



Decision not to continue to undertake an Information Commissioner review under s 54W(c) of the *Freedom of Information Act 1982*

Information Commissioner review applicant	H
Agency	Australian Broadcasting Corporation
Decision date	20 September 2024
OAIC reference number	MR24/00181
Agency reference number	ABC FOI 202324-031

Decision

1. I refer to the application made by H (the applicant) for Information Commissioner review (IC review) of a made by the Australian Broadcasting Corporation (the Agency) on 14 August 2024, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. As a delegate of the Information Commissioner, I have decided to exercise my discretion not to continue to undertake an IC review under s 54W(c) of the FOI Act.
3. The background of this matter is provided at **Attachment A**.

Discretion not to continue to undertake an IC review

4. If an applicant fails to comply with a direction of the Information Commissioner, including the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews,¹ the Information Commissioner may in some cases decide not to undertake or continue to undertake an IC review. The Direction specifically states:

Applicants must respond to requests for information from the OAIC within the time provided unless there are exceptional circumstances warranting a longer period to respond. If more time is needed, a request for an extension of time must be made to the OAIC at the earliest opportunity within the period provided for response, and no later than 2 days before that period is due to expire. Requests for more time must explain the exceptional circumstances that necessitate additional time and propose a new date for response. Approval of an extension request is at the discretion of the OAIC.

¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [3.1] [3.2]



Australian Government

Office of the Australian Information Commissioner

Reasons for decision

5. In deciding whether to exercise the discretion not to continue to undertake a review, I have considered the participation of the applicant during the IC review process. I am satisfied that the applicant failed to comply with a Direction of the Information Commissioner, as provided above.
6. As such, continuing to review this matter does not promote the objects of the FOI Act.
7. I confirm that this IC review is now closed. Your review rights are set out below.

Yours sincerely,

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

Hannah Holswilder

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

20 September 2024



ATTACHMENT A

Background

Date	Events
15 September 2023	FOI request made to the Agency.
29 January 2024	IC review application received by the Office of the Australian Information Commissioner.
27 February 2024	The OAIC commenced the IC review and requested the Agency to provide documents under s 54Z of the FOI Act to progress the review.
14 August 2024	The Agency issued a revised decision, providing some access to documents within the FOI request.
2 September 2024	The OAIC sought the applicant's advice about whether the applicant wished to proceed with the IC review and if so, to provide reasons why they wished to proceed in accordance with the Information Commissioner's written direction to IC review applicants . The OAIC also advised the applicant that their IC review may be finalised under s 54W(c) of the FOI Act, if the applicant failed to comply with the direction by the specified date



Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of this IC review application under the Freedom of Information Act 1982 (the FOI Act) is not legally correct. You can make this application under the Administrative Decisions (Judicial Review) Act 1977.

The Court will not review the merits of your case, but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information or visit the Federal Court website.²

Making a complaint to the Commonwealth Ombudsman

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

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website.³

Accessing your information

If you would like access to the information that we hold about you, please [contact us](#).

More information is available on our website.⁴

² See [Federal Court of Australia](#)

³ See [Commonwealth Ombudsman](#)

⁴ See [About us: Access our information](#)