

Subject: FOIREQ24/ Your FOI Request - Misdirected

OAIC ref: FOIREQ24/

Dear

Thank you for your email below.

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](#) of Australian and Norfolk Island government agencies. We are also responsible for handling privacy complaints about ACT public sector agencies. This means, for example, if someone makes a complaint about another Commonwealth agency or private organisation under the Privacy Act that it breached their privacy, the OAIC will then open up a file. That person who made the complaint can then ask OAIC to provide that file to them. Or if someone makes a complaint about the FOI decision made by another Commonwealth government agency, the OAIC will then open up a file for that FOI review, which is on our record.

Each Australian state and territory also have separate FOI legislation that governs information held by state government agencies.

The OAIC **does not**:

- have the function to provide information on matters not covered by the Privacy Act or the FOI Act.
- hold records of other Commonwealth government agencies or private organisations.
- **hold [insert documents sought by the FOIA here].**

We encourage you to make your FOI request directly to the **Administrative Appeals Tribunal** via [their website](#).

Next steps

As the OAIC does not hold the records you seek access to, I ask that you please confirm by return email, that you agree withdraw your request to the OAIC **by close of business on Wednesday 6 March 2024**.

If we do not hear from you by this date, we will take it that you withdraw your request and close it on our system.

Kind regards

Sig

Subject: 47F [REDACTED] Your FOI Request – Withdrawn

OAIC ref: 47F [REDACTED]

Dear 47F [REDACTED]

Having not received further correspondence from you regarding your FOI request, we assume it has been redirected to the appropriate entity and that you no longer wish to pursue your misdirected request to the OAIC, noting that OAIC does not hold the type of records you are seeking.

This matter is now closed. Thank you for contacting the OAIC.

Kind regards

Sig

Subject: 47F [REDACTED] Your FOI Request – Withdrawn

OAIC ref: 47F [REDACTED]

Dear 47F [REDACTED]

Having not received further correspondence from you regarding your FOI request, we assume it has been redirected to the appropriate entity and that you no longer wish to pursue your misdirected request to the OAIC, noting that OAIC does not hold the type of records you are seeking.

Please note that external review of FOI decisions in NSW are undertaken by the NSW Information Commissioner or NCAT (NSW Civil and Administrative Tribunal) pursuant to the *Government Information (Public Access) Act 2009* (NSW).

This matter is now closed. Thank you for contacting the OAIC.

Kind regards

Sig

Subject: 47F [REDACTED] - Your FOI Request – Withdrawn

OAIC ref: 47F [REDACTED]

Dear 47F [REDACTED]

Having not received further correspondence from you regarding your FOI request, we assume it has been redirected to the appropriate entities and that you no longer wish to pursue your misdirected request to the OAIC, noting that the OAIC does not hold the type of records you are seeking.

Please note that external review of FOI decisions in Queensland are undertaken by the Office of the Information Commissioner (Queensland) pursuant to the *The Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld).

This matter is now closed. Thank you for contacting the OAIC.

Kind regards

Sig

Subject: 47F [REDACTED] Your FOI Request – Withdrawn

OAIC ref: 47F [REDACTED]

Dear 47F [REDACTED]

Having not received further correspondence from you regarding your FOI request, we assume it has been redirected to the appropriate entities and that you no longer wish to pursue your misdirected request to the OAIC, noting that the OAIC does not hold the type of records you are seeking.

Please note that external review of FOI decisions in South Australia are undertaken by Ombudsman SA or SACAT (South Australian Civil and Administrative Tribunal) pursuant to the *Freedom of Information Act 1991 (SA)*.

This matter is now closed. Thank you for contacting the OAIC.

Kind regards

Sig

Subject: ^{47F} [REDACTED] Your FOI Request – Withdrawn

OAIC ref: ^{47F} [REDACTED]

Dear ^{47F} [REDACTED]

Having not received further correspondence from you regarding your FOI request, we assume it has been redirected to the appropriate entity and that you no longer wish to pursue your misdirected request to the OAIC, noting that OAIC does not hold the type of records you are seeking.

Please note that external review of FOI decisions in Victoria are undertaken by the Office of the Victorian Information Commissioner or VCAT (Victorian Civil and Administrative Tribunal) pursuant to the *Freedom of Information Act 1982* (Vic).

This matter is now closed. Thank you for contacting the OAIC.

Kind regards

Sig

Subject: 47F [REDACTED] Your FOI Request – Withdrawn

OAIC ref: 47F [REDACTED]

Dear 47F [REDACTED]

Having not received further correspondence from you regarding your FOI request, we assume it has been redirected to the appropriate entities and that you no longer wish to pursue your misdirected request to the OAIC, noting that the OAIC does not hold the type of records you are seeking.

Please note that external review of FOI decisions in Western Australia are undertaken by way of complaint to the Western Australian Information Commissioner pursuant to the *Freedom of Information Act 1992 (WA)*.

This matter is now closed. Thank you for contacting the OAIC.

Kind regards

Sig

Subject: ^{47F} [REDACTED] Your FOI Request – Withdrawn

OAIC ref: ^{47F} [REDACTED]

Dear ^{47F} [REDACTED]

We confirm receipt of the withdrawal of your FOI request.

As you have withdrawn your request, this matter is now closed.

Thank you for contacting the OAIC.

Kind regards

Sig

Subject: 47F [REDACTED] Your FOI Request – Withdrawn

OAIC ref: 47F [REDACTED]

Dear 47F [REDACTED]

We confirm receipt of the withdrawal of your FOI request to the OAIC.

As you have withdrawn your request, this matter is now closed.

Please note that external review of FOI decisions in NSW are undertaken by the NSW Information Commissioner or NCAT (NSW Civil and Administrative Tribunal) pursuant to the *Government Information (Public Access) Act 2009* (NSW).

Thank you for contacting the OAIC.

Kind regards

Sig

Subject: 47F [REDACTED] Your FOI Request – Withdrawn

OAIC ref: 47F [REDACTED]

Dear 47F [REDACTED]

We confirm receipt of the withdrawal of your FOI request to the OAIC.

As you have withdrawn your request, this matter is now closed.

Please note that external review of FOI decisions in Queensland are undertaken by the Office of the Information Commissioner (Queensland) pursuant to the *The Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld).

Thank you for contacting the OAIC.

Kind regards

Sig

Recipient: [REDACTED]

Cc: OAIC – FOI

Subject: [REDACTED] Your FOI request - Query

OAIC ref: [REDACTED]

Dear [REDACTED]

Thank you for your email.

For the records you are seeking, we encourage you to submit an FOI request, as you did to our agency, to the agencies mentioned in our last email to you. We consider that they would be likely to hold the information you seek. The OAIC does not hold these records, and therefore we cannot provide them to you.

We kindly ask that you confirm you withdraw your request to the OAIC by **Friday 10 May 2024**. If we do not receive confirmation from you by this date, we will take it that your request is withdrawn.

Kind regards

Sig

Acknowledgement letter template

Email subject: FOIREQXX/XXXXX – Acknowledgement of your FOI request to the OAIC- **Response by COB XX Month 202X**

Our reference: FOIREQXX/XXXXX

Dear [name of FOI applicant]

Freedom of Information request

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Your FOI request was received by the Office of the Australian Information Commissioner (OAIC) on **XX Month 202X**. This means that a decision on your FOI request is currently due on **XX Month 202X**.

Scope of your request

Your FOI request was made in the following terms:

[insert scope of request]

[Optional: I understand your request to be seeking access to:

[Insert understanding of scope]

In order to process your request as efficiently as possible, I will exclude duplicates and early parts of email streams that are captured in later email streams from the scope of this request, unless you advise me otherwise.

I will not identify you as the FOI applicant during any consultation process. However, documents that are within the scope of your request that the OAIC may need to consult third parties about may contain your personal information.

Consultation on scope of request

[undertake an informal consultation on the scope of the request here]

I would appreciate a response to my questions above by COB XX Month 202X. If I do not hear from you by this date I will assume that you do not object to this interpretation of the scope of your FOI request and will continue to process the request according to this interpretation.

Timeframes for dealing with your request

Section 15 of the FOI Act requires the OAIC to process your request no later than 30 days after the day we receive it. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third parties about certain information, such as business documents or documents affecting their personal privacy.

The current decision due date for your request is **XX Month 202X**. We will advise you if this timeframe is otherwise extended.

Disclosure Log

Documents released under the FOI Act may be published online on our disclosure log, unless they contain personal or business information that would be unreasonable to publish.

If you would like to discuss your FOI request, please contact me on my contact details set out below.

Yours sincerely



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQXX/XXXX

[Salutation] [First] [Last name]

By email: [email address]

Freedom of Information Request – FOIREQXX/XXXX

Dear [Salutation] [Last name]

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on XX Month 202X.

I am writing to consult with you on the basis that your request gives rise to a practical refusal reason.

Background

Scope of your request

Your FOI request sought access to the following information:

[insert scope of request]

OR

Following consultation with you on the scope of your request, on XX Month 202X you revised your request as follows:

[insert scope of revised request]

I note that on XX Month 202X you also agreed to (insert description of any material agreed as out of scope i.e. personal information).

[Detail any other consultations that took place with the FOI applicant]

Notice of intention to refuse your request

I am an officer authorised under s 23(1) of the FOI Act to make FOI decisions on behalf of the OAIC.

I am writing to consult with you under section 24AB of the FOI Act, because:



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- I believe that the work involved in processing your **request/your revised** request will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope (s 24AA(1)(a)(i)); **and/or**
- I cannot sufficiently identify the documents that you are requesting (s 24AA(1)(b)).

For the purposes of the FOI Act, **this/these** are called a ‘practical refusal reason/s’ (s 24AA(1)(a)(i) of the FOI Act).

On this basis, I intend to your request for access to documents unless the terms of your request are revised, so as to remove the practical refusal **reason/s**.

However, before I proceed to a refusal decision, you have an opportunity to revise your request again. This is called a ‘request consultation process’ as set out under s 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out at the end of this letter.

Why I intend to refuse your request

Calculation of the processing time – substantial diversion

Based on searches conducted by the relevant line **area/s**, and a preliminary review of the documents contained **[relevant document location]**, I estimate it will take the OAIC at least **XXX** hours to process your FOI request in its current form.

[Include information regarding searches conducted, time taken, the number and nature of documents, any advice other staff have advised regarding volume of documents, file notes, telephone records and other recorded actions]

I consulted with the following line areas in relation to your request;

- **[insert list of line areas]**

As a result of the searches undertaken to date, I have identified at **least/in excess XX document/s**, totalling **XX** pages falling within scope of your request.

I have reviewed a sample of documents falling within scope of you request.

The documents comprise of **[describe type of documents, eg. internal staff communications, draft correspondence, draft and finalised decisions, submissions, third party personal information etc]**.

I estimate that it would take **XX** hours to process a decision on your request.

I have come to this estimate in consideration of the following factors:



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I estimate that it would take one officer approximately **XX** hours to undertake a full search and retrieval exercise in response to this request. This estimate includes consideration of the time required to search for, locate, convert to PDF and collate **XX** documents from OAIC's record management systems.

A preliminary review of this material indicates that the documents contain sensitivities. At a minimum, I would have to consider the application of the following FOI Act exemption provisions;

- [list exemption provisions]
- Section 47G (business information)
- Section 47E (operations of an agency)
- Section 47F (personal information)
- Section 42 (legal professional privilege)

Based on a sampling exercise, I estimate that it will take between **XX and XX minutes/hours per documents/per page** to examine and assess each document for potential release in accordance with FOI Act exemption provisions.

I further estimate that it will require **XX minutes/hours** to prepare an edited PDF copy of the document, including the redaction of exempt material. On the basis that there will be **XX** documents within the scope of the request so far, this task will take more than **XX** hours.

I also estimate that it will take **XX** hours to prepare a decision statement and schedule of documents.

I have therefore calculated it will take at least **XX** hours to process your request.

I consider that the processing of your request would be a substantial diversion of the OAIC's resources, for the purposes of section 24AA(1)(a)(i) of the FOI Act.

Unreasonable diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal **reason/s exists**. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:



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- the staffing resources available to the OAIC for FOI processing
- the impact that processing the request may have on other tasks and functions of the OAIC
- whether an applicant has cooperated in revising the scope of the request
- whether there is a significant public interest in the requested documents
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The OAIC is a small agency, employing approximately 140 (head count) staff. I consider that processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests of this size and nature.

On the basis that your request will require at least **XX** hours to process, it is likely that the processing of your request would divert OAIC staff away from their other work, including the OAIC's:

- [List appropriate functions of the OAIC and activities undertaken under the OAIC corporate plan]
- ability to process its ongoing FOI request load
- regulatory functions in both FOI and privacy
- activities set out in the OAIC's 2020/2021 Corporate Plan such as:
 - conciliating and investigating privacy complaints, responding to notifiable data breaches, and overseeing the privacy aspects of the My Health Record system
 - monitoring the handling of personal information in the COVIDSafe system.
 - implementation of the Consumer Data Right scheme
 - monitoring compliance with new legislation and providing guidance and education
 - improvement of processes for managing FOI requests
 - engage with the Open Government Partnership, with delivery of the third National Action Plan.

For these reasons I have formed the view that processing your request would substantially impact the OAIC's operations.

I also consider that the processing of your request would be an unreasonable diversion of the OAIC's resources.



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Identification of request documents

For the purposes of s 24AA(1)(b), a practical refusal reason exists in relation to a request if the request does not provide such information concerning the document as is reasonably necessary for the OAIC to identify it as required by s 15(2)(b) of the FOI Act.

After reviewing the preliminary search responses conducted in response to your request so far, I have formed the view that further information is required to sufficiently identify and conduct searches for documents in response to your request.

The [line area/s] advised that they could not identify documents falling with scope of your request for the following reasons:

- [insert detailed advice from line area on identification issue or other reasons why the request is unclear].

Request consultation process

You now have an opportunity to revise your request so as to remove the practical refusal reason/s.

There are a number of ways that you can reduce the scope of your request so as to remove the practical refusal reason/s. These include **limiting and/or further** revising the scope of your request by:

- [Suggest relevant ways the applicant can reduce/revise scope of request. Examples below]
- narrowing the terms of your request to a document category (e.g. email correspondence or internal briefing documents)
- further clarifying the kinds or types of information that you are seeking access to
- narrowing the scope of your request to communication between specific individual staff members
- exclude internal publications (such as FOI Regulatory Group Insights reports and Commissioner's priorities)
- exclude draft and final decisions
- removing duplicate emails from email chains
- removing correspondence which you have already received or been a party to
- only include documents created after or between certain date ranges
- exclude third party personal information
- exclude communication between the respondent and the OAIC during the IC review.



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By way of assistance, we have also drafted the following revised scope for your consideration:

[insert suggested revised scope]

If you would like to proceed with the above revised scope of your request or proceed with another revision of scope you should advise us in a reply email.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for **14 days** and starts on the day after you receive this notice. Therefore, you must respond to this notice by **XX Month 202X**.

During this period, you can ask the contact person (see below) for help to revise your request. If you revise your request in a way that adequately addresses the practical refusal reasons outlined above, we will recommence processing it.

Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

If you would like to revise your request, or have any questions, you can contact me at legal@oaic.gov.au.

Yours sincerely,

[insert contact signature of FOI decision maker]

XX Month 202X



Australian Government
Office of the Australian Information Commissioner

Our reference: FOIREQXX/XXXX

[Salutation] [First] [Last name]

By email: [email address]

Freedom of Information Request – FOIREQ

Dear [Salutation] [Last name]

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on **XX Month 202X**.

I am writing to inform you of my decision.

I have made a decision to **refuse your request on the basis that a practical refusal reason(s) exists**.

In accordance with section 26(1)(a) of the FOI Act, my reasons for decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

[insert scope of request]

OR

Following consultation with you on the scope of your request, on **XX Month 202X** you revised your request as follows:

[insert scope of revised request]

I note that on **XX Month 202X** you also agreed to **(insert description of any material agreed as out of scope i.e. personal information)**.

On XX Month 202X I consulted with you under s 24AB of the FOI Act on the basis that a practical refusal reason(s) existed under s 24AA of the FOI Act. On XX Month 202X you responded to my consultation notice with the following revised scope:

[insert revised scope]

OR

On XX Month 202X you responded to my consultation notice advising that you did not want to revise the scope of your request.

[Detail any other consultations that took place with the FOI applicant]

Request timeframe

On XX Month 202X you agreed to an extension of time under section 15AA of the FOI Act. This means that a decision on your request is due by XX Month 202X.

OR

On XX Month 202X, following my consultation notice under s 24AB, the statutory period was paused for a period of XX days. This means that a decision on your request is due by XX Month 202X.

Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Following consultation with you under s 24AB of the FOI Act, I have decided to refuse access to the documents you requested under s 24(1) of the FOI Act because a 'practical refusal reason' still exists under s 24AA of the FOI Act.

I am satisfied that the work involved in processing your request will substantially and unreasonably divert the OAIC's resources from its other operations due to its size and broad scope.

Reasons for decision

Request consultation process

On XX Month 202X, I wrote to you under s 24AB of the FOI Act to advise you of my intention to refuse your request under s 24(1) of the FOI Act on the basis that you

request gave rise to the following practical refusal reasons/s under s 24AA of the FOI Act):

- I believe that the work involved in processing your request/your revised request will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope (s 24AA(1)(a)(i); and/or
- I cannot sufficiently identify the documents that you are requesting (s 24AA(1)(b)).

I gave you an opportunity to respond to my consultation notice and revise the scope of your request so as to remove the practical refusal reason(s). Specifically, I asked you to advise whether you wanted to:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

In my consultation letter, I suggested the following ways you could revise your request:

[extract of consultation letter]

I also suggested the following revision of scope for your consideration:

[insert proposed revised scope]

On XX Month 202X, you responded to the consultation notice, with the following revised scope:

[extract of response]

OR

On XX Month 202X, you responded to the consultation notice indicating that you did not wish to revise the scope of your request.

OR

The 14 day request consultation period expired on XX Month 202X. As I did not receive a response from you in this timeframe, your request has been taken to be

withdrawn. [If this option, the letter can end here with a signature and the rest of the decision template can be removed]

Materials taken into account

In making my decision, I have had regard to the following:

- your freedom of information request of **XX Month 202X**;
- **your revised scope of XX Month 202X**;
- **consultation with internal line area/s about the broad scope of documents subject to your request and/or the wording of your request**;
- the calculations and reasons why a practical refusal reason/s exist, as provided to you in my consultation notice of **XX Month 202X**;
- your correspondence of **XX Month 202X and XX Month 202X**;
- the FOI Act, in particular s 15, 24, 24AA and 24AB; and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines).

Practical refusal reason

Under s 24(1) of the FOI Act, if an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request, the agency or Minister:

- (a) must undertake a request consultation process; and
- (b) If, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists- the agency or Minister may refuse to give access to the document in accordance with the request.

For the purposes of s 24, a practical refusal **reason/s exists** in relation to a request if:

- the work involved in processing the **request/your revised/request** will substantially and unreasonably divert the resources of the OAIC from its other operations (s 24AA(1)(a)(i)); and/or
- the request does not sufficiently identify the documents being sought (s 24AA(1)(b) and s 15(2)(b)).

Calculation of the processing time – substantial diversion

Based on searches conducted by the relevant line **area/s**, and a preliminary review of the documents contained **[relevant document location]**, I estimated it would take the OAIC at least **XXX** hours to process your FOI request in its current form.

[Include information regarding searches conducted, time taken, the number and nature of documents, any advice other staff have advised regarding volume of documents, file notes, telephone records and other recorded actions]

I consulted with the following line areas in relation to your request;

- **[insert list of line areas]**

As a result of the searches undertaken to date, I have identified at **least/in excess XX document/s**, totalling **XX** pages falling within scope of your request.

I have reviewed a sample of documents falling within scope of you request.

The documents comprise of **[describe type of documents, e.g. internal staff communications, draft correspondence, draft and finalised decisions, submissions, third party personal information etc]**.

I estimated that it would take **XX** hours to process a decision on your request.

I came to this estimate in consideration of the following factors:

I estimated that it would take one officer approximately **XX** hours to undertake a full search and retrieval exercise in response to this request. This estimate includes consideration of the time required to search for, locate, convert to PDF and collate **XX** documents from OAIC's record management systems.

A preliminary review of this material indicates that the documents contain sensitivities. At a minimum, I would have to consider the application of the following FOI Act exemption provisions;

- **[list exemption provisions]**
- **Section 47G (business information)**
- **Section 47E (operations of an agency)**
- **Section 47F (personal information)**
- **Section 42 (legal professional privilege)**

Based on a sampling exercise, I estimated that it will take between **XX and XX minutes/hours per documents/per page** to examine and assess each document for potential release in accordance with FOI Act exemption provisions.

I further estimated that it would require **XX minutes/hours** to prepare an edited PDF copy of the document, including the redaction of exempt material. On the basis that there would be **XX** documents within the scope of the request and that this task will take more than **XX** hours.

I also estimated that it will take **XX** hours to prepare a decision statement and schedule of documents.

I therefore calculated it would take at least **XXX** hours to process your request.

In response to your consultation response, I undertook further consultation with **[insert name of line area/s]** on the terms of your request. Specifically, I discussed the OAIC's time estimate.

The **[line area]** confirmed that they agree that the time estimate involved in processing your request remains accurate. The **[line area]** further confirmed the following reasons why the processing of your request would require a substantial diversion of the Department's resources:

[insert further considerations]

OR

The **[line area]** advised that your further revision of scope would still require the substantial diversion of the Department's resources for the following reasons:

[insert further considerations]

On the basis that the processing of your request would take at least **XXX** hours to process. I consider that the processing of your request would be a substantial diversion of the OAIC's resources, for the purposes of section 24AA(1)(a)(i) of the FOI Act.

Unreasonable diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal **reason(s) exists**. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

- the staffing resources available to the OAIC for FOI processing
- the impact that processing the request may have on other tasks and functions of the OAIC
- whether an applicant has cooperated in revising the scope of the request
- whether there is a significant public interest in the requested documents
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The OAIC is a small agency, employing approximately 140 (head count) staff. I consider that processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests of this size and nature.

On the basis that your request will require at least **XX** hours to process, it is likely that the processing of your request would divert OAIC staff away from their other work, including the OAIC's:

- [List appropriate functions of the OAIC and activities undertaken under the OAIC corporate plan]
- ability to process its ongoing FOI request load
- regulatory functions in both FOI and privacy
- activities set out in the OAIC's 2020/2021 Corporate Plan such as:
 - conciliating and investigating privacy complaints, responding to notifiable data breaches, and overseeing the privacy aspects of the My Health Record system
 - monitoring the handling of personal information in the COVIDSafe system.
 - implementation of the Consumer Data Right scheme
 - monitoring compliance with new legislation and providing guidance and education
 - improvement of processes for managing FOI requests
 - engage with the Open Government Partnership, with delivery of the third National Action Plan.

I have also taken into consideration relevant decisions from the Administrative Appeals Tribunal (AAT).

Firstly, I note that paragraph [101] of *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 confirmed that what constitutes a practical refusal ground will be agency dependent.

The recent decision of *Chief Executive Officer, Services Australia v Urquhard* [2021] AATA 1407, provides a detailed summary of relevant decisions in respect of section 24AB consultations, and found that the processing of a request for personal information which would account for over 118 hours (or three weeks) of work by one full-time FOI employee was both substantial and unreasonable in the context of the second largest FOI agency in the Commonwealth. The Tribunal also noted the broad terms of the request and that the FOI Applicant was not particularly flexible in limiting his request during the consultation process.

I have also had regard to the decision of *Tate and Director, Australian War Memorial* [2015] AATA 107, another smaller agency of a similar size to the OAIC, in which the AAT affirmed a decision by the Australian War Memorial to refuse access to documents for a practical refusal reason. In making its decision, the AAT considered not only the size of the Australian War Memorial (which employs 330 full-time equivalent staff) but also that at the time the request was made the corporate priority of the Australian War Memorial was to prepare for and deliver on the Centenary of ANZAC and First World War commemorations. In this context, processing the request was considered to involve a substantial and unreasonable diversion of the Australian War Memorial's resources. In that matter, the AAT also considered that the Australian War Memorial had acted reasonably in relation to the applicant's requests and had cooperated with him to a significant extent by providing documents in response to informal requests.

Having regard to the above time estimate and advice received in relation to the processing of your request. I consider that XX hours to process one FOI request is clearly both a substantial and unreasonable diversion of the OAIC's resources from its other operations.

Identification of request documents

For the purposes of s 24AA(1)(b), a practical refusal reason exists in relation to a request if the request does not provide such information concerning the document as is reasonably necessary for the OAIC to identify it as required by s 15(2)(b) of the FOI Act.

I have **also determined** that your request does not sufficiently identify the documents sought.

As noted in my consultation letter, the [line area/s] advised that they could not identify documents falling with scope of your request for the following reasons:

- [insert detailed advice from line area on identification issue or other reasons why the request is unclear].

In response to your consultation response/revised request, the [line area/s] further advised that your request remained unclear because:

- [insert further advice from line area on identification issue or other reasons why the request remains unclear].

In determining that your request does not sufficiently identify the documents sought for the purposes of section 15(2)(b) of the FOI Act, I have also had regard to the OAIC's guidance material on practical refusal notices and relevant decisions of the Australian Information Commissioner on the application of section 24AA(1)(b).¹

I have carefully ensured that myself and the line area/s have reasonably read the terms of your request and have not taken a strict or pedantic approach to the interpretation of the scope of your request.²

Taking into consideration the advice from the [line area/s], I am satisfied that the terms of your request are unclear and do not enable an officer of the OAIC to sufficiently identify the documents being sought.

Conclusion

On the basis of the above considerations, I have found that:

- the processing of your FOI request would substantially and unreasonably divert the resources of the OAIC from its other operations (s 24AA(1)(a)(i)); and/or
- your request does not provide such information concerning the documents/s as is reasonably necessary to enable a responsible office of the OAIC to identify it/them (s 24AA(1)(b) and s 15(2)(b)).

¹ See Freedom of Information Guidelines, paragraphs 3.109-3.110 available at [FOI Guidelines \(oaic.gov.au\)](https://www.oaic.gov.au/foi-guidelines).

² 'BI' and Professional Services Review [2014] AICmr 20, applying Re Anderson and AFP [1986] AATA 79.

As such I have decided to refuse your request on the basis that a practical refusal **reason/s** exist/s in relation to your request for access to the documents. Accordingly, I have decided to refuse your request under s 24(1) of the FOI Act.

Your review rights are outlined on the following page.

Yours sincerely,

[insert contact signature of FOI decision maker]

XX Month 202X

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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

Request for s 15AA Extension of time Email Template

Email subject: FOIREQXX/XXXXX – Your FOI request – Request for EOT - Response by COB XX Month 202X

Our reference: FOIREQXX/XXXXX

Dear [name of FOI applicant]

I refer to your freedom of information request (FOI request) received by the Office of the Australian Information Commissioner (the OAIC) on XX Month 202X.

Request for an extension of time

At this stage, the due date of your FOI request is XX Month 202X.

Due to the broad scope of your request, our preliminary searches indicate that your request captures a significant amount of material. At this stage we have identified approximately/at least [number] pages of material that will need to be considered in response to your request.

The OAIC may also be required to undertake consultation with other agencies prior to the release of the material to you.

Accordingly, I am writing to you to seek your agreement to an extension of time under s 15AA of the FOI Act by a further 30 days. If agreed, this will extend the time for the OAIC to process your request by 30 days until XX Month 202X.

Request for an extension of time due to Christmas closure

The OAIC will not be operating during the upcoming holiday period public holidays, as well during a further office shutdown period, between the dates of [DATE] to [DATE]. During this time, due to the unavailability of OAIC staff, there will be a delay in the OAIC's ability to access documents relevant to FOI processing during this period.

I now write to you to formally consent, under s 15AA of the FOI Act, to extend the time for the OAIC to process your request by 14 days until [DATE].

We will continue to process your request as efficiently as possible however would be most grateful if you would kindly agree to an extension of time. We endeavour to provide you access to the relevant material as soon as possible.

I would be grateful to receive your response to be sent by reply email to legal@oaic.gov.au as soon as you can but by COB on [DATE].

Please note that we will continue to process your request as efficiently as possible. We will endeavour to make a decision on your request earlier than this extended date, if we are in a position to do so.

We ask that you please reply to this email, confirming your agreement to this extension of time request, by no later than XX Month 202X.

If you have any further questions, please do not hesitate to contact legal@oaic.gov.au.

Kind regards

s 27 Notice to FOI Act – extended processing period

Our reference: FOIREQXX/XXXX

Dear [applicant name]

Freedom of information request no. FOIREQXX/XXXX

I refer to your request made under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Your request was received by the Office of the Australian Information Commissioner (OAIC) on XX Month 202X.

Your request includes documents which contain information concerning an organisation's business or professional affairs and/or third-party personal information. Accordingly, the OAIC is required to consult with that/those individual(s) and/or organisation(s) under s 27 and/or s 27A of the FOI Act before making a decision on the release of those document(s).

For this reason, the period for processing your request has been extended by 30 days to allow time for this consultation (see s 15(6) of the FOI Act). This means that the processing period for your request will now end on XX Month 202X.

The consultation mechanism/s under ss 27 and/or 27A apply when we believe the person or organisation concerned may wish to contend that the requested documents are exempt for reasons of personal privacy and/or or may adversely affect their business or financial affairs.

The FOI decision maker will consider any comments received as part of the consultation process. However, the final decision about whether to grant you access to the documents, rests with the FOI decision maker.

In the event that the FOI decision maker makes a decision to release material, despite objection from a consulted third party, that third party has review rights available to them should they wish to contest such a decision.

We will not identify you as the FOI applicant during any consultation process. Please note that documents that are within the scope of your request may contain your personal information or information that may identify you.

Regards

[Insert signature]

Courtesy Consultation Response Email Template

Email subject: FOIREQXX/XXXXX - Courtesy consultation about an FOI request received by the OAIC – Decision will be made on XX Month 202X

Our reference: **FOIREQXX/XXXXX**

Dear FOI contact officer

Thank you for your submissions on **XX Month 202X** in respect to the FOI request FOIREQXX/XXXXX.

I have had regard to your submissions when making the decision on this request.

I have decided that the information on **[insert description of information subject to exemption pages XX XX]** is exempt under s **XX and XX of the FOI Act**. As such I will not be releasing this information to the FOI applicant. **[explain further if required]**

OR

I have decided that the information is not exempt under s **XX and XX of the FOI Act** and to release this information to the FOI applicant. **[explain further if required]**

The information was released on **XX Month 202X** and **will be published on the OAIC's disclosure log shortly/ will not be published on the OAIC's disclosure log.**

Thank you for your assistance with this matter.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ[number]

[Salutation] [First] [Last name]

By email: [email address]

By post: [postal address]

Internal review decision – FOIREQ[number]

Dear [Salutation] [Last name]

I refer to your request for internal review of a decision of the OAIC relating to a request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The decision was made by [name of delegate] on XX Month 202X and:

- created and granted access in full/ in part to XX document(s), and
- granted full access to XX document(s), and
- granted access in part to XX document(s), and
- refused access in full to XX document(s).

An internal review is a fresh decision made by a person other than the person who made the original decision (section 54C of the FOI Act). All materials available to the original decision maker have been made available to me. I have also undertaken further searches, deliberation and/or consultation before making my decision.

I have made a decision to:

- affirm the decision of XX Month 202X,
- vary the decision and grant further access in part to XX document(s),
- vary the decision and grant full access to XX document(s).

Background

Your original FOI request

Your FOI request dated XX Month 202X sought access to the following information:

[insert scope of request]

Following consultation with you on the scope of your request, on **XX Month 202X** you revised your request as follows:

[insert scope of revised request]

I note that on **XX Month 202X** you also agreed to *(insert description of any material agreed as out of scope i.e. personal information)*.

On **XX Month 202X** the original decision maker consulted with you under section 24AB of the FOI Act on the basis that a practical refusal reason/s existed under section 24AA of the FOI Act.

On **XX Month 202X** the original decision maker made a decision to:

- create and grant access in full/ in part to **XX document(s)**, and
- grant full access to **XX document(s)**, and
- grant access in part to **XX document(s)**, and
- refuse access in full to **XX document(s)**.

This decision was made subject to the following exemption provisions of the FOI Act:

- *[insert relevant provisions of the FOI Act relied upon]*

Your internal review request

On **XX Month 202X** you wrote to the OAIC requesting an internal review of this decision.

Your internal review request was on the following terms:

[insert scope of internal review request]

A decision on your internal review decision is due on **XX Month 202X**.

[IF THIRD PARTIES CONSULTED]

Consultation

The original decision maker consulted with the following third parties in relation to documents falling within scope of your request:

- [insert name of Commonwealth agencies that have been courtesy consulted]
- XX third parties in relation to third party personal information contained within the documents
- XX third parties in relation to third party business information contained within the documents.

I undertook further consultation with these third parties.

I have taken the views of these third parties in consideration of my decision to affirm/vary the decision.

I agree with the views of a third party in relation to the personal/business information contained within document X and have decided to refuse/grant part access to the document/s.

[OR]

I do not agree with the views of a third party in relation to the personal/business information contained within document X and have decided to grant full/part access to the document/s.

Subsection 27(7) of the FOI Act provides that access is not to be given to the documents until the third party's review or appeal opportunities have run out.

As a result, document X will not be released to you until all opportunities for review or appeal in relation to this decision have run out. If the third party applies for internal review with the OAIC, or IC review, the OAIC cannot release the document until the review is concluded and the time for instituting a review or appeal has expired.

Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to:

- affirm the decision of XX Month 202X;
- vary the decision and grant further access in part to XX document(s);
- vary the decision and grant full access to XX document(s);

Searches Undertaken

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

As part of the internal review process I reviewed the searches performed in the course of processing your original request. I also conducted additional searches in an effort to locate documents within the scope of your request.

The following line areas of the OAIC conducted reasonable searches for documents relevant to you request:

- [insert list of relevant line areas]

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager
- OAIC's email system
- general computer files
- paper files
- [Insert description of other document storage systems that have been searched].

The following search terms were used when undertaking electronic records searches:

- [insert search terms]

The line area/s or the OAIC's Records Officer provided the following additional information as to the searches conducted/documents found:

[Insert advice from relevant business area]

Having consulted with the relevant line areas and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request. and that all relevant documents have been located.

OR

As a result of conducting further searches, I have identified XX documents in addition to those already provided to you as part of the original decision.

Reasons for decision

Materials taken into account

In making my decision, I have had regard to the following:

- your FOI request dated **XX Month 202X** and subsequent revised scope dated **XX Month 202X**
- **your internal review request dated XX Month 202X**
- consultation/communications with you in relation to your request
- the FOI Act, in particular **[Insert relevant sections, including s 3, 11, 11A, 15 and 26]** of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- third party submissions in relation to the release of the documents dated **XX Month 202X**
- **consultation with line area/s of the OAIC in relation to your request**
- **[insert further considerations as required]**

[Insert exemption provisions – refer to FOI Master Template]

Disclosure log determination

Section 11C of the FOI Act requires agencies to publish online document released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

As discussed above and identified in the attached documents schedule, **XX** documents subject to this decision contain personal and/or business information.

Accordingly, I have determined that:

- It would be unreasonable to publish **documents XX to XX** on the disclosure log [due to the document containing personal/business information that would be unreasonable to publish in the circumstances]; and otherwise
- publish the remaining documents **XX to XX** on the disclosure log.

OR

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of documents

The documents and my decision on internal review are identified in the attached schedule of documents.

The documents are enclosed for release. Documents which I have not varied the decision on access have not been provided to you again. Please let the OAIC know if you require another copy of this material.

OR

Because relevant third parties were consulted in the marking of **the original decision and** have objected to release of the material contained in **XX** documents, the OAIC was required under s 27 and/or 27A of the FOI Act, to advise them of the original decision and provide them with an opportunity to seek internal or external review.

The third party has sought internal/external review of the original decision.

As a result, the documents which are subject to third party consultation review rights cannot be released to you until those external review proceedings have finalised.

The remainder of the documents not subject to third party objections are enclosed for release **and varied in the course of my internal review decision are enclosed.** Documents which I have not varied the decision on access have not be provided to you again. Please let the OAIC know if you require another copy of this material.

Please see the following page for information about your review rights.

Yours sincerely,

[NAME]

[Date]

If you disagree with my decision

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You have the right to seek review of this decision by the Information Commissioner.

(IC review). If you wish to apply for IC review, you must do so in writing within 30 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to and include a copy of this letter.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can post your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or apply by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.



Australian Government
Office of the Australian Information Commissioner

Our reference: FOIREQ[number]

[Salutation] [First] [Last name]

By email: [email address]

By post: [postal address]

Freedom of Information Request – FOIREQ [number]

Dear [Salutation] [Last name]

I am writing to inform you of my decision in response to a request for documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) for documents relating to [insert description of documents].

Background

On XX Month 202X, [insert officer name] wrote to you to advise that the OAIC had received an FOI request which includes xx documents relating to/about [Name of individual or organisation].

Pursuant to section 27 and/or section 27A of the FOI Act, [insert officer name] sent you a copy of the document/s relevant to yourself/your organisation and asked for submissions to be made if you thought that the document/s was/were exempt under relevant sections the FOI Act.

On XX Month 202X, you provided submissions outlining your objection to the release of the document/s under the following provisions:

- Section 37 of the FOI Act on the basis that the disclosure of the documents could endanger the life or physical safety of any person;
- Section 47 of the FOI Act on the basis that the documents contain material of commercial value, that could reasonably be expected to be destroyed or diminished upon disclosure;
- Section 47F of the FOI Act on the basis that the documents contain the personal information of [insert description of personal information] and it would be unreasonable to disclose this personal information; and
- Section 47G of the FOI Act on the basis that the documents contain the business information of [insert description of personal information] and it would be unreasonable to disclose this business information.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Of the **XX** documents that the OAIC consulted **you/your organisation** on, I have identified **XX** documents within the scope of the request. I have decided to **grant access to XX documents in full and XX documents in part/refuse access to the documents in full.**

This means that I have agreed with your submissions on potential sensitivities and redactions under the FOI Act **in full/in part.**

[OR]

This means that I have disagreed with your submissions on potential sensitivities and redactions under the FOI Act.

Please find **enclosed** with this letter the following documents:

- a schedule of the documents relevant to **you/your organisation** that I propose to release to the FOI applicant
- a redacted version of the documents which identifies the information that will be removed before the document/s is/are released in accordance with my FOI decision

The reasons for my decision are set out below.

Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

- the document/s at issue
- the FOI Act, in particular **sections 22, 27, 27A, 47, 47F and 47G** of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- your submission in relation to the release of the document/s dated **XX Month 202X.**

Personal privacy - conditional exemption – section 47F

A document is conditionally exempt under section 47F(1) of the FOI Act where disclosure would involve the unreasonable disclosure of personal information of any person, including a deceased person. This exemption is intended to protect the personal privacy of individuals.

You have submitted that [*insert submissions of consultee as to why section 47F applies*].

[*Insert your assessment of the submissions and whether section 47F is satisfied in the circumstances*]

In my view, the disclosure of this information would not involve the unreasonable disclosure of personal information because [*explanation why release is reasonable, such as the information is already known to the applicant*]. For this reason, I have not exempted any under section 47F of the FOI Act.

[**OR**]

In my view, the disclosure of this information would involve the unreasonable disclosure of personal information, namely [*Name*]. For this reason, I have exempted the material under section 47F of the FOI Act.

Business – conditional exemption – section 47G

Section 47G of the FOI Act provides:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
- (a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
 - (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

The FOI Guidelines provide at [5.15] that in relation to the test ‘would or could reasonably be expected’:

- 5.16 *The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.*
- 5.17 *The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.*
- 5.18 *The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.*

You have stated that the documents reveal sensitive information relating to **[insert submissions of consultee as to why section 47G applies]**:

I have considered whether the release of these documents could be expected to unreasonably affect **[Name]** adversely in respect of their business affairs. I acknowledge that the documents do contain business information about **[insert details of document information]**. I also note that in relation to a number of documents they are marked “commercial in confidence”.

However, **[include any arguments which go against the documents being confidential in nature, such as document being released to applicants previously]**.

EXAMPLE – Because the information contained in the documents identified in the schedule contain information that is specific to **[Name]** and has previously been released to **[Name]** in accordance with the *Privacy Act 1988*, I do not consider the release of these documents would adversely affect **[Name]** in respect of their business affairs.

In my view, I do not consider the documents are conditionally exempt under section 47G of the FOI Act. I have not considered whether the release of the documents is in the public interest.

[OR]

In my view, it is likely that disclosure of the information contained in the documents would adversely affect **[Name]** in respect of their business affairs/could reasonably be expected to prejudice the future supply of information to **[Name]**. For this reason, I have exempted the material under section 47G of the FOI Act.

Access to edited copies with irrelevant and exempt matter deleted – section 22

Section 22 of the FOI Act provides that an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to an FOI request where material has been identified as exempt or irrelevant to the request.

In addition to the material which I have marked as exempt under the FOI Act, I have also identified the following material within the documents to be irrelevant or out of scope to the request:

- [describe material which has been treated as irrelevant]

Release of document

[Name of consultee] has the right to seek internal review or external review of this decision.

Subsection 27(7) of the FOI Act provides that access is not to be given to the documents until review or appeal opportunities have run out.

As a result, if you do choose to seek review, the document/s will not be released to the FOI applicant until all opportunities for review or appeal in relation to this decision have run out.

Disclosure log

Section 11C of the FOI Act requires agencies to publish, on its website, documents released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

As discussed above, I have identified the XX documents containing the personal information of [Name] and [Name] employees that would be unreasonable to publish. As a result, all XX documents will not be published on the OAIC's FOI disclosure log.

As I have not identified any sensitives pertaining to personal information or business information, the documents will be published on the OAIC's FOI disclosure log.

Further information about applying for review can be found on the next page.

Yours sincerely,

[Name]

[Position title]

[Date]

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the

Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

<https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR10>

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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

Schedule of documents

Note: In accordance with OAIC's Operational Policy for Processing FOI requests and internal review requests made to the OAIC, business areas tasked with FOI search and retrieval are required to complete the following schedule of documents, the search minute template provided and attach all relevant documents within scope of the request to the Legal Services Team within 1 week.

Schedule of documents – Freedom of information request no. [insert unique number/code]

Document no.	Page no.	Date	No. of pages	Description	Decision on access	FOI Act Provision/Exemption
Each document should be assigned a document number. Each attachment is considered to be a new separate document and should be assigned a new number.	Page number range in the FOI document bundle	Date(s) document created (or date received if creation date unknown) and date(s) document annotated	Number of pages (or other physical descriptor)	Describe the nature of the document and provide details of the author and/or addressee (where applicable). Do not disclose any material that is subject to exemption.	State whether the document is being: <ul style="list-style-type: none"> • released in full • release in full, with deletions of irrelevant/out of scope material only • released in part, with deletions on the basis of one or more specific exemptions • refused in full on the basis of one or more specific exemptions • access is being deferred • access is being granted in a different form from that requested 	State any FOI Act provisions relied upon that aren't exemptions (i.e. section 22 or 24A(1)(b)(ii) were a document was clearly identified but not found. State FOI Act exemptions and (if applicable) where that exemption is claimed on a document (for example which page; if there is more than one exemption claimed on a single page, provide further detail such as paragraph or line number. Alternatively, you may choose to annotate the document with the exemption number next to each redaction.)

Executive FOI decision and documents for noting

Email subject: FOIREQXX/XXXXX – Executive FOI Decision and documents for noting – Request for [insert description of documents] – Response required by COB XX Month 202X

CC Media Team

Our reference: FOIREQXX/XXXXX

Dear Commissioner and Deputy Commissioner,

The Legal Services team received an FOI request on XX Month 202X from [insert name of FOI applicant] (applicant).

Scope of the request

The applicant has requested the following information:

[Insert scope here]

To process this matter, I requested that [name of relevant business area/s] to conduct searches for documents that they may hold that would be relevant to the applicant's request. They have both provided XX document(s) for my consideration.

Please find **attached** a marked-up version of the document(s) that I propose to release to the applicant. [If the applicant has provided consent] I note that the applicant has given us their consent to remove personal information from the scope of the request. As such, I have redacted all personal information under s 22 of the FOI Act.

I have also attached the FOI decision that will be sent to the applicant by COB XX Month 202X for your information. [If documents are not exempted from the Disclosure Log (see FOI Guidelines 14.14)]. I note that these documents will also be placed on the OAIC's disclosure log within 10 working days after access is provided to the applicant.

If you have any further questions in relation to this matter, please do not hesitate to contact me.

Kind regards,

OR, if seeking executive's view on a certain issue:

Our reference: FOIREQXX/XXXXX

Dear Commissioner and Deputy Commissioner

The Legal Services team received an FOI request on XX Month 202X from [insert name of FOI applicant] (applicant).

Scope of the request

The applicant has requested the following information:

[Insert scope here]

OR Legal has interpreted this request as [describe scope].

Third-party consultations

Legal consulted with the following third-party consultations under s 27/27A of the FOI Act:

- [list third party consultees]

In response to the consultation the third party/s raised the following concerns in relation to disclosure:

- [list third party response concerns]

The FOI decision has had regard to these submissions and has decided to accept or disagree with these submissions and proceed to making a [insert description of proposed decision being made]

For review and comment

Please find the following documents for your review and comment:

1. Draft FOI decision **proposing full/partial access/refusing access under:**
 - [list relevant exemption provisions]
2. Draft schedule of documents which identifies the FOI Act exemptions relied upon, and
3. Documents proposed for release with proposed exemptions marked up.

We also see you views in relation to [detail any specific issues requiring the executive's attention and/or advice required].

Next steps

As the decision is due on **COB XX Month 202X** , I would be grateful to receive any comments, if any, on my proposed draft decision by **COB XX Month 202X**.

If you would like to discuss any aspects of the above, please do not hesitate to give me a call.

Line Area FOI Decision Notification

Email subject: FOIREQXX/XXXXX – FOI decision notification – Request for [insert description of documents] – Decision will be made by COB XX Month 202X

Our reference: FOIREQXX/XXXXX

Dear XX

Thank you for all of your assistance with processing FOIREQXX/XXXXX.

I am writing to inform you that a decision has been made to release XX document(s) in full (with the deletion of irrelevant material under s 22 of the FOI Act). The applicant will be provided with a decision letter and documents on XX Month 202X.

[If documents are not exempted from the Disclosure Log (see FOI Guidelines 14.14)] The attached document(s) will also be published on the OAIC's disclosure log shortly.

OR

I am writing to inform you that a decision has been made to release XX document(s) in part, subject to exemptions under s XX, XX and XX and with the deletion of irrelevant material under s 22 of the FOI Act. The applicant will be provided with a decision letter and document(s) on XX Month 202X.

[If documents are not exempted from the Disclosure Log (see FOI Guidelines 14.14)] The attached document(s) will also be published on the OAIC's disclosure log shortly.

OR

I am writing to inform you that a decision has been made to refuse access to XX document(s), subject to exemption(s) under s XX, XX and XX of the FOI Act. The applicant will be provided with a decision letter on XX Month 202X.

If you have any further questions, please do not hesitate to contact me.

Many thanks,

Disclosure Log - Email Notification

Email subject: FOIREQXX/XXXXX – FOI Disclosure Log update – Request for [insert description of documents]
– Due COB XX Month 202X

Our reference: FOIREQXX/XXXXX

Send to **website and CC media**

Dear XX

Can you please update the disclosure log to include the following new FOI decision/s:

Reference Number	Date of access	FOI request	Other information	Publish by

The relevant document/s is/are attached to this email.

Can you please publish the document **as soon as possible, but no later than COB XX Month 202X.**

If you have any questions, please do not hesitate to contact me.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Guidance for staff

Processing administrative access and APP 12 requests made to the OAIC



June 2023

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Processing of administrative access and APP 12 requests made to the OAIC

This is a best practice guide developed by the Office of the Australian Information Commissioner (**OAIC**) to ensure that once the OAIC receives an access request for personal or non-personal information, officers correctly assess, manage and make decisions on the request in a timely manner, noting the OAIC has the responsibility of protecting personal privacy and advancing information access rights across the Commonwealth.

1. Request classified

The OAIC officer who receives the access request, will classify the request as:

- a. a routine request for documents or information that can be dealt with informally in the course of managing the relevant matter (submission process, complaint, review)¹
- b. a request for documents made under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) ('FOI request')²
- c. an administrative access request³
- d. an APP 12 request for access to personal information made under the *Privacy Act 1988* (Cth) (**Privacy Act**) ('APP 12 request'),⁴ or
- e. an APP 13 request for correction to personal information made under the *Privacy Act* ('APP 13 request').⁵

The nature of the information requested (personal vs non-personal), any references to legislation (FOI Act or Privacy Act), and any access arrangements that the OAIC has in place for such information or documents are relevant to the classification of the request.

If the request is complex or unclear, inquiries can be undertaken with the individual or entity that made the access request. In some cases, it may be appropriate for classification to be undertaken by the responsible director in discussion with Legal Services.

2. Line area with responsibility for access request identified

FOI requests and APP 13 requests made under the *Privacy Act* will be processed by Legal Services.

An administrative access request, or an APP 12 request will be managed by the director with responsibility for the work of the OAIC officer who received the access request. A routine request for

¹ For instance, an agency may ask the OAIC for information on the date that a submission must be provided by, or a complainant or applicant may ask for information that relates to an ongoing complaint or review that case officers share with parties on a regular basis within the complaints or review process.

² For discussion on documents that can be requested under the FOI Act, 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), specifically [Part 2](#) at [2.28] – [2.61].

³ For discussion on administrative access see OAIC, *Administrative access* (25 September 2018) <<https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/administrative-access/>> and OAIC, *Administrative access to information* <<https://www.oaic.gov.au/about-us/access-our-information/administrative-access-to-information/>>.

⁴ For discussion on APP 12 requests see [Chapter 12](#) of the Australian Privacy Principles guidelines.

⁵ For discussion on APP 13 requests see [Chapter 13](#) of the Australian Privacy Principles guidelines.

documents or information that can be dealt with informally in the course of managing the relevant matter (submission process, complaint, review) will be managed pursuant to information-sharing processes or policies that apply to such matters.⁶

3. Request registered and allocated

When an administrative access or APP 12 request) is received by the OAIC the officer who receives the request will register it as an access request on Resolve. Where a single point of contact officer (SPOC officer) has been assigned, the request is forwarded to the SPOC officer for registration.

The request is then forwarded to the responsible director who will allocate the request to the relevant case officer, or another appropriate officer, to assess the request, undertake search and retrieval, assess the requested documents and make the decision on the request.

4. Acknowledgment of request

Based on the initial assessment of whether the request should be handled as an administrative access or APP 12 request, within 7 days of receiving the request, the relevant officer will send an acknowledgement email to the applicant.

If an administrative access request for non-personal information is assessed as likely to require more than 30 days to process, the officer should advise the applicant of their right to make an FOI request and seek agreement to otherwise continue the request under administrative access arrangements.

For administrative access requests for an individual's own personal information that are assessed as likely requiring more than 30 days to process, applicants should be made aware at the time of making the request:

- of their right to make a request under either the FOI Act or the Privacy Act;
- the relevant rights and timeframes accruing under each Act;⁷ and
- that unless the applicant chooses to make an FOI request their request will be treated as an APP 12 access request.

5. Search and retrieval

The officer will evaluate the request, undertake an assessment of documents falling within scope of the request and determine the relevant line areas within the OAIC that are likely to hold relevant documents.

A search and retrieval email should be sent to the line area requesting that the relevant officer/s conduct searches and provide the officer with documents relevant to the request.

⁶ For instance, the Commissioner has issued a Direction as to certain procedures to be followed in IC reviews under s 55(2)(e)(i) of the FOI Act which explains that the Commissioner will share an agency or minister's submissions with the applicant unless there are compelling reasons not to (at [5.2]).

⁷ FOI Act access decisions must be granted within 30 days unless an extension of time provisions applies, s 15(5) of the FOI Act. APP 12 requests must be responded to within 30 days (see *Knowles v Secretary, Commonwealth Department of Defence* [2020] FCA 1328 [66]-[67]).

6. Assessment of documents

Once the documents are located/received, the relevant officer will assess the document to determine whether they may be released to the applicant and whether redactions need to be applied to the documents.⁸

It should be noted that APP 12 provides for access to a person's personal information only. APP 12 further provides that agencies are not required to give access to personal information in circumstances where it isn't authorised or required under the FOI Act or another piece of legislation that provides for access to documents.⁹

If the officer is uncertain about whether a document or documents may be released or there are sensitivities or complexities that are apparent in the documents or from the circumstances of the request which may require the consideration of redaction, the officer can consult with Legal Services who will provide advice. Examples of complexities or sensitivities include:

- where the requester has made a threat of violence against an OAIC officer and then requested access to information about the OAIC officer, or
- the nature of the information or documents requested is sensitive because it contains third party personal or business information.

7. Decision

The relevant officer will draft a decision and prepare the information or documents for release. The documents and decision will be cleared by the responsible director before being sent to the applicant.

The officer will also provide the applicant, as appropriate, with:

- a statement of reasons for APP 12 requests
- their review rights in relation to APP 12 requests (Appendix A), or
- their options in relation to administrative access requests (Appendix B).

If requested, Legal Services are available to review any draft APP 12 or administrative access decisions.

8. Guidance material

The OAIC publishes guidance on its website about processing administrative access requests and APP 12 requests.

Guidance about processing APP 12 requests and administrative access requests can be found at [Chapter 12: APP 12 — Access to personal information - Home \(oaic.gov.au\)](https://www.oaic.gov.au/12) and [Administrative access - Home \(oaic.gov.au\)](https://www.oaic.gov.au/administrative-access).

9. Revision of policy

This policy should be revised annually from the date of commencement.

⁸ For discussion on how to process APP 12 requests see [Chapter 12](#) of the Australian Privacy Principles guidelines.

⁹ APP12.2(b)(i)&(ii).

Appendix A

Please find below your review rights in relation to my APP 12 decision.

Privacy complaint

You may make a privacy complaint to the OAIC as a regulator under s 36 of the Privacy Act. Further information about privacy complaints can be found at <https://www.oaic.gov.au/privacy/privacy-complaints/lodge-a-privacy-complaint-with-us/>

Ombudsman complaint

If you have a complaint about the outcome of your access requests, or the way in which they have been handled, you may write to enquiries@oaic.gov.au or contact the Commonwealth Ombudsman on 1300 363 072.

Freedom of Information

Alternatively, you may make a Freedom of Information (FOI) request. To make an FOI request you must:

- make the request in writing
- state that it is an application for the purposes of the *Freedom of Information Act 1982* (Cth)
- provide information that clearly identifies the documents/information you seek
- provide details about how notices can be sent to you (this can include an email address)
- send your request to foi@oaic.gov.au, fax it to (02) 9284 9666, or post it to the OAIC at GPO Box 5218 Sydney NSW 2001

Judicial review

If you consider that the OAIC erred in law in the relevant decisions, you may wish to consider seeking judicial review of the decision. The court won't review the merits of your request but may refer the matter back to us to reconsider — if they find our decision or determination was wrong in law or we didn't exercise our powers properly.

For more information about a judicial review, including fees for making an application, visit the Federal Court of Australia's website: <https://www.fedcourt.gov.au/>

Appendix B

Please find below your options in relation to the processing of your administrative access request.

Ombudsman complaint

If you have a complaint about the outcome of your access requests, or the way in which they have been handled, you may write to enquiries@oaic.gov.au or contact the Commonwealth Ombudsman on 1300 363 072.

Freedom of Information

Alternatively, you may make a Freedom of Information (FOI) request. To make an FOI request you must:

- make the request in writing
- state that it is an application for the purposes of the *Freedom of Information Act 1982* (Cth)
- provide information that clearly identifies the documents/information you seek
- provide details about how notices can be sent to you (this can include an email address)
- send your request to foi@oaic.gov.au, fax it to (02) 9284 9666, or post it to the OAIC at GPO Box 5218 Sydney NSW 2001

Misdirected FOI Acknowledgement Email Template

Email subject: FOIREQXX/XXXXX – Your FOI request to the OAIC - Response requested by COB XX Month 202X

Our reference: FOIREQXX/XXXXX

Dear [name of FOI applicant]

Thank you for your email received by the Office of the Australian Commissioner (OAIC) on XX Month 202X.

I understand that you are making a request for documents under the *Freedom of Information Act 1982* (Cth) for access to the following documents:

[insert terms of request]

I am of the view that the OAIC does not hold the documents you are seeking access to and that your request would be better directed to [name of agency or organisation].

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](#) of Australian and Norfolk Island government agencies. We are also responsible for handling privacy complaints about ACT public sector agencies.

Each Australian state and territory also have separate FOI legislation that governs information held by state government agencies.

The OAIC **does not:**

- have the function to provide information on matters not covered by the Privacy Act or the FOI Act.
- hold records of other Commonwealth government agencies or private organisations.

If you are seeking to access records of a particular agency or organisation, you will need to make your request directly to the relevant agency or organisation.

I consider that your request would be more suited to [name of agency or organisation] and recommend that you make your request to:

[Name of relevant Agency]

Online: Apply online [update hyperlink to relevant FOI webpage for specific FOI request]

Post: [insert relevant postal address]

Email: [insert relevant email address]

If you are applying by post or email, your written letter must:

- state that it is a request for the purposes of the *Freedom of Information Act 1982* (Cth) or [insert state-based legislation]
- specify the documents requested or provide such information as is reasonably necessary to enable a responsible officer of the agency or the minister to identify the document that is requested
- specify details of how notices under the FOI Act may be sent to you, such as a postal or email address

Alternatively, you can lodge a completed [\[insert hyperlink to FOI form\]](#) by post or email.

Next steps

As the OAIC does not hold the records you seek access to, I ask that you please confirm by return email, that you agree withdraw your request to the OAIC by **XX Month 202X**. If I do not hear from you by this date, we will take it that you withdraw your request and close it on our system.

If you have any questions, please contact me at the details below.

Kind regards

Misdirected FOI Closure Email Template

Email subject: FOIREQXX/XXXXX – Your FOI request to the OAIC has been taken as withdrawn

Our reference: **FOIREQXX/XXXXX**

Dear [name of FOI applicant]

I refer to your request for access to documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act) received on **XX Month 202X**.

In your request you seek access to the following:

[insert terms of request]

On **XX Month 202X**, I wrote to you to inform that the OAIC does not hold the documents that you are seeking and gave you information about where you may consider directing your request. I then advised that if you did not confirm the withdrawal of your request by **XX Month 202X**, the OAIC would treat your request as having been withdrawn and close the request on our system.

Withdrawal of FOI request

As the OAIC has not received your confirmation as of **XX Month 202X**, this FOI request is now closed.

If you have any questions, please contact me at the details below.

Kind regards



Australian Government
Office of the Australian Information Commissioner

Our reference: FOIREQXX/XXXX

[Salutation] [First] [Last name]

By email: [email address]

Dear [Salutation] [Last name]

Freedom of Information Request – FOIREQXX/XXXX

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on **XX Month 202X**.

I am writing to inform you of my decision.

I have made a decision to refuse access to your request on the basis that documents **cannot be found/ do not exist**.

In accordance with section 26(1)(a) of the FOI Act, my reasons for decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

‘documentation re covid’ or ‘other scope of request’

On **XX Month 202X**, I wrote to you to advise that the OAIC does not hold the documents that you requested and invited you to withdraw your FOI request to the OAIC by **XX Month 202X** as follows:

The Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) and the Freedom of Information Act 1982 (Cth) (FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian Government agencies and many private sector organisations, as well as the power to review decisions made under the FOI Act.

As a result, the OAIC does not hold the documents you are seeking, which appear to be held by the Department of Health.

I provide the following information about where you may consider directing your request.

Department of Health

*Post: Freedom of Information Coordinator
FOI Unit
Department of Health
GPO Box 9848
Canberra ACT 2601*

Email: foi@health.gov.au

Email or post a completed FOI application form or written request. Your request must:

- be in writing*
- state that it is a request for the purposes of the FOI Act*
- specify the documents requested or provide such information as is reasonably necessary to enable a responsible officer of the agency or the minister to identify the document that is requested*
- specify details of how notices under the FOI Act may be sent to you, such as a postal or email address*

Please note that the Department imposes certain fees for processing FOI requests.

Next steps

*I would be grateful if you could confirm, by return email, whether you withdraw your request to the OAIC by **X Month 202X**. If I do not hear from you by this date, we will take it that you withdraw your request and close it on our system.*

[If the applicant notified you that they redirected their request] On **XX Month 202X**, you notified us that you have redirected your request to the Department of Health.

On **XX Month 202X**, I wrote to you to confirm your withdrawal of your request as follows:

*As you have redirected your response to another government agency, we will treat your email on **XX Month 202X** as a withdrawal of your request to the OAIC unless you advise us otherwise by COB **XX Month 202X**.*

[If you received a response from the applicant] The OAIC received a response from you on XX Month 202X notifying your intention to withdraw/**continue with** the FOI request. As a result, we have withdrawn/**continued to process** your FOI request.

Decision and reasons for decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

I have made a decision to refuse access to your request on the basis that documents **cannot be found/ do not exist**.

Materials taken into account

In making my decision, I have had regard to the following:

- your FOI request dated **XX Month 202X** and subsequent revised scope dated **XX Month 202X**
- the FOI Act, in particular **[Insert relevant sections, including s 3, 11, 11A, 15, 26, 24A]** of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- **consultation with line area/s of the OAIC in relation to your request**
- **[insert further considerations as required]**

Documents cannot be found or do not exist – s 24A

Section 24A(1) of the FOI Act provides that an agency may refuse a request for access to a **document/s** requested under the FOI Act if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found (s 24A(b)(i)) or does not exist (s 24A(b)(ii)).

I have made a decision to refuse your request for documents under s 24A of the FOI Act on the basis that all reasonable steps have been taken to find the **document/s** and no **document/s could be found/do not exist**.

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

Searches Undertaken

In response to your request, the following **line area/s** of the OAIC conducted reasonable searches for documents relevant to you request:

- **[insert list of relevant line areas]**

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager
- OAIC's email system
- General computer files
- Paper files
- **[Insert description of other document storage systems that have been searched].**

The following search terms were used when undertaking electronic records searches:

- **[insert search terms]**

The officers conducted searches using the search term 'SARS-CoV-2 Delta Strain' **[or insert other relevant search terms]**. As of **XX Month 202X**, the searches did not return any result.

Having consulted with the **relevant line area/s** and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request and that no relevant documents **could be found/exist**.

As outlined in our email to you of **XX Month 202X**, 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 of Australian and Norfolk Island government agencies. The OAIC is also responsible for handling privacy complaints about ACT public sector agencies.

The OAIC **does not** have the function to provide information on matters not covered by the Privacy Act or the FOI Act and **does not** hold records of other government agencies or private organisations.

Information pertaining to Covid-19, as outlined in your request, is a matter closely related to the Department of Health. As such if you are seeking access to records of this type, you will need to contact the Department of Health.

Conclusion

Based on the terms of your request and searches undertaken, I am satisfied that all reasonable steps have been taken to find documents that fall within the scope of your request and that the **documents cannot be found/no documents exist**.

I have made a decision to refuse your request for access to documents under **s 24A(1)(b)(i)(ii) and s 17(2)** of the FOI Act on the basis that documents **cannot be found/no documents exist**.

Your review rights are outlined on the following page.

Please see the following page for information about your review rights.

Yours sincerely,

[insert contact full name and signature of FOI decision maker]

XX Month 202X

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

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.



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ[number]

[Salutation] [First] [Last name]

By email: [email address]

By post: [postal address]

Freedom of Information Request – FOIREQ[number]

Dear [Salutation] [Last name]

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on **XX Month 202X**.

I am writing to inform you of my decision.

I have identified [x] documents within the scope of your request. I have made a decision to:

- create and grant access in full/ in part to XX document(s), and/or
- grant full access to XX document(s), and/or
- grant access in part to XX document(s), and/or
- refuse access in full to XX document(s).

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

[insert scope of request]

[OR]

Following consultation with you on the scope of your request, on **XX Month 202X** you revised your request to be as follows:

[insert scope of revised request]

I note that on **XX Month 202X** you also agreed to *(insert description of any material agreed as out of scope i.e. personal information)*.

[Detail any other consultations that took place with the FOI applicant]

Request timeframe

Your request was made on **XX Month 202X**.

On **XX Month 202X** you agreed to an extension of time under section 15AA of the FOI Act.

This means that a decision on your request is due by **XX Month 202X**.

Consultation

I consulted with the following third parties in relation to documents falling within scope of your request:

- *[insert name of Commonwealth agencies that have been courtesy consulted]*
- **XX** third parties in relation to third party personal information contained within the documents
- **XX** third parties in relation to third party business information contained within the documents.

[OR]

I do not agree with the views of the third party/s in relation to the personal/business information contained within the document/s and I have decided to grant part access to the document/s.

Subsection 27(7) of the FOI Act provides that access is not to be given to the documents until the third party's review or appeal opportunities have been exercised or expire.

As a result, the document/s will not be released to you until all opportunities for review or appeal in relation to this decision have been exercised or expire. If the third party applies for internal review with the OAC, or IC review, the OAC cannot release

the document until the review is concluded and the time for instituting a review or appeal has expired.

On XX Month 202X I consulted with you under section 24AB of the FOI Act on the basis that a **practical refusal reason/s** existed under section 24AA of the FOI Act.

On XX Month 202X you responded to my consultation notice with the following revised scope:

[insert revised scope]

On XX Month 202X you responded to my consultation notice advising that you did not want to revise the scope of your request.

[Detail any other consultations that took place with the FOI applicant]

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to:

- create and grant access in full/ in part to XX document(s), and/or
- grant full access to XX document(s), and/or
- grant access in part to XX document(s), and/or
- refuse access in full to XX document(s).

Searches Undertaken

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

The following line areas of the OAIC conducted reasonable searches for documents relevant to you request:

- *[insert list of relevant line areas]*

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager

- OAIC's email system
- general computer files
- paper files
- *[Insert description of other document storage systems that have been searched].*

The following search terms were used when undertaking electronic records searches:

- *[insert search terms]*

The *line area/s or the OAIC's Records Officer* provided the following additional information as to *the searches conducted/documents* found:

[Insert advice from relevant business area]

Having consulted with the relevant line areas and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request.

Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

- your FOI request dated *XX Month 202X* and subsequent revised scope dated *XX Month 202X*
- the FOI Act, in particular *[Insert relevant sections, including sections 3, 11, 11A, 15 and 26]* of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- third party submissions in relation to the release of the documents dated *XX Month 202X*
- *consultation with line area/s of the OAIC in relation to your request*
- *[insert further considerations as required]*

Access to edited copies with irrelevant and exempt matter deleted (section 22)

In accordance with section 22 of the FOI Act, an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to

an FOI request where material has been identified as exempt or irrelevant to the request.

I have determined that **no/ FOI Act** exemptions apply to this material. Accordingly the exempt material has been removed in accordance with s 22(1)(a)(i) of the FOI Act.

I have **also** identified the following material within the documents to be irrelevant or out of scope of your request in accordance with s 22(1)(a)(ii) of the FOI Act:

- **[describe material which has been treated as irrelevant]**

Accordingly, I have made an edited copy of the documents which removes this material in accordance with s 22 of the FOI Act and otherwise grants you **full access** to the material in scope of your request.

Creation of a document in response to your FOI request (section 17)

Pursuant to section 17 of the FOI Act, I have made a decision to create **[x] document[s]** in response to your request. I have made a decision to **grant full access to XX document(s)**.

Under section 17 of the FOI Act, if an FOI request is made for a document that could be produced by using a computer ordinarily available to the agency for retrieving or collating stored information, an agency is required to deal with the request as if it was a request for written documents to which the FOI Act applies.

The FOI Guidelines [at 3.204] explain that section 17 may require an agency to produce a written document of information that is stored electronically and not in a discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. The obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (section 17(1)(c)(i)), or making a transcript from a sound recording (section 17(1)(c)(ii)); and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (section 17(2)).

If those conditions are met, the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.

Your request sought access to [insert description of request relevant to section 17 decision]. [Name of relevant business area] advised me that the material sought is not available in a discrete form but instead is able to be produced in a written document through the use of a computer.

In light of this, a document(s) has been created under section 17 in response to your request and is included in the schedule of documents attached.

Documents subject to legal professional privilege (section 42)

I have identified material contained within the documents/ xx documents that comprises of/contain legal advice and requests for legal advice [insert other description as required i.e. documents reference to or summary of legal advice] in relation to [topic of legal advice where allowed to be disclosed].

In accordance with section 42 of the FOI Act, I have made a decision to redact material on the basis that it is subject to legal professional privilege.

Section 42(1) of the FOI Act provides that

A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

In determining whether or not these documents could be privileged from production in legal proceedings I have considered:

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

Generally, privilege may be claimed in legal proceedings in relation to advice sought from and given by an inhouse lawyer, where the professional relationship between the lawyer and the agency seeking advice has the necessary quality of independence, as per *Taggart and Civil Aviation Safety Authority (Freedom of information)* [2016] AATA 327 at [32].

Having regard to this material, I am satisfied that there is a legal adviser - client relationship between [describe the parties i.e. OAC in-house lawyer and line area].

The OAIC legal team is part of the corporate branch and is separate from the [insert name of line area] which requested the legal advice. Requests for legal advice are settled by General Counsel or a principal lawyer within the legal team. Although not a determinative factor, all members of the legal team hold practising certificates and are subject to all professional obligations of legal practitioners.

I consider that the separation of the legal team from the [insert name of line area] reinforces the independence of the legal advice and made the relationship a legal adviser – client relationship.

Whether privilege attaches to a document depends on the purpose for which the communication in the document was created. The High Court has confirmed that the common law requires a dominant purpose test rather than a sole purpose test, as per *Esso Australia Resources Ltd v Commissioner for Taxation (1999) 201 CLR 49*. The relevant documents, including [insert description of documents, e.g. the request for legal advice and the legal advice] were all created for the dominant purpose of providing legal advice to the [team name] team in relation to [topic of legal advice if allowed to be disclosed]. **[OR]** The relevant documents were all created for the dominant purpose of being used in connection with actual/anticipated litigation.

Finally, I have turned my mind to whether the advice was given in confidence. In relation to the relevant documents, the legal advice was clearly marked legal in confidence, and it/they was/were only distributed to a limited number of OAIC employees who were involved in the matter. I have not been able to identify any express or implied waiver of the privilege and am satisfied that the advice was provided in confidence.

Waiver

Section 42(2) of the FOI Act provides that a document is not exempt under section 42(1) if ‘the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim’. As such, I have also considered whether the privilege attached to the relevant documents has been waived. Waiver of privilege may be express or implied.

Generally, privilege can only be explicitly waived by the General Counsel of the OAIC. I understand that this has not occurred.

I further understand that material contained within the documents has not otherwise been impliedly waived, by way of incidental disclosure outside of its intended audience.

I understand that the material contained within the documents has been disclosed [insert description of disclosure]. I note that the FOI Guidelines explain discuss waiver of privilege and note that not all disclosures will imply a waiver. Paragraph 5.146 and provides the follow examples of waiver:

- the communication in question has been widely distributed,
- the content of the legal advice in question has been disclosure, or
- a person has publicly announced their reliance on the legal advice in question in a manner that discloses the substance of the legal advice.

Further, in the recent Information Commissioner decision of *The Australian and Department of Industry, Science, Energy and Resources (Freedom of information)* [2022] AICmr 23, the Commissioner determined that public statements made by a Minister which referenced legal advice provided to the Commonwealth and which was later reported in the media did not amount to waiver, but that certain material which was published in a statement of claim and filed in the Federal Court of Australia and was a public document which could be obtained by inspecting the Federal Court's file, did amount to waiver.

For the reasons given above, I consider the relevant documents identified in the schedule are exempt under section 42 of the FOI Act.

As section 42 is not a conditional exemption, I am not required to consider the application of a public interest test.

Confidential material (section 45)

I have identified material contained within the documents/ xx documents that comprises of/contain [insert description of confidential material, without disclosing exempt material].

In accordance with section 45 of the FOI Act, I have made a decision to exempt this material on the basis that disclosure would amount to a breach of confidence.

Section 45 of the FOI Act will apply to material contained within a document if the FOI decision maker considers that disclosure of that material would found an action by a person (other than an agency or the Commonwealth) for a breach of confidence.

This concept of confidentiality is discussed in the FOI Guidelines and relevant IC review cases.¹

The FOI Guidelines at paragraph 5.159 provide that the relevant information must meet the following five criteria for section 45 to apply:

- (a) it must be specifically identified
- (b) it must have the necessary quality of confidentiality
- (c) it must have been communicated and received on the basis of a mutual understanding of confidence
- (d) it must have been disclosed or threatened to be disclosed, without authority;
- (e) unauthorised disclosure of the information has or will cause detriment.

Having regard to this material, I am satisfied that it meets the definition of section 45 for the following reasons:

- [provide factors why the material is confidential, i.e. is it marked in confidence, does the language make it clear that the communication is confidentiality, are the communications otherwise protected by secrecy provisions, is there a general understanding of confidence in relation to material of this topic/nature, consider any other supporting evidence].

Specifically identified

The FOI Guidelines explain at paragraph 5.161 that it is not sufficient for the alleged confidential information to be identified in global terms, and instead it must be identified specifically.

¹ See *FOI Guidelines* [5.155] - [5.172]; *The Australian and Department of Industry, Science, Energy and Resources (Freedom of information)* [2022] AICmr 23, *Paul Farrell and Department of Home Affairs (Freedom of information) (No. 4)* [2019] AICmr 40; *Paul Farrell and Department of Home Affairs (No 2) (Freedom of information)* [2019] AICmr 37; *Paul Farrell and Department of Home Affairs (No 4) (Freedom of information)* [2018] AICmr 68; *Friends of the Earth Australia and Food Standards Australia New Zealand (Freedom of information)* [2018] AICmr 44; and *Maurice Blackburn Lawyers and Australian Securities and Investments Commission (Freedom of information)* [2017] AICmr 111.

I am satisfied based on my examination of the relevant documents that the information is specifically identifiable, and this criteria is satisfied.

Quality of confidentiality

The FOI Guidelines at 5.162 explain that for information to have the quality of confidentiality it must be secret or only known to a limited number of people. Further, information which is common knowledge or in the public domain will not have the quality of confidentiality.

The Commissioner recently noted at paragraph [130] of *The Australian and Department of Industry, Science, Energy and Resources (Freedom of information)* [2022] AICmr 23:

In *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41, Justice Megarry found that no matter how secret the information is, there can be no binding obligation of confidence if the information is disclosed in public or communicated in other circumstances which negate any duty to keep the information confidential:

... there can be no breach of confidence in revealing to others something which is already common knowledge. [**Footnote omitted**]

I am satisfied based on my examination of the relevant documents that the information only known to [list parties] and is not common knowledge or in the public domain. I am also satisfied that the material has not been disclosed outside of its intended audience. In my view, this criteria is satisfied.

Mutual understanding of confidence

The FOI Guidelines at 5.164 explain that the information must have been communicated and received on the basis of a mutual understanding of confidence.

I have had regard to the submissions of the relevant parties in respect of the mutual understanding of confidence. [insert description of submissions where relevant]

I am satisfied based on my examination of the relevant documents that the information has been communicated and received on the basis of a mutual understanding of confidence. The information is contained in exchanges between a limited number of staff members in [list parties], and access to the relevant documents was carefully limited to these parties. In my view, this criteria is satisfied.

Unauthorised disclosure or threatened disclosure

Paragraph 5.168 of the FOI Guidelines explains:

The information must have been or been threatened to be disclosed without authority. The scope of the confidential relationship will often need to be considered to ascertain whether disclosure is authorised.

The [list relevant parties] do not consent to the release of the relevant documents. Following consultation, [list party name] objects to the disclosure of the relevant documents. Accordingly, in my view, the disclosure of the relevant documents in this case would be unauthorised.

Detriment

The FOI Guidelines at Paragraph 5.171 explain that the final element of this exemption is that the unauthorised disclosure of the information has, or will, cause detriment to the person who provided the confidential information.

Paragraph 5.172 of the FOI Guidelines further explain that:

The AAT has applied this element in numerous cases, but whether it must be established is uncertain. The uncertainty arises because of an argument that an equitable breach of confidence operates upon the conscience (to respect the confidence) and not on the basis of damage caused. Despite the uncertainty, it would be prudent to assume that establishing detriment is necessary.

In my view, based on the information before me at this time, the release of the relevant documents, which contain [describe material] would [describe detriment]. Accordingly, in my view this criteria is satisfied.

For the reasons given above, I consider the relevant documents identified in the schedule are exempt under section 45 of the FOI Act.

As section 45 is not a conditional exemption, I am not required to consider the application of a public interest test.

Trade secrets exemption (section 47(1)(a))

In accordance with section 47(1)(a) of the FOI Act, I have made a decision to redact material on the basis that it would disclose trade secrets.

Whilst the term ‘trade secret’ is not defined in the FOI Act, paragraphs 5.196 – 5.208 of the FOI Guidelines discusses the term and notes that the Federal Court has

interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown:

Paragraph 5.200 of the FOI Guidelines further explain that:

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

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

The FOI Guidelines also include, at paragraph 5.201, a non-exhaustive list of factors that decision makers may take into account in considering the application of section 47(1)(a) of the FOI Act. Those factors include the extent to which the information is known outside of the business that owns the information.

I have also considered the recent Information Commissioner decisions of *Rex Patrick and Department of Defence (No 2) (Freedom of information)* [2021] AICmr 97 and *Rex Patrick and Department of Defence (No 2) (Freedom of information)* [2020] AICmr 40, which discuss the application of this conditional exemption provision. In assessing whether the material is suitable for exemption under 47(1)(a) of the FOI Act, I must determine whether the material would disclose trade secrets and whether the material has been limited from dissemination, or at the very least widespread dissemination or publication was not encouraged and that disclosure of the trade secret to a competitor would be liable to cause real or significant harm.

The material that I have decided is subject to exemption consists of:

- [insert description of material that does not otherwise reveal exempt material]
- Eg. Emails and letter between [NAME] and the OAIC in relation to the notifiable data breach, on behalf of [NAME]
- Draft text and email correspondence [NAME] propose to send to its customers notifying the data breach, as well as revised notification published on [NAME]'s website.

I have also taken the views of a third party who I consulted in respect of this material. Relevantly I note their submission that:

[quote or paraphrase submission from third party]

I am satisfied that the material contained in the documents includes trade secrets because *[insert reasoning as to why the information is commercially valuable, or otherwise constitutes a trade secret and discussion on the limited audience that has access to the material]*.

I am/am not satisfied that the material has been limited from dissemination because *[insert reasoning]*.

I am/am not satisfied that the material would cause real or significant harm to the owner of the trade secret to which the documents relate *[insert reasoning]*.

For the above reasons, I *am/ am not satisfied* that the documents marked in the schedule below *are not/ are exempt under section 47(1)(a)*.

As section 47 is not a conditional exemption, I am not required to consider the application of a public interest test.

Commercially valuable information exemption (section 47(1)(b))

In accordance with section 47(1)(b) of the FOI Act, I have made a decision to redact material on the basis that it contains commercially valuable information and disclosure would or could reasonably be expected to be destroyed or diminished if that material was disclosed.

Paragraph 5.205 of the FOI Guidelines explain that:

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

- *whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value*

- *whether the information confers a competitive advantage on the agency or person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors*
- *whether a genuine ‘arm’s-length’ buyer would be prepared to pay to obtain that information*
- *whether the information is still current or out of date (out of date information may no longer have any value)*
- *whether disclosing the information would reduce the value of a business operation or commercial activity – reflected, perhaps, in a lower share price.*

I have also considered the recent AAT decision of *Kung Fu Wushu Australia Ltd v Australian Sports Commissioner* [2018] AATA 157 and Information Commissioner decisions of *Rex Patrick and Department of Defence (No 2) (Freedom of information)* [2021] AICmr 97, *‘OS’ and Department of Health (Freedom of information)* [2018] AICmr 46; *‘NO’ and National Library of Australia (Freedom of information)* [2018] AICmr 2; *Wushu Council Australia Limited and Australian Sports Commission (Freedom of information)* [2017] AICmr 26 and *Stryker Australia Pty Ltd and Department of Health (Freedom of information)* [2017] AICmr 69 which discuss the application of this conditional exemption provision.

In *Kung Fu Wushu Australia Ltd v Australian Sports Commissioner* [2018] AATA 157, the Tribunal was not satisfied that material relating to documents relating to the commercial workings of Kung Fu organisations, accreditation requirements, and commercial relationships found in financial statements and minutes of historical general meetings 2014, met the criteria for exemption under section 47(1)(b). The Tribunal did not find that the relevant evidence sufficiently established the documents as commercial in character and that they instead related to operational matters including that relating to financial management and planning.

In terms of the submission that the material could be used to give other organisations a competing advantage, the Tribunal found as follows:

- [42] It does not seem to the Tribunal that either s 47(1)(b) — or any other provision of the Act — operates with the intention of restricting competition per se. Competition between entities in both the commercial sector and the not-for-profit sector must be regarded as healthy and desirable, and a regime of open access to information must be seen as dovetailing with such an outcome. Arguments that

exemptions in the Act must be interpreted as protecting holders of information from competition per se are misconceived.

The material that I have decided is subject to exemption, comprises of:

- [insert description of material that does not otherwise reveal exempt material]
- [E.g. detailed costing information of third-party services providers.]

I have also taken the views of the third party who I consulted in respect of this material. Relevantly I note their submission that:

[quote or paraphrase submission from third party]

In relation to the documents at issue, it is **clear/unclear** that the documents have commercial value and that disclosure of this material **would/would not** destroy or diminish that commercial value. [Insert detailed reasoning as to why this effect would occur, have regard to timing of material, nature of material and any particular markings on the material].

For the above reasons, I **am/ am not satisfied** that the documents marked in the schedule below **are not/ are exempt under section 47(1)(b)**.

As section 47 is not a conditional exemption, I am not required to consider the application of a public interest test.

Public interest conditional exemption--deliberative processes (section 47C)

Section 47C of the FOI Act provides for the exemption of deliberative matter as follows:

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

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

Exceptions

- (2) *Deliberative matter does not include either of the following:*
- (a) *operational information (see section 8A);*
 - (b) *purely factual material.*

Paragraph [6.55] of the FOI Guidelines confirms that section 47C of the FOI Act is not a harm provision and that the only consideration is whether the document does or does not contain deliberative matter. As explained in the decision of *Parnell & Dreyfus and Attorney-General's Department* [2014] AICmr 71 (30 July 2014) at [38], deliberative matter is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation'.

I have also considered FOI Guideline material provided at paragraphs [6.52] to [6.88], relevant AAT decisions including *Secretary, Dept of Prime Minister and Cabinet and Secretary, Dept of Infrastructure and Regional Development and Sanderson* [2015] AATA 361, and the recent Information Commissioner decisions of *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66 (10 November 2021) which discuss the application of this conditional exemption provision. In both decisions whilst the material itself was identified as deliberative, there was not sufficient evidence to prove that disclosure of the material would be contrary to the public interest, particularly in circumstances where a significant passage of time had passed since the material was the subject of active deliberation.

The documents subject to the request contain material in relation to [insert topic of documents]. I am/ am not satisfied that this material is deliberative matter for the purpose of section 47C of the FOI Act, because [insert reasoning, i.e. it relates to advice and opinion sought about Or e.g. the document is a summary report of a review currently underway relating to ...].

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47C of the FOI Act.

As section 47C is a conditional exemption, I am also required to consider the application of a public interest test.

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Section 47E(c) – Management or assessment of personnel

In accordance with section 47E(c) of the FOI Act, I have made a decision to redact material on the basis that disclosure would or could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or an agency.

Paragraph 6.101 of the FOI Guidelines explains that:

For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term ‘could reasonably be expected’ is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

At 6.103 the FOI Guidelines further explain:

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

Paragraph 6.144 the FOI Guidelines confirms that for 47E(c) to apply the documents must relate to either the management or assessment of personnel.

In undertaking an assessment of this conditional exemption, I have had regard to relevant AAT and Information Commissioner decisions including *Chief Executive Officer, Services Australia v Justin Warren* [2020] AATA 4557, *De Tarle and Australian Securities and Investment Commission (Freedom of Information)* (2016) AATA 230, *Virginia Plowman and Australian Securities and Investments Commission (Freedom of information)* [2018] AICmr 5, *Plowman and Australian Securities and Investments Commission (Freedom of Information)* [2020] AATA 4729, ‘YB’ and *Department of Veterans’ Affairs* [2021] AICmr 52, ‘QZ’ and *Australian Criminal Intelligence Commission (Freedom of information)* [2019] AICmr 57 and ‘YX’ and *Department of Health (Freedom of information)* [2021] AICmr 78.

The decision of ‘YX’ and *Department of Health (Freedom of information)* [2021] AICmr 78 recently applied this conditional exemption to material which related to a workplace investigation and where it was considered that disclosure would:

- (a) undermine a confidential process
- (b) inhibit the future frankness and candour of witnesses involved in similar investigative processes, and
- (c) undermine those employees trust and confidence in the Department's ability to manage workplace related incidents and investigations.

I have also had regard to the submissions of [insert relevant agency consultation details if applicable].

The material that I have decided is subject to conditional exemption comprises of [insert description of material that does not otherwise reveal exempt material and reasons for consideration why that material is subject to exemption]

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47E(c) of the FOI Act.

As section 47E is a conditional exemption, I am also required to consider the application of a public interest test.

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Section 47E(d) – Proper and efficient conduct of the OAIC's operations

In accordance with section 47E(d) of the FOI Act, I have [also] made a decision to redact material on the basis that disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations.

[Remove below two paragraphs if already referred to above in discussion of 47E(c)]

Paragraph 6.101 of the FOI Guidelines explains that:

For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

Additionally, at 6.103 the FOI Guidelines further explain:

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

The material that I have decided is subject to conditional exemption comprises of [insert description of material that does not otherwise reveal exempt material].

In undertaking an assessment of this conditional exemption, I have had regard to relevant and recent AAT and Information Commissioner decisions including *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66, *Paul Farrell and Department of Home Affairs (Freedom of information) (No 2)* [2022] AICmr 49 (8 April 2022) and *Knight v Commonwealth Ombudsman* [2021] AATA 2504.

In *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66, a document was found not to be conditionally exempt under section 47E(d) of the FOI Act in circumstances where the agency argued that disclosure of the relevant material would or could reasonably be expected to have result in stakeholders declining to work with the Australian Human Rights Commission. The decision found that there was not sufficient evidence to support the conclusion that such harm would occur. Similarly in *Paul Farrell and Department of Home Affairs (Freedom of information) (No 2)* [2022] AICmr 49 (8 April 2022), whilst the material found within the documents related to the Department of Home Affairs' operations, the Commissioner determined that the Department had failed to provide sufficient evidence as to why disclosure would have a substantial and adverse effect on its operations. These decisions further reinforce the position that this provision requires a high threshold as to the substantial and adverse effect that disclosure would have on an agency's operations.

In order to determine whether disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC, I have taken into consideration the functions and activities of the OAIC.

The OAIC is an independent statutory agency within the Attorney-General's portfolio, established under the *Australian Information Commissioner Act 2010* (Cth). The OAIC comprises the Australian Information Commissioner and the Privacy Commissioner (both offices currently held by Angelene Falk), the FOI Commissioner (office currently held by Leo Hardiman QC), and the staff of the OAIC. [Delete if not relevant]: Relevant

to this case, the OAIC is responsible for investigating privacy complaints, made by members of the public.

I consider that the disclosure of the material would or could reasonably be expected to have an adverse effect on this function for the following reasons:

Investigation Material

Paragraph 6.122 of the FOI Guidelines provide:

The exemption may also apply to documents that relate to a complaint made to an investigative body. The disclosure of this type of information could reasonably affect the willingness of people to make complaints to the investigative body, which would have a substantial adverse effect on the proper and efficient conduct of the investigative body's operations. [footnotes omitted].

In the decision of *Knight v Commonwealth Ombudsman* [2021] AATA 2504, the Tribunal upheld the application of section 47E(d) to material relating to the Defence Abuse Response Taskforce (DART) which was an administrative body established in 2012. The Ombudsman contended that release of certain material would have a substantial adverse effect on its functions. In respect of the application of section 47E(d) the Tribunal found as follows (emphasis added):

[40] I consider that the ongoing maintenance of confidentiality is critical to the effective management of the defence abuse response program. Individuals may be discouraged from participating in meaningful engagement with the respondent if the documents sought were disclosed. A failure to protect confidentiality would undermine the reputation of, and the trust in, the respondent. The operations of the respondent would be compromised.

I further note that the importance of protecting information collected during an investigation process was upheld in the recent Information Commissioner (IC) decision of 'YU' and *Bureau of Meteorology (Freedom of Information)* [2021] AICmr75 (YU). Whilst the decision of YU was in relation to an investigation of under the *Public Interest Disclosures Act 2013* (Cth), YU also highlighted other relevant case law that confirms the important of agencies being able to undertake confidential investigative processes.

I consider these decisions to be of relevance to the material subject to this FOI request which comprises of confidential material obtained in the course of one of the

OAIC's investigations. As part of its investigative function, it is vitally important that investigations are able to be undertaken in a timely and efficient manner and that participants fully engage in this process which at times is often because of an understanding of confidentiality.

I consider that release of material relating to an investigation part way through the investigation itself would likely undermine or interfere with the outcome of the investigation. I consider that release of this material would also likely mean that individuals are less inclined to fully engage with the OAIC and its investigative functions.

Staff names

The recent decision of *Chief Executive Officer, Services Australia v Justin Warren* [2020] AATA 4557 discussed the issue of the disclosure of public servants' names and contact details which was also discussed in the FOI Guidelines and the Information Commissioner's 2020 Policy Paper Disclosure of public servants' names and contact details in response to FOI requests.

It is accepted that the position that the assessment of the redaction of staff names should be assessed on a case by case basis.

[Name of agency] has submitted that the disclosure of staff names and contact details contained in this particular bundle of documents would have a substantial adverse effect on their operations for the following reasons [detail information or evidence about why disclosure of staff names would or would not have a substantial adverse effect].

Other functions of the OAIC

Example regarding security information: Given the nature of the OAIC investigative functions, security incidents occur that involve threats from members of the public. These threats can include self-harm or harm to others. The OAIC has established procedures as to how such security incidents are to be managed. If the detail of these procedures were released, including how they were applied in relation to your circumstances, they could reasonably be expected to undermine the effectiveness of such procedures. As such, I consider information about how security incidents are managed and how these procedures were applied in relation to you are conditionally exempt under section 47E(d) of the FOI Act.

Example regarding IT addresses: contained in a number of documents is the network address for the OAIC's IT system. The OAIC collects and stores a range of personal and financial information about members of the public. The network address contains information about the OAIC's IT system (including the network location and storage of information). I consider that disclosure of this information could compromise the safety and security of the storage of the information held by the OAIC. The impact of any compromise to the safety and security of the OAIC's information systems would result in a serious adverse impact on the functions and responsibilities of the OAIC.

In *'AW' and Australian Taxation Office (Freedom of information)* [2014] AICmr 1, the then FOI Commissioner considered the decision by the Australian Taxation Office (ATO) to exempt user IDs under section 47E(d) of the FOI Act. The user IDs are used by ATO staff to access the ATO's IT system. The Commissioner found that disclosing the user IDs 'would have an adverse effect on the security of the ATO's IT systems and could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the ATO'. In a series of subsequent IC review decisions, the former Australian Information Commissioner agreed with the reasoning given by the Commissioner in *'AW'* to find that user IDs used by ATO staff to access the ATO's IT system are exempt under section 47E(d) of the FOI Act.

I consider that the disclosure of the network address of the OAIC's computer system could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations. I have decided that the network address of the OAIC's IT system is conditionally exempt from disclosure under section 47E(d) of the FOI Act.

In my view, these adverse effects from the disclosure of the relevant documents at this time is more than merely an assumption and would impact upon the proper and efficiency operations of the OAIC in **[describe affected functions]**.

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47E(d) of the FOI Act.

As section 47E is a conditional exemption, I am also required to consider the application of a public interest test.

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Public interest conditional exemptions--personal privacy (section 47F)

In accordance with section 47F of the FOI Act, I have made a decision to redact material on the basis that disclosure would constitute an unreasonable disclosure of personal information.

A document is conditionally exempt under section 47F(1) of the FOI Act where disclosure would involve the unreasonable disclosure of personal information of any person, including a deceased person. This exemption is intended to protect the personal privacy of individuals.

Section 4 of the FOI Act provides that the definition of personal information in the *Privacy Act 1988* (Cth) also applies to the FOI Act. The term personal information is defined in section 6 of the Privacy Act to be:

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

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

The documents contain [insert description of personal information e.g. names, leave arrangements, phone numbers, date of birth, signatures and contact details of third parties].

I am satisfied that this material meets the definition of personal information because [insert reasoning i.e. the material relates closely to the personal matters of an individual and disclosure of this information would reasonably identify that individual].

I have made a decision to release the names and contact information [insert description of other personal information] of persons that I understand are known to you or are otherwise publicly available.

In determining whether disclosure of other personal information in the documents would involve an unreasonable disclosure of personal information, the FOI Guidelines provide the following considerations at paragraph 6.140:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be associated with the matters in the document

- the availability of the information from publicly accessible sources
- any other matters the agency or Minister considers relevant.

The FOI Guidelines further describes the key factors for determining whether disclosure is unreasonable at paragraph 6.143:

- *the author of the document is identifiable*
- *the documents contain third party personal information*
- *release of the documents would cause stress on the third party*
- *no public purpose would be achieved through release.*

The FOI Guidelines explain at paragraph 6.138 that the test of ‘unreasonableness’ in section 47F ‘implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals’.

Consistent with *FG and National Archives of Australia [2015] AICmr 26*, the FOI Guidelines at paragraph 6.143 explain that other relevant factors include:

- *the nature, age and current relevance of the information*
- *any detriment that disclosure may cause to the person to whom the information relates*
- *any opposition to disclosure expressed or likely to be held by that person*
- *the circumstances of an agency’s collection and use of the information*
- *the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act*
- *any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and*
- *whether disclosure of the information might advance the public interest in government transparency and integrity*

Inconsideration of these factors and the material contained within the documents, I am satisfied that the release of this personal information would be unreasonable because **[insert reasoning]**.

I am satisfied that the relevant material is not public information and is not well known. I am also satisfied that the individuals to whom the information relates is not known to be associated with the matters dealt with in the document. If this information were disclosed publicly it would unreasonably impact on the privacy of the individual.

The recent decision of *Knight v Commonwealth Ombudsman* [2021] AATA 2504 discusses personal information collected in the course of a complaint or investigation. At paragraph [32] the Tribunal found that:

In the circumstances where the information is highly sensitive and has been disclosed on a confidential basis, it would be unreasonable to disclose that information to the applicant.

I consider the collection of the material contained in this document to be of a similar nature, in that it was collected during the course of an OAIC investigation. I consider that the information is highly sensitive and confidential and that it would be unreasonable to disclose this information.

The FOI Guidelines at paragraph 6.171 state:

An agency or minister must have regard for any submissions made before deciding whether to give access to the document (ss 27A(3) and 27A(4)). The third party does not, however, have the right to veto access and agencies should take care that the third party is not under such a misapprehension.

I have also had regard to the submissions of relevant third parties in respect of the release of the personal information contained within the document. Those third parties raised concerns as to: **[insert submissions raised]**.

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47F of the FOI Act.

As section 47F is a conditional exemption, I am also required to consider the application of a public interest test.

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Business information conditional exemption (section 47G)

I have made a decision to redact material contained within the documents in accordance with section **47G** of the FOI Act.

Section 47G of the FOI Act provides:

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

of an organisation or undertaking, in a case in which the disclosure of the information:

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

In undertaking an assessment of this conditional exemption, I have had regard to relevant and recent AAT and Information Commissioner decisions including 'ABH' and Australian Transport Safety Bureau (Freedom of information) [2022] AICmr 27, Bell and Secretary, Department of Health (Freedom of information) [2015] AATA 494 and 'E' and National Offshore Petroleum Safety and Environmental Management Authority [2012] AICmr 3.

[Reasoning to be considered if businesses involved in investigation documents are being considered] I also note the AAT case of *Re Secretary, Department of Employment and Besser and Others* (2017) 166 ALD 343 which discussed the exemption of material which identified businesses who were the subject of investigation. I consider this case relevant to my consideration of the business material identified in the documents subject to this request, which relate to investigations undertaken by the OAIC. I note at paragraph [28] the Tribunal found:

- [28] A hypothetical neutral reader of the documents might not ascribe any weight to those unsubstantiated allegations. But I think that disclosure of the documents could reasonably be expected to have an adverse effect on providers by naming them as having been the subject of allegations to, or investigations by, the Department. That effect would be a reduction in the number of employers or unemployed people seeking to use a provider's services, and a consequential reduction in the provider's access to funding under the program. The documents do not reveal whether the allegations have been substantiated.²⁹ In those circumstances, I think that the adverse effect, upon the providers, of disclosure would be unreasonable for the purposes of s 47G.

On review of the documents, I have identified the following business information in relation to [name of business or third-party provider]:

- [insert description of business information e.g. invoices or documents pertaining to business arrangements]

I consider that the disclosure of this material could reasonably be expected to adversely impact that [name of third-party business] as it would disclose [describe what it would disclose i.e. commercial costings to competitors]. I consider/ I do not consider that this would negatively impact the business operations of [name of business] and their competitive advantage in the market.

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47G of the FOI Act.

As section 47G is a conditional exemption, I am also required to consider the application of a public interest test.

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Application of the public interest test – (section 11A and 11B)

As provided above, I have considered that material within the documents is subject to conditional exemption under [insert provisions].

Section 11A(5) provides that where a document/s is considered to be conditionally exempt, an agency **must** give the person access to that/those document/documents unless the FOI decision maker would, on balance, would be contrary to the public interest.

This means that I must balance factors for and against disclosure in light of the public interest.

In Chapter 6, the FOI Guidelines provide the following guidance:

- 6.4 *There is a **single public interest test to apply to each of the conditional exemptions**. This public interest test is defined to include certain factors that must be taken into account where relevant, and some factors which must not be taken into account.*
- 6.5 *The public interest test is considered to be:*
- *something that is of serious concern or benefit to the public, **not merely of individual interest***

- **not something of interest to the public, but in the public interest**
- *not a static concept, where it lies in a particular matter will often depend on a balancing of interests*
- *necessarily broad and non-specific, and*
- *related to matters of common concern or relevance to all members of the public, or a substantial section of the public.*

6.6 *It is not necessary for a matter to be in the interest of the public as a whole. It may be sufficient that the matter is in the interest of a section of the public bounded by geography or another characteristic that depends on the particular situation. A matter of public interest or benefit to an individual or small group of people may also be a matter of general public interest.*

In the AAT case of *Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission (Freedom of information)* [2017] AATA 269, at paragraph 133 of the Decision Deputy President Forgie explained that:

... the time at which I make my decision for section 11A(5) requires access to be given to a conditionally exempt document “*at a particular time*” unless doing so is, on balance, contrary to the public interest. Where the balance lies may vary from time to time for it is affected not only by factors peculiar to the particular information in the documents but by factors external to them.

The FOI Act sets out four factors favouring access, which must be considered if relevant. Of these factors, we consider the following to be relevant:

- **promote the objects of the FOI Act,**
- **inform debate on a matter of public importance,**
- **promote effective oversight of public expenditure, and**
- **allow a person to access his or her own personal information**

In addition to these factors favouring disclosure, I have also considered that the following factors in favour of disclosure apply:

- **[list factors in favour of disclosure]**
- **Example: disclosure would reveal the reason for a decision of government and/or provide further information surrounding that decision.**
- **Example: disclosure would enhance scrutiny around government decision making.**

- Example: disclosure would better inform a matter of public importance or debate
- Example: disclosure could contribute to the promotion of procedural fairness in respect of [description of matter]

Section 11B(4) of the FOI Act provides factors which are not to be taken into account in , which I have had regard to. Section 11B does not further prescribe the factors against disclosure to be considered. In considering the documents subject to this request, I consider that the follow factors do not favour disclosure:

- [describe factors not favouring disclosure- needs to go beyond the wording of the provisions relied upon].
- Example: disclosure would have an adverse effect on the OAIC's proper and efficient operations relating to xxxx.
- Example: disclosure of the personal information contained in the documents could reasonably be expected to interfere with an **individual's** right to privacy.

In balancing these factors for and against, I have placed greater weight on factors in relation to [describe factors against].

I consider that there is little public interest in the disclosure of [describe material] because [insert reasoning]. I consider that the disclosure of this material would likely [insert any negative or adverse effect].

On balance, I consider the public interest factors favouring disclosure to be more persuasive than the public interest factors against disclosure. I am satisfied that the public interest is to disclose the exempt material.

OR

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Disclosure log decision

Section 11C of the FOI Act requires agencies to publish online document released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

As discussed above and identified in the attached documents schedule, **XX** documents subject to this decision contain personal and/or business information.

Accordingly, I have determined that it would be unreasonable to publish **documents XX to XX** on the disclosure log.

OR

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of document

The documents are enclosed for release. **OR**

Because relevant third parties were consulted in the marking of this decision and have objected to release of the material contained in **XX** documents, I am required under section 27 and/or 27A of the FOI Act, to advise them of my decision and provide them with an opportunity to seek:

- Internal review of my decision, or
- Review of my decision by the Information Commissioner.

The third party has 30 days from the date they are notified of my decision in which to seek review.

As a result, the documents which are subject to third party consultation review rights cannot be released to you until this review period has expired, or any internal or external review proceedings have finalised.

The remainder of the documents not subject to third party objections are enclosed for release.

The documents are identified in the attached schedule of documents.

Please see the following page for information about your review rights.

Yours sincerely,

[insert contact full name and signature of FOI decision maker]

XX Month 202X

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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



Australian Government
Office of the Australian Information Commissioner

Our reference: FOIREQ[number]

[Salutation] [First] [Last name]

By email: [email address]

By post: [postal address]

Freedom of Information Request – FOIREQ [number]

Dear [Salutation] [Last name]

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on **XX Month 202X**.

I am writing to inform you of my decision.

I have made the decision to refuse your request on the basis that documents **cannot be found/do not exist/have not been received by the OAIC**.

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on the material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

[insert scope of request]

OR

Following consultation with you on the scope of your request, on **XX Month 202X** you revised your request as follows:

[insert scope of revised request]

I note that on **XX Month 202X** you also agreed to **(insert description of any material agreed as out of scope i.e. personal information)**.

[Detail any other consultations that took place with the FOI applicant]

Request timeframe

Your request was made on **XX Month 202X**.

On XX Month 202X, you agreed to an extension of time under section 15AA of the FOI Act.

This means that a decision on your request is due to be decided by **XX Month 202X**.

Decision and reasons for decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

I have made the decision to refuse your request on the basis that documents **cannot be found/ do not exist/have not been received by the OAIC**.

Material taken into account

In making my decision, I have had regard to the following:

- your FOI request dated **XX Month 202X and subsequent revised scope dated XX Month 202X**
- the FOI Act, in particular **[Insert relevant sections, including sections 3, 11, 11A, 15, 26, 24A]** of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- **consultation with line area/s of the OAIC in relation to your request**
- **[insert further considerations as required]**

Documents cannot be found, do not exist or have not been received – Section 24A of the FOI Act

Section 24A(1) of the FOI Act provides that an agency may refuse a request for access to a **document/s** requested under the FOI Act if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or do not exist.

Section 24A(2) of the FOI Act provides that an agency may refuse a request for access to a **document/s** requested under the FOI Act if the agency has taken contractual measures to ensure it receives a document from a contracted service provider but has not done so after taking all reasonable steps to receive the document in accordance with the contractual measures (section 24(2)).

I have made the decision to refuse your request under section 24A of the FOI Act on the basis that all reasonable steps have been taken to find the **document/s you have requested** and no **document/s could be found/do not exist**.

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

Searches Undertaken

In response to your request, the following **line area/s** of the OAIC conducted reasonable searches for documents relevant to you request:

- **[insert list of relevant line areas]**

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager
- OAIC's email system
- general computer files
- paper files
- **[Insert description of other document storage systems that have been searched]**.

The following search terms were used when undertaking electronic records searches:

- **[insert search terms]**

The **line area/s or the OAIC's Records Officer** provided the following information as to why documents **could not be found/do not exist/have not been received**.

[Insert advice from relevant business area]

Having consulted with the **relevant line area/s** and having undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable

search has been undertaken in response to your request and that no relevant documents **could be found/exist/have not been received by the OAIC.**

Creation of a document in response to your FOU request (section 17)

As no documents **could be found/exist/have been received** in relation to your request, I also turned my mind to whether a relevant document could be created in accordance with section 17 of the FOI Act.

I consulted with the **[insert name of line area/s]** when considering whether a document could or could not be created to meet the terms of your request.

The **[line area/s]** advised **[insert advice as to why a document cannot be created]**.

I have made the decision that section 17 of the FOI Act does not apply in relation to this request, because the OAIC is not in a position to create a written document via the use of a computer or other equipment that is ordinarily available to the OAIC for the purposes of retrieving or collating stored information.

OR

In accordance with section 17(2) of the FOI Act, I have decided that the creation of document relevant to your request would require the substantial and unreasonable diversion of the OAIC's resources from its other operations.

In determining that the creation of a document would require the substantial and unreasonable diversion of the OAIC's resources, I consulted with **[name of business area]**, being the area that holds information relevant to your request. **[name of business area]** advised me that the creation of a document meeting the terms of your request would require at least XX hours of work and require the following steps to be completed:

- **[insert description of steps required to create a document]**

Conclusion

Based on the terms of your request and searches undertaken, I am satisfied that all reasonable steps have been taken to find documents that fall within the scope of your request and am satisfied that the **documents cannot be found/no documents exist/have not been received by the OAIC.**

I have made the decision to refuse your request for access to documents under **section 24A(1)(b)(i)/(ii)/24A(2) and s 17(2)** of the FOI Act, on the basis that documents **cannot be found/no documents exist/have not been received by the OAIC.**

Please see the following page for information about your review rights in relation to this FOI request.

Yours sincerely,

[insert contact full name and signature of FOI decision maker]

XX Month 202X

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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



Australian Government
Office of the Australian Information Commissioner

Our reference: FOIREQXX/XXXX

[Salutation] [First] [Last name]

By email: [email address]

By post: [postal address]

Dear [Salutation] [Last name]

Freedom of Information Request – FOIREQXX/XXXX

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on **XX Month 202X**.

I am writing to inform you of my decision.

I have identified **[x] document[s]** within the scope of your request. I have made a decision to **grant full access to XX document(s)**.

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

[insert scope of request]

[OR]

Following consultation with you on the scope of your request, on **XX Month 202X** you revised your request to be as follows:

[insert scope of revised request]

I note that on XX Month 202X you also agreed to (insert description of any material agreed as out of scope i.e. personal information).

[Detail any other consultations that took place with the FOI applicant]

Request timeframe

On XX Month 202X you agreed to an extension of time under section 15AA of the FOI Act. This means that a decision on your request is due by XX Month 202X.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to grant full access to XX document(s).

Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

- your FOI request dated XX Month 202X and subsequent revised scope dated XX Month 202X
- the FOI Act, in particular [Insert relevant sections, including section 3, 11, 11A, 15 and 26] of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- third party submissions in relation to the release of the documents dated XX Month 202X
- consultation with line area/s of the OAIC in relation to your request
- [insert further considerations as required]

Access to edited copies with irrelevant and exempt matter deleted (section 22)

In accordance with section 22 of the FOI Act, an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to an FOI request where material has been identified as exempt or irrelevant to the request.

I have identified the following material within the document(s) to be irrelevant or out of scope of your request:

- [describe material which has been treated as irrelevant]

Accordingly, I have made an edited copy of the document(s) which removes this irrelevant material and otherwise grants you **full access** to the material in scope of your request.

Searches undertaken

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

In response to your request, the following line areas of the OAIC conducted reasonable searches for documents relevant to you request:

- [insert list of relevant line areas]

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager
- OAIC's email system
- general computer files
- paper files
- [Insert description of other document storage systems that have been searched].

The following search terms were used when undertaking electronic records searches:

- [insert search terms]

Having consulted with the relevant line areas and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request and that all relevant documents **have been found**.

Disclosure log decision

Section 11C of the FOI Act requires the OAIC to publish documents released under the FOI Act on the OAIC's disclosure log within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

As discussed above and identified in the attached documents schedule, **XX** document(s) subject to your request contain personal and/or business information.

Accordingly, I have determined that it would be unreasonable to publish **documents XX to XX** on the disclosure log.

OR

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of document/s

The **document/s** are enclosed for release.

The **document/s** are identified in the **attached** schedule of documents.

Please see the following page for information about your review rights.

Yours sincerely,

[insert contact full name and signature of FOI decision maker]

XX Month 202X

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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



OAIC FOI Search Minute

This search minute is to be used in the processing of FOI requests.

Before undertaking a search and retrieval exercise in response to an FOI request, officers should read [Processing FOI requests: taking all reasonable steps to find documents](#) for more information.

FOI reference:	
Date action due:	
FOI applicant:	
Search minute completed by:	
Reasons why you were nominated to complete the search minute (e.g. you are the responsible case officer, you have particular knowledge of the business practices of the agency, etc.):	

Scope of FOI request:

The FOI Guidelines at [\[3.89\]](#) provide that agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office.

Searches undertaken:

Completed	Location	Description of search undertaken / search terms used	Outcome / relevance
<input type="checkbox"/>	Case Management Systems: (insert name of system(s))		
<input type="checkbox"/>	Records Management Systems: (insert name of system(s))		
<input type="checkbox"/>	Electronic documents saved on computers, electronic devices including iPads or tablets, smartphones and apps (for example emails, text messages, etc.)		
<input type="checkbox"/>	Electronic documents saved on portable media devices		
<input type="checkbox"/>	Hardcopy files (for example documents stored in safes, compactus, tambours, desk drawers, records warehouses, etc.)		
<input type="checkbox"/>	If applicable, backup systems		
<input type="checkbox"/>	Other: (please specify)		

Additional comments (e.g. interpretation of the scope of the FOI request, additional details of searches conducted, an explanation as to why no documents found):

Records of the above searches have been created and retained.

Time spent for search and retrieval:	
Number of documents and pages found	
Completed by:	

Position title:	
Date completed:	

Courtesy Consultation Email Template

Email subject: FOIREQXX/XXXXX – Courtesy consultation about an FOI request received by the OAIC - Response by COB XX Month 202X

Our reference: **FOIREQXX/XXXXX**

Dear FOI contact officer

The OAIC has received a request under the *Freedom of Information Act 1982* (the FOI Act) for access to document(s).

I have identified the following **XX** document(s) within the scope of the request that contain material concerning your agency:

- [insert descriptions of documents relevant to the courtesy consultation]

A copy of the document/s is/are attached.

We ask that you please examine the document(s) and comment on their potential release under the FOI Act in the table below.

If you consider any documents should be fully or partially exempt from release, please provide submissions in support of your claims for exemption, particular to this FOI request at this point in time. Please kindly note that the onus is on the agency to establish that a decision given in respect of the request is justified. Accordingly, please kindly provide the OAIC with as much detail as possible in support of your claim for exemption so that the delegate can be satisfied the exemption contention is justified in the circumstances.

Please note that your comments will be taken into consideration, but that the ultimate decision on disclosure falls with the FOI decision maker.

Please provide your response by COB XX Month 202X.

Thank you in advance for your assistance with this matter.

Kind regards

Notification of Transfer of FOI request Email Template

Email subject: FOIREQXX/XXXXX – Your FOI request has been transferred

Our reference: **FOIREQXX/XXXXX**

Dear [name of FOI applicant]

I refer to the freedom of information request (FOI request) received by the Office of the Australian Information Commissioner (OAIC) on **XX Month 202X** (attached).

I am writing to tell you that I have transferred your FOI request to the [insert name of Agency] under s 16(1)(b) of the *Freedom of Information Act 1982* (Cth). Under this section I can transfer a request, or part of a request, if the documents requested are more closely connected to the functions of another agency.

The OAIC does not hold documents relating to [insert description]. [insert name of Agency] has accepted the transfer of this request as it is likely that the documents you have requested are in the possession of [insert name of Agency].

We received your request on **XX Month 202X**, and the 30 day statutory period for processing your request commenced from the day after that date. [Insert name of Agency] will treat your request as if they received it on the same day we did. You should therefore expect a decision by **XX Month 202X**. The period of 30 days may be extended if consultation with third parties is needed or for other reasons. They will advise you if this happens.

If you have any questions, please contact me.

Regards

Request for s 16 Transfer Email Template

Email subject: FOIREQXX/XXXXX – s 16 FOI request transfer request - Response by COB XX Month 202X

Our reference: FOIREQXX/XXXXX

Dear FOI Contact Officer

On XX Month 202X the Office of the Australian Information Commissioner (OAIC) received the attached Freedom of Information request from [name of applicant] seeking access to documents related to [description of request].

If agreed between two agencies, section 16(1)(b) of the *Freedom of Information Act 1982* (FOI Act) allows an agency to transfer all or part of a request to another agency if the subject matter of the documents is more closely connected with the functions of the other agency than with those of the agency to which the request is made.

The purpose of my email is to seek your agreement to accept transfer of this request. To our knowledge, the OAIC does not possess the documents sought by the applicant. From the terms of the FOI request, it appears that the documents that the FOI applicant is seeking is more closely connected with the functions of your agency than the OAIC.

Can you please kindly advise the OAIC by close of business on XX Month 202X if you agree to accept transfer of this request?

Please call me if you have any questions.

Regards

Acknowledgement of FOI IR Request - Email Template

Email subject: FOIREQXX/XXXXX – Acknowledgement of your FOI Internal Review request

Our reference: FOIREQXX/XXXXX

Dear [name of FOI applicant]

I refer to your email of XX Month 202X, in which you requested an internal review of the OAIC's FOI decision XX Month 202X (FOIREQXX/XXXXX).

Your request FOIREQXX/XXXXX, was made in the following terms:

[insert scope of FOI request]

Section 54C of the *Freedom of Information Act 1982* (Cth) requires the OAIC to make a fresh decision on your FOI request within 30 days after the day we received your application.

Because we received your application on XX Month 202X we must make a fresh decision by XX Month 202X.

Your application will be allocated to a review officer with no previous involvement with the earlier decision.

If you have any questions, please contact me.

Regards

Third Party Consultation Email Template

Email subject: FOIREQXX/XXXXX – Consultation on FOI request - Response by COB XX Month 202X

Our reference: FOIREQXX/XXXXX

Dear [name of third-party contact]

Freedom of information request and opportunity to make submission

I am writing to inform you that the Office of the Australian Information Commissioner (OAIC) has received a freedom of information (FOI) request, which includes a document/documents containing business and/or personal information relating to yourself/your organisation.

The relevant document/s is/are attached.

The information contained in the document(s) that you are receiving is information relating to yourself or your business that I am proposing to release under FOI.

When we receive a request covering documents of this kind and we believe the person or organisation concerned may wish to contend that the documents are exempt from release, we are required to consult before releasing the documents, if it is reasonably practicable to do so (ss 27 and 27A of the FOI Act).

Opportunity to make a submission

I invite you to make submissions raising any objections you may have to the release of the attached document(s) under the following exemptions in the FOI Act (paraphrased):

1. Section 47(1) – disclosure of the document would disclose:
 - a) trade secrets or
 - b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
2. Section 47G(1) – disclosure of the document would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs, or
 - b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
3. Section 47F – disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person). This exemption is intended to protect the personal privacy of individuals.

We note that more information:

- about s 47 is available in the *Guidelines issued by the Australian Information Commissioner under section 93A of the Freedom of Information Act 1982, Part 5 (Exemptions)*

- about ss 47F and 47G is available in the Part 6 (Conditional exemptions) of the *FOI Guidelines*.
- The FOI Guidelines is available at [FOI Guidelines - Home \(oaic.gov.au\)](https://www.oaic.gov.au/foi-guidelines)
- Information about this consultation process is available at: [When an FOI request affects you - Home \(oaic.gov.au\)](https://www.oaic.gov.au/foi-guidelines/when-an-foi-request-affects-you)

If you consider that the conditional exemptions in s 47F and/or 47G apply, access must be given to documents unless this would be contrary to the public interest. As such you must also advise whether you consider that disclosure would be contrary to the public interest.

If you form the view that material within the **document(s)** is subject to the exemptions outlined above, could you please consider whether redaction of any specific information from the **document/s** would address your objections. The FOI Act requires the assessment of material on a line by line basis. This means that where sensitivities exist and exemptions apply, I may still be able to grant part access to the documents, with the sensitive material redacted.

Please note that it is not sufficient to simply assert that one of the exemptions applies and that disclosure would be contrary to the public interest. You need to provide detailed reasons and supporting evidence.

Please also note that while your comments will be taken into account, the final decision about whether to release the document rests with the FOI decision maker. If the decision maker decides to grant access to any document and disagrees with a submission that you have made in support of exemption, you will be given written notice of the decision and the opportunity to seek review of the decision before the document is released.

Disclosure log

If we decide to grant access to the requested document(s) we are generally obliged to publish the information on our [disclosure log](#).

How to make your submission

Please send your comments in writing by close of business on **XX Month 202X** by return email to legal@oaic.gov.au. Please use OAI reference **FOIREQXX/XXXXX** in all correspondence.

If a response is not received by **XX Month 202X**, I will assume you do not object to the release of the **document(s)**.

If you have any questions, please do not hesitate to contact me.

Regards,



Australian Government

Office of the Australian Information Commissioner

Guidance for staff

Operational Policy for Processing FOI requests and internal review requests made to the OAIC under the Freedom of Information Act 1982 (Cth)



March 2021

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Processing FOI requests and internal review requests for access to documents of the OAIC

This is a guide developed by the Office of the Australian Information Commissioner (**OAIC**) to document the steps undertaken when the OAIC receives a request for access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) (**FOI request**) and a request for internal review of a decision on an FOI request. This guide is to be read together with the 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)* and [FOI Essentials](#) resources on the web.

FOI requests

1. Roles and responsibilities in relation to FOI request

The legal team oversees, manages and processes FOI requests received by the OAIC. This includes the:

- registration of new FOI requests;
- consultation with the FOI applicant;
- management of search and retrieval efforts;
- drafting of an FOI decision and the redaction of documents; and
- briefing OAIC executive on sensitive requests.

The legal team will consult with relevant line area/s within the OAIC on searches and sensitivities relevant to the request. If it is determined that a line area likely holds documents relevant to the request, the Legal team will ask that the line area to:

- undertake a search and retrieval activity;
- record evidence of those searches in a search minute;
- provide documents relevant to the request; and
- advise on sensitivities contained within the documents.

It is vitally important that the legal team and relevant line area/s work closely together in the processing of FOI requests. Any foreseeable issues, advice on searches on sensitivities or anticipated delays should be communicated as soon as possible. This will ensure that the OAIC is able to respond to its FOI request in an efficient and effective manner.

1. Registration, assessment and allocation of FOI requests

When a new FOI request¹ is received by the OAIC, the request is forwarded to the OAIC's Legal Services team **on the same day**. Requests made to foi@oaic.gov.au are automatically forwarded to the Legal Services mailbox. Where a request is directly received by an OAIC officer by email or by post, it must be forwarded to the Legal Services mailbox: legal@oaic.gov.au. This is vitally important, because the processing period for an FOI request begins on the day that it is received by an Agency, even if it was misdirected to a mailbox that is not intended for FOI processing.

¹ Misdirected FOI requests are also allocated to and processed by the Legal Services team.

Within 1 day, a Legal Services officer² registers the request and undertakes a search on Resolve for the FOI applicant by name and for any other information access requests for similar material. The officer should also confirm that the FOI applicant is not subject to a vexatious applicant declaration.

Within 1 day, a Legal Services Officer allocates the request to the FOI Coordinator.³

On the same day, the FOI Coordinator assesses whether the request is a valid FOI request.⁴

On the same day, the FOI Coordinator allocates the request to a legal services officer.

2. Acknowledgment of the FOI request and consideration of transfer

Within 2 days of receipt of a valid FOI request,⁵ the Legal Services officer sends an acknowledgement to the applicant advising of the due date of the request using the details that the applicant provided of how notices may be sent to them.⁶

The FOI Act obligates agencies to consult with applicants to assist them in making their request valid and in circumstances where a practical refusal reason⁷ under section 24AA of the FOI Act exists. Where a request is unclear but meets all other validity requirements provided in section 15 of the FOI Act, consultation on the issue of document identification should be undertaken.

If the FOI request is not valid, or a practical refusal reason exists, the Legal Services officer contacts the applicant to assist them in making a valid request, such as by clarifying or narrowing the scope.⁸ This can be done informally by agreement or by commencing a request consultation process under the FOI Act.⁹

Transfer of request: The officer should also consider whether the request should be transferred to another agency under s 16 of the FOI. Requests may be transferred on agreement with the other agency, if it is determined that the request is more closely connected to the function of another

² A legal services officer is a staff member of the Oaic in the legal services team and can be any APS or Executive Level.

³ The FOI Coordinator is the Director of the Legal Services team.

⁴ Section 15(2) of the FOI Act prescribes that a request must be in writing, state that the request is an application for the purposes of the FOI Act, provide information that is reasonably necessary to enable identification of the requested document and give details of how notices under the FOI Act can be sent to the applicant.

⁵ The FOI Act requires all reasonable steps to be taken to enable the FOI applicant to be notified that the request has been received, no later than 14 days after the day on which the request is received (s 15(5)(a)).

⁶ Section 15(2)(c).

⁷ Section 24AA of the FOI Act provides that for the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:

- (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
- (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

⁸ The FOI Act obliges agencies to take reasonable steps to assist a person to make a valid FOI request (s 15(3)).

⁹ Section 24AB of the FOI Act sets out the requirements for a request consultation process.

agency and relevant documents are not held by the OAIC.¹⁰ Requests should be transferred as early in the request period as possible. Consultation with relevant line area/s and other agencies may be required to determine whether a request is suitable for transfer.

3. Search and retrieval to line area

The officer assesses the scope of the FOI request to determine the relevant line area/s within the OAIC that will need to undertake a search for relevant documents.

Within 1 day of receipt of a valid FOI request, the officer clarifies scope of the request with the applicant as may be required if the terms of the request are ambiguous or appear to capture material that may not be of interest to the applicant.

Within 2 days of receipt of a valid FOI request, the officer sends a search and retrieval email including a blank [Search Minute template and schedule](#) to the line area and requests that relevant officers conduct reasonable searches and provide Legal Services with any documents falling within scope of the request within 1 week.

Within 1 week of the search and retrieval request, officers from the relevant line area finalise their searches and email Legal Services:

- a completed [Search Minute template](#);
- the requested documents in pdf format **or** any evidence and submissions to support a decision that the work involved in processing the request would *substantially* and *unreasonably* divert the resources of the OAIC from its other operations
- a completed schedule of the requested documents; and
- comments relevant to release of the documents to the FOI applicant with reference to any sensitivities in the completed schedule.

Record Keeping: It is very important that all search and retrieval efforts are recorded by the relevant line area and the FOI officer with carriage of the FOI request. In addition to the document search minute which outlines the search areas and search terms used, the FOI officer should also record file notes of relevant conversations with line areas/s about the searches undertaken and sensitivities identified within the documents.

4. Assessment of the documents

Within 1 day of receiving documents from the line area, if the Legal Services Officer considers that further searches need to be conducted based on feedback from the line area and/or the nature or volume of documents identified by the line area, additional search and retrieval emails are sent out by the Legal Services officer. These further search minutes should provide further guidance on the kind of searches that are still outstanding.

If the Legal Services Officer considers that additional time will be required to conduct search and retrieval and/or assess documents within scope of the request, the Legal Services Officer may seek to obtain the applicant's written agreement to an extension of time of up to 30 days under s 15AA of the FOI Act.

¹⁰ s 16 Freedom of Information Act 1982 (Cth).

If the applicant agrees in writing to the extension of time (s 15AA(a)), the Legal Services Officer completes the IC Request [smartform](#) available on the OAIC website to notify the Information Commissioner of the extension of time 'as soon as practicable after the agreement is made' (s 15AA(b)).

Generally speaking, the OAIC will not apply for an extension of time under section 15AB of the FOI Act.

Within 3 days of receiving documents from the line area, the Legal Services officer assesses the documents to determine whether:

- the documents include third party material
- additional searches will need to be undertaken (this assessment must be undertaken following every response to the search and retrieval requests)
- the documents include operational information relevant to other Commonwealth agencies
- the document(s) are exempt or conditionally exempt in part or in full under the FOI Act, and/or
- the FOI request must be transferred to another Commonwealth agency or Minister.¹¹

5. Consultation

Within 2 days of reviewing the documents, if third party consultation or informal consultation is necessary, the Legal Services officer sends out consultation emails with a deadline of 7 days.¹²

Third party consultation

The FOI Act provides for formal third-party consultation where:

- documents subject to an FOI request contain third party personal or business information and may be appropriate for exemption under ss 47, 47G and/or 47F; and
- it appears to the OAIC that the third party might reasonably wish to make a contention that the documents are subject to those exemption.

Third party consultation is undertaken by sending an email to the relevant third party, attaching the relevant documents (with any sensitive material or material not relevant to the third party removed if required), and inviting them to make submissions within 7 days about whether they consider specific exemptions apply to the documents.

On the same day, the Legal Services Officer sends an email to the FOI applicant advising them that the OAIC is undertaking third party consultation and the time for processing the FOI request is extended by 30 days.¹³

¹¹ Section 16 of the FOI Act permits and requires FOI requests to be transferred to another agency in prescribed circumstances.

¹² See, s 27 & s 27A.

¹³ See, s 15(6).

Courtesy consultation with Commonwealth agencies

For courtesy consultations with Commonwealth agencies on material that may relate to the operations of the other Commonwealth agency and/or documents that originated in the other Commonwealth agency, an email is sent to the relevant Commonwealth agency inviting that agency to comment on any concerns it may have relating to release of the documents relevant to that agency and consideration of any FOI Act exemptions that may apply to the documents.

Any oral or written submissions received following third-party consultation or courtesy consultation are assessed by the Legal Services officer and **may** be considered by the FOI decision maker. However, the ultimate decision on release is that of the FOI decision makers. Unlike formal third-party consultations on personal or business information, courtesy consultations do not attract third party review rights.

Practical Refusal Consultation (s 24AA and s 24AB)

The OAIC can consult with an FOI applicant on the scope of their request under section 24AB of the FOI Act, where the following practical refusal reasons exist:

- the work involved in processing the **will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope (s 24AA(1)(a)(i)); and/or**
- the terms of the request do not sufficiently identify the documents being sought (s 24AA(1)).

A formal section 24AB notice should only be sent where informal consultation on the scope of the request has been unsuccessful. A section 24AB notice will have the effect of ‘stopping the clock’. Within 14 days of a section 24AB notice being issued, the applicant must indicate whether they do or do not wish to revise the scope of their request or withdraw their request.

6. Decision

Within 7 days of review of the documents or receipt of third-party or courtesy consultation response(s), the Legal Services officer will draft decision(s) on the FOI request, including a decision on whether the documents are to be published on the OAIC’s disclosure log.

S 11C of the FOI Act provides that FOI documents should be published on the disclosure log unless an exception provides. Exceptions include the documents contain personal or business information that would be unreasonable to disclose.¹⁴

If the Legal Services officer decides to release documents that a third party has objected to the release of, a separate access grant decision will also be drafted.

Four days before the decision is due, the document should be changed into a readable PDF format through the Optimise function in Adobe PDF, this will ensure the document is searchable. The documents are marked up for redaction with the relevant exemption identified in red text. A header is included with the FOI request number and bates numbering. A further review of the requested documents is undertaken by searching for keywords in the exempt material such as the names of particular individuals.

¹⁴ s 11C(1)(a)-(d) *Freedom of Information Act 1982* (Cth).

Three days before the decision is due, the draft decision(s) and documents prepared for release are sent to the FOI Coordinator for review and comment.

Three days before the decision is due, Legal Services sends decisions on significant FOI requests¹⁵ to the Executive for review and comment, and to the Strategic Communications and Coordination branch in case of media interest.

On or before the day that the decision is due, the Legal Services officer will send the cleared decision and documents to the FOI applicant, and any access grant decision(s) to third parties consulted under the FOI Act.

7. Release of documents

All decisions and documents to be released to an FOI applicant are second counselled by the FOI coordinator before being sent to the FOI applicant.

On the day of the decision, documents that are not exempt and that **are not** subject to an access grant decision that a third party has objected to, are released to the FOI applicant. The Resolve file is closed on the day the decision is notified to the FOI applicant.

Where a third party objection has been raised, a reminder action is added to the Resolve file to remind the decision maker to release the documents after the third party appeal period has expired. **After the third party's review or appeal rights have run out**, documents subject to the access grant decision are released to the FOI applicant.¹⁶

8. Notifications

On the day of the decision, if a Commonwealth agency has been consulted, an email is sent to the relevant Commonwealth agency advising them of the decision made. The actual decision is not provided to the agency.

On the day of the decision, the line area is notified of the decision.

On the day of the decision, decisions and/or documents that are likely to raise media interest are notified to the Director of Strategic Communications and Coordination.

On the day of the decision, if the Legal Services officer has decided to publish any documents on the disclosure log,¹⁷ an email is sent to the Strategic Communications and Coordination branch requesting publication and attaching the relevant documents.

Within ten days of release of the documents to the FOI applicant documents must be published on the Disclosure Log, if a disclosure log determination requiring publication has been made. **Note** that this timeframe is based on the release of the documents to the FOI applicant, and not the date of the FOI decision.

¹⁵ Significant FOI requests include requests which may generate media interest and/or involve Senior Executive Service documents. The FOI Coordinator will assess whether an FOI request is significant on a case-by-case basis.

¹⁶ See, subsections 26A(4), 27(7), 27A(6) of the FOI Act.

¹⁷ See Part 14 of the FOI Guidelines for discussion on disclosure log decisions.

9. Summary of FOI decision making steps

[place holder for flow chart]

Applications for internal review

1. Registration, assessment and allocation of applications for internal review

When a new application for internal review is received by the OAIC, the application is forwarded to the OAIC's Legal Services team **on the same day**. Requests made to foi@oaic.gov.au are automatically forwarded to the Legal Services mailbox. Where a request is directly received by an OAIC officer by email or by post, it must be forwarded to the Legal Services mailbox: legal@oaic.gov.au.

Within 1 day, a Legal Services officer¹⁸ registers the request and allocates it to the FOI Coordinator.¹⁹

On the same day, the FOI Coordinator assesses whether the request is a valid application for internal review.²⁰ The FOI Act does not prescribe any requirements for a valid application for internal review.

On the same day, the FOI Coordinator allocates the internal review request to a legal services officer.

2. Acknowledgment of the application for internal review

Within 2 days of receipt of an application for internal review, the Legal Services officer sends an acknowledgement to the applicant advising of the due date of the internal review decision using the details that the applicant provided of how notices may be sent to them.

3. Search and retrieval to line area

The officer assesses the scope of the application for internal review to determine the line area within the OAIC likely to hold the documents.

The scope of the application for internal review depends on whether internal review is sought of an access refusal decision under s 54 or an access grant decision under s 54A.

Within 1 day of receipt of a valid internal review application, the officer should seek to clarify the scope of the application with the applicant, if the terms of the application are ambiguous.

Within 2 days of receipt of a valid internal review application, the officer sends a search and retrieval email to the line area and requests that relevant officers conduct further searches and provide Legal Services with any additional documents and a further search minute. This further search and retrieval exercise should be done within 1 week.

¹⁸ A legal services officer is a staff member of the OAIC in the legal services team and can be any APS or Executive Level.

¹⁹ The FOI Coordinator is the Director of the Legal Services team.

²⁰ Section 15(2) of the FOI Act prescribes that a request must be in writing, state that the request is an application for the purposes of the FOI Act, provide information that is reasonably necessary to enable identification of the requested document and give details of how notices under the FOI Act can be sent to the applicant.

Within 1 week of the search and retrieval request, officers from the relevant line area finalise their searches and email Legal Services:

- a completed [Search Minute template](#)
- the requested documents in pdf format **or** any evidence and submissions to support a decision that no documents exist or could be found, **or** that the work involved in processing the request would *substantially* and *unreasonably* divert the resources of the OAIC from its other operations
- a schedule of the requested documents, and
- comments relevant to release of the documents to the FOI applicant with reference to any sensitivities in the completed schedule.

4. Assessment of the documents

Within 1 day of receiving the further search response from the line area, if the Legal Services Officer considers that further searches need to be conducted based on feedback from the line area and/or the nature or volume of documents identified by the line area, additional search and retrieval emails are sent out by the Legal Services officer.

Within 3 days of receiving documents from the line area, the Legal Services officer assesses the documents to determine whether:

- the documents include third party material
- additional searches will need to be undertaken (this assessment must be undertaken following every response to the search and retrieval requests)
- the documents include operational information relevant to other Commonwealth agencies
- the document(s) are exempt or conditionally exempt in part or in full under the FOI Act, and/or
- the FOI request must be transferred to another Commonwealth agency or Minister.²¹

5. Consultation

Within 2 days of review of documents, if third party consultation or informal consultation is necessary, the Legal Services officer sends out consultation emails with a deadline of 7 days.

Third party consultation

Third party consultation is undertaken by sending an email to the relevant third party, attaching the relevant documents (with any sensitive material or material not relevant to the third party removed if required), and inviting them to make submissions within 7 days about whether they consider specific exemptions apply to the documents.

Courtesy consultation with Commonwealth agencies

For courtesy consultations with Commonwealth agencies on material that may relate to the operations of the other Commonwealth agency and/or documents that originated in the other

²¹ Section 16 of the FOI Act permits and requires FOI requests to be transferred to another agency in prescribed circumstances.

Commonwealth agency, an email is sent to the relevant Commonwealth agency inviting that agency to comment on any concerns it may have relating to release of the documents relevant to that agency and consideration of any FOI Act exemptions that may apply to the documents.

Any oral or written submissions received following third-party consultation or courtesy consultation are assessed by the Legal Services officer and **may** be considered by the FOI decision maker. However, the ultimate decision on release is that of the FOI decision makers. Unlike formal third-party consultations on personal or business information, courtesy consultations do not attract third party review rights.

6. Decision

Within 7 days of review of the documents or receipt of third-party or courtesy consultation response(s), the Legal Services officer will draft decision(s) on the FOI request, including a decision on whether the documents are to be published on the OAIC's disclosure log. If the Legal Services officer decides to release documents that a third party has objected to the release of, a separate access grant decision will also be drafted.

Four days before the decision is due, the document should be changed into a readable PDF format through the Optimise function in Adobe PDF, this will ensure the document is searchable. The documents are marked up for redaction with the relevant exemption identified in red text. A header is included with the FOI request number and bates numbering. A further review of the requested documents is undertaken by searching for keywords in the exempt material such as the names of particular individuals.

Three days before the decision is due, the draft decision(s) and documents prepared for release are sent to the FOI Coordinator for review and comment.

Three days before the decision is due, Legal Services sends decisions on significant FOI requests²² to the Executive for review and comment, and to the Strategic Communications and Coordination branch in case of media interest.

On or before the day that the decision is due, the Legal Services officer will send the cleared decision and documents to the FOI applicant, and any access grant decision(s) to third parties consulted under the FOI Act.

7. Release of documents

All decisions and documents to be released to an FOI applicant are second counselled by the FOI coordinator before being sent to the FOI applicant.

On the day of the internal review decision, documents that are not exempt and that **are not** subject to an access grant decision that a third party has objected to, are released to the FOI applicant. The Resolve file is closed on the day the decision is notified to the FOI applicant.

Where a third-party objection has been raised, a reminder action is added to the Resolve file to remind the decision maker to release the documents after the third party appeal period has expired.

²² Significant FOI requests include requests which may generate media interest and/or involve Senior Executive Service documents. The FOI Coordinator will assess whether an FOI request is significant on a case-by-case basis.

After the third party's review or appeal rights have run out, documents subject to the access grant decision are released to the FOI applicant.²³

7. Notifications

On the day of the internal review decision, if a Commonwealth agency has been consulted, an email is sent to the relevant Commonwealth agency advising them of the decision made. The actual decision is not provided to the agency.

On the day of the internal review decision, the line area is notified of the decision.

On the day of the internal review decision, decisions and/or documents that are likely to raise media interest are notified to the Director of Strategic Communications and Coordination.

On the day of the internal review decision, if the Legal Services officer has decided to publish any further documents or make changes to the documents already published on the disclosure log,²⁴ an email is sent to the Strategic Communications and Coordination branch requesting publication and attaching the relevant documents.

Within ten days of release of the documents to the FOI applicant documents must be published on the Disclosure Log or other updates made to reflect the internal review decision, if a disclosure log determination requiring publication has been made. **Note** that this timeframe is based on the release of the documents to the FOI applicant, and not the date of the FOI decision.

²³ See, subsections 26A(4), 27(7), 27A(6) of the FOI Act.

²⁴ See Part 14 of the FOI Guidelines for discussion on disclosure log decisions.

Our reference: FOIREQXX/XXXX

[Salutation] [First] [Last name]

By email: [email address]

Dear [Salutation] [Last name]

Freedom of Information Request – Third Party Consultation - FOIREQ

On [XX Month 202X] we wrote to you to inform you that the Office of the Australian Information Commissioner (OAIC) has received a freedom of information (FOI request) which included document(s) containing business and/or personal information about you/your organisation/business.

We invited you to make submissions raising any objections you may have had to the release of the attached documents under the *Freedom of Information Act 1982* (FOI Act).

On [XX Month 202X] you responded to our consultation request and provided submissions indicating your view that the document/s were exempt under [section(s)] of FOI Act.

In line with your submissions, the OAIC has decided to exempt the material in full/in part under [section(s)] of the FOI Act. As such, the consultation documents that were sent to you on [XX Month 202X] will not be provided to the applicant/will be provided to the applicant with your personal/business information redacted.

Thank you for your assistance with this matter.

Contact officer

If you have any questions, please feel free to contact me during business hours on (02) 9284 [EXT] or by email to legal@oaic.gov.au.

Yours sincerely,

[insert contact signature of FOI decision maker]

XX Month 202X

OAIC ref: [INSERT FOI REFERENCE]

Dear [insert name of colleague/business area]

I am writing about an FOI request we received yesterday from [name of FOI applicant].

The purposes of this email is to request that you undertake search and retrieval (S&R) for documents falling within scope of this FOI request.

The FOI request seeks access to:

[insert terms of request]

[Insert details of any narrowing of scope]

Action required

We ask that you complete the following tasks by **COB XX Month 202X**.

- Search for relevant documents (including in Resolve, Outlook, in your cabinets and any other place you may have documents)
- Request each staff member assisting with the search to complete the attached Document Search Minute Template
- Save any documents you consider relevant (as PDF if possible) – if you are unsure whether the document is relevant include the document and we can consider its relevancy at a later stage
- Complete the attached schedule of documents
- Provide feedback in relation to any sensitive information contained within the documents (for example information received in confidence, information that would affect OAIC operations, third party information). This information can be noted in column 6 of the schedule of documents in red.
- Advise whether the relevant documents relate to matters that are currently open with the OAIC

If there is a large number of potentially relevant documents, I would be grateful if you could provide an estimate of the time required for your team to conduct S&R for this request. You may wish to consider the following factors when estimating the S&R time:

- Approximate number of matters/folders located on Resolve/TRIM/Outlook etc. which may contain the relevant documents
- Approximate number of documents within each matter which may fall within the scope of the request

- Approximate length of a document which may fall within the scope of the request
- The subject matter of the document or folder for the purpose of narrowing down the request
- Approximate time it will take to examine each document to decide whether a document is within the scope of the request. It may also be helpful to conduct the S&R on 5% of the potentially relevant documents and use the time taken to complete that 5% sample to estimate the time required to conduct the full search and retrieval.
- The number of staff members available and able to review the potentially relevant documents
- Any other factors which you consider may effect your ability to complete S&R

When I receive the documents and your feedback I will consider my FOI decision. I will give you an opportunity to comment on my proposed FOI decision.

Thanks (in advance) for your help. If you have any questions about processing an FOI request, or this particular matter, please let me know.

Kind regards

[name and contact details of FOI Officer]



Australian Government
Office of the Australian Information Commissioner

Our reference: FOIREQXX/XXXX

[Salutation] [First] [Last name]

By email: [email address]

By post: [postal address]

Dear [Salutation] [Last name]

Request for amendment under the FOI Act – FOIREQXX/XXXX

I refer to your request for **amendment/annotation** to documents made under section 48 of the *Freedom of Information Act 1982* (Cth) (the FOI Act), received by the Office of the Australian Information Commissioner (OAIC).

I am writing to inform you of my decision.

I have decided to amend material contained within [x] **document[s]** within the scope of your request. Details of these amendments can be found in the document schedule.

[AND/OR]

I have [**decided to refuse your request for amendment and**] made a decision to annotate [x] **document[s]** within the scope of your request. The effect of my decision is that the documents will include an annotation of your reasons for seeking amendment. Details of these annotations can be found in the document schedule.

In accordance with section 51D of the FOI Act, the reasons for my decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your request for **amendment/annotation** stated:

[insert scope of request]

[OR]

Following consultation with you on the scope of your request, on **XX Month 202X** you revised your request for **amendment/annotation** to be as follows:

[insert scope of revised request]

[Detail any other consultations that took place with the FOI applicant]

Request timeframe

Your request was made on **XX Month 202X**. This means that a decision on your request is due by **XX Month 202X**.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI **amendment/annotation** requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to **amend/annotate** to **XX** document(s).

Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

- your **amendment/annotation** request dated **XX Month 202X** [and subsequent revised scope dated **XX Month 202X**]
- the FOI Act, in particular **[Insert relevant sections, including section 3, 23, 26 and 48 – 51E]** of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines), and
- relevant case law.

Requirement of amendment/annotation request

Section 48 of the FOI Act provides that amendment or annotation request can be made where access to a personal information document has been lawfully provided to the person, whether under the FOI Act or otherwise, and the person claims that information within the document is incomplete, incorrect, out of date or misleading.

Section 50 of the FOI Act provides that an agency can amend a document where they are satisfied that:

- The personal information is contained in a document the agency holds, and
- The information is incorrect, incomplete, out of date or misleading, and
- The information has been used, is being used, or is available for use for an administrative purpose.

Where an amendment request is refused, section 51 of the FOI Act states that the document must be annotated, unless the agency considers the statement to be irrelevant, defamatory or unnecessarily voluminous.

The paragraph 7.34 of the FOI Guidelines state that when assessing whether the information in a document is incomplete, incorrect, out of date or misleading, a decision maker should consider:

- the nature of the information the applicant seeks to amend
- the evidence on which the decision is to be based, including the circumstances in which the original information was provided, and
- the consequences of amendment, where relevant.

Part 7.37 of the FOI Guidelines states provides:

A decision to amend a record must be supported by a finding that the record is incorrect, incomplete, out of date or misleading (s 50). This requires a decision maker to undertake a reasonable investigation and to assess the available evidence. If an applicant does not provide evidence in support of their claim, an agency would be justified in refusing to amend the record. However, before refusing a request, a decision maker should give the applicant an opportunity to provide further evidence to substantiate their claims. For example, if the applicant claims that the information is out of date, the decision maker should ask the applicant for evidence of the current position.

I am satisfied that the documents subject to your **amendment/annotation request** were released to you by the OAIC in response to FOI request (ref: **FOIREQXX/XXXX**) on

XX Month 202X. [insert other details of how documents were released]. I am satisfied that the documents contain your personal information and that the information has been used for an administrative purpose in the past.

The documents that you seek to be amended/annotate include:

- [describe documents, such as email dated ## Month ##, medical report of ##### dated ###, documents produced by AGENCY dated ###, etc.]

I have considered your claims in relation to each category of documents below.

[List description of claim for annotation/amendment and reasons for decision.

SAMPLE:

Email dated ##### from ### to the OAIC/Document dated ###

You have requested amendments to emails from you to the OAIC [dated ...].

Nature of the information

[general overview of the emails and the particular point that the applicant is objecting to, noting their explanation as to why they believe it is incorrect, incomplete, out of date or misleading].

Evidence on which decision is to be based

On ##, you provided me with the following documents to support your claim:

-

I have also undertaken a reasonable search for any documents in the OAIC's database that support your claim.

I have considered the content of the documents and your reasons/supporting evidence why you consider that they contain information that is incorrect, incomplete, out of date or misleading.

Consequences of amendment

[include decision maker's assessment, including the assessment of consequences of amendment]

The document(s) contain your personal information such as

[EXAMPLE - The FOI Guidelines state at Part 7.21 that personal information is misleading if it could lead a reader into error or convey a second meaning which is untrue or inaccurate. As the information was not produced by the OAIC and does not relate to our role and function, we have no basis to test if the information contained in these records is inaccurate, incorrect or misleading.]

It is important that agency records are as accurate as possible, as incorrect information can have significant consequences for individuals. However, it is not necessary that an agency be satisfied that the information proposed by the applicant is correct before it can amend its record under section 50 of the FOI Act. It is enough that:

- the information proposed by the applicant is more likely to be the correct information, or to be closer to the correct information, than the information currently recorded by the agency, and
- there is no other information that is more likely to be correct.¹

I note that just because you may not agree with the information within the documents does not mean, in and of itself, that the document should be amended.² An opinion about an individual given by a third party is not incorrect by reason only that the individual disagrees with that opinion or advice.³

[SAMPLE - In addition to a lack of evidence, I have also considered that the documents that you want amended were collected in the course of conducting an Information Commissioner review (IC review) by the OAIC and/or dealing with your other matters. Therefore, to amend these records may alter the records on which the original decision of the OAIC was based]

Based on the information available to me, I am not reasonably satisfied that any information in the document(s) is incorrect, incomplete, out of date or misleading.

OR

Based on the information available to me, I am reasonably satisfied that information contained in the document(s) is incorrect, incomplete, out of date or misleading. An amendment to the document(s) will be made in the following manner:

¹ 'K' and Department of Immigration and Citizenship [2012] AICmr 20 at [14] – [25].

² Grass and Secretary, Department of Immigration and Border Protection [2014] AATA 751 at [39]-[44] per Britton SM.

³ 'XB' and Cancer Australia (Freedom of information) [2021] AICmr 15 (28 April 2021).



Annotation Decision

Where I have refused to amend a document, section 51 of the FOI Act provides for the annotation of a document.

This means that a statement is placed with the relevant record outlining your views on why you consider the information to be incomplete, incorrect, out of date or misleading, and your reasons for this.

I have decided to annotate the relevant documents. This means that the OAIC will place a note on each of the files that it holds which states exactly what you have said about the document. The Office will not alter your submissions.

This will ensure that moving forward, anyone who views the relevant files will see that they have been annotated with your submissions.

Annotated/Amended Documents

The **document/s with amendments applied** are enclosed for release.

The **document/s where annotations have been made** are identified in the **document schedule**.

Please see the following page for information about your review rights.

Yours sincerely,

[insert contact full name and signature of FOI decision maker]

XX Month 202X

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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



Australian Government

Office of the Australian Information Commissioner

Document Schedule

Document no.	Page no.	Document Description	Details of amendment and/or annotation



Australian Government
Office of the Australian Information Commissioner

Our reference: FOIREQXX/XXXX

[Salutation] [First] [Last name]

By email: [email address]

By post: [postal address]

Freedom of Information Request – FOIREQXX/XXXX

Dear [Salutation] [Last name]

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information request (FOI request) was received by the Office of the Australian Commissioner (OAIC) on **XX Month 202X**.

I am writing to inform you of my decision.

Pursuant to section 17 of the FOI Act, I have made a decision to create **[x] document[s]** in response to your request. I have made a decision to **grant full access to XX document(s)**.

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

[insert scope of request]

[OR]

Following consultation with you on the scope of your request, on **XX Month 202X** you revised your FOI request to be as follows:

[insert scope of revised request]

I note that on **XX Month 202X** you also agreed to (insert description of any material agreed as out of scope i.e. personal information).

[Detail any other consultations that took place with the FOI applicant]

Request timeframe

On **XX Month 202X** you agreed to an extension of time under section 15AA of the FOI Act. This means that a decision on your FOI request is due by **XX Month 202X**.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to create and grant full access to **XX document(s)**.

Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

- your FOI request dated **XX Month 202X** [and subsequent revised scope dated **XX Month 202X**]
- the FOI Act, in particular [Insert relevant sections, including section 3, 11, 11A, 15, 17 and 26] of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- third party submissions in relation to the release of the documents dated **XX Month 202X**
- **consultation with line area/s of the OAIC in relation to your request**
- [insert further considerations as required]

Requests involving the use of computers (s 17)

Under section 17 of the FOI Act, if an FOI request is made for a document that could be produced by using a computer ordinarily available to the agency for retrieving or collating stored information, an agency is required to deal with the request as if it was a request for written documents to which the FOI Act applies.

The FOI Guidelines [at 3.204] explain that section 17 may require an agency to produce a written document of information that is stored electronically and not in a discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. The obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (section 17(1)(c)(i)), or making a transcript from a sound recording (section 17(1)(c)(ii)); and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (section 17(2)).

If those conditions are met, the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.

Your request sought access to [insert description of request relevant to section 17 decision]. [Name of relevant business area] advised me that the material sought is not available in a discrete form but instead is able to be produced in a written document through the use of a computer.

In light of this, a document(s) has been created under section 17 in response to your request and is included in the schedule of documents attached.

Disclosure log decision

Section 11C of the FOI Act requires the OAIC to publish documents released under the FOI Act on the OAIC's disclosure log within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

As discussed above and identified in the attached documents schedule, XX document(s) subject to your request contain personal and/or business information.

Accordingly, I have determined that it would be unreasonable to publish documents XX to XX on the disclosure log.

OR

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of document/s

The **document/s** are enclosed for release.

The **document/s** are identified in the **attached** schedule of documents.

Please see the following page for information about your review rights.

Yours sincerely,

[insert contact full name and signature of FOI decision maker]

XX Month 202X

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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

Subject: ^{47F} [REDACTED] - Your FOI Request – Withdrawn

OAIC ref: ^{47F} [REDACTED]

Dear ^{47F} [REDACTED],

Having not received further correspondence from you regarding your FOI request, we assume it has been redirected to the appropriate entity and that you no longer wish to pursue your misdirected request to the OAIC, noting that OAIC does not hold the type of records you are seeking.

This matter is now closed. Thank you for contacting the OAIC.

Kind regards

Sig



Australian Government

Office of the Australian Information Commissioner



Freedom of information

Presented by Margaret Sui, Principal Lawyer
Legal Services

7 March 2024



Contents

- The OAIC as FOI Regulator
- The OAIC as FOI Agency
- Statutory time frames
- Completing Search and Retrieval
- Reporting



Australian Government

Office of the Australian Information Commissioner



The OAIC as FOI Regulator

FOI functions



- Review FOI decisions of agencies and ministers
- Investigate and resolve FOI complaints
- Handle FOI enquiries



- Investigate on own initiative
- Oversee the Information Publication Scheme
- Use range of regulatory powers



- Compile FOI data and assess trends
- Provide guidance and strategic policy advice
- Education and awareness
- Regulatory engagement and collaboration



Australian Government

Office of the Australian Information Commissioner



The OAIC as FOI Agency

Freedom of Information Act 1982

Objects of the FOI Act:

- to give the Australian community access to information held by government, by requiring agencies to publish that information and by providing for a right of access to documents
- to promote Australia's representative democracy by increasing public participation in government processes, with a view to promoting better-informed decision making



Freedom of Information Act 1982

Objects of the FOI Act (continued):

- to promote Australia's representative democracy by increasing scrutiny, discussion, comment and review of government activities
- to increase recognition that information held by government is to be managed for public purposes and is a national resource
- that powers and functions 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.



Freedom of Information Act 1982

The FOI Act gives the community access to information held by Australian Government ministers and agencies by:

- requiring agencies to publish certain information
- providing a right of access to documents (with some exemptions).

The OAIC is subject to the FOI Act. The Legal team is responsible for processing FOI requests made to the OAIC.



FOI Act features

- The OIAIC receives around 350 FOI requests a year.
- The OIAIC must help a person make an FOI request.
- The OIAIC does not charge in relation to an FOI request.
- The OIAIC has 30 days to make a decision (with some exceptions)

How to identify an FOI request

For a FOI request to be valid it must:

- Be in writing
- State it is a FOI request
- Provide enough information to identify the relevant documents
- Give valid address

If you receive an FOI request, even if you are not sure it is a valid FOI request it is important to forward to foi@oaic.gov.au on the day you receive it. This will allow the legal team to assess the FOI request and start processing or assist the applicant to make a valid FOI request



The OAIC has a dedicated email for receiving FOI requests at foi@oaic.gov.au

However, an FOI request can be validly made to any email, fax postal address of the OAIC.

Statutory timeframes

The OAIC must process within 30 calendar days after the day on which the request was received.

The timeframe can be extended in certain circumstances including:

- With the agreement of the applicant (up to 30 days)
- To undertake consultation with third parties (30 days)

No additional time is provided to consult with other government agencies.

The OAIC does not grant EoT under s.15AB of the FOI Act for requests made to the OAIC.



If no decision is made within the statutory timeframe, the agency is **deemed to have refused the request**. The FOI applicant can apply to the OAIC to review the decision.

Completing Search and Retrieval

All OAIC staff are required to assist the Legal team by completing reasonable searches for documents relevant to an FOI Request.

To successfully undertake search and retrieval it is important to understand:

- What is a document
- What constitutes reasonable searches
- When is a request too large to process



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What is a document for the purposes of the FOI Act?

A 'document' is defined in s 4(1) of the FOI Act to include any or any part of the following:

- any paper or other material on which there is writing;
- map, plan, drawing or photograph;
- any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them
- any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device
- any article on which information has been stored or recorded, either mechanically or electronically
- any other record of information



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What constitutes reasonable searches?

The FOI Guidelines provide that it will depend on the circumstances of each request and will be influenced by the normal business practices of the agency. At a minimum,

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



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I don't hold the documents, but I know who does

If you consider another line area within your branch, or another staff member may have documents which fall in scope of the FOI request, please kindly forward the search and retrieval request from Legal to them as soon as possible, so they can also conduct the search and retrieval.

Please CC Legal via foi@oaic.gov.au to minimise delay.



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When is a request too large to process?

Whether a request is too large to process, consideration is given to the time taken to:


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

It is important to note, that the OAIC does not adopt a 'ceiling' in relation to processing times. When considering whether a request is too large a sample of 10% of the documents will be examined to support any finding.




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[Part 3.110 of the FOI Guidelines] A request can be described quite broadly and must be read fairly by an agency or minister, being mindful not to take a narrow or pedantic approach to its construction.

‘BI’ and Professional Services Review [2014] AICmr 20, applying *Re Anderson* and AFP [1986] AATA 79



SUMMARY: If you receive a request from the Legal team to conduct searches there are several steps you need to take:

- Identify other staff/areas that might hold documents, forward the S&R email to them straight away, and CC the legal team
- Search and identify relevant documents
- Complete the search minute
- Complete the document schedule and identify sensitivities in the documents
- Respond within the specified timeframe



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Helpful Tools

- Saving Emails to PDF
- Snipping and Saving (Microsoft Teams Messages)
- Creating and Saving a Resolve Report



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Searching in Outlook and Saving Emails to PDF

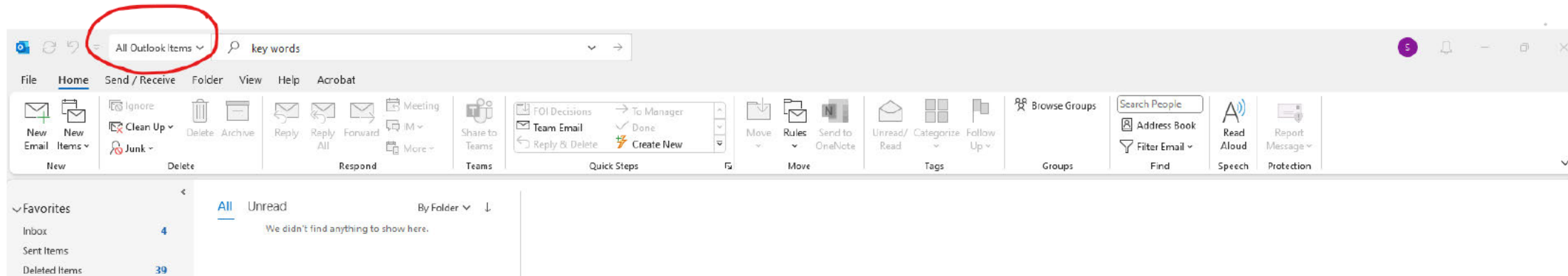


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Searching in Outlook

- Emails older than 3 months are automatically archived into the Online Archive
- Select “All Outlook Items” when you search for key words in your Outlook to capture older emails that have been archived.



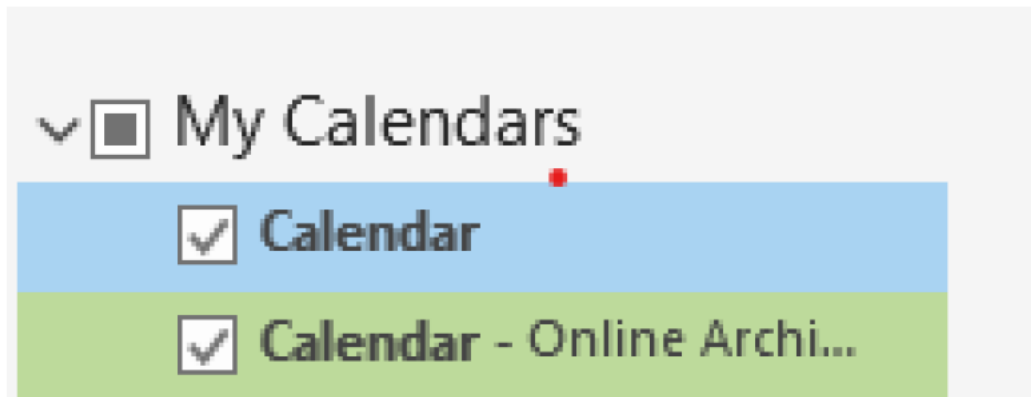


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Searching in Outlook: Calendar entries

- Similar to emails, calendar entries older than 3 months are automatically archived into the Calendar - Online Archive section of the calendar.
- Select both “Calendar” and “Calendar – Online Archive” to show entries older than 3 months, which you can then screenshot and save onto your desk top using the Snipping Tool.



The screenshot displays the Microsoft Outlook application window. At the top, the 'File' menu tab is highlighted with a red circle. The ribbon below it contains several groups of icons for email management, including 'New', 'Delete', 'Respond', 'Teams', 'Quick Steps', 'Move', 'Tags', 'Groups', 'Find', 'Speech', 'Language', and 'Apps'. The main content area shows the 'Inbox' folder with one email item titled 'FOI Training' selected. The email details pane on the right shows 'None' for the sender and 'FOI Training' for the subject. The status bar at the bottom of the window shows 'Items: 1', 'All folders are up to date.', and 'Connected to: Microsoft Exchange'.



The screenshot shows the Outlook interface with the 'Account Information' pane on the left. The 'Save As' section is expanded, and the 'Save as Adobe PDF' option is circled in red. A 'Save Adobe PDF File As' dialog box is open, showing the file path '- Corporate Network > Documents >'. The dialog displays a list of folders in the 'Documents' directory:

Name	Status	Date modified	Type	Size
Custom Office Templates	✓	7/12/2023 11:07 AM	File folder	
Offline Records (OP)	✓	29/02/2024 3:28 PM	File folder	
OneNote Notebooks	✓	6/12/2023 10:25 AM	File folder	
Remote Assistance Logs	✓	20/02/2024 10:41 AM	File folder	

The dialog also shows the file name 'FDI Training' and 'Save as type: PDF files'. Below the dialog, there are two 'Manage Add-ins' buttons: 'Manage COM Add-ins' and 'Manage Add-ins'.





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Snipping and Saving (For example, Microsoft Teams Messages)

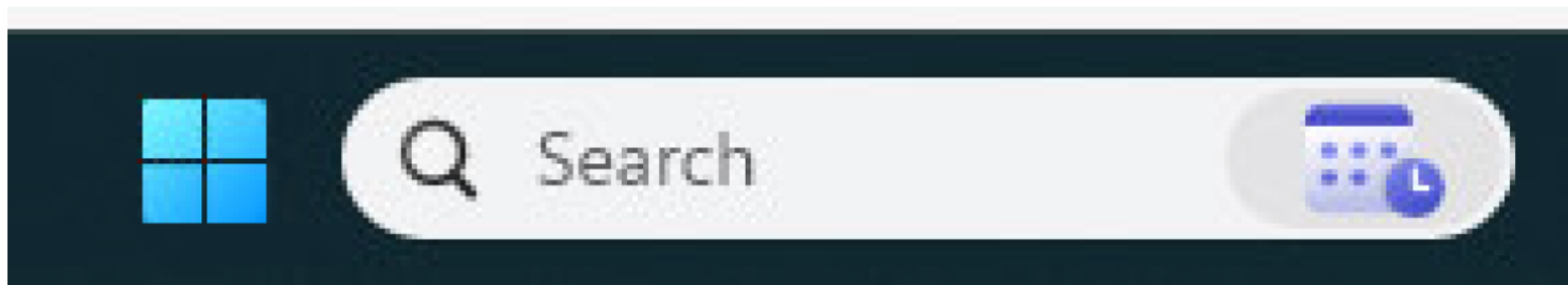


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Step 1: Type “Snipping Tool” in the search bar at the bottom of your task bar, to find the Snipping Tool App

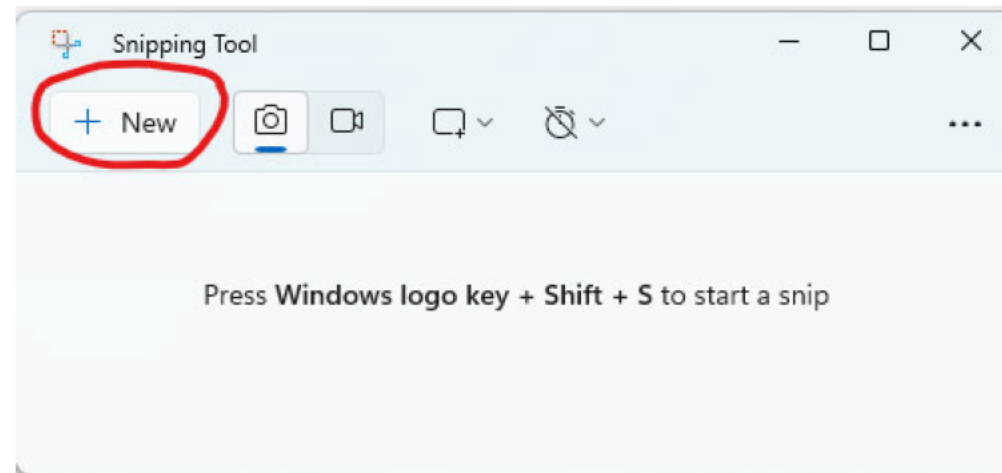




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Step 2: Open the Snipping Tool App and click “+ NEW”





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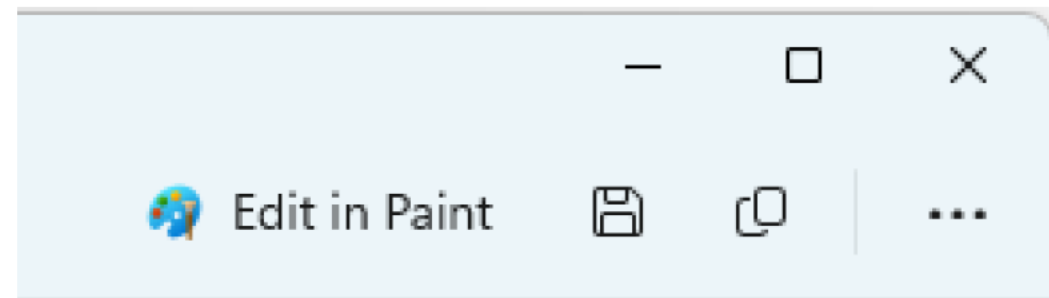
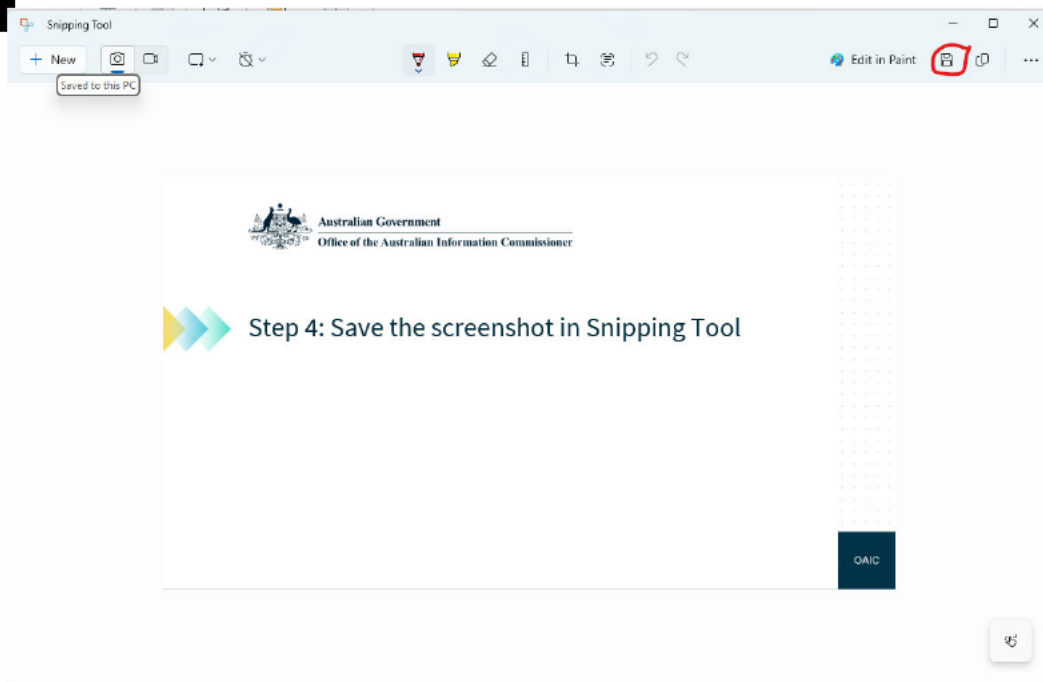
Step 3: Hold your left mouse button and drag your cursor over the material you would like to capture which will be captured by the Snipping Tool automatically.



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Step 4: Save the screenshot captured Snipping Tool onto your desktop by clicking the floppy disk button (in red)





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Creating and Saving a Resolve Report

- FOI Request Entry

Save Undo **Print** Print Preview Close FOI Request Search Document Content

Details

Sub Type:	<input type="text"/>	Case Number:	<input type="text"/>	Stage:	<input type="text"/>
FOI Request Type:	<input type="text"/>	Assigned to:	<input type="text"/>	File Security:	<input type="text"/>
Closed Date:	<input type="text" value="v"/>	Target Date:	<input type="text" value="v"/>	Time Spent (Hours):	<input type="text"/>
Closed by:	<input type="text"/>	Exp Destruction Date:	<input type="text" value="v"/>	File Holder:	<input type="text"/>

This FOI Request is closed

Main Exemptions Actions Documents Stages File Movements XRefs

Open File CheckOut and Edit Document Check In

Title	Number	Author	Comments	Created	Category	Status	Created By	File Name	Last Updated by
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- FOI Request Entry

Save Undo Print Print Preview Close FOI Request Search Document Content

Details

Sub Type:	<input type="text"/>	Case Number:	<input type="text"/>	Stage:	<input type="text"/>
FOI Request Type:	<input type="text"/>	Assigned to:	<input type="text"/>	File Security:	<input type="text"/>
Closed Date:	<input type="text"/>	Target Date:	<input type="text"/>	Time Spent (Hours):	<input type="text"/>
Closed by:	<input type="text"/>	Exp Destruction Date:	<input type="text"/>	File Holder:	<input type="text"/>

This FOI Request is closed

Main Exemptions Actions Documents Stages File Movements XRefs

Open File CheckOut and Edit Document Check In

Title	Number	Author	Comments	Created	Category	Status	Created By	File Name	Last Updated by
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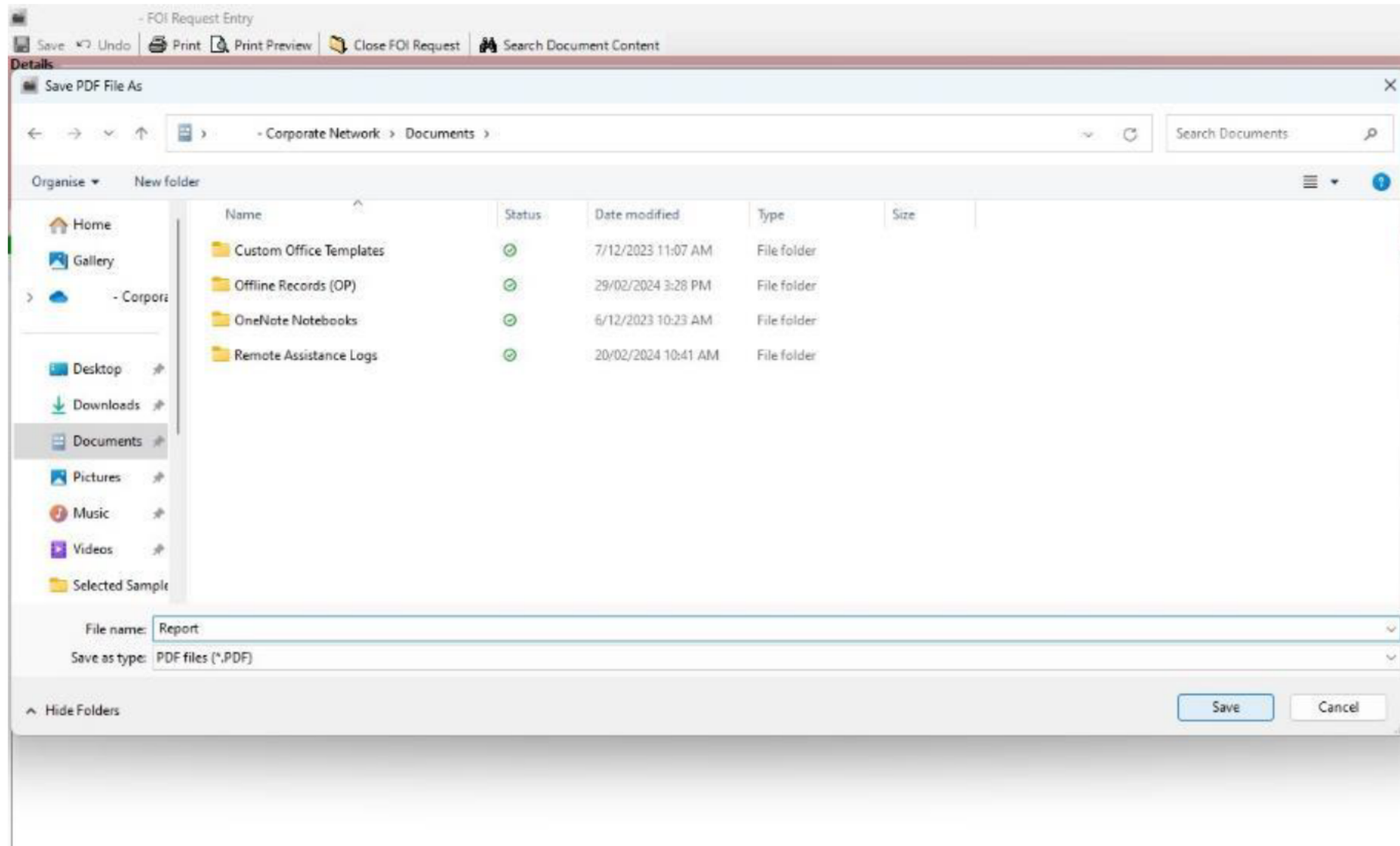
Select Layout

Please select report layout:

Full Report (All Sections)

Continue Cancel





Reporting

The OAIC reports on its compliance with the FOI Act through:

- Quarterly and Annual FOI statistics which are published on data.gov.au



Non-compliance with the FOI Act is reported by Legal to the executive including the Australian Information Commissioner and the FOI Commissioner.



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Additional Resources

Reasonable Steps Checklist

https://www.oaic.gov.au/data/assets/pdf_file/0019/8263/processing-foi-requests-reasonable-steps-checklist.pdf

FOI Guidelines

<https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines>



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Questions or feedback?

Contact: foi@oaic.gov.au

Procedure for Right to Know Non-FOI Requests

Wednesday, 6 March 2024 2:59 PM

We have recently been receiving some correspondence via Right to Know that do not contain FOI requests. If you are managing the Legal Inbox and receive non-FOI correspondence via Right to Know, please follow the below procedure:

1. Inform Marg regarding the correspondence and confirm the course of action to be taken.
2. Set up an Enquiry file on Resolve.
3. Email The Right to Know administrator, via contact@righttoknow.org.au and inform her that the correspondence is not an FOI request.

Once the Enquiry has been dealt with, on the file's Resolve main page:

1. Fill in 'Enquirer Industry Sector' and 'Target Industry Sector' details.
2. Add an Issue (bottom of the page). Navigate to the relevant issue tab. If we are referring the matter to a different OAIC branch, select 'referred to case management'.
3. Close the Enquiry.

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FOI Consultation Contacts

Wednesday, 6 March 2024 3:07 PM

AGS: foi@ag.gov.au

FOI Registration Guide

Wednesday, 6 March 2024 3:08 PM

1. Confirm the FOI request is valid

- Refer to s 15(2) of the FOI Act
 - The request must:
 - (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

2. Register the request in Resolve

- Press the 'Find Client' tab at the top of Resolve
- Search for the client via first name, last name, and email address (separately)
 - If you are unable to find the client, create a new profile by pressing the 'New Client' button and filling in the key details (name and email address)
- Select 'New Case' and then 'FOI Request'
- Complete the following fields:
 - Sub type
 - FOI request type
 - How received
 - Received from
 - Request date received (the field will automatically be listed as the date the request was registered - Please ensure this is listed at the same date as the request was received)
 - Request due date (Please ensure this day does not fall on a weekend or public holiday)
- Save the file

3. Add information to the 'Comment' Field

- Include the following information:
 - Received:
 - Due:
 - Section 15AA granted:
 - Third party consultation:
 - Section 24AB consultation response due:
 - Date final decision delivered:

4. Add any relevant emails to the file

5. Add the request to the FOI tracker

6. Assign the file to the FOI coordinator

7. If you believe the request is misdirected, prepare an acknowledgement to be saved to file immediately after registering a misdirected FOI request

• Shortened Acknowledgement

- Instead of our previous practice of outlining in great detail how an applicant may redirect their request, FOI has adopted a stream-lined approach. This includes (where appropriate) simply referring them to a website containing the relevant information. This will commonly be the FOI page of a government agency, but in some circumstances more generic information or website links such as a 'Contact Us' page may suffice (e.g. where there is no FOI website page).
- It may be appropriate in some circumstances to highlight the distinction between State and Federal FOI regimes in your draft email to the applicant. It is also required that we tailor our acknowledgment to specifically address what the applicant is seeking, see writing in **red** in the example template below:
[Misdirected Acknowledgment Template - Abridged .docx](#)
- For paralegals assisting delegates with these drafts, the following comment is helpful when assessing the correct place to redirect the applicant:

'You do not need to know for certain which agency you need to redirect the FOIA to, this is something for the delegate to check, but the template with the details of FOIA to be drafted is a fantastic start!'

- The three-business day rule for responding to our acknowledgement prior to the applicant being considered to have made a withdrawal still applies.
- Please remember that all drafts are to be saved to file as a word document to allow for easy editing.

FOI Closure Guide

Wednesday, 6 March 2024 3:08 PM

1. Populate/Confirm all Fields on the 'Main' Tab

- Sub Type
- FOI Request Type
- How Received
- Received From
- Request Date Received
- Request Date Due
- Personal Info
 - **Important: This information is collected as part of the FOI statistics reporting.**
- Scope
- Decision
- Summary
- Time Spent (Hours)
 - **Important: This information is collected as part of the annual FOI statistics reporting. Please ensure that the time recorded accurately reflects the processing time of ALL staff who have worked on the request (e.g. include S&R processing, paralegal work, Margs reviews of documents, your own reviewing, decision making and drafting time, etc.).**
 - **Note: Where a matter has been outsourced to an external law firm for drafting assistance, the time spent on the matter by the external law firm is NOT to be included in the time record.**

2. Select Relevant Exemptions on the 'Exemptions' Tab

- Select all exemptions that are relied upon in the FOI decision
 - **Important: This information is collected as part of the FOI statistics reporting.**

3. Check-in all Documents

- If required force check in the checked-out documents or make a copy of the documents and delete the checked-out versions

4. Tick off all Actions

- Complete the relevant questions as they arise
- The final action will be 'close case', which will close the file
 - **Important: This information is collected as part of the FOI statistics reporting. Please close files as soon as possible after the decision has been sent to ensure accuracy in our processing time data collection.**
- Note: Resolve will not let you close the case if any of the above steps have not been completed, an error message will indicate which step requires actioning

5. Update FOI Tracker

FOI Scheduling Guide

Wednesday, 6 March 2024 3:08 PM

1. Review the S&R

1. Confirm that S&R from each line area has been returned
2. If necessary, convert the documents provided to a format that can be combined in Adobe (pdf, word, etc.)
3. Combine the documents and add them to the Resolve file as 'Initial Doc Bundle'

2. Populate the Initial Schedule

1. Copy the relevant information from the line area's schedule into the master schedule
 - a. Combine the information from the 'decision on access' and 'exemption' columns into the 'line are comment' column
 - b. No. of pages
 - c. Date
 - d. Description
 2. Complete the 'doc no' column
 3. For documents that are attachments of other docs, include the following in the 'description' column: 'Attachment to doc X: ...'
 4. Do not complete the 'page no.' column (which is best left blank until the docs have been reviewed in order to not cause confusion if documents are removed/moved)
 5. Ensure language used is consistent with other FOI decisions
 - a. Doc no = 1, 2, 3, 4, etc. (do not use 1.1, 1.2. etc. for attachments)
 - b. Date = XX/XX/XXXX, XX:XXAM (use as detailed time as possible – include seconds if available)
 - c. Description = Brief description of document, e.g. Email from OAIC to applicant (do not use email subject line)
 - d. Decision on access = Release in Full, Release in Part, or Full Exempt
 - e. Exemption = s XX, s XX
 6. Add the initial schedule to the Resolve file and mark 'key document'
- ### 3. Assess the Documents (if decision maker)
1. Read/scan all the documents
 2. Mark documents that will require courtesy or third-party consultation in the 'CC/TPC' column
 3. Mark documents that are out of scope
 4. Add initial views on the sensitivity/release of documents as comments in the master schedule
 5. If necessary, ask a paralegal to remove out of scope or duplicate documents from the doc bundle and save the new bundle as 'Final Doc Bundle' (Key document)
 6. Ask a paralegal to complete the 'page no.' column

4. Conduct FOI Decision Making Process

5. Create the Final Schedule for Release

1. At the completion of the FOI decision making process, copy the relevant information into the final schedule for release
2. Sanitise the schedule for release

Templates

- [Master Schedule](#)
- [Schedule for Release](#)
- [Internal Review Schedule](#)

Registering a s 15AA extension request

Wednesday, 6 March 2024 3:09 PM

Before requesting an extension, ensure the FOI Applicant has agreed in writing to the extension of time.

1. Go to: [Apply for an extension of time to process a freedom of information request | OAIC](#)
2. Scroll down towards to bottom of the page and select the 'Extension of Time Smartform'
3. Once in the Smartform, select the correct form, usually it will be 'I am notifying of or requesting an extension of time'
4. The request is being submitted on behalf of: 'Australian Government Agency'
5. For Agency details, select 'Other' and then type in 'Office of the Australian Information Commissioner'
6. Provide the FOI reference number
7. On the next page, insert your name and the foi@oaic.gov.au email address.
8. The following section is for the FOI Applicant's name and their representative (if they have one)
9. Select 'Extension of time notification with the agreement of the applicant (s 15AA)'
10. Insert the date we received the FOI request, the current date the decision is due and insert '30' into the requested length of extension (number of days), and calculate 30 days from the original decision due date. *If you are unsure, please check with Margaret or the delegate on the matter.*
11. Tick the declaration
12. Upload a pdf document of the email chain that confirms that the Applicant agreed to the extension.
13. Submit the form
14. Save the acknowledgement email (that would have been sent to the FOI inbox) on the FOI matter and add a comment 's 15AA EOT lodged.
15. Advise the delegate of the extension submission.

Recognising an FOI request (requirements of s 15(2) of the FOI Act)

Wednesday, 6 March 2024 3:09 PM
Freedom of information requests to the OAIC

Section 15(2) of the *Freedom of Information Act 1982* (Cth) (FOI Act) provides:

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as it is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant...
- (3) Where a person:
- a. Wishes to make a request to an agency; or
 - b. Has made to an agency a request that does not comply with this section;
- it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section.
- (4) Where a person has directed to an agency a request that should have been directed to another agency or to a Minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.

The s 15 requirements

a. *be in writing*

If the enquiry was received via telephone, the enquiries team should direct the applicant to our webpage *Freedom of information requests to the OAIC*^[1] to make the request in writing, either by email or by post, to the OAIC.

(aa) state that the request is an application for the purposes of the FOI Act

This requirement distinguishes an FOI request from a simple enquiry requesting administrative access. We should nevertheless take a flexible approach when assessing whether an applicant has met this requirement. If an applicant's intention is not clear, we should contact them to confirm whether the request was intended to be made under the FOI Act and provide them the option of making a formal FOI request, or if access is in relation to their personal information only, under administrative access or APP 12.

Where the applicant has indicated the request was made under the FOI Act, or the *Freedom of Information Act* but does not specify whether they were referring to the Commonwealth FOI Act 1982 or FOI Act in a state jurisdiction, we should take a generous interpretation as if they were making the request under the Commonwealth FOI Act, and the matter should be referred to Legal as soon as possible.

If the applicant has specifically indicated that the request was made under the state FOI legislation, the request should be treated as an enquiry only and the applicant provided with the contact details of the relevant state agency to process that request.

a. *provide such information concerning the document as it is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it*

Generally, we should take a generous interpretation to requests that do not necessarily provide such details up front. While the word *document* is used in the Act, a request for information should also satisfy the requirement of s 15(2)(b) as often information can be contained in a number of formats still suitable for release under the FOI Act, such as electronic recordings, compact discs etc.

If all other aspects of the FOI request under s 15(2) are met, and the enquiry team is not sure whether sufficient information has been provided in relation to what the applicant is seeking in the request, the request should be forwarded to Legal to assess this information and where required, assistance provided to the applicant to clarify this information

a. *give details of how notices under this Act may be sent to the applicant*

The return address may be a physical, postal or electronic address (such as an email address).

Reasonable steps to assist (ss 15(2)(c) and 15(2)(d))

An agency or minister should also be flexible in assisting an applicant to provide the details necessary for a request to fulfil the formal requirements of the FOI Act (for example, notifying the applicant of a missing detail by telephone or email). This contact can be made either before or after a request is formally acknowledged. It should rarely be necessary to require the submission of a fresh written FOI request if only a minor detail, such as a date relevant to a particular document or the applicant's return address, has been omitted from the access request. Once the further information is provided, the agency or minister's office should inform the applicant that their request meets the statutory requirements and that the timeframe for deciding the request has commenced. It is important to keep good records of contact with applicants, such as file notes of conversations, so that an agency can demonstrate if required that it has taken reasonable steps in accordance with s 15(3) or (4).

Legal's recommendation:

Where the enquiries team receives a request that meets all of the criteria under s 15(2), the team should immediately forward the request to Legal Services team for processing.

Where the enquiries team receives a request that does not meet all of the criteria under s 15(2), where possible, the team should assist the applicant in relation to making a valid FOI request by directing the

applicant to our *Freedom of information request to the OAIC webpage* which should inform the applicant on how to make a valid FOI request to the OAIC.

Where the enquiries team is not sure whether a request meets all of the criteria under s 15(2), particularly under s 15(2)(b), the team should immediately forward the request to Legal Services team who can review the request and advise.

Example 1

Enquiries team receives an email from Mr John Smith that requests:

Under FOI Act, I want all my NSW police records to be sent to me.

In this case, the request is a valid FOI request because it is in writing, it states the request was made for the purposes of FOI Act, it seeks police records, and it has the applicant's email address for the notices to be sent even though it does not expressly give details. While the request does not specify it was for the purpose of the Commonwealth FOI Act, as we should take a generous interpretation where FOI Act is mentioned in the request, it is appropriate to accept this request as meeting s 15(2)(aa) requirements.

This request should be immediately forwarded to Legal Services team for registering and processing. Whether the OAIC actually has the NSW police records is not relevant in determining whether the FOI request is valid or not which Legal will determine once the FOI request is registered.

Upon receipt of the request, Legal Services Team will contact the FOI applicant and request that he redirect his FOI request to NSW Police for action in accordance with our obligations under s 15(4) of the FOI Act to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister. The FOI applicant can withdraw the request or refuse to withdraw the request.

If the FOI applicant requests the OAIC to continue processing the request, Legal will conduct search and retrieval of the records with assistance of the line areas and a decision provided to the FOI applicant in accordance with the FOI Act within the statutory time limit.

Example 2

Enquiries team receives a telephone call from Mr John Smith requesting:

Under FOI Act, I want all my privacy complaint records to be sent to me to my email address at xxx@email.com.

In this case, the request is not a valid FOI request because it is not in writing.

The request should be treated as an enquiry by the enquiries team who can inform Mr Smith that the FOI request must be in writing, and that he should send his FOI request per the directions on the OAIC's website.

This is in line with s 15(3) of the FOI Act where the OAIC has provided assistance to the person who wishes to make an FOI request to the OAIC. The enquiry can then be closed.

Example 3

Enquiries team receives an email from Mr John Smith requesting:

I want all my privacy complaint records (OAIC reference number XXXX) to be sent to me to my email address at xxx@email.com.

In this case, the request is not a valid FOI request because it does not refer to the FOI Act. The enquiries team should advise the applicant of his access rights (i.e he can make an FOI request by visiting our website [Freedom of Information requests to the OAIC](https://www.oaic.gov.au/about-us/access-our-information/freedom-of-information-requests-to-the-oiac), or alternatively he can make an administrative access request or an APP 12 request).

If the applicant wishes to make an FOI request, information on how that can be made will be on the website. If the applicant wishes to make an administrative access request or an APP 12 request, the enquiries team can direct the email to the relevant privacy complaint line area to process the request either as an administrative access request or an APP 12 request.

[1] <https://www.oaic.gov.au/about-us/access-our-information/freedom-of-information-requests-to-the-oiac>

How to do bates numbering

Wednesday, 6 March 2024 3:09 PM

1. Open your adobe PDF document
2. Go to 'tools'
3. Go to 'organise pages'
4. In the top right hand area click 'more' and then hover over 'bates numbering' and select 'add'
5. Change colour square from black to red (highlighted yellow in screenshot)
6. Click on the 'centre header text' box and click then 'insert bates numbering' (highlighted yellow in screenshot)
7. Change the 'number of digits' to 5 and add FOIREQ23/ to the 'prefix' section (highlighted yellow in screenshot)



Adobe
guide to



Australian Government
Office of the Australian Information Commissioner

Adobe guide – preparing PDF documents for release

When preparing documents for release as part of the FOI or Access Request process, documents must be converted to PDF. This document provides basic instructions on sharing large lists of files for conversion and using Adobe Pro to prepare documents for release.

August 2021

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Sharing a large list of files

Zip (compressed) files/folders take up less storage space and can be shared, either via email or Resolve, more quickly than uncompressed files. Use ZIP function when you want to email/upload to Resolve a large list of files/folders before merging.

1. To zip (compress) a file or folder

Select the files/folders that you want to zip > right-click > select **Send to** > select **Compressed (zipped) folder**. A new zipped folder with the same name is created in the same location.



Use Shift + click to highlight several files at once.

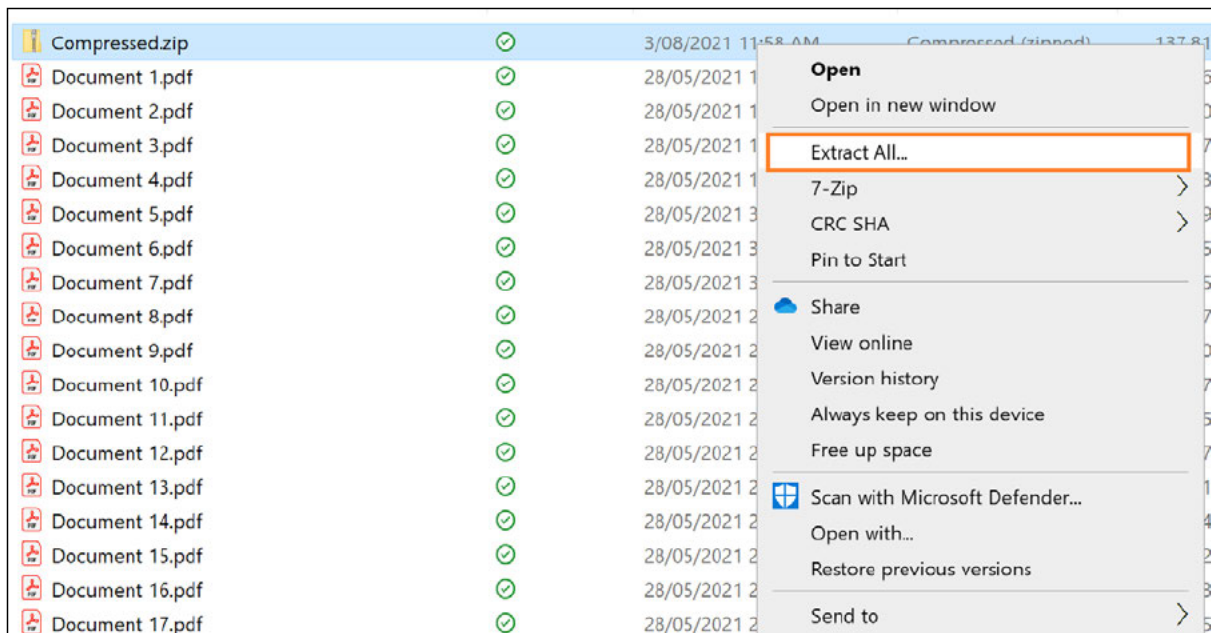
Name	Status	Date modified	Type	Size
New folder	🔒	3/08/2021 11:47 AM	File folder	
Document 1.pdf	🔒	28/05/2021		363 KB
Document 2.pdf	🔒	28/05/2021		602 KB
Document 3.pdf	🔒	28/05/2021		779 KB
Document 4.pdf	🔒	28/05/2021		931 KB
Document 5.pdf	🔒	28/05/2021		799 KB
Document 6.pdf	🔒	28/05/2021		854 KB
Document 7.pdf	🔒	28/05/2021		858 KB
Document 8.pdf	🔒	28/05/2021		578 KB
Document 9.pdf	🔒	28/05/2021		
Document 10.pdf	🔒	28/05/2021		
Document 11.pdf	🔒	28/05/2021		
Document 12.pdf	🔒	28/05/2021		
Document 13.pdf	🔒	28/05/2021		
Document 14.pdf	🔒	28/05/2021		
Document 15.pdf	🔒	28/05/2021		
Document 16.pdf	🔒	28/05/2021		
Document 17.pdf	🔒	28/05/2021		
Document 18.pdf	🔒	28/05/2021 2:39 PM	Adobe Acrobat Docu...	
Document 19.pdf	🔒	28/05/2021 2:40 PM	Adobe Acrobat Docu...	
Document 20.pdf	🔒	28/05/2021 2:46 PM	Adobe Acrobat Docu...	53 KB
Document 21.pdf	🔒	28/05/2021 2:41 PM	Adobe Acrobat Docu...	
Document 22.pdf	🔒	28/05/2021 2:46 PM	Adobe Acrobat Docu...	
Document 23.pdf	🔒	28/05/2021 2:49 PM	Adobe Acrobat Docu...	
Document 24.pdf	🔒	28/05/2021 3:46 PM	Adobe Acrobat Docu...	
Document 25.pdf	🔒	28/05/2021 2:50 PM	Adobe Acrobat Docu...	659 KB
Document 26.pdf	🔒	28/05/2021 2:50 PM	Adobe Acrobat Docu...	4,090 KB
Document 27.pdf	🔒	28/05/2021 2:52 PM	Adobe Acrobat Docu...	972 KB
Document 28.pdf	🔒	28/05/2021 2:53 PM	Adobe Acrobat Docu...	642 KB
Document 29.pdf	🔒	28/05/2021 2:53 PM	Adobe Acrobat Docu...	753 KB

The image shows a Windows File Explorer window with a right-click context menu open over a selection of PDF files. The 'Send to' option is highlighted, and its sub-menu is visible, showing 'Compressed (zipped) folder' as the selected option. Other options in the 'Send to' menu include Desktop (create shortcut), Documents, Fax recipient, HPE Content Manager, HPECM Desktop, Mail recipient, G drive (G:), I drive (I:), Common drive (J:), Limited (L:), Local Staging (O:), Media (V:), and anne (\\websrv\local staging) (W:).

2. To unzip (extract) a file or folder from a zipped folder

Select the zipped folder > Option 1: to unzip a single file or folder, open the zipped folder > drag the file or folder from the zipped folder to a new location

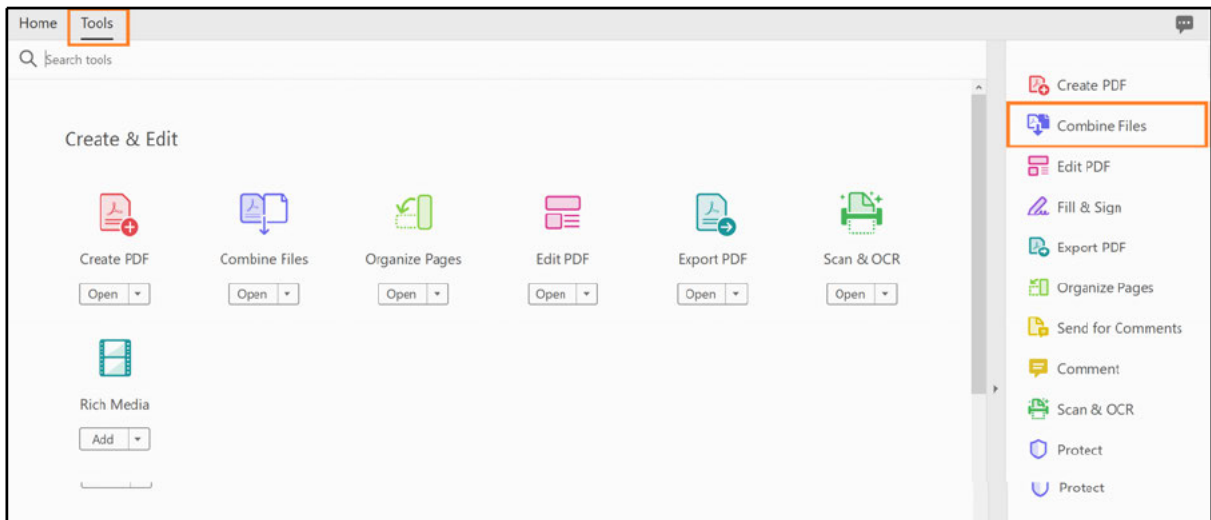
Option 2: to unzip all the contents of the zipped folder, right-click the folder > select **Extract All** and follow the prompt to save the extracted files/folders



Merging files

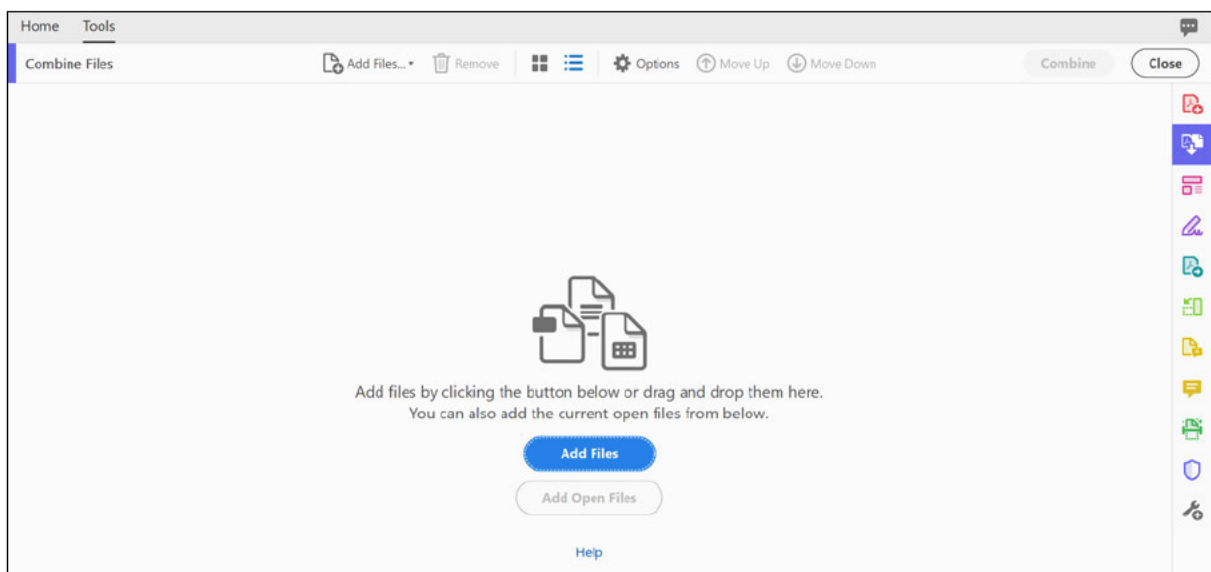
When processing an FOI request/access request, you will need to combine all documents to be released into a single PDF file. Use the **Combine Files** tool to combine documents of various file types.

1. Open the **Combine Files** tool using the shortcut in the right pane or from the Tools center at the top.



2. Add files to combine

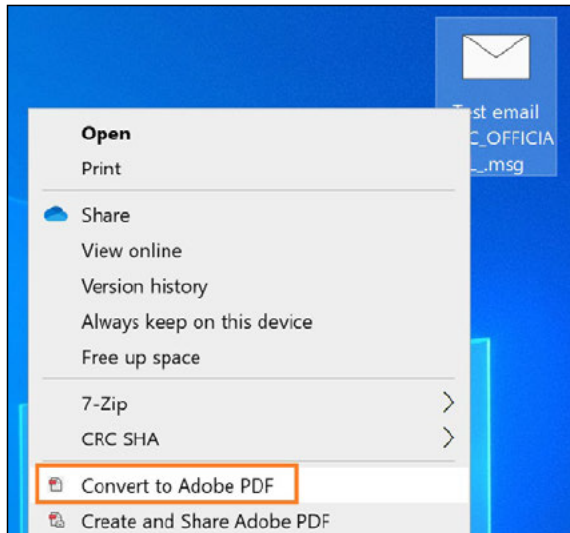
Choose from a variety of file types to merge into one PDF. Non-PDF files (e.g. pictures, word documents, excel sheets etc.) will be automatically converted to PDF files (except for Outlook Items) before being merged. Select **Add Files** and navigate to the location of the files you wish to add. Alternatively, you can drag and drop files directly from your desktop.



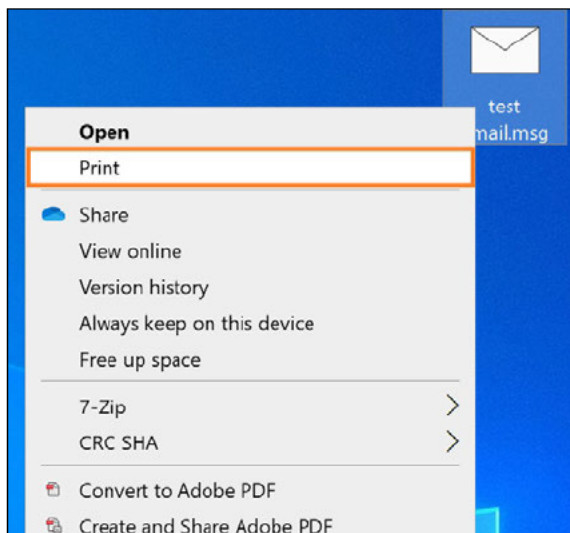
Outlook Items (.msg files)

Outlook MSG files provide a mechanism for the storage of an email message, an appointment, a contact or a task within a file system. We often save emails from Outlook as a file on Resolve or our desktop by drag and drop. Outlook MSG files cannot be directly merged in Adobe Acrobat with other files.

You must first convert it into a PDF. Right-click on the .msg file > select **Convert to Adobe PDF**. Then follow the prompt to save the new PDF file.

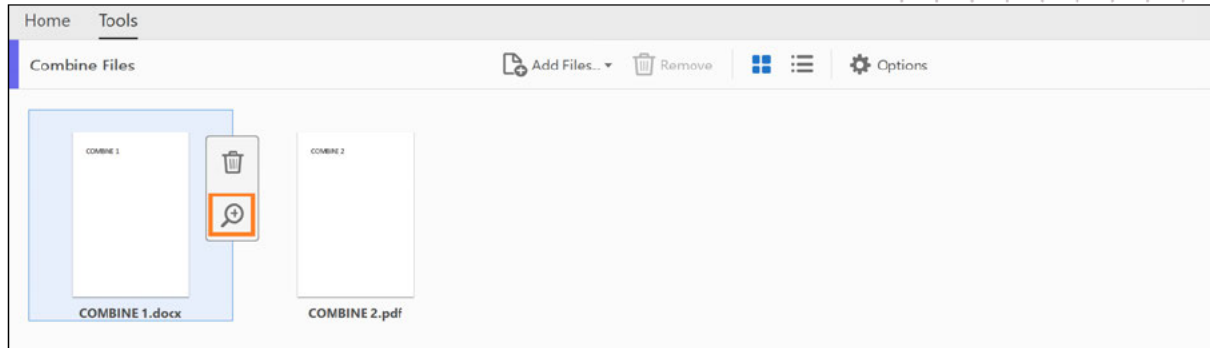


Alternatively, you can use the **Print PDF** by selecting **Print** and follow the prompt to save as a new PDF file.



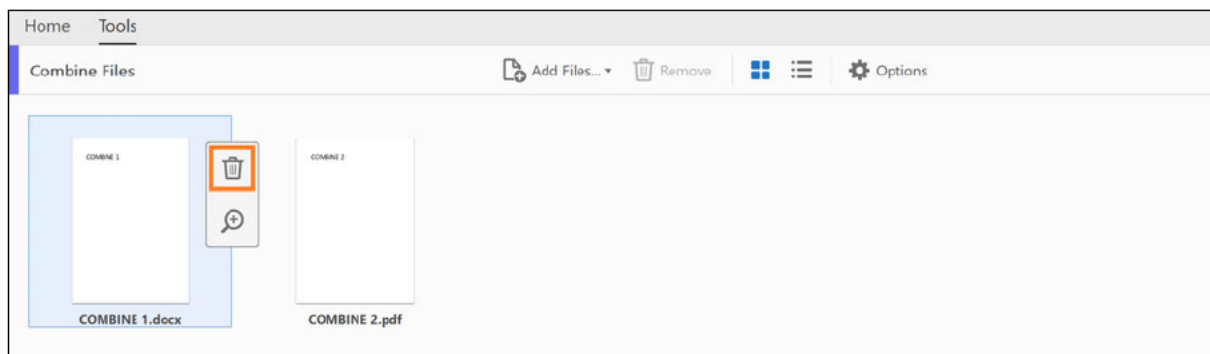
3. Preview file contents

Once you add your files, you can hover your mouse over any of the file thumbnails and click the **magnifying glass** to see an enlarged preview.



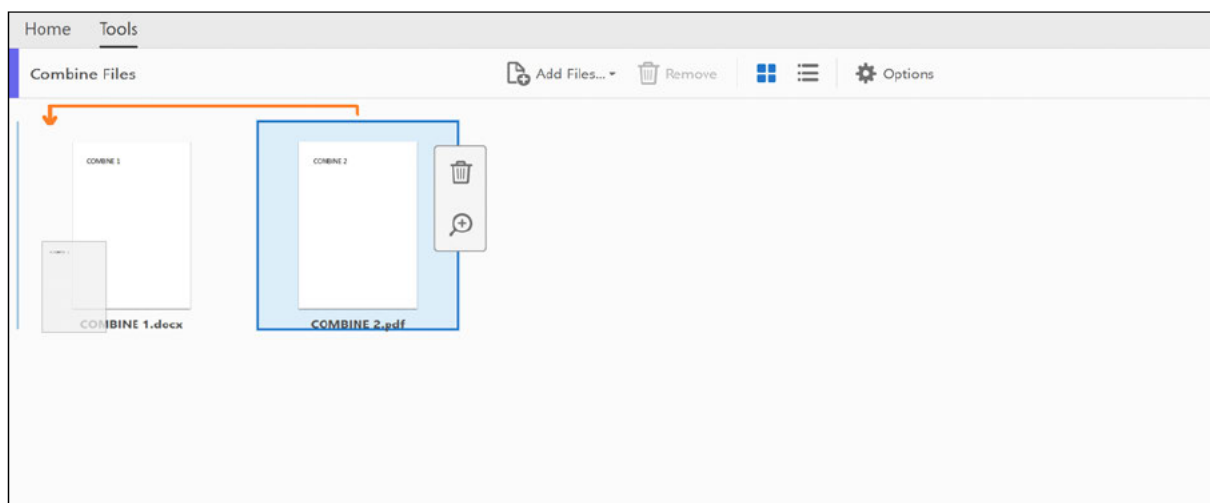
4. Delete pages

To remove unwanted pages, select the Remove trash can icon. Use **Shift + click** to select a series of pages to remove. Use **Ctrl + click** to select specific pages to remove.



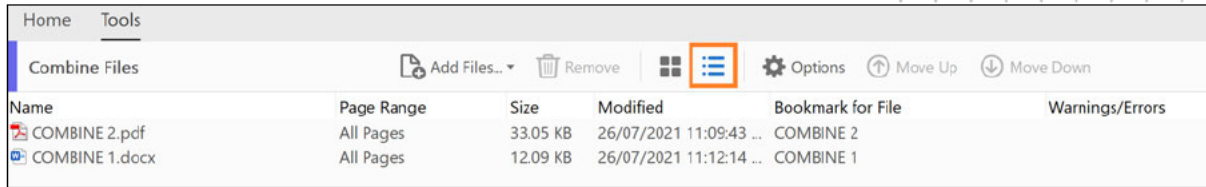
5. Reorder pages

To reorder pages, click the page thumbnail and drag it to its new location.

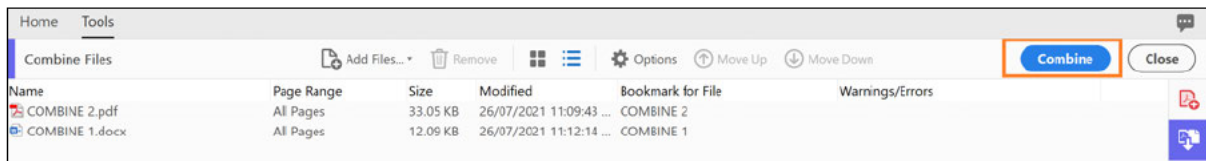


6. Switch to list view

When there is a large number of files to be combined, click on List icon to switch to list view for easier navigation.



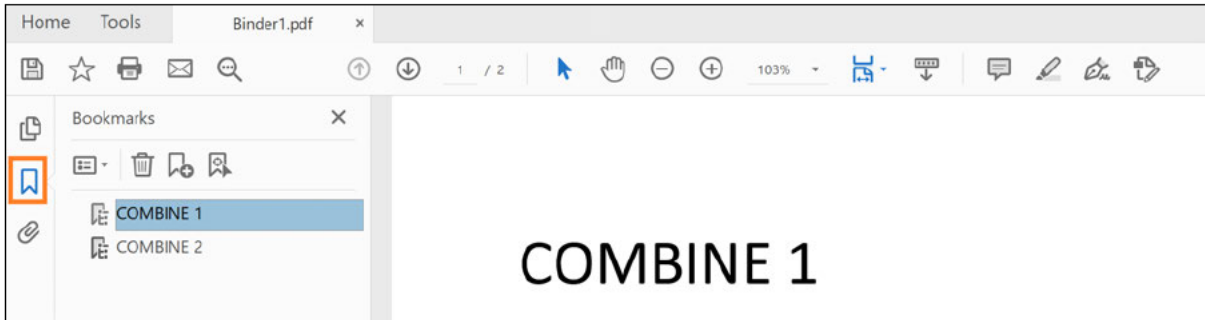
7. Click **Combine** to merge files



Bookmarking

Once the relevant documents have been combined, check the bookmarks to make sure that they match with the schedule of documents.

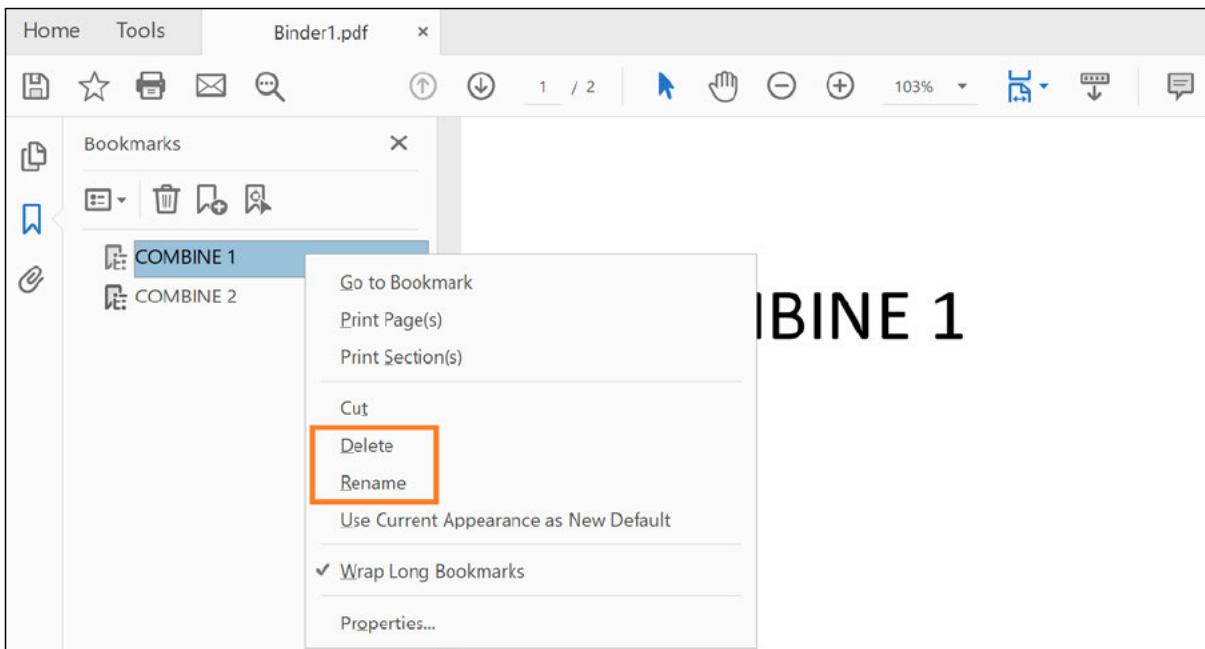
1. Bookmarks are automatically created based on the file name of each source file that were combined. Click on Bookmark icon to access the bookmark panel.



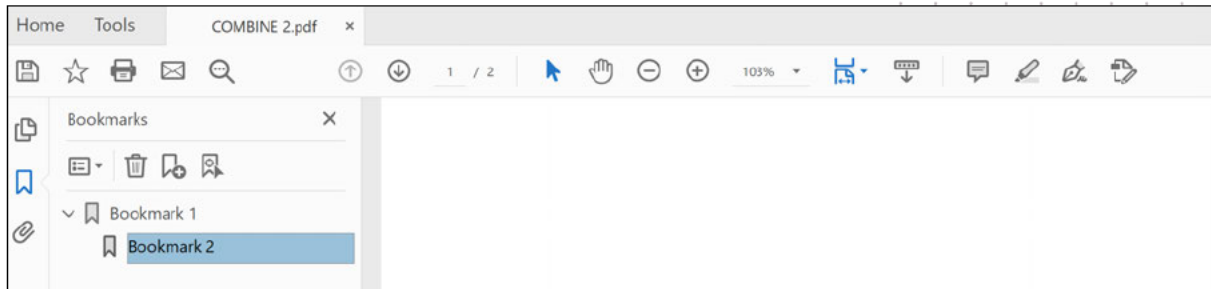
2. Edit bookmarks

Right click on a bookmark to rename or delete the bookmark to match the schedule of documents.

- 💡 To save time, before merging, rename the individual source files as Document 1, 2, 3...etc. so they will automatically be bookmarked as such once merged.

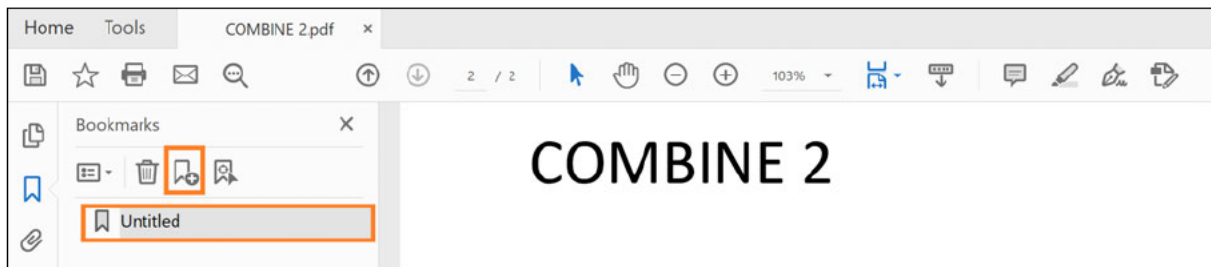


If you are deleting a bookmark with a nested bookmark as below, both bookmark 1 and 2 will be deleted if you delete bookmark 1.



3. Add bookmarks

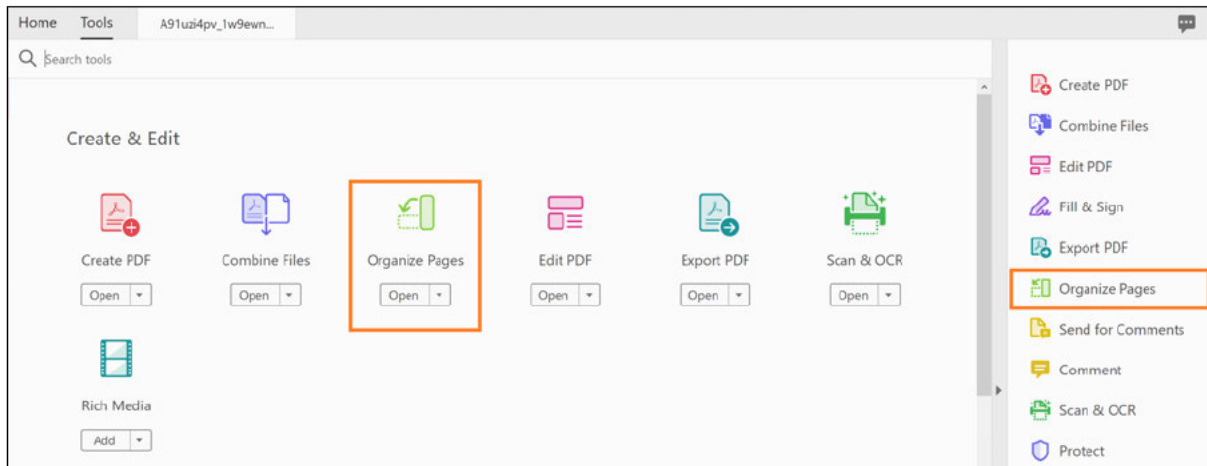
Navigate to the starting page of the document you wish to bookmark. Select **Add bookmark icon** and name your new bookmark.



Organise pages

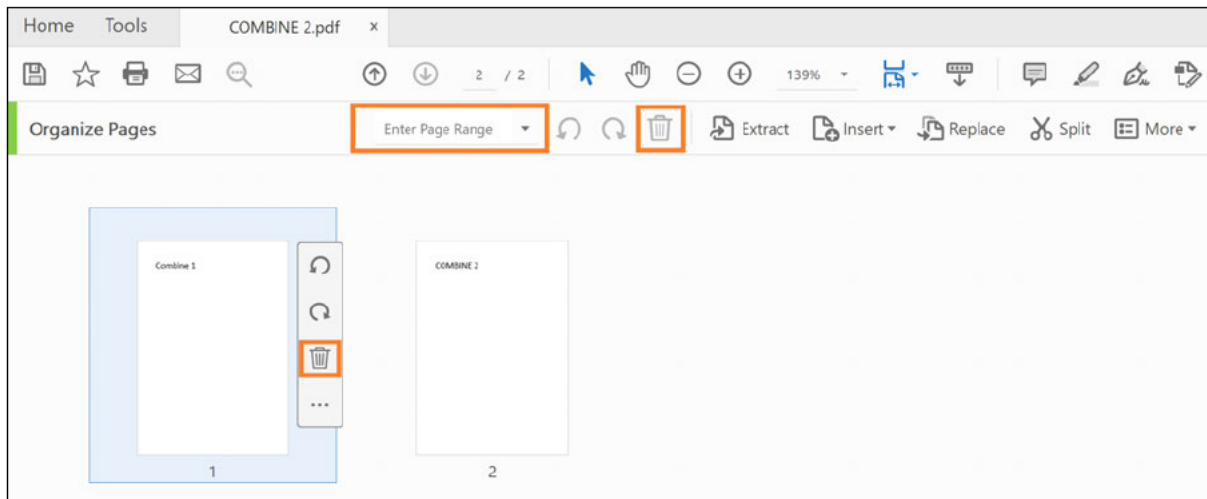
Once the relevant documents have been combined, you may wish to delete duplicates e.g. repeated attachments/email chains using the **Organise** tool. Please make sure that you have previously informed the FOIA/requester that you will be excluding duplicates and /or repeated email streams before deleting them.

Open the **Organise** tool.



1. Delete pages

Select the Remove trash icon to delete particular pages. Alternatively, you can specify a range of pages e.g. 3-4,7,9 and then select Remove trash can icon to delete.



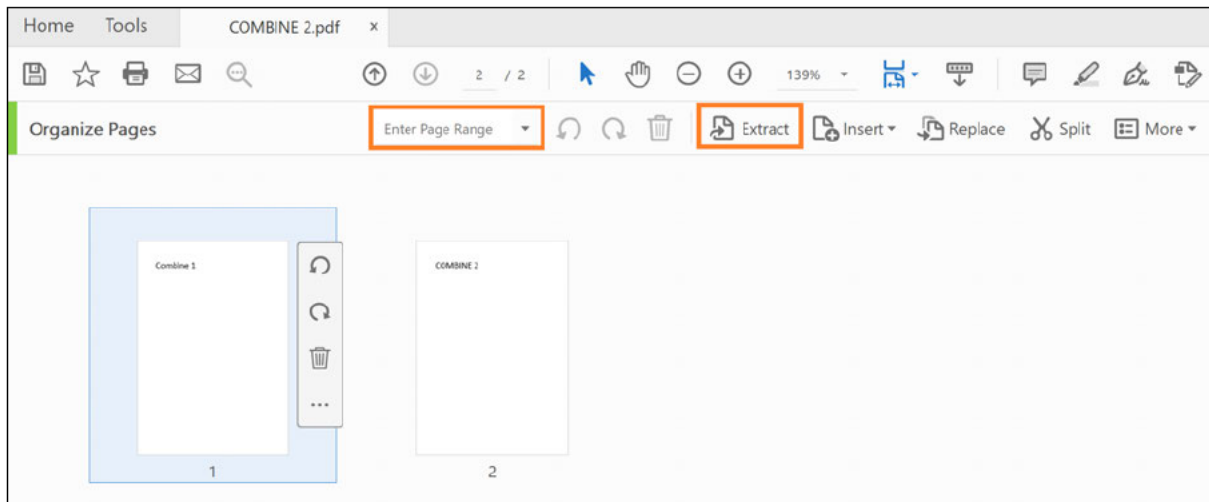
2. Extract pages (useful for 3rd party consultations)

Documents subject to a FOI request may require consultation with third parties if they affect Commonwealth-State relations, are business documents, or are documents affecting a person's privacy. Only particular page/s of the combined document containing third party information may be required for consultation. Use the **Extract pages** tool to combine the relevant pages for consultation.



Only extract the pages after you have bates numbered the document. This will make it easier to keep track when there are concurrent consultations.

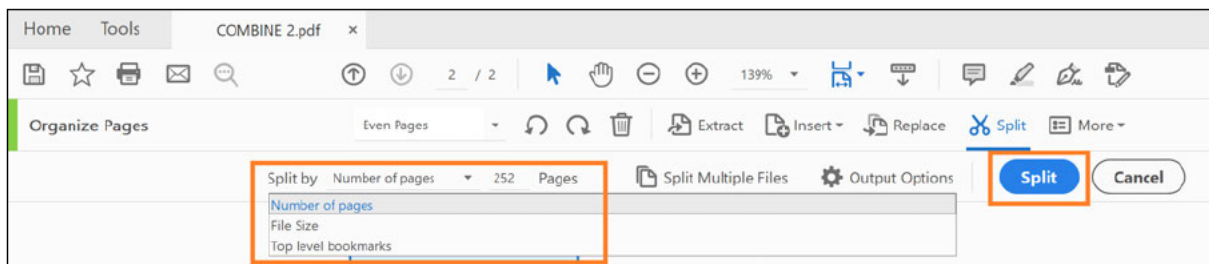
Specify a range of pages e.g. 3-4,7,9 > select **Extract** to generate a separate PDF containing only the specified pages.



3. Split files (useful when the merged file is too large)

You cannot send attachments larger than 20MB on Outlook. Where the combined documents exceed this limit, use the **Split file** tool to create smaller documents.

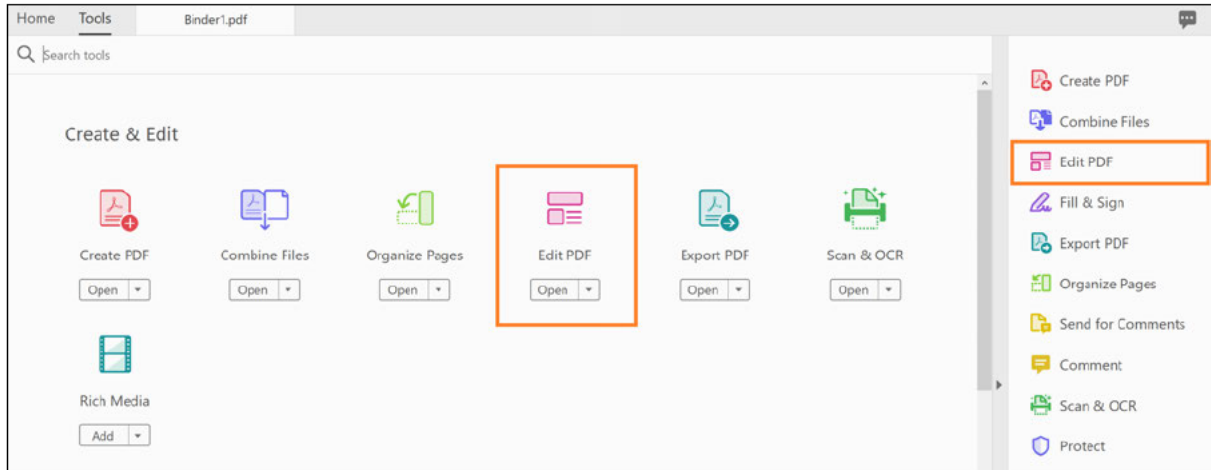
Choose how you wish to split your document > select **Split**. The smaller documents generated will be automatically saved in the same location as the original combined documents.



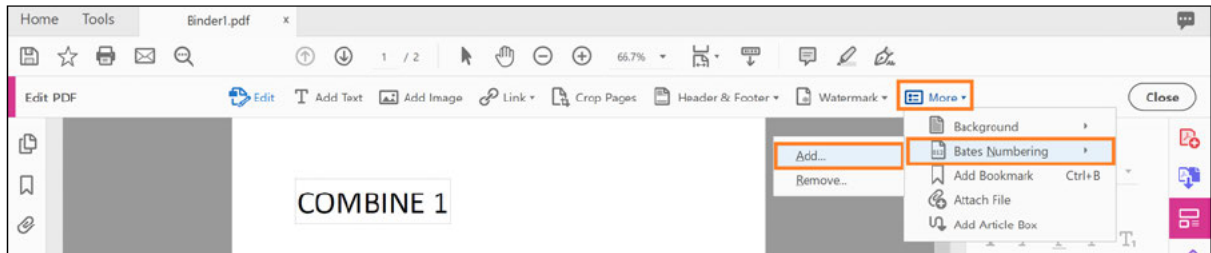
Bates numbering

All combined documents for an FOI request/access request must be bates numbered as follows.

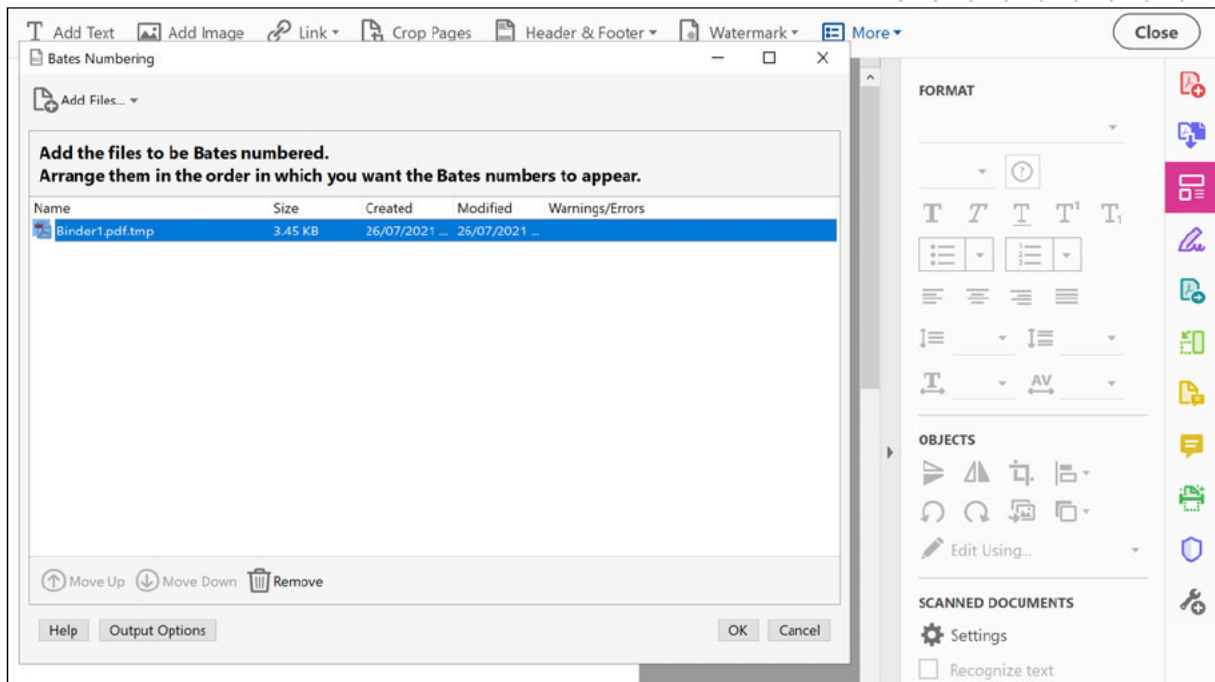
1. Open **Edit PDF** tool.



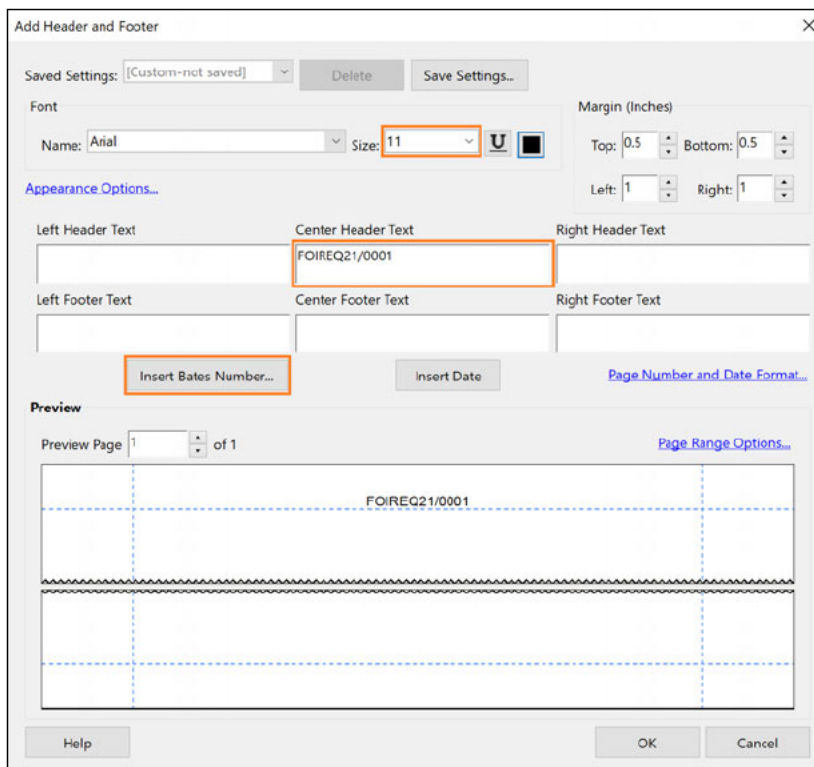
2. In the secondary toolbar, select **More > Bates Numbering > Add**.



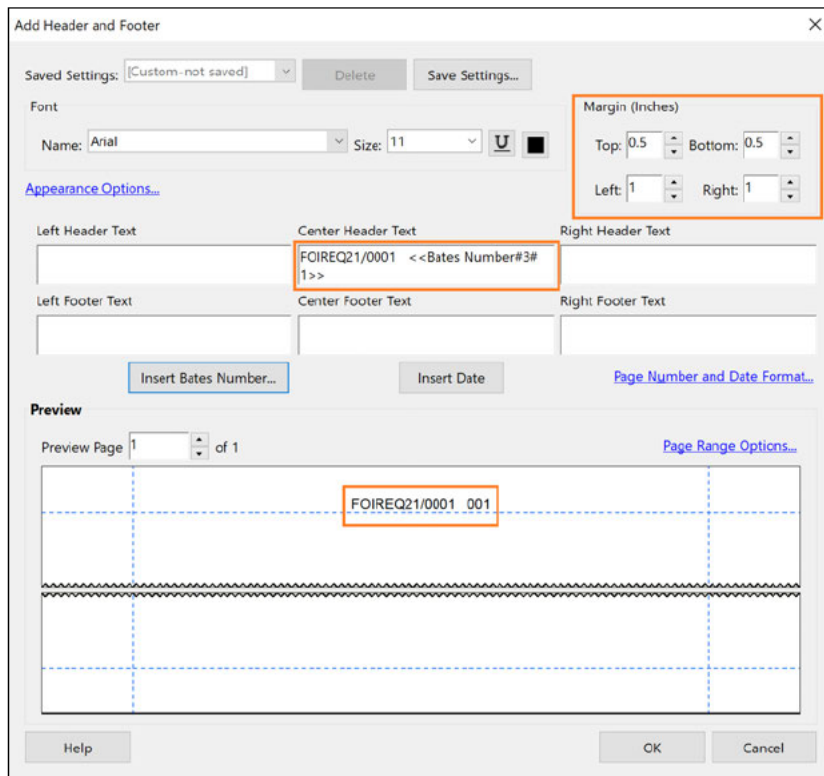
3. You will be prompted to select the file to bates number > **OK**. This should be the first file listed. However, if you have multiple files open, they will all be listed. You can bates number multiple files by selecting any or all of them.



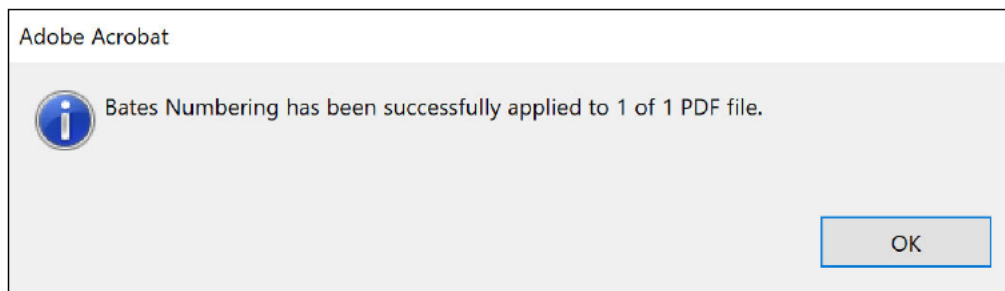
4. To maintain consistency, please change font to **size 11**. Type in file number in **Right Header Text** followed by **three spaces** > click **Insert Bates Number**.



5. In the prompt, select **3** (or 4 for very large files) in **Number of Digits** > **OK**. The **Preview Page** field should update with the bates number. Adjust the **Margin** to move the location of the bates number around if it overlaps with the document text > **OK**.

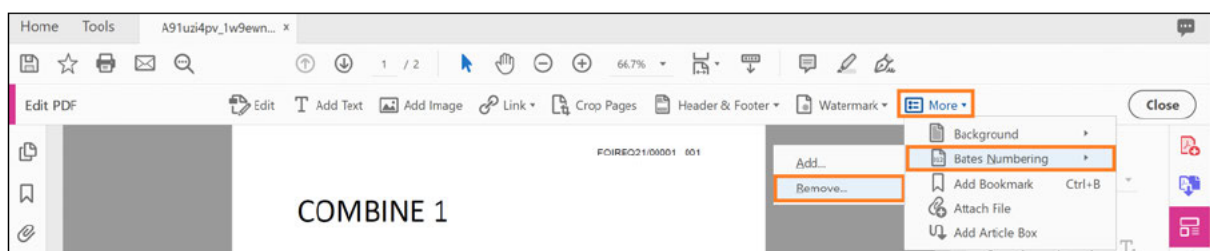


6. Confirmation prompt



7. Remove bates number

Once applied, bates number cannot be edited. To remove a current bates number, open **Edit PDF** tool > **More** > **Bates Numbering** > **Remove**. Repeat step 1 – 6 to add a new bates number.



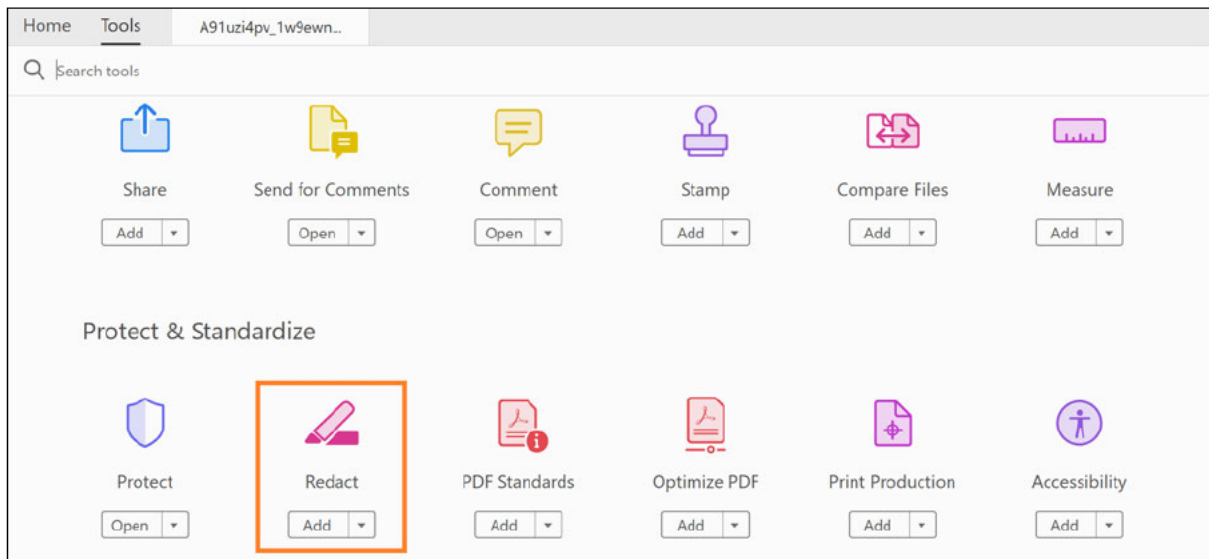
Redactions

Under s 22 of the FOI Act, we must release an otherwise exempt document if it is reasonably practicable to prepare an edited copy with the exempt or irrelevant information redacted. Use the **Redactions** tool as follows.

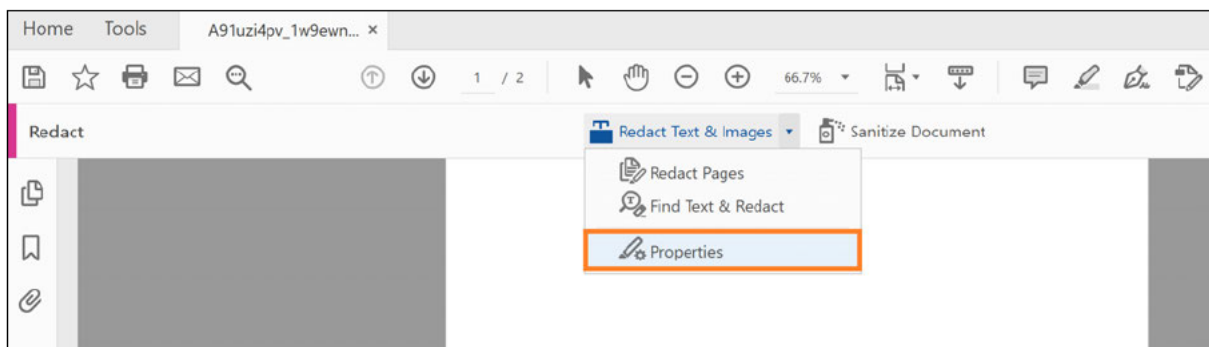
1. Set the redaction properties.

This step sets up how your redactions will appear on the document.

Open the **Redact** tool.



In the secondary toolbar, click the dropdown from **Redact Text & Images** > select **Properties**.



To maintain consistency, please adjust the settings as follows:

- select black for **Redacted Area Fill Colour**
- tick **Use Overlay Text**
- tick **Auto-Size text to fit redaction region**
- select red for **Font Colour**
- insert the relevant exemption (section number and description) in the **Custom Text** field
- **OK** to confirm

Redaction Tool Properties

Appearance General

Redacted Area Fill Color: Use Overlay Text

Overlay Text

Font*: Helvetica Font Size*: 10

Auto-Size text to fit redaction region Repeat Overlay Text

Text Alignment: Left Center Right Font Color:

Custom Text: s 22

Redaction Code:

Code Sets: U.S. FOIA U.S. Privacy Act

Code Entries: (b) (1) (A) (b) (1) (B) (b) (2) (b) (3) (A) (b) (3) (B) (b) (4)

Add Selected Entry Edit Codes

Redaction Mark Appearance

Outline Color: Fill Color:

Fill Opacity: 100%

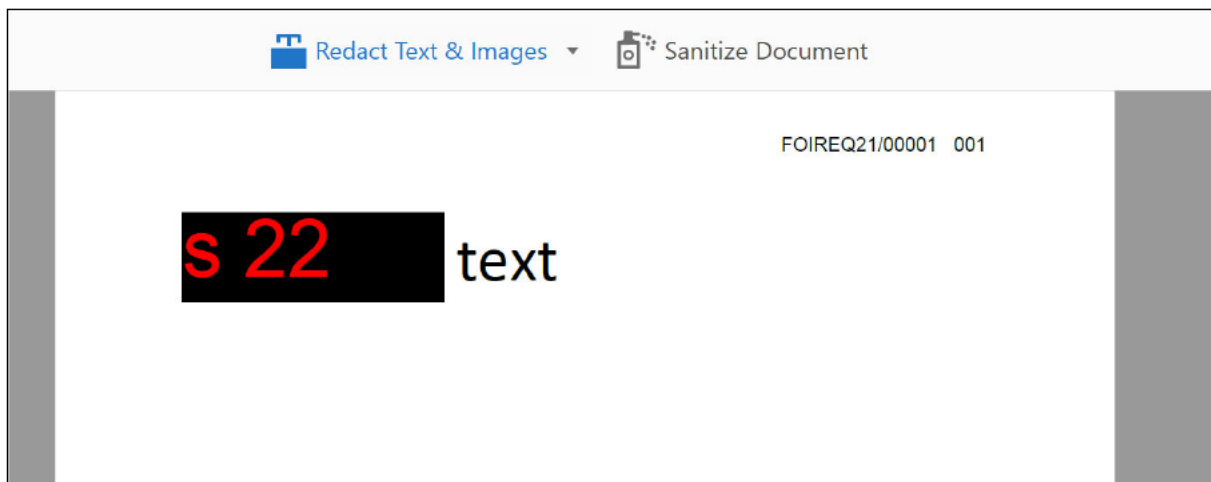
Locked OK Cancel

2. Mark for redactions

This step marks the information to be redacted.

Redacting texts

Highlight the text that you wish to redact. A red box should appear around the text marked for redaction. If you hover your mouse over the marked redaction, the relevant exemption specified in the previous step should appear.



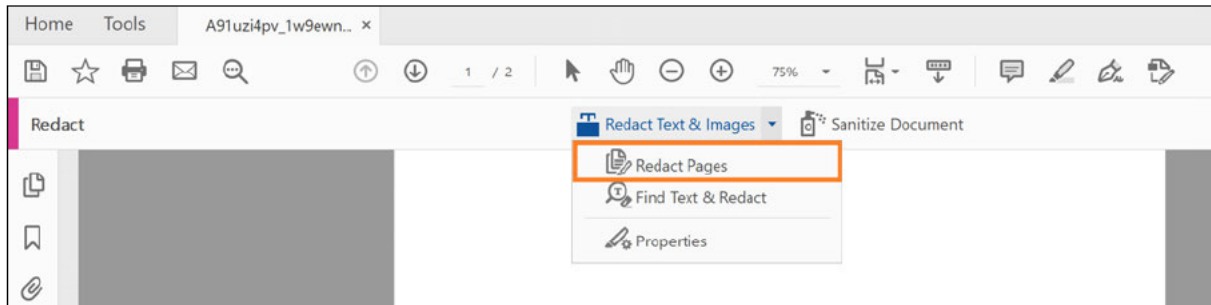
Redacting texts in an image

Draw a box over the text within the image you wish to redact. Again, a red box should appear around the text marked for redaction. If you hover your mouse over the marked redaction, the relevant exemption specified in the previous step should appear.

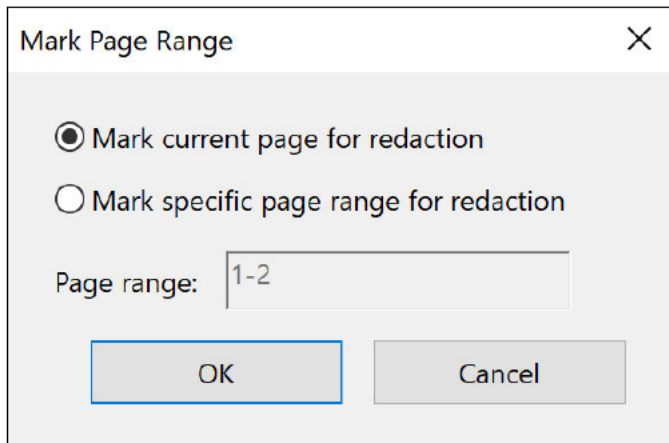


Redacting pages

In the secondary toolbar, click the dropdown from **Redact Text & Images** > select **Redact Pages**.

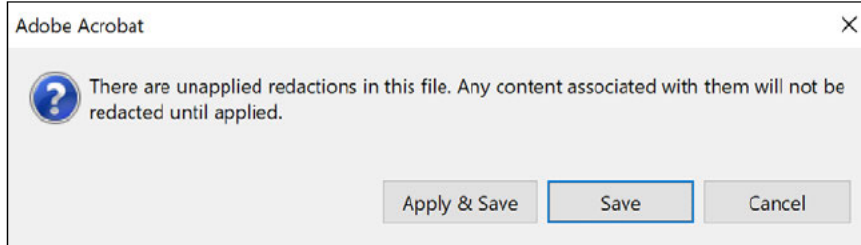


Select from the prompt the page/s that you wish to redact.



3. Save an unredacted copy for review

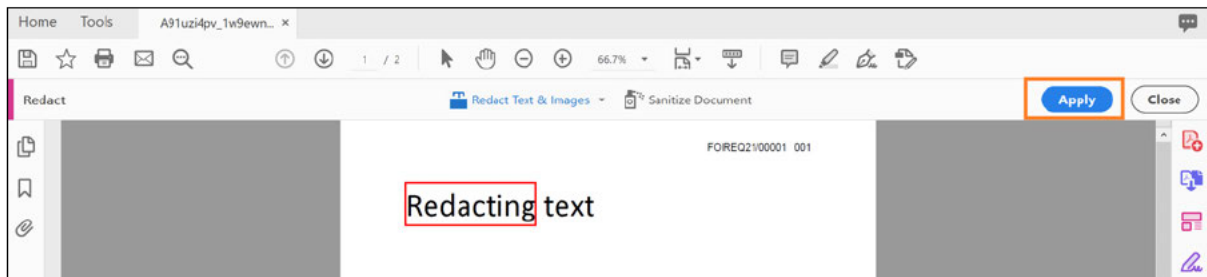
Always save an unredacted copy for second counsel. When prompted to save upon exiting, choose **Save** to leave the document unredacted.



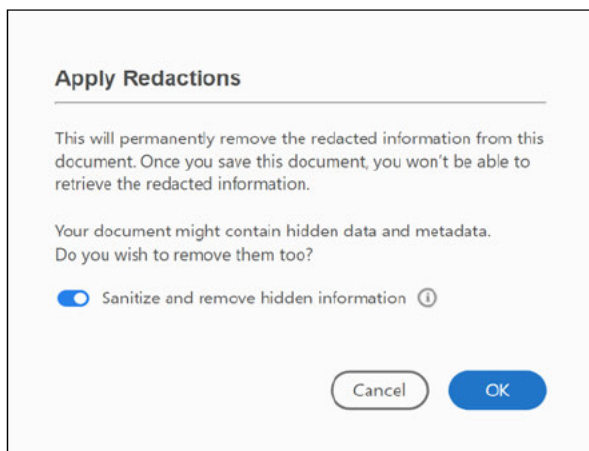
4. Apply redactions

This step involves the actual deletions of information. Once redactions have been applied, the property of a document fundamentally changes which makes it harder to add more redactions on top. Therefore, ensure all intended redactions have been marked and cleared before applying redactions.

Once the file is cleared for redaction, open the file in Adobe Acrobat again. Open the **Redact** tool > select **Apply**.



Make sure the **Sanitize** option is switched on to remove any hidden data and metadata > **OK**.



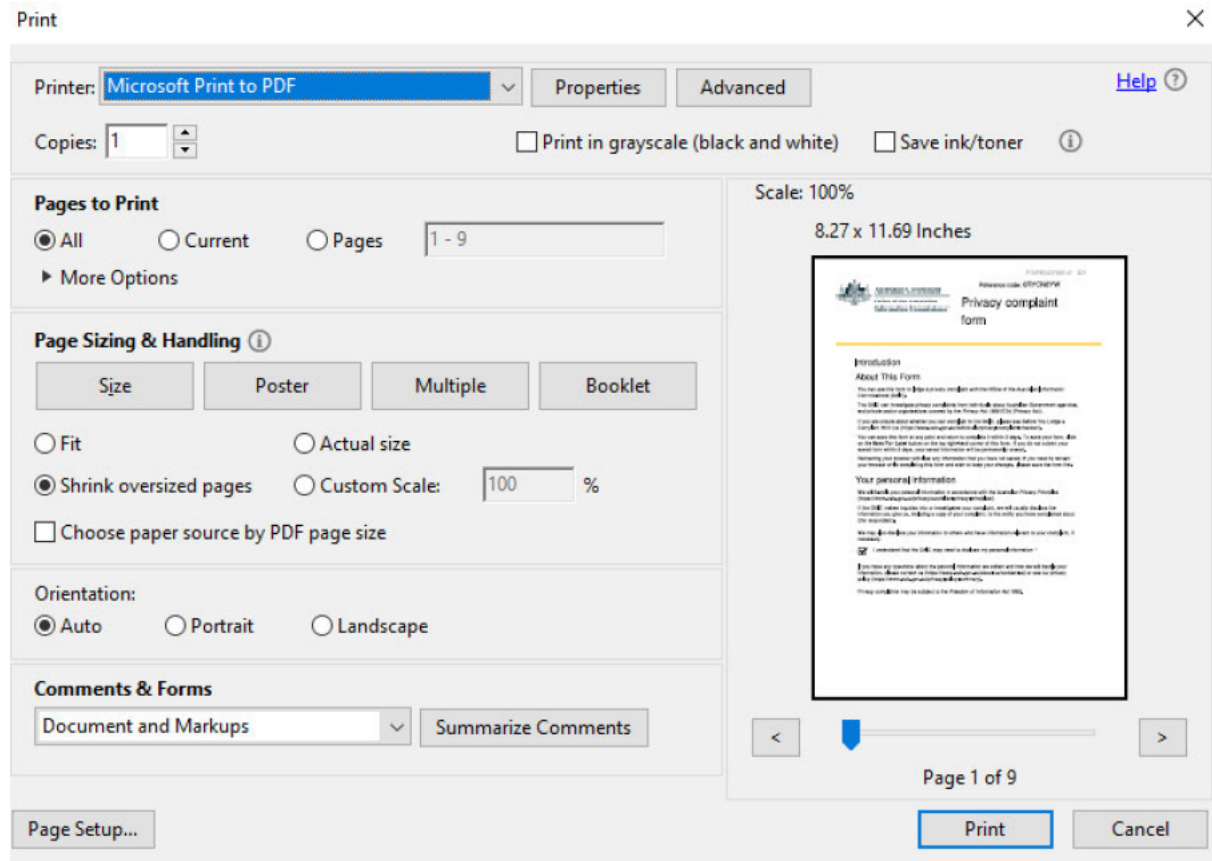
Finally, follow the prompt to save the new redacted file.

Note – Sanitising Smart Forms

OAIC smart forms (eg, privacy complaint forms) often become corrupted and digits become missing after undergoing sanitising. This problem can be overcome by following the below steps:

1. Print to PDF

Open the smart form in Adobe and select File > Print > set printer to Microsoft Print to PDF > select Print.



You will be prompted to save the document.

2. Sanitise

Once saved, open the new PDF and follow the usual steps to sanitise.

Once saved again, the smart form should remain readable.

Calculating time frames

Wednesday, 8 May 2024 12:37 PM

When the standard 30 day statutory timeframe is to be extended for any reason:

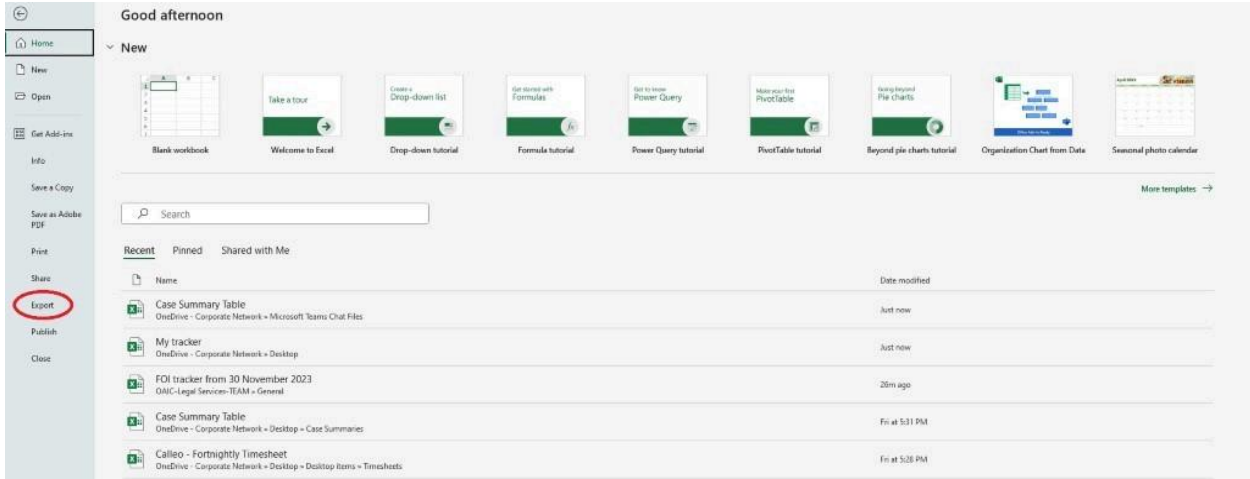
1. Calculate the new due date.
2. Confirm the calculated due date with second lawyer. Send file note requesting confirmation of the calculated due date.
3. Complete the summary field with new due date.
4. Update Resolve and the FOI tracker.

Exporting Excel Spreadsheets to PDF

27 May 2024 12:19

You may be asked to export a spreadsheet to pdf, as a document for the purposes of the FOI Act.

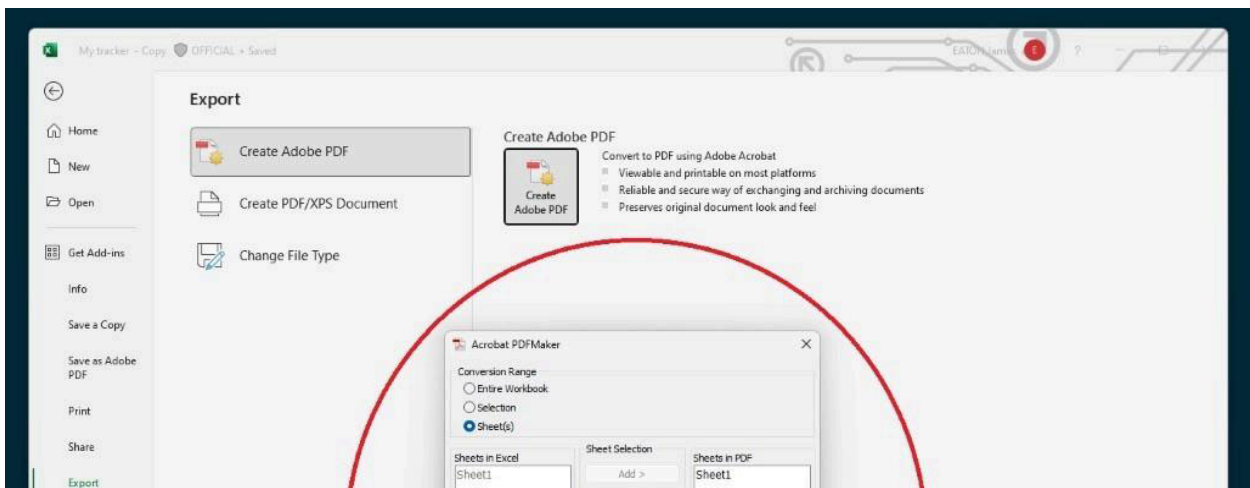
1. First, open the excel file you wish to export.
2. Then click on 'File' (top left) which will bring you to 'Home' then 'Export':

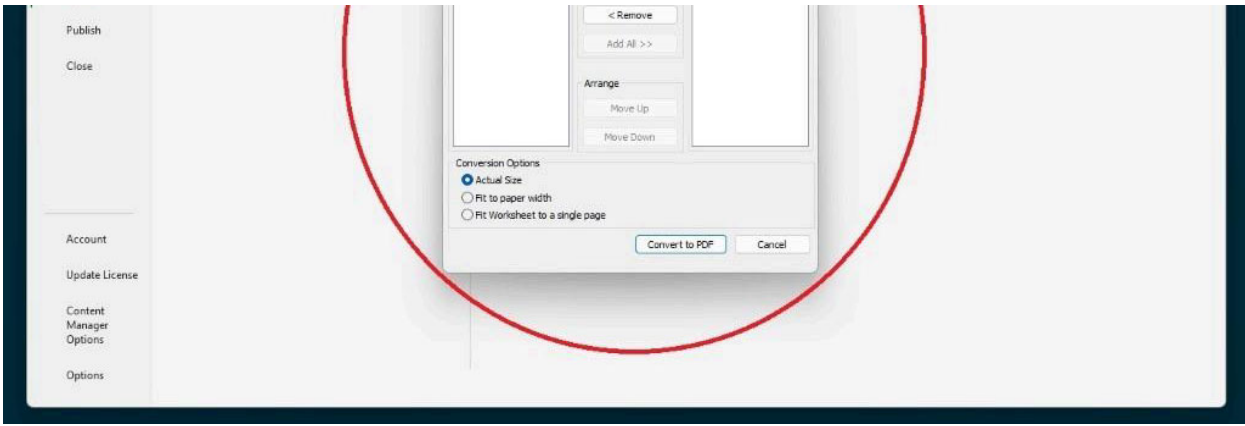


3. Click on 'Create Adobe PDF'



4. You will be presented with a number of choices as seen in the pop-up below. You may select whether you want to export the entire workbook or individual sheets. The practical choice when exporting is often to choose 'Fit to paper width'. This will ensure that the writing in the workbook is legible for the viewer without excessive zooming in. This may not always be the case, so testing different 'conversion options' may reveal the desirable result.

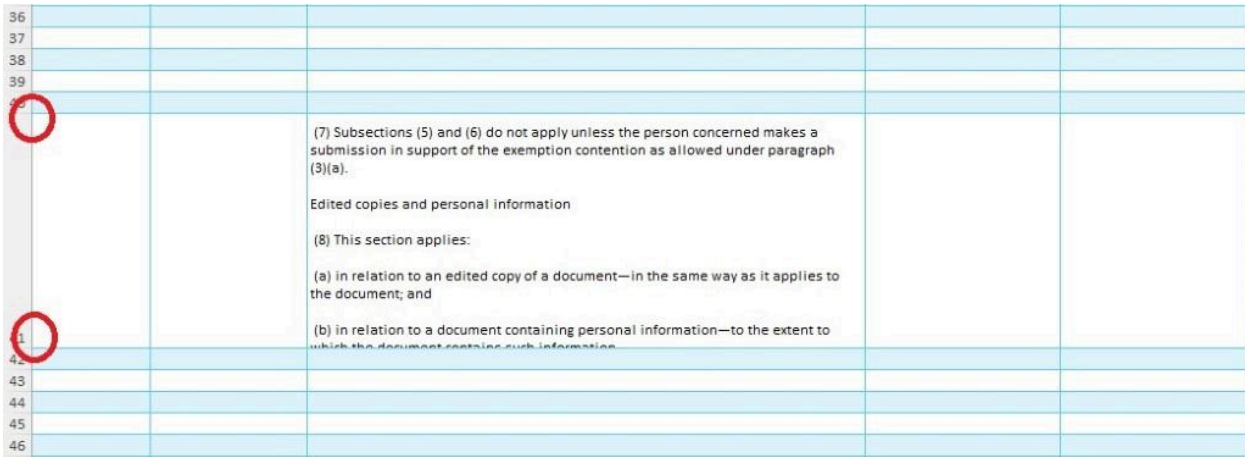




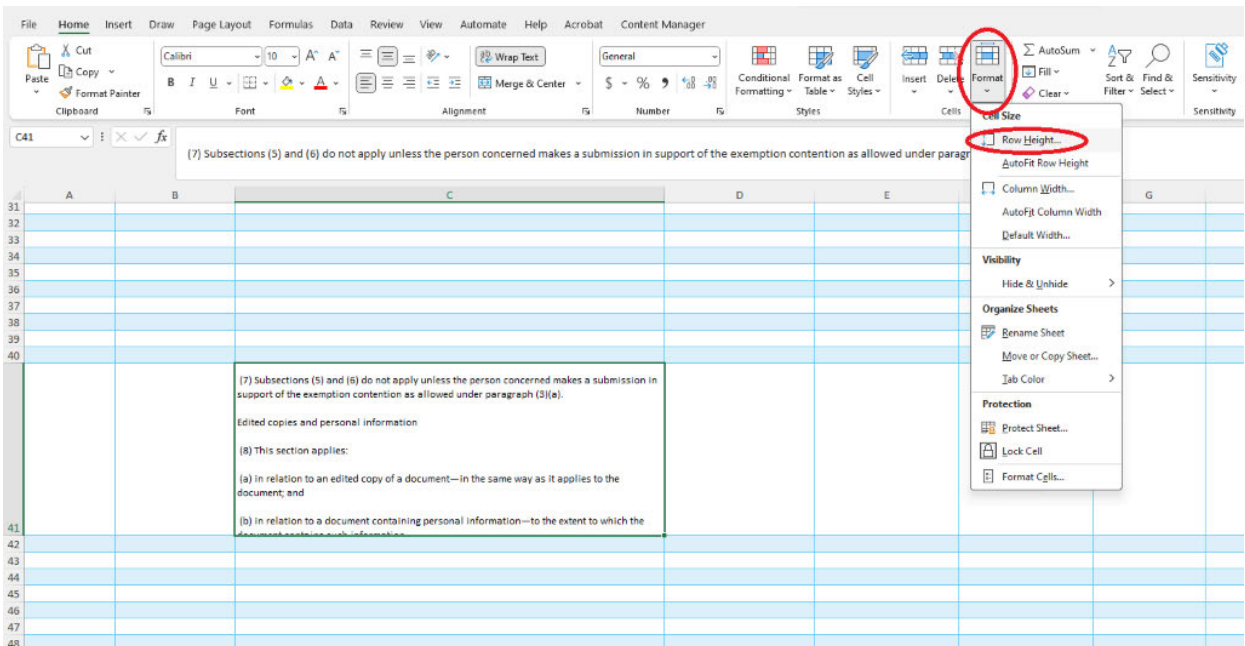
- 5. A common problem to watch out for, is when you export a spreadsheet to a pdf and the information in the cells appears 'cut off', as in the example below:



A simple fix for this dilemma is to 'widen' the cells on your spreadsheet, and then to try exporting again. You can do this manually, by hovering your mouse where the red circles below are located and dragging to widen the borders of the cells:



Or automatically, by highlighting the cells you wish to change and selecting 'Format' and 'Row Height' and inputting a height number:



The trick is to make sure that the cells have been widened sufficiently, such that no text is touching the borders of the cells. See below:

		(7) Subsections (5) and (6) do not apply unless the person concerned makes a submission in support of the exemption contention as allowed under paragraph (3)(a). Edited copies and personal information (8) This section applies: (a) in relation to an edited copy of a document—in the same way as it applies to the document; and (b) in relation to a document containing personal information—to the extent to which the document contains such information			

- 6. Should the issue persist, try continuing to widen the relevant cells until it is resolved. **Remember**, you may also obtain better results by changing the 'conversion options' as discussed at step 4 above.

S&R Privacy DR CC SPOC

Monday, July 22, 2024 12:08 PM

Amanda Kennish (SPOC officer) should be copied into all FOI requests for Privacy DR.

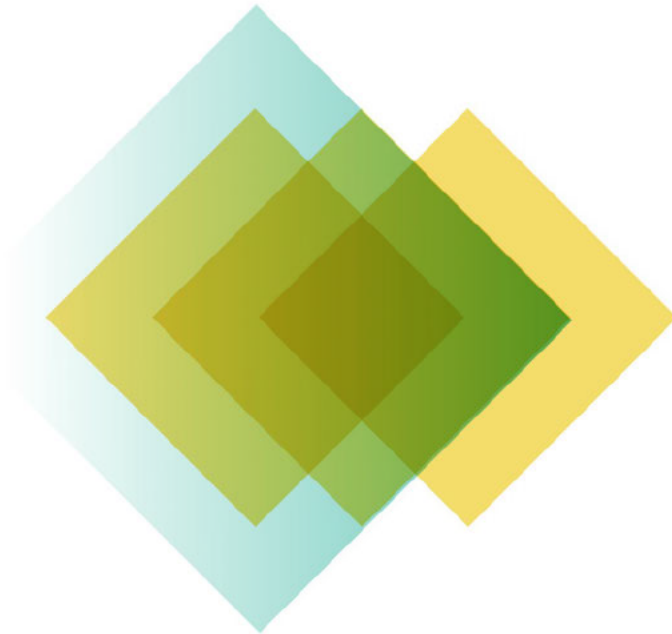


Australian Government

Office of the Australian Information Commissioner

Guidance for staff: Privacy in practice

How the OAIC manages its privacy obligations



24 June 2021

Audience: OAIC staff

Location: Intranet - FYI

Review date: Annual

Version	Name	Changes	Date
1.0		Original document	November 2018
2.0	Legal	Revised	March 2021
2.1	Legal	Formatting updates	June 2021

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Background

Does this guidance apply to me?

This guidance is for all personnel including statutory appointees, ongoing and non-ongoing employees, temporary agency staff, contractors, consultants, interns, work experience trainees and others who have access to personal information held by or on behalf of the OAIC.

General expectations of personnel

The OAIC recognises the high level of awareness that most personnel hold about the application of the *Privacy Act 1988* (Cth) (**Privacy Act**) and the Australian Privacy Principles (**APPs**) to operations. Our people are best placed to recognise risks and opportunities and to help us lead others with exemplary privacy practices.

Accordingly, we expect our personnel to take an active role in privacy management and compliance at the OAIC.

Please speak with your manager if:

1. You see a risk or an issue relating to our management of personal information;
2. You have identified an opportunity to improve the way we manage personal information;
3. You believe that any project on which you are working will have a significant impact on the privacy of individuals, as a PIA may be required in respect of that project.¹

Managers are expected to raise these matters with the Chief Privacy Officer promptly and to ensure that risks are appropriately documented in the OAIC's risk registers in accordance with our risk management policies, detailed below.

Our functions and activities

The OAIC as an APP entity

While the Privacy Act confers on the Commissioner a range of privacy regulatory powers, the OAIC too is an APP entity and has obligations to properly manage the collection, use and disclosure of personal information. This document describes how the OAIC manages its obligations under the Privacy Act.

About the OAIC

In the performance of its functions, the OAIC collects, uses, and discloses personal information. The OAIC has three primary functions, namely:

- privacy functions, conferred by the Privacy Act and other laws;

¹ Privacy (Australian Government Agencies — Governance) APP Code, s 12.

- freedom of information functions, in particular oversight of the operation of the *Freedom of Information Act 1982 (FOI Act)* and review of decisions made by agencies and ministers under that Act; and
- government information policy functions conferred on the Australian Information Commissioner under the *Australian Information Commissioner Act 2010 (AIC Act)*.

Our routine collections, uses and disclosures required by these functions are described below and in [our privacy policy](#) on the OAIC website.

Collection of personal information by the OAIC

The OAIC routinely **collects** personal information relating to:

- Complainants, applicants, and authorised representatives when handling privacy and freedom of information (FOI) complaints and FOI reviews or taking other regulatory action under the Privacy or FOI Acts. This can include sensitive information.
- Respondents such as government officers or organisation contacts (for example, employees and witnesses) when dealing with a complaint under the Privacy Act, or a complaint, extension of time or application for IC review under the FOI Act.
- Job applicants, people who notify the OAIC about a data breach or report a matter for investigation.
- Individuals who wish to engage with us, for example by attending an event, joining a privacy or FOI network, or providing feedback, or when engaging in policy/advice work. This includes counterparts with regulators in other jurisdictions and overseas and other business contacts, and
- Individuals who provide feedback or other information to the OAIC via social networking services such as Facebook and Twitter.

Whilst we usually collect personal information directly from the relevant individual, at times, we collect personal information from a third party or publicly available source.

Use of personal information by the OAIC

The OAIC routinely **uses** personal information for the following purposes:

- To conduct privacy investigations, either in response to complaints or on the Commissioner's own initiative.
- To review decisions made by agencies and ministers under the FOI Act.
- To handle privacy and FOI complaints.
- To receive notices about eligible data breaches.
- To conduct privacy assessments.
- To monitor agency administration in relation to FOI and privacy.

- To allow the OAIC to properly manage its employment of staff or to assess the suitability of candidates for employment at the OAIC, and
- To engage with and provide advice to stakeholders in the public and private sectors and the Australian community.

Disclosure of personal information by the OAIC

The OAIC routinely **discloses** personal information in the following circumstances:

- To the respondent and the complainant, and where relevant, affected third parties, where a privacy or FOI complaint is made, or an FOI review is sought.
- To others as relevant where a notifiable data breach is reported to the OAIC and the notifier agrees to or would reasonably expect the OAIC to disclose the personal information.
- To the My Health Records System Operator where a breach is notified to the OAIC under the My Health Records Act.
- To another review body where a complainant, applicant or respondent seeks an external review of the OAIC's decision or makes a complaint to the Commonwealth Ombudsman.
- Where a party to a published decision, determination or report asks for their name to be published.
- To the media where an individual agrees for personal information relating to a complaint to be disclosed, or would reasonably expect it to be disclosed, and
- To other Australian or international regulators, or to external dispute resolution (EDR) schemes if the individual agrees and where the information will assist the OAIC or the other regulator or EDR scheme investigate a matter.

There is also regular disclosure of staff information, for example, when successful applicants are announced in the Gazette.

We only disclose sensitive information for primary purposes or for directly related secondary purposes which are reasonably expected or agreed to by the individual.

Our suppliers and partners

At times, we engage third parties to perform some of our activities, including to host our website servers and manage our information technology and human resources information. You can read more about our suppliers and management of suppliers in [Personal information inventory and Supplier management](#).

International dealings

The OAIC holds limited personal information about people residing overseas.

We transfer personal information outside of Australia in limited circumstances. Generally, this will occur only where required to properly handle a complaint or application. For example, where the

complainant or respondent is based overseas, where the respondent is Australian based but is a related body corporate to an overseas company and where a complaint is made to regulators or other bodies overseas in addition to the OAIC.

We exchange information with overseas contacts such as personnel of foreign regulators.

Personal information holdings

It is an obligation of our Chief Privacy Officer to maintain a record of the OAIC's personal information holdings.² The OAIC has mapped our personal information holdings to show where personal information resides in our systems. See Personal information inventory to read more about our holdings.

How we manage our commitments under the APPs

APP 1 – Open and transparent management of personal information

Ensures that the OAIC manages personal information in an open and transparent way. This includes having a clearly expressed and up to date APP privacy policy.

Note: In respect of APP 1.2, the OAIC is also bound by the *Privacy (Australian Government Agencies – Governance) APP Code 2017 (APP Code)*. The APP Code is referenced in footnotes where relevant.

What we do and our expectations of personnel Governance and accountability

The OAIC recognises the high level of awareness that most personnel hold about the application of the Privacy Act and the Australian Privacy Principles (**APPs**) to operations. Our people are best placed to recognise risks and opportunities and to help us lead others with exemplary privacy practices. Accordingly, we expect our personnel to take an active role in privacy management and compliance at the OAIC.

Personnel are supported by three key roles with complementary accountabilities for privacy outcomes at the OAIC. These are the Chief Privacy Officer, Privacy Officers, and the Privacy Champion.

Privacy Champion

The OAIC has appointed a Privacy Champion (the OAIC's Deputy Commissioner), who holds accountability for the following actions:

- Promoting a culture of privacy within the agency that values and protects personal information.
- Providing leadership within the agency on broader strategic privacy issues.
- Reviewing and/or approving the agency's privacy management plan, and documented reviews of the agency's progress against the privacy management plan, and

² Privacy (Australian Government Agencies – Governance) APP Code 2017, s 10(5)(b).

- Providing regular reports to the agency's executive, including about any privacy issues arising from the agency's handling of personal information.³

How to contact our Privacy Champion:

Elizabeth Hampton
Deputy Commissioner
Elizabeth.hampton@oaic.gov.au
Telephone: +61 2 9284 9832

Chief Privacy Officer and Privacy Officers

Within the OAIC the CPO is the primary point of contact for advice on privacy matters and coordinates a range of functions to help the agency comply with the Code.⁴ However, it is ultimately the OAIC that is required to comply with the Code and the Privacy Act. The OAIC is expected to provide the CPO and its Privacy Officers with the necessary resources, time, and support to allow them carry out their role effectively.

The Code sets out a list of the Privacy Officer functions that the OAIC must ensure are carried out. These functions will usually be performed by the CPO and the Privacy Officers but may also be performed by another person (or persons) in accordance with the existing processes or specific requirements of the agency. The Privacy Officer functions required under the Code include:

- Providing privacy advice internally. The CPO, for example, may give advice to colleagues on:
 - the development of new initiatives that have a potential privacy impact
 - the general application of privacy law to the agency's activities
 - what to consider when deciding whether to carry out a Privacy Impact Assessment (PIA)
 - what safeguards to apply to mitigate any risks to the privacy of individuals
- Liaising with the Executive and the agency at large about privacy matters in the OAIC and how to best undertake a range of functions to help the agency comply with the Code.
- Coordinating the handling of internal and external privacy enquiries, privacy complaints about the OAIC as an agency, and providing advice on requests for access to, and correction of, personal information. On receipt of a privacy enquiry or complaint, the CPO will talk to the manager and/or officer relevant to the enquiry or complaint. The CPO will generally refer privacy complaints to the Privacy Officers to assist with management of the complaint.
- Responsibility for maintaining a record of the OAIC's personal information holdings
- Assisting with the preparation of PIAs, which are required for all high privacy risk projects
- Measuring and documenting the OAIC's performance against its privacy management plan.

³ APP Code s 11(4)

⁴ APP Code s 10(4)

The CPO and Privacy Officers have additional functions including delivering privacy training to agency staff, proactively monitoring compliance, and managing the OAIC's response to data breaches.

How to contact our Chief Privacy Officer:

Chief Privacy Officer: Caren Whip

caren.whip@oaic.gov.au

Telephone: +61 2 9284 9826

The accountabilities of the Chief Privacy Officer and the Privacy Champion are documented in their respective performance management agreements.

Privacy Policy

Several key policies (external and internal) set out the OAIC's framework for the handling of personal information.

The OAIC's [privacy policy](#) is published on our website. It has a Flesch Kincaid Reading Ease score of 6 (meaning it can be comprehended by 11 to 12-year-olds). It is accompanied by a [summary of the policy](#).

The OAIC has a separate [human resources privacy policy](#). The Chief Privacy Officer is accountable for maintaining these policies.

All personnel are expected to comply with these policies and to raise any questions or concerns with their manager.

Privacy management plan

The OAIC has developed and implemented a privacy management plan and this is reviewed annually by the Executive.⁵

All personnel are expected to read the OAIC's current privacy management plan (**PMP**) ([D2018/011921](#)) and to action any responsibilities assigned to them under it. Managers are expected to monitor and report to the Chief Privacy Officer on the progress of these actions.

Training, awareness, and culture

About 80% of our staff are directly involved in the regulation of or providing advice on the APPs. As a result, there is a high level of awareness amongst personnel about privacy obligations and best practice. It is expected that most staff, after their induction and on-the-job training will generally have a relatively detailed understanding of the APPs.

When new employees are inducted, they attend face to face training with the OAIC's privacy officers. This training covers the privacy obligations of all personnel, and policies and procedures relating to

⁵ The APP Code requires the OAIC to have a PMP (s 9(1)) and to measure and document its performance against its PMP at least annually (s 9(3)).

privacy.⁶ The Chief Privacy Officer routinely updates content based on lessons learnt from complaints and enquiries data over the preceding period.

The OAIC recognises the need for annual refresher training on privacy obligations and good privacy practices. Online, as well as face-to-face awareness and training programs are provided to staff.

Aside from formal training and awareness activities, the OAIC aims to embed a strong culture of good privacy practice through leadership by example. Managers are expected to exemplify and manage good privacy practices through their day-to-day supervision and mentoring of staff, including through remote oversight.

Access and correction

Information for the public about how to access and seek correction of personal information held by the OAIC is on our website.

In many cases, personal information is updated during case management by way of an informal request with the case manager.

Our internal standard operating procedure for managing formal access and correction requests can be found on our '[Access our information](#)' page on the OAIC website.

Complaints and enquiries

Information about how to make a complaint or inquiry about the OAIC's handling of personal information is outlined in our privacy policies, accessible on the OAIC website.

Our internal processes for capturing and managing complaints and inquiries can be found on the Intranet. See for example, our Enquiries Line Resolve Guide [D2013/011438](#) and our Guide to assisting on the Enquiries Line ([D2013/011442](#)).

Privacy complaints about the OAIC

Where an individual complains to the OAIC under s 36 of the Privacy Act (in its capacity as a regulator), that the OAIC has interfered with their privacy, there is a risk that the OAIC will be perceived to be biased or may have a conflict of interest in investigating its own actions. That is, a reasonable observer might consider that the OAIC may not bring an impartial mind as the regulator, in regulating its own actions.

If a complaint is made about the OAIC's handling of personal information, it would be handled by a more senior officer than the officer to whom the complaint relates and would be conducted in accordance with the Australian Public Service Values, Code of Conduct and guidelines for handling misconduct.

In order to mitigate this risk, the OAIC has decided on a process by which it may seek the assistance of an appropriately qualified and experienced external consultant to conduct an independent investigation into the act or practice about which the complainant complains. The decision to outsource a s 36 privacy complaint against the OAIC to an external investigator must be made by the

⁶ APP Code s 16

Australian Information Commissioner or an Executive delegate. Additional information is available from 'Guidance for staff: 'Dealing with privacy complaints about the OAIC' ([D2021/000080](#)).

Review the OAIC [Service Charter](#) on how the OAIC deals with privacy complaints against the OAIC conducted at least every 12 months.

Risk management and reporting

The OAIC has a framework for identifying and managing privacy risks (and other types of risks). Risk management is an important part of our compliance with the *Public Governance, Performance and Accountability Act 2013*. Under this framework, all personnel play a role in the identification and mitigation of risks.

Personnel who become aware of a privacy risk in the OAIC's day-to-day operations or in a project or initiative should speak with their manager. Managers must ensure that risks are documented in the OAIC's risk registers in accordance with our risk management framework.

You can read more about risk management by clicking on these links:

- Risk management policy: [D2017/002862](#)
- Risk management procedures and framework: [D2017/002866](#)

The OAIC's risk registers are regularly reviewed by the Executive.

You can access the risk register for your Branch here: Regulation and Strategy Risk Register: [D2017/006758](#) and DR Risk Register: [D2017/006759](#)

Privacy Impact Assessments (PIAs)

All initiatives that may involve the collection or handling of personal information (for example, a new supplier, technology or process that impacts the handling of personal information by the OAIC or on its behalf) must be reviewed for privacy impacts and safeguards. Findings must be included in the relevant Executive brief, for sign off by the Executive.

Where the OAIC reasonably considers that a project involves any new or changed ways of handling personal information that are *likely to have a significant impact on the privacy of individuals*, the APP Code requires that a PIA is conducted on the project.⁷ The OAIC has an obligation to maintain and publish on its website a register of any PIAs it conducts⁸ and may determine to publish a PIA (or an edited or summary version of a PIA) on its website.⁹

All personnel should familiarise themselves with our approach to PIAs and escalate initiatives and projects accordingly. See 'When and how to obtain a PIA' below.

⁷ APP Code s 12

⁸ APP Code s 15

⁹ APP Code s 13

Reviews for compliance and continuous improvement

The Privacy Champion and Chief Privacy Officer oversees an annual review of the OAIC's privacy practices, procedures, and systems, to ensure their currency and adequacy for the purposes of compliance with the APPs¹⁰ and to drive continuous improvement. The Chief Privacy Officer oversees review or assessment of the following:

- Privacy policy and privacy notices¹¹
- Privacy management plan and implementation¹²
- Privacy practices of teams across the OAIC, and
- The effectiveness of the OAIC's data breach response plan (tested against real incidents or simulation if no incidents have occurred).

The Privacy Champion oversees review or assessment of:

- Risk register
- Records management policies and guidance in relation to the OAIC's handling of personal information
- A privacy compliance review is an agenda item on the internal audit committee agenda at least every 12 months.

The timeliness and quality of the functions and activities we deliver are also measured by the Privacy Champion and Chief Privacy Officer from time to time to support continuous improvement.

APP 2 — Anonymity and pseudonymity

Requires the OAIC to give individuals the option of not identifying themselves, or of using a pseudonym. Limited exceptions apply.

What we do and expectations of personnel

In many cases, it is impracticable for the OAIC to perform its functions and activities without identifying the individuals with whom we engage. By way of example, we usually need a name and contact information to handle inquiries, requests, complaints, or applications or to act on a report. In limited circumstances, we can support individuals to remain anonymous or use a pseudonym in their interactions with us. For example, if someone contacts our enquiries line, personnel are expected not to ask for their name unless this information is needed to adequately handle the question.

¹⁰ APP Code s17

¹¹ APP Code sub-s 17(a) and (b)

¹² APP Code requires the OAIC to have a PMP (s 9(1)) and to measure and document its performance against its PMP at least annually (s 9(3)).

APP 3 – Collection of solicited personal information

Outlines when the OAIC can collect personal information that is solicited. It applies higher standards to the collection of 'sensitive' information.

What we do and expectations of personnel

The OAIC applies a data minimisation approach to all collections of personal information. This means that personal information collected should be kept to the minimum required to perform the activity. Where possible, no personal information should be collected.

All personnel are expected to use our forms and systems effectively to capture personal information in a consistent and appropriate way. Also, personnel with accountabilities for managing complaints and other relevant activities are expected to follow standard operating procedures for capturing consent, e.g., where a third party provides sensitive information.

APP 4 – Dealing with unsolicited personal information

Outlines how the OAIC must deal with unsolicited personal information

What we do and expectations of personnel

As the OAIC is bound by the *Archives Act 1983*, we generally cannot *automatically* delete unsolicited personal information. Depending on the situation, the personal information may have to be kept for a short time before being disposed of under Archives Act Normal Administrative Practice parameters. See the [Records Disposal Authority and Normal Administrative Practice \(NAP\) checklist](#).

In all instances, personnel must consult the Chief Privacy Officer if they believe that they have received unsolicited personal information, the collection of which would not be permitted under APP 3 or which may necessitate the issuing of a privacy notice, e.g., where unsolicited personal information about a complaint or review is received from a third party.

APP 5 – Notification of the collection of personal information

Outlines when and in what circumstances the OAIC, when it collects personal information, must notify an individual of certain matters.

What we do and expectations of personnel

The OAIC typically meets its APP 5 obligations by issuing its [standard short privacy statement](#), linking to its detailed privacy policy. The statement is used on all complaint and review forms and when collecting contact information from new groups of stakeholders.

Personnel must ensure that the standard short statement is used when collecting personal information. It can be adapted if required, in consultation with the Chief Privacy Officer.

APP 6 — Use or disclosure of personal information

Outlines the circumstances in which the OAIC may use or disclose personal information that it holds.

What we do and expectations of personnel

The OAIC uses and discloses personal information to perform its functions and activities as detailed above. All personnel are expected to escalate to their manager if they believe that an initiative or other activity, they are undertaking does not comply with APP 6.

If a project or initiative involves any new or changed ways of using or disclosing personal information (including using or disclosing existing personal information holdings for secondary purposes), a PIA and/or other actions may be required. See 'When and how to obtain a PIA' below.

APP 7 — Direct marketing

An organisation may only use or disclose personal information for direct marketing purposes if certain conditions are met.

What we do and expectations of personnel

APP 7 does not apply to the OAIC as it only applies to organisations.

APP 8 — Cross-border disclosure of personal information

Outlines the steps the OAIC must take to protect personal information before it is disclosed overseas.

What we do and expectations of personnel

It is quite rare for the OAIC to send personal information overseas. It does occur from time to time where necessary for the proper handling of a complaint or application, for example, where the complainant or respondent is based overseas.

The OAIC's privacy policy states that such international disclosures may occur, and therefore the OAIC considers that implied consent is received when the relevant party or parties provide their personal information. However, overseas disclosures are usually discussed with the relevant party or parties before the information is disclosed as an additional precaution.

All personnel are expected to discuss any planned overseas disclosures with the relevant party or parties before making the disclosure and to make a file-note of the discussion in Resolve.

APP 9 — Adoption, use or disclosure of government related identifiers

Outlines the limited circumstances when an organisation may adopt a government related identifier of an individual as its own identifier or use or disclose a government related identifier of an individual.

What we do and expectations of personnel

APP 9 does not apply to the OAIC as it only applies to organisations.

APP 10 — Quality of personal information

The OAIC must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. The OAIC must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.

What we do and expectations of personnel

As stated in our [privacy policy](#), the OAIC has adopted the following routine practices to support its obligations under APP 10:

- We generally collect personal information in a consistent format using templates and forms.
- Whenever personal information is collected from a third party or a public source, we check its accuracy with the individual to whom it relates.
- We are timely in adding or updating personal information in existing records.
- We (via our Enquiries team) regularly audit our contact lists to check their accuracy, and
- We review the quality of personal information before we use or disclose it.

All personnel are expected to adopt these practices in their dealings with complainants, respondents, and other individuals.

APP 11 — Security of personal information

The OAIC must take reasonable steps to protect personal information it holds from misuse, interference, and loss, and from unauthorised access, modification, or disclosure. The OAIC has obligations to destroy or de-identify personal information in certain circumstances.

What we do and expectations of personnel

Reasonable steps

The OAIC's information security policy framework consists of the following key documents:

- Information Management Policy: ([D2017/001625](#))
- System Security Plan: ([D2017/007023](#))
- Risk Management Plan: ([D2017/007022](#))
- Standard Operating Procedures: ([D2017/007020](#))
- Security Documentation Framework: ([D2017/007021](#))

The OAIC's information security framework is supported by the OAIC's records manager who has accountability for overseeing information security practices within the OAIC.

In addition, regular independent information security reviews and audits are conducted. For example, in 2018, following commencement of the NDB scheme, the OAIC engaged an outside consultant to perform an information security review. Also, an audit of access controls will be conducted in 2018 and an audit of the OAIC's clean desk policy was conducted in 2017. The results of audits are usually provided to staff by way of an all-staff email to increase awareness and drive continuous improvement.

The OAIC routinely considers information security risks and controls when engaging new suppliers. For organisations that will be accessing personal information held by the OAIC (for example, to provide IT services in relation to OAIC's information systems) strict contractual measures such as additional non-disclosure agreements are used to protect the security and confidentiality of that personal information.

Where the OAIC uses Australian Government agencies as suppliers, they must comply with all applicable information security protocols under the Australian Government's Protective Security Policy Framework (**PSPF**). For more information on how the OAIC manages supplier risk, see 'Supplier management' below.

All personnel are expected to comply with the OAIC's clean desk policy, to use effective password practices, and to comply with relevant policies, such as the Usage of ICT Facilities Policy ([D2017/001580](#)) and the Remote Access and Mobile Devices Policy ([D2017/001030](#)).

Managers are expected to periodically check that access controls for personnel are appropriate and request changes if necessary.

Working away from the office

Telework is working away from the office. Staff who telework or work from home use information and communications technology to stay connected with colleagues and work systems. All staff are expected to comply with the OAIC's 'Working from home (WFH) Instructions and Guidance' ([D2020/005244](#)). This includes the 'Telework Policy and Remote Access' guidelines ([D2013/095066](#)).

Destruction and de-identification

The OAIC destroys personal information that is no longer required, subject to archiving obligations.¹³ Records documenting routine operational administrative tasks supporting the core

¹³ See [OAIC Privacy Policy](#) under "Storage and security of personal information".

business of compliance management for example, are destroyed seven years after the action is completed while records documenting general enquiries relating to the compliance management business of the OAIC are destroyed one year after the action is completed (see [Records Disposal Authority](#)).

Where archiving obligations prevent de-identification or destruction of personal information, it is OAIC policy to adopt other measures to limit privacy risks (such as archiving and limiting access to those personal information holdings).

All personnel must ensure that they comply with the [OAIC Records Disposal Authority](#) (and the [Normal Administrative Practice Checklist](#)) before destroying personal information as non-compliance may breach our obligations under the Archives Act.

APP 12 – Access to personal information

Outlines the OAIC's obligations when an individual requests to be given access to personal information held about them by the entity. This includes a requirement to provide access unless a specific exception applies.

APP 13 – Correction of personal information

Outlines the OAIC's obligations in relation to correcting the personal information it holds about individuals.

What we do and expectations of personnel (APP 12 and APP 13)

The OAIC has published its access and correction procedures in detail as part of its [privacy policy](#) and on the '[Access our information](#)' page on its website. The latter advises individuals to consider speaking to an OAIC officer via its enquiries line before making an FOI request, as in many cases personal information can be provided quickly (within 30 days) and informally. The OAIC requires the requester to verify their identity before access is given or the information is corrected. Where access is requested in an alternative format, the OAIC will attempt to meet all such requests to the best of our ability.

All personnel are expected to be familiar with these policies.

Personnel who support the enquiries line are expected to be aware of the detailed operating procedures which underpin APP 12 and 13 and the '[Access our information](#)' page on our website.

All other personnel are expected to refer access and correction requests to their Director.

Data breach management and notification

The OAIC's Data Breach Response Plan (**Plan**) can be found on the OAIC's FYI intranet (see HP Content Manager at [D2017/002187](#)). The Plan accords with the OAIC's published guidance ([Data breach preparation and response – A guide to managing data breaches in accordance with the Privacy Act 1988 \(Cth\)](#)). The Plan names the data breach response team members.

All personnel should be aware of the Plan and if they suspect that a data breach has occurred should escalate any suspected data breaches to their manager in the first instance.

As stated in the Plan, Directors should use their discretion in determining whether a data breach or suspected data breach requires escalation to the data breach response team. In making that determination, Directors should consider the following questions:

- Are multiple individuals affected by the breach or suspected breach?
- Is there (or may there be) a risk of serious harm to any of the affected individual(s)?
- Does the breach or suspected breach indicate a systemic problem in OAIC processes or procedures?
- Could there be media or stakeholder attention as a result of the breach or suspected breach?

If the answer to any of these questions is 'yes', then the Director should attempt immediate verbal contact with the Chief Privacy Officer, or if this is not possible, another primary response team member.

Our training and awareness programs 2020-21 FY and 2021-22 FY

The following email communications for all personnel will comprise an essential part of the OAIC's awareness and training programs.

Topic	From	Content
Data breach escalation and management	Chief Privacy Officer	Reminders about how to escalate a suspected data breach.
Data breach escalation and management	Chief Privacy Officer	Reports on the outcome of planned Data Breach Response Plan Tests.
Privacy/ security practices	Privacy Champion	Updates to all staff about results and learnings from any internal audits in relation to personal information handling.
Data Breach Notification report	Privacy Champion	Findings from latest OAIC DBN report shared with all staff in email communications or face-to-face training.
Privacy Awareness Week	Strategic Communications	Provide opportunities for reminders about the role and responsibilities of OAIC staff in protecting the personal information of individuals.

When and how to conduct a PIA

Threshold test for informing the Chief Privacy Officer of a new initiative

The Chief Privacy Officer must be consulted on all new projects handling personal information.

Threshold test for informing the Executive

The Executive is to be informed of *any new personal information handling processes* or where the OAIC proposes to use or disclose existing personal information holdings for *secondary purposes*. The Executive Brief template includes a section for privacy impacts and safeguards.

Threshold test for a PIA

A PIA is required under the APP Code where the OAIC reasonably considers that a project involves any new or changed ways of using or disclosing personal information that are likely to have a significant impact on the privacy of individuals.¹⁴

Escalation process

If you believe that your project or initiative (including the engagement of a new supplier) meets any of these thresholds, you should speak with your manager in first instance to determine any subsequent action(s) required.

PIA methodology

The OAIC follows its [Guide to undertaking privacy impact assessments](#).

The Chief Privacy Officer (in consultation with the Executive) will determine the effort and approach to be applied to the PIA and will provide advice to the Executive on the approach to publication (in accordance with the APP Code),¹⁵ if appropriate.

'[Privacy Impact Assessment: Working remotely in response to COVID-19](#)' has been developed to consider privacy risks associated with changes to working arrangements at the OAIC in response to the COVID-19 pandemic.

Supplier management

Engaging suppliers

The OAIC routinely considers information security risks and controls when engaging new suppliers.

For organisations that will be accessing personal information held by the OAIC (for example, to provide IT services in relation to OAIC's information systems) strict contractual measures such as

¹⁴ APP Code s12

¹⁵ APP Code s15

additional non-disclosure agreements are used to protect the security and confidentiality of that personal information.

Where the OAIC uses Australian Government agencies as suppliers, they must comply with all applicable information security protocols under the Australian Government's Protective Security Policy Framework (**PSPF**).

Identifying supplier risk prior to onboarding

If you are proposing to engage a new supplier (or, you are proposing to engage an existing supplier to deliver a new product or service), you must include the following information when you brief the Chief Financial Officer at contract creation stage:

Question	Risk Considerations
Threshold	
Will the supplier handle personal information while providing a service to the OAIC?	<i>If 'no', there is no need to complete the questions below.</i>
Privacy foundations	
Has the supplier demonstrated that it handles personal information in a manner that complies with the APPs?	<i>This is a high-level question which requires a holistic consideration of all responses below.</i>
Is the supplier subject to the APPs in their own right?	
Is the supplier an organisation or an agency?	
Does the supplier have a publicly available privacy policy which meets the requirements of the APPs?	<i>Provide a copy.</i>
Does the supplier have an operational privacy framework supported by a privacy function and a Chief Privacy Officer or privacy lead?	<i>Provide evidence from supplier.</i>
Does the supplier carry out periodic training and awareness in relation to privacy?	<i>Provide evidence from supplier.</i>
Does the supplier have a process in place for managing privacy complaints?	<i>Provide evidence from supplier.</i>
Does the supplier have a standard personal information collection notice?	<i>Provide evidence from supplier.</i>

Question	Risk Considerations
Privacy Impact Assessments	
<p>Does the supplier carry out Privacy Impact Assessments over internal programs?</p> <p><i>Provide evidence from supplier.</i></p>	
Third parties/subcontracting	
<p>Will the third party share personal information with another third party while offering services to the OAIC?</p>	<p><i>If 'no', there is no need to complete the other questions in this section. Proceed to 'Integrity of personal information'.</i></p>
<p>Does the supplier carry out Privacy Risk Assessments over third parties it shares personal information with?</p> <p><i>Provide evidence from supplier.</i></p>	
<p>Does the supplier have a process for monitoring the sharing of personal information with its third parties, and for periodically assessing their privacy and security controls?</p> <p><i>Provide evidence from supplier.</i></p>	
<p>If the supplier will disclose personal information to entities located outside Australia, does it assess their compliance with the APPs?</p> <p><i>Provide evidence from supplier.</i></p>	
Integrity of personal information	
<p>How does the supplier protect the personal information that it holds from interference, misuse, loss and unauthorised access, modification and disclosure?</p> <p><i>Provide evidence from supplier.</i></p>	
<p>Does the supplier have policies and procedures relating to data retention and destruction, including processes for identifying and destroying or de-identifying personal information (in electronic and physical form) that it no longer requires?</p> <p><i>Provide evidence from supplier.</i></p>	
<p>Does the supplier have a process for monitoring and correcting personal information that it holds?</p> <p><i>Provide evidence from supplier.</i></p>	

Question	Risk Considerations
Access and correction	

Does the supplier have a process to allow individuals to access any personal information it holds about them?

Provide evidence from supplier.

Does the supplier have a process for allowing individuals to request the correction of personal information it holds about them?

Provide evidence from supplier.

Contract governance and assurance

Responsibility for ensuring that contractual and other operational controls are operating effectively during the term of the contract (and beyond if relevant) lies with the Director of the team that engaged the supplier. Supplier risks must be escalated via the OAIC risk register.

Termination

At the cessation of the contract, the OAIC must ensure that controls in place to protect privacy and personal information at the conclusion of the engagement are effective, for example, by assuring that access to personal information is stopped and copies of personal information held by the supplier on behalf of the OAIC are returned or destroyed at appropriate time periods.

Responsibility for ensuring that these steps are taken lies with the Director of the team that engaged the supplier.

Personal information inventory

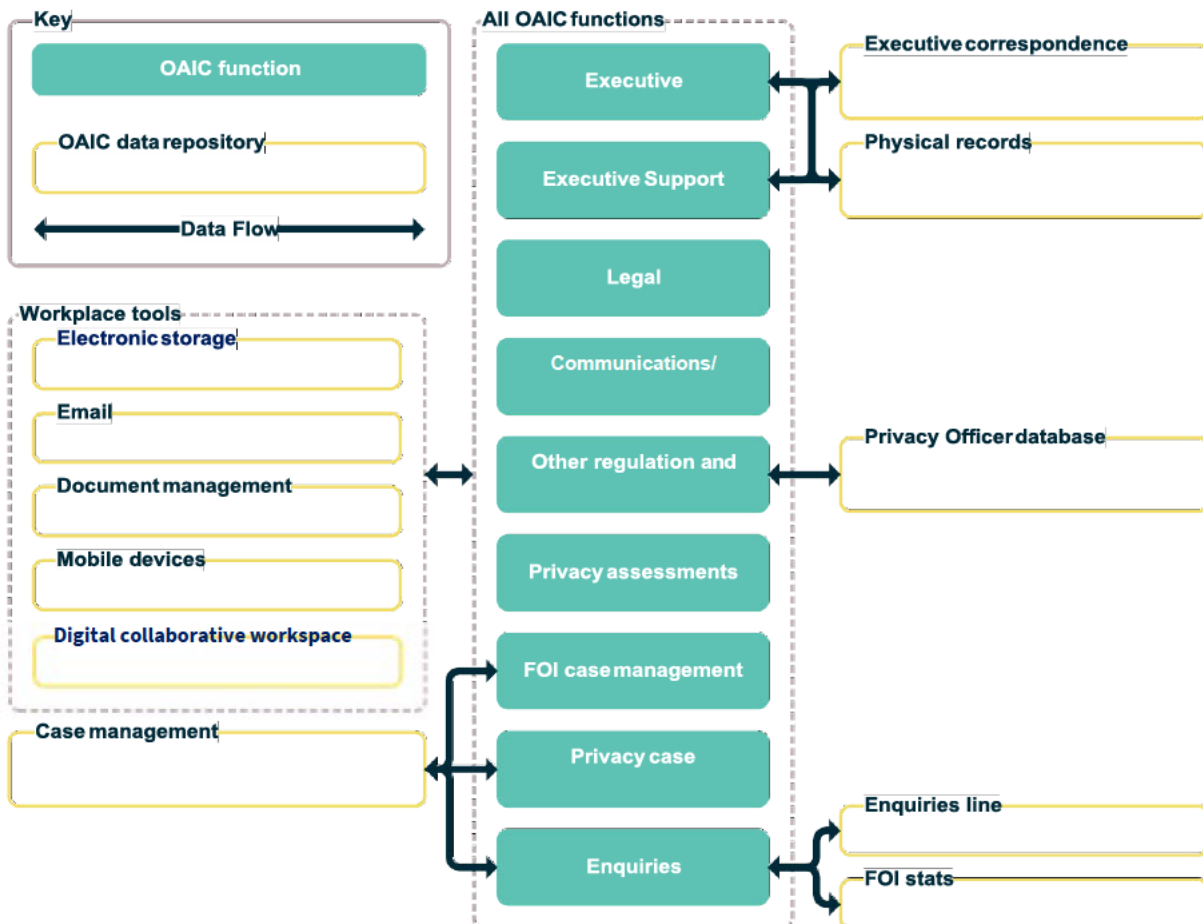
The OAIC has mapped our personal information holdings to show where personal information resides in our systems. Our [Personal Information Inventory](#) includes a detailed listing of all the OAIC's data repositories that contain personal information, along with:

- the types of personal information held in each repository;
- the purposes for which the personal information is used;
- the source of the personal information;
- whether personal information is shared with third parties;
- where the personal information is stored;
- how long the personal information is retained;
- who within the OAIC with accountability for the personal information;

- who within the OAIC has access to the personal information; and
- a contact person/team for each repository.

The Chief Privacy Officer is the owner of the Personal Information Inventory document.

The diagram below is a high-level summary of our Personal Information Inventory, with system names and third parties removed.



The Chief Privacy Officer is the owner of the personal information inventory document.



Australian Government

Office of the Australian Information Commissioner

Early Resolution Guidance on processing APP 12 requests



15 January 2021

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Change history

Version	Changes	Date
1.0	Original	January 2021

Background

When this guidance applies

This guidance applies to the acceptance and processing of Australian Privacy Principle (**APP**) 12 requests made of the Office of the Australian Information Commissioner (**OAIC**) in its capacity as an APP entity for the purposes of the *Privacy Act 1988* (Cth) (**Privacy Act**).

References to provisions in this guidance are those in the Privacy Act unless otherwise specified.

Relevant provisions – Privacy Act

Under s 6(1) “personal information” is information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable.

Section 6(1) further provides that an APP entity “holds” personal information if the entity has possession or control of a record that contains the personal information.

Australian Privacy Principle (**APP**) 12 states that if an APP entity holds personal information about an individual the entity must, on request by the individual, give the individual access to the information unless a specific exemption applies.

APP 12.2 provides that an agency is not required to give access to personal information if it is authorised to refuse access under the *Freedom of Information Act 1982* (**FOI Act**).

APP 12.5 provides that if an APP entity refuses to give access to personal information in the manner requested by the individual, it must take reasonable steps to give access in a way that meets the needs of the individual. Under the OAIC’s Australian Privacy Principles Guidelines (July 2019) (**APP Guidelines**), this can include giving a summary of the requested personal information to the individual.

APP 12.9 provides that if an APP entity refuses to give access, or to give access in the manner requested by the individual, the entity must give the individual written notice setting out a number of matters, including the reasons for the refusal, except to the extent that it would be unreasonable to do so, having regard to the grounds of refusal.

Purpose

This guidance material outlines:

- the text of APP 12
- how to interpret APP 12, and
- how to apply APP 12 when making a decision.

This guidance should be used by all staff who process APP 12 requests made of the OAIC. This document outlines the statutory time frames that apply to the OAIC and the steps that should be taken when processing an APP 12 request.

APP 12 – what does it say

An APP entity that holds personal information about an individual must, on request, give that individual access to the information (APP 12.1). The grounds on which access may be refused differ for agencies and organisations.

APP 12 also sets out minimum access requirements, including the time period for responding to an access request, how access is to be given, and that a written notice, including the reasons for the refusal, must be given to the individual if access is refused.

APP 12 operates alongside and does not replace other informal or legal procedures by which an individual can be given access to information. In particular, APP 12 does not prevent an APP entity from giving access to personal information under an informal administrative arrangement, provided the minimum access requirements stipulated in APP 12 have been met.

For agencies, APP 12 operates alongside the right of access in the *Freedom of Information Act 1982* (Cth) (**FOI Act**). The FOI Act provides individuals with a right of access to documents held by most Australian Government agencies, including documents containing personal information.

APP 12 requires an APP entity to provide access to ‘personal information’. It does not provide a right of access to other kinds of information. ‘Personal information’ is defined in s 6(1) as ‘information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not, and
- whether the information or opinion is recorded in a material form or not’

Personal information of one individual may also be personal information of another individual. For example:

- information in a marriage certificate may be personal information of both parties to the marriage
- an opinion may be personal information of both the subject and the giver of the opinion

APP 12 requires an APP entity to provide access to all of an individual’s personal information it holds, even if that information is also the personal information of another individual, unless a ground to refuse access applies.

As to other requested information that is not personal information an agency could consider whether access to that information can be granted under the FOI Act, or on an administrative basis. Before refusing access to that other information, the agency should advise the individual to consider making the request under the FOI Act.

Agencies are not required to advise individuals to request personal information under the FOI Act rather than under an administrative arrangement or by relying on APP 12.

In some circumstances it may be preferable for an agency to suggest that an individual make an access request under the FOI Act. This is because an FOI access request can relate to any document in the possession of an agency (FOI Act, s 15(1)) and is not limited to personal information held in an agency record (APP 12.1).

The FOI Act contains a consultation process for dealing with requests for documents that contain personal or business information about a person other than the requester (FOI Act, ss 27, 27A).

An applicant who applies for access under the FOI Act can complain to the Information Commissioner about an action taken by an agency under that Act (FOI Act, s 70).

An applicant who is refused access under the FOI Act has a right to apply for internal review or Information Commissioner review of the access refusal decision (FOI Act, ss 54, 54L).

An agency is not required by APP 12 to give access to personal information if the agency is required or authorised to refuse access to that information by or under:

- the FOI Act (APP 12.2(b)(i))
- any other Act of the Commonwealth, or a Norfolk Island enactment, that provides for access by persons to documents (APP 12.2(b)(ii))

In summary, an agency is 'required' to refuse access by an Act that prohibits the disclosure of the personal information; and an agency is 'authorised' to refuse access by an Act that authorises or confers discretion on the agency to refuse a request for access to the personal information.

Authority to refuse access under the FOI Act

The grounds on which an access request can be declined under the FOI Act include:

- a document is an exempt document under Part IV, Division 2 of the FOI Act, for example, the document is a Cabinet document, is subject to legal professional privilege, contains material obtained in confidence, or a secrecy provision applies
- a document is a conditionally exempt document under Part IV, Division 3 of the FOI Act, for example, the document contains deliberative matter, or disclosure of the document would involve the unreasonable disclosure of personal information about another person and it would be contrary to the public interest to release the document at that time
- the individual is not entitled to obtain access to a document of the kind requested, for example, the document is available for purchase from an agency (FOI Act, ss 12, 13)
- providing access in the terms requested by a person would substantially and unreasonably divert an agency's resources from its other operations (s 24AA)
- processing a person's request would require an agency to disclose the existence or non-existence of a document, where that would otherwise be exempt information (s 25).

The FOI Act specifies consultation processes that may apply to requests made under that Act, for example, where a 'practical refusal reason' may apply (FOI Act, s 24) to the request, or where a requested document contains a third party's personal or business information (FOI Act, ss 27, 27A). An agency is not required to undertake any of those consultation processes before refusing access on any of those grounds under APP 12.

A decision to refuse access under APP 12.2(b)(i) (on one of the FOI grounds listed above) is a decision made under the Privacy Act, not the FOI Act. As required by APP 12.9, the agency must provide the individual with a written notice that sets out the reasons for the refusal and the complaint

mechanisms available to the individual. The individual may have a right to complain pursuant to s 36 of the Privacy Act to the Information Commissioner about the refusal decision. However, the individual will not have a right to seek internal review or Information Commissioner review under the FOI Act.

Required or authorised to refuse access under another Act

APP 12.2(b)(ii) provides that an agency is not required to give access to personal information if it is required or authorised to refuse to give access by another Act that provides for access by persons to documents. An example is a statutory secrecy provision that requires or authorises that access be refused in certain circumstances.

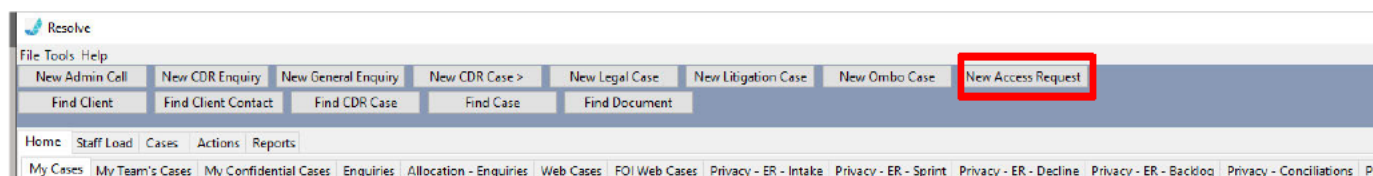
A further example is that the National Archives of Australia (**NAA**) is authorised to refuse access to certain 'exempt records' under the Archives Act 1983 (**Archives Act**). The Archives Act provides that the NAA must make available for public access Commonwealth records in the open access period that are in the care of the NAA and that are not exempt records (s 31 of the Archives Act). The categories of exempt records include information whose disclosure would constitute a breach of confidence, would involve the unreasonable disclosure of information relating to the personal affairs of any person, or would unreasonably affect a person adversely in relation to his or her business, financial or professional affairs (s 33 of the Archives Act).

Processing a request

Create a new Access request file in Resolve

On receipt of an APP 12 request a new Access Request file needs to be generated in Resolve.

In Resolve, click 'New Access Request' in the top menu ribbon:



A 'New Request Entry' will open:

The screenshot shows a software interface for processing requests. At the top, there are several input fields: 'Case Type' (a dropdown menu), 'Case Number' (a text field), 'Target Date' (a date picker), 'Priority' (a dropdown menu), 'Case Officer' (a dropdown menu showing 'Smith, Delaney'), 'Retention Class' (a dropdown menu), and 'COVID-19 Delay' (a checkbox). Below these is a 'Title' field. The main area is divided into sections: 'Requestor Details' with a search bar and 'Find'/'Open' buttons; 'How Received' (a dropdown menu); 'Registered By' (a dropdown menu showing 'Smith, Delaney'); 'Summary (Press F2 for Full Screen)' (a large text area); 'Case Outcome' (a dropdown menu); and 'Open Actions' (a table with columns 'Action Name' and 'Due Date'). A 'Casenote (Press F2 for full screen)' field is at the bottom left. Six red callout boxes with numbers 1 through 6 point to: 1. 'Case Type' dropdown; 2. 'Find' button; 3. 'How Received' dropdown; 4. 'Summary' text area; 5. 'Open Actions' table; 6. 'Case Outcome' dropdown.

1. Click on the 'Case Type' field and select 'APP 12' from the drop-down menu.
2. Click on find to locate the requestor details in Resolve and select the requestor. The requestor's details will populate the white field below. If the requestor's details are not in Resolve you will need to manually input the information.
3. Click on the 'How Received' field and select the appropriate option from the drop-down menu.
4. Copy and paste the scope into the Summary field directly from the request.
 - a. At this stage you can save your work. This will then generate the Resolve file number.
5. Complete the Action steps from 'Register Case', then 'Allocate to Case Officer', and 'Process Request'.
6. Once you have made your decision and provided the decision and any relevant records to the requestor select the 'Case Outcome': Granted, Not Granted, or Withdrawn.

You may then complete the final action and close the AR file.

Identifying the Scope

The first step when an APP 12 request is received is to identify the scope of the request.

For example, an individual may request access to a specific record that may contain their personal information. On the other hand, an individual may request access to 'all personal information' held by the OAIC.

It is important to identify the scope of the request as this will determine what searches you need to carry out to identify the relevant records and whether you need to consult with other staff members or other teams across the OAIC.

APP 12.4 – Dealing with an APP 12 request

APP 12.4 requires an agency to respond to a request within 30 days. The OAIC has previously held the view that this means that the response includes providing an acknowledgment of the request and providing access to the requested information (subject to any exceptions that may apply) within 30 days.

However, in a recent decision of the Federal Court¹ Snaden J held that APP 12.4 mandates two steps by which an APP entity must deal with APP 12 requests.² Snaden J found:

*[F]irst, by the provision of a response to the request; and, second, by the provision of access to the information as requested (subject to notions of reasonableness and practicality...). [APP 12.4] draws a distinction between “dealing with” a request by responding to it and “dealing with” a request by granting access to what is requested. **The 30-day deadline applies only in respect of the former.**³ (my emphasis)*

This means that the OAIC is required by APP 12.4 to acknowledge receipt of the request within 30 days and the provision of access to the information requested can be done outside the 30-day time frame.

Whilst this means that where the OAIC does not provide access or a decision refusing access within 30 days, it is important to process the request in a timely manner. Best privacy practice requires that decisions on access requests are made within a reasonable time from receipt of the request.

Where the request is voluminous or complex, it will be appropriate to advise the individual that a decision may not be provided within 30 days and to assure the individual that the request will be actively progressed. You may wish to negotiate access to the information requested in tranches to ensure the matter is dealt with appropriately.

Search and retrieval of records

Once an APP 12 request has been acknowledged you should schedule time within the first week of receipt to identify where the information requested may be held.

Generally, APP 12 requests to the OAIC relate to complaint or IC Review file and the records sought will be held in those files. You may need to ask the relevant case officer for assistance in identifying records relevant to the scope of the request.

If you do need to ask other staff for assistance, a sample of a search and retrieval email can be found at Annexure A.

¹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328.

² *Knowles v Secretary, Department of Defence* [2020] FCA 1328 [67].

³ *Knowles v Secretary, Department of Defence* [2020] FCA 1328 [67].

Assessment of relevant records

APP 12 provides individuals with a general right to access their own personal information held by an APP entity. This general right is subject to exceptions, which for an agency are found at APP 12.2.

Once you have identified all records relevant to the scope of the request, you need to convert emails and Word documents to PDF and then combine all records into one document. Then you may assess the information for relevancy and whether the information is the personal information of the individual.

When assessing the information relevant to the access request, you should identify the information that may be:

- (a) outside the scope the request
- (b) the personal information about other individuals
- (c) deliberative or evaluative information, or
- (d) available in a generally available publication.

This information should be removed from an access grant before releasing the records to the individual.

Exceptions to providing access

By far the exception relied on most by agencies is APP 12.4(b)(i) whereby access may be refused on the grounds available under the FOI Act:

- a document is an exempt document under Part IV, Division 2 of the FOI Act, for example, the document is a Cabinet document, is subject to legal professional privilege, contains material obtained in confidence, or a secrecy provision applies
- a document is a conditionally exempt document under Part IV, Division 3 of the FOI Act, for example, the document contains deliberative matter, or disclosure of the document would involve the unreasonable disclosure of personal information about another person and it would be contrary to the public interest to release the document at that time
- the individual is not entitled to obtain access to a document of the kind requested, for example, the document is available for purchase from an agency (FOI Act, ss 12, 13)
- providing access in the terms requested by a person would substantially and unreasonably divert an agency's resources from its other operations (s 24AA)
- processing a person's request would require an agency to disclose the existence or non-existence of a document, where that would otherwise be exempt information (s 25).

Whilst the FOI Act specifies consultation processes that may apply to requests made under that Act, for example, where a 'practical refusal reason' may apply to the request,⁴ or where a requested document contains a third party's personal or business information,⁵ an agency is not required to

⁴ FOI Act, s 24.

⁵ FOI Act, ss 27, 27A.

undertake any of those consultation processes before refusing access on any of those grounds under APP 12.

A decision to refuse access under APP 12.2(b)(i) (on one of the FOI grounds listed above) is a decision made under the Privacy Act, not the FOI Act. As required by APP 12.9, the agency must provide the individual with a written notice that sets out the reasons for the refusal and the complaint mechanisms available to the individual. The individual may have a right to complain pursuant to s 36 of the Privacy Act to the Information Commissioner about the refusal decision. However, the individual will not have a right to seek internal review or Information Commissioner review under the FOI Act.

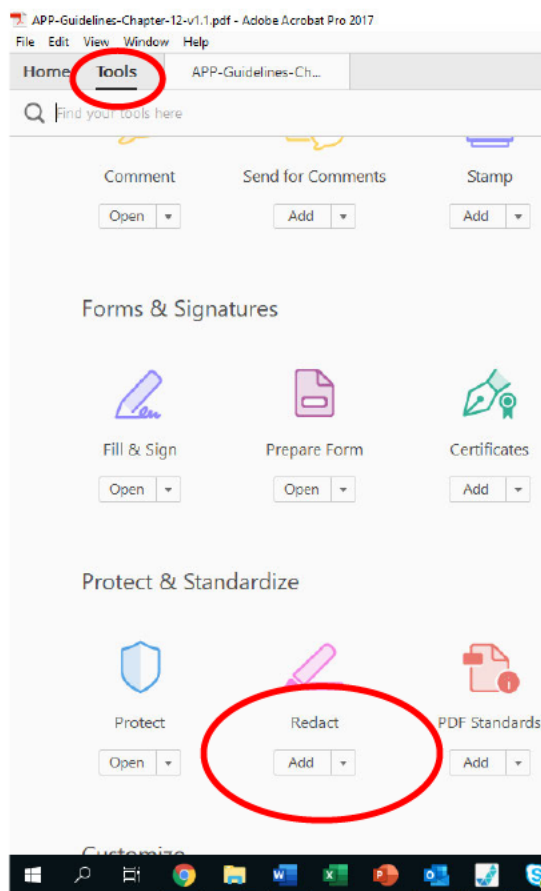
Redaction of information not in scope or otherwise not required to release

Once you have identified the information that is either irrelevant to the scope of the request or information that is not the individual's personal information, you will need to remove (or hide) that information by redacting it.

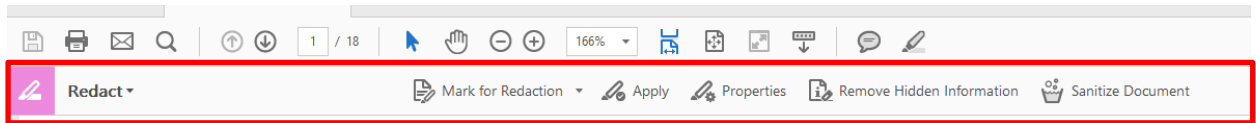
Redacting a document requires access to Adobe Pro 2017. There are limited licences available to the OAIC; however, some individuals in the Early Resolution team do have access to Adobe Pro as do the stand-up desks on level 2.

Redacting is a three-step process. First you need to 'Mark for redaction'. This involves the following steps:

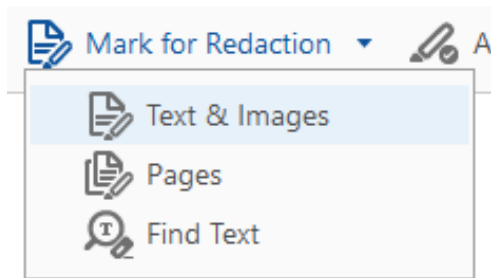
1. Go to 'Tools' in the document and scroll down to 'Redact'



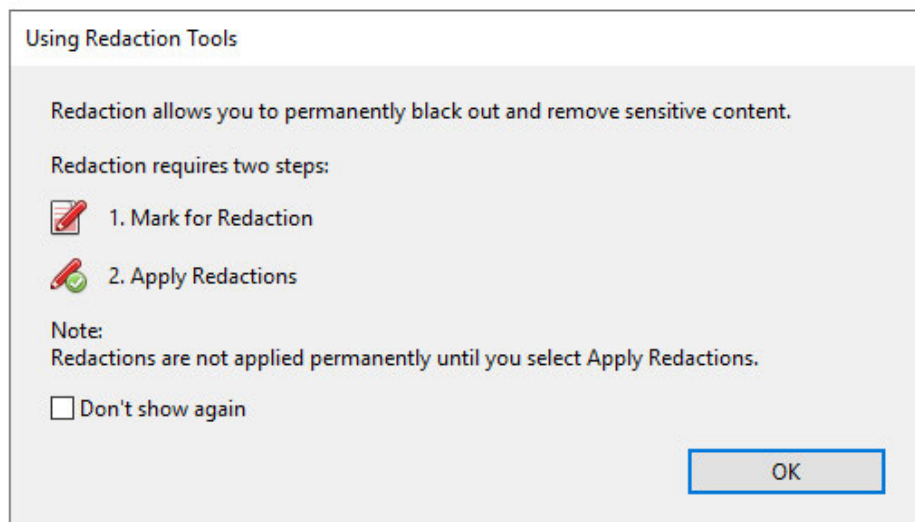
Once you have clicked on 'Redact' you will be taken back to the document you are working on. You will see a new ribbon at the top of the document:



Click on 'Mark for Redaction'. You will then see the drop-down menu:

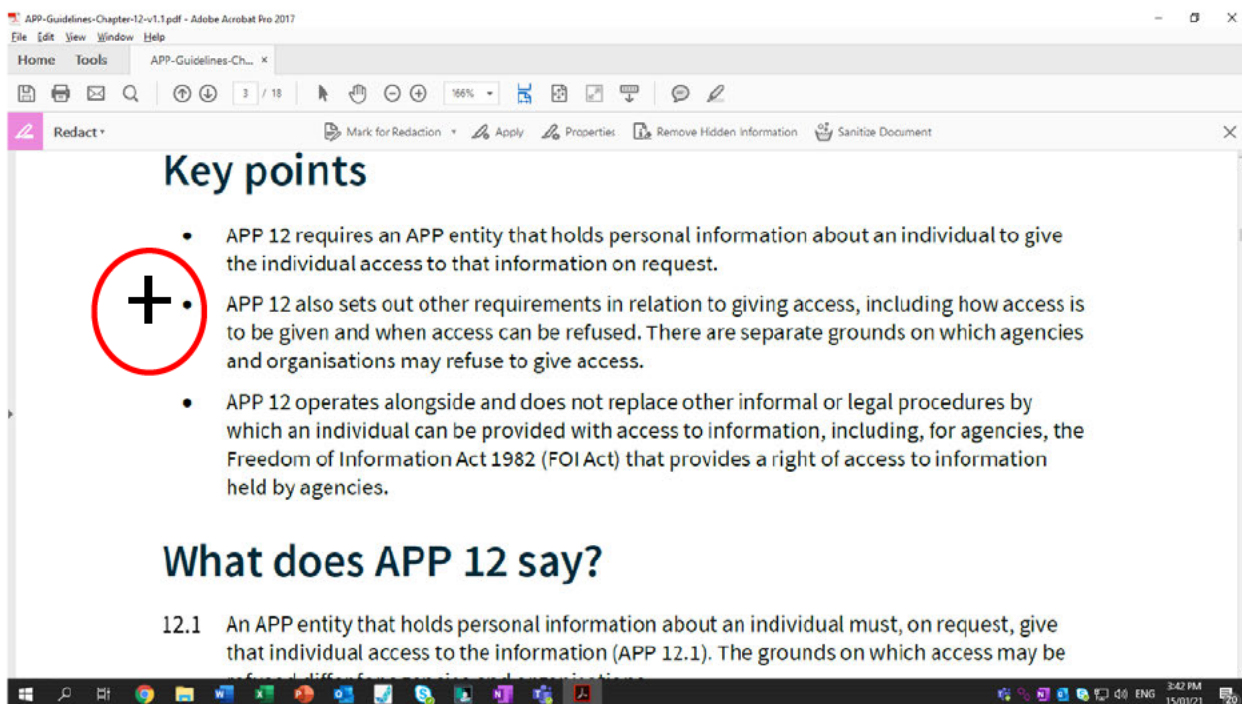


Select 'Text & Images'. You will then see the following text box:

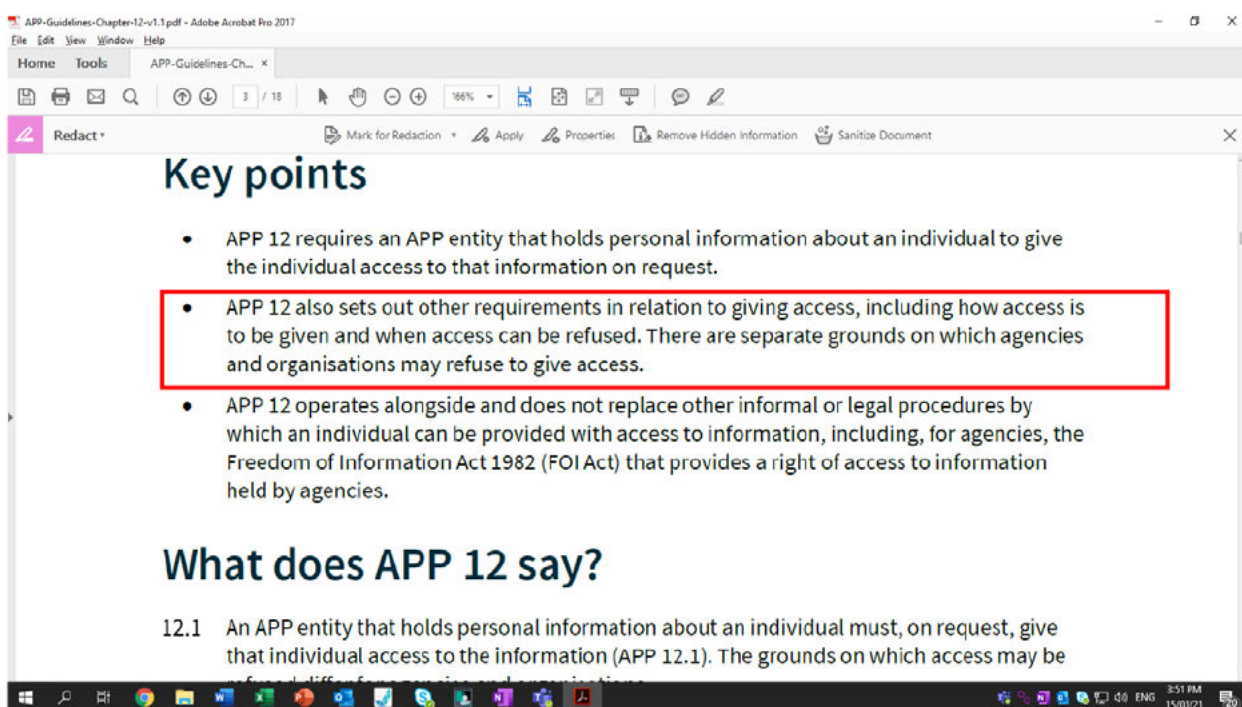


Click 'OK' and you are now ready to assess the information and mark up the document.

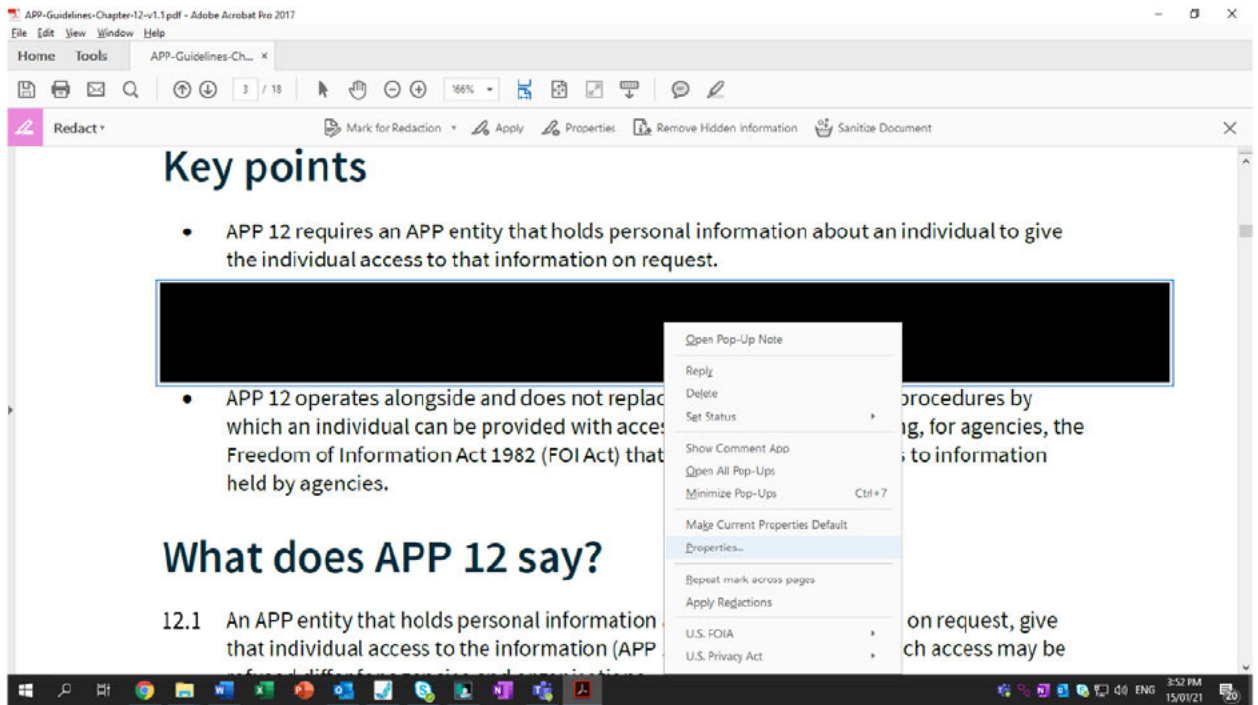
2. To mark up the document identify the information you want to redact. Place your cursor near the information until it forms a cross:



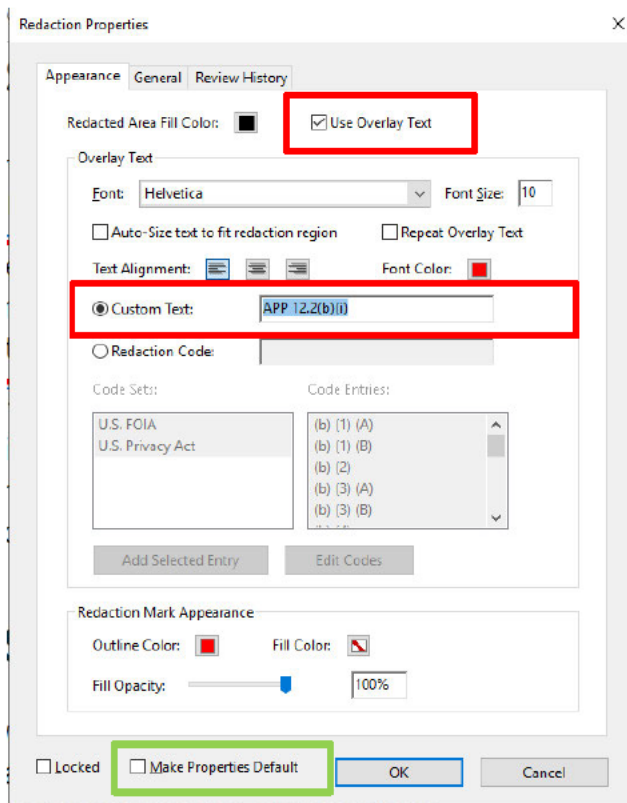
Then highlight the text you want to redact:



Within the selected area, right click and select 'Properties' from the drop-down menu:



Once you are in the properties box select the 'Use Overlay Text' tick box and type in 'APP 12.1(b)(i)' in the 'Custom Text' box:



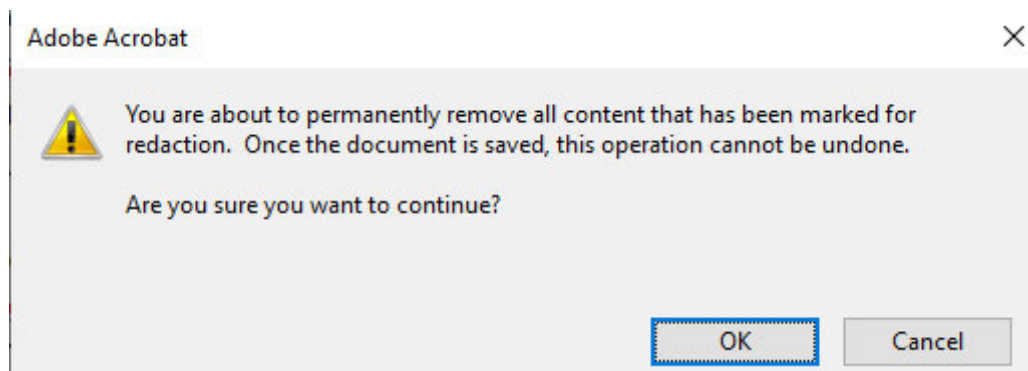
Press 'OK' to apply the properties to the document. For the sake of ease, you can set these properties as the default by checking the 'Make Properties Default' check box.

Proceed to review and mark up the entire document.

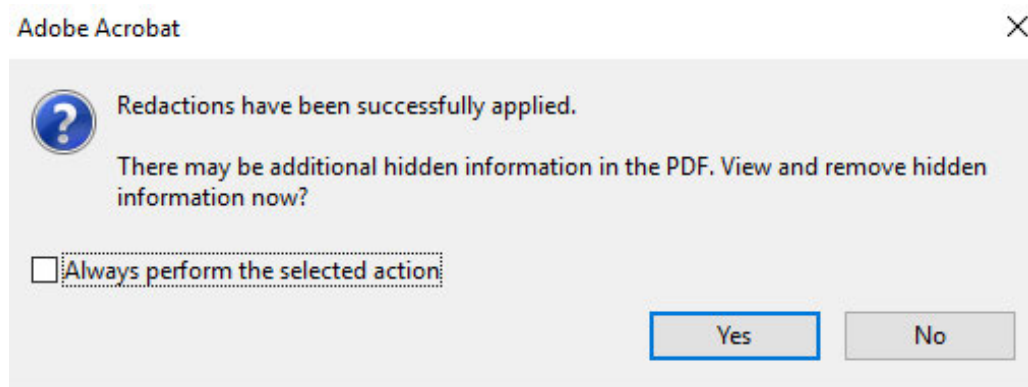
At this stage, the redactions have not been applied to the document. However, if you need your supervisor, or another team, to review the suggested redactions, you should save the document to your desktop and place on the relevant AR file. Once the document is in Resolve, delete the document from your desktop and work on the document as usual in Resolve.

Once you are satisfied that the appropriate redactions have been made the next step is to apply the redactions.

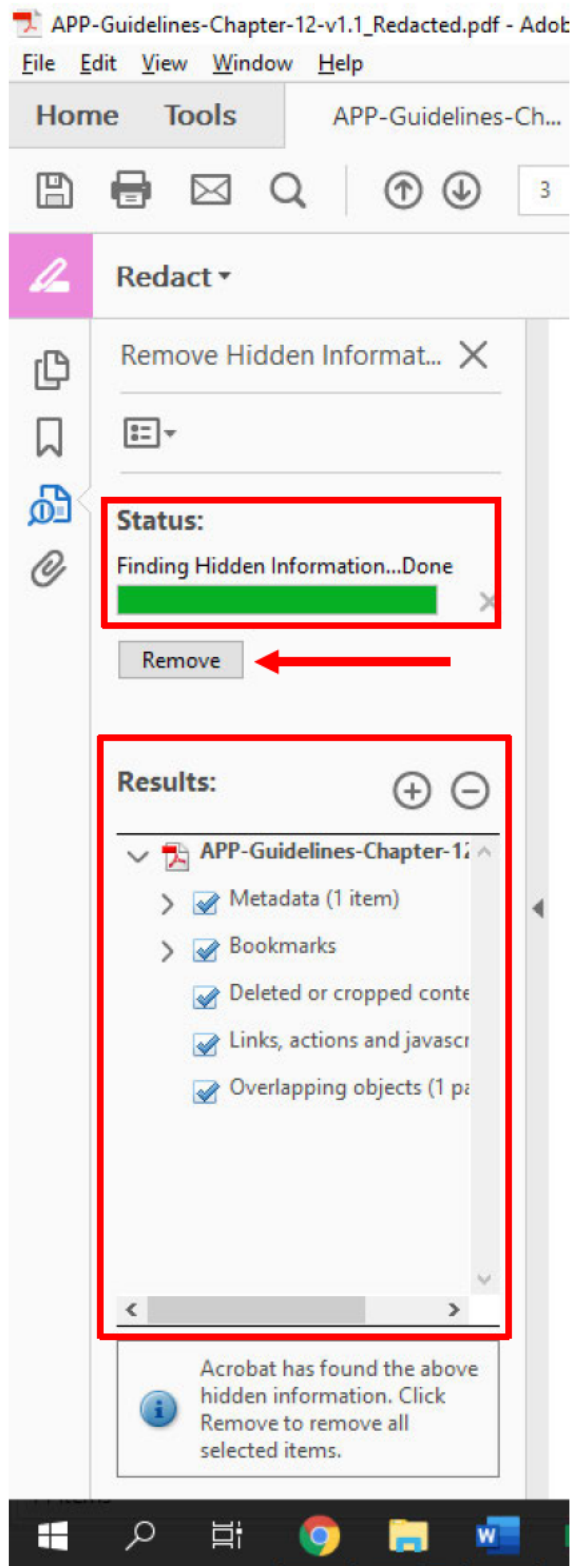
Select 'Apply' which is next to the 'Mark for Redaction' option you selected in step one. You will receive an alert:



Select 'OK' to proceed. You will then see another warning box:



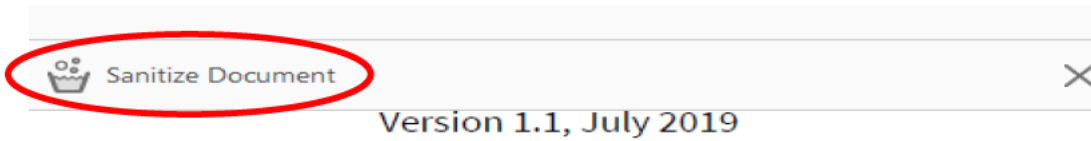
Select 'Yes' to continue. A side activity window will open on the left-hand side of the document:



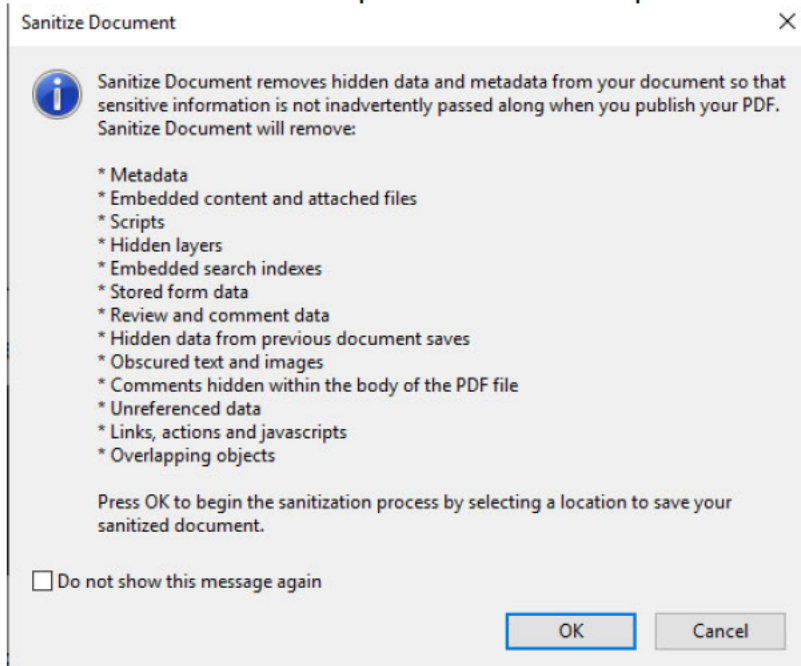
The 'Status' will show the progress of the application of the redactions and Adobe's search for hidden information. Once this is complete, select 'Remove'. This will remove the information listed in the 'Results' box below.

3. The third and final step in redacting the document is to Sanitise it.

Click on the 'Sanitize Document option in the redaction ribbon at the top of the document:



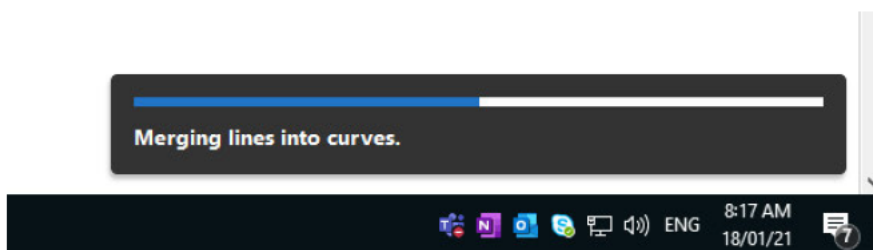
You will the see a box that explains the sanitisation process:



Click 'OK' to begin the sanitisation process. You will be asked to save the document.⁶ When you save the document include in the naming convention that this is the record to be released to the individual:

'AR20_00000 – Documents for release to A'

Once you have saved the document the sanitisation process will begin. You can see the progress here in the bottom right-hand corner of your screen:



⁶ As you will be working on the document in Resolve you will need to save the document to your desktop and move it into Resolve. Immediately delete this copy from your desktop once the document is in Resolve.

Decision

APP 12.9 requires an agency to notify an individual where it decides to refuse access to the personal information requested under APP 12.2 or to provide access to the requested information in the manner requested.

The decision should set out clearly:

- (a) the reasons for the refusal except to the extent that, having regard to the grounds of refusal, it would be unreasonable to do so; and
- (b) the mechanisms available to complain about the refusal; and
- (c) any other matter prescribed by the regulations.

It is important to note that the review rights available to an individual are slightly different to those available when the OAIC makes a decision under s 41 of the Privacy Act.

There are no internal review rights in relation to APP 12 decisions which differs from the right of internal review provided by the FOI Act.

Examples of APP 12 decisions are available at Annexure B.

APP 12 request check list

Date	Action	Completed
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ APP 12 request received ➤ Resolve file created ➤ Resolve case number: AR21/XXXX 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Scope identified: <i>[INSERT SCOPE]</i> 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Search and retrieval request sent and added to Resolve 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Relevant records received in PDF format, or ➤ Relevant records identified and converted to PDF format, combined into one PDF document and placed on Resolve 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Relevant records assessed for information outside of the scope, personal information of third parties and/or information that would be exempt under the FOI Act. PDF document marked for redaction 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Draft decision completed and placed on Resolve 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Draft decision and proposed redactions reviewed by Supervisor and approved 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Apply redactions and sanitise documents for release ➤ Finalise the decision and convert to PDF 	<input type="checkbox"/>
Click or tap to enter a date.	<ul style="list-style-type: none"> ➤ Send decision and documents to the Applicant ➤ Close Resolve file 	<input type="checkbox"/>

Annexure A

Sample search and retrieval email

Subject: AR21/XXXXX – APP 12 request

Dear [STAFF]

I refer to [APPLICANT]'s APP 12 request made to the OAIC.⁷

Under APP 12 [APPLICANT] has requested:

[INSERT SCOPE OF REQUEST]

Please search your Outlook, Content Manager and H:Drive for records within the scope of the request.

Please provide any record relevant to the scope of the request in PDF format by [GIVE 7 DAYS].

[EMAIL SIGNATURE]

⁷ If you consider that attaching the original request will assist the staff member please attach the request.

Annexure B

Sample APP 12 Decisions

Our reference: AR21/XXXXX

[APPLICANT]

[ADDRESS]

By email: [EMAIL@EMAIL.COM.AU]

Your access request under APP 12

Dear [APPLICANT],

I refer to your request for access to your personal information under APP 12 in Schedule 1 to the *Privacy Act 1988* (Cth) (**Privacy Act**), received by the Office of the Australian Information Commissioner (**OAIC**) on [DATE RECEIVED].

Your Request

In your request you seek access to the following:

[INSERT SCOPE]

Decision

References to provisions in this decision record are those in the Privacy Act unless otherwise specified.

Relevant provisions - Privacy Act

Under s 6(1) “personal information” is information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable.

Section 6(1) further provides that an APP entity “holds” personal information if the entity has possession or control of a record that contains the personal information.

Australian Privacy Principle (**APP**) 12 states that if an APP entity holds personal information about an individual the entity must, on request by the individual, give the individual access to the information unless a specific exemption applies.

APP 12.2 provides that an agency is not required to give access to personal information if it is authorised to refuse access under the *Freedom of Information Act 1982* (**FOI Act**).

APP 12.5 provides that if an APP entity refuses to give access to personal information in the manner requested by the individual, it must take reasonable steps to give access in a way that meets the needs of the individual. Under the OAIC's Australian Privacy Principles Guidelines (July 2019) (**APP Guidelines**), this can include giving a summary of the requested personal information to the individual.

APP 12.9 provides that if an APP entity refuses to give access, or to give access in the manner requested by the individual, the entity must give the individual written notice setting out a number of matters, including the reasons for the refusal, except to the extent that it would be unreasonable to do so, having regard to the grounds of refusal.

Findings

I have located [# OF RECORDS] records which contain your personal information.

Of the records held by the OAIC found to be within scope, I have decided to grant access [STATE WHAT YOU ARE GRANTING ACCESS TO].⁸

[I have refused access to your personal information held in 12 records in full.]⁹

[I have refused access to information held in the records released where that information is not your personal information as defined by s 6(1) of the Privacy Act.]¹⁰

I set out my reasons for refusing access as follows.

Reasons for decision

I have decided to [**grant access in full/refuse access**] to the personal information held in [THE NUMBER OF RECORDS] records for the following reasons.

[In relation to document numbers [INSERT DOCUMENT NUMBERS] access is refused pursuant to APP 12.2(b)(i). This is because [INSERT REASONS FOR REFUSAL].]

[In relation to document numbers [INSERT DOCUMENT NUMBERS], these records contain redaction of information that is either not your personal information or is information not within the scope of your APP 12 request.

Your options

Your review rights are provided below.

⁸ If you are granting access to all records you need go no further.

⁹ Use this option if you are refusing access under APP 12.2(b)(i).

¹⁰ Use this option if you have redacted other individual's personal information.

Judicial review

If you consider that the OAIC erred in law in the relevant decisions, you may wish to seek judicial review of the decision. The court will not review the merits of your request but may refer the matter back to us to reconsider – if they find our decision or determination was wrong in law or we didn't exercise our powers properly.

For more information about a judicial review, visit the Federal Court of Australia's website: <https://www.fedcourt.gov.au/>

Privacy complaint

You may make a privacy complaint to the OAIC as a regulator under s 36 of the Privacy Act. Further information about privacy complaints can be found at <https://www.oaic.gov.au/privacy/privacy-complaints/lodge-a-privacy-complaint-with-us/>

Ombudsman complaint

If you have a complaint about the outcome of your access requests, or the way in which they have been handled, you may write to enquiries@oaic.gov.au or contact the Commonwealth Ombudsman on 1300 363 072.

Freedom of Information

Alternatively, you may make a Freedom of Information (FOI) request. To make an FOI request you must:

- make the request in writing
- state that it is an application for the purposes of the *Freedom of Information Act 1982* (Cth)
- provide information that clearly identifies the documents/information you seek
- provide details about how notices can be sent to you (this can include an email address)
- send your request to foi@oaic.gov.au, fax it to (02) 9284 9666, or post it to OAIC.

Yours sincerely

[Signature]

[Title]

[Date]

Our reference: AR21/XXXXX

[APPLICANT]

By email: [EMAIL@EMAIL.COM.AU]

Your access request under APP 12

Dear [APPLICANT],

I refer to your request for access to your personal information under APP 12 in Schedule 1 to the *Privacy Act 1988* (Cth) (**Privacy Act**), received by the Office of the Australian Information Commissioner (**OAIC**) on [DATE RECEIVED].

Your Request

In your request you seek access to the following:

[INSERT SCOPE]

Decision

References to provisions in this decision record are those in the Privacy Act unless otherwise specified.

Relevant provisions - Privacy Act

Under s 6(1) “personal information” is information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable.

Section 6(1) further provides that an APP entity “holds” personal information if the entity has possession or control of a record that contains the personal information.

Australian Privacy Principle (**APP**) 12 states that if an APP entity holds personal information about an individual the entity must, on request by the individual, give the individual access to the information unless a specific exemption applies.

APP 12.2 provides that an agency is not required to give access to personal information if it is authorised to refuse access under the *Freedom of Information Act 1982* (**FOI Act**).

APP 12.5 provides that if an APP entity refuses to give access to personal information in the manner requested by the individual, it must take reasonable steps to give access in a way that meets the needs of the individual. Under the OAIC’s Australian Privacy Principles Guidelines (July 2019) (**APP Guidelines**), this can include giving a summary of the requested personal information to the individual.

APP 12.9 provides that if an APP entity refuses to give access, or to give access in the manner requested by the individual, the entity must give the individual written notice setting out a number of matters, including the reasons for the refusal, except to the extent that it would be unreasonable to do so, having regard to the grounds of refusal.

Findings

I have decided to provide you access to the four records held by the OAIC falling within the scope of your request.

I set out my reasons for my decision below.

Reasons for decision

On receiving your request, to ensure all reasonable steps were taken, [STAFF MEMBER] undertook searches for records within the scope of your request.

[STAFF MEMBER] reviewed our files in relation to your request and searched their Outlook files, local hard drive, case management system, Content Manager system and paper files. [STAFF MEMBER] located the **attached** records relevant to the scope of your request.

I have reviewed the relevant files and the records identified as relevant to your APP 12 request. I agree that the records are relevant to your request and I provide you access to the records.

Your options

Your review rights are provided below.

Judicial review

If you consider that the OAIC erred in law in the relevant decisions, you may wish to seek judicial review of the decision. The court will not review the merits of your request but may refer the matter back to us to reconsider — if they find our decision or determination was wrong in law or we didn't exercise our powers properly.

For more information about a judicial review, visit the Federal Court of Australia's website: <https://www.fedcourt.gov.au/>

Privacy complaint

You may make a privacy complaint to the OAIC as a regulator under s 36 of the Privacy Act. Further information about privacy complaints can be found at <https://www.oaic.gov.au/privacy/privacy-complaints/lodge-a-privacy-complaint-with-us/>

Ombudsman complaint

If you have a complaint about the outcome of your access requests, or the way in which they have been handled, you may write to enquiries@oaic.gov.au or contact the Commonwealth Ombudsman on 1300 363 072.

Freedom of Information

Alternatively, you may make a Freedom of Information (FOI) request. To make an FOI request you must:

- make the request in writing
- state that it is an application for the purposes of the *Freedom of Information Act 1982* (Cth)
- provide information that clearly identifies the documents/information you seek
- provide details about how notices can be sent to you (this can include an email address)
- send your request to foi@oaic.gov.au, fax it to (02) 9284 9666, or post it to OAIC.

Yours sincerely,

[SIGNATURE]

[TITLE]

[DATE]

Our reference: AR21/XXXXX

[APPLICANT]

By email to: [EMAIL@EMAIL.COM.AU]

Your APP 12 request for access to a document

Dear [APPLICANT]

I refer to your email to the Office of the Australian Information Commissioner (**OAIC**) dated 1 July 2020, in which you requested access to the following document under Australian Privacy Principle (**APP**) 12 of the *Privacy Act 1988*:

[INSERT SCOPE]

I have looked for the document you requested, that is, a document [DESCRIBE THE DOCUMENT REQUESTED]. I did not find a document meeting this description.

To look for this document I searched the case management file for [RESOLVE FILE NUMBER]. This case file holds all the documents relevant to your [IC review application/privacy complaint] dated [DATE].

I am therefore refusing you access to the document you requested on the basis that the OAIC does not have this document in its possession.

Your options

Your review rights are provided below.

Judicial review

If you consider that the OAIC erred in law in the relevant decisions, you may wish to seek judicial review of the decision. The court will not review the merits of your request but may refer the matter back to us to reconsider — if they find our decision or determination was wrong in law or we didn't exercise our powers properly.

For more information about a judicial review, visit the Federal Court of Australia's website:

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Privacy complaint

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Ombudsman complaint

If you have a complaint about the outcome of your access requests, or the way in which they have been handled, you may write to enquiries@oaic.gov.au or contact the Commonwealth Ombudsman on 1300 363 072.

Freedom of Information

Alternatively, you may make a Freedom of Information (FOI) request. To make an FOI request you must:

- make the request in writing
- state that it is an application for the purposes of the *Freedom of Information Act 1982* (Cth)
- provide information that clearly identifies the documents/information you seek
- provide details about how notices can be sent to you (this can include an email address)
- send your request to foi@oaic.gov.au, fax it to (02) 9284 9666, or post it to OAIC.

Yours sincerely

[SIGNATURE]

[TITLE]

[DATE]

Annexure C

Case note: Knowles v Secretary, Department of Defence [2020] FCA 1328

Case citation	<i>Knowles v Secretary, Department of Defence</i> [2020] FCA 1328
Court/Tribunal	Federal Court of Australia
Date	17 September 2020
Parties	Kieran John Murray Knowles Applicant Secretary, Commonwealth Department of Defence Respondent
Court reference	VID416/2017
Legislation cited	<i>Administrative Decisions (Judicial Review) Act 1977</i> (Cth) – ss 3, 5, 6, 7, 10 and 16 <i>Federal Court of Australia Act 1976</i> (Cth) – s 21 <i>Freedom of Information Act 1982</i> (Cth) <i>Judiciary Act 1903</i> (Cth) – s 39B <i>Privacy Act 1988</i> (Cth) – Sch 1; Pt V; Pt VIB; ss 6, 6A, 13, 15, 36, 40, 41, 52, 55A, 80W, 96 <i>Regulatory Powers (Standard Provisions) Act 2014</i> – Pt 7; ss 118, 119, 120 and 121
Catchwords	ADMINISTRATIVE LAW – judicial review – decisions made by the respondent in relation to applications made under the <i>Privacy Act 1988</i> (Cth) (hereafter, the “ Privacy Act ”) for access to and correction of certain information – various species of relief sought – whether Privacy Act mandates provision of access to information within 30 days – appropriateness of declaratory relief – whether existence of other remedies for the review of administrative decisions should incline the court against granting prerogative or other relief – whether private information might be corrected by associating or attaching other documents to it – whether a demand that information be destroyed qualifies as a request for correction under the Privacy Act – further amended originating application dismissed with costs
Privacy Act	<i>Privacy Act 1988</i> (Cth) – Sch 1; Pt V; Pt VIB; ss 6, 6A, 13, 15, 36, 40, 41, 52, 55A, 80W, 96
Paragraphs of interest	All
Case note	Author: Delaney Smith

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Case note

Citation

Knowles v Secretary, Department of Defence [2020] FCA 1328.

Parties

Kieran John Murray Knowles

Applicant

Secretary, Commonwealth Department of Defence

Respondent

Court

Federal Court of Australia

Date of judgment

17 September 2020

Statement of material facts

In 2011, the Applicant was the subject of communication/s between the Respondent and Department of Veterans' Affairs (**DVA**) (see: ***DO and Department of Veterans' Affairs* [2014] AICmr 124¹¹ (OAIC Determination)**).¹²

In May 2016, the Applicant made an application under Australian Privacy Principle (**APP**) 12 of sch 1 of the *Privacy Act 1988* (Cth) (**Privacy Act**) for access to his personal information held by the Respondent and later a further request for access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).¹³

On 25 November 2016 (**25 November APP 12 request**), the Applicant sent an email to the Respondent titled 'PI access under [APP] 12'.¹⁴

The Respondent acknowledged the November request the following week. The Applicant subsequently emailed the Respondent enquiring about 'the due date for a decision (just so we lock this down)'. The Respondent advised the Applicant:

¹¹ This decision was set aside by *TYGJ and Information Commissioner* [2017] AATA 156 and subsequently affirmed by *AIT18 v Australian Information Commissioner* [2018] FCAFC 192.

¹² *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [6].

¹³ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [7].

¹⁴ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [8].

Dear [Applicant]

... we will endeavor to action your request... as soon as possible [however] I am unable to provide an expected date for a response...¹⁵

On 1 December 2016, the Applicant sent the Respondent and email stating:

I believe... that legislation wise, the required processing period is 30 calendar days...¹⁶

On 22 December 2016, the Respondent provided a partial grant of access to some documents within the scope of the Applicant's request and advised by email:

[The Respondent has] asked... other areas [in the Respondent]... to review their records and identify what relevant personal information they may hold. Further [the Respondent]... asked them to advise their agreement to release, including reasons if they consider documents should be redacted or not released.

Unfortunately, [the Respondent has] not yet received responses to [its] requests. At this stage [the Respondent was] unable to provide an expected date for further response however [the Respondent] will keep [the Applicant] updated. Just to clarify, [the Respondent] is not refusing access.¹⁷

The Applicant responded later that day and provided the Respondent further time to complete his request.¹⁸

On 23 December 2016, the Respondent sent emails to various areas throughout the Respondent seeking assistance in responding to the Applicant's November request (**Assistance Request Emails**).¹⁹

On 30 January 2017, the Applicant sent a further email to the Respondent.²⁰ Soon after, the Applicant lodged a privacy complaint with the OAIC about the Respondent's response (or partial) response to the 25 November 2016 APP 12 request (**OAIC complaint**). The Applicant claimed the Respondent interfered with his privacy by failing to provide him access to his personal information by filing to provide access to the information requested within 30 days.²¹

The Respondent sent the Applicant the requested information in tranches during February 2017. In response to the Respondent's February 2017 emails, the Applicant made claims that the Respondent failed to provide access to all the information he sought.²²

¹⁵ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [9].

¹⁶ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [10].

¹⁷ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [11].

¹⁸ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [12].

¹⁹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [13].

²⁰ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [14].

²¹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [15].

²² *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [16-17].

On 2 March 2017, the Applicant again emailed the Respondent requesting the Respondent to attach or associate with his personal information a s 52 of the Privacy Act determination (**2 March APP 13 Request**).²³

On 3 March 2017, the Applicant emailed the Respondent demanding it destroy what the Applicant described as ‘defamatory claims’ about him from the Respondent’s records (**3 March Demand Email**). The information the Applicant demanded to be destroyed is held in an email from the Respondent to the Applicant dated 2 March 2017 whereby the Respondent addressed the Applicant’s claim regarding the conduct of the officer dealing with his requests.²⁴

On 6 March 2017, the Respondent distributed the 2 March APP 13 Request and asked various departments within the Respondent to take steps to address the request and provided a copy of the OAIC determination.

On 9 April 2017, the Applicant requested an update on the progress of his APP 13 requests. The following day, the Respondent replied to the Applicant and advised him that the OAIC determination had been sent to four departments within the Respondent and that it had asked those departments to include a copy of the determination in the Applicant’s records. The Respondent confirmed that two departments had included the determination in the Applicant’s records, one department had not made any annotation and the remaining department was currently processing the request.²⁵

Later in 2017, the Applicant commenced proceedings in the Federal Court against the OAIC.²⁶ The proceedings related, among other things, to the OAIC complaint.²⁷ The proceedings were ultimately summarily dismissed. The reference to the APP 12 request as noted at paragraph [19] of the 2017 proceedings is a reference to the Applicant’s 30 January 2017 complaint to the OAIC relating to his 25 November 2016 APP 12 request.²⁸

The OAIC ultimately closed the Applicant’s complaint under s 41(2)(a).²⁹ Snaden J in his decision stated that ‘there is no evidence that [the Applicant] has sought to challenge that [decision], nor that he complained to the [OAIC] in respect of the [Respondent’s] response (or failure to respond) to his 2 March APP 13 request or his 3 March Demand email’.³⁰

The Applicant sought declaratory relief to record that the Respondent contravened APP 12 and APP 13 by not providing him access to his personal information within 30 days and by failing to respond to his APP 13 requests within 30 days.

²³ ‘DO’ and Department of Veterans’ Affairs [2014] AICmr 124. This determination was subsequently set aside by the AAT (see: *TYGJ and Information Commissioner* [2017] AATA 1560) and the Full Federal Court upheld the AAT decision (see: *AIT18 v Australian Information Commissioner* [2018] FCAFC 192).

²⁴ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [20-22].

²⁵ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [27-28].

²⁶ *Knowles v Australian Information Commissioner* [2018] FCA 1212 (Tracey J)

²⁷ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [30].

²⁸ *Ibid.*

²⁹ See: CP17/00171.

³⁰ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [33].

Procedural history

This was an originating application.

Summary of the court’s analysis

APP 12 – access to personal information

Snaden J held that he was not persuaded that the Applicant’s claims about the Respondent’s conduct (that it contravened the Privacy Act by failing to address his 25 November APP 12 Request within 30 days and that it’s handling of the request was tainted by bad faith) was well founded.³¹

His Honour addressed both the 30-day time frame and the Applicant’s claim regarding bad faith. In relation to the 30-day time frame set out in APP 12.4 the court held that the requirement at APP 12 is not that:

‘... access to requested personal information must be granted within 30 days; it is that the request must be responded to within that timeframe.’³²

The court stated that the Respondent had in fact responded to the Applicant’s request within 30 days and that this issue was not in dispute between the parties and that the Respondent provided documents in partial satisfaction of it within 30 days.³³

The court found that the terms of APP 12 reinforce that division. Relevantly, the court found:

‘Paragraph 12.4... is headed “Dealing with requests for access”. It mandates two measures by which an APP Entity must deal with requests for access to information under APP 12: first, by the provision of a response to the request; and, second, by the provision of access to the information as requested (subject to notions of reasonableness and practicality...). The instrument draws a distinction between “dealing with” a request by responding to it and “dealing with” a request by granting access to what is requested. The 30-day deadline applies only in respect of the former.’³⁴

The court stated that even if it had taken a different view about the appropriateness of declaratory relief to address this aspect of the Applicant’s complaint, it would not have been persuaded that the Respondent had contravened APP 12, or any other part of the Privacy Act, by failing to provide the Applicant access to his personal information within 30 days to his access request.³⁵

Further, the court held that the Respondent’s response to the 25 November Request and its handling of the request did not amount to bad faith and found that the Respondent had not acted unlawfully by responding to the 25 November Request in a manner that bespoke bad faith.³⁶

³¹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [65].

³² *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [66].

³³ *Ibid.*

³⁴ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [67].

³⁵ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [68].

³⁶ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [69-74].

APP 13 – correction of personal information

In 2014, the OAIC ruled on a complaint that the Applicant had made about the Department of Veterans' Affairs (**DVA**).³⁷ The Commissioner determined that DVA had interfered with the Applicant's privacy and declared that DVA were to provide the Applicant with an apology and to conduct a review of its privacy complaint management process (to be conducted by an external provider).³⁸

By his 2 March 2017 APP 13 request, the Applicant sought correction of the Respondent's records insofar as the related to the statements of opinion that were inconsistent with the OAIC Determination.³⁹

The conduct engaged in by the Respondent in response to the 2 March APP 13 Request was not contested: certain records of the Respondent were annotated by having attached to the record/s a copy of the OAIC Determination. The Applicant contends that that course was not open to the Respondent. The Applicant maintained that the Respondent should have, in the first instance, made a decision one way or the other as to whether or not it would correct the personal information it held. The Applicant claimed that the Respondent was obligated to tell him as much and provide him reasons justifying that course. Then, and only then, was it open to the Applicant to ask the Respondent to associate a copy of the OAIC Determination with the relevant record/s.⁴⁰

Snaden J stated that APP 13 required the Respondent to respond to the 2 March APP 13 Request within 30 days and that, while the statutory requirement could be clearer, there seemed to be some merit in the Applicant's claims that that required, within 30 days, an indication from the Respondent as to whether it would or would not correct the Applicant's personal information as requested.⁴¹

His Honour also noted that the Applicant, while apparently familiar with the provisions of the Privacy Act that offer him a statutory right to make a complaint about the Respondent's acts or practices, the Applicant had not in fact availed himself of those rights.

In relation to the Applicant's claims that the Respondent unlawfully annotated his records, the court held that the Respondent was compelled to take reasonable steps to correct the personal information it held and was about the Applicant. The court stated:

*"Correction", in that sense, required the taking of steps to ensure that that information was "accurate, up to date, complete, relevant and not misleading"...*⁴²

The court referred to the Applicant's request that was aimed at the opinions of DVA and the Respondent's records in which those opinions were recorded. The court stated that it was difficult to see how records that contained (or otherwise referred to) those opinions might be thought to have been inaccurate, out of date, incomplete or irrelevant. The Applicant's contention was that the opinions were unsubstantiated and this view (until it was set aside) was validated by the OAIC

³⁷ Although this decision does not name DVA, as this is an internal document and staff are aware of the Applicant's complaints and relevant determinations, DVA is named in this case note.

³⁸ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [76] referring to 'DO' and *Department of Veterans' Affairs* [2014] AICmr 124.

³⁹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [77].

⁴⁰ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [79].

⁴¹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [83].

⁴² *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [90].

Determination. However, the court found that this does not demonstrate that the Respondent's records inaccurately recorded the opinions or that the opinions had since been altered or qualified such that the records in question were no longer up to date or were otherwise incomplete, or irrelevant in some way.⁴³

The court went on to state that APP 13 does not require an APP entity to take any particular steps by way of correction of information. The court stated:

*'there is, in my view, no reason why a record that is misleading because it records an opinion that has subsequently been the subject of judicial or quasi-judicial criticism or repudiation might not be "corrected" – that is to say, rendered not misleading – by annexing to it a record of that criticism or repudiation.'*⁴⁴

In response to the Applicant's submission that the association of the OAIC Determination was something that could only be done at his request and only following a decision by the Respondent that it would not take steps to correct the record and reasons for the refusal, the court stated it disagreed with the Applicant's submissions.⁴⁵

His Honour stated that he did not accept that the Respondent misunderstood its obligations or otherwise acted inconsistently with them in relation to the 2 March APP 13 Request. Snaden J went on to find:

*"it is apparent that the [Respondent] resolved to correct the records [the Applicant] asked it to correct. That it did so is hardly surprising given the existence... of the OAIC Determination which rendered the opinions about [the Applicant]... unsustainable. The [Respondent] did not communicate its resolution to [the Applicant] and it probably should have. But regardless, it was entitled to see to that correction by the means it adopted... Indeed, doing so was at least superficially consistent with what [the Applicant] had requested. Having opted to take that course, the [Respondent] was not obliged to provide [the Applicant] with a notice under paragraph 13.3 of APP 13, and [the Applicant] was not entitled to initiate the process for which paragraph 13.4 of APP 13 provides.'*⁴⁶

The court then turned its mind to the 3 March Demand email. In this email, the Applicant demanded that the Respondent destroy certain information contained in an email from the Respondent to him. The Applicant submitted that he had made an APP 13 request regarding that information and that the Respondent failed to process his request within 30 days.

In coming to its decision, the court considered the character of the 3 March Demand Email and the exchange that precipitated the request. The exchange began on 2 March 2017 with the Applicant's 2 March APP 13 Request. The Respondent replied to that request asking for a copy of the OAIC Determination. The Applicant responded and provided a link to the Determination and made inferences that the Respondent ought to have known about the Determination and threatened to 'eventually' subpoena the Respondent, to subject the Respondent staff member to cross examination

⁴³ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [91].

⁴⁴ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [92].

⁴⁵ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [93-94].

⁴⁶ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [94].

and expose the staff member's 'disgraceful behaviour' on a permanent court record'. The Applicant also suggested that the staff member was 'lazy or ignorant'.⁴⁷

In response to the Applicant's provocations the Respondent replied by apologising to the Applicant for any appearance of laziness or ignorance and that the staff member was not the Respondent's Privacy Officer nor was he legally trained in privacy matters.⁴⁸

The court took particular notice of one paragraph in the Respondent's response to the Applicant:

*'I understand that I am currently the focal point of your frustrations with [the Respondent] and you hold me personally responsible for [the Respondent's] responses to date – I assume your expletives and threats are only a reflection of this frustration and do not imply a serious threat to my health or safety.'*⁴⁹

By the Applicant's 3 March Demand Email, the Applicant described those comments as 'defamatory' and demanded that they be 'destroy[ed]... from [the Respondent's] records'. The Applicant also threatened the staff member with action against him if the Applicant's demand was not met. The court considered whether the staff member's remark was in fact the Applicant's personal information; however, it did, with reluctance accept that the remark did constitute the Applicant's personal information and proceeded on that basis.⁵⁰

Hi Honour summarised the issue in the following way:

'It was a statement of opinion about what [the Respondent's staff member] understood was conveyed by the intemperate language of [the Applicant's] earlier emails: specifically, that [the Applicant] was frustrated; but not to the point that he posed a threat to [the staff member's] health or safety. That conclusion appears very much to align with reality: [the Applicant] was plainly frustrated with the manner in which the [Respondent] had responded to his prior requests for information but there is no evidence that that frustration risked expression in the form of physical threats or aggression aimed at [the staff member]. It is difficult to see how [the staff member's] opinion was wrong, much less defamatory.'

The court then considered whether the 3 March Demand Email equated to a request for correction under APP 13. The court found that although the Applicant clothed his demand in the language of the Privacy Act and his demand that the Respondent 'destroy these defamatory claims from [the Respondent's] records about threatening behaviour' was expressly said to be required under APP 13. However, Snaden J found that those words alone are not sufficient to constitute the email as a request for correction of information under APP 13.⁵¹

Snaden J went on to state that there are two ways in which an APP entity may be obliged to correct (or consider correcting) personal information held about a person. The first is if the entity has occasion to consider, of its own volition, that the information is inaccurate, out of date, incomplete,

⁴⁷ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [101-103].

⁴⁸ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [104].

⁴⁹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [105].

⁵⁰ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [107-108].

⁵¹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [109].

irrelevant or misleading. The second is that the entity receives a request from an individual for the correction of their personal information.⁵²

The court was not satisfied that the 3 March Demand Email was in fact an APP 13 request from the Applicant. Specifically, the email did not request the correction of anything. Snaden J held that:

‘[the email] was little (if anything) more than a demand that records be “destroyed”, couched in objectionable language that appears to have been calculated only to bully or belittle [the Respondent’s staff member]. The 3 March Demand Email does not employ the term “correction”, nor any analogue of it...’⁵³

‘... I am not satisfied that the [Respondent’s] failure to respond to the 3 March Demand Email amounts in any way to a contravention of APP 13 (nor to an interference with [the Applicant’s] privacy.’⁵⁴

Declaratory relief

The Applicant sought declaratory relief from the court record that the Department contravened APP 12 by not providing him with access to his personal information within 30 days of his request, and that the Respondent acted in bad faith in attending to that request in the manner that it did.⁵⁵

The court’s power to grant declaratory relief in matters that it has jurisdiction to determine is not in question. That power exists by virtue of s 16(c) of the ADJR Act and s 21 of the *Federal Court of Australia Act 1976* (Cth), if not inherently by reason of this court’s status as a superior court of record: *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 (“**Ainsworth**”), 581 (Mason CJ, Dawson, Toohey and Gaudron JJ).⁵⁶

Although the Applicant’s claims for declaratory relief lacked substance the court identified that he contended he had a right to have his 25 November APP 12 request dealt with within 30 days and in a manner unpolled by bad faith. The Applicant claimed that those rights were infringed by the manner by which the Respondent handled the request.⁵⁷

Declaratory relief may assume one or both of two forms:

1. it could state that the Applicant possessed the rights he identified and/or
2. that the Respondent infringed those rights by dealing with his request as it did.⁵⁸

The court held that it would be an inappropriate exercise of the court’s discretionary power to grant the relief sought by the Applicant. In *Ainsworth* (at 582) the majority made the following observation about declaratory relief (references omitted in original):

[D]eclaratory relief must be directed to the determination of legal controversies and not to answering abstract or hypothetical questions. The person seeking relief must have “a real

⁵² *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [110].

⁵³ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [111].

⁵⁴ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [112].

⁵⁵ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [56].

⁵⁶ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [57].

⁵⁷ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [58].

⁵⁸ *Ibid.*

*interest” and relief will not be granted if the question “is purely hypothetical I”, if relief is “claimed in relation to circumstances that [have] not occurred and might never happen” or it “the Court’s declaration will produce no foreseeable consequences for the parties”.*⁵⁹

Snaden J was not persuaded that there was any utility in granting declaratory relief in respect of the Applicants APP 12 and APP 13 requests. The 25 November APP 12 Request was addressed, it was futile to grant relief in relation to the APP 13 request and the granting of relief would do little more than validate the Applicant’s opinion that the Respondent ought to have acted on the 3 March Demand Email in accordance with APP 13. The court was satisfied that the Applicant received what he was entitled to receive and he did not challenge his successful prosecution of the APP 12 request. The Applicant simply seeks to validate his view that it was not handled as it ought to have been. The court stated:

*‘Even assuming that he is right about that, it is difficult to see how declaratory relief from this court might benefit him in any legal sense.’*⁶⁰

The court commented further on the utility of granting declaratory relief in this case:

*I am not satisfied that the circumstances that here present warrant an exercise of the court’s discretion to grant declaratory relief (under any of the various sources of the court’s power to grant it). However much it might vindicate [the Applicant’s] criticisms of the Department, declaratory relief would be legally pointless.*⁶¹

...

*I do not consider that the circumstances here warrant an exercise of the court’s discretion to grant declaratory relief. There is no utility in granting what is sought. Declaratory relief is granted to record the existence or otherwise of a particular state of affairs and, thereby, to resolve a justiciable controversy. Here, [the Applicant] seeks little (if anything) more than an advisory opinion from the court. That is not an appropriate exercise of the remedy.*⁶²

...

*The relief that is sought would achieve nothing more than to vindicate [the Applicant’s] opinion that the Department ought to have responded to or acted upon (or was required under APP 13 to respond to or act upon) his 3 March Demand Email, and/or to serve as advice to the Department that that view is correct. ... that view is not correct; but even if it were, declaratory relief is not a remedy that is appropriately deployed in the service of those ends. Although it would undoubtedly validate [the Applicant’s] criticisms of the Department’s failure to respond to his 3 March Demand Email, declaratory relief in the form sought would be legally pointless (in the sense that it would not serve to vindicate any presently-existing legal rights, nor otherwise resolve any presently-existing justiciable controversy).*⁶³

⁵⁹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [59] citing *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 [582].

⁶⁰ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [62].

⁶¹ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [64].

⁶² *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [82].

⁶³ *Knowles v Secretary, Department of Defence* [2020] FCA 1328, [115].

The court's decision

Application dismissed with costs.

Orders made by the court**THE COURT ORDERS THAT:**

1. The applicant's further amended originating application dated 30 September 2019 be dismissed.
2. The applicant pay the respondent's costs in a sum to be assessed in default of agreement, in accordance with the court's Costs Practice Note (GPN-COSTS).

Court judgment⁶⁴

FEDERAL COURT OF AUSTRALIA

Knowles v Secretary, Department of Defence [2020] FCA 1328

File number:	VID 416 of 2017
Judgment of:	SNADEN J
Date of judgment:	17 September 2020
Catchwords:	ADMINISTRATIVE LAW – judicial review – decisions made by the respondent in relation to applications made under the <i>Privacy Act 1988</i> (Cth) (hereafter, the “ Privacy Act ”) for access to and correction of certain information – various species of relief sought – whether Privacy Act mandates provision of access to information within 30 days – appropriateness of declaratory relief – whether existence of other remedies for the review of administrative decisions should incline the court against granting prerogative or other relief – whether private information might be corrected by associating or attaching other documents to it – whether a demand that information be destroyed qualifies as a request for correction under the Privacy Act – further amended originating application dismissed with costs
Legislation:	<i>Administrative Decisions (Judicial Review) Act 1977</i> (Cth) – ss 3, 5, 6, 7, 10 and 16 <i>Federal Court of Australia Act 1976</i> (Cth) – s 21 <i>Freedom of Information Act 1982</i> (Cth) <i>Judiciary Act 1903</i> (Cth) – s 39B <i>Privacy Act 1988</i> (Cth) – Sch 1; Pt V; Pt VIB; ss 6, 6A, 13, 15, 36, 40, 41, 52, 55A, 80W, 96 <i>Regulatory Powers (Standard Provisions) Act 2014</i> – Pt 7; ss 118, 119, 120 and 121
Cases cited:	<i>Ainsworth v Criminal Justice Commission</i> (1992) 175 CLR 564 <i>Australia Pty Ltd v Minister for Infrastructure and Transport</i> (2014) 221 FCR 165 <i>Australian Competition and Consumer Commission v MSY Technology Pty Ltd & Ors</i> (2012) 201 FCR 378

⁶⁴ Errors and emphasis in original.

Construction, Forestry, Maritime, Mining and Energy Union v Milin Builders Pty Ltd [2019] FCA 1070

Cruse v Multiplex Ltd & Ors (2008) 172 FCR 279

Dranichnikov v Minister for Immigration and Multicultural Affairs (2003) 197 ALR 389

Knowles v Australian Information Commissioner [2018] FCA 1212

Saitta Pty Ltd v Commonwealth (2000) 106 FCR 554

SCAS v Minister for Immigration and Multicultural and Indigenous Affairs [2002] FCAFC 397

Tooth & Co Ltd v Council of the City of Parramatta (1955) 97 CLR 492

Warramunda Village v Pryde (2001) 105 FCR 437

Knowles v Australian Information Commissioner [2018] FCA 1212

Saitta Pty Ltd v Commonwealth (2000) 106 FCR 554

SCAS v Minister for Immigration and Multicultural and Indigenous Affairs [2002] FCAFC 397

Tooth & Co Ltd v Council of the City of Parramatta (1955) 97 CLR 492

Warramunda Village v Pryde (2001) 105 FCR 437

Division: General Division
 Registry: Victoria
 National Practice Area: Administrative and Constitutional Law and Human Rights
 Number of paragraphs: 118
 Date of hearing: 14 October 2019
 Counsel for the Applicant: The applicant appeared in person
 Counsel for the Respondent: Mr A D Pound
 Solicitor for the Respondent: HWL Ebsworth Lawyers

ORDERS

VID 416 of 2017

BETWEEN: KIERAN JOHN MURRAY KNOWLES

Applicant

AND: SECRETARY, COMMONWEALTH DEPARTMENT OF DEFENCE

Respondent

ORDER MADE BY: SNADEN J

DATE OF ORDER: 17 SEPTEMBER 2020

THE COURT ORDERS THAT:

1. The applicant's further amended originating application dated 30 September 2019 be dismissed.
2. The applicant pay the respondent's costs in a sum to be assessed in default of agreement, in accordance with the court's Costs Practice Note (GPN-COSTS).

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

SNADEN J:

1. For at least the last four years, the applicant, Mr Knowles, has been in dispute with the respondent—or, perhaps more broadly, with the commonwealth department that the respondent administers (hereafter, the “**Department**”)—concerning Departmental records that pertain to him. The background to that dispute is not material; but it has spawned a raft of applications and related litigation under various commonwealth statutes. The present matter is the latest front upon which that private war rages.
2. By a further amended originating application dated 30 September 2019, Mr Knowles prosecutes a number of challenges to various decisions made (and other conduct or omissions engaged in) by or on behalf of the Department in connection with applications that he has made or purported to make under what are known as the Australian Privacy Principles (hereafter the “**APPs**”), for which sch. 1 of the *Privacy Act 1988* (Cth) (hereafter, the “**Privacy Act**”) makes provision. Particulars of those applications, the relief that is sought in respect of them and the statutory sources of this court’s power that Mr Knowles seeks to invoke in order to obtain that relief are identified below.
3. For the reasons set out herein, I decline to grant the relief that Mr Knowles seeks. His further amended originating application of 30 September 2019 will be dismissed with the usual order as to costs.

1. EVIDENCE AND BACKGROUND FACTS

4. The material facts are substantially (if not wholly) uncontroversial. They emerge from the evidence that the parties led, all of which was received (in some cases, eventually) without successful objection. Mr Knowles read an affidavit that he affirmed on 24 September 2019. The respondent read an affidavit of Ms Catherine Nicole Hooper, affirmed on 18 January 2018. Additionally, the parties prepared a statement of agreed facts, which was filed on 6 February 2018 and received into evidence at the hearing. A bundle of documents—the content of which was the subject of discussion and, ultimately, agreement at the hearing—was also received into evidence.
5. The following facts emerge without significant controversy from that body of evidence.
6. In 2011, Mr Knowles was the subject of a communication (or possibly multiple communications) between the Department and another Commonwealth government department (hereafter, “the Other Department”), the identity of which it is prudent not to reveal (as these reasons will later explain). It is not necessary to recite the substance of those communications (although some insight as to them emerges below). It suffices to note that they recorded some information or opinions about Mr Knowles to which Mr Knowles took (and continues to take) exception.
7. In May 2016, Mr Knowles sought to ascertain what records the Department possessed that contained information personal to him (including about the communications referred to in the previous paragraph). To that end, he made an application under the Privacy Act and, later, under the Freedom of Information Act 1982. Those applications are not presently relevant, except insofar as they provide some context for the events that are.

8. On Friday, 25 November 2016, Mr Knowles sent an email to the Department headed “PI Access under App12”. That email (hereafter, the “25 November APP 12 Request”) was relevantly in the following terms (errors original):

Dear Defence Privacy Officer,

Since Defence seems intent to stymie access under FOI, I now request access under the Privacy Act - APP12, to PI of mine.

An APP entity that holds personal information about an individual must, on request, give that individual access to the information (APP 12.1).

APP 12 operates alongside and does not replace other informal or legal procedures by which an individual can be given access to information. This includes FOI, which is a separate process and does not impede on application via the Privacy Act.

An APP entity ‘holds’ personal information ‘if the entity has possession or control of a record that contains the personal information’ (s 6(1)), and extends beyond physical possession of a record to include a record that an APP entity has the right or power to deal with.

APP 12 requires an APP entity to provide access to ‘personal information’, as defined in s 6(1), being any information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.

APP 12 requires an APP entity to provide access to all of an individual’s personal information it holds, even if that record may not exclusively deal with that individual's personal information.

APP 12 requires that personal information be given to an individual ‘on request’. APP 12 does not stipulate formal requirements for making a request, or require that a request be made under signature. An entity cannot require an individual to follow a particular procedure, use a designated form or explain the reason for making the request.

APP 12.4(a)(i) provides that an agency must ‘respond’ to a request for access within 30 calendar days. The 30 day time period commences on the day after the day the agency receives the request. The agency must respond by giving access to the personal information that is requested, or by notifying its refusal to give access.

An APP entity must give access to personal information in the manner requested by the individual, if it is reasonable and practicable to do so (APP 12.4(b)). **I request supply via electronic email**

An agency cannot impose upon an individual any charge for providing access to personal information under APP 12 (APP 12.7). This includes a charge for the making of the request to access personal information and/or a charge for giving access to requested personal information, such as charges for copying costs, postage costs and costs associated with using an intermediary.

I therefore request all records, held by Defence, that contain my PI. I expect record search will be conducted for the periods *Oct 2011 to March 2012 and May 2016 to Oct 2016 inclusive*.

To help narrow the search for Defence, these would be records in CAF, DCAF, JHC, HQAC, and RAAF Security Police repositories, and relate to issues contained in [a document that was identified but need not here be repeated], *and may mention the following personnel as author, receiver, or sender of said documents:*

...[there then followed a list of names that need not be recited]...

This is not to say these records will include the personal information of the aforementioned, as where public servants' names or positions or other material that only reveal only a public servant performing their public duties does not involve the disclosure of information concerning their personal affairs. Essentially what is disclosed is that the person took part in the passage of official information, and constitutes official information, not personal information.

While not limiting what is recognised as personal information of mine, search terms that could be used to identify records include:

...[there then followed a list of search terms that need not here be repeated]...

I hope this will help resolve Defence's bad faith unethical stonewalling on access noting that nothing prevents these processes running concurrently (and still Defence is not lifting a finger to search under FOI still, at least this way you'll can get started doing under the Privacy Act, as is required on application).

I note that I previously verified my identity via this email address with Defence Privacy.

Regards

Kieran Knowles

9. The following week, Mr Ian Heldon—the Department's Assistant Director Administrative Review, Complaints and Resolution—acknowledged receipt of Mr Knowles's 25 November APP 12 Request. Mr Knowles then enquired of Mr Heldon as to "...the due date for [a] decision (just so we lock this down)". Mr Heldon relevantly responded as follow:

Dear Kieran,

While we will endeavour to action your request for access to information as soon as possible I am unable to provide an expected date for a response. We will keep you updated. If you are dissatisfied with Defence's handling of your request you can complain to the Office of the Australian Information Commissioner.

...

10. Later that day (Thursday, 1 December 2016), Mr Knowles sent Mr Heldon another email, noting (relevantly, errors original):

I believe Ian that legislation wise, the required processing period is 30 calendar days for APP 12 decisions. Certainly I will activate my review rights should neither response nor reasonable excuse not be received by 27 December 2016 (30 calendar days falls on 26th, but it'd be unreasonable to have due date on Boxing Day, so have added an extra day for you) - unless you can provide evidence as to why it should be some other date.

...

11. On Thursday, 22 December 2016, Mr Heldon sent Mr Knowles another email, to which was attached some documentation provided in partial satisfaction of his 25 November APP 12 Request. In that email, Mr Heldon noted additionally as follows (relevantly, errors original):

...

I have asked the other areas in Defence which you nominated in your request to review their records and identify what relevant personal information they may hold. Further I have asked

them to advise their agreement to release, including reasons if they consider documents should be redacted or not released.

Unfortunately, I have not yet received responses to my requests. At this stage I am unable to provide an expected due date for a further response however I will keep you updated. Just to clarify, Defence is not refusing access.

If your dissatisfied with Defence's handling of your request you can complain to the Office of the Australian Information Commissioner....

12. Later that evening, Mr Knowles sent an email to Mr Heldon in the following terms:

Good Afternoon Ian,

I'm pleased you have taken the opportunity to inform yourself of the obligations imposed by the Privacy Act under Australian Privacy Principle 12. It's a welcome about face compared to previous responses In recognition of this, I am happy to provide Defence - in recognition of the impact of the Christmas/New Years stand-down - an extension of two weeks, making the new deadline Monday 9th January to provide the outstanding material and to complete this PI access request.

May you have a Merry Christmas and a Happy New Year, and I hope this more professional and ethical approach now taken, will continue.

I will also provide copy of this to the OAIC desk officer handling the related FOI IC review, as I believe this will assist in progressing that matter too.

Regards

Kieran Knowles

13. On Friday, 23 December 2016, Mr Heldon sent a series of emails to various colleagues throughout the Department, by which he sought assistance in responding to Mr Knowles's 25 November APP 12 Request. Those emails (hereafter, the "Assistance Request Emails ") assume some significance in this matter.

14. In the early morning of Monday, 30 January 2017, Mr Knowles sent another email to Mr Heldon. It is convenient to set out the terms of that email in full (errors original):

Ian,

It seems you deliberately wish to cause offence.

I gave you an extended deadline to complete this outstanding APP12 process, for your "outstanding enquiries", which was required to be completed by Monday 9th January.

That deadline passed without completion or update.

I allowed the end of the month to run, to see if you made any effort to update or complete, and you did not do so.

Defence has still deliberately failed to comply with its obligations under the APP12 provision of the Privacy Act - partial completion is still a breach of the Privacy Act, the obligation is that all relevant records must be provided.

Do you have any excuse you wish to make, before this matter is actioned on?

Disgusted by this unlawful behaviour by Defence.

Kieran Knowles

15. Approximately an hour later, Mr Knowles made a complaint to the Office of the Australian Information Commissioner concerning the Department's response—or partial-response—to his 25 November APP 12 Request. By that complaint (hereafter, the "**OAIC Complaint**"), Mr Knowles charged the Department with having contravened an APP (and, thereby, with having interfered with his privacy for the purposes of the Privacy Act) insofar as it did not answer his 25 November APP 12 Request within 30 days. The OAIC Complaint made reference to the Department having, in the past, "...repeatedly and deliberately interfered with [Mr Knowles's] privacy and [his] right to see how it has dealt with [his personal information]" and concluded as follows:

I request formal acknowledgement of this privacy complaint against Defence, and that it be dealt with promptly, noting the numerous refusals by Defence to adhere to privacy and FOI law.

Let me be crystal clear - I will use all legal means to ensure the legislation is complied with, and that further intentional delays are given the judicial scrutiny they deserve. I would think you would be aware that playing games with me, has a history of not working out so well for you (even when you stack the deck).

16. By a series of emails sent in early February, Mr Heldon provided to Mr Knowles the remaining information that he had sought by his 25 November APP 12 Request. In reply to one of those emails, Mr Knowles responded in the following terms (errors original):

Dear Ian,

It is rather appalling that Defence clearly hoped I would just forget and that you sat on this material - from the limited records provided (which do not contain any material between CAF Office and the other involved areas of Defence, despite repeated reference to said records, including a HIB which can not have "disappeared" given archive practices for such material), some redacted without specific explanation (contrary to Defence standard practice of specifying for each redaction the claimed grounds for doing so) this material has been in Defence's immediate possession following internal enquiries back mid-2016 - rather than release it as you were obligated to do within a reasonable time period (which as per the OAIC rules, was still 30 days within request made).

The missing records (not missing as in actually missing, but clearly being withheld unlawfully), which cannot be missing due to record keeping practices for correspondence between CAF Office and other areas of Defence (you forget I worked in the C Suite as SO to DCAF for a number of months - I am familiar with that office's practices and requirements here), in particular any records coming out of CAF's Office and any briefings or other related records back (which, by necessity, must contain my PI and therefore fall within scope) are required to be provided and there is no possibility they have simply "disappeared" from records (Archive Act requires such records are retained).

I specifically requested these records, yet none have been provided, nor has any explanation for their absence been given.

For just once, can you play this with a straight bat and provide the records required. I know you have them, you know you have them, and by sitting on them, you only give weight that wrongdoing was deliberately done at the time.

I should also advise you, given some of the factually untrue claims made in the some of these documents provided, I will seek correction under APP13 (or more accurately, annotation required to be placed on said records, based on evidence directly proving certain claims to be false, that those allegations were falsely made as part of a intentional harassment and defamatory campaign by [the Other Department] - that are repeated in the internal correspondence as facts when they are not – in breach of APP10) at a later date. Defence should, however, not wait given its obligations under the Privacy Act, and start to effect its own review as to the accuracy of said records, and make sure they are up to date (it's in your own interests given it's clear where this will end up, but this is just advice, and you can certainly ignore it if you want to dig your own hole further - frankly we could have had this done and dusted ages ago - but the irony of Defence trying to cover its backside is that it is actually leading you further towards scrutiny you clearly wish to avoid).

Now, are you going to provide the outstanding PI records, or do you want to spend yet more time and resources trying to hide them, when you would be well aware you' ll have to hand them over eventually - all this unethical and illegal behaviour is doing is kicking the can down the road to delay the inevitable (if I was going to just give up in the face of Defence's unlawful obstructions, it would have happened months ago - but I have the time, money and will to stick with it, as I would have thought was pretty obvious by now).

For as long as it takes, I will have Defence account for all the ways it used my PI in these disgraceful breaches of privacy (I think Defence needs a refresher in PI and Privacy law - any opinion or comment about an identifiable individual, whether true or not, is PI – this idea that Defence never disclosed or used PI to multiple individuals both within and without Defence is simply unsustainable - false claims were repeatedly distributed, to the detriment of my standing within the Defence community, pretty widely, and Defence failed to retract these when those false claims were shown without substantive evidence - Defence conducted a witch hunt on little better than rumour and I was subjected to harassment by senior ADF personnel because of it, partially because of personal relationships senior ADF individuals had with senior staff at [the Other Department], who wanted to knock me down a whole clothesline of pegs for exposing their corrupt practices). The list of individuals who were communicated false claims (as if they were factually correct), without any notification or right of reply being given (in breach of administrative law) to me, now runs multiple pages - absolutely there will be multiple individuals (who only dealing with their part) who were never advised those claims were false and will still believe those false allegations are true, when senior Defence personnel knew they were not (but never did correct the record), is a massive travesty.

I am just not going to give up. So why don't you exercise some common sense and just supply all the records required, prove there is nothing to cover up, and avoid future escalating embarrassment (it is not my objective to damage the ADF or the ADO, but by god, I am not going to protect you, and if you force things down that path of ever increasing scrutiny, you are going to have to cop the exposure and liability that comes with it).

Again Ian, Defence has nothing to lose by dealing with this ethically, but much risk in not doing so (ask [the Other Department] how their illegal behaviour is going for them - one officer even got her previous lying under oath uncovered, these things tend to kick up linked stuff people would rather wish hidden).

Regards

Kieran Knowles

17. In reply to another of Mr Heldon's early-February 2017 emails, Mr Knowles responded as follows (errors original):

Hi Ian,

Given you've breached the Act/PPs multiple times already, I'm sure you are aware I already have [lodged a complaint with the office of the Australian Information Commissioner].

There is a set period for providing the required records, Defence cannot ignore that. It's not a case of providing what you want, when you want, when you feel like it.

It might take years (maybe even a decade), but I will progress this matter through the OAIC, the AAT and the Federal Court if that's what it takes (and indeed there is some benefit of doing so, given that the only way such unlawful conduct will cease is if continuously reinforced that such conduct is unlawful).

You know the obligations here, I know the obligations here, and that any short term benefits you think you are deriving by acting unlawfully now, will be insignificant to the long term losses you are exposing Defence to.

I know I would quite appreciate the opportunity to force certain Defence personnel involved here to give evidence under oath - perjury is a risky business for individuals, especially those knowingly acting unlawfully.

Given you made no mention of waiting on other material, and passed off your earlier email today as closure of this matter, until this point was pressed, you' ll be pressed to sell that con.

You should be aware that when a respondent acts in a high-handed, malicious, oppressive or insulting manner, especially when warned by the Applicant prior, it exposes further liabilities. Honestly, the incredible arrogance of Defence here will be costly for you.

Regards

Kieran Knowles

18. In the evening of Thursday, 2 March 2017, Mr Knowles wrote again to Mr Heldon. Again, it is prudent to set out the terms of that email (hereafter, the "2 March APP 13 Request") in full (errors original):

Dear Ian,

As you should be aware the Privacy Commissioner issued a Determination in my favour a few years back upholding a privacy complaint against [the Other Department] in relation to a number of false claims [the Other Department] made about me to Defence about me being a serious and imminent risk to self and others, and falsely alleging I was in a psychotic state.

As stated in that Determination:

* "The [Other Department] (the Department) interfered with the complainant's privacy by disclosing his personal information, in breach of Information Privacy Principle (IPP) 11.1 of the Privacy Act 1988 (Cth) (the Privacy Act)"

* " 'Personal information' is defined in s 6(1) of the Privacy Act as: information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion." [these uncorrected opinions about me that Defence has recorded in multiple records, without qualification or annotation,

based on [the Other Department]'s fraudulent and malicious claims constitute personal information about me, held on record by Defence, and come within the scope of the Privacy Act]

* The Commissioner rejected that these false allegations/disclosures by [the Other Department] to Defence were covered by or justified by IPP 11.1(a), saying 'the Department has not provided any explanation or information demonstrating how the complainant was aware, or was reasonably likely to have been aware, that information of that kind was usually passed to the ADF or the Department of Defence.'

* The Commissioner rejected that these false allegations/disclosures by [the Other Department] to Defence were covered or justified by IPP 11.1(c) saying "If I were to accept that the complainant's communications could be characterised as a serious and imminent threat to either the life or health of himself or that of another person, I am nevertheless not satisfied that the disclosure of that conduct to the Department of Defence was necessary to protect him or any other person from that threat. It is particularly unclear how the Department could have considered it was necessary to disclose the complainant's personal information to his employer in order to prevent or lessen the serious and imminent threat to the life or health of a...staff member [of the Other Department], when the security assessment report recommended the Department consider mediation and/or the appointment of a specialised single point of contact as soon as practically possible. If the Department considered the threat to be serious and imminent, then disclosure to the police, in accordance with reported standard Departmental practice, would seem the appropriate course of action to address the situation. It is also unclear why when making such a disclosure it would be relevant to disclose details of the complainant's compensation claims. I am not persuaded on the information before me, that any threat that may have existed at that time mandated disclosure to ADF medical staff or Defence's Head of Joint Health Command in order to prevent or lessen it... I am satisfied that the complainant's conduct did not constitute a serious and imminent threat. In my view, on the totality of the information before me, any belief that the Department may have held that the complainant's conduct posed a serious and imminent threat was not reasonable. The circumstances presented here do not meet the threshold required for IPP 11.1(c) to be applicable and the Department was therefore not entitled to rely on it."

* The Commissioner rejected that these false allegations/disclosures by [the Other Department] to Defence were covered or justified by IPP 11.1(d) saying "The Department submitted that its disclosure of the complainant's personal information was at a minimum authorised, if not required, by the Work Health and Safety Act 2011 (WHS Act)... The WHS Act did not commence until 1 January 2012 and was therefore not in effect at the time of the Department's disclosure. As the WHS Act does not operate retrospectively, it cannot be relied on by the Department. The Occupational Health and Safety Act 1991 was in place at the time of the Department's disclosure. I am not satisfied that any obligations the Department may have under that legislation may be relied on to permit the disclosure under IPP 11.1(d). Even if a duty of care existed as asserted by the Department and that duty of care could have been categorised as a law for the purposes of IPP 11.1(d), it is not clear that authorisation to disclose would permit disclosure to the complainant's employer under the exception in IPP 11.1(d) of the Privacy Act. No specific legislative reference to the range of persons personal information may be disclosed to in the discharge of such a duty of care has been identified. Nor it seems was this disclosure in keeping with standard practice (the Department's standard practice would normally involve disclosure to the police). In my view, the Department's actions were not consistent with the notion that it was discharging a perceived duty of care. Accordingly, on the information available to me, I am satisfied that the Department cannot rely on the exemption contained in IPP 11.1(d)."

* The Commissioner rejected that these false allegations/disclosures by [the Other Department] to Defence were covered or justified by IPP 11.1(e) saying "The Department submitted on 28 March 2012 that the disclosures were reasonably necessary for the enforcement of the Defence Force Disciplinary Act 1982 (DFDA) and referred in particular to sections 33 and 60, which deal with 'assault, insulting or provocative words' and prejudicial conduct respectively. If I were to accept that the term 'enforcement of criminal law' or 'enforcement of a law involving pecuniary penalty' in IPP 11.1(e) includes disciplinary action taken by the Department of Defence under the Defence Force Discipline Act 1982 (DFDA), I am not aware of any type of arrangement between the Department and Defence, that existed at the time of the alleged improper disclosures, to the effect that these agencies shared information relevant to Defence's law enforcement functions under the DFDA. Nor has any information been presented to me to indicate that the complainant was the subject of an investigation of a service offence at the time of the disclosures. I am not satisfied that disclosure of the complainant's information to ADF medical officers could reasonably be expected to be necessary for the enforcement of any disciplinary action under the DFDA. The Head of Joint Health Command is, amongst other things, responsible for the provision of health care to members of the ADF. The ADF Senior Medical Officer also has a role in the provision of health care to ADF personnel. Even if there was an intention to disclose for the purpose of law enforcement, I am not satisfied that it was reasonably necessary to disclose that personal information to ADF and Department of Defence medical staff... Accordingly, I am satisfied that the exception contained in IPP 11.1(e) was not available to the Department in relation to its disclosures to an ADF Senior Medical Officer and the Head of Joint Health Command. "

* "The Department was not entitled to rely on the exceptions in IPP 11.1 (a), (c), (d) or (e) in disclosing the complainant's personal information to an ADF Senior Medical Officer on 20 October 2011... The Department was not entitled to rely on the exceptions in IPP 11.1 (a), (c), (d) or (e) in disclosing the complainant's personal information to the Department of Defence's Head of Joint Health Command on 20 October 2011"

* "I declare in accordance with s 52(1)(b)(i)(B) of the Privacy Act that the complainant's complaint is substantiated and that the Department breached IPP 11.1 by disclosing the personal information of the complainant."

As these false allegations by [the Other Department] were found without merit (Defence health personnel, after conducting intrusive review by multiple medical staff, found no substantiation of [the Other Department]'s false and malicious claims) and were held to be unlawful, these false claims recorded without qualification or annotation by Defence in multiple records held by them, across Security, Medical, Personnel and Executive records, are well overdue for correction. APP 13 requires an APP entity to take reasonable steps to correct personal information to ensure that, having regard to the purpose for which it is held, it is accurate, up-to-date, complete, relevant and not misleading. Despite the defamatory nature of these allegations and that a kangaroo court QA was done in secret against me, which all fizzled out due to the fraudulent nature of these allegations and the utter lack of evidentiary weight to back these abuses of power, not correction of these fraudulent claims recorded as if they were true by Defence had occurred - even though many years have passed.

I therefore now formally require Defence to correct these records to specifically annotate every record held by Defence where these defamatory and false claims are recorded by Defence, to specifically advise that these defamatory and false claims by [the Other Department] were not only unlawful but also found to be unsubstantiated. It is a malicious slur on my record that they have been left uncorrected, to the extent that someone not completely across the whole history, may see one of those records in isolation and be misled as to thinking they actually

had some merit. An annotation on each individual piece of these records where these defamatory and false claims (that was held to be unlawful for [the Other Department] to make) to specify that this is not the case is the minimum ethical requirement for Defence to do.

Failure of Defence to do so will initiate legal action.

These annotations should also explicitly note that a Determination found these claims by [the Other Department] a breach of the Privacy Act and therefore unlawful. I will give you the reasonable period of 30 days to advise me of your decision, and 60 days to complete this task. Again, failure to do so will result in legal action. While my preference is destruction of these records that contain malicious and false claims by [the Other Department], that Defence not only made unlawful disclosures to [the Other Department] in return to but used to run an abuse of process because of personal relationships certain senior Defence staff had with certain senior...staff [of the Other Department] (bastardisation for a favour), I understand that such records will be the subject of ongoing legal action, so will accept comprehensive annotation (which is the absolute minimum required here).

I would advise you that playing games here just allows me to re-open the original breaches of the Privacy Act by Defence (despite claims by Defence, there was no legislative coverage for the disclosures by Defence to [the Other Department], of confidential medical information, as it was unrelated to any compensation claim and therefore outside any legal access arrangements and at that time not even a policy document covered the disclosures made by Defence), but since I receive a gain either way, feel free to be the unethical fuckhead you've been to date. I will take advantage of it.

Regards

Kieran Knowles

19. The following morning, Mr Heldon replied, requesting that Mr Knowles provide him with "...a copy of the determination which [was referred to in the 2 March APP 13 Request] or at least a reference which would allow [the Department] to make enquiries to obtain a copy."

20. Mr Knowles responded to that email that afternoon in the following terms:

Ian,

Determinations of the Privacy/Information Commission (Oaic) are all publicly available. The Oaic publishes them at <https://www.oaic.gov.au/privacylaw/determinations/#pagelist>

There has only been one Determination against [the Other Department] [there then followed a hyperlinked URL that needn't be republished here]

As a "Privacy Officer" it is inherent you must have a passing knowledge of the Privacy Act and the Oaic - both of which advise about the public publication of Determinations, and a quick Google search would have given you this information even if you were so ignorant of these facts. (although you appear to think your job is all about ignoring and subverting the Privacy Act and its obligations on Defence, not ensuring compliance).

Furthermore Determinations are published on Austlii and the LexisNexis legal database.

If you want me to be your administrative officer, because you are too lazy or ignorant to do your job, I suggest you start paying me.

Stop fucking around - unless you eventually want a subpoena to be cross-examined and your disgraceful behaviour to be on permanent court record (tends not to go down so well if you ever want to do anything else in your life).

Kieran Knowles

21. Mr Heldon responded later that evening in the following terms:

Dear Kieran,

Thank you for providing a link to the OAIC determination which I have now read.

I apologise if you believe that I am being lazy, ignorant or behaving disgracefully. I'm not as you suggest a 'privacy officer' nor legally trained in privacy although by default I have ended up managing the Defence privacy inbox in addition to my role managing APS employee grievances. The directorate where I work co-ordinates responses to requests received across several complaint related inboxes.

My previous interactions with you have been in this coordination role. In hindsight I should have been clear about this at the outset. I passed your complaints/requests to the relevant areas in Defence and then collected their responses and passed them to you. I have no decision making power in relation to Privacy or the ability to direct areas such as Air Force or Joint Health Command to take any particular action. I can't see what records they hold and I rely on the information I am provided by them.

I understand that I am currently the focal point of your frustrations with Defence and you hold me personally responsible for Defence's responses to date - I assume your expletives and threats are only a reflection of this frustration and do not imply a serious or imminent threat to my health or safety.

I believe that I have always responded to you in a cordial and respectful manner although I acknowledge not always in your expected timeframe or with the outcome you are seeking. I have strived to balance your requests along with my core responsibility managing a small internal complaint handling team whose workload often impacts on timeliness. If you would prefer not to interact with me then I can try to identify an alternate point of contact within Defence for you.

I provide the above as explanation of my role and the actions I have taken to date when corresponding with you. None of what I have said should be construed as a reflection on Defence's broader responsibilities and obligations under the Privacy Act and Australian Privacy Principles.

You may well respond with further expletives and threats about taking some action against me. I'll just continue to try to coordinate a response to your requests - unless you advise that you want an alternate point of contact.

In response to your current request I intend forwarding a copy of the OAIC determination to Air Force (Personnel and Executive records), Joint Health Command (Medical records), Australian Government Security Vetting Agency (Security records) and Service Police (Policing Records) and request they annotate their records as you have requested including attaching a copy of the OAIC determination

Regards,

Ian Heldon

Acting Director Complaints and Resolution
 HR Services Branch
 Defence People Group
 Department of Defence

22. Half an hour later, Mr Knowles responded as follows (errors and emphasis original):

Stop being hysterical Ian - you'd be hard pressed to make out a criminal threat or threatening behaviour, and you are welcome to try asshole.

You have continually taken the piss, been intentionally obstructionist, and deliberately dragged your heels and been unhelpful. Damn right I hold you accountable for that.

If you continue to make defamatory comments about me making threats or exhibiting anything other than frustration to be expected from your deliberately obstructionist behaviour, I warn you now that I will commence legal action against you personally for intentional defamation. You should be aware that as per the Legal Services Directive, the Commonwealth will not fund defamation action on your part, so it'll be you personally responsible for your disgusting unethical behaviour.

Anyone can be fake token forms of address while being deeply disrespectful and offensive in their conduct - you can fuck off with your claims you have treated me "respectfully", because the evidence proves otherwise. You have ignored your legal obligations on multiple occasions, on the few times you have given token lip service I have treated you with respect, in all other cases where you have acted fraudulently or with intentional disrespect by action, you have also been treated accordingly.

If you what to put it to the test, feel free to debate it in a court room, because you'll come out smarting.

So pull your head in dickhead - you want respect, you had to act with integrity and honesty. You are not entitled to any, if you do not give any - and you are well aware as I am you have been constantly playing games with intentional infliction of unethical behaviour below the standards required by the APS Code of Conduct.

As Dr Jeremy E Sherman said:

"You're being disrespectful!" is an arresting accusation made as though you should never be disrespectful, as though everyone always deserves total respect. Being respectful is treated as synonymous with being nice, disrespectful as with sinning.

And yet none of us can or should respect everything and everybody equally. To do so would be to surrender our powers of discernment, of evaluating the quality of one person's views and actions as cleaner or better than another's.

Some say the way out is to disrespect ideas and actions but not people, and yet, as you may have noticed, we can't draw a clean line between people and their behavior, at least not one they'll regard as clean. Snubbing my thoughts and actions could easily snub me. When the citizens of Syria voice their opposition to Bashar a-Assad, their president for using Scud missiles against them, he'll feel personally snubbed, disrespected as a person, and well he should. The extreme proves the problem. A pure ban on disrespect is unworkable. We need a different approach to disrespect. Disrespect is not the sin it's made out to be.

I reserve for me and everyone else our powers of discernment, the right to employ the full spectrum from the highest respect to the lowest, from honoring a person as inherently credible, to taking their word and actions with a grain of salt, to monitoring them skeptically, to doubting them outright, to ignoring them, to fighting them, to fighting them to the death as I think befits Assad, the ultimate show of disrespect.

It is more dishonest and unethical to be fake polite, while intentionally being immoral, unethical or disrespectful by action, than it is just to be plainly so. This is the act of the psychopath who games the system of social interaction, the "Mean Girl" who pretends butter doesn't melt in her mouth, while being the biggest bully in the school.

Actions speak louder than words, and those who hide their unethical behaviour behind tokenistic platitudes deserve all the scorn such immoral fakery deserves.

If you don't retract your defamatory statements, I will follow up on them.

Under APP13 I require you to destroy these defamatory claims from Defence records about threatening behaviour you just made (note [the Other Department] tried the same stunt and lost, so try your luck dickhead), such comments are opinions about me that constitute personal information about me, and therefore fall within the scope of the Privacy Act. Furthermore they are defamatory and any distribution or repetition make you personally liable.

You want to dance with me snake, you better make sure you are fully covered, and I am telling you you are not. But thanks for giving me the opportunity to open action against you personally if you fail to remedy.

Kieran Knowles

That email (hereafter, the "**3 March Demand Email**") also assumes significance in the present matter.

23. I pause to note that there is nothing in the evidence to suggest that Mr Knowles and Mr Heldon had any particular history beyond the various requests or complaints that Mr Knowles had made concerning his access to Departmental records. Although Mr Knowles plainly appears to have felt a sense of frustration about the manner in which Mr Heldon (or the Department more generally) had managed his requests, there is nothing in the evidence that explains why Mr Knowles was driven to send Mr Heldon such obviously and wildly inappropriate communications. For present purposes, nothing turns upon the relationship between Mr Knowles and Mr Heldon, nor upon the regrettable—frankly, astonishing— language that Mr Knowles chose to employ in the prosecution of his grievances. Nonetheless, I offer those observations lest it be thought that there is some hitherto unexplored evidence about the relationship between Mr Knowles and Mr Heldon that might contextualise Mr Knowles's gratuitous incivility. There is not.
24. Perhaps appropriately after the exchanges outlined above, Mr Heldon played no further role of significance—certainly none that the evidence discloses—in the Department's responses to Mr Knowles's 2 March APP 13 Request and 3 March Demand Email. Responsibility in that regard seems to have vested instead in Mr Peter Bavington, the Department's Director of Complaints and Resolution.

25. By email dated 6 March 2017, Mr Bavington distributed throughout various areas within the Department a copy of Mr Knowles's 2 March APP 13 Request and requested that steps be taken to address it. Relevantly, Mr Bavington's email was in the following terms (errors original):

Mr Knowles request is below (the determination he refers to is attached).

I request you review records you hold concerning ex-FLTLT Knowles and make any necessary corrections or annotations. If you do not consider that the records held are inaccurate, out-of-date, incomplete, irrelevant or misleading you may consider it appropriate to add a copy of the attached determination and a note (or a copy of this email) containing Mr Knowles APP13 request. Alternatively you may decide that no action is required in which case I request you provide reasons for that decision.

Your response is requested by Mon 28 March 2017 to enable a consolidated response to be provide within the 30 day timeframe.

26. That request was the subject of various responses over subsequent weeks, to the substance of which I shall shortly return.

27. On Sunday, 9 April 2017, Mr Knowles sent a follow up email to Messrs Bavington and Heldon. Again, it is convenient to set out the content of that email in full (errors original):

Attn Defence Privacy/Ian Heldon,

On the 2nd March 2017 and, subsequently on the 3rd March 2017 (following the highhanded, malicious, insulting & oppressive conduct of Defence EL2 employee Ian Heldon, who made the same fraudulent defamation that [the Other Department] was criticised by the Information Commissioner for, which he was aware of at the time of making said comments), two separate but related APP13 Correction applications were made to Defence.

Defence was required to deal with both these APP13 Correction applications within 30 calendar days (so Monday 3 April 2017, given the weekend, for both application), under the Privacy Act and related Guideline requirements.

To date, no formal decision and correction has been made/notified by Defence (it is not acceptable to simply forward the matter to another area of Defence, to be left up to them, without any further confirmation that this has actually been carried out – just as an FOI decision requires a formal response/confirmation, so too does these actions under the Privacy Act).

Given Defence has not formally responded to either APP13 correction application, and this matter is now overdue a number of days, this is legally a deemed refusal by Defence to deal with these applications as required by the legislation and related guidelines.

I now have 30 days in which to seek review of this breach of the Privacy Act by Defence, which I advise you of my intent to do so. It is certainly apparent from the ongoing highhanded, malicious, insulting & oppressive conduct by Defence, who have gone to great lengths to frustrate and prevent lawful access to, and correction of, Defence records relating to my PI, that this will be the only mechanism to force Defence to comply with its legal obligations.

Suffice to say, it is disgusting behaviour by Defence, and the irony of a powerful and deeply unethical cohort in Defence, who act unlawfully in extreme prejudice to the legal rights of others, demanding they be treated with obsequious forelock tugging, when their actions have been anything but respectful (and indeed are breaches of the APS Code of Conduct) is noted (it

is nothing more than a fraudulent manipulation, a poisoning of the well, a shield to the powerful - much like Assad or Putin criticise the West for its hostility to its repeated breaches of international law, respect is not a right, and it is hypocritical to demand respect when you act in such a unethical and unlawful way).

28. Mr Bavington replied the following day, summarising the responses that he had collated from the various areas within the Department whose assistance he had enlisted for the purposes of addressing the 2 March APP 13 Request. Again, it is convenient to set out the text of Mr Bavington's email in full (errors original):

Dear Mr Knowles

I apologise for the delay in resolving your concerns. I asked four areas of Defence to annotate your records by including a copy of the OAIC determination. Those four areas are Air Force (Personnel and Executive records), Joint Health Command (Medical records), the Australian Government Security Vetting Agency (Security records) and Service Police (Policing Records). I have received confirmation that Joint Health Command and the Service Police have annotated your records. The Australian Government Security Vetting Agency has advised me that they have no records relating incident that resulted in the OAIC determination and therefore they have not annotated their records. Air Force is still working through some issues. I am following that up and I will get back to you when that matter is finalised.

Please note I will be the point of contact for any future privacy matters you may wish to raise with Defence.

Your sincerely

Peter

29. Twenty minutes later, Mr Knowles responded in the following terms (errors original):

Peter,

Again, an APP13 decision, required under the legislation, is not some soft serve "we will ask other internal areas of the Department to see if they wish to update" type of response as if this was an optional activity/mere suggestion, as given here, but a requirement to give an actual decision and amend records accordingly.

I also note you did not address at all the second APP13 submission, also overdue, requiring the removal of the defamatory claims of Ian Heldon from the records.

The outcomes requires are no different from that for an FOI decision, a formal letter from an authorised decision maker, granting the APP13 correction sought, or denying it, and giving a statement of reasons.

No such activity has taken place, despite the statutory deadline having passed and this constitute a deemed refusal to deal with the matter and a breach of the Act.

No apology for Ian Heldon's disgraceful behaviour (which insultingly was lifted from the Determination cited, that being making knowingly fraudulent inferences/claims of serious risk to self or others) has been provided either.

It seems rather clear that Defence do not intend to deal ethically with these matters, and won't do so short of being reminded of the law, in a courtroom.

30. Later in 2017, Mr Knowles commenced a proceeding in this court against the Australian Information Commissioner. That proceeding appears to have concerned, amongst other things, the OAIC Complaint. It was ultimately the subject of a successful application for summary dismissal: *Knowles v Australian Information Commissioner* [2018] FCA 1212 (Tracey J). The court’s reasons in support of that outcome contain the following factual summary:
- 19 On 27 June 2017 the Assistant Commissioner gave Mr Knowles a notice stating that he intended to dismiss his APP 12 complaint under s 41(1)(e) and s 41(2)(a) of the Privacy Act (“the proposed s 41 decision”). Mr Knowles was invited to comment by 11 July 2017.
- 20 Although Mr Knowles indicated that he would comment on the notice he did not, ultimately, do so. Instead, on 30 June 2017, he varied his application to the Court to seek relief in relation to the proposed s 41 decision.
- 21 The proposed s 41 decision has been put on hold pending the outcome of this proceeding.
31. The reference to the “APP 12 complaint” is a reference to a complaint that Mr Knowles directed to the Office of the Australian Information Commissioner on 30 January 2017 concerning a request that he made of the Department on 25 November 2016 for access to information under APP 12: *Knowles v Australian Information Commissioner* [2018] FCA 1212, [12]-[16] (Tracey J). I infer—and it is plainly the case—that that request was the 25 November APP 12 Request (above, [8]); and that that complaint was the OAIC Complaint (above, [15]).
32. By correspondence sent to Mr Bavington and dated 23 May 2019—after the summary dismissal of Mr Knowles’s earlier proceeding in this court and after the commencement of the present proceeding—the Office of the Australian Information Commissioner gave notice that it had decided to exercise its discretion under s 41(2)(a) of the Privacy Act to not investigate Mr Knowles’s OAIC Complaint.
33. There is no evidence that Mr Knowles has sought to challenge that determination, nor that he has complained to the Australian Information Commissioner in respect of the Department’s response (or failure to respond) to his 2 March APP 13 Request or his 3 March Demand Email.

2. LEGISLATIVE FRAMEWORK

34. The relief that Mr Knowles presently seeks is said to be authorised under various commonwealth enactments. It is prudent to map out in some detail the legislative bases upon which his application rests.

2.1. The Privacy Act

35. The Privacy Act regulates, amongst other things, certain ways in which Commonwealth agencies must handle particular types of information. Sch 1 to that act contains the APPs. By s 15 of the Privacy Act, “APP Entities” are prohibited from conducting themselves in ways that amount to breaches of an APP. Such conduct is the subject of further definition, into which it is not presently necessary to delve: Privacy Act, s 6A. It is not disputed that the respondent qualifies as an “APP Entity” and, more specifically, as an “agency”: Privacy Act, s 6.

36. By s 13 of the Privacy Act, an APP Entity is deemed to have “interfered with the privacy of an individual” if it engages in an act or adopts a practice that, in either case, breaches an APP in relation to personal information about that individual. “Personal information” is defined to mean “...information or an opinion about an identified individual, or an individual who is reasonably identifiable...whether the information or opinion is true or not [and] whether the information or opinion is recorded in material form or not”: Privacy Act, s 6.
37. There are two APPs that are relevant to this proceeding: APP 12 and APP 13. APP 12 is relevantly in the following terms:

12 Australian Privacy Principle 12—access to personal information

Access

- 12.1 If an APP entity holds personal information about an individual, the entity must, on request by the individual, give the individual access to the information.

...

Dealing with requests for access

- 12.4 The APP entity must:

- (a) respond to the request for access to the personal information:
- (i) if the entity is an agency—within 30 days after the request is made; or
 - (ii) if the entity is an organisation—within a reasonable period after the request is made; and
- (b) give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so.

...

38. APP 13 is relevantly in the following terms:

13 Australian Privacy Principle 13—correction of personal information

Correction

- 13.1 If:

- (a) an APP entity holds personal information about an individual; and
- (b) either:

- (i) the entity is satisfied that, having regard to a purpose for which the information is held, the information is inaccurate, out of date, incomplete, irrelevant or misleading; or

- (ii) the individual requests the entity to correct the information;

the entity must take such steps (if any) as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose for which it is held, the information is accurate, up to date, complete, relevant and not misleading.

...

Refusal to correct information

13.3 If the APP entity refuses to correct the personal information as requested by the individual, the entity must give the individual a written notice that sets out:

- (a) the reasons for the refusal except to the extent that it would be unreasonable to do so; and
- (b) the mechanisms available to complain about the refusal; and
- (c) any other matter prescribed by the regulations.

Request to associate a statement

13.4 If:

(a) the APP entity refuses to correct the personal information as requested by the individual; and

(b) the individual requests the entity to associate with the information a statement that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the entity must take such steps as are reasonable in the circumstances to associate the statement in such a way that will make the statement apparent to users of the information.

Dealing with requests

13.5 If a request is made under subclause 13.1 or 13.4, the APP entity:

(a) must respond to the request:

- (i) if the entity is an agency—within 30 days after the request is made...

39. Part V of the Privacy Act is headed “Investigations”. Section 36 provides that an individual may complain to the Australian Information Commissioner about an act or practice that he or she feels has resulted in an interference with his or her privacy. By s 40 (and subject to exceptions not presently relevant), the Australian Information Commissioner is required to investigate such complaints. That requirement is subject to the discretions conferred upon the Australian Information Commissioner by s 41 of the Privacy Act, which include a discretion not to investigate a complaint made against an APP entity if satisfied that the entity has adequately dealt with it.

40. Section 52 of the Privacy Act deals with the determination of complaints. Relevantly, it provides as follows:

52 Determination of the Commissioner

(1) After investigating a complaint, the Commissioner may:

(a) make a determination dismissing the complaint; or

(b) find the complaint substantiated and make a determination that includes one or more of the following:

- (i) a declaration:

(A) where the principal executive of an agency is the respondent— that the agency has engaged in conduct constituting an interference with the privacy of an individual and must not repeat or continue such conduct; or

(B) in any other case—that the respondent has engaged in conduct constituting an interference with the privacy of an individual and must not repeat or continue such conduct;

(ia) a declaration that the respondent must take specified steps within a specified period to ensure that such conduct is not repeated or continued;

(ii) a declaration that the respondent must perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

(iii) a declaration that the complainant is entitled to a specified amount by way of compensation for any loss or damage suffered by reason of the act or practice the subject of the complaint;

(iv) a declaration that it would be inappropriate for any further action to be taken in the matter.

41. Division 3 of Part V of the Privacy Act concerns (amongst other things) the enforcement of determinations made under s 52. A complainant may apply for orders in this court or the Federal Circuit Court to enforce such a determination: Privacy Act, s 55A. A complainant who is unhappy about a determination made under s 52 of the Privacy Act may apply to the Administrative Appeals Tribunal to have it reviewed: Privacy Act, s 96(1)(c).

42. Part VIB of the Privacy Act deals with enforcement of the obligations that the act otherwise imposes. Section 80W concerns enforcement by means of injunctions. It relevantly provides as follows:

80W Injunctions

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

...

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection

(a) the Commissioner;

(b) any other person.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection

- (a) the Federal Court;
- (b) the Federal Circuit Court.

2.2. The ADJR Act

43. The *Administrative Decisions (Judicial Review) Act 1977* (hereafter, the “**ADJR Act**”) confers upon this court jurisdiction to review certain administrative decisions.

44. Section 5 of the ADJR Act relevantly provides as follows:

5 Applications for review of decisions

(1) A person who is aggrieved by a decision to which this Act applies that is made after the commencement of this Act may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the decision on any one or more of the following grounds:

- (a) that a breach of the rules of natural justice occurred in connection with the making of the decision;
- (b) that procedures that were required by law to be observed in connection with the making of the decision were not observed;
- (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
- (d) that the decision was not authorized by the enactment in pursuance of which it was purported to be made;
- (e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;
- (f) that the decision involved an error of law, whether or not the error appears on the record of the decision;
- (g) that the decision was induced or affected by fraud;
- (h) that there was no evidence or other material to justify the making of the decision;
- (j) that the decision was otherwise contrary to law.

(2) The reference in paragraph (1)(e) to an improper exercise of a power shall be construed as including a reference to:

- (a) taking an irrelevant consideration into account in the exercise of a power;
- (b) failing to take a relevant consideration into account in the exercise of a power;
- (c) an exercise of a power for a purpose other than a purpose for which the power is conferred;
- (d) an exercise of a discretionary power in bad faith;
- (e) an exercise of a personal discretionary power at the direction or behest of another person;
- (f) an exercise of a discretionary power in accordance with a rule or

policy without regard to the merits of the particular case;

(g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power;

(h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and

(j) any other exercise of a power in a way that constitutes abuse of the power.

45. Section 6 is in similar terms, save that it relates to (amongst other things) conduct in which a person has engaged for the purposes of making a decision to which the ADJR Act applies.

46. Section 7 of the ADJR Act relates to failures to make decisions to which the ADJR Act applies. It provides as follows:

7 Applications in respect of failures to make decisions

(1) Where:

(a) a person has a duty to make a decision to which this Act applies;

(b) there is no law that prescribes a period within which the person is required to make that decision; and

(c) the person has failed to make that decision;

a person who is aggrieved by the failure of the first mentioned person to make the decision may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the failure to make the decision on the ground that there has been unreasonable delay in making the decision.

(2) Where:

(a) a person has a duty to make a decision to which this Act applies;

(b) a law prescribes a period within which the person is required to make that decision; and

(c) the person failed to make that decision before the expiration of that period;

a person who is aggrieved by the failure of the first mentioned person to make the decision within that period may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the failure to make the decision within that period on the ground that the first mentioned person has a duty to make the decision notwithstanding the expiration of that period.

47. Section 3 of the ADJR Act defines what qualifies as a “decision to which this Act applies”. It is not in dispute that the decisions made (or not made) by or on behalf of the Department in connection with each of the 25 November APP 12 Request and the 2 March APP 13 Request were decisions to which the ADJR Act applied. For reasons that will become apparent, I do not consider that the Department’s response (or failure to respond) to the 3 March Demand Email was conduct that related to, or was otherwise a failure to make, a decision to which the ADJR Act applied.

48. The rights of review conferred by ss 5, 6 and 7 of the ADJR Act are in addition to any other rights that a person has to seek review of a relevant decision, relevant conduct engaged in for the purposes of making a decision, or a relevant failure to make a decision: ADJR Act, s 10(1). This court may, in its discretion, refuse to grant an application under any of those sections in circumstances where another law makes adequate provision for a process or processes by which a person may apply to a tribunal to have the decision, conduct or failure in question reviewed: ADJR Act, s 10(2).
49. Section 16 of the ADJR Act confers upon this court various powers that, in its discretion, it may exercise by way of review of an impugned decision, impugned conduct or an impugned failure to make a decision. It provides as follows:

16 Powers of the Federal Court and the Federal Circuit Court in respect of applications for order of review

(1) On an application for an order of review in respect of a decision, the Federal Court or the Federal Circuit Court may, in its discretion, make all or any of the following orders:

- (a) an order quashing or setting aside the decision, or a part of the decision, with effect from the date of the order or from such earlier or later date as the court specifies;
- (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to such directions as the court thinks fit;
- (c) an order declaring the rights of the parties in respect of any matter to which the decision relates;
- (d) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court considers necessary to do justice between the parties.

(2) On an application for an order of review in respect of conduct that has been, is being, or is proposed to be, engaged in for the purpose of the making of a decision, the Federal Court or the Federal Circuit Court may, in its discretion, make either or both of the following orders:

- (a) an order declaring the rights of the parties in respect of any matter to which the conduct relates;
- (b) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court considers necessary to do justice between the parties.

(3) On an application for an order of review in respect of a failure to make a decision, or in respect of a failure to make a decision within the period within which the decision was required to be made, the Federal Court or the Federal Circuit Court may, in its discretion, make all or any of the following orders:

- (a) an order directing the making of the decision;
- (b) an order declaring the rights of the parties in relation to the making of the decision;

(c) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court considers necessary to do justice between the parties.

(4) The Federal Court or the Federal Circuit Court may at any time, of its own motion or on the application of any party, revoke, vary, or suspend the operation of, any order made by it under this section.

2.3. The Regulatory Powers Act

50. The *Regulatory Powers (Standard Provisions) Act 2014* (Cth) establishes (amongst other things) a framework for the enforcement of certain legislative provisions by means of injunctive relief. Part 7 of that act (hereafter, the “**RP Act**”) is headed “Injunctions”. Section 121 of the RP Act provides as follows:

121 Grant of injunctions

Restraining injunctions

(1) If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of a provision enforceable under this Part, a relevant court may, on application by an authorised person, grant an injunction:

(a) restraining the person from engaging in the conduct; and

(b) if, in the court’s opinion, it is desirable to do so—requiring the person to do a thing.

Performance injunctions

(2) If:

(a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and

(b) the refusal or failure was, is or would be a contravention of a provision enforceable under this Part;

the court may, on application by an authorised person, grant an injunction requiring the person to do that thing.

51. Other provisions of the RP Act define what is contemplated by provisions that are “enforceable” under Part 7 (RP Act, s 118), who qualifies as an “authorised person” (RP Act, s 119) and what is an “authorised court” (RP Act, s 120). It suffices presently to note that the provisions of the Privacy Act are provisions that are enforceable under Part 7 of the RP Act, and that, for that purpose, Mr Knowles is an “authorised person” and this court is an “authorised court”: Privacy Act, s 80W (above, [42]).

2.4. The Judiciary Act 1903

52. The *Judiciary Act 1903* (Cth) (hereafter, the “**Judiciary Act**”) confers upon this court jurisdiction to determine matters in which injunctive relief, or writs of mandamus or prohibition are sought against an officer or officers of the commonwealth, or which otherwise arise under commonwealth laws: *Judiciary Act 1903* (Cth), s 39B(1) and (1A)(c).

3. MR KNOWLES'S CASE

53. There are three distinct aspects to the case that Mr Knowles prosecutes. They align with the three requests that he made (or purported to make) under the Privacy Act, namely: the 25 November APP 12 Request, the 2 March APP 13 Request and the 3 March Demand Email. It is convenient to deal separately with each of those three aspects of Mr Knowles's case.

3.1. The 25 November APP 12 Request

3.1.1. Summary of the contentions advanced

54. As the factual summary above sets out, the 25 November APP 12 Request concerned an attempt by Mr Knowles to access certain personal information that the Department held about him. Although the information that he sought was provided to him, Mr Knowles was and remains unhappy about the manner in which the Department handled that request.
55. There are two dimensions to his discontent. First, he says that the Department failed to afford him access to the information that he sought within 30 days of his request, which, he says, was required under APP 12. Second, he maintains that the Department's conduct in handling his request was attended by bad faith on the part of Mr Heldon. That alleged bad faith is itself comprised of multiple parts, in that it is said that Mr Heldon:

(1) did not take steps to address the 25 November APP 12 Request until nearly 30 days from the time that he received it;

(2) indicated to Mr Knowles that he (Mr Heldon) was awaiting responses from within the Department when, in truth, he had not initiated any process to elicit the information that Mr Knowles had sought; and

(3) provided to Mr Knowles, in partial satisfaction of the request, documents that he (Mr Heldon) knew had already been provided pursuant to another request that Mr Knowles had earlier made.

56. Mr Knowles seeks declaratory relief to record that the Department contravened APP 12 by not providing him with access to his personal information within 30 days of his request, and that Mr Heldon acted in bad faith in attending to that request in the manner that he did.

3.1.2. Appropriateness of declaratory relief

57. The court's power to grant declaratory relief in matters that it has jurisdiction to determine is not in question. For present purposes, it exists at least by dint of s 16(c) of the ADJR Act and s 21 of the *Federal Court of Australia Act 1976* (Cth), if not inherently by reason of this court's status as a superior court of record: *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 ("**Ainsworth**"), 581 (Mason CJ, Dawson, Toohey and Gaudron JJ).
58. Mr Knowles did not identify the terms in which he hoped that the court might grant declaratory relief. Respectfully, the submissions that he advanced—which I pause to note were otherwise cogent and well-structured—did not clearly articulate the right or rights whose existence he sought to make the subject of declarations. He contended that he had a right to have his 25

November APP 12 Request addressed within 30 days and in a manner unpolled by bad faith. Those rights were, he says, infringed by the manner in which the Department addressed his request. Logically, declaratory relief could assume one or both of two forms: it could state that Mr Knowles possessed the rights that he has identified and/or that the Department infringed them by addressing his request in the manner that it did.

59. Either way, what Mr Knowles seeks in respect of his 25 November APP 12 Request is not an appropriate exercise of the court's power to grant declaratory relief. In *Ainsworth* (at 582), the majority made the following observations about declaratory relief (references omitted):

“[D]eclaratory relief must be directed to the determination of legal controversies and not to answering abstract or hypothetical questions. The person seeking relief must have “a real interest” and relief will not be granted if the question “is purely hypothetical”, if relief is “claimed in relation to circumstances that [have] not occurred and might never happen” or it “the Court’s declaration will produce no foreseeable consequences for the parties”.

60. Although I have had occasion to express some doubt about the point (see, for example, *Construction, Forestry, Maritime, Mining and Energy Union v Milin Builders Pty Ltd* [2019] FCA 1070, [80]-[85] (Snaden J)), it seems to be accepted in this court that declaratory relief *may* be granted simply to record the basis upon which a proceeding resolves: *Cruse v Multiplex Ltd & Ors* (2008) 172 FCR 279, 298 [53] (Goldberg and Jessup JJ, Gray J dissenting). Unhelpfully, there is other full court authority to the contrary effect: *Warramunda Village v Pryde* (2001) 105 FCR 437, 440 [8] (Gray, Branson and North JJ); *Australian Competition and Consumer Commission v MSY Technology Pty Ltd & Ors* (2012) 201 FCR 378, 388 [35] (Greenwood, Logan and Yates JJ).
61. Assuming, momentarily, that the Department's conduct in respect of the 25 November APP 12 Request was engaged in in contravention of the law (in that the request was not addressed within 30 days and/or that the manner in which it *was* addressed was tainted by bad faith), and that the court might properly “record” as much by making a declaration or declarations to that effect (or otherwise so as to record what Mr Knowles's rights are or were), the court's attention naturally turns to whether there is any utility in doing so.
62. I am not persuaded that there is any utility in granting declaratory relief in respect of the 25 November APP 12 Request (supposing, as I do for the sake of argument, that the Department's relevant conduct was unlawful in either or both of the ways that Mr Knowles alleged). The 25 November APP 12 Request was addressed. Mr Knowles received what he was entitled to receive and, for obvious reasons, he does not challenge his successful prosecution of the request. He simply seeks to validate his view that it was not handled as it ought to have been. Even assuming that he is right about that, it is difficult to see how declaratory relief from this court might benefit him in any legal sense.
63. It is unfair to describe Mr Knowles's prosecution of this aspect of his present claim as a personal vanity project; but, equally, it is difficult to see how declaratory relief might vindicate any presently existing legal right to which he lays claim. On that front, Mr Knowles noted that he intends to lodge further requests for information under APP 12 and that the relief sought presently would (or might) serve to inform the manner in which the Department responds to them. Respectfully, those are hypothetical propositions into which this court cannot properly be drawn. Declaratory relief is granted to resolve justiciable controversies; not as a means of

providing advice to future or potential litigants : *Porter v OAMPS Ltd* (2005) 215 ALR 327, 337 [34] (Goldberg J).

64. Even assuming that Mr Knowles is right to draw the criticisms that he draws about the Department's responses to his 25 November APP 12 Request, I am not satisfied that the circumstances that here present warrant an exercise of the court's discretion to grant declaratory relief (under any of the various sources of the court's power to grant it). However much it might vindicate Mr Knowles's criticisms of the Department, declaratory relief would be legally pointless.

3.1.3. Validity of Mr Knowles's complaints

65. In any event, I am not persuaded that Mr Knowles's criticisms of the Department's conduct—namely that it contravened the Privacy Act by failing to address his 25 November APP 12 Request within 30 days and that its handling of the request was tainted by bad faith—are well-founded. I address each contention in turn.

The 30-day timeframe

66. The requirement in APP 12 is not that access to requested personal information must be granted within 30 days; it is that the request must be responded to within that timeframe. It is not in dispute that the Department did that. Mr Heldon acknowledged the request not long after Mr Knowles made it; and provided documents in partial satisfaction of it within 30 days (above, [9], [11]).
67. The terms of APP 12 reinforce that bifurcation. Paragraph 12.4 (above, [37]) is headed "Dealing with requests for access". It mandates two measures by which an APP Entity must *deal with* requests for access to information under APP 12: first, by the provision of a response to the request; and, second, by the provision of access to the information as requested (subject to notions of reasonableness and practicality that are not presently relevant). The instrument draws a distinction between "dealing with" a request by responding to it and "dealing with" a request by granting access to what is requested. The 30-day deadline applies only in respect of the former.
68. Even had I taken a different view about the appropriateness of declaratory relief to address this aspect of Mr Knowles's complaint, I would not have been persuaded that the Department (or the respondent on its behalf) contravened APP 12 (or any other part of the Privacy Act) by failing to provide to Mr Knowles access within 30 days to the information that was the subject of his 25 November APP 12 Request.

Bad faith

69. Similarly, I would not have been persuaded that the Department's response to the 25 November APP 12 Request was attended by bad faith. To stigmatise its conduct in that way, Mr Knowles would need to show that Mr Heldon (through whom the Department's—and the respondent's—response was actioned) did not honestly or genuinely set out to discharge the obligations that the Privacy Act imposed: *SCAS v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCAFC 397, [19] (Heerey, Moore and Kiefel JJ).

70. I do not accept that Mr Heldon's failure prior to 23 December 2016 to make the internal inquiries necessary to address the 25 November APP 12 Request sinks to the depths of bad faith. There may be any number of innocent explanations for such a failure (for example, the need to attend to other matters). Indeed, the evidence does not safely permit the court to infer that such a failure even occurred: the fact that Mr Heldon sent the Assistance Request Emails on 23 December (above, [13]) is not proof that no other steps had been taken prior to that point to compile the information that Mr Knowles had requested. The evidence simply does not disclose what, if anything, Mr Heldon did between 25 November 2016 and 23 December 2016. It is possible that he didn't do anything, which would be consistent with the tone of the Assistance Request Emails. But that consistency alone is not a sufficient basis upon which to infer that that, in fact, was what occurred.
71. Mr Heldon's knowing provision of documents of which Mr Knowles was already in possession (above, [11] and [55]) is not sufficient to constitute bad faith either. It is difficult to see what else Mr Heldon was meant to do with those documents. There is no suggestion that they were outside the scope of the 25 November APP 12 Request. Had he not provided them, he would have contravened the Department's obligation to do so. That he provided them already knowing that Mr Knowles possessed them (if, indeed, he had such knowledge) is neither here nor there. The suggestion (if it was made) that he did so as some kind of ruse to disguise a degree of inactivity to that point in time (assuming that there *was* some degree of inactivity) is also insufficient to ground a finding of bad faith. It is not disputed that the documents answered the description of what Mr Knowles had requested. Mr Heldon was right to provide them.
72. In any event, this aspect of Mr Knowles's bad faith allegation does not find clear expression within his further amended originating application of 30 September 2019 (nor any prior variant of that document). It was raised for the first time at the hearing. Although I would have dismissed it on its merits, it would have been dismissed in any event on the basis that it was not part of the case of which Mr Knowles gave prior notice.
73. Mr Knowles also attributes to Mr Heldon bad faith manifest in his indication of 22 December 2016 that he had "...asked other areas in Defence...to review their records [etc but had] not yet received responses" (above, [11]). Mr Knowles contends that that representation was untrue: that, in reality, Mr Heldon had not made any internal inquiries to that point in time and that he lied about having done so. I reject that contention. As has already been explored, there is simply insufficient evidence to conclude that Mr Heldon had not made any internal inquiries prior to 23 December 2016.
74. Again, even had I taken a different view about the appropriateness of declaratory relief to address this aspect of Mr Knowles's complaint, I would not have been persuaded that the Department (or the respondent on its behalf) had acted unlawfully (or had otherwise done something that engaged either of ss 5(1)(e) or 6(1)(e) of the ADJR Act) by responding to the 25 November APP 12 Request in a manner that bespoke bad faith.

3.1.4. Conclusion in respect of the 25 November APP 12 Request

75. Insofar as it pertains to his 25 November APP 12 Request, Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The relief that is sought—namely, declaratory relief—should (and will) be declined in the court's discretion on the

basis that there is no utility in granting it. Even were that otherwise, it would be declined on the basis that the respondent's (or the Department's) conduct, insofar as it pertained to that request, was not engaged in in contravention of the Privacy Act and did not otherwise amount to an improper exercise (or improper exercises) of statutory power.

3.2. The 2 March APP 13 Request

3.2.1. Summary of the contentions advanced

76. In 2014, the Australian Information Commissioner ruled on a complaint that Mr Knowles had made against the Other Department. It held that the Other Department had interfered with Mr Knowles's privacy by disclosing personal information about him to the Department. That information contained (or assumed the form of) statements of opinion about Mr Knowles, including about his mental health and the level of threat that he posed to the physical safety of himself and others. Those opinions appear to have stemmed at least partly from what were considered aggressive or obnoxious communications that Mr Knowles had directed toward an officer or officers of the Other Department. The particulars of those communications and the opinions that were formed (and, ultimately, disclosed to the Department) in consequence of them need not here be recited. It suffices to note that the Other Department made certain disclosures to the Department at least in part on the strength of the opinions that had been formed about Mr Knowles. The Australian Information Commissioner determined that those opinions neither warranted nor authorised the disclosures that were made (that determination is referred to, hereafter, as the "**OAIC Determination**").
77. By his 2 March APP 13 Request, Mr Knowles sought the correction of Departmental records insofar as they chronicled statements of opinion that were inconsistent with the OAIC Determination. It is in respect of the Department's conduct in response to that request that he now seeks various remedies.
78. The OAIC Determination has since been the subject of an application for review before the Administrative Appeals Tribunal. That review resulted in the determination being set aside; and a subsequent appeal of that decision to this court was dismissed. In both of those proceedings, Mr Knowles was referred to by a pseudonym. It is for that reason that the Other Department has not been identified in these reasons. In order to preserve Mr Knowles's anonymity in those other proceedings, neither of the decisions that they generated will be cited.
79. The conduct engaged in by the Department in response to Mr Knowles's 2 March APP 13 Request is not in contest: certain Departmental records were annotated by having attached to them a copy of the OAIC Determination. Mr Knowles maintains that that course (hereafter, the "**Annotation Decision**") was not one that was open to the Department. Instead, he maintains that the Department ought first to have made a decision one way or the other whether or not it would correct the personal information that it retained about him. In the event that it determined not to correct that information, Mr Knowles maintains that the Department was obliged to tell him as much and to provide him with reasons justifying that course. Then and only then, so Mr Knowles maintains, was it open to him to request that the Department associate a copy of the OAIC Determination with the relevant records in which his personal information was contained.
80. By way of relief, Mr Knowles seeks:

- (1) under the ADJR Act:
 - (a) an order under s 16(1)(a) setting aside the Annotation Decision; and
 - (b) an order under s 16(1)(b) referring the 2 March APP 13 Request back to the Department for further consideration; or, alternatively,
 - (2) under the Judiciary Act, that there issue:
 - (a) a writ of certiorari that removes into this court and quashes the Annotation Decision; and
 - (b) a writ of mandamus that requires the Department to reconsider the 2 March APP 13 Request; or, further in the alternative,
 - (3) injunctions under s 121 of the RP Act requiring that the Department refrain from relying upon or giving effect to the Annotation Decision, and that it otherwise reconsider its response to the 2 March APP 13 Request.
81. Mr Knowles also complains that the Department did not respond to his 2 March APP 13 Request within 30 days, as APP 13 required. In respect of that failure, he seeks declaratory relief to record the existence of his right to such a response within that timeframe and the Department's breach of that right.

3.2.2. Appropriateness of declaratory relief

82. I will deal, first, with Mr Knowles's request for declaratory relief. It is not necessary that I should replicate what has already been said about the appropriateness of that species of relief, nor about the circumstances in which it might be withheld on discretionary grounds. For reasons equivalent to those outlined in section 3.1.2 of these reasons, I do not consider that the circumstances here warrant an exercise of the court's discretion to grant declaratory relief. There is no utility in granting what is sought. Declaratory relief is granted to record the existence or otherwise of a particular state of affairs and, thereby, to resolve a justiciable controversy. Here, Mr Knowles seeks little (if anything) more than an advisory opinion from the court. That is not an appropriate exercise of the remedy.
83. That notwithstanding, I confess some sympathy for the submission that Mr Knowles advanced. APP 13 required that the Department respond to the 2 March APP 13 Request within 30 days. Although the statutory requirement could be clearer, there is force in Mr Knowles's submission that that required, within that timeframe, some indication from the Department as to whether it would or would not correct what Mr Knowles had asked it to correct. That does not appear to have happened. Had the Department indicated to Mr Knowles within the 30-day timeframe the intention to which it subsequently gave effect, the complexion of the present matter might well have been different.
84. Even assuming that Mr Knowles's criticisms of the Department's response (or non-response) to his 2 March APP 13 Request are well- founded, I am not satisfied that that suffices to warrant an exercise of the court's discretion to grant declaratory relief. Although doing so would undoubtedly validate those criticisms, it would nonetheless be legally inutile.

85. The analyses that follow concern the remaining claims for relief (that is to say, claims for relief other than declaratory relief) that arise in respect of the 2 March APP 13 Request.

3.2.3. Existence of alternative remedies

86. As is outlined above, the Privacy Act establishes mechanisms by which a complainant might seek to review conduct engaged in by an APP Entity. At first instance, it provides for the making, investigation and determination of complaints about acts or practices that amount to an interference or interferences with an individual's privacy: Privacy Act, Part V (above, [39]-[40]). Determinations so made may themselves be reviewed by the Administrative Appeals Tribunal: Privacy Act, s 96(1)(c) (above, [41]).
87. Despite his apparent familiarity with those provisions, Mr Knowles has not availed himself of them insofar as concerns his 2 March APP 13 Request. The mechanisms established by the Privacy Act afford Mr Knowles adequate rights of review in respect of Departmental conduct that he considers constitutes an interference or interferences with his privacy. Insofar as concerns the 2 March APP 13 Request, the existence of those mechanisms warrants the court's refusing to grant relief under the ADJR Act as a matter of discretion: ADJR Act, s 10(2)(b).
88. The existence of those mechanisms also informs the court's discretion to grant relief under the alternative sources of power that Mr Knowles seeks to invoke, namely s 39B(1) of the Judiciary Act and s 121(1) of the RP Act. A court may, in its discretion, withhold prerogative relief in the nature of certiorari and mandamus on the basis that a party has chosen not to avail him or herself of convenient alternative remedies: see *Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 197 ALR 389, 395-396 [33] (Gummow and Callinan JJ); *CSL Australia Pty Ltd v Minister for Infrastructure and Transport* (2014) 221 FCR 165, 212-213 [219] (Allsop CJ, with whom Mansfield J agreed). Doing so has been described as the "general rule": *Tooth & Co Ltd v Council of the City of Parramatta* (1955) 97 CLR 492, 498 (Dixon CJ, with whom McTiernan, Webb, Fullagar and Kitto JJ agreed). Where relevant, equivalent considerations guide the exercise of the court's power to grant injunctive relief under s 121 of the RP Act and, indeed, all discretionary relief, whatever be the court's power to grant it: *Saitta Pty Ltd v Commonwealth* (2000) 106 FCR 554, 575 [104] (Weinberg J).
89. Insofar as concerns his 2 March APP 13 Request, there is no evidence that Mr Knowles has availed himself of the processes for which Part V of the Privacy Act provides. If the Department's conduct in connection with that request involved improper exercises (or nonexercises) of statutory power under the Privacy Act, then the review mechanisms to which Part V and s 96(1) of the Privacy Act gives effect offer adequate and convenient means of correction. That alone is basis enough to decline to grant the relief that Mr Knowles seeks under s 39B(1) of the Judiciary Act and s 121(1) of the RP Act.

3.2.4. Annotation of records is not unlawful

90. In any event, I do not accept Mr Knowles's submission that the Department's Annotation Decision was beyond what the Privacy Act sanctioned. Upon receiving the 2 March APP 13 Request, the Department was compelled to take reasonable steps to correct personal information that it retained about Mr Knowles. "Correction", in that sense, required the taking of steps to ensure that that information was "accurate, up-to-date, complete, relevant and not misleading": APP 13.1.

91. Here, Mr Knowles’s request was aimed at the opinions that the Other Department formed about him and, more precisely, the Departmental records in which the expression of those opinions was chronicled. Even in the face of the OAIC Determination, it is difficult to see how records that contained (or otherwise referred to) expressions of those opinions might be thought to have been inaccurate, out of date, incomplete or irrelevant. Mr Knowles’s complaint, of course, was that the opinions were unsubstantiated: a view that the OAIC Determination validated (at least until it was set aside). But to observe as much is not to demonstrate that the Department’s records inaccurately recorded the opinions that were communicated to it, or that those opinions had since been altered or qualified such that the records in question were no longer up-to-date or were otherwise incomplete, or were irrelevant in some way. Mr Knowles did not allege as much (either by his 2 March APP 13 Request or by his submissions before this court). He simply wished (and wishes) for it to be known—that is, for the Department’s records to reflect—that the opinions that had been communicated to it were unsubstantiated in light of the OAIC Determination. He sought to ensure that the Department’s records were not misleading (in the sense that a person having occasion to review them might be drawn to conclude that opinions expressed about him were well-founded).
92. APP 13 does not require that an APP entity take any particular steps by way of correction of information. There is, in my view, no reason why a record that is misleading because it records an opinion that has subsequently been the subject of judicial or quasi-judicial criticism or repudiation might not be “corrected”—that is to say, rendered not misleading—by annexing to it a record of that criticism or repudiation.
93. Mr Knowles does not here submit that there were other steps that the Department ought reasonably to have taken in order to correct the personal information that it held about him. He says, instead, that the association of the OAIC Determination to existing records was something that could only be done at his request, and only following (first) a determination by the Department that it would not take steps to correct its records and (second) the provision of written reasons explaining that determination. Mr Knowles contends that, by acting as it did, the Department misunderstood—and failed properly to discharge—its statutory obligation. That, in turn, is said to warrant relief under s 16(1) of the ADJR Act, prerogative relief under s 39B(1) of the Judiciary Act and/or injunctive relief under s 121(1) of the RP Act.
94. I do not accept that the Department misunderstood its obligations or otherwise acted inconsistently with them vis-à-vis the 2 March APP 13 Request. It is apparent that the Department resolved to correct the records that Mr Knowles asked it to correct. That it did so is hardly surprising given the existence at the time of the OAIC Determination, which rendered the opinions about Mr Knowles (or at least some of them) unsustainable. The Department did not communicate its resolution to Mr Knowles and it probably should have. But, regardless, it was entitled to see to that correction by the means that it adopted (namely, by annexing the OAIC Determination to the relevant, existing records). Indeed, doing so was at least superficially consistent with what Mr Knowles had requested. Having opted to take that course, the Department was not obliged to provide Mr Knowles with a notice under paragraph 13.3 of APP 13, and Mr Knowles was not entitled to initiate the process for which paragraph 13.4 of APP 13 provides.

3.2.5. Utility of relief

95. There is another basis upon which the court should, in its discretion, decline to grant the relief that Mr Knowles has sought in respect of his 2 March APP 13 Request. As is set out above, the OAIC Determination is no longer extant: it was set aside by the Administrative Appeals Tribunal and an appeal from that decision was dismissed by a full court of this court. Both of those events occurred after the 2 March APP 13 Request was made.
96. That the 2 March APP 13 Request was premised upon the existence of the OAIC Determination is not readily in doubt. It was by the OAIC Determination that the opinions communicated to the Department by the Other Department were held not to be substantiated. Mr Knowles's demand was that the Department annotate the records in which the Other Department's opinions were expressed to "...specifically advise that these defamatory and false claims by [that Other Department] were not only unlawful but also found to be unsubstantiated" and to "explicitly note that a Determination found these claims by [the Other Department] a breach of the Privacy Act and therefore unlawful". In context, Mr Knowles's reference to what had been "found" or determined can only be understood as a reference to the OAIC Determination.
97. Given that the foundation upon which the 2 March APP 13 Request was erected has since been washed away, it is impossible to see what utility there might be in setting aside the Annotation Decision and requiring that the Department reconsider its response. The court's discretion to grant relief in that nature—whether under the ADJR Act, the Judiciary Act or the RP Act—is properly informed by that want of utility. Even had I come to a different view about the availability of alternative remedies and the propriety of the Department's conduct in answer to the 2 March APP 13 Request, I would, nonetheless and in the exercise of the court's discretion, have declined to grant the relief that Mr Knowles seeks on the basis that granting it would almost certainly be pointless.

3.2.6. Conclusion in respect of the 2 March APP 13 Request

98. Insofar as it pertains to his 2 March APP 13 Request, Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The declaratory relief that is sought should (and will) be declined in the court's discretion on the basis that there is no utility in granting it. The other relief that is sought should (and will) be declined:
- (1) in the court's discretion on the basis that the Privacy Act adequately provides for an alternative, convenient means of review of the Department's conduct; and, alternatively,
 - (2) on the basis that the respondent (or the Department) did not, in any event, misconstrue or fail to comply with the requirements of APP 13, nor otherwise err by conducting itself as it did in response to the 2 March APP 13 Request.

Had I reached different conclusions on those fronts, I would nonetheless have declined to grant that other relief on the basis that there would be no utility in doing so given that the OAIC Determination is no longer extant.

3.3. The 3 March Demand Email

3.3.1. Summary of the contentions advanced

99. Mr Knowles’s contentions relating to his 3 March Demand Email are straightforward. He maintains that, by that communication, he requested under APP 13 that the Department correct personal information about him that was contained in Mr Heldon’s email of that evening (above, [21]). It is not in contest that the Department did not respond to that request and did not make any correction as requested. Mr Knowles contends that those failures were in contravention of APP 13 and, thereby, amount to an interference with his privacy for the purposes of the Privacy Act.

100. Mr Knowles moves the court for the following relief, namely:

(1) under the ADJR Act:

(a) an order under s 16(3)(a) compelling the Department to consider his 3 March Demand Email; and

(b) declaratory relief under s 16(3)(b) to record or state his rights and/or the Department’s obligations in respect of that communication; or, alternatively,

(2) under s 39B(1) of the Judiciary Act:

(a) that there issue a writ of mandamus that requires the Department to consider the 3 March Demand Email; and

(b) declaratory relief to record or state his rights and/or the Department’s obligations in respect of that communication; or, further and alternatively,

(3) an injunction under s 121(2) of the RP Act to compel that Department to consider his 3 March Demand Email.

3.3.2. Nature of the 3 March Demand Email

101. In order to properly appreciate the character of the 3 March Demand Email, it is appropriate to rehearse the exchange that preceded it. That exchange began the previous day with Mr Knowles’s 2 March APP 12 Request (above, [18]). On any view, that communication—in which, amongst other things, Mr Knowles referred to Mr Heldon as an “unethical fuckhead”—was needlessly petulant and obnoxious.

102. Mr Heldon responded by requesting a copy of the OAIC Determination to which the 2 March APP 12 Request referred. He sensibly did not react to Mr Knowles’s gratuitous disrespect.

103. Later that afternoon, Mr Knowles emailed Mr Heldon an internet link to the OAIC Determination. In that email, he intimated that Mr Heldon ought already to have been aware of the determination, or otherwise ought to have been able to locate it himself. He threatened to “eventually” subpoena Mr Heldon, to subject him to cross-examination and, thereby, to expose Mr Heldon’s “disgraceful behaviour” on a “permanent court record”, which he suggested would “not

go so well if [Mr Heldon] ever want[ed] to do anything else in [his] life”. He suggested that Mr Heldon was “lazy or ignorant” and invited him to “[s]top fucking around”.

104. It was in response to those bizarre provocations that Mr Heldon sent the response upon which the 3 March Demand Email fixed. By his email of that evening (above, [21]), Mr Heldon began by apologising to Mr Knowles for any appearance of laziness or ignorance, and pointed out that he was, in fact, not a “privacy officer” nor “legally trained in privacy”. Instead, he pointed out, his role was one of coordination: it fell to him to coordinate the Department’s responses to Mr Knowles’s request, requiring, as they inevitably did, input from a range of personnel across the various different parts of the Department. He noted that he did not have any decision-making power and that, in the absence of a request from Mr Knowles that somebody else should coordinate the Department’s response, he would continue to do so, including in the face of Mr Knowles’s “expletives and threats about taking some action against [him].”
105. Of particular significance was the following passage of Mr Heldon’s email:
- I understand that I am currently the focal point of your frustrations with Defence and you hold me personally responsible for Defence's responses to date - I assume your expletives and threats are only a reflection of this frustration and do not imply a serious or imminent threat to my health or safety.
106. By his 3 March Demand Email, Mr Knowles described those comments as “defamatory” and demanded that they be “destroy[ed]...from Defence records”. He again threatened Mr Heldon with “action against [Mr Heldon] personally” in the event that his demand was not met.
107. This aspect of Mr Knowles’s cases turns, in part, upon whether or not Mr Heldon’s remark (about Mr Knowles’s obnoxious language not reflecting a serious or imminent threat to his [Mr Heldon’s] health or safety) constitutes personal information about Mr Knowles. The Department submits that it does not. Before me, Mr Knowles conceded that he didn’t “necessarily know...if that falls into the definition of personal information”. There is at least some basis for supposing that the remark was more interrogatory than a statement of opinion personal to Mr Knowles.
108. On balance—and not without some hesitation—I accept that Mr Heldon’s remark (or the email that contained it) amounted to personal information (as the Privacy Act defines that concept) concerning Mr Knowles. It was a statement of opinion about what Mr Heldon understood was conveyed by the intemperate language of Mr Knowles’s earlier emails: specifically, that Mr Knowles was frustrated; but not to the point that he posed a threat to Mr Heldon’s health or safety. That conclusion appears very much to align with reality: Mr Knowles was plainly frustrated with the manner in which the Department had responded to his prior requests for information but there is no evidence that that frustration risked expression in the form of physical threats or aggression aimed at Mr Heldon. It is difficult to see how Mr Heldon’s opinion was wrong, much less defamatory.
109. That accepted, it is necessary to consider whether the 3 March Demand Email amounted to a request for correction under APP 13. It is plain enough that Mr Knowles clothed his 3 March Demand Email in the language of the Privacy Act. His demand that Mr Heldon “destroy these defamatory claims from Defence records about threatening behaviour” was expressly said to be

required “[u]nder APP13”. Those words alone, however, are not sufficient to constitute the email as a request for correction under APP 13.

110. There are two ways in which an APP entity might be obliged to correct (or consider correcting) personal information held about a person. The first is if it has occasion to consider, of its own volition, that that information is inaccurate, out-of-date, incomplete, irrelevant or misleading. The second is that it receives a request for correction from the person to whom the information pertains. Plainly, the circumstances of this case involve that second trigger. At issue is whether the 3 March Demand Email amounted to a request to correct information.
111. I am not satisfied that it did. The 3 March Demand Email did not request the correction of anything. It was little (if anything) more than a demand that records be “destroyed”, couched in objectionable language that appears to have been calculated only to bully or belittle Mr Heldon. The 3 March Demand Email does not employ the term “correction”, nor any analogue of it (the subject header of the email does but only because it was carried over from the 2 March APP 13 Request, which of course *was* a request for correction of information under APP 13).
112. I am not satisfied that the Department’s failure to respond to the 3 March Demand Email amounts in any way to a contravention of APP 13 (nor to an interference by the Department in Mr Knowles’s privacy).
113. That being the case, the relief that Mr Knowles seeks should (and will) be declined for want of a legal basis for granting it.

3.3.3. Discretionary considerations

114. Even were I to have formed a different view about the nature of the 3 March Demand Email, I would decline to grant the relief that Mr Knowles seeks on discretionary bases.
115. Insofar as he seeks declaratory relief related to that demand, I would decline to grant it for reasons equivalent to those explained in sections 3.1.2 and 3.2.2. The relief that is sought would achieve nothing more than to vindicate Mr Knowles’s opinion that the Department ought to have responded to or acted upon (or was required under APP 13 to respond to or act upon) his 3 March Demand Email, and/or to serve as advice to the Department that that view is correct. For reasons already outlined, that view is not correct; but even if it were, declaratory relief is not a remedy that is appropriately deployed in the service of those ends. Although it would undoubtedly validate Mr Knowles’s criticisms of the Department’s failure to respond to his 3 March Demand Email, declaratory relief in the form sought would be legally pointless (in the sense that it would not serve to vindicate any presently-existing legal rights, nor otherwise resolve any presently-existing justiciable controversy). In light of that want of utility, I am not satisfied that the present circumstances warrant an exercise of the court’s discretion to grant declaratory relief in connection with the 3 March Demand Email.
116. Insofar as Mr Knowles seeks other relief related to that demand, I would decline to grant it for reasons equivalent to those explained in section 3.2.3 above. The Privacy Act— particularly Part V, which provides for the initiation, investigation and determination of complaints concerning alleged interferences with people’s privacy, and s 96(1), which provides for the review of such determinations by the Administrative Appeals Tribunal— affords Mr Knowles adequate and

convenient rights of review in respect of Departmental conduct that he considers was engaged in in contravention of APP 13. The existence of those processes warrants the court's refusing, as a matter of discretion, to grant relief under the ADJR Act in relation to the 3 March Demand Email: ADJR Act, s 10(2)(b). It also warrants the court's refusing, in its discretion, to grant relief in relation to that email under the alternative sources of power that Mr Knowles seeks to invoke, specifically s 39B(1) of the Judiciary Act and s 121(2) of the RP Act (see above, [88]).

3.3.4. Conclusion in respect of the 3 March Demand Email

117. Insofar as it pertains to his 3 March Demand Email, Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The respondent (or the Department) did not contravene APP 13—nor otherwise err—by failing to respond to (or otherwise act upon) that communication. Even if he (or it) did, I would, in the exercise of the court's discretion:

- (1) decline to grant the declaratory relief that Mr Knowles seeks because there is no (or insufficient) utility in granting it; and
- (2) decline to grant the other relief that Mr Knowles seeks because the Privacy Act adequately provides for an alternative, convenient means of review of the Department's conduct.

4. CONCLUSIONS

118. Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The respondent seeks an order that Mr Knowles pay his costs. That is appropriate and an order to that effect will also be made.

I certify that the preceding one hundred and eighteen (118) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Snaden.

Associate:

Dated: 17 September 2020

Guide to assessing an APP 12 complaint – Privacy Case Management (PCM) team



Galina Druc

4 October 2023

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Executive summary

- 1.1 For privacy complaints relating to APP 12 referred to the PCM for consideration of investigation, in order to assess the complaint and regulatory approach as efficiently as possible, Investigations Officers (**IOs**) will be assisted by using a standard approach to assessing and investigating alleged breaches of APP 12.
- 1.2 These guidelines will set out the relevant considerations and how to assess a matter for alleged breach of APP 12.

1. Overview of APP 12 requirements

- 1.3 A failure to comply with APP 12 on the part of an APP entity will amount to an interference with the privacy of an individual under the Privacy Act: s 13(1) of the Privacy Act.
- 1.4 The obligation for APP entities to provide access is set out in APP 12.1 and will be triggered when the following elements are met:
- the individual makes a request to the APP entity
 - the entity 'holds' ¹ the personal information.
- 1.5 Once the access obligation is triggered, the next matter to consider is whether the respondent refused to provide access on the basis of exceptions. Different exceptions apply to agencies and organisations. The exceptions are set out in APP 12.2 and APP 12.3, respectively.
- 1.6 After having considered whether any of the exceptions to access apply, consider whether any other obligations apply:
- under APP 12.4 the request must be acknowledged
 - under APP 12.5 alternative manner of access must be considered
 - under APP 12.9 written notice must be given if refusing.
- 1.7 Under s 40(1A) of the Privacy Act, an individual needs to complain to the respondent before the Commissioner can investigate, unless it would be inappropriate for the complainant to complain to the respondent.
- 1.8 Before assessing an APP 12 complaint, the IO should check that the complainant has complained to the respondent about the respondent's handling of their access request prior to making a complaint to the OAIC.
- 1.9 If there is no evidence that the complainant has complained to the respondent about the APP 12 claim, the IO should discuss this aspect with their supervisor and document the discussion. The file note should outline the IO's consideration as to why it would be inappropriate to require the complainant to complain to the respondent about APP 12.²

¹ Under s 6(1) of the Privacy Act, an entity holds personal information if it has possession or control of a record that contains the personal information.

² For example. In '[VN' and 'VM' \(Privacy\) \[2020\] AICmr 46 \(2 September 2020\) \(austlii.edu.au\)](#)' the Commissioner decided that it was not appropriate for the complainant to first complain to the respondent before complaining to the OAIC because the respondent had been non-responsive to the complainant's request.

2. Steps for assessing APP 12 matters

Step 1 – Interpret the complaint

- 1.10 Using the tool **APP 12 - Interpreting the complaint** (see Attachment A) as a guide, the IO will set out the claims to be assessed.
- 1.11 The first step is to check which parts of APP 12 the complainant alleges the respondent has breached in the complaint document. This will form the **scope of the complaint** and can be used to confirm the claims with the parties prior to or when opening the investigation. The IO should always check the acts and practices set out in the complaint and set out the claims independently. This ensures that no claims are overlooked, which can amount to jurisdictional error.
- 1.12 As with all s 36 complaints, the role of the IO is to assess, investigate and determine whether the respondent has interfered with the complainant's privacy in relation to the acts and practices the subject of the complaint. While events occurring throughout the OAIC's complaint process may be relevant to the exercise of the decline powers and to any claimed damage, the conduct being examined against the APPs is what the complainant alleged occurred in the complaint and necessarily, what occurred prior to the complaint being lodged with the OAIC.
- 1.13 The APP 12 complaint may fall into a number of categories that overlap. Some common examples are:
- respondent failed to acknowledge access request and provided no personal information – alleged breach of APP 12.1 and APP 12.4
 - respondent acknowledged access request but gave no further contact and provided no personal information - alleged breach of APP 12.1
 - respondent notified the complainant that it did not hold the personal information –alleged breach of APP 12.1
 - respondent provided access to some but not all of the personal information and relied on exceptions - alleged breach of APP 12.1, requiring consideration of APP 12.2 or APP 12.3
 - respondent refused access to all personal information that it held - alleged breach of APP 12.1, requiring consideration of APP 12.2 or APP 12.3
 - respondent refused access and failed to consider alternative access methods – alleged breach of APP 12.5
 - respondent refused access and notification was deficient – alleged breach of APP 12.9.

Step 1A - Exceptions to access

- 1.14 Most cases that reach the PCM team fall into categories where the respondent has refused to provide access to at least some personal information on the basis of the exceptions to access in APP 12.2 or APP 12.3. The main issue, therefore, in the assessment process will be determining whether it was open to the respondent to rely on the exceptions to access in the way that it did.

- 1.15 After interpreting the claims, the IO will assess which, if any exceptions are being claimed by the respondent.
- 1.16 As mentioned above, different exceptions apply to agencies and organisations.

Agencies

- 1.17 For agencies, as defined by s 6 of the Privacy Act, the exceptions to access are enlivened where the entity is required or authorised to refuse to give the individual access to the personal information by or under:
- *Freedom of Information Act 1982* (Cth) (**FOI Act**) or
 - another Act of the Commonwealth or Norfolk Island that provides for access by persons to documents.
- 1.18 If enlivened, the entity is not required to give access to the extent that the entity is required or authorised to refuse to give access.
- 1.19 If the respondent is an agency, and they rely on exceptions to access, the IO should consider liaising with the Principal Director FOIRG notifying of the case, outlining the claimed exceptions to access, including the relevant exemptions under the FOI Act, and advising that the IO will update them again after assessing whether there is sufficient evidence to proceed.
- 1.20 After confirming the evidence is sufficient, the IO may request FOIRG conduct a preliminary assessment on whether the exceptions under APP 12.2 applied.

Organisations

- 1.21 For organisations, as defined by s 6 of the Privacy Act, the exceptions to access are enlivened where one or more of the items at APP 12.3 applies:
- APP 12.3(a) - The entity reasonably believes that giving access would pose a serious threat to the life, health or safety of any individual, or to public health or public safety
 - APP 12.3(b) - Giving access would have an unreasonable impact on the privacy of other individuals
 - APP 12.3(c) - The request for access is frivolous or vexatious
 - APP 12.3(d) - The information relates to existing or anticipated legal proceedings between the entity and the individual and would not be accessible by the process of discovery in those proceedings
 - APP 12.3(e) - Giving access would reveal the intentions of the entity in relation to negotiations with the individual in such a way as to prejudice those negotiations
 - APP 12.3(f) - Giving access would be unlawful
 - APP 12.3(g) - Denying access is required or authorised by or under an Australian law or a court/tribunal order
 - APP 12.3(h) - Both of the following apply:

- APP 12.3(h)(i) - The entity has reason to suspect that unlawful activity or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in
 - APP 12.3(h)(ii) - Giving access would be likely to prejudice the taking of appropriate action in relation to the matter
 - APP 12.3(i) - Giving access would be likely to prejudice one or more enforcement related activities conducted by or on behalf of, an enforcement body.
 - APP 12.3(j) - Giving access would reveal evaluative information generated within the entity in connection with a commercially sensitive decision-making process.
- 1.22 If the respondent is an organisation, and the claims include exceptions, the IO will proceed to check the evidence with particular focus on whether the respondent has provided enough to satisfy the IO that the exceptions apply to the personal information.

Step 2 – Check the evidence

- 1.23 Once the IO has scoped the claims, the IO will check whether there is enough information to make preliminary findings. Using the tool at Attachment C – APP 12 Evidence Questionnaire, the IO can decide whether to request further information. The type and amount of evidence required for a case will depend on the particular circumstances of the individual case. However, generally nearly every case will require the following evidence:
- The **access request** made by the complainant to the respondent, whether letter, email or file note of a telephone conversation.
 - The **acknowledgement** of access request from the respondent to the complainant, whether letter, email or file note of a telephone conversation.
 - The **notification of refusal** of access sent by the respondent to the complainant, either a letter or email.
 - If the respondent has provided any access to the complainant, a copy of the **documents** provided to the complainant, or submissions on why the documents cannot be provided or a completed Excluded Documents Tables at Attachment B.

Checking for evidence of Exceptions

- 1.24 Whether further evidence is required depends on the quality of the completed Excluded Documents Tables and any other information already gathered by the OAIC with respect to how the exceptions apply.
- 1.25 In general terms, the more detailed the description of the personal information the respondent has provided and the more detailed the description of the reason why the relevant exception is being relied upon, the less likely additional evidence will need to be requested.
- 1.26 However, reliance on the respondent's assertions needs to be considered carefully. As a general expectation there should be adequate source documents available for the IO to be

satisfied that the respondent's assertions can be relied upon. For example, if the respondent has referenced a court order, a copy of that court order should usually be before the IO.

- 1.27 If issues are non-contentious, source documents are less likely to be necessary. For example, if the respondent has referenced negotiations between the complainant and the respondent that on foot, and the complainant has not denied that such negotiations exist, it would not be necessary to obtain a source document establishing that such negotiations are on foot.
- 1.28 Ultimately, if the respondent has asserted that exceptions apply, the IO should not accept such assertions uncritically. If the IO is not satisfied, based on material provided by the parties during the process, the IO should draft a preliminary assessment setting out why the IO is not satisfied. The next step will then be to open an investigation, requesting the respondent provide information to satisfy the IO otherwise.
- 1.29 If the respondent has not satisfied the IO that the exceptions apply, the potential breaches may be that:
- access was required to be provided under APP 12.1
 - the exceptions to access under APP 12.2 or APP 12.3, as relevant, did not apply. Therefore, the respondent has breached APP 12.1.
 - in circumstances where access was refused under APP 12.3 or in the manner requested, the respondent was obliged to take steps to give access by alternative means under APP 12.5
 - the respondent was obliged to provide an APP 12.9 compliant notice to the complainant when refusing access or access in the manner requested by the complainant.

Step 5 – Opening an investigation

- 1.30 On receipt of any additional information, if the IO's preliminary assessment is that there is not enough evidence that the exceptions apply, proceed to drafting letters opening an investigation under s 40 of the Privacy Act.
- 1.31 As per s 43(1), email the respondent advising of the OAIC's intention to open an investigation into the acts or practices subject of the complaint.

Step 4 – Preliminary Assessment

- 1.32 In assessing APP 12 compliance, provided that there is evidence of the access request, the onus is generally on the respondent to establish that they met the APP 12 obligations.
- 1.33 The IO can use their discretion as to whether the request or compel under s 44 the production of information relevant to the APP 12 obligations in APP 12.1 and APP 12.4-APP 12.9 once an investigation has been opened.

Exceptions - Organisations

- 1.34 As for APP 12.3 exceptions, the IO may consider it useful to send a 'APP 12 preliminary assessment' letter to the respondent and invite them to provide additional information.

- 1.35 The IO may also include Attachment D which sets out information about the exceptions under APP 12.3.

Exceptions - Agencies

- 1.36 For agencies, it may be appropriate for the IO to liaise with the Principal Director FOI Regulatory Group (**FOIRG**) to consult as to whether there is enough evidence for a preliminary assessment that the exception applies.
- 1.37 If FOI considers there is enough evidence, this will inform the IO's assessment.
- 1.38 If FOI requires further information to make such an assessment, the IO will make inquiries as required.
- 1.39 The IO can consider the FOI preliminary assessment as though it is expert advice.

APP 12.5 – steps to provide access by other means

- 1.40 In cases where the respondent has refused to provide access to some or all of the personal information requested, the IO needs to consider what steps (if any) the respondent has taken to give access by other means as required by APP 12.5.
- 1.41 The IO should consider the material available as to whether the respondent has provided information on this point. It is relevant that the OAIC expects the respondent to consult the individual to try to satisfy their request in relation to APP 12.5.
- 1.42 To show compliance with this obligation, the respondent would generally need to provide information about:
- how they ascertained the complainant's needs
 - their own needs in relation to the access request
 - what steps they took to give alternate access
 - any circumstances relevant to the reasonableness of any such steps.

APP 12.9 – written notice of refusal

- 1.43 In cases where the respondent refused to give access to the personal information because of their reliance on the exceptions in APP 12.3, the respondent is obliged to give the complainant a written notice under APP 12.9 setting out the reasons for the refusal and how the complainant can complain about the refusal.

Attachment A – Interpreting the complaint

The following table sets out:

- examples of common categories of claims made by the complainant alleging a breach of APP 12
- potentially relevant APPs to consider
- potentially relevant issues to be mindful of for each category.

The IO does not need to complete this table but can use it as a guide to discerning the complainant's claims, setting them out in the complainant's claims section of the preliminary view and considering the relevant issues.

Type of claims	APP to consider	Issues
Access request ignored - Respondent failed to acknowledge access request and provided no personal information.	APP 12.1 APP 12.4	Did the complainant make the access request to the respondent? Did the respondent respond to the complainant?
Access request acknowledged but no decision - Respondent acknowledged access request but gave no further contact and	APP 12.1 APP 12.9	Did the respondent respond to the complainant? Despite not contacting the complainant, did the respondent nonetheless locate the personal information and apply the exceptions?

Type of claims	APP to consider	Issues
provided no personal information.		
Documents not held - Respondent notified the complainant that it did not hold the personal information.	APP 12.1	Did the respondent conduct adequate searches for the personal information?
Partial access refusal - Respondent provided access to some but not all of the personal information requested.	APP 12.1 APP 12.2 or 12.3 APP 12.5 APP 12.9	Did the exceptions to access apply? For the personal information that was refused, was there an alternative way in which the APP entity could have given access? Did the refusal notification set out all the matters as required by APP 12.9?
Complete access refusal - Respondent refused access to all personal information that it held.	APP 12.1 APP 12.2 or 12.3 APP 12.5 APP 12.9	Did the exceptions to access apply? Was there an alternative way in which the APP entity could have given access? Did the refusal notification set out all the matters as required by APP 12.9?

Attachment B – Exclusion Table - Organisation

For cases where the respondent claims it cannot locate the documents requested, the IO should ensure that the following table is completed by the respondent:

APP 12.1 - Missing Documents Table

	Name/identify particular document	Why do you believe it is missing?	Approx. date of document
1			
2			
3			

For cases where the respondent claims exceptions apply to the documents located, the IO should ensure that the following table is completed by the respondent:

APP 12.3 - Exceptions Table

If you are the respondent to a privacy complaint about refusal to give access under APP 12, and you have refused access because you consider one or more of the exceptions under APP 12.3 apply to the personal information, please complete this table. Please refer to **Information Sheet – APP 12 Exceptions – Organisations and the [APP Guidelines](#)**.³

	Document	Description of personal information in document	Exception relied upon	Why do you believe the exception applies?
1				
2				
3				

³ <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/>

Attachment C – APP 12 – Evidence Questionnaire – Agencies & Organisations

The following questionnaire is a tool for IOs to use on receipt of an APP 12 related complaint. The Questions column may form the basis of questions to be posed to respondent entities in PI or s 40 letters.

Step 1 - APP 12.1 – Was the access obligation triggered?			
Element	Questions	Your answer	Evidence
C made a request	On what date did C make a request?		<p>Strong evidence:</p> <ul style="list-style-type: none"> Written request of C Response of R acknowledging and setting out C's request
	What PI did C request?		<p>Medium evidence:</p> <ul style="list-style-type: none"> File notes setting out C's verbal request <p>Weak evidence:</p> <ul style="list-style-type: none"> R's assertion about when and what C requested C's assertion about when and what requested
R held the requested PI at time of request	What searches did R do?		<p>Strong evidence:</p> <ul style="list-style-type: none"> Emails setting out R's requests to internal area and their responses. Statutory declaration of R that searches were undertaken and what information was located. <p>Medium evidence:</p>

Step 1 - APP 12.1 – Was the access obligation triggered?			
Element	Questions	Your answer	Evidence
			<ul style="list-style-type: none"> File notes setting out C’s verbal request <p>Weak evidence:</p> <ul style="list-style-type: none"> R’s assertions that does not hold PI. C’s assertions that it does.
<p>If satisfied that access request was made and R held the personal information, access obligation is triggered. Proceed to Step 2 - Exceptions.</p>			

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
Agencies – APP 12.2			
FOI Act requires or authorises refusal	Which provision of the FOI Act does the Agency rely upon?		The preliminary assessment or advice from FOI RG will inform the assessment of whether the exception applies.
	Has the Agency made an arguable case that the relevant FOI exemption applies?		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
Another Act requires or authorises refusal	What Act and what provision authorises the refusal?		
	Has the Agency made an arguable case that the relevant provision applies?		
Organisation – APP 12.3			
APP 12.3(a) – The entity reasonably believes that giving access would pose a serious threat to the life, health or safety of any individual, or to public health or public safety	Who is the individual (in generic terms) that the respondent says would be threatened by granting access?		<p>Strong evidence:</p> <ul style="list-style-type: none"> • Source document setting out the personal information • Medical or other expert explaining how the access could result in harm <p>Medium evidence:</p> <ul style="list-style-type: none"> • Detailed description of the personal information • Documentary evidence setting out an incident involving harm to an individual eg incident report <p>Weak evidence:</p> <ul style="list-style-type: none"> • R's assertions
	If not an individual, what aspect of public health or public safety would be threatened by granting access?		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
	What is the identified threat – life, health, or safety?		
	Is that threat serious?		
	How would giving access cause, contribute or exacerbate that threat?		
	What does the entity base its belief upon and is its belief reasonable?		
APP 12.3(b) – Giving access would have an unreasonable impact on the	Who are the individuals that the respondent says would be impacted? (in generic terms, e.g. staff member referred to by their role		<p>Strong evidence:</p> <ul style="list-style-type: none"> Statements of individuals setting out how access would impact on their privacy. <p>Weak evidence:</p>

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
privacy of other individuals	description, or role in a particular incident)		<ul style="list-style-type: none"> R's assertions
	How would access impact on the individuals?		
	What makes that impact unreasonable?		
APP 12.3(c) – Request access is frivolous or vexatious	Has C numerous similar access requests or other actions that go towards the same grievance?		<p>Strong evidence:</p> <ul style="list-style-type: none"> Records setting out previous requests Correspondence of the complainant setting out an improper motivation making the request <p>Medium evidence</p>

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
	Did the C have an irrelevant and ulterior motive other than to access their own personal information (e.g. to harass or intimidate the respondent)?		<ul style="list-style-type: none"> Correspondence and file notes that set out what the complainant said about their true motivation for making the request Correspondence and file notes that show a pattern of harassment on the part of the complainant. <p>Weak evidence:</p> <ul style="list-style-type: none"> R's assertions
APP 12.3(d) – The information relates to existing or anticipated legal proceedings between the entity and the individual and would not be accessible by the process of discovery in those proceedings	What are the legal proceedings?		<p>Strong evidence:</p> <ul style="list-style-type: none"> Document referencing the legal proceedings. Correspondence and file note indicating the consideration of legal proceedings Expert opinion that documents would not be accessible through discovery. <p>Medium evidence</p> <ul style="list-style-type: none"> R's statement setting out the provisions upon which the information would not be accessible through discovery. <p>Weak evidence:</p> <ul style="list-style-type: none"> R's assertions
	Are those legal proceedings between C and R?		
	If anticipated and not existing, what is the basis upon which the respondent considers that the legal		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
	proceedings are anticipated?		
	How does the requested personal information relate to those legal proceedings?		
	On what basis does the respondent say that the personal information would not be accessible in a process of discovery?		
APP 12.3(e) – Giving access would reveal the intentions of the entity in relation to negotiations with the	What negotiations are on foot?		<p>Strong evidence:</p> <ul style="list-style-type: none"> • Document referencing the negotiations. • Correspondence and file note indicating the consideration of legal proceedings • Expert opinion that documents would not be accessible through discovery.
	Does the personal information reveal the intentions of the		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
individual in such a way as to prejudice those negotiations	entity in relation to those negotiations?		<p>Medium evidence</p> <ul style="list-style-type: none"> R's statement setting out how personal information reveals intentions of the entity and how the release of information would impact on negotiations Detailed description of what the negotiations are about <p>Weak evidence:</p> <ul style="list-style-type: none"> R's assertions
	How would access prejudice those negotiations?		
APP 12.3(f) – Giving access would be unlawful	What is the specific Australian law or order making the giving of access unlawful?		<p>Strong evidence:</p> <ul style="list-style-type: none"> An order of the court or tribunal made under a particular law that makes the giving of access unlawful Expert opinion explaining how giving access would be unlawful. <p>Medium evidence</p> <ul style="list-style-type: none"> R's statement setting out how giving access would be unlawful. <p>Weak evidence:</p> <ul style="list-style-type: none"> R's assertions
	Has R made an arguable case that the law applies in that it makes access unlawful?		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
APP 12.3(g) – Denying access is required or authorised by or under an Australian law or court or tribunal order	What is the specific Australian law or order relied upon?		Strong evidence: <ul style="list-style-type: none"> • An order of the court or tribunal made under a particular law that authorises or requires refusal of access • Expert opinion explaining how giving access would be unlawful. • Medium evidence <ul style="list-style-type: none"> • R’s statement setting out how refusing access is required or authorised by or under law. Weak evidence: <ul style="list-style-type: none"> • R’s assertions
	Has the respondent raised an arguable case that the law or the order applies to the refusal?		
APP 12.3(h) – Giving access would be likely to prejudice the taking of appropriate action in relation to suspect that unlawful activity	What is the activity that the entity suspects?		Strong evidence: <ul style="list-style-type: none"> • Documents setting out the suspected unlawful activity. E.g. Investigation reports, incident reports, police reports. • Document setting out the entity’s functions and activities that demonstrate a link to the unlawful conduct. E.g. policies and employment agreements that prohibit the activity. • Documents are set out the type of action that may be taken in relation to the activity. E.g. policies and employment agreements that set out disciplinary action the entity can take.
	Is that activity unlawful or is that activity misconduct of a serious nature?		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
or serious misconduct	What is the reason that the entity suspects that the activity is being or may be engaged in?		<p>Medium evidence</p> <ul style="list-style-type: none"> R's statement setting out how refusing access is required or authorised by or under law. <p>Weak evidence:</p> <ul style="list-style-type: none"> R's assertions
	How does that activity connect with the entity's functions or activities?		
	What action does the entity consider taking in relation to the activity, and is that action appropriate?		
	How would giving access prejudice that action?		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
APP 12.3(i) – Access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body	What is the enforcement related activity?		<p>Strong evidence:</p> <ul style="list-style-type: none"> Documents setting out the enforcement related activity. E.g. Police reports or requests by the enforcement body made to the respondent Statement from the enforcement body setting out how giving access could prejudice the activity. <p>Medium evidence</p> <ul style="list-style-type: none"> Statement of the respondent <p>Weak evidence:</p> <ul style="list-style-type: none"> Respondent’s assertions
	What is the enforcement body conducting that activity?		
	How would giving access prejudice that enforcement related activity?		
APP 12.3(j) – Giving access would reveal evaluative information generated within the entity in connection with a commercially	What is the decision-making process?		<p>Strong evidence:</p> <ul style="list-style-type: none"> The source document setting out evaluated information Documents Referencing the commercially sensitive decision-making process <p>Medium evidence</p> <ul style="list-style-type: none"> Statement of the respondent
	How is that decision-making process commercially sensitive?		

Step 2 - APP 12.2 and APP 12.3 – Did one or more exception apply to giving access to the personal information?			
Element	Questions	Your answer	Evidence
sensitive decision-making process.	How would giving access reveal evaluative information?		Weak evidence: <ul style="list-style-type: none"> Respondent's assertions
	What is the link between the evaluated information and the decision-making process?		
If satisfied that one or more exceptions apply, the respondent's obligation to consider alternative means of access, and to give notification, is triggered. Proceed to Step 3 – Manner of access.			

Step 3A - APP 12.5 - Did the respondent take reasonable steps to offer other means of access?			
Element	Questions	Your answer	Evidence
It was possible to give access in a way otherwise than what the way in which the complainant requested	In light of the exemptions are required, was there another way in which the respondent could have provided access to the personal information?		<ul style="list-style-type: none"> • The documents containing the personal information • The version of the personal information the respondent gave access to • The respondent's assertions
	Could the respondent has provided a redacted version of the personal information?		
	Could the respondent have given the complainant a summary of the personal information?		
	Could the respondent have provided the personal information by using a mutually agreed intermediary?		

The alternate way of giving access would meet the needs of the respondent and the complainant	Does the complainant consider that the alternative means of access would meet their needs?		
	Does the respondent considered that the alternative means of access would meet their needs?		
The respondent took reasonable steps to give access in this way	Did the respondent offer the alternative means of access?		<ul style="list-style-type: none"> • Corresponding setting out the respondent's offer • Correspondence from the complainant in response

Step 3B – APP 12.5 - Did the respondent notify the complainant of the refusal decision?		
Element	Questions	Evidence
Respondent gave a written notice	Did the respondent notify the complainant of the refusal decision?	Letter/Email setting out the notification
The written notice set out the reasons for the refusal	Does the written notice set out all the reasons for the refusal? If not, were the omitted reasons reasonable, having regard to the exemptions the respondent claimed? Does the letter set out the mechanisms available to complain about the refusal?	Letter/Email setting out the notification Any other document setting out reasons that a written notice was not provided
If the complainant has raised it, proceed to finally consider Step 4 – Acknowledgement of requests for personal information		
Step 4 – APP 12.4 - Did the respondent acknowledge the request for personal information?		
Element	Questions	Evidence
Respondent responded to the access request	Did the respondent respond (i.e. acknowledge) the complainant's access request?	Letter/Email setting out the response

Attachment D – APP 12.3 Information sheet for Organisations

Privacy information sheet – Determinations – APP 12 Exceptions – Organisations

APP 12.3 of Schedule 1 to the Privacy Act

The following table sets out the exceptions to access to personal information requested under APP 12 for respondent organisations. Organisations claiming exceptions should also consider Chapter 12 of the [APP Guidelines](#).⁴

APP	Exception
APP12.3(a)	The entity reasonably believes that giving access would pose a serious threat to life, health or safety of an individual.
APP12.3(b)	Giving access would have an unreasonable impact on the privacy of other individuals.
APP12.3(c)	The request for access is frivolous or vexatious.
APP12.3(d)	The information relates to existing or anticipated legal proceedings between the entity and the individual, and would not be accessible by the process of discovery in those proceedings.
APP12.3(e)	Giving access would reveal the intentions of the entity in relation to negotiations with the individual in such a way as to prejudice those negotiations.
APP12.3(f)	Giving access would be unlawful.
APP12.3(g)	Denying access is required or authorised by or under an Australian law or a court/tribunal order.

⁴ <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/>

APP	Exception
APP12.3(h)	Both of the following apply: <ul style="list-style-type: none"> <li data-bbox="517 411 1760 480">(i) The entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in; <li data-bbox="517 485 1821 517">(ii) Giving access would be likely to prejudice the taking of appropriate action in relation to the matter.
APP12.3(i)	Giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body.
APP12.3(j)	Giving access would reveal evaluative information generated within the entity in connection with a commercially sensitive decision-making process.

Evidence for APP 12.3

Before a decision-maker accept a respondent's claims that APP 12.3 exceptions apply to personal information, the decision-maker will need to be satisfied that each element of the exception being claimed is supported by evidence. In order to make out these claims, a respondent may consider providing the following evidence:

- the document containing the personal information that is the subject of the dispute.
- a statutory declaration setting out a description of the personal information and why the respondent believes a particular exception applies to that personal information.
- source documents. For example, if the respondent is claiming that a court or tribunal order requires or authorises an access refusal decision, a copy of that court or tribunal order.