



Our reference: MR24/00901

Agency reference: LEX954

The respondent is:	The applicant is:
Australian Public Service Commission By email: foi@apsc.gov.au	B Z By email: foi+request-11239-eea16f1c@righttoknow.org.au

Notice of IC review application and request for documents

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

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

Scope of IC review

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

Requirement for parties to engage and share submissions

As part of this process:

- **the OAIC requires respondents and applicants to engage with each other to attempt to** resolve or narrow the issues in dispute. The respondent should initiate this process
- the respondent has until **1 October 2024** to complete the engagement and share its submission with the OAIC and the applicant
- the respondent also has until **1 October 2024** to provide the OAIC with the information set out in Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#)
- the applicant has 10 business days after receiving the respondent's submission to share their submission with the OAIC and the respondent.

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

Request for information from respondent

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

Respondents can comply with this notice by delivering the response to foidr@oaic.gov.au by **1 October 2024**.

Obligations during the IC review process

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

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

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

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

Yours sincerely,

Ellie O’Kearney

Intake and Early Resolution Team
Freedom of Information Branch
Office of the Australian Information Commissioner
[Enclosed: IC review application and decision under review].
20 August 2024

Annexure A: Further information for applicants

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

Obligation for you to engage

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

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

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

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

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

Sharing submissions between you and the respondent

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

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

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

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

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

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

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

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

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

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

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

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

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

Annexure B: Further information for respondents

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

Obligation for respondents to engage

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

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

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

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

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

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

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

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

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

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

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

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

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

Sharing submissions between the respondent and applicant

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

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

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

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

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

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

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

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