



Our reference: MR23/01375
Agency reference: AGOFOI123/465

| | |
|--------------------------------|--------------------------|
| The respondent is: | The applicant is: |
| Office of the Attorney General | Waldek Lupinski |

Notice of IC review and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner (IC) review of a deemed access refusal decision made by the Office of the Attorney General (the Agency) under the *Freedom of Information Act 1982* (the FOI Act).

The IC will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

On 30 August 2023, the applicant made a FOI request to the Office of the Attorney General.

On 15 September 2023, the Attorney General's Department purported to accept transfer of the request under s 16 of the FOI Act from the Attorney General's Office. However, no evidence of searches completed by the Office of the Attorney General prior to the transfer to satisfy s 16(1) of the Freedom of Information Act 1982 has been provided.

Therefore, the IC considers the purported s 16 transfer was invalid and the FOI Decision was deemed to be refused on 29 September 2023.

On 14 November 2023, the applicant lodged an application for an IC review.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The IC may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the IC in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The IC may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and unredacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01375) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Please note, you are required to send any submissions prepared in response to the Direction at **Attachment A**, to the applicant at the same time as to the OAIC.

Obligations during the IC review process

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

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed by agencies and ministers in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely,



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

23 July 2024

Attachment A



Direction to the Office of the Attorney General under s 55(2)(e)(ii) of the *Freedom of Information Act* 1982

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/01375, I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the Office of the Attorney General (the Agency) under s 55(2)(e)(ii) of the FOI Act.

Revised decision – full access

1. Should the Agency wish to provide full access to the documents within the scope of the request, I request that Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC.

Revised decision – partial access

2. Should the Agency wish to provide partial access to the documents within the scope of the request, I request that Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC.
3. Please also provide the following documents to the OAIC:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).
 - c. If any third parties have been notified of this IC review a copy of the written notifications.

- d. Copies of any correspondence between the Agency and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01375) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Agency wish to refuse access, I request that the Agency provide the applicant and the OAIC the following:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Agency claims are exempt and the particular provisions of the FOI Act the Agency is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Agency contends that the applicant should be refused access to the documents.
- 5. Should the Agency wish to refuse access, I request that the Agency provide the OAIC the following:
 - a. Should the Agency wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Agency is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Agency wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.
 - c. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).

- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Agency, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01375) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

If Agency makes a submission to the OAIC in support of an access refusal decision, it must send the submission to the applicant at the same time (unless there are compelling reasons not to, in which case it must make a prior request to make a submission in confidence). However, it is not required to provide the applicant with copies of other documents requested under this notice.

The requested information is required to be provided to the OAIC by **13 August 2024**.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Yours sincerely,



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

23 July 2024

Attachment B



Notice to produce documents and give information

In relation to MR23/01375, under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require you Kenneth Eagle, Assistant Secretary, of the Office of the Attorney General, to give me the following information by close of business

13 August 2024:

- a marked up and unredacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au. These documents are not required to be provided to the IC review applicant.

Notice issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Yours sincerely,

A handwritten signature in black ink, appearing to read "Hannah Holswilder".

Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

23 July 2024