officer).

- a. NOTE: if it is an organisation, you will list the organisation as the Party, and then add the individual representative as a contact. i.e. 'Victoria Legal Aid' would be the party, and the contact would be the individual lawyer.

With all of

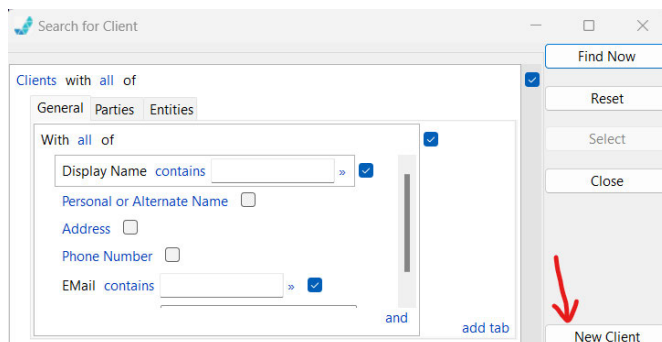
Display Name contains Victoria legal aid >> +

Personal or Alternate Name

- b.
- c. Once you have entered the details click  Save at the top right-hand side of the profile

18. If the representative does not already have a profile, you will need to create one.

- a. Select 'New Client' option



Search for Client

Clients with all of

General Parties Entities

With all of

Display Name contains >>

Personal or Alternate Name

Address

Phone Number

E-Mail contains >>

and

add tab


Find Now

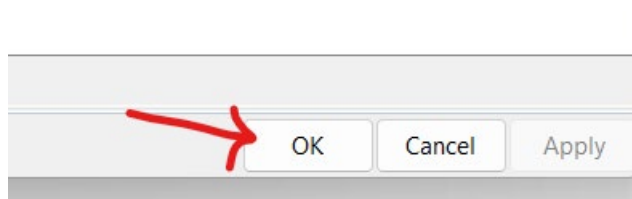
Reset

Select

Close

New Client

- b. Fill in the new client profile using all the information available in the application.
- c. Once you have entered the details click  Save at the top right-hand side of the profile.
- d. Now press 'OK' at the bottom of the client profile



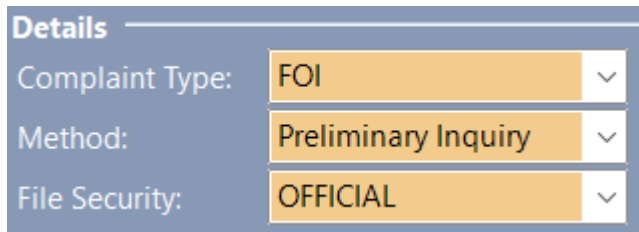
OK Cancel Apply

- e.

Step 3: setting up FOI complaint file

19. Change 'Method' to 'Preliminary Inquiry'

20. Change 'File Security' to 'OFFICIAL'



Details

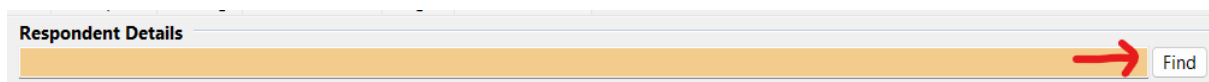
Complaint Type: **FOI** ▾

Method: **Preliminary Inquiry** ▾

File Security: **OFFICIAL** ▾


21. Enter 'Respondent Details' to reflect complaint application and supporting documents.

a. Select 'Find'



Respondent Details **Find**

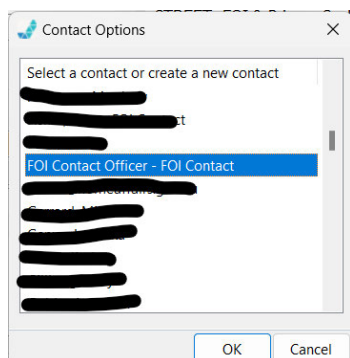
b. In 'Display Name' type in the Respondent Agency or Department (for most departments you can use their abbreviation i.e. 'DHA')



Display Name contains » +

c. Double click on the correct option from the list.

d. Then the resolve page will take a while to load. Once it does, a 'Contact Options' box will open. In that box, scroll down to 'FOI Contact Officer'. This contact should already exist in majority of the Respondent files. If there is no 'FOI Contact Officer' you will need to either find the correct officer based on the documents provided in the email application, or select 'Add new Contact' from the top of the list and input FOI Contact Officer as the display name, and the email address of that agency or department's FOI branch (these details will usually be on the decision or acknowledgement provided in the application).



Contact Options

Select a contact or create a new contact

- [Redacted]
- [Redacted]
- FOI Contact Officer - FOI Contact**
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

OK Cancel

22. On main page of screen, under Respondent Details, enter the 'Agency Reference Number'

Agency Reference Number:

. This reference number will most likely be found in the application or supporting documents.

23. Drop down to 'Complaint Details'

- a. 'Received Date' will be automatically set to the date they made their application.
- b. 'How Received' will be automatically set to 'Website'

Complaint Details

Received Date:

How Received:

Registered By:

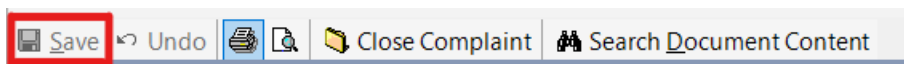
24. Go to Xrefs tab. This tab is used to add any related matters as cross references to the complaint file.

- a. Copy the Agency Reference number (See step 22)
- b. Select 'New'
- c. A new window will appear, Select 'Find'
- d. A new window will appear, enter the Agency reference number for this field in the corresponding search field and then click 'Find Now'. You may need to attempt slight variations of the Agency reference number to find results e.g. 22
- e. Review search results.
 - i. If no search results appear there are no Xrefs for this matter. Close pop-up windows and move to Step 25.
 - ii. If search results appear, view the title field in the search results list to check if they relate to the same applicant/complainant and Agency. If you locate related matters, double click on the matter from the search results and then click OK to add the matter to the Xrefs page. You can delete any incorrectly added Xrefs if required. If multiple related matters appeared in the search, repeat steps b –e to add each related matter.

25. Go to 'Agency FOI Stage' field on main resolve page. Most, but not all complaints, relate to an FOI request lodged with an Agency. This field indicates the progress of the complainants FOI request, please select the appropriate option based on the application content.

- a. 'No Reviewable Decision' - Where the complaint does not relate to a specific FOI Decision.
- b. 'Initial Request Sent' - Complainant has lodged an FOI request and the statutory processing period has not yet passed.
- c. 'Initial Decision' - Complaint relates to an initial FOI request Decision
- d. 'Internal Review Sent' Complainant has received an initial FOI Decision and has request an Internal Review, but the statutory processing period for the internal review (30 days) has not yet passed.
- e. 'Internal Review Decision' - Complaint relates to an Internal Review Decision (The decision letter will note if it relates to an Internal Review).
- f. 'IC Review Sent' - The Complainant has already lodged an IC Review about the FOI Decision to which the complaint relates. If the complainant has lodged an IC Review you will have located the Review during your Xrefs search at step 24.

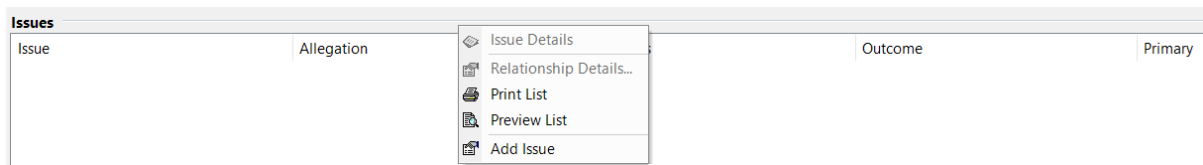
26. Now click 'Save' in the top-left of the file.



Step 4: add Issue string to file.

27. This is where you add to the resolve file WHY the complainant is lodging a complaint with the OAIC.

28. On the main page, right click in the 'Issues' box at the bottom of the page.



29. Select 'Add Issue' and a new window will open.

30. You will need to enter two things here, the 'Issue Description' and the 'Allegation'. You will need to determine which options are most relevant based on the details provided in the application.

31. From the 'Issue Description' drop down box, select the relevant choice. This is the overarching category of the issue.

32. From the 'Allegation' drop down menu, select the most relevant. This is the more focused, precise issue category i.e. customer service.
33. In the comments box, copy and paste relevant parts of the complainant's application that details why they are making a complaint, or provide a brief summary.
34. Leave the Outcome Field blank - No outcome is required at this stage.
35. The issue should look like this:

22 Issue Entry

Issues

Issue Details

Issue Description: > Processing Request

Advice:

Allegation: > unsatisfactory customer service Primary Issue:

Comments

Remedy Provided

Remedy Provided

- Agency officer counselled or disciplined
- Change policy/procedure
- Error corrected
- Explanation
- Financial remedy
- Matter expedited
- Other systemic remedy
- Publish information
- Reduced
- Refunded

Outcome

Outcome: >

OK Cancel Apply

- 36.
37. Select apply and the issue will appear on the main page. Example:

Issues				
Issue	Allegation	Comments	Outcome	Primary
↔ Processing Request	failure to acknowledge request			Y
↔ Processing Request	processing delay	"I am yet to be provided with anything"		N
↔ Processing Request	unsatisfactory customer service	"I have emailed the FOI team multiple t.."		N

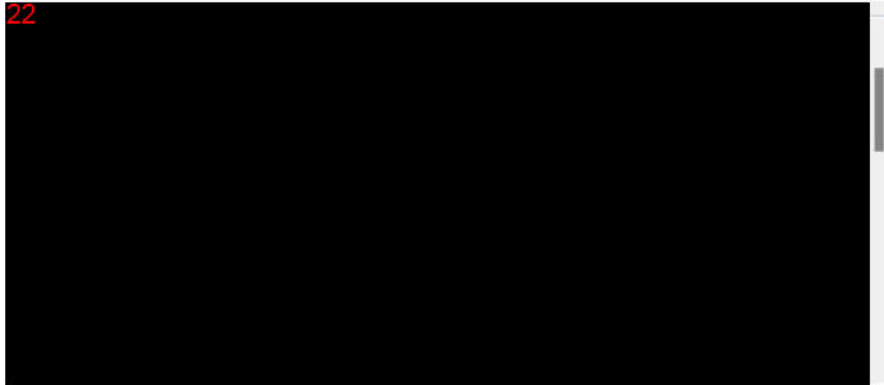
38. If there is more than one issue, repeat steps 26 to 35 for each issue.

Step 5: update summary field in Resolve.

39. The 'Summary' field needs to be updated to provide a simple overview of the Complaint. It should include"
 - a. Brief overview e.g. "C lodged complaint having not received response from FOI request".

- b. Preliminary recommendation e.g. “complaint to move to assessment” or
“Complaint more appropriately addressed through IC review, offer/ITD made to C”
- c. Quote main points of C’s complaint e.g. “C states XXXX”

40. Example:



41. Once you have entered the details click  Save at the top left-hand side of the profile.

Step 6: assess FOI complaint.

- 42. Now you are able to assess the complaint for validity and determine the next steps.
- 43. Access the FOI complaint process guide below to determine next steps:
 - a. f

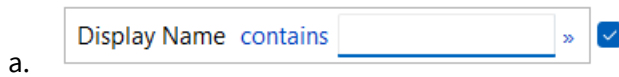
Registration of a matter – Inbox IC review request

Step 1: check for client profile

1. Open resolve main page
2. Select 'Find Client' from top bar

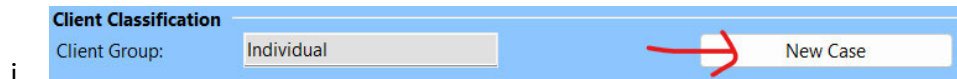


3. Type applicant's name into 'Display Name', you may need to search the first and last name separately. REMEMBER: the applicant is the person making the FOI request (or the person authorising another person to lodge an FOI request on their behalf), any representative (migration agent of legal) will be entered later.

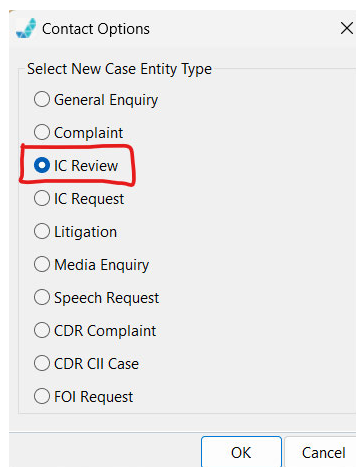


4. There will be two options. Either the applicant will already have a profile, or they will not.
 - a. Applicant has a profile – Go to Step 6
 - b. Applicant does not already have a profile – Go to Step 7
5. If the **applicant has a profile** in resolve: double-click the profile and confirm the contact details supplied in the email are the same as the contact details on the existing Resolve profile.

- a. If the details are correct, you can click 'New Case'



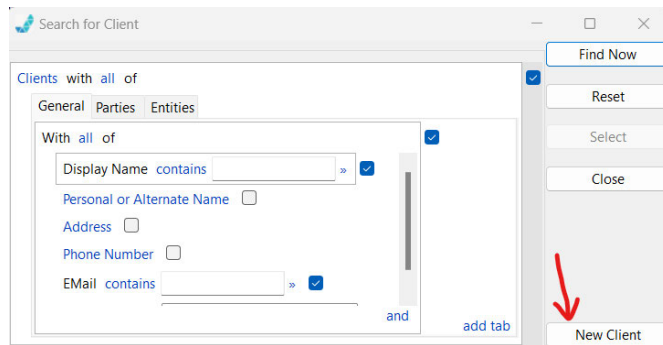
- b. Then select 'IC review' from the pop-up box.



- c. Go to step 7.


6. If the **applicant does not already have a profile**, you will need to create one.

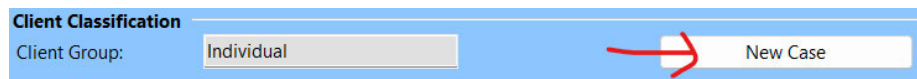
- a. In the same window you opened to find the client (referred to in step 2) select the 'New Client' option



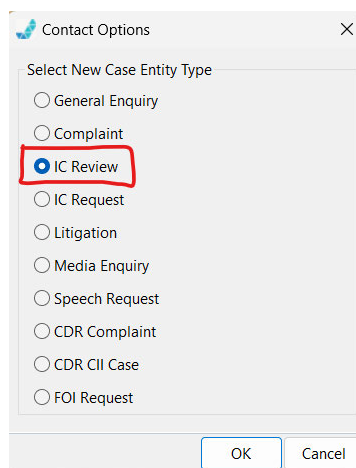
- i.
- b. Fill in the new client profile using all the information available in the email application. We will always need the first and last name and email address. If it has been provided, then include the phone number and street address. NOTE: if the applicant is represented, sometimes we will only have their name. This is fine as long as the representative has provided contact details.

- i. 'Client Group' will be 'individual' in majority of the cases, unless any of the drop-down options apply.

- c. Once you have entered the details click  Save at the top right-hand side of the profile.
- d. You will now be able to click 'New Case'



- i.
- e. Then select 'IC review' from the pop-up box.



- i.
- ii. Select "Yes" to proceed

7. Then the following window will appear and you will need to begin filling in all the details

The screenshot displays the 'New IC Review - IC Review Entry' application. The interface is divided into several sections:

- Details:** Contains fields for Case Type (Primary), Method (To be Determined), Review Type (Access Refusal), File Security (OFFICIAL), Case Number, Case Officer, File Holder, Destruction, Retention Class, and Target Date (18-Apr-2024).
- Applicant Details:** Includes Applicant Type, Agency Reference Number, and a 'No details' message.
- Review Details:** Shows Received Date (19-Mar-2024), How Received, Registered By (Lynch, Claire), and various decision options like Validation (Not validated), Deemed decision, Preliminary view to applicant, Preliminary view to respondent, SSG decision, and Decision to Executive.
- Open Actions:** A table with columns for Action Name and Due Date.
- Issues:** A table with columns for Issue, Review Reason, Comments, Outcome, Primary Issue, and Decision Type.

Step 2: setting up IC review file

8. Change 'Method' to 'Preliminary Inquiry'
9. Change 'Review Type' to 'Access Refusal'
 - a. SURGE: if you think the matter may be an access grant, please make note and let Hannah Hunter or Claire Lynch know (either by email, teams, or assigning an action in Resolve), and move on to the next task. Access Grant matters will not be dealt with in surge.
10. Change 'Category' to relevant drop down option
 - a. NOTE: Deemed access refusals will be 'Not Applicable'
11. Change 'File Security' to 'OFFICIAL'

The close-up screenshot shows the 'Details' section with the following configuration:

- Case Type: Primary
- Method: Preliminary Inquiry
- Review Type: Access Refusal
- Category: Not Applicable
- File Security: OFFICIAL

12. Add 'Respondent Details'
 - a. Select 'Find'

Respondent Details Find

- b. In 'Display Name' type in the Respondent Agency or Department (for most departments you can use their abbreviation i.e. 'DHA')

Display Name contains DHA

- c. Double click on the correct option from the list.
- d. Then the resolve page will take a while to load. Once it does, a 'Contact Options' box will open. In that box, scroll down to 'FOI Contact Officer'. This contact should already exist in majority of the Respondent files. If there is no 'FOI Contact Officer' you will need to either find the correct officer based on the documents provided in the email application, or select 'Add new Contact' from the top of the list and input FOI Contact Officer as the display name, and the email address of that agency or department's FOI branch (these detail will usually be on the decision or acknowledgement provided in the application).

Contact Options

Select a contact or create a new contact

- [Redacted]
- [Redacted]
- FOI Contact Officer - FOI Contact
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

OK Cancel

- e.
- f. Insert 'Agency Reference Number' - this will be found in the application. Either the applicant will have provided it, or it will be listed on the acknowledgment or decision from the Agency/Department that the applicant has provided. If the Agency Reference Number is not provided, this may be left -blank to be updated at a later time.

13. Drop down to 'Review Details'

- a. Change 'Received Date' to the date the email requesting IC review was sent to the OAIC by email.
- b. Change 'How Received' to 'Email'
- c. In the 'Sensitivity' check list, tick any that may apply. The most common are 'Media Interest' or 'Member of Parliament'.

- d. Change Deemed Decision to 'yes' or 'no'. This will depend on why the applicant is applying for IC review. NOTE: a deemed decision occurs when the applicant has not received a response to their FOI request by the due date – generally 30 days (s 15AC).
- e. Leave '55G Decision' orange with no entry– this will be filled in by the team later in the process.

Review Details	
Received Date: 14-Mar-2024	Validation: Not validated
How Received: Email	Deemed decision: Yes
Registered By: Lynch, Claire	Preliminary view to applicant:
Sensitivity:	Preliminary view to respondent:
<input checked="" type="checkbox"/> Not sensitive	55G decision:
<input type="checkbox"/> Media Interest	Decision to Executive:
<input type="checkbox"/> Member of Parliament	
<input type="checkbox"/> Ministerial	
<input type="checkbox"/> Safety concerns	

14. Now click 'Save' in the top-left of the file. This will generate an OAIC reference number.

Save Print Print Preview Close IC Review Search Document Content			
Case Type:	Primary	Case Number:	MR24, [REDACTED]
Method:	Preliminary Inquiry	Case Officer:	[REDACTED]
Review Type:	Access Refusal	Target Date:	13-Apr-2024
File Security:	OFFICIAL	Stage:	Registration

Step 3: If the applicant is represented.

15. If the applicant is represented, you will need to add these details manually.
16. Click on the 'Parties' tab.

Main	All Actions	Documents	Agency Decisions	Parties	Additional Parties	XRefs	IC Requests	Hearings	Related Process	Stages	File
Applicant Details						Respondent Details					

17. Under 'Represented by Details' click on 'Find'

Represented By Details
<input type="text"/> <input type="button" value="Find"/> <input type="button" value="Open"/>


18. Search the representative in 'Display Name' and double click on the correct resolve file listed (details have to be the same as application). Another Contact Options screen will pop up. If the representative is already listed, select them. If the representative is not listed, you

will need to add a new contact at the top of the list. If there is no individual representative, only the organisation, select 'Add Contact later'.

- a. NOTE: if it is an organisation, you will list the organisation as the Party, and then add the individual representative as a contact. i.e. 'Victoria Legal Aid' would be the party, and the contact would be the individual lawyer.

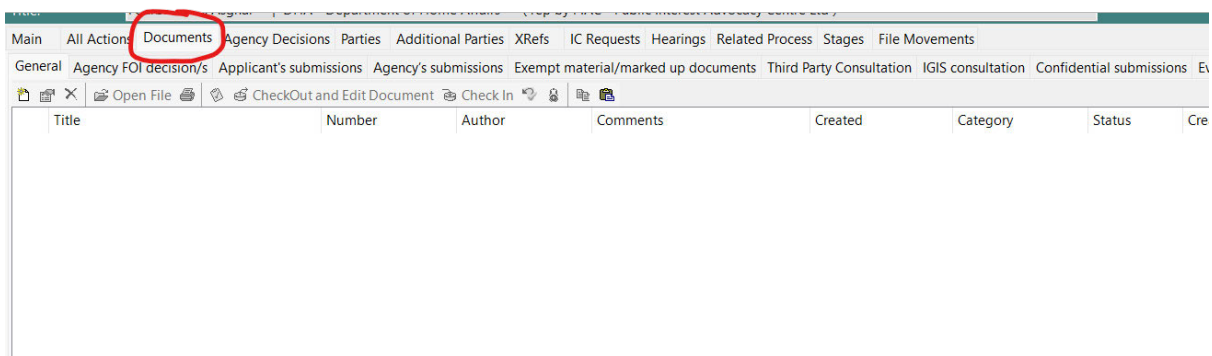
With all of

Display Name contains Victoria legal aid >> +

- b. Personal or Alternate Name
- c. Once you have entered the details click  Save at the top right-hand side of the profile

Step 4: add application documents and submissions to file.

19. To save the correspondence to file, open the Documents tab on the Resolve file.



20. Have both your outlook and your Resolve page open side-by-side

21. Drag the IC review application email into the empty white space of the 'documents' tab in the resolve file. Do not copy and paste, or the document will not save with the correct date and time stamp.

22. Now drag each individual attachment from the email into the space of the documents tab in the Resolve file.

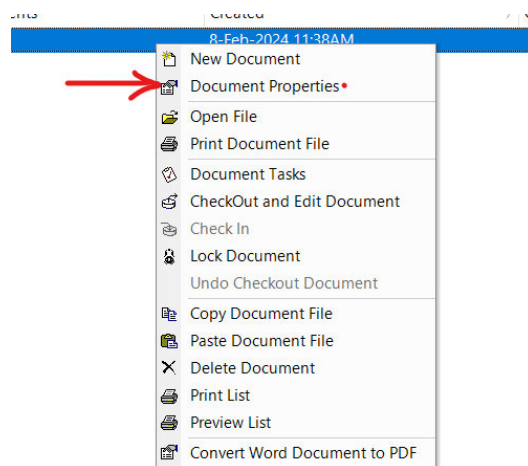
23. Your documents will appear as a list.

Title	Number	Author	Comments	Created	Category	Status
FOI Request [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	8-Feb-2024 11:38AM		CheckedIn
RE: Acknowledgement of Freedom of Information...	[REDACTED]	[REDACTED]	[REDACTED]	12-Mar-2024 10:07AM		CheckedIn
FW: Form Receipt - (Automated Notification) - Office...	[REDACTED]	[REDACTED]	[REDACTED]	14-Mar-2024 12:06PM		CheckedIn
SmartForm in Error folder [REDACTED] [EC=OFFICIAL]	[REDACTED]	[REDACTED]	[REDACTED]	14-Mar-2024 4:52PM		CheckedIn
form-recei [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	19-Mar-2024 4:32PM		CheckedIn
S0314-2403.14 GIAC Application [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	19-Mar-2024 4:33PM		CheckedIn
S0314-50314-SIGNED IC Authority [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	19-Mar-2024 4:33PM		CheckedIn
S0314-50314-SIGNED IC Privacy Notification and...	[REDACTED]	[REDACTED]	[REDACTED]	19-Mar-2024 4:33PM		CheckedIn
S0314 [REDACTED].pg	[REDACTED]	[REDACTED]	[REDACTED]	19-Mar-2024 4:35PM		CheckedIn

24. You need to name each individual document. The most common attachments we receive are:

- a. Original FOI request
- b. Dept Acknowledgement
- c. IC review application form
- d. A's submissions for IC review
- e. Rep authority to act
- f. A's Photo ID
- g. FOI decision under review

25. To rename documents, left click on each individual document. It will highlight blue, and a list of options will pop-up. Select 'Document Properties'



26. The following box will appear. In the 'Comments' section, name the document. DO NOT: change document title.

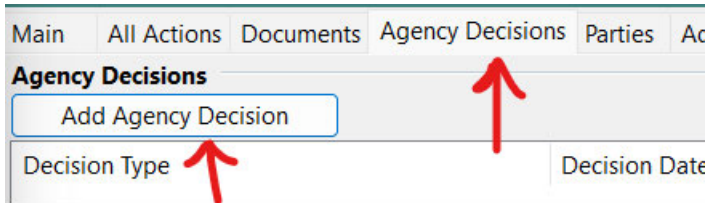
27. Press ok.

28. Repeat until all documents are labelled. Once completed, move the email to the 'ACTIONED EMAILS' folder within the FOIDR mailbox.

Step 5: add agency decision.

29. This is where you add to the resolve file WHY the applicant is seeking IC review.

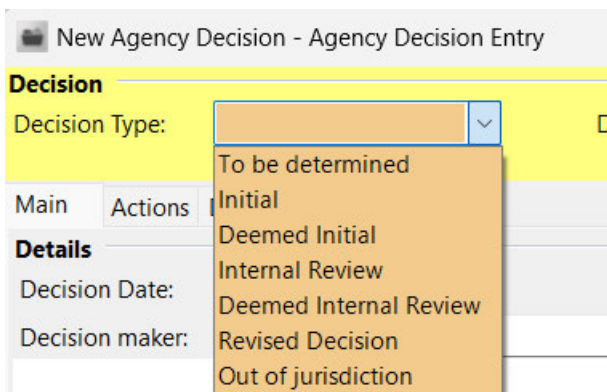
30. Go to the 'Agency Decisions' tab and click 'Add Agency Decision'.



31. A 'New Agency Decision' window will open.

32. From the 'Decision Type' drop down box, select the relevant choice. This is the IC reviewable decision made by the Agency/Department that the applicant is seeking to have reviewed.

- a. Initial - Agency/Department provided a decision letter in response to the FOI request.
- b. Deemed Initial – The applicant has not received a response to the FOI request OR the Agency/Department provided a response AFTER the processing period expired (30 days unless timeframe extended).
- c. Internal Review – A is sought internal review of an original/initial FOI Decision, and they wish to have the internal review decision reviewed by the IC.
- d. Deemed Internal Review – Applicant requested internal review and never received a response from the Agency/Department within 30 days OR the Agency/Department provided a response AFTER the 30-day processing period to provide a response expired
- e. Out of Jurisdiction – Decision the applicant is seeking to have reviewed is in regards to a state jurisdiction, unrelated to FOI or misdirected.



33. Enter 'Decision Date'. This will either be on the decision letter, or if in relation to a deemed decision, will be 30 calendar days after the request was sent, unless an Xrefs check of the

Agency reference indicates an extension of time was granted or the IC review application indicates another mechanism under the FOI Act has impacted the decision due date (s24AB consultation, third party consult or charges). NOTE: if the application is regarding a deemed decision, and the applicant has not provided a copy of the original request, you will need to send an [RFI](#) requesting it.

34. Click 'Ok' at the bottom of the 'Agency Decision' so it saves. Your screen will then look like this:

Agency Decisions		
Decision Type	Decision Date	Decision Status
Deemed Initial	9-Mar-2024	Active

35. Double click on the Agency Decision that is now listed.
 36. Left click inside of the 'Issues' box so a list of options pops-up.
 37. Select 'Add Issue'

38. The next pop-up screen will allow you to enter the particulars of the decision, and what the applicant is seeking to have reviewed.
39. Under 'Issue Description' select the most relevant. The most common are:
- Access refused 53A(a) – Decision refused access in full OR deemed decision
 - Partial access refused 53A(b) – Decision provided access to some documents, but other documents were redacted/exempt
 - Not an IC reviewable decision - Decision the applicant is seeking to have reviewed is in regards to a state jurisdiction, unrelated to FOI or misdirected
40. 'Review Reason' will depend on what part of the decision the applicant disagrees with.

- a. If the decision is deemed, the 'Review Reason' will always be 's15AC - no reasons'

Issue Details

Issue Description: > access refused - 53A(a)

Advice:

Review Reason: > s15AC - no reasons Primary Issue:

Comments

- b. If the applicant has been given a decision that is redacted/exempt or refused in full, you will list the exemptions that the applicant has raised in their IC review application.
- c. NOTE: the applicant may state that they disagree with the entire decision, in that case, you will need to add every exemption listed in the decision letter.
- d. If there is more than one exemption ('Review Reason') that needs to be listed, you will need to add multiple issues.
- e. Click 'Ok' to save first issue, which will now appear in the Issues list of the agency decision. Then right click in the 'Issues' box again and 'Add New Issue'

Agency Decision Entry

Decision

Decision Type: Deemed Initial Decision Status: Active Substitute Agency Decision

Main Actions Documents

Details

Decision Date: 9-Mar-2024

Decision maker: Find Open

Document Count: Date substituted:

Summary

Issues

Issue	Review Reason	Comments	Outcome	Primary Issue
access refused - 53A(a)	s15AC - no reasons			Y

Issue Details
Relationship Details...
Print List
Preview List
Add Issue

OK Cancel Apply

- f. Repeat steps 38 and 39 until all exemptions raised in IC review application are listed. Example:

s 22

Agency Decision Entry

Decision

Decision Type: Decision Status:

Main Actions Documents

Details

Decision Date: Decision maker:

Document Count: Date substituted:

Summary

Issues

Issue	Review Reason	Comments	Outcome	Primary Issue
partial access refused ...	s45 - confidential infor...			Y
partial access refused ...	s47B - Commonwealth ...			N
partial access refused ...	s47G - business affairs -..			N

Step 6: update summary field in Resolve.

41. The 'Summary' field needs to be updated to provide a simple overview of the IC review. It needs to include five things:
- a. Timeline of events
 - i. This will detail when the request was made, whether there were any EOTs, the date of the decision, and the date the IC review was requested.
 - ii. All of the details will be found in the IC review application, supporting documents and any cross-referenced files.
 - b. Details of the decision under review
 - i. This will detail the date of the decision, what type of decision it is (deemed, partial access, refused in full, internal review, access grant, etc.), how many documents are at issue and what exemptions have been used.
 - ii. All of the details will be found in the decision letter.
 - c. Any important notes for the assessor

- i. This will depend on each application. However, can include details of an out of jurisdiction decision (i.e. a deemed refusal occurred before the Agency released their decision, but the applicant is seeking review of the out of jurisdiction decision, not the deemed refusal)
- d. Scope of the IC review
 - i. This is why the applicant is seeking review, and what parts of the decision they disagree with.
 - ii. This will be found in the application.
- e. Scope of the FOI request
 - i. This lists what was requested in the original FOI request.

42. Examples:

s 22

A large black rectangular redaction box covering the content of the first example.

s 22

A large black rectangular redaction box covering the content of the second example.

s 22

A large black rectangular redaction box covering the content of the third example.

43. Once you have entered the details click  Save at the top left

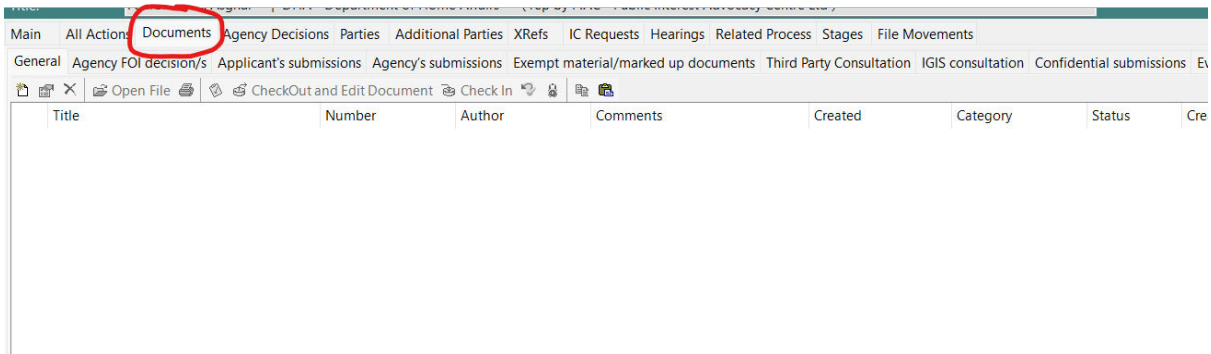
44. -hand side of the profile.

Step 7: update summary field in Resolve.

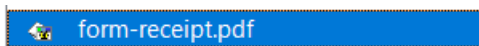
45. Now you are able to assess the matter for validity and determine the next steps.
46. Depending on what type of review the applicant is seeking, access the relevant process guide below to determine next steps:
 - a. [Access Grants - Triage Process Guide](#)
 - b. [Access Refusals - Triage Process Guide](#)
 - c. [Deemed Access Refusals - Triage Process Guide](#)

Registration of a matter – FOI Web Cases Queue

1. Open 'FOI Web Cases' Queue in Resolve
2. Double click file to open
3. Locate documents tab. The Application and any supporting documentation will already be uploaded to the file.



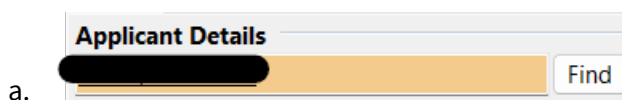
4. Open the document titled 'form-receipt.pdf'



5. Read through the form to assess why the applicant has applied for IC review and determine how the file should be set up.

Step 1: check for client profile

6. Using the SmartForm ('form-receipt.pdf'), identify the IC review applicant and whether they have a representative acting on their behalf for the IC review process.
 - a. NOTE: the applicant will often automatically be registered onto the Resolve file correctly, but you will need to register the representative manually.
 - b. Also, you may need to read the supporting documents to determine who the applicant is and who the representative is. Some legal and migration agencies will accidentally enter their own details into the SmartForm, and not the FOI applicant's details.
7. If the 'Applicant Details' are not correct (i.e. the representative has been entered as the applicant), you will need to update the file.
8. Select 'Find' from next to the applicant's name



9. Type applicant's name into 'Display Name', you may need to search the first and last name separately. REMEMBER: the applicant is the person making the FOI request (or the person authorising another person to lodge an FOI request on their behalf), any representative (migration agent or legal) will be entered later.

a.

10. There will be two options. Either the applicant will already have a profile, or they will not.
- a. If the applicant has a profile in resolve: right-click the profile and select 'Open Client'. The client profile will open, and you can confirm the contact details supplied in the application are the same as the contact details on the existing Resolve profile.
- i. If the details are correct, close the client profile window and then double click their profile from the search list.
- ii. This will automatically add the client profile to the resolve file, and the window will redirect you to the Resolve case main page where you can see this updated.


- b. If the applicant does not already have a profile, you will need to create one.
- i. In the same window you opened to find the client (referred to in step 9) select the 'New Client' option

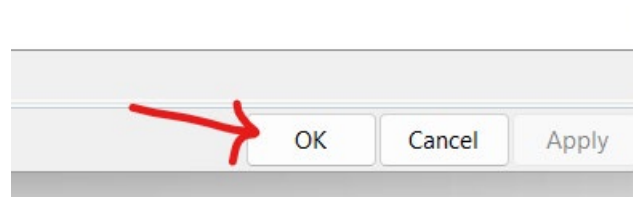
ii.

- iii. Fill in the new client profile using all the information available in the email application. We will always need the first and last name and email address.

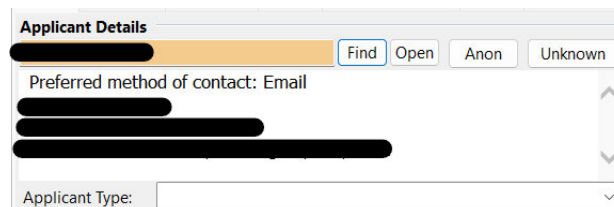
If it has been provided, then include the phone number and street address.

NOTE: if the applicant is represented, sometimes we will only have their name. This is fine as long as the representative has provided contact details.

- iv. 'Client Group' will be individual in majority of the cases, unless any of the drop-down options apply.
- v. Once you have entered the details click  Save at the top right-hand side of the profile.
- vi. Now press 'OK' at the bottom of the client profile



- vii.
- viii. This will automatically add the client profile to the resolve file, and the window will redirect you to the Resolve case main page where you can see this updated.

A screenshot of a form titled 'Applicant Details'. The top section has a name field highlighted in orange, followed by buttons for 'Find', 'Open', 'Anon', and 'Unknown'. Below this, it says 'Preferred method of contact: Email'. There are two redacted lines for address and one redacted line for phone number. At the bottom, there is a dropdown menu for 'Applicant Type'.

11. Then the following window will appear, and you will need to begin filling in all the details in orange.

Step 2: If the applicant is represented.

12. If the applicant is represented, you will need to add these details manually.
13. Click on the 'Parties' tab.


14. Under 'Represented by Details' click on 'Find'

15. Search the representative in 'Display Name' and double click on the correct resolve file listed (details have to be the same as application). Another Contact Options screen will pop up. If the representative is already listed, select them. If the representative is not listed, you will need to add a new contact at the top of the list. If there is no individual representative, only the organisation, select 'Add Contact later'.
 - a. NOTE: if it is an organisation, you will list the organisation as the Party, and then add the individual representative as a contact. i.e. 'Victoria Legal Aid' would be the party, and the contact would be the individual lawyer.

With all of

Display Name contains Victoria legal aid >> +

- b. Personal or Alternate Name


- c. Once you have entered the details click  Save at the top right-hand side of the profile

Step 3: setting up IC review file

16. Change 'Method' to 'Preliminary Inquiry'
17. Change 'Review Type' to 'Access Refusal'
- d. SURGE: if you think the matter may be an access grant, please make note and let Hannah Hunter or Claire Lynch know (either by email, teams, or assigning an action in Resolve), and move on to the next task. Access Grant matters will not be dealt with in surge.
18. Change 'Category' to relevant drop down option
- a. NOTE: Deemed access refusals will be 'Not Applicable'
19. Change 'File Security' to 'OFFICIAL'

Details	
Case Type:	Primary
Method:	Preliminary Inquiry
Review Type:	Access Refusal
Category:	Not Applicable
File Security:	OFFICIAL

20. Confirm 'Respondent Details' match IC review application and supporting documents.
- a. If details need to be changed, select 'Find'

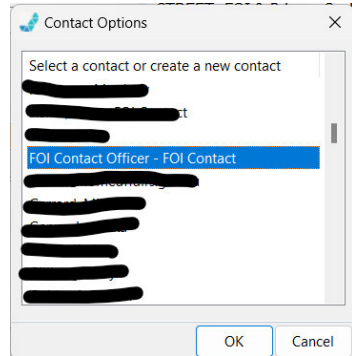
Respondent Details
 Find

- a. In 'Display Name' type in the Respondent Agency or Department (for most departments you can use their abbreviation i.e. 'DHA')

Display Name contains	DHA	» +	<input checked="" type="checkbox"/>
-----------------------	-----	-----	-------------------------------------

- b. Double click on the correct option from the list.
- c. Then the resolve page will take a while to load. Once it does, a 'Contact Options' box will open. In that box, scroll down to 'FOI Contact Officer'. This contact should already exist in majority of the Respondent files. If there is no 'FOI Contact Officer' you will need to either find the correct officer based on the documents provided in

the email application, or select 'Add new Contact' from the top of the list and input FOI Contact Officer as the display name, and the email address of that agency or department's FOI branch (these details will usually be on the decision or acknowledgement provided in the application).



d.

e. Confirm 'Agency Reference Number' has been entered automatically. If this requires manual entry, it will be found in the application. Either the applicant will have provided it, or it will be listed on the acknowledgment or decision from the Agency/Department that the applicant has provided.

21. Drop down to 'Review Details'

- a. 'Received Date' will be automatically set to the date they made their application.
- b. 'How Received' will be automatically set to 'Website'
- c. In the 'Sensitivity' check list, tick any that may apply. The most common are 'Media Interest' or 'Member of Parliament'.
- d. Change Deemed Decision to 'yes' or 'no'. This will depend on why the applicant is applying for IC review. NOTE: a deemed decision occurs when the applicant has not received a response to their FOI request by the due date – generally 30 days (s 15AC).
- e. Leave '55G Decision' orange with no entry – this will be filled in by the team later in the process.

Review Details	
Received Date: ● 14-Mar-2024	Validation: Not validated
How Received: ● Email	Deemed decision: ● Yes
Registered By: Lynch, Claire	Preliminary view to applicant:
	Preliminary view to respondent:
Sensitivity ●	55G decision:
<input checked="" type="checkbox"/> Not sensitive	Decision to Executive:
<input type="checkbox"/> Media Interest	
<input type="checkbox"/> Member of Parliament	
<input type="checkbox"/> Ministerial	
<input type="checkbox"/> Safety concerns	

22. Now click 'Save' in the top-left of the file. This will generate an OAIC reference number.

Step 4: rename application documents and submissions to file.

23. The supporting documents provided with the application will be automatically saved in the Documents tab on the Resolve file.

Title	Number	Author	Comments	Created	Category	Status	Cre

24. Your documents will appear as a list.

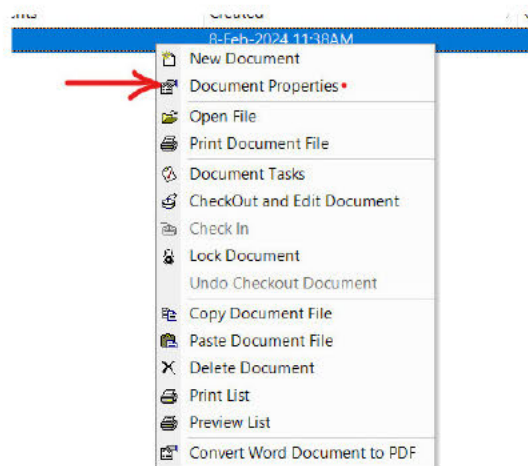
OAIC IC Review...							
form-data.xml							SmartForm Import
form-receipt.pdf							SmartForm Import
[redacted] Decision letter (1).docx							SmartForm Import
Documents released.pdf							SmartForm Import
[redacted] Decision letter (1).docx							SmartForm Import
FOI Request_Form and...							SmartForm Import
Authority to Release_signed (3).jpg							SmartForm Import
Appointment of Rep [redacted]...							SmartForm Import

25. You need to name each individual document. The most common attachments we receive are:

- a. OAIC IC Review Acknowledgment – Automatic Acknowledgement
- b. Form-data.xml – you do not need to use this one as it is the electronic data from submitting the form online
- c. Form-receipt.pdf – this is a copy of the applicant's actual online form and submissions

- d. Common supporting documents:
 - i. Original FOI request
 - ii. Dept Acknowledgement
 - iii. IC review application form
 - iv. A's submissions for IC review
 - v. Rep authority to act
 - vi. A's Photo ID
 - vii. FOI decision under review

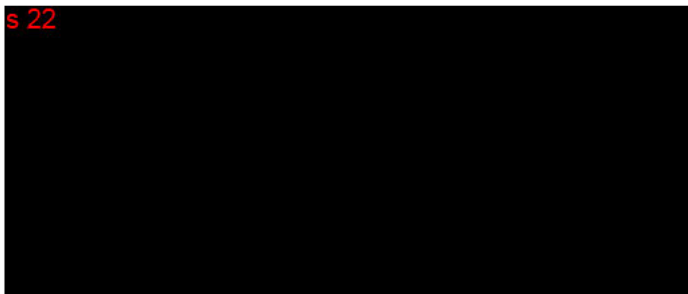
26. To rename documents, left click on each individual document. It will highlight blue, and a list of options will pop-up. Select 'Document Properties'



27. The following box will appear. In the 'Comments' section, name the document. DO NOT: change document title.

28. Press ok.

29. Repeat until all documents are labelled.



Step 5: add agency decision.

30. This is where you add to the resolve file WHY the applicant is seeking IC review.

31. Go to the 'Agency Decisions' tab and click 'Add Agency Decision'.

32. A 'New Agency Decision' window will open.

33. From the 'Decision Type' drop down box, select the relevant choice. This is the IC reviewable decision made by the Agency/Department that the applicant is seeking to have reviewed.

- e. Initial - Agency/Department provided a decision letter in response to the FOI request.
- f. Deemed Initial – The applicant has not received a response to the FOI request OR the Agency/Department provided a response AFTER the processing period expired (30 days unless timeframe extended).
- g. Internal Review – A has sought internal review of an original/initial FOI Decision, and they wish to have the internal review decision reviewed by the IC.
- h. Deemed Internal Review – Applicant requested internal review and never received a response from the Agency/Department within 30 days OR the Agency/Department provided a response AFTER the 30-day processing period expired
- i. Out of Jurisdiction – Decision the applicant is seeking to have reviewed is in regards to a state jurisdiction, unrelated to FOI or misdirected.

34. Enter 'Decision Date'. This will either be on the decision letter, or if in relation to a deemed decision, will be 30 calendar days after the request was sent, unless an Xrefs check of the Agency reference indicates an extension of time was granted or the IC review application indicates another mechanism under the FOI Act has impacted the decision due date (s24AB

consultation, third party consult or charges). NOTE: if the application is regarding a deemed decision, and the applicant has not provided a copy of the original request, you will need to send an [RFI](#) to the Respondent Agency requesting it.

35. Click 'Ok' at the bottom of the 'Agency Decision' so it saves. Your screen will then look like this:

Agency Decisions		
Decision Type	Decision Date	Decision Status
Deemed Initial	9-Mar-2024	Active

36. Double click on the Agency Decision that is now listed.
 37. Left click inside of the 'Issues' box so a list of options pops-up.
 38. Select 'Add Issue'

39. The next pop-up screen will allow you to enter the particulars of the decision, and what the applicant is seeking to have reviewed.
40. Under 'Issue Description' select the most relevant. The most common are:
- j. Access refused 53A(a) – Decision refused access in full OR deemed decision
 - k. Partial access refused 53A(b) – Decision provided access to some documents, but other documents were redacted/exempt
 - l. Not an IC reviewable decision - Decision the applicant is seeking to have reviewed is in regards to a state jurisdiction, unrelated to FOI or misdirected
41. 'Review Reason' will depend on what part of the decision the applicant disagrees with.
- m. If the decision is deemed, the 'Review Reason' will always be 's15AC – no reasons'

Issue Details

Issue Description: > access refused - 53A(a)

Advice:

Review Reason: > s15AC - no reasons Primary Issue:

Comments

- n. If the applicant has been given a decision that is redacted/exempt or refused in full, you will list the exemptions that the applicant has raised in their IC review application.
- o. NOTE: the applicant may state that they disagree with the entire decision, in that case, you will need to add every exemption listed in the decision letter.
- p. If there is more than one exemption ('Review Reason') that needs to be listed, you will need to add multiple issues.
- q. Click 'Ok' to save first issue, which will now appear in the Issues list of the agency decision. Then right click in the 'Issues' box again and 'Add New Issue'

Agency Decision Entry

Decision

Decision Type: Deemed Initial Decision Status: Active Substitute Agency Decision

Main Actions Documents

Details

Decision Date: 9-Mar-2024

Decision maker: Find Open

Document Count: Date substituted:

Summary

Issues

Issue	Review Reason	Comments	Outcome	Primary Issue
access refused - 53A(a)	s15AC - no reasons			Y

Issue Details
Relationship Details...
Print List
Preview List
Add Issue

OK Cancel Apply

- r. Repeat steps 38 and 39 until all exemptions raised in IC review application are listed. Example:

Decision

Decision Type: Initial Decision Status: Active Substitute Agency Decision

Main Actions Documents

Details

Decision Date: 29-Feb-2024

Decision maker: Find Open

Document Count: Date substituted:

Summary

Issues

Issue	Review Reason	Comments	Outcome	Primary Issue
partial access refused ...	s45 - confidential infor...			Y
partial access refused ...	s47B - Commonwealth ...			N
partial access refused ...	s47G - business affairs - ...			N

OK Cancel Apply

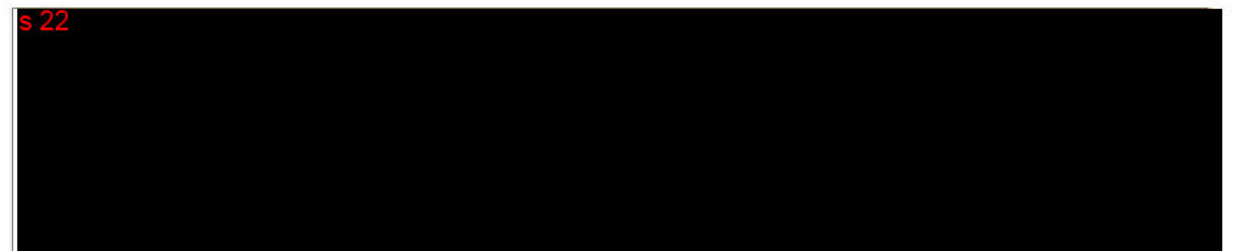
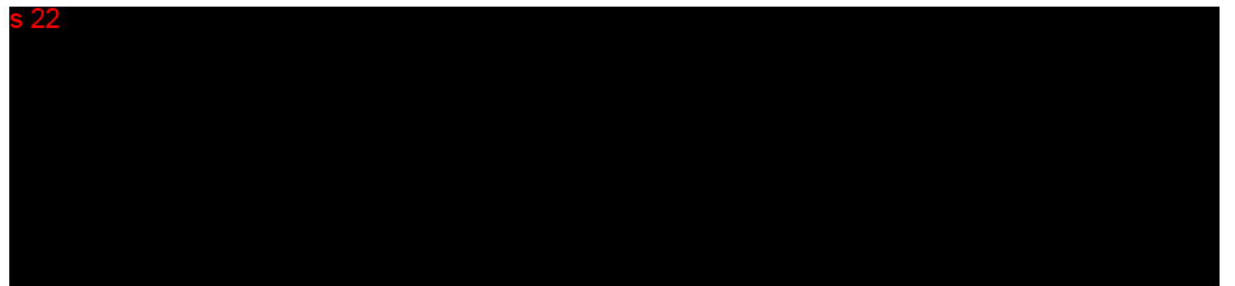
Step 6: update summary field in Resolve.


42. The 'Summary' field needs to be updated to provide a simple overview of the IC review. It needs to include five things:

- s. Timeline of events
 - viii. This will detail when the request was made, whether there were any EOTs, the date of the decision, and the date the IC review was requested.
 - ix. All of the details will be found in the IC review application, supporting documents and any cross-referenced files.
- t. Details of the decision under review
 - x. This will detail the date of the decision, what type of decision it is (deemed, partial access, refused in full, internal review, access grant, etc.), how many documents are at issue and what exemptions have been used.
 - xi. All of the details will be found in the decision letter.
- u. Any important notes for the assessor
 - xii. This will depend on each application. However, can include details of an out of jurisdiction decision (i.e. a deemed refusal occurred before the Agency released their decision, but the applicant is seeking review of the out of jurisdiction decision, not the deemed refusal)
- v. Scope of the IC review

- xiii. This is why the applicant is seeking review, and what parts of the decision they disagree with.
- xiv. This will be found in the application.
- w. Scope of the FOI request
 - xv. This lists what was requested in the original FOI request.

43. Examples:



44. Once you have entered the details click  Save at the top left-hand side of the profile.

Step 7: assess IC review application.

- 45. Now you are able to assess the matter for validity and determine the next steps.
- 46. Depending on what type of review the applicant is seeking, access the relevant process guide below to determine next steps:
 - x. [Access Grants - Triage Process Guide](#)
 - y. [Access Refusals - Triage Process Guide](#)
 - z. [Deemed Access Refusals - Triage Process Guide](#)

Complaint Declines Where OAIC is the respondent – Process Guide

1	<p>Complaint matters where OAIC are the respondent should be moved to the 'FOI Complaints – Declines' queue immediately after registration.</p> <p>Go to Step 2.</p>
2	<p>Draft the following letters and covering emails to the Ombudsman and the Complainant using the templates:</p> <p>To COMBO:</p> <ul style="list-style-type: none"> • s 74 consult to the Ombudsman Email Template.docx <p>To complainant:</p> <ul style="list-style-type: none"> • s 74 Intent to Transfer to C Email Template.docx <p>Correspondence to the Ombudsman is addressed to:</p> <p>47E(d) [REDACTED]</p> <p>[REDACTED]</p> <p>Once ready for clearance, send to EL2 for clearance.</p> <p>Once cleared, send the correspondence to the Ombudsman and Complainant.</p> <p>Add 'Next Action': "s74 consult due"</p> <p>Add Next Action Date: due date of consultation (1 week)</p> <p>Go to Step 3</p>
3	<p>At the due date of the consultation to the Ombudsman:</p> <ul style="list-style-type: none"> - If the Ombudsman has responded accepting Transfer, go to Step 4. - If the Ombudsman has not responded, escalate to your EL2 to follow-up. - If the Ombudsman has responded declining to accept the transfer (generally this should only occur if the Ombudsman has a duplicate complaint already on-hand), consider whether it is appropriate to decline the matter under s 73. Discuss with your EL2.
4	<p>To Transfer the Complaint draft the following letters and covering emails to the Ombudsman and the Complainant using the templates:</p> <p>To COMBO:</p> <p>Template - s 74 Decision - Transfer to Ombudsman.docx Covering Email to COMBO - Transfer of Complaint.docx</p> <p>To complainant:</p>

	<p>Template - Decision to C - Finalise complaint under s74(3).docx Covering Email to C - Complaint Transferred to Ombudsman.docx</p> <p>Once ready for clearance, send to EL2 for signature and clearance.</p> <p>Once cleared, send the correspondence to the Ombudsman and Complainant.</p> <p>Go to Step 5</p>
5	<p>Close matter in Resolve.</p> <p>End Process</p>

Subject: OAIC – Response due [1 week] – MRXX/XXXXX - Notification of access grant review - Agency reference: [reference no.]

Our reference: [reference no.]
Agency reference: [reference no.]

FOI Contact Officer
[Agency Name]

By email: [email address]

Information Commissioner review of access grant decision

Dear FOI Contact Officer

Action Required

We require the [Agency name] (the Agency) to provide the following by [1 week]:

- contact details of the FOI applicant, in accordance with s 54Z(b)
- Name, title and email address of the APS EL2 (or equivalent) responsible officer for the purpose of issuing notices relevant to this review

Background

[IC Applicant name] (affected third-party) has made an application for Information Commissioner review (IC review) of the Agency's access grant decision / internal review decision of an access grant decision under the *Freedom of Information Act 1982* (the FOI Act).

The FOI applicant cannot be given access to the documents that are the subject of this IC review, whilst the Agency's decision /internal review decision is under review.

The application for review received [date] is attached.

Yours sincerely

Subject: OAIC –MRXX/XXXXX - Notification of access grant review

Our reference: [reference no.]

Agency reference: [reference no.]

[FOI Applicant name]

By email: [FOI applicant email address]

CC: [Agency email address]

Information Commissioner review of access grant decision

Dear [Mr/Mrs Applicant name]

An affected third-party has made an application for Information Commissioner review (IC review) of the [Agency name]'s (the Agency) access grant decision under the *Freedom of Information Act 1982* (the FOI Act).

Access to the documents subject of this IC review cannot be given to the you whilst this decision is under review.

We do not require any action from you at this time. We will contact you in due course regarding the outcome of this 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.

Yours sincerely

1. TEMPLATE FOR DEEMED MATTERS

Our reference: <CASE NO>

Agency Reference: <REF>

By email: <Email>

Receipt of your IC review application

Dear Mr/Ms A,

[If applicant's only IC review] Thank you for your application for Information Commissioner Review (IC review).

[If applicant has multiple IC reviews] Thank you for your application for Information Commissioner Review regarding the decision [or internal review decision] made by the [Department or Minister name] on [date].'

The Office of the Australian Information Commissioner (OAIC) is considering your application.

[If IC review lodged via email] Please note that the OAIC's preference is to receive IC review applications through our online [Information Commissioner Review Application form](#), as this allows an application to be automatically registered and acknowledged, which in turn allows us to progress an application more quickly. Please note that future applications that are made by email will take longer to acknowledge and progress as they require manual registration.

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to FOIDR@oaic.gov.au and quote <CASE NO>.

Kind Regards,

2. TEMPLATE FOR MATTERS TO BE SENT TO ASSESSMENTS QUEUE

Our reference: XXXXX

Agency reference: XXXXX

Applicant name

By email: XXXXX

Receipt of your IC review application

Dear [Mr/Ms name]

[If applicant's only IC review] Thank you for your application for Information Commissioner Review (IC review).

[If applicant has multiple IC reviews] Thank you for your application for Information Commissioner Review regarding the decision [or internal review decision] made by the [Department or Minister name] (The Agency) on [date].’

[If substantive out of jurisdiction decision is reason for review] The Agency was required to provide you with a decision by [date]. As you did not receive a decision on your request until [date] the Agency is deemed to have refused your request when they failed to provide you a decision in time. The IC review will consider the Agency’s deemed refusal of your request and the Agency’s decision letter you provided in your IC review application.

The Office of the Australian Information Commissioner (OAIC) is currently considering your application.

[If scope is clear] We understand that you are seeking a review of...[e.g. the exemptions applied to the documents under ss XX and XX of the FOI Act; the searches undertaken by the respondent to identify all documents relevant to your request etc.]

or

[If scope of review is unclear] To assist us in assessing your application, can you please respond by **[2 weeks]** with the following information:

1. identify the aspect(s) of the agency or Minister’s decision about which the review is sought
2. state why you disagree with the agency or Minister’s decision
3. identify which documents you consider have been wrongly refused, or which exemptions have been incorrectly applied
4. **[only include if relevant- otherwise delete]** if the request has been refused on the grounds 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 they believe the FOI request would not have this impact.

[If IC review lodged via email] Please note that the OAIC’s preference is to receive IC review applications through our online [Information Commissioner Review Application form](#), as this allows an application to be automatically registered and acknowledged, which in turn allows us to progress an application more quickly. Please note that future applications that are made by email will take longer to acknowledge and progress as they require manual registration.

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to FOIDR@oaic.gov.au and quote **<CASE NO>**.

Otherwise we will write to you with an update on next steps once your application has been assessed.

Kind Regards,

OAIC reference: [MRXX/XXXXX]

Agency reference: [X]

[Requestors name]

By email: [email address]

Progress update on IC review application

Dear [Ms/Mr ..]

Thank you for your correspondence seeking an update regarding the progress of your IC review application.

Your IC review application is being progressed, and we will write to you in due course to provide an update.

We are unable to expedite matters, matters are prioritised based on their date of receipt.

Kind regards,

OAIC reference: [MRXX/XXXXX]

Agency reference: [X]

[Requestors name]

By email: [email address]

Progress update on IC review application

Dear [Ms/Mr ..]

Thank you for your correspondence seeking an update regarding the progress of your IC review application. [*If appropriate: Please accept our apologies for the delay in responding to your request*].

Your IC review application is currently awaiting assessment by a senior member of the FOI team.

We will write to you in due course, as your IC review application progresses.

Yours sincerely

OAIC reference: [MRXX/XXXXX]

Agency reference: [X]

[Requestors name]

By email: [email address]

Progress update on IC review application

Dear [Ms/Mr ..]

Thank you for your correspondence of [date] seeking an update regarding the progress of your IC review application. *[If appropriate: Please accept our apologies for the delay in responding to your request].*

[First update request- ER matters] At this stage, your IC review 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.

[Subsequent case update requests- ER matters] Unfortunately, it remains the case that the matter is awaiting allocation to a review adviser. The OAIC is currently focusing on the case management and finalisation of aged matters, particularly IC review applications on hand received in 2020 and 2021. Once your matter is allocated, the review adviser will contact you to advise of next steps in the matter.

In the meantime, we are working to progress this matter in readiness for allocation, and we will contact you should we need any further information or as this matter is progressed.

Yours sincerely

Subject: Important Information regarding IC review application – OAIC

Whilst we accept your email below as written application for a review, to prevent delay in processing your application we encourage you to also submit the application using our online smartform. Please reply to this email to confirm your submission of the smartform and we will ensure your email correspondence is attached to the smartform application.

IC review applications received via email require manual registration and acknowledgement which may delay the progress of your application.

The link to the smartform is below:

[Information Commissioner Review Application form \(business.gov.au\)](https://business.gov.au/information-commissioner-review-application-form)

For future, please ensure IC review applications are lodged via the smartform, to ensure they are valid and are processed in the most efficient manner.

If you have enquiries, please contact the OAIC Enquiries Line on 1300 363 992.

Kind regards,

FOI Branch



CASE OFFICER ALLOCATION FOR CORRESPONDENCE

Reply correspondence should be actioned back to the case officer who sent the originating correspondence. However, if this is unable to be determined, the following list indicates the general case officer for each queue.

<u>TEAM</u>	<u>QUEUE</u>	<u>OFFICER FOR ALLOCATION</u>
Intake and Early Resolution	FOI – Web Cases	Claire Lynch Alexandra Millar Omid Azizi
	FOI – Triage	Claire Lynch Alexandra Millar Omid Azizi
	FOI – EOT	Sarah Forrester
	FOI – IC Reviews – Deemed	Sussan Jrajiri
	FOI – IC Reviews – S22 Deemed	Hannah Hunter
	FOI – IC Reviews – Assessment	<ul style="list-style-type: none"> • Assistant Directors <ul style="list-style-type: none"> ○ Lakshmi Gopinath • Paralegals <ul style="list-style-type: none"> ○ William Martin ○ Ellie O’Kearney ○ Sarveshcika Yuvaraj
	FOI – IC Reviews – Post Triage	<ul style="list-style-type: none"> • Assistant Directors <ul style="list-style-type: none"> ○ Lakshmi Gopinath • Paralegals <ul style="list-style-type: none"> ○ William Martin ○ Ellie O’Kearney ○ Sarveshcika Yuvaraj
	FOI – IC Reviews – Early Resolution (ER)	<ul style="list-style-type: none"> • Assistant Directors <ul style="list-style-type: none"> ○ Lakshmi Gopinath ○ Lisa Ktenidis • Paralegals <ul style="list-style-type: none"> ○ William Martin ○ Ellie O’Kearney ○ Sarveshcika Yuvaraj
	FOI – IC Reviews – Declines	Georgia Furlong
Reviews and Investigations	FOI – IC Reviews – R&I	Sandra Wavamunno
	Individual listed as Case Officer	Relevant Case Officer

	FOI – Complaints – Assessments	<ul style="list-style-type: none"> Jackie Scolyer OR <ul style="list-style-type: none"> Individual listed as Case Officer
	FOI – Complaints – Declines	Lisa Ktenidis
	FOI – Complaints – Investigations	<ul style="list-style-type: none"> Jackie Scolyer OR <ul style="list-style-type: none"> Individual listed as Case Officer
	FOI Complaints – s 86 Finalisation	<ul style="list-style-type: none"> Jackie Scolyer OR <ul style="list-style-type: none"> Individual listed as Case Officer
Significant Decision	FOI – Significant Decisions	<ul style="list-style-type: none"> Justin Lodge OR <ul style="list-style-type: none"> Individual listed as Case Officer
	Individual listed as Case Officer	Relevant Case Officer
	FOI – Vexatious applicant requests	<ul style="list-style-type: none"> Justin Lodge OR <ul style="list-style-type: none"> Individual listed as Case Officer
	FOI – IC Reviews – s 89K	<ul style="list-style-type: none"> Justin Lodge OR <ul style="list-style-type: none"> Individual listed as Case Officer
Monitoring, Guidance and Engagement	FOI - Guidance – Allocation	<ul style="list-style-type: none"> Sara Peel OR <ul style="list-style-type: none"> Individual listed as Case Officer

OAIC reference:

Agency reference:

Dear XXXX

Extensions of time to comply with a notice or direction issued by the Office of the Australian Information Commissioner will only be granted in exceptional circumstances.

At this time, your request for extension has been filed.

Please note, in the absence of the OAIC advising you that the requested extension has been granted, the original due date applies. If the original due date has passed, you should provide the required information as soon as possible.

Kind regards,

[your signature block]

Registering a New IC Review on Resolve

- New requests usually come through by email or the smartform. Uncommon by post or phone, but not impossible.
 - Application should be in writing (but we have to make reasonable adjustments should an applicant require it)
 - IC review request will be **out of time** if made after 60 days of decision date
 - If it is out of time, invite the applicant to make a request for a s 54T extension of time. Use the template email invitation. Once s 54T request is received, follow steps to register a s 54T EOT (similar to registering EOTs for 15AB/15AC/54D but instead of an agency, it is for an individual)
- 1. On Resolve, click 'Find Client' to search for the correct applicant (be careful with companies/directors etc. – cross reference with decision and review form).
 - a. Enter last name of FOI A
 - b. If there are no hits, click 'New Client' and enter in all possible fields (in particular contacts)
 - i. For Address, click validate and select from existing postcode, or 'Not registered' if there are no options
 - ii. Click save and click 'New Case'
 - c. If there is a hit, open the client page for the correct person and click 'New Case' on top right hand corner
 - d. Select 'IC Review' or appropriate type and click ok
 - e. Everything in orange must be completed
 - f. Enter Review Type – be careful! This cannot be changed post selecting
 - i. Most common options: Access refusal (includes charges and amendment), access grant (when someone opposes to the release of documents)
 - g. Method: To be determined
 - h. Enter respondent/agency's details. Never create an agency unless you are confident that there it is a completely new agency – select from options existing
 - i. Don't need to select an individual for agency, click 'add contact later' unless expressly provided
 - ii. If party is represented, can add additional party in 'Parties' tab
 - i. Received date: date application was received by OAIC and method
 - j. Google the FOI A to see if they are in the media/journalist. If so, flag with supervisor as 'Sensitivity' may need to be changed accordingly
 - k. Summary: brief description of request outlining the request, decision under review [original/internal] decision dated @ - [Practical refusal/Exemptions ss @/Searches]; number of documents at issue; and scope of review. You can complete this in the Triage stage.
 - l. Click save (this creates a case number)
 - m. Two new actions will pop up:
 - i. Record case details and attach docs
 - ii. Send acknowledgement letter
 - n. Clear any categories on email with application etc. to remove any metadata from Outlook and then drag the file onto Resolve.
 - i. On Outlook, move to 'DO NOT USE' folder for actioned emails
 - ii. Drag separate decision letter onto file for easy access and any other key documents

- iii. Add note in document properties: Name 'primary decision' or 'IR decision' whichever is more appropriate
 - iv. Change doc type to key documents
 - v. Tick off 'Record case details' button in the Actions
 - o. Send acknowledgement letter using the template
 - i. Check we have the decision (and check the date to ensure it is within time). If insufficient info is provided, see steps below in 'Triage process' for 'if further info is required' and don't send ack letter yet
 - ii. Prepare letter and ensure dates are up to date
 - iii. Use generic intake signature, send from FOI general inbox
 - iv. Use acknowledgement letter from TRIM/most up to date template
 - v. Copy sent will need to be put on the Resolve file
 - p. Move case to 'Triage' queue by ticking the box in Actions
- 2. Purpose of Triage
 - a. Get more info from applicant; or
 - b. Get file prepared and ready for the Mail Assessor stage; or
 - c. Close the file.
- 3. Triage process
 - a. Enter in summary
 - i. Use template:

Summary

Request:

Decision under review: [original/internal] decision dated @ - [Practical refusal/Exemptions ss @/Searches]

Number of documents at issue: @

Scope of review: Applicant seeks review of [Practical refusal/Exemptions ss @/Searches]

- b. Enter decision action
 - i. Go to 'Agency Decisions tab'
 - ii. Click 'Add Agency Decision'
 - iii. Type: Initial/IR review
 - iv. Date of decision: on decision letter
 - v. If name of person is unknown, just put on agency for the name
- c. Click 'Apply' before adding issues individually
- d. Add issues from the Decision
 - i. Review reasons (mostly sections) – apply each separately
 - ii. Right click in empty box and 'add issue' for all reasons/sections
 - 1. Select appropriate concern – e.g. access refused/partial refusal etc and the section that applies to that
 - iii. Enter each section applied by decision – if docs are not covered by the act, select 'Invalid'
 - iv. First will automatically become primary issue but not a problem
- e. Click 'OK'
- f. Assessor Note
 - i. Summary: e.g. 'ss 47F &47C/searches'. If it is too long to list, state 'exemptions/searches'
- g. If everything is ready to move to the next stage, tick 'Allocate Triage Officer' and allocate case to yourself
- h. Tick 'Conduct Triage' box and select appropriate outcome
 - i. If **further info is required**:

1. E.g. see MR18/00935 where there was no express written request for review of AGD decision
2. Email party with request for more information (can use email template but alter appropriately)
3. Tick 'Conduct Triage' in Actions and for status, select 'Seek Further Information' and due date
4. Manually change 'Case Officer' to 'Triage'
5. Enter in Assessor Note 'RFI to A/R due [date]'
6. Once info is received, upload corro into Resolve.
7. Send out full acknowledgement letter without your name.
8. Update Assessor Note
 - ii. If no further info is required: 'Mail Assessor'
- i. Check that everything is available and ready for the Mail Assessor. If yes, check that the Case Officer is allocated to Mail Assessor

New IC Review of Deemed Matters

1. On Resolve, click 'Find Client' to search for the correct applicant (be careful with companies/directors etc. – cross reference with decision and review form).
 - a. Enter last name of FOI A
 - b. If there are no hits, click 'New Client' and enter in all possible fields (in particular contacts)
 - i. For Address, click validate and select from existing postcode, or 'Not registered' if there are no options
 - ii. Click save and click 'New Case'
 - c. If there is a hit, open the client page for the correct person and click 'New Case' on top right hand corner
 - d. Select 'IC Review' or appropriate type and click ok
 - e. Everything in orange must be completed
 - f. Enter Review Type – be careful! This cannot be changed post selecting
 - i. Most common options: Access refusal (includes charges and amendment), access grant (when someone opposes to the release of documents)
 - g. Method: To be determined
 - h. Enter respondent/agency's details. Never create an agency – select from options existing
 - i. Don't need to select an individual for agency, click 'add contact later' unless expressly provided
 - ii. If party is represented, can add additional party in 'Parties' tab
 - i. Received date: date application was received by OAIC and method
 - j. Google the FOI A to see if they are in the media/journalist. If so, flag with supervisor as 'Sensitivity' may need to be changed accordingly
 - k. Click save (this creates a case number)
 - l. Two new actions will pop up:
 - i. Record case details and attach docs
 - ii. Send acknowledgement letter
 - m. Clear categories on email with application etc. and drag onto the file on Resolve.
 - i. On Outlook, put the category back on the email and move to 'Read case' folder

- ii. Tick off 'Record case details' button
2. Potentially check with A whether a decision was provided (send a s 54N email)
3. Check when FOI request was lodged. If it was more than 30 days ago, continue with registration/triage process
4. Conduct Triage process
 - a. Enter in summary
 - i. Paste in template:

***deemed refusal on @. FOI request made @. Pls to R due @**

Summary

Request:

Decision under review: [original/internal] decision dated @ - [Practical refusal/Exemptions ss @/Searches]

Number of documents at issue: @

Scope of review: Applicant seeks review of [Practical refusal/Exemptions ss @/Searches]

- b. Assessor Note
 - i. Summary: Pls to R due [date]
- c. Tick 'Allocate Triage Officer' and allocate case to yourself
- d. Tick 'Conduct Triage' box and select appropriate outcome
 - i. If **further info is required** (usually the case):
 1. E.g. see **s 22**
 2. Conduct Pls under s 54V with agency (use template) and drag email to file
 3. Tick 'Conduct Triage' in Actions and for status, select 'Seek Further Information' and due date and allocation
 4. Manually change 'Case Officer' to 'Allocation – Deemed Decisions – FOI'
 5. Enter in Assessor Note 'Pls to R due [date]'
 6. Once info is received, upload corro into Resolve.
 7. Send out full acknowledgement letter without your name.
 8. Update Assessor Note
5. Send Pls to R using template: [D2018/008878](#) check that it is the most up to date
6. Send ack to A using the newest template (note: no IR possible so delete dot point) and drag email to file
7. Tick send ack letter
8. Add Agency Decision to Agency Decisions tab
 - a. Decision Type: Deemed initial
 - b. Decision Date
 - c. Click apply
 - d. Right click, add issue
 - e. Access refused → s 15AC – no reasons
9. Tick allocate to triage officer and conduct triage (select Further Info). Leave 'Seek Further Info' action unticked
10. Move to 'Allocation - Deemed Decision – FOI' queue

Things to note

- For high profile applicants (e.g. members for parliament), flag with Sandra by sending email of IC review application email and indicate our reference number
- For requests to expedite the IC review, flag in summary on Resolve, and flag with Sandra by sending email of IC review application email and indicate our reference number

-
-

Date	Key Events
	FOI request for:
	Third Party Consultation under ss 26A,27,27A
	Third Party Consultation response(s)
	Original Decision: deemed/exemptions ss
	Name/position of decision maker:
	Number of documents/pages:
	Internal review application received by respondent agency
	Internal review decision
	IC review application received by OAIC
	Section 54T application
	Section 54T grant/decline
	Section 54V Preliminary Inquiries:
	PI's issued
	PI's due
	Substantive decision
	[Proceed][Scope of Review]:
	[Category]:
	Allocated queue:
	Assessment:
	Respondent agency notified under s 54Z
	Applicant notified:
	Request for information issued under @
	Request for information due
	Information received
	Agency request for EOT to respond under s54Z
	Submissions provided to parties
	Revised decision
	Section 55K decision

Summary Field Template:

deemed refusal [or affirmed] on XX*. FOI request [or internal review request] made XX

Request:

Decision under review: original decision dated @.

[Exemptions use]: @ document/s found within scope of request, released/exempt in full/part under exemption/s @.

[Searches use]: No document/s found within scope of request. Access refused under s 24A (insert relevant subsection if known).

[Practical refusal use]: @ document/s found within scope of request. (Insert @ hours to process, decision making etc. any key points)

[Charges use]: \$@ (insert calculation)

Number of documents at issue: @ (delete if not applicable)

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).

Notes for assessor::

Dear XXX,

I refer to your email below dated 0:00AM/PM DD MM YYYY (or this morning/afternoon), in which you forwarded correspondence to both the Department of XXXXXX (abbrv.) and our office, the Office of the Australian Information Commissioner (OAIC)

I understand from your email below that you have accessed your review rights by making a valid application for internal review of the decision by XXXX dated DD MM YYYY (Agency ref no.).

You can ask us for an Information Commissioner (IC) review, if you're not happy with the decision in response to your freedom of information (FOI) request. Under Part VII of the FOI Act we can conduct an IC review of the FOI decision by XXXXX.

However, noting that you have applied for an internal review, we generally recommend that you wait for an outcome from the internal review before starting an IC review. An internal review gives the agency or minister's office the opportunity to reconsider their original decision. Your needs may also be met more quickly – as a 30-day time limit for a decision applies.

As such, and noting that you have not made a valid application for IC review under s 54N of the FOI Act, your email below will not be actioned by the OAIC.

If you are unhappy with the internal review decision, or you do not receive a response from XXXXX before the 30-day statutory time limit to provide a decision expires (DD MM YYYY – provide date), you may seek IC review of the internal review decision. You can make an application for IC review by visiting our website: [Apply for an Information Commissioner review | OAIC](#).

If we can be of any further assistance, please do not hesitate to contact us.

Kind regards,

Thankyou for emailing the FOI branch at the Office of the Australian Information Commissioner (OAIC).

We are unable to determine the action or response you are seeking to your correspondence.

If your correspondence relates to a current IC review or complaint, please respond to this email providing the OAIC reference number.

Further Assistance

You can find information about the OAIC on our [website](#), including:

- IC reviews [Freedom of information reviews | OAIC](#)
- Complaints [Freedom of information complaints | OAIC](#)

If you have any further enquiries, please contact the OAIC Enquiries Line on 1300 363 992.

Kind regards

FOI Branch

Subject line: OAIC – MRXX/XXXXXX – Notification of Finalisation of Information Commissioner review under s 54R of the FOI Act

//

Our reference: MRXX/XXXXX

Agency reference:

Applicant Name
Agency / Minister

By email: [Applicant email address]

By email: [Agency/ Minister email address]

Finalisation of Information Commissioner review application under s 54R of the FOI Act

Dear Parties,

This matter has been withdrawn under s 54R of the *Freedom of Information Act 1982* (Cth).

Section 54R(2) states that if an Information Commissioner review application is withdrawn, it is taken never to have been made.

The matter is now closed.

Kind regards,

Our reference: MRXX/XXXXX

Agency reference: PA XX/XX/XXXX

Applicant's Name

Represented by Representative's Name

By email: email

Applicant's name/Your IC review application about a decision by the

s 22

Dear XXXX,

I refer to the application for IC review you submitted to the OAIC on DD MM YYYY regarding your abovenamed clients.

From the information you have provided, it appears the s 22 is dealing with your request under the *Privacy Act 1988* (Cth) ('Privacy Act').

I note in your original FOI request, you provided consent to the Department to process your request under the Privacy Act by stating "If this can be processed faster under the Privacy Act, we are content for this to occur." [IF POSSIBLE: Additionally, on DD MM YYYY, the Department noted your consent and confirmed the matter would be dealt with under the Privacy Act.]

Section 54K of the FOI Act provides that an IC reviewable decision is a decision covered by s 54L(2) (access refusal decisions) or a decision covered by s 54M(2) (access grant decisions).

Decisions released under the Privacy Act 1988 (Cth) are not IC reviewable decisions.

As your request application does not relate to an IC reviewable decision as defined in s 54K of the FOI Act, we have finalised this matter on the basis that the application is not a valid IC review application in accordance with s 54N of the FOI Act.

Please note, an agency must respond to a request for access to personal information within 30 days. If you still have not received a response from the Department, you can lodge a Privacy complaint with the OAIC. More information about this process can be found here: [Access your personal information | OAIC](#) and [Lodge a privacy complaint with us | OAIC](#).

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXXX in all correspondence.

I confirm your application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXXX

Agency file number: BCCXXX/XXXXXXXX [I use the file number from the s 22]

Mr/Mrs/Ms First Last

By email: XXXXX

Application for Information Commissioner Review of Decision by the s 22

Dear Mr/Mrs/Ms Last,

On X XX 2023 the Office of the Australian Information Commissioner (the OAIC) received your application for Information Commissioner review (IC review) of a decision by the s 22 to refuse your s 22 .

Please note, the OAIC regulates the *Privacy Act 1988 (Cth)* (the Privacy Act) and the *Freedom of Information Act 1982 (Cth)* (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to conduct reviews of decisions made under the FOI Act.

The decision you have provided the OAIC is not one made in accordance with the FOI Act, meaning it is not an IC reviewable decision, and we therefore cannot conduct a review of the decision.

Section 54N of the FOI Act says that in order to make a valid application for IC review a person must send a copy of the decision they want reviewed with their application.

Noting that your application does not relate to an IC reviewable decision, it has now been closed as invalid.

[You will need to contact the s 22 [REDACTED] regarding this decision. However, please note that the decision letter states:

“Review rights

There is no right of merits review for this decision.

...

Questions about this decision

We cannot consider your visa application any further.”

OR

However, please note, you have until **close of business of XX XXXX XXXX** to apply to the Administrative Appeals Tribunal (AAT) for a merits review of this decision.

The decision letter you were provided with by the s 22 [REDACTED] gives you details on how to make this application. Alternatively, you can visit this website for more details: [How to apply | Administrative Appeals Tribunal \(aat.gov.au\)](#)

I confirm this application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXX

Mr/Mrs/Ms First Last

By email: XXXXX

Your IC review application about the Department of XXXX

Dear Mr/Mrs/Ms Last,

I refer to your IC review application received by the Office of the Australian Information Commissioner (OAIC) on XX XXXXX XXXX.

It appears from your application that you are seeking to make an FOI request to the Department of XXXXX (the Department) in relation to [e.g. a document titled '1912-royal-warrant'].

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. We are also responsible for handling privacy complaints about ACT Government agencies.

The OAIC does not hold records of other government agencies. If you wish to apply for access to documents held by an Australian or Norfolk Island government agency, then you need to make a request in writing, under the FOI Act, directly to the agency that holds the records. Further information about making an FOI application, including details of what needs to be included, is available on our website here: [How to make a freedom of information request | OAIC](#)

REFER A ONTO HOW TO MAKE AN FOI REQUEST WITH THE SPECIFIC DEPARTMENT [e.g. If you wish to obtain documents from the Department of Home Affairs under the FOI Act, you can email your

request to foi@homeaffairs.gov.au. More information about this process can be found here: [How to make a FOI request \(homeaffairs.gov.au\)](#)]

Section 54N of the Freedom of the Information Act 1982 (the FOI Act) says that in order to make a valid application for IC review a person must send us a copy of the decision they want reviewed with their application.

Noting that your application does not relate to an IC reviewable decision it has now been finalised as invalid.

I confirm your application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXX

By email:

Receipt of your IC review application concerning the XXXXX

Dear XXXXX,

I refer to our email below. It appears we have not received a response.

I note that in your original correspondence of DD Month 2023 to the OAIC you provided what appeared to be an FOI decision made by XXXXX.

However, we were unable to open the decision in the format you provided, and your email contained no other details.

Section 54N of the Freedom of Information Act 1982 (Cth) ('FOI Act') provides that the contents of an IC review application must include a copy of the IC reviewable decision for which an IC review is sought.

On DD Month 2023 we wrote to you at the email address used in your original correspondence, and asked for a copy of the decision.

We have not received a response to that correspondence, and consequently your IC review application has been finalised as invalid under s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXX in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: MRXX/XXXXX

Agency reference: XXXXXXXXXXXX

[Applicant name]

[Representative: xxxxx]

By email: xxxxx@xxxxxx

Information Commissioner Review Application for [INSERT DEPARTMENT] (the Agency) decision.

Dear Mr/Mrs/Ms SURNAME,

On [INSERT DATE] we received your application for Information Commissioner review (IC review).

Section 54N(1)(a) of the *Freedom of the Information Act 1982* (the FOI Act) says that the IC review application must be in writing and must give details of how notices under this Part may be sent to the IC review applicant.

On [INSERT DATE] we reached out by email requesting the attached OAIC Privacy and Authority Consent Form be completed and returned and explained that in order for the IC review application to meet the requirements of section 54L(3) of the FOI Act, we require evidence that the applicant has provided authority for a representative to lodge an IC review and receive notices on their behalf.

We advised, that if we did not receive a response by the due date, the application will be finalised as invalid, as it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

As no third party or representative authority were established, this IC review application is invalid.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXXX in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Yours sincerely,

[INSERT SIG BLOCK]

16 December 2021

Our reference:
Agency reference:

By email:

Your Information Commissioner review application concerning the Department of XXXX

Dear XXXXX,

I refer to your application for Information Commissioner (IC) review received by the Office of the Australian Information Commissioner (OAIC) on XX XXXXX 20XX, concerning the XXX (the Agency).

You sought IC review on the basis that your Freedom of Information (FOI) request of DD Month YYYY was deemed refused on DD Month YYYY.

On DD Month Year, the Agency applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982 (Cth)* (FOI Act) for an extension of time to DD Month Year to process your FOI request.

On DD Month Year, the Information Commissioner granted the Agency an extension of time to DD Month Year under 15AC of the FOI Act, which extended the statutory due date. As such, the FOI decision was not due until DD Month YYYY.

An IC review must relate to an IC reviewable decision as outlined in sections 54L and 54M of the FOI Act. As such, no IC reviewable decision had been made when you applied for this IC review on DD Month Year and therefore, we have finalised your IC review application as invalid under s 54N of the FOI Act.

If...[the Agency fails /has failed to meet the due date outlined above], **OR** [you disagree with the Agency's decision of DD Month YYYY], you can seek a new IC review. Please note, to ensure the most efficient processing of an IC review, applications should be lodged via our [smartform](#).

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXX in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: MRXX/XXXX

Agency reference: XXXXX

Mr/Mrs/Ms XXXXX XXXXX

By email: XXXXX

Your application for IC review about the Department of XXXXX

Dear **Mr/Mrs/Ms XXXXX**,

I refer to your application for IC review received by the Office of the Australian Information Commissioner (OAIC) on **XX XXXXX 20XX**.

We understand that you are seeking **[insert what applicant has requested in review application form. e.g., “to have employees of the Australian Taxation Office (ATO) investigated.”]**

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. However, our powers do not extend beyond these acts.

Section 54K of the FOI Act provides that an IC reviewable decision is a decision covered by s 54L(2) (access refusal decisions) or a decision covered by s 54M(2) (access grant decisions).

It appears from your application, that you have not made an FOI request to the **Department of XXXXX**, and therefore no IC reviewable decision currently exists.

As your request application does not relate to an IC reviewable decision as defined in s 54K of the FOI Act, we have finalised this matter on the basis that the application is not a valid IC review application in accordance with s 54N of the FOI Act.

Please note, **[always refer the applicant to the correct governing body. e.g.,**

“if you're not happy with the the ATO’s conduct, you can contact the Inspector-General of Taxation and Taxation Ombudsman by visiting their website at [Home - IGTO](#) “

OR

If you disagree with the decision dated XX XXXXX XXXX and would like an external review of the decision, you can apply to the NSW Information and Privacy Commission or the NSW Civil and Administrative Tribunal (NCAT). More information about these processes can be found here:



Australian Government

Office of the Australian Information Commissioner

NSW Information Commissioner - [How to lodge an application for a review of a government information access decision \(nsw.gov.au\)](#)

NSW Civil and Administrative Tribunal (NCAT) - [Access to government information \(nsw.gov.au\)](#)

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXX

Agency reference: XXXXX

Mr/Mrs/Ms XXXXX XXXXX

By email: XXXXX

Your application for IC review about the Department of **XXXXX**

Dear **Mr/Mrs/Ms XXXXX**,

I refer to your application for IC review received by the Office of the Australian Information Commissioner (OAIC) on **XX XXXXX 20XX**.

We understand that you are seeking **[insert what applicant has requested in review application form. e.g., “to have employees of the Australian Taxation Office (ATO) investigated.”]**

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. However, our powers do not extend beyond these acts.

Section 54K of the FOI Act provides that an IC reviewable decision is a decision covered by s 54L(2) (access refusal decisions) or a decision covered by s 54M(2) (access grant decisions).



Australian Government

Office of the Australian Information Commissioner

It appears from your application, that you have not made an FOI request to the **Department of XXXXX**, and therefore no IC reviewable decision currently exists.

As your request application does not relate to an IC reviewable decision as defined in s 54K of the FOI Act, we have finalised this matter on the basis that the application is not a valid IC review application in accordance with s 54N of the FOI Act.

Please note, **[always refer the applicant to the correct governing body. e.g.,**

“if you're not happy with the the ATO’s conduct, you can contact the Inspector-General of Taxation and Taxation Ombudsman by visiting their website at [Home - IGTO](#) “

OR

If you disagree with the decision dated XX XXXXX XXXX and would like an external review of the decision, you can apply to the NSW Information and Privacy Commission or the NSW Civil and Administrative Tribunal (NCAT). More information about these processes can be found here:

NSW Information Commissioner - [How to lodge an application for a review of a government information access decision \(nsw.gov.au\)](#)

NSW Civil and Administrative Tribunal (NCAT) - [Access to government information \(nsw.gov.au\)](#)]

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

OAIC – MR – Review application about the [Respondent]

Dear [applicant],

I acknowledge that correspondence has been exchanged previously. However, during a standard review of legacy applications, we have determined further verification is required to ensure we protect the privacy of applicants. We apologise for any inconvenience caused.

It remains the focus of the Office of the Australian Information Commissioner (OAIC) to adhere to 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) of the *Freedom of Information Act 1982* (FOI Act).

The OAIC service charter further sets out the standard of service applicants can expect from the OAIC and how the OAIC expects applicants to assist us. This includes keeping the OAIC informed about any changes to your contact details. To date, the OAIC has not been informed by you about any changes associated with the Right to Know account.

Moving forward, the OAIC is committed to ensuring that future communications reflect the Information Commissioner's Direction, with an emphasis on seeking required evidence to demonstrate IC review applications are made by, or on behalf of, the person who made the request to which the decision relates.

It remains open to you to seek assistance from [Right to Know](#).

If you are unable to respond by **DD Month Year**, you must request more time at the earliest opportunity and no later than **DD Month Year**. **[two days before due date]** Requests for extension must explain why you need more time, and you must propose a new date to provide your response. The OAIC will determine whether it is appropriate to grant an extension on a case by case basis.

Kind regards,

OR

OAIC – MR – Review application about the [Respondent]

Dear [applicant],

I acknowledge that correspondence has been exchanged previously. However, during a standard review of legacy applications, we have determined further verification is required to ensure we protect the privacy of applicants. We apologise for any inconvenience caused.

It remains the focus of the Office of the Australian Information Commissioner (OAIC) to adhere to 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) of the *Freedom of Information Act 1982* (FOI Act).

The OAIC service charter further sets out the standard of service applicants can expect from the OAIC and how the OAIC expects applicants to assist us. This includes keeping the OAIC informed about any changes to your contact details. To date, the OAIC has not been informed by you about any changes associated with the Right to Know account.

Moving forward, the OAIC is committed to ensuring that future communications reflect the Information Commissioner's Direction, with an emphasis on seeking required evidence to demonstrate IC review applications are made by, or on behalf of, the person who made the request to which the decision relates.

You have not complied with the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews and as such, this application is now finalised on the basis that it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

Kind regards,

Dear FOI Officer,

The applicant was unable to comply Information Commissioner's Direction as to certain procedures to be followed by applicants in Information Commissioner reviews and as such, the application was finalised on the basis that it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

I trust the above is of assistance.

Kind Regards,



Omid Azizi

Assistant Review Adviser

Freedom of Information Branch

Office of the Australian Information Commissioner

Sydney | GPO Box 5288 Sydney NSW 2001

P 1300 363 992 **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](#)

Our reference: MRXX/XXXXX

Agency reference:

NAME

By email:

Your application for IC review about the [XXXX]

Dear Mr/Ms/Mrs XXXXX,

On [date] we received your application for Information Commissioner review (IC review).

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. We are also responsible for handling privacy complaints about ACT Government agencies.

Our powers do not extend to State or Territory Government agencies and we therefore do not have jurisdiction to review the decision made by the South Australian Government.

As outlined on the last page of the decision letter, you still have review rights in relation to the request.

NSW Gov

If you disagree with an information access decision made by the NSW Government and would like an external review of the decision, you can apply to the NSW Information and Privacy Commission or the NSW Civil and Administrative Tribunal (NCAT). More information about these processes can be found here:

NSW Information Commissioner - [How to lodge an application for a review of a government information access decision \(nsw.gov.au\)](#)

NSW Civil and Administrative Tribunal (NCAT) - [Access to government information \(nsw.gov.au\)](#)

SA Gov

If you disagree with a Freedom of Information decision made by the South Australian Government [XXXor name DepartmentXXX] and would like an external review of the decision, you can apply to Ombudsman SA or the South Australian Civil and Administrative Tribunal (SACAT). More information about these processes can be found here:

Ombudsman SA - [Freedom of information | Ombudsman SA](#)

South Australian Civil and Administrative Tribunal (SACAT) - [Freedom of Information | South Australian Civil and Administrative Tribunal \(sacat.sa.gov.au\)](#)

[Freedom of information | Attorney-General's Department \(agd.sa.gov.au\)](#)

WA Gov

If you disagree with a Freedom of Information decision made by the Western Australian Government {XXXor name DepartmentXXX] and would like an external review of the decision, you can apply to the Western Australian Information Commissioner . More information about these processes can be found here:

WA Information Commissioner - [Application form for external review \(oic.wa.gov.au\)](https://oic.wa.gov.au)
[Apply for a Freedom of Information decision external review | Western Australian Government \(www.wa.gov.au\)](https://www.wa.gov.au)

Section 54N of the Freedom of the Information Act 1982 (the FOI Act) says that in order to make a valid application for IC review a person must send us a copy of the decision they want reviewed with their application. Noting that your application does not relate to an IC reviewable decision within our jurisdiction to conduct a review, your application has now been finalised as invalid.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Email to Applicant – Closure to A

Our reference: MRXX/XXXXX

Mr/Mrs First Last

By email: email address

Application for IC review regarding Agency/Department

Dear XXXXX,

Thank you for your response below.

The Agency/Department (XXXX) is not an agency for the purposes of the Freedom of Information Act 1982 (Cth) ('FOI Act'), which means your request below is not considered a valid request in accordance with the FOI Act. Without a valid request, there is no IC reviewable decision, and the Office of the Australian Information Commissioner (OAIC) does not have the jurisdiction to conduct a review of this request.

We have therefore finalised this application as invalid in accordance with s54N of the FOI Act

However, Agency/Department (XXXX) the TIO is an organisation bound by the Privacy Act 1988 (Cth). Where a request for access to personal information has been made, an agency must respond to the applicant within 30 days. Your request from DD MM YYYY appears to be a request for personal information in accordance with the Privacy Act, and you therefore have the opportunity to lodge a Privacy complaint with the OAIC, having not received a response from the Agency/Department (XXXX).

We will therefore forward your correspondence onto our Privacy branch for assessment, and a member of the branch will be in contact with you shortly about your complaint.

In the meantime, if you have any questions, please contact our Enquiries line on 1300 363 992.

Kind regards,

Email to Privacy Branch (DREnquiries@oaic.gov.au)

Dear Enquiries,

We received an enquiry on DD MM YYYY in relation to a request for access to personal documents held by the Agency/Department (XXXX).

This was originally taken to be an application for IC review, however, the Agency/Department is not an agency for the purposes of the FOI Act, which means the access request is not a valid request in accordance with the FOI Act, and we cannot conduct an IC review.

We have therefore closed this application as invalid.

However, the Agency/Department is an organisation bound by the Privacy Act 1988, and the applicant [INSERT REASON: e.g. has made a request for access to personal information which has gone unanswered for more than 30 days].

We have advised the applicant that this matter has been transferred to the DR branch as a privacy complaint for further actioning.

Please let me know if there is anything else we can do.

Kind regards,

Our reference: MRXX/XXXXX

Agency Reference: XXXXX

Applicant Name

Representatives Name

By email:

Your application for IC review about the **[Agency/Minister]**

Dear Mr/Ms/Mrs XXXXX

On DD/MM/YYYY we received your application for Information Commissioner review (IC review) regarding an FOI request you made to **[Insert MP name]** on DD/MM/YYYY.

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the *Privacy Act 1988* (Cth) (the Privacy Act) and the *Freedom of Information Act 1982* (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. We are also responsible for handling privacy complaints about ACT Government agencies.

However, our powers do not extend to members of Parliament.

The Parliamentary Service Act 1999 was amended in June 2013 to confirm that all parliamentary departments are excluded from the application of the FOI Act. The effect of the amending legislation is that the FOI Act is taken not to apply and not to have ever applied to the parliamentary departments and persons who hold, or perform duties of, an office established under the Parliamentary Service Act, such as a Member of Parliament.

Section 54N of the FOI Act states that in order to make a valid application for IC review, a person must send us a copy of the decision they want reviewed with their application.

Noting that your application does not relate to an IC reviewable decision defined under s 54L or 54M, your application has now been finalised as invalid in accordance with s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: XXXXX
Agency reference: XXXXX

FOI Contact Officer
[the Department of XXXXX]
By email: XXXXX

Consultation regarding s 54T extension of time application and IC review application

Dear FOI Contact Officer,

I write to advise [the Department of XXXXX] that the Office of the Australian Information Commissioner (the OAIC) received an IC review application, from XXXXX XXXXX (applicant).

The application relates to the above decision made on DD MM YEAR.

Under s 54S of the *Freedom of Information Act 1982* (Cth) (FOI Act), an IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given. As such, the last day for the applicant to seek IC review of the decision was **DD MM YEAR**.

The OAIC received the applicant's IC review application on **DD MM YEAR**. Consequently, the application for IC review was received XXX days outside the prescribed 60-day statutory timeframe.

The applicant has now applied for an extension of time under s 54T of the FOI Act and advised the OAIC the following:

[INSERT SCREEN SHOT OF REASONS FOR 54T REQUEST]

In consideration of the applicant's extension of time application, the OAIC invites [the Department of XXXXX] to provide any comments or concerns the agency wishes to make in deciding the outcome of this application.

Particularly, we ask that you **[INSERT ANY PARTICULARS YOU MAY NEED E.G. provide a copy of the correspondence the applicant purportedly sent to [the Department of XXXXX] on two occasions after the decision was made]**.

Please respond to this email by **close of business on DD MM YEAR**. If we do not receive a response **by DD MM YEAR**, the decision maker will make a decision on the basis of the information provided to the OAIC.

The OAIC will notify the Department once this decision has been finalised.

Contact

If you have any questions regarding this email, please contact me via email at foidr@oaic.gov.au. Please quote OAIC reference: MRXX/XXXXX in all correspondence.

Kind regards,

Our reference: XXXXXXXXX
Agency reference: XXXXXXXXX

Mr/Ms/Mrs XXXXXXXXX
By email: XXXXXXXXX

IC review application about an FOI decision by XXXXXXXXX

Dear XXXXXXXXX,

[If relevant] I write to you as the authorised representative of [X].

I understand that you are seeking Information Commissioner review (IC review) of a decision made by XXXXX on [date].

Under s 54S of the FOI Act, an IC review application in relation to an access grant decision must be made within 30 days after the day notice of the IC reviewable decision was given. As such, the last day to seek IC review of the Agency's decision was [date].

We received your IC review application on [date]. Consequently, your application for IC review is outside the prescribed 30 day statutory timeframe.

Extension of time under s 54T of the FOI Act

Section 54T of the FOI Act allows the Information Commissioner to extend the time for making an application for IC review if the Information Commissioner is 'satisfied that it is reasonable in all the circumstances to do so'. It is therefore open to you to request an extension of time to make a valid application for IC review.

In considering what is reasonable in all the circumstances, the Information Commissioner may take the following factors into account:

- the length of the delay in applying for IC review
- the reasons for the delay
- any action taken by you regarding the decision after the Department made its decision
- any prejudice to the Department and to the general public due to the delay, and
- the merits of your substantive application for IC review.

Invitation to make a request for an extension under s 54T

Please advise by the close of business on [1 week] whether you wish apply for an extension of time under s 54T of the FOI Act, and if so, please include the reasons why you consider an extension should be granted.

Please note, if you wish to apply for an extension of time under s 54T, under s 54T(4) we require you to notify the [Agency Name] (the Agency) of your intention to seek IC review and request a 54T extension as soon as possible. Please include this email address in your correspondence or provide a copy with your reply email.

If I do not receive a response from you by **[1 week]** your application for IC review will be finalised as invalid under s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXXX** in all correspondence.

Yours sincerely,

Our reference: XXXXXXXXX

Agency reference: XXXXXXXXX

Mr/Ms/Mrs XXXXXXXXX

By email: XXXXXXXXX

IC review application about an FOI decision by XXXXXXXXX

Dear XXXXXXXXX,

I write to you as the authorised representative of [X].

I understand that you are seeking Information Commissioner review (IC review) of a decision **deemed to have been** made by XXXXX on **[date]**.

Under s 54S of the FOI Act, an IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given. As such, the last day to seek IC review of the Department's decision was **[date]**.

We received your IC review application on **[date]**. Consequently, your application for IC review is outside the prescribed 60 day statutory timeframe.

Extension of time under s 54T of the FOI Act

Section 54T of the FOI Act allows the Information Commissioner to extend the time for making an application for IC review if the Information Commissioner is 'satisfied that it is reasonable in all the circumstances to do so'. It is therefore open to you to request an extension of time to make a valid application for IC review.

In considering what is reasonable in all the circumstances, the Information Commissioner may take the following factors into account:

- the length of the delay in applying for IC review
- the reasons for the delay
- any action taken by you regarding the decision after the Department made its decision
- any prejudice to the Department and to the general public due to the delay, and
- the merits of your substantive application for IC review.

Invitation to make a request for an extension under s 54T

Please advise by the close of business on **[1 week]** whether you wish apply for an extension of time under s 54T of the FOI Act, and if so, please include the reasons why you consider an extension should be granted.

If I do not receive a response from you by **[1 week]** your application for IC review will be finalised as invalid under s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXXX** in all correspondence.

Yours sincerely,

Our reference:
Agency Reference:

Applicant name
[represented by:]
By email:

Receipt of your Information Commissioner (IC) review application concerning the **s 22**

Dear **Applicant**,

Thank you for your application for Information Commissioner Review regarding the **decision/ deemed access refusal decision** made by the **[Department /Agency]** **[if represented: on behalf of applicant]**.

Please note your **complaint (CPXX/XXXXX)** has now been **withdrawn**.

The Office of the Australian Information Commissioner (OAIC) is considering your application.

Please note that the OAIC's preference is to receive IC review applications through our online [smartform](#), as this allows an application to be automatically registered and acknowledged, which in turn allows us to progress an application more quickly. Please note that future applications that are made by email will take longer to acknowledge and progress as they require manual registration.

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to FOIDR@oaic.gov.au and quote **MR2XX/XXXXX**

Kind regards,

Subject: OAIC - Receipt of your IC review application concerning the **XXDepartment NameXXX - MRXX/XXXXX**

Our reference:

Agency reference:

By email:

Receipt of your IC review application concerning the **XXDepartment NameXXX**

Dear **Mr/Ms/Mrs XXXX**,

We have reviewed your application for Information Commissioner Review (IC Review) from **[date]**.

From the information you have provided, on **[date]**, you requested documents held by the **[Department Name]** (the **Department**) under the Freedom of Information Act 1982 (the FOI Act).

On **[date]**, the Department responded to your request and notified you of their intention to refuse your request on the basis that the work involved in processing your request would substantially and unreasonably divert the resources of the **Department**. In that notice, the **Department** gave you 14 days to either:

- make a revised request; or
- indicate that you do not wish to revise your request; or
- withdraw your request.

It appears that on **[date]**, the 14 day period expired, and in accordance with section 24AB(7) of the FOI Act, the **Department** considered your request to be withdrawn after not receiving a response from you. They notified you of this on **[date]**.

An agency has the power to finalise a request as deemed to be withdrawn where an applicant fails to respond to their notice. From the correspondence you have provided, it appears that the required notice was given, and that you did not respond to this notice within the required time frame. Therefore the **Department** deemed your request withdrawn.

As your request was deemed withdrawn by the **Department**, there is no reviewable decision for an IC Review to be conducted. We therefore intend to decline this IC Review as invalid under s 54N of the FOI Act.

If you disagree, and believe you did provide a response to the **Department** within the 14 day notice period, please provide a copy of the correspondence you sent to the **Department** between **[date]** and **[date]**.

If we have not heard a response from you by **close of business on [1 week]**, this IC Review application will be closed as invalid.

Kind regards,

Subject: OAIC – MRXX/XXXXX - Extension of time request under s 54T of the FOI Act

Our reference:

Agency reference:

By email:

Extension of time request under s 54T of the FOI Act

Dear [Mr/Mrs/Ms XXXX],

I refer to your request for an extension of time (s 54T) to seek Information Commissioner review (IC review) of the decision **deemed to be** made by the [Agency name] under the *Freedom of Information Act 1982* (the FOI Act).

As noted in our previous correspondence to you inviting your application for extension under s 54T [OR As noted in your application for IC review], your IC review application was received outside of the prescribed statutory timeframe. [IF DECISION MADE AFTER DEEMED DATE: I note that a deemed refusal decision occurred on XX XX XXXX, and you wish to seek review of the decision issued by the Agency/Department on XX XX XXXX].

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 54T of the FOI Act.

I have considered the reasons provided in support of your request for an extension of time. In particular, I have considered...

- [Insert considerations]

In light of this, I have decided under s 54T of the FOI Act to **grant** your extension request.

Based on the information before the OAIC, I am satisfied that granting an extension of time under s 54T of the FOI Act is reasonable in all the circumstances.

As such, your IC review is taken to have been lodged within the statutory timeframe. We will write to you regarding the progress of your IC review in due course.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number at the top of this email in all correspondence.

Review rights

Judicial review

If you disagree with the OAIC's decision 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 to grant an extension of time 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 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](#) page on our website.

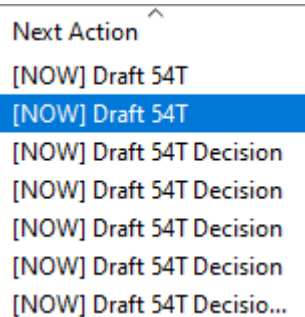
[Signature Block]

Section 54T Extensions

Under s 54S of the FOI Act, an IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given.

Section 54T of the FOI Act allows the Information Commissioner to extend the time for making an application for IC review if the Information Commissioner is 'satisfied that it is reasonable in all the circumstances to do so'. It is therefore open to the applicant to request an extension of time to make a valid application for IC review.

When these out of time applications come through the registering officer will immediately issue a 54T invitation. Once the applicant has responded, the registration officer will label them in Resolve as "[NOW] Draft 54T":

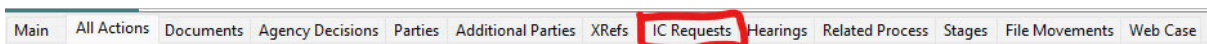


HOW TO PROCESS:

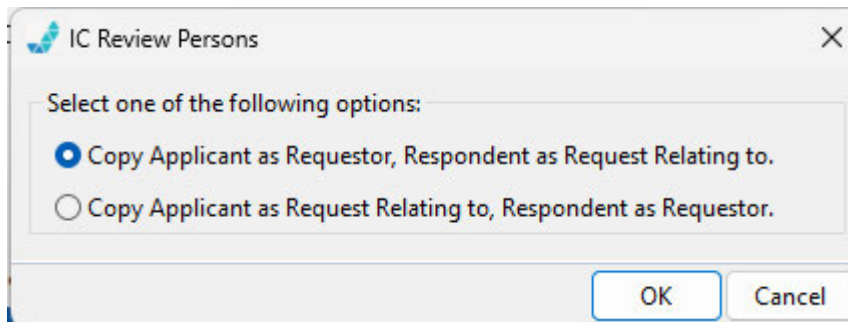
1. If a 54T invite has not already been sent to the applicant, you will need to send one and receive a response before drafting the decision. The template for the 54T Invitation is here: [54T Invitation](#). Provide 1 week to respond before you can move on to the next steps.
 - a. Remember:
 - i. Check if submissions are in original smartform application.
 - ii. Check to see if there are EOT files with the same agency reference number which may tell you the processing period to respond has been extended.
2. Read submissions from A and decide if it's a grant or refusal. If unsure, speak to your EL1 or EL2 for advice. Submissions will be saved in Documents as "54T Response from A", or if this not there, they will be included in the original application form.
3. At this stage, action flow should be up to 'Respondent's View Appropriate', as below:

Action	Due Date	Outcome
<input checked="" type="checkbox"/> Record case details and attach docs (MR I&T)	25-Aug-2023	
<input checked="" type="checkbox"/> Allocate to Triage Officer (MR I&T)	28-Aug-2023	
<input checked="" type="checkbox"/> Send Acknowledgement Letter (MR I&T)	28-Aug-2023	
<input checked="" type="checkbox"/> Generic Application Info Complete? (MR I&T)	28-Aug-2023	Application is Complete
<input checked="" type="checkbox"/> Application Valid? (MR I&T)	28-Aug-2023	No, Out of Time
<input checked="" type="checkbox"/> Request Applicant lodge s54T Request (MR OT)	28-Aug-2023	
<input checked="" type="checkbox"/> Await s54T Request (MR OT)	14-Sep-2023	s54T Request Received
<input checked="" type="checkbox"/> Prepare and Send 54T invitation	28-Aug-2023	
<input type="checkbox"/> Respondent's View Appropriate (MR OT)	31-Aug-2023	

4. Create IC EOT Request:
 - a. Click IC Requests



5. Select New IC Request, and the following window will pop up. It will automatically be set as 'Copy Applicant as Requestor, Respondent as Request Relating to.' Select 'OK'



6. The IC Request file will open and look like this.

New IC Request - IC Request Entry

Save Undo Print Print Preview Close IC Request Search Document Content

Details

Request Type: Case Number: File Security:

Request from: Case Officer: Destruction Status:

Sub Type: Target Date: Retention Class:

Title:

COVID-19 Delay:

Warning: There is an alert for the Request Relating To Client

Main All Actions Documents Parties XRefs File Movements

Requestor Details

Find Open Unknown

Request Relating to

Find Open Unknown

Contact: Find Open Select

Represented By (Requestor)

Find Open

Represented By (Request Relating To)

Find Open

IC Request Details

Received Date: Agency Request Received:

How Received: Original Decision Date:

Registered By: Extension Date:

7. Begin filling in required yellow fields on main page of IC request (applicant will already be entered – you do not need to add it again).
 - a. Case officer: you (this will already be set)
 - b. Request Type: extension of time
 - c. Request from: Individual/Organisation
 - d. Sub Type: s54T-to lodge an IC review
 - e. How Received: Email or Website (depending on how 54T request was received)
 - f. Received Date: change date to the date the 54T request was received by OAIC

New IC Request - IC Request Entry

Save Undo Print Print Preview Close IC Request Search Document Content

Details

Request Type: Case Number:

Request from: Case Officer:

Sub Type: Target Date:

IC Request Details

Received Date:

How Received:

8. Begin filling in EOT dates and decision fields (you will need to refer back to A's submissions in main IC review file)
 - a. Agency Request Received: this is the date the original FOI request was made (or request for internal review)

- b. Original Decision Date: This will be the date of the Agency/Department’s decision (or deemed refusal decision)
- c. Extension Date: this will be the date the IC review was requested (not the 54T). Will be the date the smart form was received on the website.
- d. Request Decision: Granted or Not Granted
- e. Summary Window: 54T Granted or 54T Not Granted

IC Request Details

Received Date: 27-Oct-2023
 How Received: Email
 Registered By: Lynch, Claire
 Agency Reference Number:

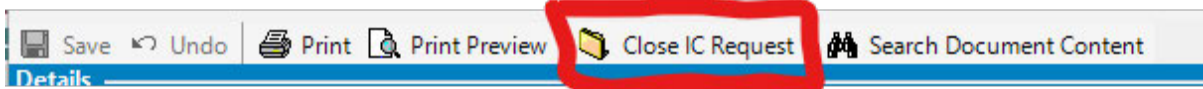
Agency Request Received: 26-Jun-2023
 Original Decision Date: 26-Jul-2023
 Extension Date: 13-Oct-2023
 Days Extended:
 Request Decision: Granted
 Note:

Summary (Press F2 for Full Screen)
 Granted

Open Actions

Action Name	Due Date
-------------	----------

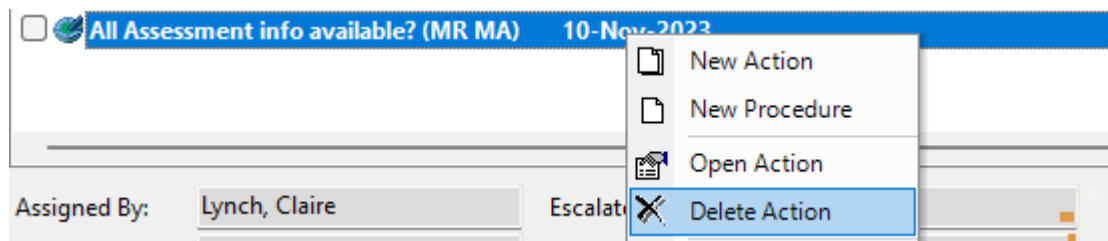
- 9. Save the IC request (Save) this will auto populate more fields
- 10. Then select ‘Close IC Request’



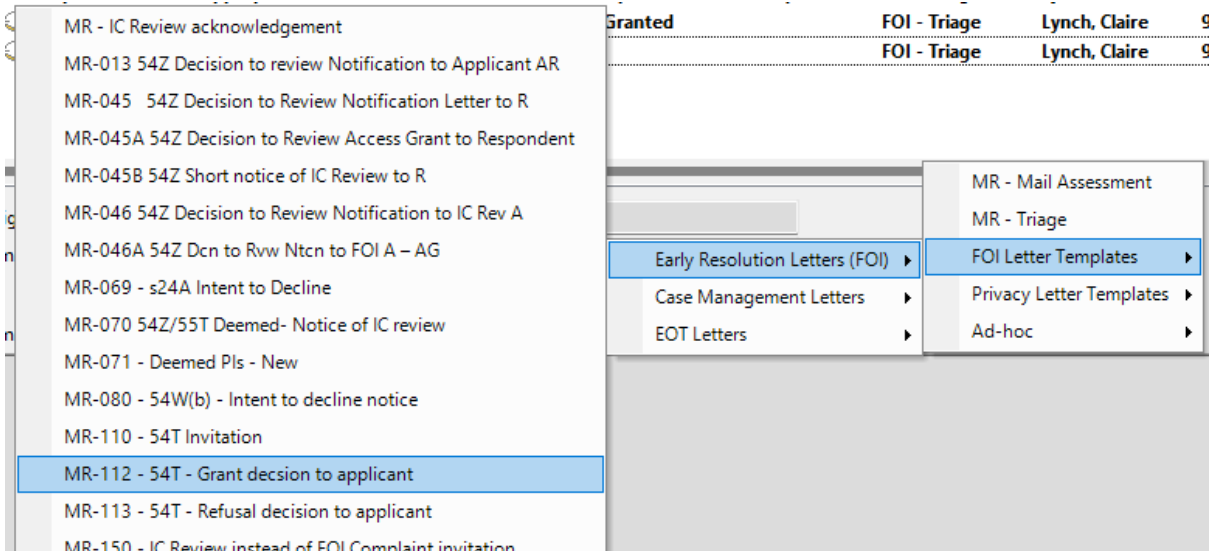
- 11. Return to original IC review MR23/XXXXX file
- 12. Complete actions up to ‘All assessment info available? (MR MA)’. Actions should reflect this:

Action	Due Date	Outcome
<input checked="" type="checkbox"/> Record case details and attach docs (M...	16-Oct-2023	
<input checked="" type="checkbox"/> Allocate to Triage Officer (MR I&T)	18-Oct-2023	
<input checked="" type="checkbox"/> Send Acknowledgement Letter (MR I&...	18-Oct-2023	
<input checked="" type="checkbox"/> Generic Application Info Complete? (M...	18-Oct-2023	Application is Complete
<input checked="" type="checkbox"/> Application Valid? (MR I&T)	18-Oct-2023	No, Out of Time
<input checked="" type="checkbox"/> Request Applicant lodge s54T Request ...	10-Nov-2023	
<input checked="" type="checkbox"/> Await s54T Request (MR OT)	29-Nov-2023	s54T Request Received
<input checked="" type="checkbox"/> Respondent's View Appropriate (MR OT)	10-Nov-2023	No Respondent's View Required
<input checked="" type="checkbox"/> Process 54T Request (MR OT)	10-Nov-2023	s54T Granted
<input checked="" type="checkbox"/> s54T Grant Notification (MR OT)	10-Nov-2023	
<input type="checkbox"/> All Assessment info available? (MR MA)	10-Nov-2023	

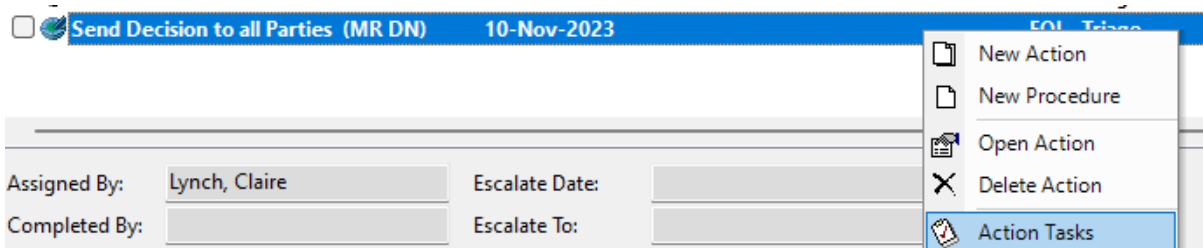
- 13. Delete final action (‘All assessment info available? (MR MA)’). Highlight action > right click > delete action.



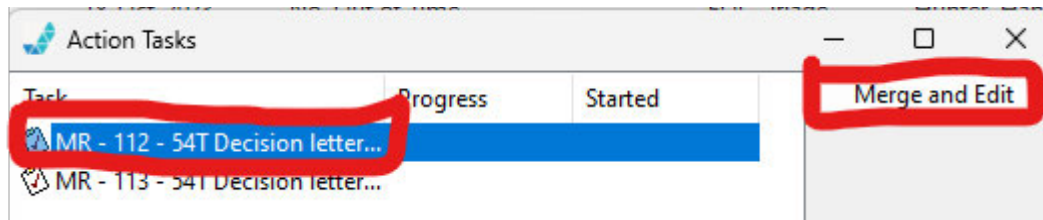
- 14. Right click > new procedure > FOI letter templates > Early resolution letters (FOI) > MR-112 – 54T – Grant decision to A



15. A new action will appear labelled 'Send Decision to all Parties (MR DN)'. Highlight action > right click > action tasks



16. An action tasks window will pop up. The grant decision letter will already be highlighted. Click 'Merge and edit'



17. A recipient's window will pop up. You de-select the respondent and only have the applicant selected. If there is a representative, only have the representative selected. Select ok:

Person	Role
s 22	Respondent Cli...
<input type="checkbox"/> FOI Contact Officer	Respondent Co...
<input type="checkbox"/> [Redacted]	Applicant Clie...
<input checked="" type="checkbox"/> [Redacted]	Represented By ...



18. Resolve will generate letter in Word

19. You will need to amend the layout of the letter, so that the 'Background' section is before the 'Decision' section. Should look like this:

I refer to your request for an extension of time to seek Information Commissioner review (IC review) of the decision deemed to be made by the s 22 under the Freedom of Information Act 1982 (the FOI Act) on Yes.

An IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given (s 54S of the FOI Act).

On the basis that you have been given notice of the Department/Agency's decision on 26 June 2023, the last day for making an application for IC review of Department/Agency's decision was [Date].¹ Your IC review application was received 13 October 2023 and was consequently made outside of the time prescribed in s 54S of the FOI Act.

Background

On [date], you made a request to the Department under the FOI Act for:

FOI request.....

¹ (delete/complete as appropriate)

Under [3.141] of the FOI Guidelines, the processing period refers to calendar days, not business (working) days. If, however, the last day for notifying a decision that falls on a Saturday, Sunday or a public holiday, the timeframe will expire on the first business day following that day. As such the...

On 26 June 2023, the Department made a decision on your FOI request.

On 26 June 2023, the Department was deemed to have refused your FOI request under s 15AC of the FOI Act when it did not make a decision within the statutory processing period.

On 13 October 2023, you made an application for IC review of the Department/Agency's decision.

On [date], you were invited by the Office of the Australian Information Commissioner (the OAIC) to request an extension of time to apply for IC review of the Department/Agency's decision, and to provide reasons why you consider an extension of time should be granted.

On [date], you sought an extension of time and provided the following reasons:

Reasons....

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 54T of the FOI Act.

Section 54T of the FOI Act provides that the Information Commissioner may extend the time for making an IC review application if satisfied that it is reasonable in all the circumstances to do so.

I have considered the reasons provided in support of your request for an extension of time. In particular, I have considered...

- [Insert considerations]

In light of this, I have decided under s 54T of the FOI Act to grant your request.

Based on the information before the OAIC, I am satisfied that granting an extension of time under s 54T of the FOI Act to is reasonable in all the circumstances.

20. For reasons of decisions (where is says '[insert considerations]'), open our I&ER teams channel > files > triage queue > example 54T reasons.docx. Use whatever of these examples fits the decision you're working on
21. Under the 'Next Steps' heading, remove which ever paragraph doesn't apply. If this is IC review of a deemed decision, you will need to keep the paragraph that talks about preliminary inquiries. If it is an access refusal/access grant, you will need to keep the paragraph that talks about assessment by a senior member of the team

Next steps

You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI Team. The assessment by a senior member of the FOI team can take 8-12 weeks and sometimes longer depending on the complexity of the issues raised in the IC review.

The OAIC will conduct preliminary enquiries with the Department regarding the status of your FOI request of . We will contact you once the Department responds to advise the next steps

22. APS 5 and above can put their name on the letter [REMINDER: If the decision is complex or sensitive, seek EL2 clearance before sending. This is more likely to occur in 'Not Granted' 54T decisions]
23. Save as a copy of the letter as a PDF on your desktop and then save and exit the letter in word. Then make sure document is checked in resolve.
24. Label document in Resolve as 'Draft 54T'
25. Create email and attach PDF from your desktop. Body of email will say:

Subject line – OAIC - MRXX/XXXX - Extension of time request under s 54T of the FOI Act

Our reference: MRXX/XXXX

Agency reference: XXXXXX

Mr/Mrs Applicants name

Represented by XXXXXX

By email:

Extension of time request under s 54T of the FOI Act

Dear XXXXX,

Thank you for your application(s) for an extension of time to apply for Information Commissioner Review (IC review) <on behalf of>.

Please find attached a decision issued under s54T of the FOI Act regarding your extension of time request.

Kind regards,

26. Send email.
27. Save copy of email to resolve
28. Label email as "54T Grant to A"

Draft 54T

OAIC - FOI DR 54T Grant to A

29. Delete all open actions in resolve
 - a. There should only be the send decisions action open from before – you can delete this otherwise it will ruin the action flo
30. Go to All Actions tab in resolve
31. Deselect the action 'Application Valid'

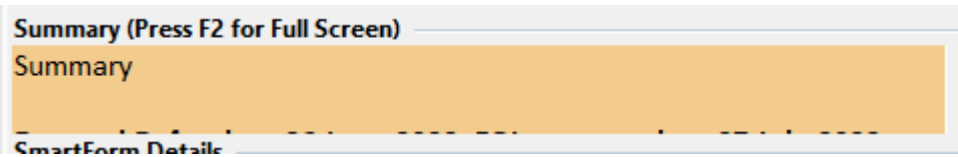
 Application Valid? (MR I&T) 18-Oct-2023 No, Out of Time

32. Then double click the open 'application valid' action
33. Change status to 'application is valid' and click ok

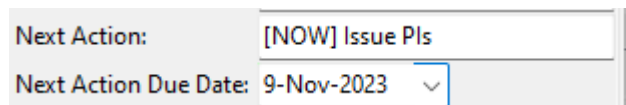
Status:

34. This will open a new action called "deemed refused under ss ..."

- 35. Complete the action depending on whether the matter needs to move deemed queue or assessments queue (Bernie, Georgia and Hannah hunter can assist with this if unsure)
- 36. Update summary window to include all possible details about request and progress of review



- 37. Change case office to move matter to correct queue
- 38. Update 'Next action' note, either:
 - a. [NOW] issue PIs; or
 - b. If moving to assessment, include exemptions that applicant is having reviewed
- 39. Next Action Due Date will be the date you moved the matter onto assessments or deemed. E.g



- 40. Ensure Issues have been added to resolve file

Issues (To add an issue - open the Agency Decision)					
Issue	Review Reason	Comments	Outcome	Primary Issue	Decision Type
access refused - 53A(a)	s15AC - no reasons			Y	Deemed Initial

Issues (To add an issue - open the Agency Decision)					
Issue	Review Reason	Comments	Outcome	Primary Issue	Decision Type
partial access refused - 53A(...)	disclose lawful methods or pr...			Y	Internal Review
partial access refused - 53A(...)	s42 - legal professional privilege			N	Internal Review
partial access refused - 53A(...)	s47C - Deliberative process - c...			N	Internal Review

- 41. Save and close resolve file

Subject line: OAIC – MR - s 54R - Withdrawal of Information Commissioner review

Our reference:

Agency/Minister reference:

Applicant Name

Agency/Minister

By email: Applicant

By email: Agency/ Minister

Withdrawal of Information Commissioner review application under s 54R of the FOI Act

Dear Parties,

I refer to the above matter.

The applicant has advised they wish to withdraw their application for Information Commissioner review.

As such, this Information Commissioner review is now closed under s 54R of the FOI Act.

Thank you for your assistance in this matter.

Kind regards,

Subject: OAIC - MRXX/XXXXX Response Required by DD Month Year- Receipt of your IC review application concerning the [Department Name]

Our reference:

Agency Reference:

By email:

Receipt of your Information Commissioner review application concerning the [Department Name]

Dear Mr/Ms/Mrs XXXXX,

We have received your request for Information Commissioner Review (IC review) dated [date].

I understand from your email that you are seeking IC review of an FOI decision made by [Department name] (the Department).

Information required

To assist in assessing your application, please provide the following:

1. A copy of the original FOI request you submitted to the Department.
2. A copy of any covering letter or email which was sent with your FOI request to the Department.
3. Any acknowledgement, automated or otherwise, which you may have received from the Department after your response was submitted
4. A copy of the FOI Decision letter
5. [If relevant, list other documents mentioned in application]

Section 54N of the *Freedom of Information Act 1982 (Cth)* (FOI Act) provides that the contents of an IC review application must include a copy of the IC reviewable decision for which an IC review is sought.

If we do not receive a response from you by **close of business on [1 week]**, your application will be finalised as invalid in accordance with s 54N of the FOI Act.

Kind regards,

Subject: OAIC – MRXX/XXXXX - Extension of time request under s 54T of the FOI Act

Our reference:

Agency reference:

By email:

Extension of time request under s 54T of the FOI Act

Dear [Mr/Mrs/Ms XXXX],

I refer to your request for an extension of time (s 54T) to seek Information Commissioner review (IC review) of the decision deemed to be made by the [Agency name] under the *Freedom of Information Act 1982* (the FOI Act).

As noted in our previous correspondence to you inviting your application for extension under s 54T [OR As noted in your application for IC review], your IC review application was received outside of the prescribed statutory timeframe. [IF DECISION MADE AFTER DEEMED DATE: I note that a deemed refusal decision occurred on XX XX XXXX, and you wish to seek review of the decision issued by the Agency/Department on XX XX XXXX].

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 54T of the FOI Act.

I have considered [include relevant factors]:

- the extent of the delay
- whether the applicant has shown an acceptable explanation for the delay
- whether the applicant has rested on their rights and allowed the decision-maker to believe that the matter was finally concluded or continued to make the decision-maker aware that they contest the finality of the decision
- whether the respondent agency or the general public would suffer prejudice as a result of the extension
- the merits of the substantive application, and
- whether it is fair and equitable in the circumstances to extend time.

I have also considered the reasons you provided in support of your request for an extension of time. In particular, I have considered...

- [Insert considerations]

On the basis of the information before the OAIC, I am not satisfied that granting an extension of time under s 54T of the FOI Act is reasonable in all of the circumstances.

I note that this does not prevent you from making new FOI request with the Department.

The effect of this decision is that your application for IC review is out of time and your IC review has been finalised as being invalid under s 54N of the FOI Act. I confirm that your IC review is now closed. Your review rights are set out below

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number at the top of this email in all correspondence.

Review rights

Judicial review

If you disagree with the OAIC's decision 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 to grant an extension of time 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 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](#) page on our website.

[Signature Block]

Subject: OAIC – Further Information Required Due DD MM Year- [Applicant name]’s Information Commissioner review application concerning the [Agency name]

Attachment: [OAIC privacy and Authority Consent Form – Feb 2024]

Our reference:

Agency Reference:

Receipt of [Applicant name]’s Information Commissioner review application concerning the [Agency name]

Dear [Representative name],

We have received your request for Information Commissioner Review (IC review) dated [XX] on behalf of the above referenced applicant.

Further Information required

[Option 1] The authority provided with the IC review application is insufficient as it is limited to providing you authority to lodge the original FOI request on behalf of the IC review applicant and does not extend to permitting you to lodge an IC review on their behalf.

[Option 2] You have not provided proof of authority to lodge an IC review on behalf of the IC review applicant with your application.

Please see attached authority and privacy consent form to be completed and returned **by [1 week]**. If you cannot meet this timeframe, please advise us as soon as possible.

Why we need this information

In order for the IC review application to meet the requirements of section 54L(3) of the Freedom of Information Act 1982 (Cth) (‘FOI Act’), we require evidence that the applicant has provided authority for a representative to lodge an IC review on their behalf.

If we do not receive a response from you by the due date your application will be finalised as invalid, as it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

Kind regards,

[Signature]



Assessment of Complaints process – by case category and complexity

Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
Stage 1: Intake	<p>1. Triage:</p> <p>a) Register complaint and send acknowledgment letter to Complainant.</p> <p>b) Determine if complaint is in Jurisdiction</p> <p>c) If Complainant has provided sufficient information to assess jurisdiction and complaint is:</p> <ul style="list-style-type: none"> a. out of jurisdiction (a Category 1 Complaint OOJ) -Decline under s70 b.in jurisdiction – assess whether to: <ul style="list-style-type: none"> i. conduct Preliminary Inquiries with Respondent ii. Decline ii. Investigate <p>d) If Complainant has provided insufficient information to determine jurisdiction (e.g., documents requested or agency not clearly identified as per s7(2)):</p> <ul style="list-style-type: none"> a. obtain further information from Complainant and reassess jurisdiction b. consider if Complainant requires assistance to formulate amended written complaint as per s70(3) and set reasonable timeframes for Complainant to provide amended written complaint c. If Complainant has not provided amended complaint form by due date – follow up by email, phone and letter and provide further opportunity to amend written complaint. If no response -issue intent to close – proceed to Decline d. if Complainant response indicates the complaint is out of jurisdiction(a Category 1 Complaint Out of Jurisdiction) – decline and close under s70 e. If Complainant response indicates the complaint is in jurisdiction (a Category 2-5 complaint) – proceed to assess whether to: <ul style="list-style-type: none"> i. conduct preliminary Inquiries with Respondent ii. Assessment stage 2 – whether to: <ul style="list-style-type: none"> • Defer decision whether to investigate • Decline • Investigate <p>e) If Ombudsman has transferred a complaint to the OAIC – it must be investigated:</p> <ul style="list-style-type: none"> i. if require information from Respondent - proceed to Preliminary Inquiries with Respondent below ii. if do not require information from Respondent – proceed to Assess complexity of complaint and Investigation below . <p>f) If the complaint is about the actions taken by the OAIC – proceed to Transfer to Commonwealth Ombudsman – see below</p>		<ul style="list-style-type: none"> • Acknowledgement letter xxx • Acknowledgement letter where OAIC is respondent xxxx 	
	<p>2. Transfer to the Ombudsman</p> <p>a) Identify whether to transfer complaint to the Ombudsman to avoid overlap in inquiries if satisfied the matter could be more effectively or appropriately dealt with by the Ombudsman or other agency (eg AFCA).</p> <p>b) Relevant factors and types of complaints suitable for transfer to the Ombudsman:</p>		<ul style="list-style-type: none"> • Letter to the Ombudsman transferring the FOI complaint: D2020/021428 • Letter to the Complainant advising that the FOI complaint has been transferred to the Ombudsman: D2020/021429 	



Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	<ul style="list-style-type: none"> a. Category 2 Complaint (Less Complex) about the way the OAIC has dealt with an IC Review, FOI complaint, about an OAIC employee, is a Respondent to a matter the Complainant has on foot before the AAT, Federal court or other forum b. Category 2 to 4 Complaints where the allegations raised is part of a wider grievance about an agency's actions that is either before the Ombudsman or falls in the Ombudsman jurisdiction and includes: <ul style="list-style-type: none"> i. Where the issues raised relate to other active complaints lodged with the Commonwealth Ombudsman c) Refer to Worksheet FOI Complaints – Referral to the Ombudsman under s74 of the FOI Act for process 		<ul style="list-style-type: none"> • Letter to the Respondent agency advising that the FOI complaint has been transferred to the Ombudsman: Dxxx/xxxxx 	
	<p>3.Preliminary Inquiries with Respondent</p> <p>a) Preliminary inquiries with the Respondent agency are conducted in the following circumstances:</p> <ul style="list-style-type: none"> a. Insufficient information before OAIC to determine whether to investigate or decline, including complexity of complaint b. The complaint relates to an access refusal decision and: <ul style="list-style-type: none"> i. there is no related IC Review on foot or ii. it is unclear if the Complainant has lodged an internal review with the Respondent agency and if so, the status of that internal review iii. the OAIC is aware there is an internal agency review on foot and it is unclear if the Respondent agency has completed the internal review iv. It is unclear whether the process issues related to the complaint has been rectified by the Respondent agency?? c. The complaint allegations suggest it may relate to actions not taken by a Respondent agency in the performance of its functions or exercise of powers under the FOI Act d. The complaint relates to a deemed refusal decision and: <ul style="list-style-type: none"> i. It is unclear if the statutory timeframe has expired for making a decision or ii. It is unclear if the Respondent agency has made a decision since lodgement of the OAIC complaint e. The Complainant has lodged a similar complaint with another agency(?) <p>b) Process for conducting preliminary inquiries with Respondent agency:</p> <ul style="list-style-type: none"> a. Issue s72 preliminary inquiries with Respondent agency notifying of complaint and request response <p>Consider response and whether more information is required from Complainant or Respondent agency. Once all information has been received and no further preliminary inquiries are required –proceed to</p>	<p>11.10 (Preliminary inquiries)</p>	<ul style="list-style-type: none"> • 	



Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	Assess complexity of complaint below in order to determine whether to decline or investigate			

Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
2: Assessment	<p>3. Assess complexity of complaint</p> <p>a) Assess complexity of complaint to determine whether to:</p> <ul style="list-style-type: none"> a. Investigate b. Defer decision to investigate c. Decline <p>b) A complaint must be investigated:</p> <ul style="list-style-type: none"> a. unless a ground to decline under s73 arises and b. will depend on the : <ul style="list-style-type: none"> i. complexity and seriousness of the complaint issues raised, and ii. outcomes sought by the Complainant. <p>c) A decision whether to investigate a complaint may be held in abeyance (deferred) pending the outcome of related IC Review -if there is a related IC Review on foot see below.</p> <p>d) Relevant factors and types of complaints suitable to decline under s73 – see below:</p> <p>Relevant factors and types of complaint suitable for investigation- see below.</p>			
	<p>4. Defer decision to investigate</p> <p>a) Relevant factors and types of complaints suitable to defer decision to investigate:</p> <ul style="list-style-type: none"> a. The complaint is a Category 2-4 complaint and b. the issues and outcomes sought are merits review related and more effectively dealt with via IC Review and c. There is a related IC Review on foot. <p>b) Reassess whether to investigate on completion of IC Review – proceed to</p>	<p>11. 5(Relationship with IC Reviews) 11.11 (Deciding not to investigate)</p>		

Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	<p>5. Decline</p> <p>a) Relevant factors and types of complaint suitable to decline under s73:</p> <ul style="list-style-type: none"> a. The complaint is a Category 2-4 type of complaint and does not meet the threshold requirements of a Category 5 or 5.1 complaint – i.e., issues not serious, systemic or in the public interest. b. Section 73(b) -the Category 2-4 complaint issues and outcomes sought are merits review related and more effectively dealt with via IC Review and: <ul style="list-style-type: none"> i. There is a related IC Review on foot in relation to the complaint issues and outcomes raised ii. In addition to merits review issues, the complaint also raises procedural compliance issues which may be addressed by IC Review or related IC Review on foot or iii. The Complainant has not sought review from the Respondent agency or OAIC IC Review in the first instance c. In all other cases, all the information before the OAIC indicates another ground under s73 arises: <ul style="list-style-type: none"> iv. S73(a) – the action is not taken by the agency in the performance of the agency’s functions v. S73(c) the Complainant has a right to complain to another body, has not exercised that right, and is reasonable for the Complainant to exercise that right vi. S73(d) the Complainant has complained to the respondent agency and the respondent agency is dealing with the complaint and not had an adequate opportunity to deal with the complaint vii. The complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith viii. S73(f) – the Complainant does not have a sufficient interest in the subject matter of the complaint. 	<p>11. 5(Relationship with IC Reviews)</p> <p>11.11 (Deciding not to investigate)</p>		



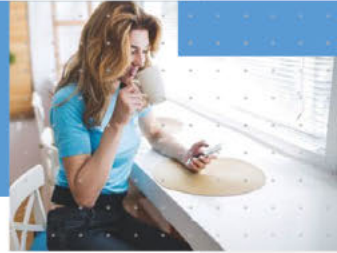
Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	<p>6. Investigate</p> <p>a) Identify if the complaint meets the threshold requirements warranting investigation</p> <p>b) Relevant factors and types of complaint suitable for investigation include:</p> <ul style="list-style-type: none"> a. the complaint has been referred to the OAIC by the Ombudsman, or b. It is a Category 2-4 complaint which meets the threshold requirements of a Category 5 complaint warranting investigation and c. The Category 2-4 issues raise systemic and/or serious procedural non-compliance issues where: <ul style="list-style-type: none"> i. There are multiple case studies raising the same issue about the agency or group of agencies : <ul style="list-style-type: none"> - this information is likely collected through the IC Review function, other FOI complaints or reported statistics indicating the allegations raised highlight serious non-compliance by the Respondent agency/agencies ii. Allegation(s) may touch on merits review function where the issue appears systemic iii. Allegations raise concerns regarding general access right to access information iv. The allegations raise novel issues and may be a lead case to address systemic issues v. The allegations highlight a recurring pattern of an agency’s non-compliance with procedural and statutory timeframes under the FOI Act and Guidelines vi. Where allegations of non-compliance with process and/or statutory timeframes lead to serious adverse outcomes for the public/complainant (e.g., breach of FOI Act or non-compliance with FOI Guidelines), and d. The risk and impact of non-compliance – the greater the risk and the greater the adverse impact on the public, the more likely that investigation is warranted e. The objects of the FOI Act, and f. The outcomes sought are more appropriately addressed by investigation, and g. Media interest 	<p>11.1-11.4 (Information Commissioner Investigations)</p> <p>11.5-11.6 (Relationship with IC reviews)</p> <p>11.7.11.8 (Power to investigate)</p>	<ul style="list-style-type: none"> • Assessment of FOI Complaints – Case Categories 	



Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
3: Decision	<p>7. Decline</p> <p>a) Issue intent to decline to the Complaint under relevant provision of s73, or to both the Complainant and Respondent agency where preliminary inquiries were conducted with the Respondent agency:</p> <p>a. s 73: if Complainant and Respondent agency respond, consider the responses and determine whether to proceed to close under s73 – if proceed to close, issue decline letter to both parties under s73.</p> <p>b. If parties do not respond, proceed to close under s73.</p>	<p>11. 5(Relationship with IC Reviews)</p> <p>11.11 (Deciding not to investigate)</p>	<ul style="list-style-type: none"> • 	
	<p>8. Investigate</p> <p>a) Issue notice to investigate to Complaint and Respondent with request for response from Respondent</p> <p>b) Refer to FOI Complaints – Overview of investigation process D2020/021386</p>		<ul style="list-style-type: none"> • FOI Complaints-Overview of investigation process D2020/021386 	



Australian Government
Office of the Australian Information Commissioner



March 2024

FOI complaints – Considering whether complaints are within jurisdiction

Introduction

This checklist provides guidance to review officers on how to consider whether FOI complaints are within jurisdiction. For further information, see [Part 11: Investigations and complaints | OAIC](#).

Checklist

- The application is in writing and identifies the agency against which the complaint is made (s 70(2)).
 - Note: The Information Commissioner cannot investigate a minister’s handling of FOI matters.
- The respondent is an agency or minister subject to the *Freedom of Information Act 1982* (FOI Act). To determine whether a particular body or office falls within the definition of ‘agency’, you should refer to ss 4-7 and Schedules 1 and 2 of the FOI Act as well as the [Part 2 of the Guidelines issued under s 93A of the FOI Act](#).

Exceptions:

- Australian Health Practitioner Regulation Agency (Ahpra): Under the *Health Practitioner Regulation National Law (2009)* (National Law), the *Australian Information Commissioner Act 2010* (Cth), *Freedom of Information Act 1982* (Cth), *Privacy Act 1988* (Cth) and *Ombudsman Act 1976* (Cth) apply to Ahpra, the Ahpra Board and the National Boards as modified by the Health Practitioner Regulation National Law Regulations 2018. The [National Health Practitioner Ombudsman](#) carries out the functions of the Freedom of Information Commissioner, the Privacy Commissioner and the Ombudsman under the relevant legislation, which includes oversight of Ahpra’s FOI functions.
- The applicant is complaining about an action taken by an agency under the FOI Act (s 70(1)). Examples of an action include:
 - a complaint that an agency did not provide adequate assistance to an FOI applicant to make an FOI request
 - a complaint by a third party that an agency failed to consult them before deciding to release a document

- a complaint that an agency did not make a decision on their FOI request within the applicable statutory timeframe
- a complaint alleging a conflict of interest by the decision maker.

Obligation to assist

- The OAI must give 'appropriate assistance' to anyone who wishes to complain and needs help to formulate their complaint (s 70(3)). This need may arise, for example, if a person has language or literacy difficulties or otherwise needs assistance ascertaining the scope of an agency's obligations under the FOI Act or making a complaint against an agency.

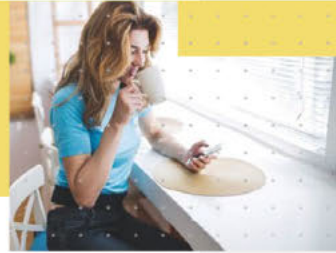
FOI Complaints involving the OAI as a respondent

-

Commented [RA1]: Please include workflow



Australian Government
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June 2021

FOI complaints case categories

FOI complaint case categories provide an indication of the complexity and range of issues to be determined in an FOI complaint lodged under s 70 of the *Freedom of Information Act 1982* (Cth) (FOI Act).

FOI complaint case categories are used to allocate FOI complaints efficiently and equitably, and to assist in the implementation of strategies to case manage FOI complaints.

The table below sets out the case categories and identifies the range of issues to be determined within each category.

In relation to matters categorised as category [3] matters (issues raised that touch on OAIC processes), consideration should be given to whether these matters should be transferred to the Commonwealth Ombudsman under s 74 of the FOI Act, consistent with the guidance in FOI Guidelines [11.5] and Transfer of FOI Complaints under s 74 worksheet: [D2020/021386](#)

This worksheet should be read in conjunction with the overview of FOI complaints process worksheet: [D2019/002579](#)

Category	Description	Issues
Category 1	Out of jurisdiction	Allegations relation to state agencies
[Cat 1]	May be resolved by way of closure under s 70	Allegations raised in relation to ministers Allegations raised in relation to actions not taken under the FOI Act
Category 2	Less complex	Allegations in relation to the decision by the agency to refuse access to documents
[Cat 2]	May be resolved by way of ss 73(b) and (e) or s 86	Allegations in relation to an agency's customer service about an action taken in the performance of functions, or exercise of powers under the FOI Act. Allegations in relation to compliance with the statutory processing period Allegations in relation to the consultation process Allegations in relation to s 17 Allegations relating to issues raised in a related IC review Allegations raised that are more appropriately considered under the merits review function

Commented [IN1]: Out of jurisdiction/wrong form/minister/state body etc

Commented [RA6]: Is this tied under 'Allegations raised that are more appropriately considered under the merits review function'?

Commented [IN2]: IC review more appropriate

Commented [RA3R2]: Agree

Commented [IN4]: I have added this in here in case a response to PIs suggest we should go to investigation

Commented [RA5]: May be resolved through early resolution and explanation that issues can be managed IC reviews space.

Commented [RA7]: I would note these under Category 3 – Allegations about an action taken by an agency that have not been previously investigated by the Commissioner

OAIC

Category	Description	Issues
		Complainant has or had a related IC review where the allegations raised were or would be more appropriately considered
Category 2 [Cat 2.1]	May be resolved by way of s 73(e) or s 86	<p>Allegations raised are the same or are similar to issues that have been previously investigated by the Information Commissioner and there is no utility in conducting a further investigation</p> <p>Allegations are without substance, frivolous or vexatious in nature</p> <p>Allegations have been addressed/resolved by the agency</p>
Category 3 [Cat 3]	Complex May be resolved by way of s 74	<p>Allegations raised are about:</p> <ul style="list-style-type: none"> - the processes of the OAIC - an employee of the OAIC - an action taken during the conduct of an OAIC IC process <p>Complainant has a matter on foot in the AAT or Federal court where the OAIC is the respondent</p>
Category 4 [Cat 4]	Complex May be resolved by way of s 73 or s 86	<p>One to two allegations raised</p> <p>Allegations raised are not merits review related</p> <p>Allegations do not appear systemic in nature</p> <p>Allegations raise issues not previously investigated by the Information Commissioner</p>
Category 5 [Cat 5]	FOI complaints with systemic and significant issues More likely to be resolved by way of s 86 Notice or through the conduct of a CII	<p>Allegations appear systemic</p> <p>Multiple case studies raising the same issue</p> <p>Allegation may touch on merits review function where the issue appears systemic</p> <p>Allegations raise concerns regarding general right to access information</p> <p>Media interest</p>
Category 5.1 [Cat 5.1]		<p>Significant and systemic issues identified above and:</p> <p>Subject matter of FOI request which are the basis of the allegations are of significant public interest</p> <p>Information collected through IC review function, other FOI complaints or reported statistics indicate the allegations raised highlight significant non-compliance by the respondent agency</p>

Commented [RA8]: I would merge with Cat 2.

Commented [IN9]: Eg DHS/Home Affairs Respondent and issue and time period around the same

Commented [IN10]: Vex app where issue falls under related vex dec

Commented [RA11]: Consider whether this is an outcome, rather than an issue

Commented [IN12]: S 74 to COMBO

Commented [RA13R12]: I am more inclined to categorise these as less complex as we are not investigating, we are transferring.

Commented [IN14]: Investigate

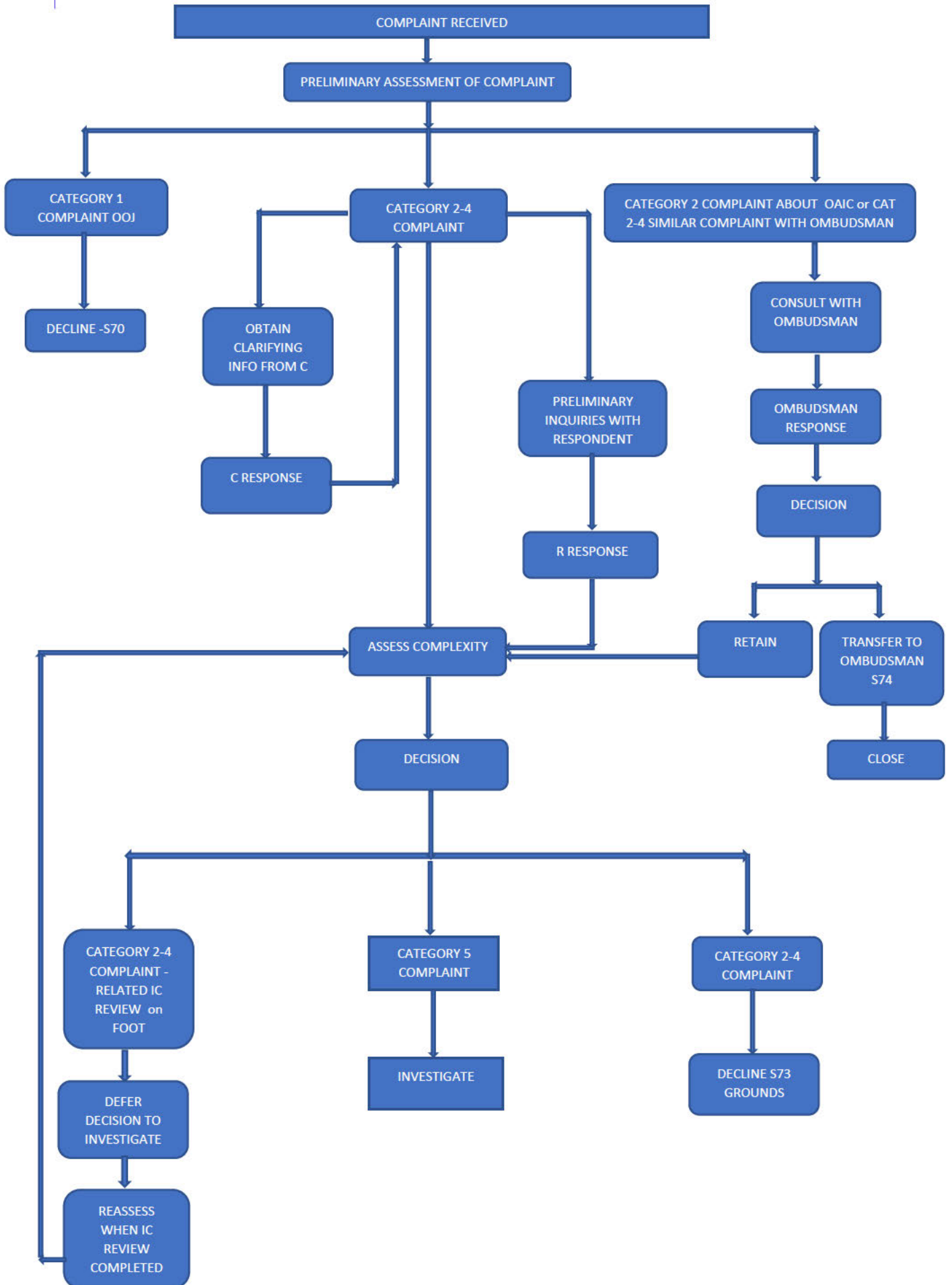
Commented [RA15]: This appears to be more Category 3?

Commented [IN16]: Investigation - systemic

Commented [IN17]: CII

Commented [RA18]: Consider wording - it may sound like it should be dealt with by the Significant and Systemic team





April 2024

FOI Complaint recommendation cases: Overview of process

This resource applies to managing FOI Complaint Recommendation Cases and should be read in conjunction with [Part 11 of the FOI Guidelines](#), the [Regulatory Action Policy](#) and [FOI Complaints: Overview of investigation process](#) resource.

Key principles

- The Information Commissioner can investigate under Part VIIB of the FOI Act agency actions relating to the handling of FOI matters. This involves investigating complaints received from complainants (s 70) as well as conducting own motion investigations (s 69(2)).
- The complaints process set out in Part VIIB is primarily intended to deal with the manner in which agencies handle FOI requests and procedural compliance matters.
- The FOI Act sets out certain rules that apply to the conduct of the Information Commissioner's complaint investigations and Commissioner initiated investigations. The guiding principle is that an investigation shall be conducted in private and in the way the Information Commissioner considers fit (s 76(1)).
- On completing an investigation, the Information Commissioner must provide a 'notice on completion' to the agency and to the complainant (if there is one) (s 86).
- The Information Commissioner's notice must include the investigation results, the investigation recommendations (if any), and the reasons for those results and any recommendations (s 86(2)).
- In addition to including opinions, conclusions or suggestions in a notice on completion, the Information Commissioner may also make 'formal recommendations to the respondent agency that the Information Commissioner believes that the agency ought to implement' (s 88).
- If the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement a formal recommendation, the Information Commissioner may issue a written 'implementation notice' requiring the agency to provide within a specified time particulars of any action the agency will take to implement the Information Commissioner's recommendations (s 89).

FOI Complaint Recommendation Case Process

Stage	Actions
Registration	<ol style="list-style-type: none"> 1. When finalising an FOI complaint, the case Officer will be prompted to record whether any recommendations have been made by the FOI/Information Commissioner. If there has been recommendations made, Resolve will automatically raise a new case type called a 'Recommendation case'.¹ 2. Once a 'Recommendation case has been raised, the Case Officer is to ensure that the Recommendation case file has been x-referenced with the original complaint and add the s 86 Notice to the documents tab of the Recommendation case file. 3. Case Officer to complete triage process including updating any relevant fields on Resolve file. 4. Case Officer to allocate the Resolve Recommendation case file to 'FOI Complaints – Rec' Resolve queue. 5. Director Reviews and Investigations to monitor response due date.
Awaiting agency's response to recommendations	<ol style="list-style-type: none"> 6. Once a response has been received from the agency, Director Reviews and Investigations team to assign the recommendation case to a Case Officer. 7. Case Officer to review the agency's response and provide a recommendation to Director Reviews and Investigations on whether the agency has responded to each recommendation or whether there are any outstanding issues. 8. As part of review, Case Officer to prepare a table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them
Assessment of response to recommendations	<ol style="list-style-type: none"> 9. Director Reviews and Investigations to undertake assessment and assign the matter to relevant Case Officer for next steps. 10. Discuss in collaboration with Director Reviews and Investigations team, Assistant Commissioner and FOI Commissioner (FOI Commissioner input meeting). Considerations on whether the agency has taken reasonable steps to implement the recommendations include: <ul style="list-style-type: none"> — Whether the recommendation related to a systemic issue — Whether the agency has taken any action to implement the recommendation — The investigation conclusions and the agency's actions which led to the recommendation being made — The impact on individual's right to access information if the recommendation is not implemented — Other relevant factors which may impact on an agency's ability to implement a recommendations such as technology issues, occurrence of a pandemic or machinery of government changes. 11. If satisfied with the agency response, proceed to 'Recommendation Acquittal' stage. 12. If not satisfied, proceed to 'Further information required' stage.
Recommendation Acquittal	<ol style="list-style-type: none"> 13. Case Officer to draft the acquittal notice to the Assistant Commissioner FOI outlining the action taken by the agency to implement the recommendations, and, if required, update the table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them. 14. Proceed to assign Resolve clearance action through to the Director Reviews and Investigations

¹ To close a complaint where there are no actions or identifiable workflows, create new action

Stage	Actions
	<p>15. Once the Draft has been cleared by the Director Reviews and Investigations, the case officer will seek Assistant Commissioner approval of:</p> <ul style="list-style-type: none"> - a draft letter of acquittal to the respondent - a table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them. <p>16. The Assistant Commissioner will make an assessment of acceptance of the implementation of recommendations under s 88 of the FOI Act (at the discretion/agreement with of the FOI Commissioner) and recommend the appropriate signatory (FOI Commissioner/Information Commissioner/Assistant Commissioner/Director/case officer if appropriate).</p> <p>17. Once approval obtained from FOI/Information Commissioner to acquit the recommendation case, case officer to provide acquittal notice to respondent.</p> <p>18. Case Officer closes Resolve case file.</p> <p>19. Case Officer to update Outcome of FOI investigations document to include no further action: D2021/020081 and provide to Communications team for publication.</p>
Further information	<p>20. Case Officer Draft RFI to be issued by the Assistant Commissioner.</p> <p>21. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> — Director Reviews and Investigations — Assistant Commissioner — FOI Commissioner <p>22. Once approved, Case Officer to provide RFI to agency.</p> <p>23. Director Reviews and Investigations to monitor response due date.</p> <p>24. Once response is received, update the table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them and return to 'Assessment of response to recommendations' stage.</p> <p>25. If satisfied with the agency response, proceed to Acquittal stage.</p> <p>26. If not satisfied, proceed to 'Implementation notice' stage.</p>
Implementation notice	<p>27. If FOI/Information Commissioner considers the agency's actions to implement their recommendations is inadequate in the circumstances and decides to issue an Implementation Notice, Case Officer to draft implementation Notice to agency.</p> <p>28. Proceed to assign Resolve clearance action through the following levels:</p> <p>29. Director Reviews and Investigations</p> <p>30. Assistant Commissioner</p> <p>31. FOI/Information Commissioner</p> <p>32. Once the draft has been approved by the FOI/Information Commissioner, Case Officer to send the Implementation Notice to the agency.</p> <p>33. Case Officer to monitor response due date specified in the Implementation Notice.</p> <p>34. Once response to Implementation Notice has been received, Case Officer to assess the response and provide an Executive Brief to the FOI/Information Commissioner for their consideration on whether the agency's response outlines whether the agency has taken reasonable steps to implement the investigation recommendations.</p> <p>35. If the FOI/Information Commissioner is satisfied with the agency response:</p> <ul style="list-style-type: none"> — Case Officer to send signed letter from FOI/Information Commissioner to agency. — Case Officer to finalise actions on resolve and closes Resolve file. — Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Comms for publication.

Stage	Actions
	36. If the FOI/Information Commissioner is not satisfied , proceed to ' Report to Minister ' stage.
Report to Minister	<p>37. Commence drafting a report to be provided the Attorney-General as the Responsible Minister. The report must include:</p> <ul style="list-style-type: none"> • A copy of the s 86 Notice on Completion • A copy of the Implementation Notice • The agency's response (if any) to the Implementation Notice • State that the Information Commissioner is not satisfied that the agency has taken adequate action that is adequate and appropriate in the circumstances • state the action that the Information Commissioner believes if taken by the agency, would be adequate and appropriate in the circumstances, to implement the investigation recommendations. <p>38. Once the draft has been approved by the FOI/Information Commissioner, Case Officer to provide a copy of the Draft to the responsible Minister on behalf of the Information Commissioner.</p> <p>39. Information Commissioner to contact the Head of the Agency to advise that a Report has been provided to the responsible Minister.</p> <p>40. Once the Report has been provided to the responsible Minister and it has been tabled in Parliament, Case Officer to close Recommendation Case. Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Comms for publication.</p>



April 2024

FOI Complaints: Overview of investigation process

This resource applies to investigating complaints by individuals and should be read in conjunction with [Part 11 of the FOI Guidelines](#), the [Regulatory Action Policy](#) and [FOI Complaints – Intake and early resolution process](#) resource, FOI Complaints recommendation case – Overview of process (see worksheet D2020/007324) and FOI Complaints – Transfer to Ombudsman (see worksheet D2020/021386).

Key principles

- The Information Commissioner can investigate under Part VIIB of the FOI Act agency actions relating to the handling of FOI matters. This involves investigating complaints received from complainants (s 70) as well as conducting own motion investigations (s 69(2)).
- The complaints process set out in Part VIIB is primarily intended to deal with the manner in which agencies handle FOI requests and procedural compliance matters.
- Generally, it is the Information Commissioner's view that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation for example, where the agency's practice appears to be systemic in nature.
- The FOI Act sets out certain rules that apply to the conduct of the Information Commissioner's complaint investigations and Commissioner initiated investigations. The guiding principle is that an investigation shall be conducted in private and in the way the Information Commissioner considers fit (s 76(1)).
- Section 73 of the FOI Act provides that the Information Commissioner has the discretion not to investigate or continue investigating a complaint in certain circumstances.
- Section 74 of the FOI Act provides the Information Commissioner with the discretion whether to transfer a complaint to the Commonwealth Ombudsman if satisfied that the complaint would be more effectively or appropriately dealt with by the Ombudsman.
- When making a decision to transfer a complaint to the Ombudsman, the Information Commissioner must clearly outline the steps in the decision-making process, namely:
 - Information Commissioner's level of satisfaction must be reached that a complaint could be more effectively or appropriately dealt with by the Ombudsman

FOI Complaint Investigation Process

Stage	Actions
Registration	<ol style="list-style-type: none"> 1. Register complaint and send acknowledgement letter to complainant. 2. Allocate the Resolve complaint case file to 'FOI Complaints – Assessments' Resolve queue. 3. Assign a Resolve action item to Director of Reviews and Investigations for early assessment of complaint.
Assessment	<ol style="list-style-type: none"> 4. Director Reviews and Investigations to assess the complaint to determine whether the complaint should proceed to investigation, be declined or preliminary inquiries are required. Relevant considerations to consider whether to commence investigation includes: <ul style="list-style-type: none"> – whether the practice is systemic – whether significant issues are raised – whether there has been a breach of the FOI Act or non-compliance with the FOI Guidelines – whether there has been non-compliance with the timeframes, or – the outcome sought. 5. Director Reviews and Investigations to allocate complaint to Case Officer. 6. Case Officer to review complaint file and compile evidence matrix (see worksheet: D2019/013612).
Preliminary inquiries	<ol style="list-style-type: none"> 7. Case Officer to draft a set of relevant preliminary inquiries in consultation with Director Reviews and Investigations. 8. Case Officer to provide the preliminary inquiries to the respondent agency. 9. Once a response is received, Case Officer to assess the response to preliminary inquiries and assign a Resolve action item to Director of Reviews and Investigations for re-assessment of complaint. 10. Director Reviews and Investigations to undertake an assessment and assign the matter to Case Officer for next steps. 11. Case Officer to update evidence matrix with next steps: <ul style="list-style-type: none"> – Transfer to the Commonwealth Ombudsman (s 74) Step 12 below – Decline to investigate (s 73) Steps 13 - 22 below – Proceed to investigation Step 10 below 12. Director Reviews and Investigations to Allocate the Resolve complaint case file to the relevant Resolve queue.
Transfer to Commonwealth Ombudsman (s 74)	<ol style="list-style-type: none"> 13. If transferring complaint to Commonwealth Ombudsman (see worksheet: D2020/021386 for next steps and templates).
Discretion not to investigate (s 73)	<ol style="list-style-type: none"> 14. If declining to investigate complaint, Case Officer to draft Intention to Decline (ITD) in consultation with Director Reviews and Investigations. 15. Case Officer to assign a Resolve action item to Director of Reviews and Investigations to clear draft ITD. 16. Director Reviews and Investigations to clear draft ITD and assign a Resolve action item to Case Officer to send ITD to complainant.

Stage	Actions
	<p>17. Once approved, Case Officer to send ITD to complainant providing a response date of 2 weeks and create a Resolve action 'await response – complainant' to monitor response due date.</p> <p>18. If a response is received, Case Officer to assess the response to ITD and assign a Resolve action item to Director of Reviews and Investigations for re-assessment of complaint.</p> <p>19. Director Reviews and Investigations to undertake an assessment and assign the matter to Case Officer for next steps. Proceed to Step 24</p> <p>20. If no response is received and/or no change to preliminary assessment, then Case Officer is to draft a closure notice (s 75(3)) to complainant to be issued by the FOI Commissioner.</p> <p>21. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> - Director Reviews and Investigations - Assistant Commissioner - FOI Commissioner <p>22. Once approved, Case Officer to send closure notice to complainant.</p> <p>23. Case Officer to close Resolve complaint file.</p>
Commencement of an investigation	<p>24. Case Officer to prepare correspondence following assessment:</p> <ul style="list-style-type: none"> - draft s 75 investigation notice to the respondent agency, and - draft commencement of investigation letter to complainant. <p>25. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> - Director Reviews and Investigations <p>26. Once draft s 75 Notice has been approved by Director Reviews and Investigations, case officer is to issue (under their signature):</p> <ul style="list-style-type: none"> - issues 75 investigation notice to the respondent agency, and - commencement of investigation letter to complainant. - .
Investigation	<p>27. Case Officer to monitor respondent agency's response due date to s 75 Notice.</p> <p>28. Once response received, Case Officer to assess the respondent agency's response and add the information to the evidence matrix.</p> <p>29. Case Officer to discuss next steps with Director Reviews and Investigations and/or Assistant Commissioner. Next steps include:</p> <ul style="list-style-type: none"> - request for further information from the respondent agency - request for further information from the complainant - providing a set of the respondent agency's open submissions to the complainant for their comment - recommend decline to investigate the matter further, or - proceed to s 86 Notice.
Section 86 Notice	<p>30. Case Officer to prepare in consultation with Director Reviews and Investigations and Assistant Commissioner:</p> <ul style="list-style-type: none"> - s 86 Notice (including any recommendations) - letter accompanying s 86 Notice to respondent agency - updated evidence matrix, and - snapshot summary.

Commissioner Initiated Investigation Process

Where the Information Commissioner has identified systemic or significant issues with an agency's processing of FOI requests, the Commissioner can commence investigation of the agency on their own initiative (Commissioner Initiated Investigation (CII)).

Systemic or significant issues may be identified through a number of methods:

- FOI complaints
- IC reviews
- Audits
- Information provided to the OAIC

Prior to commencing a CII, the Information Commissioner will consider the information before the office at that time. The Information Commissioner may decide to conduct preliminary inquiries with an agency prior to commencing investigation.

Stage	Actions
Preliminary inquiries	<ol style="list-style-type: none"> 1. Case Officer to draft a set of relevant preliminary inquiries in consultation with Director Reviews and Investigations. 2. Case Officer to provide the preliminary inquiries to the agency and monitor response due from the respondent agency.
Assessment	<ol style="list-style-type: none"> 3. Complaint and respondent agency response to preliminary inquiries to be assessed to determine whether the complaint should proceed to a CII investigation. Relevant considerations to consider whether to commence a CII includes: <ul style="list-style-type: none"> – whether the practice is systemic – whether significant issues are raised – whether there has been a breach of the FOI Act or non-compliance with the FOI Guidelines – whether it is in the public interest to investigate 4. Director Reviews and Investigations or Assistant Director to undertake assessment and assign the matter to Case Officer for next steps.
Allocation	<ol style="list-style-type: none"> 5. If the recommendation is to proceed to commence a CII: 6. Case Officer to prepare a brief to the Information Commissioner including the following information: <ul style="list-style-type: none"> – recommendations – background – potential case studies – information before the office – relevant agency statistics – related IC review issues – considerations – outcomes/benefits – resourcing implications – project plan 7. Proceed to assign Resolve clearance action through the following levels: <ul style="list-style-type: none"> – Director Reviews and Investigations – Assistant Commissioner

Stage	Actions	
	- FOI Commissioner	. . .
	8. Case Officer sends brief to Information Commissioner.	. . .
Commencement of CII	9. If the Information Commissioner decides to commence a CII, the Case Officer drafts a s 75 Notice to the respondent agency for clearance.	. . .
	10. Proceed to assign Resolve clearance action through the following levels:	. . .
	- Director Reviews and Investigations	. . .
	- Assistant Commissioner	. . .
	- FOI Commissioner	. . .
	11. Case Officer to compile documents on Resolve file and send the draft s 75 Notice to the Information Commissioner.	. . .
Investigation	12. Once the Information Commissioner has settled the s 75 Notice, the Commissioner or relevant delegate to call the respondent agency to advise that this matter will proceed to a CII investigation providing the following information:	. . .
	- Issues	. . .
	- Outline process, and	. . .
	- Case Officer details contact details.	. . .
	13. Media statement prepared and finalised by the Information Commissioner	. . .
	14. Case Officer follows up on phone call to the agency by the Information Commissioner or relevant delegate by sending the s 75 Notice.	. . .
	15. Case Officer to notify affected third party that their matter will be used as a case study in the CII (if required).	. . .
	16. Case Officer to monitor respondent agency's response due date.	. . .
	17. Once a response has been received from the respondent agency to the s 75 Notice, Case Officer to assess the evidence and form preliminary view.	. . .
	18. After discussion with Director Reviews and Investigations and/or Assistant Commissioner, Case Officer to prepare relevant correspondence to either the respondent agency or the complainant.	. . .
	19. Case Officer to discuss next appropriate steps with Director Reviews and Investigations and/ or Assistant Commissioner.	. . .
	Next steps include:	. . .
	- Request for further information from the agency	. . .
	- Request for further information from affected third parties	. . .
	- Providing a set of the agency's open submissions to affected third parties for their comment, and	. . .
	- Proceed to s 86 Notice.	. . .
	20. If further information required, Case Officer to draft request and provide to Director Reviews and Investigations and Assistant Commissioner for clearance.	. . .
	21. Case Officer to monitor response.	. . .
	22. If response received , consider submissions and discuss with Director Reviews and Investigations for re-assessment.	. . .
	23. If Director Reviews and Investigations in consultation with Assistant Commissioner is satisfied that no further information is required proceed to finalisation.	. . .
Section 86 Notice	24. If proceeding to s 86 Notice, Case Officer to prepare in consultation with Director Reviews and Investigation and Assistant Commissioner:	. . .

Stage	Actions
	<ul style="list-style-type: none"> - s 86 Notice - list of recommendations - letter accompanying s 86 Notice to respondent agency, and - Executive brief outlining next steps.
	25. Case Officer to compile documents on Resolve file.
	26. Case Officer to consider whether the findings of the CII warrant making recommendations and also consider the appropriateness of recommendations that: <ul style="list-style-type: none"> - related FOI complaint outcomes - promote cultural change - reinforce the requirement to promote the objects of the FOI Act - implement training - update FOI manuals - develop policies and procedures, and - conduct audits with a reporting timeframe of up to 6 months.
	27. Case Officer to arrange for the s 86 Notice to be signed by the Information Commissioner.
	28. Once the s 86 notice has been signed by the Information Commissioner: <ul style="list-style-type: none"> - Information Commissioner or relevant delegate to call the respondent agency to advise that the matter has been finalised and advise: <ul style="list-style-type: none"> - whether any recommendations have been made, and - relevant next steps in the process.
	29. Case Officer to advise OAIC media of the outcome of the investigation prior to sending out the s 86 notices to the agency.
	30. Case Officer to send out the s 86 Notice to the respondent agency inviting them to provide comments they wish to make within 2 weeks and advising them that the Information Commissioner will consider any comments and then provide a copy of the s 86 Notice and comments to any affected parties and publish a summary of the outcome of the investigation on the OAIC's website (see Outcomes of investigations summary table: D2021/020081).
	31. 2 weeks later: (if there are notified third parties) Case Officer to call the affected third parties and advise that the matter has been finalised by the Information Commissioner. Follow up with email providing s 86 Notice.
Finalisation	32. Director Reviews and Investigations together with Assistant Commissioner in consultation with Media team to consider whether a media statement is required.
	33. Director Reviews and Investigations and Assistant Commissioner provide a copy of the s 86 Notice to Media team for publication on the OAIC's website.
	34. Case Officer to provide draft summary of the outcome of the investigation to Director Reviews and Investigations and Assistant Commissioner for clearance and approval to publish the outcome on the OAIC website (see Outcomes of investigations summary table: D2021/020081)
	35. Case Officer to liaise with media once approval has been provided for the publication of the outcome of the complaint.
	36. If no recommendations made the Case Officer closes the CII Resolve file.
	37. If recommendations made the Case Officer closes the CII Resolve file and raises a 'Recommendation Case' on Resolve x-ref the original CII file. Follow process set

Stage	Actions
	out in FOI Complaints recommendation case – Overview of process (see worksheet D2020/007324).



September 2023

FOI Complaints: transfer to Ombudsman

This resource applies to transfers of FOI complaints to the Commonwealth Ombudsman under s 74 of the *Freedom of Information Act 1982* (FOI Act) and should be read in conjunction with [Part 11 of the FOI Guidelines](#).

Key principles

- Under Part VIIB of the FOI Act the Information Commissioner can investigate agency actions relating to the handling of FOI matters. This involves investigating complaints received from complainants (s 70) as well as conducting own motion investigations (s 69(2)).
- The FOI Act sets out certain rules that apply to the conduct of the Information Commissioner's complaint investigations and Commissioner initiated investigations. The guiding principle is that an investigation shall be conducted in private and in the way the Information Commissioner considers fit (s 76(1)).
- Section 74 of the FOI Act provides the Information Commissioner with the discretion whether to transfer a complaint to the Commonwealth Ombudsman if satisfied that the complaint would be more effectively or appropriately dealt with by the Ombudsman.
- Part 11 of the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines) provides guidance on the operation of s 74.¹ In particular paragraph [11.14] explains that the Information Commissioner has the power to transfer a complaint (or part of a complaint) to the Ombudsman if the Information Commissioner is satisfied that the complaint could be dealt with more effectively or appropriately by the Ombudsman (s 74).
- The factors that the Information Commissioner considers when deciding to transfer a complaint to the Ombudsman include:
 - whether the complaint is about actions taken by the Office of the Information Commissioner (OAIC), including how the OAIC has dealt with an:
 - Information Commissioner review
 - FOI complaint
 - vexatious applicant declaration application
 - FOI request, or
 - extension of time application

¹ See *FOI Guidelines* [11.14].

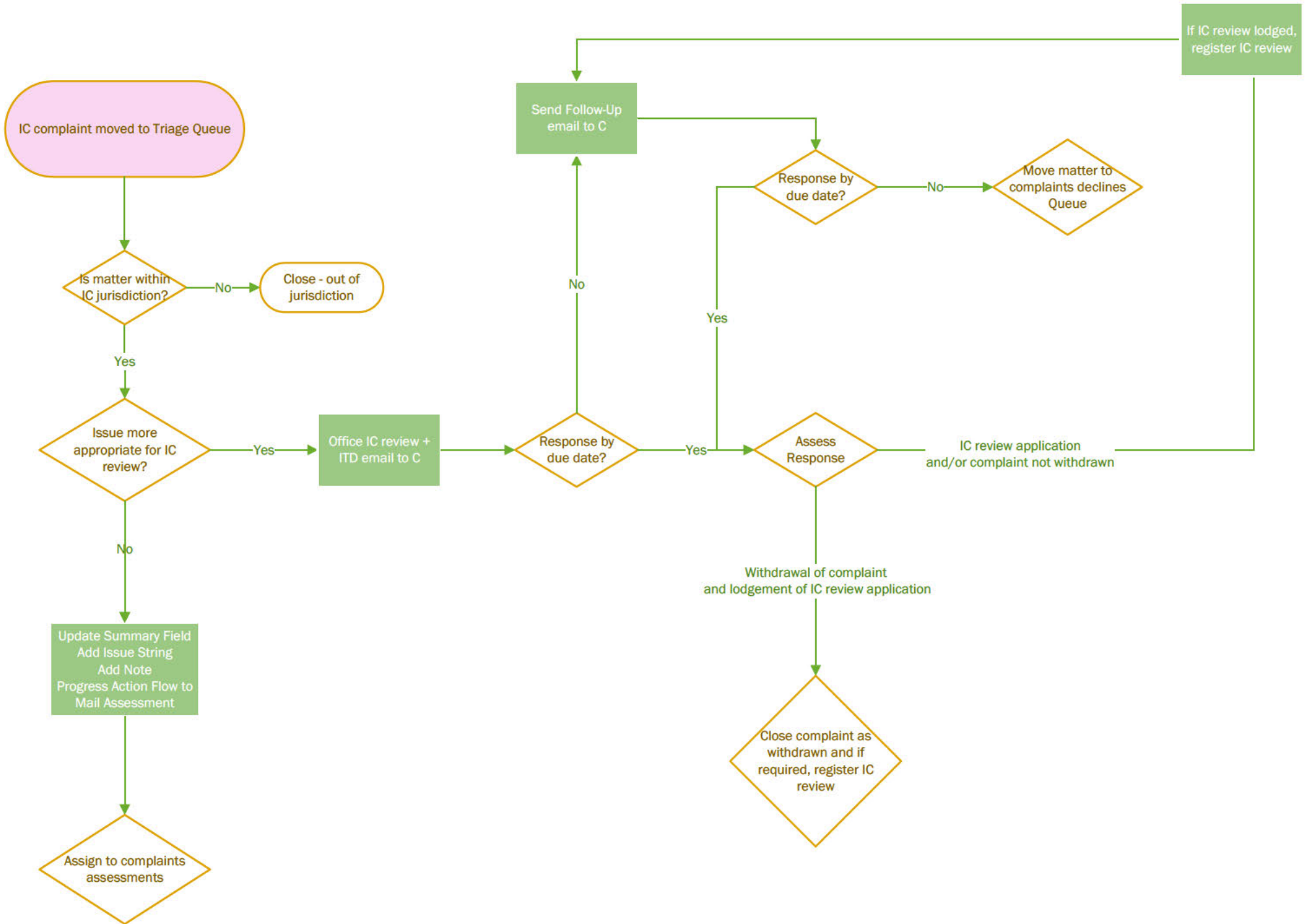
- whether there may be a perceived or actual conflict of interest in the Commissioner considering the complaint, including where:
 - the complainant has active complaints under the Privacy Act where the Information Commissioner is the respondent
 - the complaint relates to specific functions exercised by the Information Commissioner under the Privacy Act
 - the complainant has active matters in other forums, including the Administrative Appeals Tribunal and Federal Court and the Information Commissioner is the respondent
- whether the issues raised relate to other active complaints lodged with the Commonwealth Ombudsman
- When making a decision to transfer a complaint to the Ombudsman, the Information Commissioner must reach a level of satisfaction that the complaint could be more effectively or appropriately dealt with by the Ombudsman.
- In making a decision on whether to transfer the complaint to the Ombudsman, the Information Commissioner will notify the complainant that the complaint may be transferred to the Ombudsman under s 74 of the FOI Act and take into consideration any submissions the complainant makes in response prior to making a decision on whether to transfer the complaint.
- If the Information Commissioner decides to transfer the complaint to the Ombudsman, the Commissioner must:
 - consult the Ombudsman (s 74(2)(a))
 - make a decision not to investigate or not to continue to investigate the complaint (s 74(2)(b))
 - provide the Ombudsman with any information or documents that relate to the complaint (s 74(3)(b)), and
 - notify the complainant in writing that the complaint has been transferred (s 74(3)(c)). The notification to the complainant must contain the Commissioner’s reasons for transferring the complaint (s 74(4)).

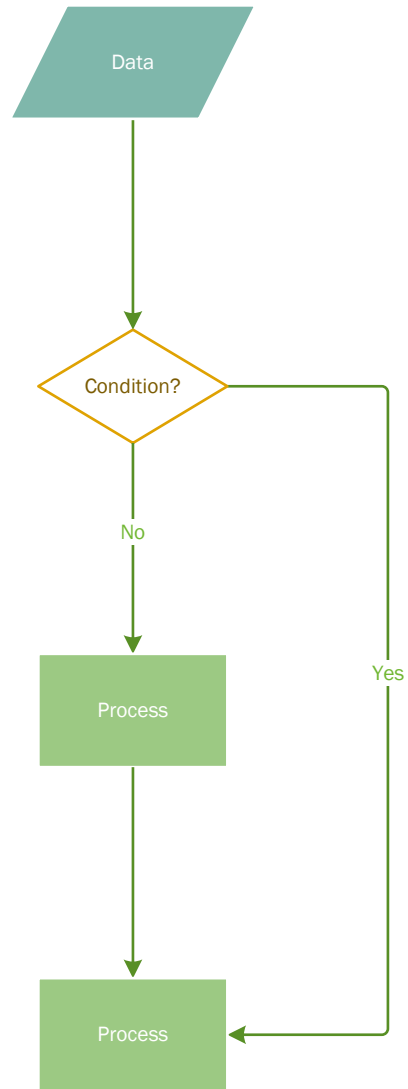
Key steps and relevant templates

Step	Template
<p>1. Consultation with the Ombudsman:</p> <p>1(a). Conduct phone consultation with a senior member of the Ombudsman’s complaint section in the first instance.</p> <p>Current contact persons include:</p> <ul style="list-style-type: none"> - 47E(d) [REDACTED] [REDACTED] [REDACTED] [REDACTED] 	<p>Consultation letter to the Ombudsman: D2020/021432</p>



<p>47E(d)</p> <p>1(b). Issue consultation letter to the Ombudsman via email at ombudsman@ombudsman.gov.au, including a copy of the relevant complaint. Provide 2 weeks for a response.</p>	
<p>2. If Ombudsman agrees, or does not raise any further issues for consideration, notify the complainant of intent to transfer. Response from complainant is to be provided within 2 weeks.</p>	<p>Letter for Intent to transfer under s 74 to complainant: D2020/021458</p>
<p>3. If Ombudsman disagrees, noting that there is no requirement in s 74 of the FOI Act for the Ombudsman to agree to transfer of the FOI complaint, escalate matter to the Assistant Commissioner FOI to confirm next steps.</p>	
<p>4. Decision to transfer to be issued to the Ombudsman by email to ombudsman@ombudsman.gov.au, including:</p> <ul style="list-style-type: none"> • a copy of the complaint • a copy of the complainant's response to the intent to transfer (where relevant). <p>5. Decision to transfer to be issued separately to the complainant.</p> <p>6. Close Resolve file with outcome recorded as 's 74 transfer'.</p>	<p>Letter to the Ombudsman transferring the FOI complaint: D2020/021428</p> <p>Letter to the complainant advising that the FOI complaint has been transferred to the Ombudsman: D2020/021429</p>





- b. Correspondence, emails, file notes relating to the [[agency]]'s request for an extension of time under s 15AA of the FOI Act
- c. The [[agency]]'s request to the OAIC for an extension of time under s 15AB of the FOI Act
- d. The OAIC's decision under s 15AB(2) to extend the processing period
- e. The [agency]'s decision
- f. Any other document you consider relevant to the complaint

Practical Refusal decisions

- a. The request under s 15 of the FOI Act
- b. The practical refusal notice pursuant to s 24AB(2) of the FOI Act
- c. Evidence of sampling undertaken by the [agency]
- d. Evidence of the request consultation process with the complainant
- e. The decision of [insert date] under s 24(1)(b) of the FOI Act
- f. Any other document you consider relevant to the complaint

Charges decisions

- a. The request under s 15 of the FOI Act
- b. The notice under s 29(1) of a preliminary estimate of charge
- c. Evidence of sampling undertaken by the [agency]
- d. Evidence which forms the basis of how the charge was calculated
- e. The complainant's response to the notice under s 29(1) of the FOI ACT
- f. The decision of [insert date] under s 29(4) of the FOI Act
- g. Any other document you consider relevant to the complaint

If there was an internal review

- h. The request for an internal review
- i. The internal review decision of [insert date].

Procedural manuals

- j. Any relevant procedural manual, guidelines, policies, or training materials used by [[agency]] to assist its FOI officers to make decisions both:
 - a. at the time this FOI complaint was made, and
 - b. any current versions

3. Whether the complainant has or had:
 - (i) a right to cause the action to be reviewed by the respondent agency
 - (ii) the complainant has not exercised, or did not exercise the right, and
 - (iii) it would have been reasonable for the complainant to exercise that right
4. Whether the complainant made a complaint to the [agency] directly and, if so:
 - a. please provide copies of relevant correspondence with the complainant regarding the complaint, and
 - b. please confirm whether the agency has:
 - (i) dealt with, or is dealing with the complaint and any outcome, or
 - (ii) not yet had an opportunity to deal with the complaint.
5. Information in response to the following [delete if not applicable to complaint issues]

[e.g. the following may apply where decision notified outside of statutory timeframe]

- i. The number of FOI requests the [agency] has completed within the statutory timeframe in the 2023-24 financial year to date.
- ii. Is the [agency] currently utilising the extension of time provisions in s 15 of the *Freedom of Information Act 1982* (FOI Act) where a request may not be processed within the statutory timeframe? Can the [agency] provide data to support this?
- iii. Has the [agency] implemented any process changes to ensure that that FOI requests are completed within the statutory timeframe or an extension of time under s 15 of the FOI Act is sought?

[include below where complaint relates to unsatisfactory customer service (i.e. lack of communication)]

- iv. Has the agency received any complaints about from FOI applicants about unsatisfactory customer service (i.e. lack of communication) since

origination of this complaint? Can the [agency] provide data to support this?

6. Brief submissions about changes made to [agency] practices and procedures relevant to the complaint issues, since the FOI complaint was received, and
7. Brief submissions in response to this FOI complaint including,
 - a. [for example - if relevant, reasons for delay, information regarding changes to practices/procedures etc.]

NOTE: Your substantive response may be shared with the complainant.

Next steps

I would be grateful for your response on or before **[date: two weeks]**.

The [ICON alert 15 March 2024](#) outlines the OAIC's approach and expectations for agencies to meet timeframes when information is requested and any extension of time requests.

If you have any questions about this request, I can be contacted via foidr@oaic.gov.au.

Yours sincerely,

[complaint officer]
[title]

[Date]

- whether you have previously complained to the agency about the issue and any response received
- your complaint issues (i.e. the function or power exercised by the agency under the FOI Act)
- the outcomes you seek from the complaints process, and
- any documents you wish to provide in support of your complaint.

In the absence of any further particulars, the OAIC is unable to properly understand the substance of your FOI complaint and the Information Commissioner may decide not to investigate your FOI complaint under s 73 of the FOI Act.

[Delete if not relevant] The outcome/s you have sought where IC review may be a better option

Complaints usually focus on how an agency has handled your FOI request or complied with other obligations under the FOI Act, rather than the decision itself. The Information Commissioner can only make non-binding recommendations as a result of a complaint which may address the issues that you have complained about, or suggestions or recommendations that the agency should implement. Therefore, you will not receive a decision and/or the documents as the outcome of a complaint.

I would be grateful if you could clarify the outcome you are seeking from the FOI complaints process. For examples of outcomes and recommendations, please see our website at [Freedom of information investigation outcomes](#) which outlines the types of recommendations the OAIC has previously made in relation to the investigation of complaints.

Next steps

Information about the FOI complaints process is available on the OAIC website at [How we handle a freedom of information complaint | OAIC](#).

A response is required by **[Date: two weeks]**.

Please note, your response may be provided to the agency for their consideration.

If you have any questions about this email, I can be contacted via foidr@oaic.gov.au.

Kind regards



Decision not to investigate a FOI complaint under s 73(b) of the *Freedom of Information Act 1982*

Complainant	
Respondent agency	
Decision date	
OAIC reference number	
Agency reference number	

1. As a delegate of the Information Commissioner, I am authorised to make a decision under s 73 of the *Freedom of Information Act 1982* (FOI Act) not to investigate a FOI complaint about an action made under s 70 of the FOI.
2. I have decided not to investigate the complainant's FOI complaint under s 73(b) of the FOI Act as I am satisfied the FOI complaint is more appropriately considered through an IC review.

Background

3. On [date], the complainant applied to the [agency] for access to:

[short summary/quote only].

OR [delete if irrelevant]

[Option for this is the background is extensive and ought to be included]

4. [The key procedural steps for this FOI complaint are set out in **Attachment A.**]

Issues raised by complainant

5. The complaint raised the following issues:

- [short summary/quote only]

Considerations and preliminary inquiries

6. In making my decision, I have had regard to the following:
- the FOI complaint of [date] [and any subsequent complaint submissions or response to preliminary inquiries of [date] if relevant]
 - the [agency's] response to preliminary inquiries under s 72 of the FOI Act [if relevant]
 - [if relevant] insert details of FOI decision or internal review decision and related correspondence with the complainant/IC review/ITD/OAIC correspondence]
 - the FOI Act, in particular s 73(b) [insert section(s)], and
 - 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 [[11.5] or [11.12]].

Preliminary inquiries [delete if irrelevant]

7. For the purpose of making preliminary inquiries I have assessed the issues and considered the response provided by [insert the agency] In summary the complainant alleges [insert the complaint issues]
8. In the [insert the agency] response to the OAIC of [date] [summarise the agency's response]

Section 73(b) of the FOI Act

9. Under s 73(b) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if the complainant:
- i. has or had a right to have the action reviewed by [insert the agency], a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act; and
 - ii. has not exercised, or did not exercise, the right; and
 - iii. it would be, or would have been, reasonable for the complainant to exercise the right.
10. [Insert reasons why the other review is more appropriate than FOI complaint and note if there is an ongoing IC review/no IC review this will determine whether 11.12 or 11.5 will apply below.]
11. [Use where an IC review is ongoing] [delete if irrelevant] The FOI Guidelines at [11.12] states:

Where a person has applied for IC review and made an FOI complaint and the issues raised are more appropriately dealt with in the IC review, it is open to the Information

Commissioner to decline to investigate the FOI complaint under s 73(b) of the FOI Act on the basis that the IC review has not had a reasonable opportunity to be conducted. The Information Commissioner may exercise this discretion prior to the commencement of an investigation or during the course of an investigation.

12. As set out above in the FOI Guidelines at [11.12], in considering whether to investigate a FOI complaint, it is open to me to decline to investigate the FOI complaint if the issues raised are more appropriately dealt with through IC review and [refer to 3 factors above (see para [9])] under s 73(b) and note that IC review is still on foot and the IC has not yet had a reasonable opportunity to deal with the complainant's IC review application].
13. Accordingly, the issues raised in the FOI complaint regarding [insert the agency] decision are more appropriately considered through the ongoing IC review.
14. This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.12].

OR

15. [Use where no IC review has been sought] [delete if irrelevant] The FOI Guidelines at [11.5] states:

The Information Commissioner's view is that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.

16. The outcome the complainant has sought from the OAIC is to investigate the [insert the agency] decision to withhold documents under the FOI Act. IC review will ordinarily be the more appropriate avenue to seek review of the merits of the [insert the agency] FOI decision as this is not an outcome that is achievable through the FOI complaints process.
17. As set out above, in considering whether to investigate a FOI complaint, it is open to me to decline to investigate a FOI complaint if the issues raised are more appropriately dealt with through IC review and [refer to 3 factors above (see para [9])] under s 73(b) and deal with each of them].
18. Accordingly, the issues raised in the FOI complaint regarding the [insert the agency]'s decision to withhold documents is more appropriately considered through the IC review process pursuant to s 73(b) of the FOI Act.
19. This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.5].

20. Should the complainant wish to make an application for IC review of [insert the agency] decision further information about this process is available at [here](#) or further assistance please email FOIDR@oaic.gov.au.

Discretion not to investigate the FOI complaint

21. In light of my findings above, I consider the discretion under s 73 not to investigate the FOI complaint is enlivened in this matter. In deciding whether to exercise the discretion not to investigate the FOI complaint, I have considered that:

- the FOI complaint is more appropriately considered through an IC review (s 73(b))
- the parties have not provided any additional information that alters my view above, and
- investigating the FOI complaint will not promote the objects of the FOI Act (s 3).

Finalisation of the FOI complaint and review rights

22. I confirm the FOI complaint is now finalised and the file is closed. Information about review rights is set out below.

23. Information about how the OAIC's handles a FOI complaint can be accessed on the OAIC's website [here](#).

Yours sincerely,

[delegates name (i.e Rocelle or Liz)]
[delegates position (i.e. ACFOI or FOIC)]

[date]

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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 <https://www.oaic.gov.au/about-us/access-our-information/>.



Decision not to investigate a FOI complaint under s 73 of the *Freedom of Information Act 1982*

Complainant	
Respondent agency	
Decision date	
OAIC reference number	
Agency reference number	

- As a delegate of the Information Commissioner, I am authorised to make a decision under s 73 of the *Freedom of Information Act 1982* ('FOI Act') not to investigate a FOI complaint.
- I have decided not to investigate the complainant's FOI complaint under s 73 of the FOI Act as I am satisfied that the FOI complaint is
 - not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act (s 73(a)).
 - more appropriately considered through an IC review (s 73(b)).
 - is appropriately considered through another body (s 73(c)).
 - the respondent has adequately dealt with your FOI complaint (s 73(d)).
 - lacking in substance (s 73(e)).
 - that you do not have sufficient interest in the subject matter of your FOI complaint (s 73(f)).

Background and FOI complaint issues

- The key procedural steps in this complaint are set out at **Attachment A**.
- On [date], the complainant submitted an FOI complaint to the Office of the Australian Information Commissioner ('the OAIC') in accordance with s 70 of the FOI Act in relation to an FOI request submitted to the [insert agency] ('the Agency').

5. On [date], the OAIC wrote to the complainant in relation to the FOI complaint to offer them the option of an Information Commissioner ('IC') review given the complainant had stated in their complainant that they [insert option]. The OAIC also invited the complainant to provide instructions concerning their FOI complaint.

- Had received a FOI decision from the Agency dated [date].
OR
- Did not receive a decision within the statutory timeframe, making the decision deemed refused by the Agency on [date].

6. On [date], the complainant sought IC review of the Agency's primary/deemed refused/internal review decision dated [date] (OAIC reference MR).

7. The complainant raised the following issue(s):

[Delete irrelevant points]

- The Agency did not provide a decision within the statutory timeframe, as required by s 15(5)(b) of the FOI Act.
- The Agency did not provide an internal review decision within the statutory timeframe, as required by s 54C(3) of the FOI Act.
- The Agency did not acknowledge receipt of the FOI request within 14-days, as required by s 15(5)(a) of the FOI Act.
- the Agency did not provide notice in the form specified in the FOI request, as required by s 15(2)(c) of the FOI Act.
- The Agency did not comply with its disclosure log obligations under s 11C of the FOI Act.
- The Agency purposely delayed in providing its decision.
- The Agency incorrectly applied exemptions to the requested documents under the FOI Act.
- The Agency did not adequately communicate with the FOI applicant during the FOI process.
- The complainant raised a conduct complaint against the decision maker.
- The complaint alleged that the Agency has acted corruptly in processing the complainant's FOI request.

Considerations and preliminary inquiries

8. In making my decision, I have had regard to the following:
- the FOI complaint of [date]
 - the Agency's submissions of [date] in response to the OAIC's preliminary inquiries,
 - 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 relevant].
 - [11.5] and [11.11] = Has not exercised right to seek IC review
 - [11.11] and [11.12] = Has an open IC review
 - [11.4] = Amendments
 - [11.17] = transfers to ombudsman
 - [3.2] to [3.5] = Administrative access
 - [3.10] = good decision making/prompt access to info, reasonable cost
 - [3.47] = requirements for valid FOI request
 - [3.48] = Agency may refuse invalid FOI request
 - [3.49] = Agency has to reasonably assist FOI applicant early in process
 - [3.78] = third party consultation requirements

Section 73(a) of the FOI Act

9. Under s 73(a) of the FOI Act, I may decide not to investigate a FOI complaint if I am satisfied that the complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act.

Section 73(b) of the FOI Act

10. Under s 73(b) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act and has not exercised that right when it would be reasonable to do so (s 73(b)).

11. [Use where an IC review is ongoing] The FOI Guidelines at [11.12] states:

Where a person has applied for IC review and made an FOI complaint and the issues raised are more appropriately dealt with in the IC review, it is open to the Information Commissioner to decline to investigate the FOI complaint under s 73(b) of the FOI Act on the basis that the IC review has not had a reasonable opportunity to be conducted. The Information Commissioner may exercise this discretion prior to the commencement of an investigation or during the course of an investigation.

12. As set out above, in considering whether to investigate an FOI complaint, it is open to me to decline to investigate a FOI complaint if the issues raised are more appropriately dealt with through IC review.
13. The outcome the complainant has sought from the OAIC is to investigate the Agency's primary/deemed access refusal/internal review decision dated [date]. I understand one of the outcomes primarily sought by the complainant is access to documents. This outcome can only be achieved through the IC review process.
14. Accordingly, it is my preliminary assessment that the issues raised within the FOI complaint regarding the Agency's decision are more appropriately considered through the complainant's ongoing IC review (OAIC reference). This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.12].

OR

15. [Use where no IC review has been sought] The FOI Guidelines at [11.5] states:

The Information Commissioner's view is that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.

16. The outcome the complainant has sought from the OAIC is to investigate the Agency's primary/deemed access refusal/internal review decision dated [date]. I understand one of the outcomes primarily sought by the complainant is access to documents. This outcome can only be achieved through the IC review process.
17. As set out above, in considering whether to investigate an FOI complaint, it is open to me to decline to investigate a FOI complaint if the issues raised are more appropriately dealt with through IC review.

18. Accordingly, it is my preliminary assessment that the issues raised within the FOI complaint regarding the Agency's decision are more appropriately considered through the IC review function pursuant to s 73(b) of the FOI Act.

Section 73(c) of the FOI Act

19. Under s 73(c) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant has or had a right to complain about the action to another body and has not exercised that right when it would be reasonable to do so (s 73(c)).
20. Based on the information discussed above, I am satisfied that the issues raised within the FOI complaint regarding [information about FOI complaint] is more appropriately considered by [body] pursuant to s 73(c) of the FOI Act.

Section 73(d) of the FOI Act

21. Under s 73(d) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant complained to the respondent agency, and the respondent agency [has not yet had an adequate opportunity to deal with the complaint] or [has adequately dealt with the FOI complaint].
22. Based on the information discussed above, I am satisfied that the respondent has not had an adequate opportunity to deal with the FOI complaint pursuant to s 73(d) of the FOI Act.

Or

23. Based on the information discussed above, I am satisfied that the complainant has complained to the Agency, and the Agency has adequately dealt with the complaint by rectifying the issue complained of and upholding its internal processes. I consider this issue to be resolved.

Section 73(e) of the FOI Act

24. Under s 73(e) of the FOI Act, I may decide not to investigate a FOI complaint if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is lacking in substance.
25. The outcome the complainant has sought from the OAIC is to investigate the [insert issue].
26. The OAIC acknowledges the complainant's concerns raised in the FOI complaint and are actively monitoring these issues. Based on the information discussed above, I am satisfied that the FOI complaint is lacking in substance pursuant to s 73(e) of the FOI Act as the issues raised are now resolved.

Section 73(f) of the FOI Act

- 27. Under s 73(f) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant does not have a sufficient interest in the subject matter of the request (s 73(f)).
- 28. The outcome the complainant has sought from the OAIC is to investigate the [insert issue].
- 29. Based on the information discussed above, I am satisfied that the complainant does not have a sufficient interest in the subject matter of the FOI complaint pursuant to s 73(f) of the FOI Act.

Finalisation of the FOI complaint and review rights

- 30. I confirm the FOI complaint is now finalised, and the matter is closed. As the matter is now closed, the OAIC will not deal further with these issues. Information about review rights is set out below.
- 31. Information about how the OAIC handles a FOI complaint can be accessed on the OAIC's website [here](#).

Yours sincerely,

Rocelle Ago/Elizabeth Tydd

Assistant Commissioner/Freedom of Information Commissioner

Date



ATTACHMENT A

Key procedural steps

Date	Events
	The complainant submitted an FOI complaint to the Office of the Australian Information Commissioner ('the OAIC') in accordance with s 70 of the FOI Act in relation to an FOI request submitted to the [insert agency] ('the Agency').
	The OAIC wrote to the complainant in relation to the FOI complaint to offer them the option of an Information Commissioner ('IC') review given the complainant had stated in their complainant that they [insert option]. The OAIC also invited the complainant to provide instructions concerning their FOI complaint.
	The complainant sought IC review of the Agency's primary/deemed refused/internal review decision dated [date] (OAIC reference MR).

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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 <https://www.oaic.gov.au/about-us/access-our-information/>.



Australian Government
Office of the Australian Information Commissioner

Our reference: [Insert reference number]
[delete if not relevant] Agency reference: [Insert reference number]

[Name]

By email: [email]

Your FOI complaint about [the agency]

Dear [name]

I am writing in relation to your complaint about [the agency] (the agency) under the *Freedom of Information Act 1982 (Cth)*(the FOI Act).

On [date], you made an FOI complaint about [summarise complaint eg the respondent’s handling of your FOI request (Agency ref.....)].

In your complaint you raised concerns regarding the [insert summary of the issues].

The Office of the Australian Information Commissioner OAIC has commenced investigation of your complaint under s 75 of the FOI Act.

In accordance with s 86(4) of the FOI Act, you will be advised of the outcome of the investigation once the Commissioner has finalised their investigation into your complaint.

If you have any questions about the conduct of the investigation, please contact me on [phone number] or via email at FOIDR@oaic.gov.au.

Yours sincerely,

[name]

[Position]

Freedom of Information

20 August 2024





Australian Government
Office of the Australian Information Commissioner

Our reference: [Insert reference number]
[Delete if not relevant] Agency reference: [Insert reference number]

FOI Contact Officer
[Agency]

By email: [Insert email address OR remove if sent by post]

Freedom of Information Complaint – [complainant]

Dear [name]

The Office of the Australian Information Commissioner (OAIC) has received an FOI complaint about the [agency] (agency) made under s 70 of the *Freedom of Information Act 1982* (FOI Act) from the [name] (the complainant).

Please find **enclosed** a copy of the complainant’s correspondence dated [date].
[include additional correspondence that clarifies the scope of the complaint.]

The OAIC has decided to conduct an investigation into this complaint under s 69(1) of the FOI Act.¹ This is a notice to the [agency] pursuant to s 75(1) of the FOI Act.

Complaint allegations

The complaint raised the following issues:

- [summarise complaint and/or]
- [quote complainant’s complaint]

[Delete if not relevant] Request for information

In accordance with s 76(2) of the FOI Act, please provide the following information by [2 weeks]:

1. [for example] Confirmation whether the [agency] received the complainant’s FOI request of [date] (enclosed)
2. ...

¹ See the *Guidelines issued by the Information Commissioner under s 93A of the FOI Act* (FOI Guidelines) at [11.6] – [11.7].



3. A copy of the relevant extracts of any FOI guidance, policies or procedures relating to [insert details].
 - a. in place at the time of the initial complaint ([date]), and
 - b. any documents presently in place.

Our investigation

[if not requesting information] [On [date] the OAIC made preliminary inquiries with the [agency] under s 72 of the FOI Act.]

The OAIC confirms receipt of the [agency]'s response of [date]. A copy of the [agency]' response has been provided to the complainant for a response. Once a response is received, the OAIC will proceed to completing its investigation.

We presently do not require any further information from the Department.]

On completing an investigation, the Information Commissioner will provide a 'Notice on completion' to the Department and to the complainant pursuant to s 86 of the FOI Act. The Information Commissioner's notice must include the investigation results, the investigation recommendations (if any), the reasons for those results and any recommendations (s 86(2)). The 'investigation results' under s 87 are:

- the matters that the Information Commissioner has investigated
- any opinion that the Information Commissioner has formed in relation to those matters
- any conclusions that the Information Commissioner has reached
- any suggestions that the Information Commissioner believes might improve the agency's processes
- any other information of which the Information Commissioner believes the agency should be aware.

The [agency]'s submissions may be provided to the complainant for their review and comment or referred to in the Notice on completion.

The outcome of the investigation will be published on the OAIC's website with any comments that the Department wishes to give under s 86(3) of the FOI Act.

Further information about the process in a FOI complaint can be found in Part 11 of the FOI Guidelines. The OAIC may seek further information once the Department's response to this notice is received.

If you would like to discuss this matter, please contact [name] on [phone number] or email foidr@oaic.gov.au. Please quote the reference number above.

Yours sincerely

[name]

Director

Freedom of Information

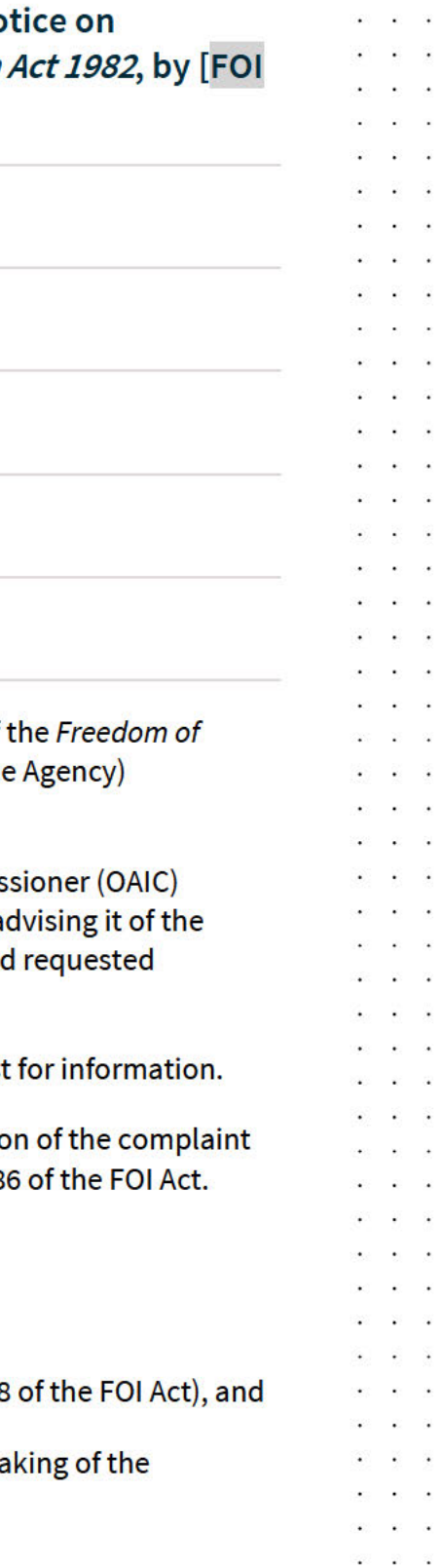
20 August 2024



Freedom of Information complaint investigation - Notice on completion under s 86 of the *Freedom of Information Act 1982*, by [FOI commissioner or delegate, name]

Complainant	
Respondent	
Completion date	
OAIC reference number	
Agency reference number	

- [name] (the complainant) made a complaint under s 70 of the *Freedom of Information Act 1982* (FOI Act) on [date] about [agency] (the Agency) compliance with its [reasons for complaint].
- On [date], the Office of the Australian Information Commissioner (OAIC) provided a notice to the Agency under s 75 of the FOI Act advising it of the commencement of an investigation into the complaint and requested information.
- On [date], the Agency responded to the notice and request for information.
- This document is a notice of completion of the investigation of the complaint made by the complainant prepared in accordance with s 86 of the FOI Act.
- Section 86 of the FOI Act requires that I give you notice of:
 - the investigation results (see s 87 of the FOI Act)
 - the investigation recommendations, if any (see s 88 of the FOI Act), and
 - the reasons for the investigation results and the making of the investigation recommendations.



Summary of investigation results, suggestions and recommendations

6. I have concluded that:
 1. [conclusions], and
 2. [conclusions]
7. Pursuant to s 87(d) of the FOI Act, I make the following suggestion to the Agency where I believe that implementation of the suggestion might improve the processes:
 1. [suggestions]
 2. [suggestions]
8. Pursuant to s 88 of the FOI Act, I make the following formal recommendations to the Agency, that I believe the Agency ought to implement **by @ [date]** is:
 1. [recommendations]
 2. [recommendations]

Background

9. The background to this FOI complaint is set out at **Attachment B**.

Investigation results

10. Section 87 of the FOI Act provides for my investigation results to set out the matter that I have investigated and my opinion and conclusions about this matter. I have considered all the material provided by the Agency and the complainant in this matter.

The matter for investigation

The matter raised by the complainant

11. [summary of complaint]

Legislation and Guidelines¹

¹ References to the FOI Act and the FOI Guidelines are to the Act and Guidelines as in force in the period 18 August 2020, when the complainant made her FOI request, to 20 August 2020, when the Agency released the requested documents. In this case, the material part of the FOI Guidelines is Part 14. The relevant version of that part is 1.6

12. [outline relevant legislation and references in the guidelines].

The Agency's submissions

13. On [date], the OAIC issued a notice to the Agency under s 75 of the FOI Act advising it of the commencement of an investigation into the FOI complaint and requested information from the Agency.

14. On [date], the Agency provide a response to the OAIC's notice and request for information. Relevantly, the Agency submitted:

[summarise or quote]

My opinions in relation to the matter

15. [insert opinions]

My conclusion in relation to the matter investigated

16. For these reasons, I am of the view that, [eg. at the time of processing the complainant's request, the Agency has complied with its obligations under s 11C of the FOI Act. However, more generally, I have found that the Agency's practices regarding the publishing of information on the disclosure log could be improved.]

My suggestions and recommendations

17. In considering whether to make formal recommendations in relation to my opinions and conclusions above, I have considered submissions made by the Agency during the course of this investigation.

18. Pursuant to s 87(d) of the FOI Act, I make the following suggestions to the Agency where I believe that implementation of the suggestions might improve the processes:

1. [suggestions]

2. [suggestions]

19. Pursuant to s 88 of the FOI Act, I make the following formal recommendation to the Agency that I believe the Agency ought to implement by [date] is:

which was in force from 18 January 2019 to 10 March 2022 (see summary of version changes to s 93A guidelines: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/summary-of-version-changes-to-s-93a-guidelines>).

1. [recommendations]
 2. [recommendations]
20. When considering the suggestions and recommendations made above, the Agency should consider referring to relevant OAIC FOI resources which can be found on the OAIC website.

Yours sincerely

[name]

[Assistant Commissioner/Freedom of Information Commissioner/Australian Information Commissioner]

[date]

ATTACHMENT B

Background

Date	Events
------	--------



Australian Government
Office of the Australian Information Commissioner

Our reference: [Insert reference number]
[Delete if not relevant] Agency Reference: [Insert reference number]

[name]
[Position]
[agency]

By email: [email]
Cc: [email]

Freedom of information complaint investigation – Notice on completion

Dear [name]

I refer to the complaint made by [complainant], (the complainant) under s 70 of the *Freedom of Information Act 1982* (FOI Act) about the [agency] (the Agency) in relation to the processing of his FOI request (Agency reference [number]). The complaint relates [reasons]

On [date], the Office of the Australian Information Commissioner (OAIC) provided a notice to the Agency under s 75 of the FOI Act advising of the commencement of an investigation into the FOI complaint and requesting information.

The Agency provided a response to the notice and request for information on [date].

I am writing in accordance with s 86 of the FOI Act to notify you that I have completed my investigation into the complaint and to advise you of the outcome.

I am required to give you notice of:

- the investigation results
- the investigation recommendations (if any), and
- the reasons for the investigation results and the making of the investigation recommendations.

The notice setting out these matters is at **Attachment A**.



My conclusions

I have concluded that:

[copy from s 86 notice]

My recommendations

In considering whether to make any investigation recommendations, I have taken into account all of the information provided by the Agency in relation to its current FOI processes and resources.

Pursuant to s 88 of the FOI Act, I make the following recommendations to the Agency that I believe the Agency ought to implement:

- a. [copy from s 86 notice]

Next steps

Comments under s 86(3) of the FOI Act

Under s 86(3) of the FOI Act, the Agency may provide any comments about the Notice on completion that the Agency wishes to make. If the Agency wishes to make any comments, please do so by XX XXX 2023.

A copy of the Notice with the Agency's comments will be provided to the complainant pursuant to s 86(4) of the FOI Act. If I do not receive any comment from the Agency by [date], I will proceed to provide a copy of the Notice to the complainant at that time.

I do not consider that this Notice contains matters of the kind mentioned in s 89C(2) of the FOI Act and I will therefore provide the complainant with a copy of this Notice pursuant to s 86(4) of the FOI Act on or after [date].

I propose to publish a summary of this Notice and any comments from the Agency on the OAIC's website.

If you would like to discuss this matter, please contact [name and position] on (02) [phone number] or email [email]. Please quote the OAIC reference number above in any correspondence.

Yours sincerely

[name]

[Freedom of Information Commissioner/Assistant Commissioner, Freedom of Information Commissioner]

[date]

Information Commissioner]

[date]

Enc: Attachment A – s 86 Notice

OAIC References: [reference number]

Complainants: [name]

Agency: [agency]

Date of s 86 Notice to R: [date]

Date of response to s 86 Notice: [date]

Recommendation

Recommendation or Suggestion	Agency response	Assessment of response	Recommendation to IC
Recommendation 1			
Recommendation 2			
Suggestion			
Recommendation/ Suggestion			

Recommendation or Suggestion	Agency response	Assessment of response	Recommendation to IC
Recommendation/ Suggestion			



Australian Government
Office of the Australian Information Commissioner

Freedom of information recommendation case under s 88 of the FOI Act – XXXXXXX

foidr@oaic.gov.au

FOI Complain Assessment Matrix: CPXX/XXX

Nature of IC review

1. AA applied for an IC review regarding a decision of BB. In summary, the complaint relates to a decision by the BB to CC.
2. The complaint will involve the consideration of the following issues:
 - a)

Relevant background

ANNEXURE A – Background

Date	Events

Investigation plan

Issue/Allegation	FOI Act/FOI Guidelines	Considerations	Recommendations
1.			
2.			

S 86 Assessment				
<ul style="list-style-type: none">• Conclusions<ul style="list-style-type: none">○○• Proposed recommendations<ul style="list-style-type: none">○				
Date s 86 case conference with DC/PD	Proceed to s 86 Notice assessed by	Date draft s 86 Notice to Director	Date draft s 86 Notice to Executive	Date s 86 Notice signed by Commissioner

E- Clearance process completed



Australian Government
Office of the Australian Information Commissioner

Our reference: [insert reference]

[insert complainant's name]

By email: [insert complainant's email or postal address]

Your complaint to the Office of the Australian Information Commissioner

Dear [insert complainant's salutation and surname],

I am writing in relation to your complaint about [insert name of agency] to the Office of the Australian Information Commissioner (OAIC) which you have sought to make under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act).

On [insert date], you [insert details of how the complaint was received and what the complaint is about].

On [insert date], an officer of the OAIC emailed you and stated as follows [if relevant/otherwise include details of any relevant contact with the complainant]:

[quote correspondence if needed]

On [insert date], [insert any other relevant background].

In respect of the complaint, you have sought to make under s 70 of the FOI Act, this section relevantly states:

*A person (the complainant) may complaint to the Information Commissioner about an action taken by an agency **in the performance of functions, or the exercise of powers, under this Act.** (our emphasis)*

[Include if relevant] The OAIC has attempted to give appropriate assistance to you to formulate your FOI complaint such that the substance can be properly understood as it is required to do so under s 70(3) of the FOI Act.¹

In the absence of any clarification, it is not apparent that the Information Commissioner has jurisdiction under s 69(1) of the FOI Act to investigate the issues

¹ See s 70(3) of the FOI Act and FOI Guidelines at [11.9].



you have raised in your complaint. This is because your complaint does not meet the requirements of s 70 of the FOI Act.

For this reason, no further action will be taken in respect of your complaint you submitted to the OAIC on [insert date].

If you have any questions about this matter, please email FOIDR@oaic.gov.au.

Yours sincerely

[complaint's officer name]

[title]

Freedom of Information

[date]



Decision not to investigate a FOI complaint under s 73 of the *Freedom of Information Act 1982*

Complainant	
Respondent agency	
Decision date	
OAIC reference number	
Agency reference number	

1. As a delegate of the Information Commissioner, I am authorised to make a decision under s 73 of the *Freedom of Information Act 1982* (FOI Act) [not to investigate/not to continue to investigate] a FOI complaint about an action made under s 70 of the FOI Act.
2. I have decided not to investigate the complainant's FOI complaint under s/ss 73(b) and of the FOI Act as [insert reason – relevant decline provision ss 73(a) – (f)].

Background

3. On [date], the complainant applied to the [agency] for access to:
[short summary/quote only].
 4. [insert any details about relevant process or procedure]
- OR**
- [Option for this is the background is extensive and ought to be included]
5. [The key procedural steps for this FOI complaint are set out in **Annexure A**.

Issues raised by complainant

6. The complaint raised the following issues:

- [short summary/quote only]

Considerations and preliminary inquiries

7. In making my decision, I have had regard to the following:

- the FOI complaint of [date] [and any subsequent complaint submissions or response to preliminary inquiries of [date]]
- the [agency's] response to preliminary inquiries under s 72 of the FOI Act
- [if relevant insert details of FOI decision or internal review decision and related correspondence with the complainant/IC review/ITD/OAIC correspondence]
- 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], and
- [if relevant] relevant case law, in particular [insert].

Preliminary inquiries [delete if irrelevant]

8. For the purpose of making preliminary inquiries I have assessed the issues and considered the response provided by [insert the agency] In summary the complainant alleges [insert the complaint issues]

9. In the [insert the agency] response to the OAIC of [date] [summarise the agency's response]

10. The respondent's submissions are summarised at **Annexure B.**

Section 73(a) of the FOI Act [delete if irrelevant]

11. Under s 73(a) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if I am satisfied that the complaint is not about an action taken by [insert the agency] in the performance of its functions or the exercise of its powers under this Act.

12. Relevant provisions of the FOI Act and parts of the FOI Guidelines are set out at **Annexure C.**

13. [Insert reasons why the complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act.]
14. For these reasons, I am satisfied the complaint is not about an action taken by [insert the agency] in the performance of its functions or the exercise of its powers under this Act pursuant to s 73(a) of the FOI Act.

Section 73(b) of the FOI Act [delete if irrelevant]

15. Under s 73(b) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if the complainant:
- i. has or had a right to have the action reviewed by [insert the agency], a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act; and
 - ii. has not exercised, or did not exercise, the right; and
 - iii. it would be, or would have been, reasonable for the complainant to exercise the right.

16. [Insert reasons why the other review is more appropriate than FOI complaint and note if there is an ongoing IC review/no IC review this will determine whether 11.12 or 11.5 will apply below.]

17. **[Use where an IC review is ongoing]** [delete if irrelevant] The FOI Guidelines at [11.12] states:

Where a person has applied for IC review and made an FOI complaint and the issues raised are more appropriately dealt with in the IC review, it is open to the Information Commissioner to decline to investigate the FOI complaint under s 73(b) of the FOI Act on the basis that the IC review has not had a reasonable opportunity to be conducted. The Information Commissioner may exercise this discretion prior to the commencement of an investigation or during the course of an investigation.

18. As set out above in the FOI Guidelines at [11.12], in considering whether to investigate a FOI complaint, it is open to me to decline to investigate the FOI complaint if the issues raised are more appropriately dealt with through IC review and [refer to 3 factors above under s 73(b) and note that IC review is still on foot and the IC has not yet had a reasonable opportunity to deal with the complainant's IC review application].

19. Accordingly, the issues raised in the FOI complaint regarding [insert the agency] decision are more appropriately considered through the ongoing IC review.

20. This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.12].

OR

21. **[Use where no IC review has been sought] [delete if irrelevant]** The FOI Guidelines at [11.5] states:

The Information Commissioner's view is that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.

22. The outcome the complainant has sought from the OAIC is to investigate the **[insert the agency]** decision to withhold documents under the FOI Act. IC review will ordinarily be the more appropriate avenue to seek review of the merits of the **[insert the agency]** FOI decision as this is not an outcome that is achievable through the FOI complaints process.

23. As set out above, in considering whether to investigate a FOI complaint, it is open to me to decline to investigate a FOI complaint if the issues raised are more appropriately dealt with through IC review and **[refer to 3 factors above under s 73(b) and deal with each of them]**.

24. Accordingly, the issues raised in the FOI complaint regarding the **[insert the agency]**'s decision to withhold documents is more appropriately considered through the IC review process pursuant to s 73(b) of the FOI Act.

25. This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.5].

26. Should the complainant wish to make an application for IC review of **[insert the agency]** decision further information about this process is available at [here](#) or further assistance please email FOIDR@oaic.gov.au.

Section 73(c) of the FOI Act **[delete if irrelevant]**

27. Under s 73(c) of the FOI Act, I may decide **[not to investigate/not to continue to investigate]** a FOI complaint if:

- i. the complainant has or had a right to complain about the action to another body; and
- ii. the complainant has not exercised that right, or did not exercise the right; and
- iii. it would be, or would have been, reasonable for the complainant to exercise the right.

28. **[Insert reasons why the complainant should have complained to another body, if appropriate identify the other body and step through the 3 limbs above]**

29. Accordingly, the issues raised in the FOI complaint regarding **[information about FOI complaint]** is more appropriately considered by **[body]** pursuant to s 73(c) of the FOI Act.

Section 73(d) of the FOI Act [delete if irrelevant]

30. Under s 73(d) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if the complainant has complained to [insert the agency], and [insert the agency]:

- i. has dealt, or is dealing, adequately with the complaint; or
- ii. has not yet had an adequate opportunity to deal with the complaint.

31. [Insert reasons why about the complaint made to the agency and step through the 2 limbs above]

32. Accordingly, I am satisfied that [insert agency] [insert correct reference to 2 limbs above] with the complaint pursuant to s 73(d) of the FOI Act.

Section 73(e) of the FOI Act [delete if irrelevant]

33. Under s 73(e) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

34. [Insert reasons why the FOI complaint is to be declined under s 73(e) for instance, why is it lacking in substance].

35. For these reasons, I am satisfied the FOI complaint is lacking in substance pursuant to s 73(e) of the FOI Act.

Section 73(f) of the FOI Act [delete if irrelevant]

36. Under s 73(f) of the FOI Act, I may decide not to investigate [not to investigate/not to continue to investigate] a FOI complaint if the complainant does not have a sufficient interest in the subject matter of the complaint.

37. [Insert reasons why the complainant does not have sufficient interest in the subject matter of the complaint].

38. For these reasons, I am satisfied the complainant does not have sufficient interest in the subject matter of the FOI complaint pursuant to s 73(e) of the FOI Act.

Decision not to investigate the FOI complaint

39. In light of my findings above, I consider the discretion under s 73 [not to investigate/not to continue to investigate] the FOI complaint is enlivened in this matter. In deciding whether to exercise the discretion not to investigate the FOI complaint, I have considered that:

- the FOI complaint is [insert s 73 reasons for declining]

- the parties have not provided any additional information that alters my view above, and
- investigating the FOI complaint will not promote the objects of the FOI Act (s 3).

Finalisation of the FOI complaint and review rights

40. I confirm the FOI complaint is now finalised and the file is closed. Information about review rights is set out below.

41. Information about how the OAIC's handles a FOI complaint can be accessed on the OAIC's website [here](#).

Yours sincerely,

[delegates name (i.e. Rocelle or Liz)]
[delegates position (i.e. ACFOI or FOIC)]

[date]

Annexure C

Relevant provisions of the FOI Act

Relevant parts of the FOI Guidelines and case law



The complainant's 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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 <https://www.oaic.gov.au/about-us/access-our-information/>.



Decision not to investigate a FOI complaint under s 73 of the *Freedom of Information Act 1982*

Complainant	
Respondent agency	
Decision date	
OAIC reference number	
Agency reference number	

1. As a delegate of the Information Commissioner, I am authorised to make a decision under s 73 of the *Freedom of Information Act 1982* (FOI Act) not to investigate a FOI complaint.
2. I have decided not to investigate your FOI complaint under s 73 of the FOI Act as [insert reason – relevant decline provision ss 73(a) – (f)].

[Option for multiple provisions]

3. I have decided not to investigate your FOI complaint under s 73 of the FOI Act for the following reasons:

- I am satisfied that your FOI complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act (s 73(a));
- I am satisfied that your FOI complaint is appropriately considered through an IC review (s 73(b)),
- I am satisfied that your FOI complaint is appropriately considered through another body (s 73(c)),
- I am satisfied that the respondent has adequately dealt with your FOI complaint (s 73(d)),

- I am satisfied that your FOI complaint is lacking in substance (s 73(e))
- I am satisfied that you do not have sufficient interest in the subject matter of your FOI complaint (s 73(f)).

Background

4. On [date], you applied to the [agency] for access to:
[insert quote or summarise for long requests].
5. [insert any details about relevant process or procedure]
OR if the background is extensive and set out in an attachment in the ITD – this can be used
6. [For the purposes of my decision, I do not propose to repeat the background again but instead, I refer to and rely on the background provided to you on [insert date]. A copy of this correspondence is attached.]

Issues raised by complainant

7. The complaint raised the following issues:
 - [summarise complaint and/or]
 - [quote complainant's complaint]

Considerations

8. In making my decision, I have had regard to the following:
 - the FOI complaint of [date]
 - the [agency's] response to your FOI complaint and submissions
 - [if relevant insert details of FOI decision or internal review decision and related correspondence with the complainant/IC review/ITD/OAIC correspondence]
 - 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], and
 - [if relevant] relevant case law, in particular [insert].

Section 73(a) of the FOI Act

Under s 73(a) of the FOI Act, I may decide not to investigate a FOI complaint if I am satisfied that the complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act.

In your FOI complaint, you said:

[quote]

[reasons]

For these reasons, I am satisfied that your FOI complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act pursuant to s 73(a) of the FOI Act.

Section 73(b) of the FOI Act

Under s 73(b) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act and has not exercised that right when it would be reasonable to do so (s 73(b)).

In your FOI complaint, you said:

[quote]

[Use where an IC review is ongoing] The FOI Guidelines at [\[11.12\]](#) states:

Where a person has applied for IC review and made an FOI complaint and the issues raised are more appropriately dealt with in the IC review, it is open to the Information Commissioner to decline to investigate the FOI complaint under s 73(b) of the FOI Act on the basis that the IC review has not had a reasonable opportunity to be conducted. The Information Commissioner may exercise this discretion prior to the commencement of an investigation or during the course of an investigation.

As set out above, in considering whether to investigate an FOI complaint, it is open to me to decline to investigate your FOI complaint if the issues raised are more appropriately dealt with through IC review.

Accordingly, it is my preliminary assessment that the issues you have raised within your FOI complaint regarding the agency's decision are more appropriately considered through your ongoing IC review.

This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [\[11.12\]](#).

[Use where no IC review has been sought] The FOI Guidelines at [\[11.5\]](#) states:

The Information Commissioner's view is that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.

The outcome you have sought from the OAIC is to investigate the non-disclosure of the requested documents from the [agency] under the FOI Act. **The IC review process is the appropriate way to seek this outcome [OR] I consider it would be reasonable for you to exercise your right to have the actions reviewed by the Information Commissioner under Part VII of the FOI Act because the Information Commissioner may also review decisions that are deemed to have been made by an agency or minister whether the statutory timeframe was not met.**

In contrast, the complaints process will not result in further access to the documents or a change in the Department's decision.

As set out above, in considering whether to investigate an FOI complaint, it is open to me to decline to investigate a FOI complaint if the issues raised are more appropriately dealt with through IC review.

Accordingly, it is my preliminary assessment that the issues you have raised within your FOI complaint regarding the [the agency]'s decision to withhold documents from you are more appropriately considered through the IC review function pursuant to s 73(b) of the FOI Act.

OR

Accordingly, the issue you have raised within your FOI complaint regarding [information about the reviewable decision] is more appropriately considered through an IC review pursuant to s 73(b) of the FOI Act.

This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.12].

Section 73(c) of the FOI Act

Under s 73(c) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant has or had a right to complain about the action to another body and has not exercised that right when it would be reasonable to do so (s 73(c)).

In your FOI complaint, you said:

[quote]

[insert reasons]

Accordingly the issues you have raised within your FOI complaint regarding [information about FOI complaint] is more appropriately considered by [body] pursuant to s 73(c) of the FOI Act.

Section 73(d) of the FOI Act

Under s 73(d) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant complained to the respondent agency, and the respondent agency or as not yet had an adequate opportunity to deal with the complaint.

In your FOI complaint, you said:

[quote]

[insert reasons]

Accordingly, the respondent has not had an adequate opportunity to deal with your complaint (s 73(d) of the FOI Act).

Section 73(e) of the FOI Act

Under s 73(e) of the FOI Act, I may decide not to investigate a FOI complaint if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is lacking in substance.

In your FOI complaint, you said:

[quote]

[insert reasons]

For these reasons, I am satisfied that your FOI complaint is lacking in substance pursuant to s 73(e) of the FOI Act.

Section 73(f) of the FOI Act

Under s 73(f) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant does not have a sufficient interest in the subject matter of the request (s 73(f)).

In your FOI complaint, you said:

[quote]

[insert reasons]

For these reasons, I am satisfied that you do not have a sufficient interest in the subject matter of your FOI complaint pursuant to s 73(f) of the FOI Act.

1. For these reasons I have decided to exercise my discretion not to investigate your FOI complaint under s 73(X) of the FOI Act.

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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 <https://www.oaic.gov.au/about-us/access-our-information/>.

Our reference: CPXX/XXXXX

Mr/Mrs/Ms First Last

By email: XXXXX

Your Complaint about the Department of XXXXXX

Dear Mr/Mrs/Ms Last,

I refer to your complaint received by the Office of the Australian Information Commissioner (OAIC) on XX XXXXX XXXX.

We understand that you are seeking to make an FOI request for [personal] information held by the Department of XXXXX.

An FOI complaint can only be made to the Australian Information Commissioner in respect to an action taken by a Commonwealth government agency in the performance of functions, or the exercise of powers, under s 70 of the Commonwealth *Freedom of Information Act 1982* (Commonwealth FOI Act).

The OAIC does not hold records of other government agencies. If you wish to apply for access to documents held by a State or Territory Government agency (including police records), then you need to make a request in writing, under the FOI Act, directly to the agency that holds the records. Further information about making an FOI application, including details of what needs to be included, is available on our website in the published here: [How to make a freedom of information request | OAIC](#).

If you wish to obtain documents from the Department of XXXXX under the FOI Act, you can email your request to [insert agency email address or webform]. More information about this process can be found here: [if possible, attach agency's webpage about making FOI requests]

As your complaint has not been made in respect to the performance of functions by a Commonwealth government agency under the Commonwealth FOI Act, your complaint cannot be considered by the Information Commissioner.

We have now finalised your complaint as invalid pursuant to s 70(1) of the Commonwealth FOI Act, as it is outside of the Commissioner's jurisdiction.

Your application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: CPXX/XXXXX

Mr/Mrs/Ms First Last

By email:

FOI Complaint about XXXXX

Dear **Mr/Mrs/Ms Last**,

I refer to your FOI complaint received by the Office of the Australian Information Commissioner (OAIC) on **XX XXXXXX XXXX**.

We understand that you are seeking to make a complaint about **XXXXX** in relation to a request you made under the *Freedom of Information Act 1982* (FOI Act).

An FOI complaint can only be made to the Australian Information Commissioner in respect to an action taken by a Commonwealth government agency in the performance of functions, or the exercise of powers, under s 70 of the Commonwealth FOI Act.

XXXXX is not a Commonwealth agency for the purposes of the FOI Act and does not fall within the jurisdiction of the OAIC's regulatory powers.

As your complaint has not been made in respect to the performance of functions by a Commonwealth government agency under the Commonwealth FOI Act, your complaint cannot be considered by the Information Commissioner.

Accordingly, we have finalised your complaint as invalid pursuant to s 70(1) of the Commonwealth FOI Act, as it is outside of the Commissioner's jurisdiction.

REFER C ONTO CORRECT REGULATOR [e.g. However, noting that you still have not received a response to your request, you may be able to seek external review through the NSW Information and Privacy Commission or the NSW Civil and Administrative Tribunal (NCAT). More information about these processes can be found here:

NSW Information Commissioner - [How to lodge an application for a review of a government information access decision \(nsw.gov.au\)](#)

NSW Civil and Administrative Tribunal (NCAT) - [Access to government information \(nsw.gov.au\)](#)

Please note, this complaint is now closed. If you would like to contact us to discuss this further, please quote the reference CPXX/XXXXX in any correspondence.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

I note in your application you have stated:

s 22
[Redacted text block]

I refer you to the following website: [Fact Sheet - How to make a complaint about us \(nsw.gov.au\)](https://www.nsw.gov.au/fact-sheet/how-to-make-a-complaint-about-us), which outlines the process for making a complaint about the NSW Information and Privacy Commission, particularly:

“If you are dissatisfied with the handling of your complaint by the IPC, you can contact the NSW Ombudsman, which has responsibility for dealing with complaints about conduct that is illegal, unreasonable, unjust, oppressive, discriminatory, based on improper or irrelevant grounds, based on a mistake of law or fact, or otherwise wrong.”

Our reference: N/A
Agency reference: N/A

Applicant

Email to:<address>

Your FOI Complaint about the <Agency> (the Agency/Department)

Dear Mr/Mrs XXsurnameXX,

We acknowledge receipt of your FOI complaint about the [Agency].

Please note:

- Once your application has been assessed, you will be advised by an investigations and review officer about the next steps in our complaints handling process.
- If your circumstances change, or your request has been resolved, please advise us by email as soon as practicable.
- Information about the way we handle your personal information is available in our [privacy policy](#).

Please note that the OAIC's preference is to receive complaints through our online [smartform](#), as this allows a complaint to be automatically registered and acknowledged, which in turn allows us to progress complaints more quickly. Please note that future complaints that are made by email will take longer to acknowledge and progress as they require manual registration.

Should you wish to follow up on this matter, please contact the OAIC by email at foidr@oaic.gov.au.

Yours sincerely,

[signature block]

From: [AGO,Rocelle](#)
To: [OAIC FOI Branch Directors](#)
Subject: Complaints Closure letters - s 73 - Notification to both parties [SEC=OFFICIAL]
Date: Thursday, 2 May 2024 12:53:48 PM
Importance: High

Dear colleagues

In closing matters under s 73, please ensure that the decision letter is sent to both parties at the time of notification, in one email.

The email can simply state:

Dear parties

Please find attached a decision to decline to investigate a complaint made by [insert complainant] against the [insert respondent] under s 73 under the *Freedom of Information Act 1982*.

Kind regards
Rocelle

Our reference:

FOI reference:

Applicant Name

By email:

Your FOI complaint about the Office of the Australian Information Commissioner

Dear **Mr/Ms/Mrs XX**,

Please find attached a letter in relation to your complaint about the Office of the Australian Information Commissioner.

I confirm your matter has now been transferred to the Commonwealth Ombudsman. The Ombudsman will contact you regarding this matter when they have assessed your complaint.

If you have any questions regarding this matter, please email FOIDR@oaic.gov.au.

Kind Regards

[Signature Block]

Our reference:

FOI reference:

47E(d)

Transfer of FOI complaint to Commonwealth Ombudsman

Dear s 47E(d)

Please find attached a letter confirming transfer of a complaint made by **XXcomplainant nameXX** about the Office of the Australian Information Commissioner.

Please also find attached:

- a copy of the FOI complaint
- a copy of our letter to the complainant advising of our intention to transfer the complaint to your office and request for a response
- a copy of our letter to the complainant under s74(3) of the FOI Act advising the complaint has been transferred to the Commonwealth Ombudsman.
- **[if relevant]** a copy of complainant's response to our intention to transfer the complaint to your office

Kind Regards

[Signature Block]

Our reference:
Agency reference:

[Name]

By email:

Your Freedom of Information Complaint about the [agency full name]

Dear [Mr/s Surname]

The Office of the Australian Information Commissioner (OAIC) has received your **complaint** about the [agency full name] (agency abbreviated name).

You have advised that:

- [if deemed]
- You made an Freedom of Information (FOI) request with the [agency] for access to information under the FOI Act.
- You have not received a decision within the processing timeframe.
- You wish to lodge a complaint about this action.
- [or, if actual decision]
- You received an FOI decision from the [agency] on [date]
- You wish to lodge a complaint about this decision.

Option of IC review

It appears that the issues raised in your **complaint** may be more appropriately managed via an **IC Review** instead of a **complaint**.

The FOI commissioner may decide not to investigate a **complaint**, where the right to seek an **IC Review** is available but is not requested (s 73(b) of the FOI Act).

Difference between FOI **IC Reviews** and **Complaints**

IC Review	Complaint
<ul style="list-style-type: none"> • Considers an FOI decision made by an Agency [or an Agency's failure to provide a decision in time (deemed refusal decision)] • Determines what the correct decision on the FOI request should be • May result in an FOI decision being changed (e.g. providing further access to documents) 	<ul style="list-style-type: none"> • Investigates the actions of an Agency relevant to FOI Act powers and functions • Cannot achieve a change of decision on your FOI request/s if you are unhappy with the decision

Action Required

Please respond to this email by [XXXX] to confirm how you wish to proceed.

1. If you require an IC review and do not require a separate complaint, please reply to this email stating:

“I require an IC review. I no longer require a complaint”.

2. If you require an IC review and continue to also require a complaint, please reply to this email stating:

“I require an IC review’ [and provide further information regarding the specific actions of the Agency that your complaint relates to].

3. If you do not require an IC review of the [Agency]’s decision [or Agency]’s failure to provide a decision in time (deemed refusal)], please reply to this email stating:

‘I do not seek IC review’ [and provide further information regarding the specific actions of the Agency that your complaint relates to].

4. [If relevant] Please note, as the [Department] made a [deemed refusal] decision on XX XXXX XXXX, as such the 60 day review period to apply for IC review expired on XX XXXX XXXX.

If you require an IC review, please include a request for an extension of time to apply for IC review (s 54T of the FOI Act). Please include a brief explanation as to why you did not seek IC review before XX XXXX XXXX, and whether you were made aware of your right to seek IC review.

Further Information

Please note, withdrawing your complaint will not negatively affect the IC review process. If you chose to withdraw your complaint now, and at the end of the IC review process decide you are still unhappy with the way the agency handled your request, you have the option of lodging a new complaint. Complaints are not subject to statutory time limitations.

Please note, if we have not received a response from you by **XXXXX, XX XXXX XXXX**, the Information Commissioner may decide to finalise your complaint under s 73(b) of the FOI Act and you will be notified of your review rights.

When a complaint is more appropriately addressed by Privacy, particularly when access to documents has been requested from an Agency that are not governed by the FOI Act (APP 12), or FOI applicant has agreed to processing request for information under the Privacy Act (most common with DHA):

Our reference: CPXX/XXXXX

Agency reference: XXXXX

First Last Name

Representative's name and organisation of available

By email:

Your [or of rep - First Last's] FOI Complaint about XXXXX Agency/Department

Dear XXXX,

I refer to your FOI complaint received by the Office of the Australian Information Commissioner (OAIC) on DD MM YYYY.

We understand that you are seeking to make a complaint about XXXXX Agency/Department in relation to a request you made under the Freedom of Information Act 1982 (FOI Act).

An FOI complaint can only be made to the Australian Information Commissioner in respect to an action taken by a Commonwealth government agency in the performance of functions, or the exercise of powers, under s 70 of the Commonwealth FOI Act.

XXXXX Agency/Department is not a Commonwealth agency for the purposes of the FOI Act and does not fall within the jurisdiction of the OAIC's regulatory powers.

As your complaint has not been made in respect to the performance of functions by a Commonwealth government agency under the Commonwealth FOI Act, your complaint cannot be considered by the Information Commissioner.

Accordingly, we have finalised your complaint as invalid pursuant to s 70(1) of the Commonwealth FOI Act, as it is outside of the Commissioner's jurisdiction.

However, XXXXX Agency/Department appears to be an organisation bound by the *Privacy Act 1988* (Cth).

The [Australian Privacy Principles](#) (the APPs) contained in the Privacy Act 1988 (Cth) set out the way many private sector organisations, including health service providers are to handle personal information.

[APP 12](#) provides individuals with a general right to access the personal information that an organization holds about them, unless an exception applies.

I confirm, where a request for access to personal information has been made in accordance with the Privacy Act, an agency must respond to the applicant within 30 days.

[if info is available - Your request from DD MM YYYY appears to be a request for personal information in accordance with the Privacy Act, and you therefore have the opportunity to lodge a Privacy complaint with the OAIC, having not received a response from XXXXX Agency/Department.

We have forwarded your correspondence onto our Privacy branch for consideration, and a member of the branch will be in contact with you separately about your complaint.

If you have any questions, please contact our Enquiries line on 1300 363 992.

I confirm this CPXX/XXXXX application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

[Signature Block]

Email to Privacy branch (DREnquiries@oaic.gov.au)

[Email subject line - Transfer of CPXX/XXXXX to Privacy]

Our reference: CPXX/XXXXX

Agency reference: XXXXX

Dear Enquiries,

We received an FOI Complaint on DD MM YYYY in relation to a request for access to personal documents held by XXXXX Agency/Department.

XXXXX Agency/Department is not an agency for the purposes of the FOI Act, which means the access request is not a valid request in accordance with the FOI Act, and we cannot investigate the complaint.

We have therefore closed this as invalid.

However, XXXXX Agency/Department appears to be an organisation bound by the Privacy Act 1988, and the applicant has made a request for access to personal information which has gone unanswered for more than 30 days.

We have advised the applicant that this matter has been transferred to the Privacy branch for consideration.

Attached is all correspondence on file.

Please let me know if there is anything else we can do.

Kind regards,
[Signature Block]

1. RFI/ITD TO A REQUESTING DETAILS

Our reference: XXXXX

XXXXX XXXXX

By email: XXXXX

Request for Information regarding your FOI Complaint

Dear XXXXX,

We have received your FOI complaint dated DD MM YYYY. We have attached a copy of the form you lodged for your reference.

I understand that you are making a complaint about *[enter details of complaint e.g. an FOI Request that you made which was denied]*. However, it is unclear from the application you submitted which agency your complaint relates to.

We kindly ask that you provide the following information by close of business on DAY, DD MM YYYY:

1. Confirm which agency or Department this FOI complaint relates to
2. Provide a copy of the request you originally made
3. Provide copies of any correspondence between you and the Department/Agency regarding your request, and
4. Provide further reasons as to why you are lodging your Complaint

Section 70(1) of the *Freedom of Information Act 1982 (Cth)* ('FOI Act') provides that a complaint can be made about an action taken by an agency in the performance of functions, or the exercise of powers, under the FOI Act.

Additionally, s 70(2)(b) of the FOI Act requires that an FOI complaint must identify the agency in which the complaint relates to.

As such, if we have not received a response from you by close of business on DAY, DD MM YYYY, your FOI Complaint will be finalised as invalid in accordance with s 70 of the FOI Act.

If you have any questions, please do not hesitate to contact us at FOIDR@oaic.gov.au. Please ensure you include the reference CP24/01801 in all correspondence.

Kind regards,

[if applicant has identified they require assistance include this at top of email; I note from your complaint request form that you require assistance participating in the FOI Complaint process; Could you please email us at foidr@oaic.gov.au or call us on 7966 929 698 to inform us of how we can provide you with assistance;]

2. CLOSURE EMAILS TO A

Our reference: XXXXX

XXXXX XXXXX
By email: XXXXX

Request for Information regarding your FOI Complaint

Dear XXXXX,

I refer to our correspondence below and note we have not yet received a response.

Section 70(2)(b) of the FOI Act requires that an FOI complaint must identify the agency in which the complaint relates to.

We have been unable to determine which Agency or Minister your FOI Complaint relates to, and as such have finalised your complaint as invalid.

This FOI complaint is now closed.

Please note, once you have identified the Australian Government Agency or Minister you wish to make a complaint about, you can lodge a new FOI complaint here: [Information Commissioner Review Application Form](#).

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

- identifying the agency in respect of which the complaint is made
- whether you have previously complained to the agency about the issue and any response received
- your complaint issues (i.e. the function or power exercised by the agency under the FOI Act)
- the outcomes you seek from the complaints process, and
- any documents you wish to provide in support of your complaint.

In the absence of the above requested information, the OAIC is unable to properly understand the substance of your FOI complaint and the Information Commissioner may decide not to investigate your FOI complaint under s 73 of the FOI Act.

[Delete if not relevant] The outcome/s you have sought where IC review may be a better option

Complaints usually focus on how an agency has handled your FOI request or complied with other obligations under the FOI Act, rather than the decision itself. The Information Commissioner can only make non-binding recommendations as a result of a complaint which may address the issues that you have complained about, or suggestions or recommendations that the agency should implement. Therefore, you will not receive a decision and/or the documents as the outcome of a complaint.

I would be grateful if you could clarify the outcome you are seeking from the FOI complaints process. For examples of outcomes and recommendations, please see our website at [Freedom of information investigation outcomes](#) which outlines the types of recommendations the OAIC has previously made in relation to the investigation of complaints.

Next steps

Information about the FOI complaints process is available on the OAIC website at [How we handle a freedom of information complaint | OAIC](#).

A response is required by **[2 weeks]**.

Please note, your response may be provided to the agency for their consideration.

If you have any questions about this email, I can be contacted via foidr@oaic.gov.au.

Kind regards



Australian Government
Office of the Australian Information Commissioner



Subject line: OAIC – CPXX/XXXXX - Response due date - **FOI complaint by [Complainant name] about the [Department/ Agency] - Agency reference: XXXX**

Our reference: CPXX/XXXXX
Agency reference: XXXX

FOI Contact Officer
[Department/ Agency]

By email:

FOI complaint by [Complainant name] about the [Department/ Agency]

Dear FOI Contact Officer

I refer to the FOI complaint made by [Complainant name] (the complainant) of [date] about the [Department/ Agency] (the agency) under s 70 of the *Freedom of Information Act 1982* (Cth).

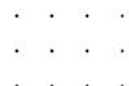
Please find attached a copy of the FOI complaint of [date].

Preliminary inquiries

I am conducting preliminary inquiries under s 72 of the FOI Act for the purpose of determining whether the Information Commissioner will conduct an investigation of this FOI complaint made under s 70 of the FOI Act.

To assist in this process, please provide the following with reference to the attached complaint:

1. chronology/timeline of events
2. whether the complainant has or had:
 - (i) a right to cause the action to be reviewed by the respondent agency
 - (ii) the complainant has not exercised, or did not exercise the right, and



(iii) it would have been reasonable for the complainant to exercise that right

3. whether the complainant made a complaint to the Department directly and, if so:
 - a. please provide copies of relevant correspondence with the complainant regarding the complaint, and
 - b. please confirm whether the agency has:
 - (i) dealt with, or is dealing with the complaint and any outcome, or
 - (ii) not yet had an opportunity to deal with the complaint.
4. brief submissions in response to this FOI complaint
5. submissions addressing any information regarding changes to agency practices and procedures since the FOI complaint was received, including, information regarding changes to practices/procedures etc.

Please note that your substantive response may be shared with the complainant.

Next steps

A response is due by **[date]**.

The recent [ICON alert 15 March 2024](#) outlines the OAIC's approach and expectations for agencies to meet timeframes when information is requested and any extension of time requests.

If you have any questions about this email, I can be contacted via foidr@oaic.gov.au.

Yours sincerely,

[Signature block]

OAIC reference:
Agency reference:

Applicant Name
Agency Name

Decision not to investigate a FOI complaint under s 73 of the Freedom of Information Act 1982

Dear Parties,

Please find attached correspondence about the above referenced FOI complaint to the Office of the Australian Information Commissioner (OAIC).

Kind regards,

[Signature]

Subject: OAIC – CPXX/XXXXX – s 74 complaint transfer consultation

Dear Mr [REDACTED]

I write to consult you about the attached complaint the Office of the Australian Information Commissioner (OAIC) has registered under s 70 of the FOI Act. The complaint relates to actions the OAIC has taken in the performance of its functions or exercise of powers under the FOI Act.

Section 69(1) provides that the Information Commissioner must investigate, subject to the Act, a complaint made under s 70 of the FOI Act.

The power to finalise a complaint made under s 70 of the FOI Act is a non-delegable function. The Information Commissioner herself must make a decision on the outcome of an FOI complaint.

Due to the non-delegable power, the Information Commissioner considers it is inappropriate to investigate this complaint lodged under s 70 of the FOI Act.

In accordance with s 74(2) of the FOI Act, I write to request that the Commonwealth Ombudsman considers transfer of the FOI complaint pursuant to s 74 of the FOI Act.

Please see attached copy of the FOI complaint **and related documents** provided by the complainant.

I seek your response by **[1 week]** confirming whether the Commonwealth Ombudsman agrees to the transfer of the complaint. Please find attached a copy of the complaint.

Please let me know if you require any further information.

Kind regards,

[EL2 Signature]

Subject: OAIC – CPXX/XXXXX – Notice of intention to transfer to the Commonwealth Ombudsman

Our reference:

Your FOI complaint about the Office of the Australian Information Commissioner

Notice of intention to transfer to the Commonwealth Ombudsman

Dear [Applicant name],

I refer to your FOI complaint made under s 70 of the *Freedom of Information Act 1982* (FOI Act) about the Office of the Australian Information Commissioner (OAIC) registered by the OAIC on 30 April 2024.

Your complaint

In your FOI complaint you raised the following issues in relation to **the OAIC**:

- [Summary of complaint]

Section 69(1) provides that the Information Commissioner must investigate, subject to the Act, a complaint made under s 70 of the FOI Act.

The power to finalise a complaint made under s 70 of the FOI Act is a non-delegable function. The Information Commissioner herself must make a decision on the outcome of an FOI complaint.

Due to the non-delegable power, the Information Commissioner is of the view that it would be inappropriate to investigate an FOI complaint lodged under s 70 of the FOI Act in certain circumstances, including:

1. [If Relevant] whether the complaint is about actions taken by the Office of the Information Commissioner (OAIC), including how the OAIC has dealt with an:
 - Information Commissioner review
 - FOI complaint
 - vexatious applicant declaration application
 - FOI request, or
 - extension of time application
2. [If Relevant] whether there may be a perceived or actual conflict of interest in the Commissioner considering the complaint, including where:
 - the complainant has active complaints under the Privacy Act where the Information Commissioner is the respondent
 - the complaint relates to specific functions exercised by the Information Commissioner under the Privacy Act

- the complainant has active matters in other forums, including the Administrative Appeals Tribunal and Federal Court and the Information Commissioner is the respondent.

Discretion to transfer FOI complaints to the Commonwealth Ombudsman

Under s 74 of the FOI Act, the Information Commissioner may decide not to investigate an FOI complaint and to transfer it to the Ombudsman if the complaint could more effectively or appropriately be dealt with by the Ombudsman under the *Ombudsman Act 1976*.

I have reviewed your FOI complaints. It is my intention to recommend that your FOI complaint is transferred to the Ombudsman under s 74 of the FOI Act on the basis that:

- The complaint relates to an action of the OAIC
- It would be a conflict for the OAIC to investigate its own actions

The effect of a decision to transfer your FOI complaint to the Ombudsman is that the Information Commissioner will finalise your complaint pursuant to s 74(3) of the FOI Act. The Ombudsman will then contact you in relation to your complaint.

Next steps

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to transfer your FOI complaint to the Ombudsman.

I invite you to provide submissions in response to my intended recommendation to transfer your FOI complaints to the Ombudsman by **[1 week]**.

If you have any questions regarding this matter please email FOIDR@oaic.gov.au . In all correspondence please quote **[OAIC reference]**.

Yours sincerely

[EL2 Signature Block]



Our reference:

Complainant Name

By email:

Transfer of your FOI Complaint to the Commonwealth Ombudsman

Dear **Mr/Mrs/Ms XX**,

I refer to your FOI complaint made on **XXDATEXX** under s 70 of the *Freedom of Information Act 1982* (FOI Act) about the Office of the Australian Information Commissioner (OAIC).

Your complaint

Your complaint raises concerns with the actions of the OAIC in **[processing an FOI request/processing an Information Commissioner Review]**.

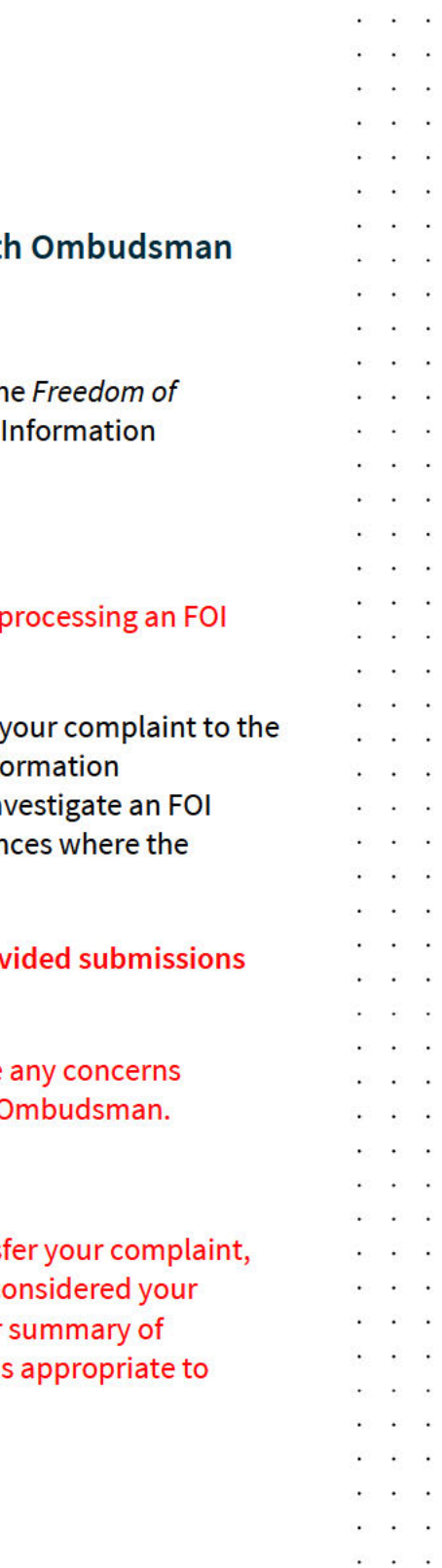
On **XXDATEXX**, the OAIC wrote to you of its intention to transfer your complaint to the Ombudsman under s 74 of the FOI Act. This was because the Information Commissioner is of the view that it would be inappropriate to investigate an FOI complaint lodged under s 70 of the FOI Act in certain circumstances where the complaint is about action taken by the OAIC.

Consideration of your submissions [If applicant has provided submissions include this section]

On **XXDATEXX** you have provided a response which did not raise any concerns regarding the transfer of this complaint to the Commonwealth Ombudsman.

[OR]

On **XXDATEXX** in response to the advice of our intention to transfer your complaint, you have provided submissions contesting the transfer. I have considered your submissions, in particular that **[insert applicants contentions or summary of contentions]**. I have determined in the circumstances, it remains appropriate to transfer this complaint to the Commonwealth Ombudsman.



Decision to transfer complaint to the Commonwealth Ombudsman

I am a delegate of the Information Commissioner.

Under s 74 of the FOI Act, the Information Commissioner may decide not to investigate a FOI complaint and to transfer it to the Ombudsman if the complaint could more effectively or appropriately be dealt with by the Ombudsman under the *Ombudsman Act 1976*.

In considering whether to transfer your FOI complaint to the Ombudsman, I have had regard to the following:

- your FOI complaint
- the FOI Act, in particular ss 70 and 74
- the Guidelines issued by the 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 paragraph 11.17.

The issue identified in the complaint matter relates to actions taken by the OAIC. It is the view of the Information Commissioner that it would be inappropriate to investigate as the Information Commissioner is the respondent.

The OAIC has consulted the Ombudsman, as required under s 74(2) of the FOI Act.

Following this consultation, I have decided to transfer your complaint to the Ombudsman under s 74(3) of the FOI Act.

The effect of this decision is to finalise your complaint with the OAIC. The file held by this office is now closed. The Ombudsman will contact you regarding this matter when they have assessed your complaint.

If you have any questions regarding this matter, please email FOIDR@oaic.gov.au. In all correspondence, please quote the reference number at the top of this letter.

Yours sincerely

Hannah Holswilder

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

21 August 2024

Your 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.



Australian Government
Office of the Australian Information Commissioner



Our reference:

47E(d)

[Redacted]

[Redacted]

Transfer of FOI complaint to Commonwealth Ombudsman

Dear s 47E(d)

I refer to a complaint made by [Complainant name] about the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (the FOI Act), received by the OAIC on XXDATEXX (the complaint).

Section 74 of the FOI Act provides that the Information Commissioner may transfer a complaint to the Ombudsman if the Information Commissioner is satisfied that a complaint about an action under the FOI Act could be more effectively or appropriately dealt with by the Ombudsman.

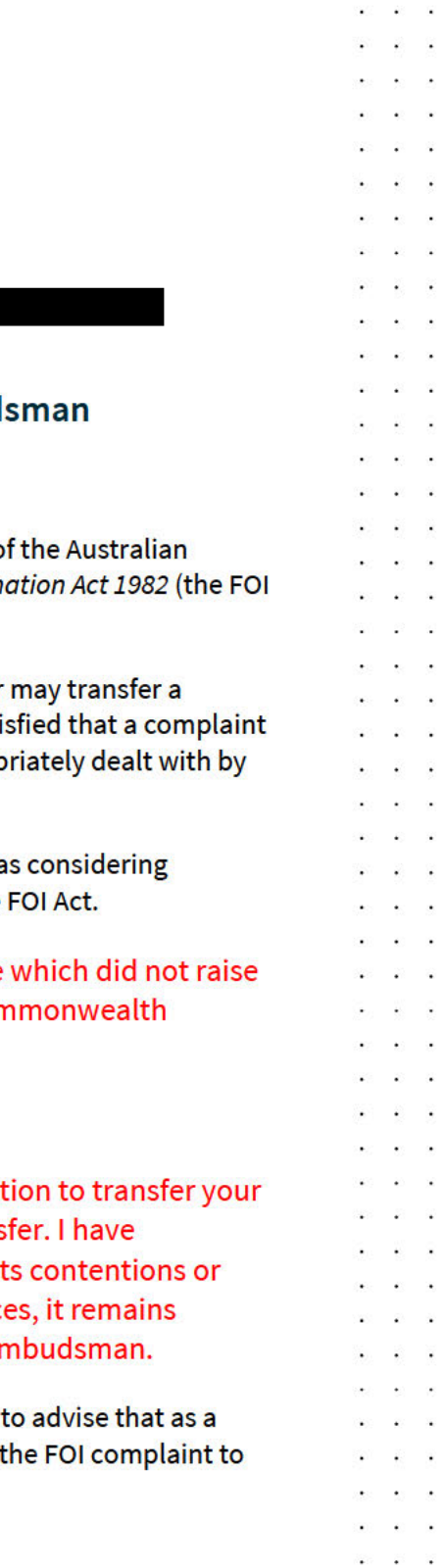
On XXDATEXX, the OAIC advised the complainant that the delegate was considering transferring the complaint to the Ombudsman pursuant to s 74 of the FOI Act.

[If relevant] On XXDATEXX the complainant provided a response which did not raise any concerns regarding the transfer of this complaint to the Commonwealth Ombudsman.

[OR]

[If relevant] On XXDATEXX in response to the advice of our intention to transfer your complaint, you have provided submissions contesting the transfer. I have considered your submissions, in particular that [insert applicants contentions or summary of contentions]. I have determined in the circumstances, it remains appropriate to transfer this complaint to the Commonwealth Ombudsman.

Following the consultation issued to your office on XXDATEXX, I write to advise that as a delegate of the Information Commissioner I have decided to transfer the FOI complaint to you pursuant to s 74 of the FOI Act.



In accordance with s 74(3)(b) of the FOI Act, I attach a copy of the complaint and related documents provided for your consideration.

I have also written to the complainant under s 74(3) of FOI Act to advise them that this complaint has been transferred. A copy of this correspondence is attached.

If you would like to discuss this matter, please contact me via email at FOIDR@oaic.gov.au. Please quote the reference number at the top of this letter in all correspondence.

Yours sincerely

Hannah Holswilder

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

21 August 2024

Dear XXXX,

Thank you for your email below.

We have registered an IC review file in response to your request, and it has been allocated the OAIC reference number MRXX/XXXX.

Noting that the issues raised in your original complaint (CPXX/XXXX) are now being addressed via the above IC review application, would you kindly respond to this email by **close of business on DD, DD MM YYYY**, and advise whether you wish to continue with this FOI complaints.

If you no longer require the FOI complaint, kindly reply to this email and confirm that you wish to “withdraw” the complaint.

If you wish to continue with the complaint, please provide more detail about why you are unsatisfied with the Department’s handling of your FOI request.

Please note, under s 73(b) of the FOI Act, the Information Commissioner may decide not to investigate a complaint if the complainant has, or had, a right to have the action reviewed by the Information Commissioner under Part VII of the FOI Act and has not exercised that right when it would be reasonable to do so (s 73(b)).

It is important to note, withdrawing this complaint will not negatively affect the IC review application. If you chose to withdraw your complaint now, and at the end of the IC review process decide you are still unhappy with the way the Department handled your request, you have the option of lodging a new complaint. Complaints are not subject to statutory time limitations.

If we do not hear a response from you by **close of business on DD, DD MM YYYY**, the OAIC may finalise this FOI complaint under s 73(b) of the FOI Act.

Please note, the IC reviews (MRXX/XXXXX) will continue to progress.

If you have any questions, please do not hesitate to contact me at FOIDR@oaic.gov.au.

Kind regards,

April 2024

FOI Complaint recommendation cases: Overview of process

This resource applies to managing FOI Complaint Recommendation Cases and should be read in conjunction with [Part 11 of the FOI Guidelines](#), the [Regulatory Action Policy](#) and [FOI Complaints: Overview of investigation process](#) resource.

Key principles

- The Information Commissioner can investigate under Part VIIB of the FOI Act agency actions relating to the handling of FOI matters. This involves investigating complaints received from complainants (s 70) as well as conducting own motion investigations (s 69(2)).
- The complaints process set out in Part VIIB is primarily intended to deal with the manner in which agencies handle FOI requests and procedural compliance matters.
- The FOI Act sets out certain rules that apply to the conduct of the Information Commissioner's complaint investigations and Commissioner initiated investigations. The guiding principle is that an investigation shall be conducted in private and in the way the Information Commissioner considers fit (s 76(1)).
- On completing an investigation, the Information Commissioner must provide a 'notice on completion' to the agency and to the complainant (if there is one) (s 86).
- The Information Commissioner's notice must include the investigation results, the investigation recommendations (if any), and the reasons for those results and any recommendations (s 86(2)).
- In addition to including opinions, conclusions or suggestions in a notice on completion, the Information Commissioner may also make 'formal recommendations to the respondent agency that the Information Commissioner believes that the agency ought to implement' (s 88).
- If the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement a formal recommendation, the Information Commissioner may issue a written 'implementation notice' requiring the agency to provide within a specified time particulars of any action the agency will take to implement the Information Commissioner's recommendations (s 89).

FOI Complaint Recommendation Case Process

Stage	Actions
Registration	<ol style="list-style-type: none"> 1. When finalising an FOI complaint, the case Officer will be prompted to record whether any recommendations have been made by the FOI/Information Commissioner. If there has been recommendations made, Resolve will automatically raise a new case type called a 'Recommendation case'.¹ 2. Once a 'Recommendation case has been raised, the Case Officer is to ensure that the Recommendation case file has been x-referenced with the original complaint and add the s 86 Notice to the documents tab of the Recommendation case file. 3. Case Officer to complete triage process including updating any relevant fields on Resolve file. 4. Case Officer to allocate the Resolve Recommendation case file to 'FOI Complaints – Rec' Resolve queue. 5. Director Reviews and Investigations to monitor response due date.
Awaiting agency's response to recommendations	<ol style="list-style-type: none"> 6. Once a response has been received from the agency, Director Reviews and Investigations team to assign the recommendation case to a Case Officer. 7. Case Officer to review the agency's response and provide a recommendation to Director Reviews and Investigations on whether the agency has responded to each recommendation or whether there are any outstanding issues. 8. As part of review, Case Officer to prepare a table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them
Assessment of response to recommendations	<ol style="list-style-type: none"> 9. Director Reviews and Investigations to undertake assessment and assign the matter to relevant Case Officer for next steps. 10. Discuss in collaboration with Director Reviews and Investigations team, Assistant Commissioner and FOI Commissioner (FOI Commissioner input meeting). Considerations on whether the agency has taken reasonable steps to implement the recommendations include: <ul style="list-style-type: none"> — Whether the recommendation related to a systemic issue — Whether the agency has taken any action to implement the recommendation — The investigation conclusions and the agency's actions which led to the recommendation being made — The impact on individual's right to access information if the recommendation is not implemented — Other relevant factors which may impact on an agency's ability to implement a recommendations such as technology issues, occurrence of a pandemic or machinery of government changes. 11. If satisfied with the agency response, proceed to 'Recommendation Acquittal' stage. 12. If not satisfied, proceed to 'Further information required' stage.
Recommendation Acquittal	<ol style="list-style-type: none"> 13. Case Officer to draft the acquittal notice to the Assistant Commissioner FOI outlining the action taken by the agency to implement the recommendations, and, if required, update the table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them. 14. Proceed to assign Resolve clearance action through to the Director Reviews and Investigations

¹ To close a complaint where there are no actions or identifiable workflows, create new action

Stage	Actions
	<p>15. Once the Draft has been cleared by the Director Reviews and Investigations, the case officer will seek Assistant Commissioner approval of:</p> <ul style="list-style-type: none"> - a draft letter of acquittal to the respondent - a table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them. <p>16. The Assistant Commissioner will make an assessment of acceptance of the implementation of recommendations under s 88 of the FOI Act (at the discretion/agreement with of the FOI Commissioner) and recommend the appropriate signatory (FOI Commissioner/Information Commissioner/Assistant Commissioner/Director/case officer if appropriate).</p> <p>17. Once approval obtained from FOI/Information Commissioner to acquit the recommendation case, case officer to provide acquittal notice to respondent.</p> <p>18. Case Officer closes Resolve case file.</p> <p>19. Case Officer to update Outcome of FOI investigations document to include no further action: D2021/020081 and provide to Communications team for publication.</p>
Further information	<p>20. Case Officer Draft RFI to be issued by the Assistant Commissioner.</p> <p>21. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> — Director Reviews and Investigations — Assistant Commissioner — FOI Commissioner <p>22. Once approved, Case Officer to provide RFI to agency.</p> <p>23. Director Reviews and Investigations to monitor response due date.</p> <p>24. Once response is received, update the table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them and return to 'Assessment of response to recommendations' stage.</p> <p>25. If satisfied with the agency response, proceed to Acquittal stage.</p> <p>26. If not satisfied, proceed to 'Implementation notice' stage.</p>
Implementation notice	<p>27. If FOI/Information Commissioner considers the agency's actions to implement their recommendations is inadequate in the circumstances and decides to issue an Implementation Notice, Case Officer to draft implementation Notice to agency.</p> <p>28. Proceed to assign Resolve clearance action through the following levels:</p> <p>29. Director Reviews and Investigations</p> <p>30. Assistant Commissioner</p> <p>31. FOI/Information Commissioner</p> <p>32. Once the draft has been approved by the FOI/Information Commissioner, Case Officer to send the Implementation Notice to the agency.</p> <p>33. Case Officer to monitor response due date specified in the Implementation Notice.</p> <p>34. Once response to Implementation Notice has been received, Case Officer to assess the response and provide an Executive Brief to the FOI/Information Commissioner for their consideration on whether the agency's response outlines whether the agency has taken reasonable steps to implement the investigation recommendations.</p> <p>35. If the FOI/Information Commissioner is satisfied with the agency response:</p> <ul style="list-style-type: none"> — Case Officer to send signed letter from FOI/Information Commissioner to agency. — Case Officer to finalise actions on resolve and closes Resolve file. — Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Comms for publication.

Stage	Actions
	36. If the FOI/Information Commissioner is not satisfied , proceed to ' Report to Minister ' stage.
Report to Minister	<p>37. Commence drafting a report to be provided the Attorney-General as the Responsible Minister. The report must include:</p> <ul style="list-style-type: none"> • A copy of the s 86 Notice on Completion • A copy of the Implementation Notice • The agency's response (if any) to the Implementation Notice • State that the Information Commissioner is not satisfied that the agency has taken adequate action that is adequate and appropriate in the circumstances • state the action that the Information Commissioner believes if taken by the agency, would be adequate and appropriate in the circumstances, to implement the investigation recommendations. <p>38. Once the draft has been approved by the FOI/Information Commissioner, Case Officer to provide a copy of the Draft to the responsible Minister on behalf of the Information Commissioner.</p> <p>39. Information Commissioner to contact the Head of the Agency to advise that a Report has been provided to the responsible Minister.</p> <p>40. Once the Report has been provided to the responsible Minister and it has been tabled in Parliament, Case Officer to close Recommendation Case. Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Comms for publication.</p>



Australian Government

Office of the Australian Information Commissioner

Decision not to [undertake/continue to undertake] an IC review under s 54W(b) of the *Freedom of Information Act 1982*

IC review applicant	«ApplicantClientTitleFirstnameSurname»
Respondent	«RespondentClientTradingName»
Decision date	
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Decision

1. I refer to the application made by «ApplicantClientTitle» «ApplicantClientSurname» (the applicant) for Information Commissioner review (IC review) of a decision made by the «RespondentClientTradingName» («RespondentClientAbbreviation») on «Agency_Decision_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(b) of the FOI Act.
3. Under s 54W(b) of the FOI Act, I have decided not to [undertake/continue to undertake] an IC review on the basis that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the Administrative Appeals Tribunal (AAT). A copy of the IC reviewable decision is attached). The effect of my decision is to allow the applicant to apply directly to the AAT.

Background

4. The key procedural steps in this IC review are set out at **Attachment A**.
5. On [date], the OAIC review officer responsible for this matter, «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname», wrote to the applicant and the «RespondentClientAbbreviation» to advise of their intention

to recommend to the delegate of the Information Commissioner that this application for IC review be finalised under s 54W(b) of the FOI Act on the basis that it is in the interests of the administration of the FOI Act that the IC reviewable decision be considered by the AAT.

6. «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname» invited the parties to provide reasons if they disagreed with the proposed finalisation of this IC review by [date].
7. [if relevant] Based on the information before me, the OAIC has not received a response.
8. OR [insert details of response or that no response was received]

Discretion not to [undertake/continue to undertake] an IC review

9. Under s 54W(b) 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 interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.
10. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.¹
11. The discretion in s 54W(b) of the FOI Act may be exercised where 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.
12. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

¹ <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

13. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

The Information Commissioner can 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 review application (s 54W(b)). It is intended that the Commissioner will resolve most applications. Circumstances in which the Commissioner may decide that it is desirable for the AAT to consider a matter instead of the Commissioner continuing with the IC review include:

- 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 request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking 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)).

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

14. 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.
15. The objects of the FOI Act provide that functions and powers under the FOI 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.
16. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

Reasons for decision

17. [If relevant, set out parties' submissions here and include consideration of these submissions]
18. I have considered the issues in this matter and 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 because:

- [review and update as appropriate]
- the IC review is linked to ongoing proceedings in the AAT or a court
- there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- the exemptions applied to the documents under s [x] of the FOI Act in this IC review are highly contested and there are a number of affected third parties who must be given a reasonable opportunity to present their case before a final decision is made (s 55(4)(b))
- the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
- the FOI request under review is complex or voluminous, resolving the IC review matter would require a substantial allocation of OAIC resources, and the matter could more appropriately be handled through the procedures of the AAT
- the OAIC is the primary decision-maker of the decision under review
- the material at issue relates to specific functions exercised by the Commissioner under the Privacy Act.

[Sample reasons]

- *It is linked to ongoing proceedings currently before the Administrative Appeals Tribunal. It is clear from the applicant's submissions in this IC review that the applicant is seeking access to information about [provide details of proceedings].*
- *The FOI request under review is complex and voluminous and resolving this matter would require substantial allocation of OAIC resources. For example, the scope of this IC review extends to various exemptions including ss 22, 24A, 33, 42 and 47F of the FOI Act and requires consideration of 200 documents at issue.*

- *The exemption of s 33 of the FOI Act adds complexity to this matter because before the Information Commissioner can determine that a document is not an exempt document under s 33 of the FOI Act, she must first request the Inspector-General of Intelligence to appear and give evidence on the damage that would, or could reasonably be expected to be caused to the security or the Commonwealth, the defence of the Commonwealth or the international relations of the Commonwealth if access to the document were given in accordance with the request (s 55ZB of the FOI Act), and*
- *Further, in circumstances where there is a distinct possibility that, should the IC review continue, any IC review decision will be taken on appeal by either party to the AAT, I consider that it is desirable for the efficient administration of the FOI Act that the IC reviewable decision is reviewed by the AAT at first instance. I also consider that such an approach is consistent with the objects of the FOI Act.*

19. In deciding whether to exercise the discretion not to [undertake / continue to undertake] a review, I have considered:

- [review and update as appropriate]
- The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states: One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.
- The objects of the FOI Act provide that functions and powers under the FOI 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.
- In accordance with the objects of the FOI Act, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost efficient method of external merit review.
- [Where the OAIC is the primary decision maker] The perceived conflict of interest in the Information Commissioner reviewing a decision made by their own agency.

20. For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to

[redacted] undertake] an IC review under s 54W(b) of the FOI Act. I confirm that this IC review is now closed.

Next steps

21. The applicant now 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.
22. If either party disagrees with my decision under s 54W(b) of the FOI Act, information about your review rights is set out below.

Yours sincerely

[Director Name]

[Director]

Freedom of information Branch

4 September 2024

ATTACHMENT A

Key procedural steps

Date	Events
[Date]	IC review application received
	Respondent agency notified under s 54Z
	Request for information issued under @
	Request for information due
	Information received
	Submissions provided to parties
	Revised decision

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/.



Australian Government

Office of the Australian Information Commissioner

Intention to recommend that an IC review **not be undertaken/ continue to be undertaken under s 54W(b) of the *Freedom of Information Act 1982***

IC review applicant	«ApplicantClientTitleFirstnameSurname»
Respondent	«RespondentClientTradingName»
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Summary

1. I refer to the application made by «ApplicantClientTitle» «ApplicantClientSurname» (the applicant) for Information Commissioner review (IC review) of a decision made by the «RespondentClientTradingName» (respondent) on «Agency_Decision_Date» 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 a delegate of the Information Commissioner exercise the discretion to decide not to [undertake/continue to undertake] an IC review under s 54W(b) of the FOI Act, which would allow the applicant to seek review at the Administrative Appeals Tribunal (AAT).
3. I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.
4. The reasons for my recommendation follow.

Background

5. The reasons for my recommendation follow.

Discretion not to [undertake/continue to undertake] an IC review

6. The reasons for my recommendation follow.
7. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.¹
8. The discretion in s 54W(b) of the FOI Act may be exercised where 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.
9. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

10. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

The Information Commissioner can 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 review application (s 54W(b)). It is intended that the Commissioner will resolve most applications. Circumstances in which the Commissioner may decide that it is desirable for the AAT to consider a matter instead of the Commissioner continuing with the IC review include:

- 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 request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:

¹ See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- 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)).

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

11. 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.
12. The objects of the FOI Act provide that functions and powers under the FOI 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.
13. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

[insert reasons for recommendation]

[Sample reasons for recommendation]

14. In this IC review, it is apparent that:

- The FOI decision under review is linked to ongoing proceedings currently before the Administrative Appeals Tribunal. It is clear from the applicant's submissions in this IC review that the applicant is seeking access to information about [provide details of proceedings].
- The FOI decision under review is complex and voluminous and resolving this matter would require substantial allocation of OAIC resources. For example, the scope of this IC review extends to various exemptions including [ss 22, 24A, 33, 42 and 47F] of the FOI Act and requires consideration of [number] documents at issue.

- The exemption of s 33 of the FOI Act adds complexity to this matter because before the Information Commissioner can determine that a document is not an exempt document under s 33 of the FOI Act, she must first request the Inspector-General of Intelligence to appear and give evidence on the damage that would, or could reasonably be expected to be caused to the security or the Commonwealth, the defence of the Commonwealth or the international relations of the Commonwealth if access to the document were given in accordance with the request (s 55ZB of the FOI Act), and
 - Given the complexity of the IC review and the subject matter of the documents requested, I consider that any IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact. In my preliminary view, this IC review could more appropriately be handled through the procedures of the AAT.
15. For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to [undertake/continue to undertake] an IC review under s 54W(b), as I am of the view that it is in the interests of the administration of the FOI Act that this review be closed and that the applicant be provided the opportunity of applying directly to the AAT for review.
16. 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/continue to undertake] a review in this case.

Next steps

17. 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(b).
18. In the absence of a response by this date this IC review application may be finalised under s 54W(b), and the parties will be notified of their review rights.

Yours sincerely

«InvestigativeOfficerFirstnameSurname»

«InvestigativeOfficerPosition»

Freedom of information Regulatory Branch

4 September 2024

ATTACHMENT A

Key procedural steps

Date	Events
[date]	IC review application received
	Respondent agency notified under s 54Z
	Request for information issued under @
	Request for information due
	Information received
	Submissions provided to parties
	Revised decision



Australian Government

Office of the Australian Information Commissioner

Intention to recommend that an IC review **not be undertaken/ continue to be undertaken under s 54W(b) of the *Freedom of Information Act 1982***

IC review applicant	«ApplicantClientTitleFirstnameSurname»
Respondent	«RespondentClientTradingName»
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Summary

1. I refer to the application made by «ApplicantClientTitle» «ApplicantClientSurname» (the applicant) for Information Commissioner review (IC review) of a decision made by the «RespondentClientTradingName» (respondent) on «Agency_Decision_Date» 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 a delegate of the Information Commissioner exercise the discretion to decide not to [undertake/continue to undertake] an IC review under s 54W(b) of the FOI Act, which would allow the applicant to seek review at the Administrative Appeals Tribunal (AAT).
3. I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.
4. The reasons for my recommendation follow.

Background

5. The reasons for my recommendation follow.

Discretion not to [undertake/continue to undertake] an IC review

6. The reasons for my recommendation follow.
7. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.¹
8. The discretion in s 54W(b) of the FOI Act may be exercised where 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.
9. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

10. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

The Information Commissioner can 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 review application (s 54W(b)). It is intended that the Commissioner will resolve most applications. Circumstances in which the Commissioner may decide that it is desirable for the AAT to consider a matter instead of the Commissioner continuing with the IC review include:

- 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 request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:

¹ See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- 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)).

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

11. 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.
12. The objects of the FOI Act provide that functions and powers under the FOI 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.
13. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

[insert reasons for recommendation]

[Sample reasons for recommendation]

14. In this IC review, it is apparent that:

- The FOI decision under review is linked to ongoing proceedings currently before the Administrative Appeals Tribunal. It is clear from the applicant's submissions in this IC review that the applicant is seeking access to information about [provide details of proceedings].
- The FOI decision under review is complex and voluminous and resolving this matter would require substantial allocation of OAIIC resources. For example, the scope of this IC review extends to various exemptions including [ss 22, 24A, 33, 42 and 47F] of the FOI Act and requires consideration of [number] documents at issue.

- The exemption of s 33 of the FOI Act adds complexity to this matter because before the Information Commissioner can determine that a document is not an exempt document under s 33 of the FOI Act, she must first request the Inspector-General of Intelligence to appear and give evidence on the damage that would, or could reasonably be expected to be caused to the security or the Commonwealth, the defence of the Commonwealth or the international relations of the Commonwealth if access to the document were given in accordance with the request (s 55ZB of the FOI Act), and
 - Given the complexity of the IC review and the subject matter of the documents requested, I consider that any IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact. In my preliminary view, this IC review could more appropriately be handled through the procedures of the AAT.
15. For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to [undertake/continue to undertake] an IC review under s 54W(b), as I am of the view that it is in the interests of the administration of the FOI Act that this review be closed and that the applicant be provided the opportunity of applying directly to the AAT for review.
16. 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/continue to undertake] a review in this case.

Next steps

17. 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(b).
18. In the absence of a response by this date this IC review application may be finalised under s 54W(b), and the parties will be notified of their review rights.

Yours sincerely

«InvestigativeOfficerFirstnameSurname»

«InvestigativeOfficerPosition»

Freedom of information Regulatory Branch

4 September 2024

ATTACHMENT A

Key procedural steps

Date	Events
[date]	IC review application received
	Respondent agency notified under s 54Z
	Request for information issued under @
	Request for information due
	Information received
	Submissions provided to parties
	Revised decision



Australian Government

Office of the Australian Information Commissioner

Decision not to [undertake/continue to undertake] an IC review under s 54W(b) of the *Freedom of Information Act 1982*

IC review applicant	«ApplicantClientTitleFirstnameSurname»
Respondent	«RespondentClientTradingName»
Decision date	
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Decision

1. I refer to the application made by «ApplicantClientTitle» «ApplicantClientSurname» (the applicant) for Information Commissioner review (IC review) of a decision made by the «RespondentClientTradingName» («RespondentClientAbbreviation») on «Agency_Decision_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(b) of the FOI Act.
3. Under s 54W(b) of the FOI Act, I have decided not to [undertake/continue to undertake] an IC review on the basis that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the Administrative Appeals Tribunal (AAT). A copy of the IC reviewable decision is attached). The effect of my decision is to allow the applicant to apply directly to the AAT.

Background

4. The key procedural steps in this IC review are set out at **Attachment A**.
5. On [date], the OAIC review officer responsible for this matter, «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname», wrote to the applicant and the «RespondentClientAbbreviation» to advise of their intention

to recommend to the delegate of the Information Commissioner that this application for IC review be finalised under s 54W(b) of the FOI Act on the basis that it is in the interests of the administration of the FOI Act that the IC reviewable decision be considered by the AAT.

6. «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname» invited the parties to provide reasons if they disagreed with the proposed finalisation of this IC review by [date].
7. [if relevant] Based on the information before me, the OAIC has not received a response.
8. OR [insert details of response or that no response was received]

Discretion not to [undertake/continue to undertake] an IC review

9. Under s 54W(b) 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 interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.
10. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.¹
11. The discretion in s 54W(b) of the FOI Act may be exercised where 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.
12. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

¹ <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

13. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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- where there may be a perceived or actual conflict of interest in the Commissioner undertaking 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
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- 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)).

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

14. 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.
15. The objects of the FOI Act provide that functions and powers under the FOI 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.
16. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

Reasons for decision

17. [If relevant, set out parties' submissions here and include consideration of these submissions]
18. I have considered the issues in this matter and 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 because:
- [review and update as appropriate]
 - the IC review is linked to ongoing proceedings in the AAT or a court
 - there is an apparent inconsistency between earlier IC review decisions and AAT decisions
 - the exemptions applied to the documents under s [x] of the FOI Act in this IC review are highly contested and there are a number of affected third parties who must be given a reasonable opportunity to present their case before a final decision is made (s 55(4)(b))
 - the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
 - the FOI request under review is complex or voluminous, resolving the IC review matter would require a substantial allocation of OAIC resources, and the matter could more appropriately be handled through the procedures of the AAT
 - the OAIC is the primary decision-maker of the decision under review
 - the material at issue relates to specific functions exercised by the Commissioner under the Privacy Act.

[Sample reasons]

- *It is linked to ongoing proceedings currently before the Administrative Appeals Tribunal. It is clear from the applicant's submissions in this IC review that the applicant is seeking access to information about [provide details of proceedings].*
- *The FOI request under review is complex and voluminous and resolving this matter would require substantial allocation of OAIC resources. For example, the scope of this IC review extends to various exemptions including ss 22, 24A, 33, 42 and 47F of the FOI Act and requires consideration of 200 documents at issue.*

- *The exemption of s 33 of the FOI Act adds complexity to this matter because before the Information Commissioner can determine that a document is not an exempt document under s 33 of the FOI Act, she must first request the Inspector-General of Intelligence to appear and give evidence on the damage that would, or could reasonably be expected to be caused to the security or the Commonwealth, the defence of the Commonwealth or the international relations of the Commonwealth if access to the document were given in accordance with the request (s 55ZB of the FOI Act), and*
- *Further, in circumstances where there is a distinct possibility that, should the IC review continue, any IC review decision will be taken on appeal by either party to the AAT, I consider that it is desirable for the efficient administration of the FOI Act that the IC reviewable decision is reviewed by the AAT at first instance. I also consider that such an approach is consistent with the objects of the FOI Act.*

19. In deciding whether to exercise the discretion not to [undertake / continue to undertake] a review, I have considered:

- [review and update as appropriate]
- The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states: One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.
- The objects of the FOI Act provide that functions and powers under the FOI 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.
- In accordance with the objects of the FOI Act, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost efficient method of external merit review.
- [Where the OAIC is the primary decision maker] The perceived conflict of interest in the Information Commissioner reviewing a decision made by their own agency.

20. 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] an IC review under s 54W(b) of the FOI Act. I confirm that this IC review is now closed.

Next steps

21. The applicant now 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.
22. If either party disagrees with my decision under s 54W(b) of the FOI Act, information about your review rights is set out below.

Yours sincerely

[Director Name]

[Director]

Freedom of information Branch

4 September 2024

ATTACHMENT A

Key procedural steps

Date	Events
[Date]	IC review application received
	Respondent agency notified under s 54Z
	Request for information issued under @
	Request for information due
	Information received
	Submissions provided to parties
	Revised decision

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/.



Australian Government

Office of the Australian Information Commissioner

Intention to recommend that an IC review **not be undertaken/ continue to be undertaken under s 54W(b) of the *Freedom of Information Act 1982***

IC review applicant	«ApplicantClientTitleFirstnameSurname»
Respondent	«RespondentClientTradingName»
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Summary

1. I refer to the application made by «ApplicantClientTitle» «ApplicantClientSurname» (the applicant) for Information Commissioner review (IC review) of a decision made by the «RespondentClientTradingName» (respondent) on «Agency_Decision_Date» 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 a delegate of the Information Commissioner exercise the discretion to decide not to [undertake/continue to undertake] an IC review under s 54W(b) of the FOI Act, which would allow the applicant to seek review at the Administrative Appeals Tribunal (AAT).
3. I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.
4. The reasons for my recommendation follow.

Background

5. The reasons for my recommendation follow.

Discretion not to [undertake/continue to undertake] an IC review

6. The reasons for my recommendation follow.
7. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.¹
8. The discretion in s 54W(b) of the FOI Act may be exercised where 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.
9. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

10. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

The Information Commissioner can 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 review application (s 54W(b)). It is intended that the Commissioner will resolve most applications. Circumstances in which the Commissioner may decide that it is desirable for the AAT to consider a matter instead of the Commissioner continuing with the IC review include:

- 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 request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:

¹ See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- 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)).

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

11. 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.
12. The objects of the FOI Act provide that functions and powers under the FOI 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.
13. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

[insert reasons for recommendation]

[Sample reasons for recommendation]

14. In this IC review, it is apparent that:

- The FOI decision under review is linked to ongoing proceedings currently before the Administrative Appeals Tribunal. It is clear from the applicant's submissions in this IC review that the applicant is seeking access to information about [provide details of proceedings].
- The FOI decision under review is complex and voluminous and resolving this matter would require substantial allocation of OAIIC resources. For example, the scope of this IC review extends to various exemptions including [ss 22, 24A, 33, 42 and 47F] of the FOI Act and requires consideration of [number] documents at issue.

- The exemption of s 33 of the FOI Act adds complexity to this matter because before the Information Commissioner can determine that a document is not an exempt document under s 33 of the FOI Act, she must first request the Inspector-General of Intelligence to appear and give evidence on the damage that would, or could reasonably be expected to be caused to the security or the Commonwealth, the defence of the Commonwealth or the international relations of the Commonwealth if access to the document were given in accordance with the request (s 55ZB of the FOI Act), and
 - Given the complexity of the IC review and the subject matter of the documents requested, I consider that any IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact. In my preliminary view, this IC review could more appropriately be handled through the procedures of the AAT.
15. For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to [undertake/continue to undertake] an IC review under s 54W(b), as I am of the view that it is in the interests of the administration of the FOI Act that this review be closed and that the applicant be provided the opportunity of applying directly to the AAT for review.
16. 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/continue to undertake] a review in this case.

Next steps

17. 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(b).
18. In the absence of a response by this date this IC review application may be finalised under s 54W(b), and the parties will be notified of their review rights.

Yours sincerely

«InvestigativeOfficerFirstnameSurname»

«InvestigativeOfficerPosition»

Freedom of information Regulatory Branch

5 September 2024

ATTACHMENT A

Key procedural steps

Date	Events
[date]	IC review application received
	Respondent agency notified under s 54Z
	Request for information issued under @
	Request for information due
	Information received
	Submissions provided to parties
	Revised decision



Australian Government

Office of the Australian Information Commissioner

Decision not to [undertake/continue to undertake] an IC review under s 54W(b) of the *Freedom of Information Act 1982*

IC review applicant	«ApplicantClientTitleFirstnameSurname»
Respondent	«RespondentClientTradingName»
Decision date	
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Decision

1. I refer to the application made by «ApplicantClientTitle» «ApplicantClientSurname» (the applicant) for Information Commissioner review (IC review) of a decision made by the «RespondentClientTradingName» («RespondentClientAbbreviation») on «Agency_Decision_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(b) of the FOI Act.
3. Under s 54W(b) of the FOI Act, I have decided not to [undertake/continue to undertake] an IC review on the basis that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the Administrative Appeals Tribunal (AAT). A copy of the IC reviewable decision is attached). The effect of my decision is to allow the applicant to apply directly to the AAT.

Background

4. The key procedural steps in this IC review are set out at **Attachment A**.
5. On [date], the OAIC review officer responsible for this matter, «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname», wrote to the applicant and the «RespondentClientAbbreviation» to advise of their intention

to recommend to the delegate of the Information Commissioner that this application for IC review be finalised under s 54W(b) of the FOI Act on the basis that it is in the interests of the administration of the FOI Act that the IC reviewable decision be considered by the AAT.

6. «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname» invited the parties to provide reasons if they disagreed with the proposed finalisation of this IC review by [date].
7. [if relevant] Based on the information before me, the OAIC has not received a response.
8. OR [insert details of response or that no response was received]

Discretion not to [undertake/continue to undertake] an IC review

9. Under s 54W(b) 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 interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.
10. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.¹
11. The discretion in s 54W(b) of the FOI Act may be exercised where 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.
12. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

¹ <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

13. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

The Information Commissioner can 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 review application (s 54W(b)). It is intended that the Commissioner will resolve most applications. Circumstances in which the Commissioner may decide that it is desirable for the AAT to consider a matter instead of the Commissioner continuing with the IC review include:

- 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 request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking 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)).

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

14. 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.
15. The objects of the FOI Act provide that functions and powers under the FOI 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.
16. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

Reasons for decision

17. [If relevant, set out parties' submissions here and include consideration of these submissions]
18. I have considered the issues in this matter and 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 because:
- [review and update as appropriate]
 - the IC review is linked to ongoing proceedings in the AAT or a court
 - there is an apparent inconsistency between earlier IC review decisions and AAT decisions
 - the exemptions applied to the documents under s [x] of the FOI Act in this IC review are highly contested and there are a number of affected third parties who must be given a reasonable opportunity to present their case before a final decision is made (s 55(4)(b))
 - the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
 - the FOI request under review is complex or voluminous, resolving the IC review matter would require a substantial allocation of OAIC resources, and the matter could more appropriately be handled through the procedures of the AAT
 - the OAIC is the primary decision-maker of the decision under review
 - the material at issue relates to specific functions exercised by the Commissioner under the Privacy Act.

[Sample reasons]

- *It is linked to ongoing proceedings currently before the Administrative Appeals Tribunal. It is clear from the applicant's submissions in this IC review that the applicant is seeking access to information about [provide details of proceedings].*
- *The FOI request under review is complex and voluminous and resolving this matter would require substantial allocation of OAIC resources. For example, the scope of this IC review extends to various exemptions including ss 22, 24A, 33, 42 and 47F of the FOI Act and requires consideration of 200 documents at issue.*

- *The exemption of s 33 of the FOI Act adds complexity to this matter because before the Information Commissioner can determine that a document is not an exempt document under s 33 of the FOI Act, she must first request the Inspector-General of Intelligence to appear and give evidence on the damage that would, or could reasonably be expected to be caused to the security or the Commonwealth, the defence of the Commonwealth or the international relations of the Commonwealth if access to the document were given in accordance with the request (s 55ZB of the FOI Act), and*
- *Further, in circumstances where there is a distinct possibility that, should the IC review continue, any IC review decision will be taken on appeal by either party to the AAT, I consider that it is desirable for the efficient administration of the FOI Act that the IC reviewable decision is reviewed by the AAT at first instance. I also consider that such an approach is consistent with the objects of the FOI Act.*

19. In deciding whether to exercise the discretion not to [undertake / continue to undertake] a review, I have considered:

- [review and update as appropriate]
- The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states: One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.
- The objects of the FOI Act provide that functions and powers under the FOI 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.
- In accordance with the objects of the FOI Act, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost efficient method of external merit review.
- [Where the OAIC is the primary decision maker] The perceived conflict of interest in the Information Commissioner reviewing a decision made by their own agency.

20. For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to

[redacted] undertake] an IC review under s 54W(b) of the FOI Act. I confirm that this IC review is now closed.

Next steps

21. The applicant now 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.
22. If either party disagrees with my decision under s 54W(b) of the FOI Act, information about your review rights is set out below.

Yours sincerely

[Director Name]

[Director]

Freedom of information Branch

5 September 2024

ATTACHMENT A

Key procedural steps

Date	Events
[Date]	IC review application received
	Respondent agency notified under s 54Z
	Request for information issued under @
	Request for information due
	Information received
	Submissions provided to parties
	Revised decision

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

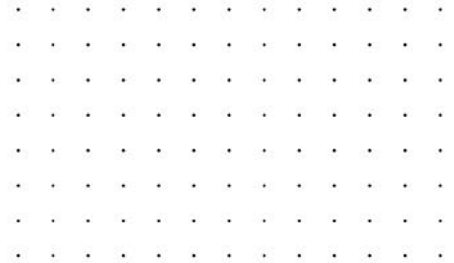
If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated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



Decision not to undertake / not to 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 / nature of the request**
- 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
Click or tap to enter a date.	FOI request made to the Choose an item . <i>[Insert scope of FOI request]</i>
Click or tap to enter a date.	IC review application received by the Office of the Australian Information Commissioner. OR IC review application received by the Office of the Australian Information Commissioner. The applicant indicated within their IC review application that they wished for the Information Commissioner to exercise discretion to decide not to undertake an IC review under s 54W(b) of the FOI Act.
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.	The Choose an item . issued an initial decision in response to the applicant's FOI request. OR 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. OR 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. OR [where a s55G decision could not be issued]

	<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>An officer of the Information Commissioner requested the applicant/ Agency/Minister /parties 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 applicant/ Agency/Minister /parties for consideration by the Information Commissioner, or a delegated member of staff, by Click or tap to enter a date.</p>
<p>Click or tap to enter a date.</p>	<p>Applicant s 54W(b) submissions received, advising:</p> <p><i>'[insert applicant submissions (these may be included in the IC review application)]'</i></p>
<p>Click or tap to enter a date.</p>	<p>Choose an item. s 54W(b) submissions received, advising:</p> <p><i>'[insert Agency/Minister submissions (these will be in response to the IC's 54W(b) ITD)]'</i></p>
<p>Click or tap to enter a date.</p>	<p>An officer of the Information Commissioner provided the applicant with the Agency's/Minister's submission.</p> <p>Fulsome submissions were requested from the applicant for consideration by the Information Commissioner, or a delegated member of staff, by Click or tap to enter a date.</p>
<p>Click or tap to enter a date.</p>	<p>Further s 54W(b) submissions received from the applicant, advising:</p> <p><i>'[insert applicant's further submissions (these will be in response to the IC's 54W(b) ITD)]'</i></p>

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.⁴

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.⁵

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.⁶

⁴ See [Federal Court of Australia](#)

⁵ See [Commonwealth Ombudsman](#)

⁶ See [About us: Access our information](#)



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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.
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 <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>



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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 decide not to **undertake / continue to undertake** an IC review under s 54W(b) of the FOI Act because:

² See [McKinnon and Department of Immigration and Citizenship \[2012\] AICmr 34](#)



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- [Insert reasons]

Next steps

9. 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.
10. If you disagree with this proposed recommendation, please write to us by [Click or tap to enter a date. \[1-2 weeks\]](#) 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 the Information Commissioner, or a delegated member of staff, you may do so by the abovementioned date.
9. 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.
11. 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



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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 affected party	
Agency	
Recommendation date	Click or tap to enter a date.
OAIC reference number	
Agency reference number	

Summary

1. I refer to the application for Information Commissioner review (IC review) of a decision made by the [Respondent] (the Agency/Minister) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. The purpose of this letter is to advise you, as an affected third party or person whose interests are affected by the IC reviewable decision, of my intention to recommend that the Information Commissioner, or a delegated member of staff, exercises the discretion to decide not to **undertake /continue to undertake** an IC review under s 54W(b) of the FOI Act.
3. 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, to allow the opportunity of applying directly to the Administrative Appeals Tribunal (AAT) for review, in the first instance.
4. I am writing to offer you an opportunity to comment or make submissions objecting this recommendation.

Discretion not to continue to undertake an IC review

5. 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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6. 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
7. 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)).
8. 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.

¹ See [Administrative Appeals Tribunal - Fees](#)

² See [McKinnon and Department of Immigration and Citizenship \[2012\] AICmr 34](#)



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Reasons for recommendation

9. In this IC review, it appears that it may be in the interests of the efficient administration of the FOI Act that the Information Commissioner, or a delegated member of staff, exercises the discretion to decide not to **undertake / continue to undertake** an IC review under s 54W(b) of the FOI Act because:

- [insert reasons – example below]
- The documents at issue appear complex, requiring technical knowledge of the subject matter, including, procedural knowledge related to the assessment of the information only known by the third parties, and the ability to determine the detriment that could occur arising from disclosure.
- Notably, the documents at issue contain information belonging to or relating to **a third party / multiple third parties** who were consulted during the processing of the FOI request, whose interests were identified as being affected by the decision. I believe it is reasonable to contend that to reach resolution of the matter it may require a formal hearing to enable oral submissions, and cross examination of the affidavit evidence so as to allow the parties sufficient opportunity to present how the decision affects their interests. This approach is more suited to the processes of the AAT than the IC review process, which is intended to be an informal process with matters review on the papers rather than through formal hearings.
- With consideration to the above, I further believe that the decision may be better suited to the flexible dispute resolution processes of the AAT, which are not available to the Information Commissioner. For example, under s 35 of the *Administrative Appeals Tribunal Act 1975* (AAT Act) the Tribunal may, by order, direct that a hearing (or part of a hearing) takes place in private where the Tribunal can also give directions prohibiting or restricting the publication of information lodged or otherwise given.³ In addition to this, s 34E of the AAT Act provides that evidence of anything said, or any act done, at an alternative dispute resolution process is inadmissible in any court or in any proceeding before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence.⁴
- I am further minded to conclude that reaching a resolution may exhaust a substantial amount of Information Commissioner resources over a significant period where, ultimately, any IC review decision made by the Information Commissioner may be taken on appeal to the AAT by either the affected third party, the FOI applicant or the Agency.

³ See Administrative Appeals Tribunal Act 1975 – Section 35

⁴ Administrative Appeals Tribunal Act 1975 - Section 34E



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Next steps

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. If you disagree with this proposed recommendation, please write to us by [Click or tap to enter a date. \[1-2 weeks\]](#) and advise us of your reasons. If you agree with the proposed recommendation, you are not required to respond. However, should you wish to provide additional information for consideration by the Information Commissioner, or a delegated member of staff, you may do so by the abovementioned date.
12. 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.
13. You 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

Subject line: OAIC – MR – s 54W(b) - Recommendation not to **undertake / continue to undertake** an Information Commissioner review

Our reference:

Agency/Minister reference:

Affected Party
Agency/Minister

By email: [Email address of Affected Party]

Recommendation not to **undertake / continue to undertake** an Information Commissioner review under s 54W(b) of the FOI Act

Good morning/afternoon [Contact person of Affected Party]

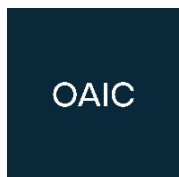
Please find **attached** correspondence in relation to this Information Commissioner review.

If you disagree with the proposed recommendation, please write to us by **DD Month 2024** and advise us of your reasons.

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,



Georgia Furlong (she/her)
Review Advisor
Freedom of Information Branch
Office of the Australian Information Commissioner
Sydney
P 1300 363 992 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.

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Draft s54X Correspondence

Subject line: OAIC – MR– s 54X – Notification of a decision not to **undertake/ continue to undertake** an Information Commissioner review

Our reference:

Agency/Minister reference:

Affected Party
Agency

By email: **[Affected Party Email Address]**

Notification of a decision not to **undertake/ continue to undertake an Information Commissioner review**

Dear **[Affected Party]**,

In accordance with s 54X of the *Freedom of Information Act 1982* (the FOI Act), you are being notified that the Information Commissioner has today concluded the Information Commissioner review under s 54W(b) of the FOI Act.

An excerpt of the reasons for decision is provided below:

[insert screenshot of the ‘reasons for decision’ paragraph/s from pdf 54W(b) decision]

The applicant 28 calendar days from today to lodge an application for review with the Administrative Appeals Tribunal (the AAT), in accordance with s 57A of the *Administrative Appeals Tribunal Act 1975* (the AAT Act).

Under s 60AA of the FOI Act, the **Agency/Minister** has an obligation to notify any person whose interests are affected by the decision that an application has been made to the AAT.

Section 30(1A) of the AAT Act provides that, if an application has been made by a person for a review of a decision, any other person whose interests are affected by the decision may apply to be made a party to the proceeding.

Please direct all future correspondence relating to the decision to the **Agency/Minister**.

I confirm our file is now closed.

Kind regards,