



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

IC review applicant	Cyber Sceptic
Respondent	Department of Home Affairs
Decision date	23 December 2024
OAIC reference number	MR24/01663
Agency reference number	FA 24/07/01802

Decision

1. I refer to the application made by Cyber Sceptic ('the applicant') for Information Commissioner review (IC review) of a deemed access refusal decision made by the Department of Home Affairs ('the Agency') on 27 August 2024 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. As a delegate of the Information Commissioner, I am authorised to make decisions under s 54W(c) of the FOI Act.
3. On 5 December 2024 the Agency made a revised decision under s 55G of the FOI Act, providing the applicant partial access to documents.
4. The Office of the Australian Information Commissioner (OAIC) has not received a response from the applicant to our subsequent correspondence to advise whether they wished to proceed with the IC review. As a delegate of the Information Commissioner, I have decided not to continue to undertake an IC review under s 54W(c) of the FOI Act. My reasons follow.

Background

5. The key procedural steps in this IC review are set out at **Attachment A**.

Discretion not to continue to undertake an IC review

6. Under s 54W(c) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the IC review applicant fails to comply with a direction of the Information Commissioner.
7. The Direction as to certain procedures to be followed by applicants in Information Commissioner reviews issued by the Australian Information Commissioner under s 55(2)(e)(i), provides:



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

8. The OAIC has not received a response from the applicant to our correspondence asking whether they wished to proceed with the IC review, or the basis on which they wished to proceed.

Reasons for decision

9. I am satisfied that the IC review should be finalised under s 54W(c) of the FOI Act as the OAIC notified the applicant that in the absence of a response from them by 19 December 2024, their IC review would be finalised by a delegate of the Information Commissioner under s 54W(c) of the FOI Act.
10. In deciding whether to exercise the discretion not to undertake a review, I have considered:
 - The applicant has not provided any indication to the OAIC that they disagree with the Agency's revised decision.
 - It does not appear that reviewing this matter will promote the objects of the FOI Act particularly noting that access to documents has now been provided to the applicant.
11. As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to continue to undertake an IC review under s 54W(c) of the FOI Act.
12. I confirm that this IC review is now closed. Your review rights are set out below.

¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews \[2.22\]](#)



Australian Government

Office of the Australian Information Commissioner

13. If either party would like to discuss this matter, please contact us by email at FOIDR@oaic.gov.au. In all correspondence, please quote MR24/01663.

Yours sincerely,

A stylized, handwritten signature in black ink, appearing to be 'm' followed by a large, looping flourish.

Michelle Corcoran

Director

Freedom of information Branch

23 December 2024





ATTACHMENT A

Key procedural steps

Date	Events
28 July 2024	FOI request made to the Agency for access to documents under the FOI Act.
8 October 2024	IC review application received by the OAIC.
29 October 2024	IC review commenced by OAIC.
5 December 2024	Revised decision made by Agency to provide access to documents.
5 December 2024	The OAIC sought the applicant's advice about whether the applicant wished to proceed with the IC review and provide grounds about the basis on which the applicant wished to proceed. The OAIC also advised the applicant that their IC review may be finalised under s 54W(c) if no response was received 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 at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

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

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#)² page on our website.

² www.oaic.gov.au/about-us/access-our-information/.