

Conducting IC review: Assessments

This worksheet provides guidance to assist with assessing IC review applications. This worksheet should be read in conjunction with the FOI Guidelines and other guidance material, including the IC review case categories ([D2020/000377](#)) and Identification of Systemic and Significant Issues worksheets: [D2019/001898](#).

Preliminary assessments

Once an IC review application has been registered and assessed for validity, it proceeds to preliminary assessment ('FOI – Assessment' queue). The Assessments Queue's function is to determine whether an IC review application will proceed to review or will be declined by the OAIC. The scope of an IC review application may be required to be clarified in order to determine whether an IC review will progress or be declined.

Preliminary assessment involves a review of:

- the FOI request
- the decision under review
- the applicant's reasons for review
- any responses to preliminary requests for information, including submissions
- the coding of the Resolve file to check accuracy

Attachment A: Assessments Process

Attachment A: Assessments Process

Step	Action
Step 1	<p>Review the documents relevant to the IC review including the:</p> <ul style="list-style-type: none"> • IC review application • The decision letter • Any attached correspondence from the applicant or respondent <p>Does the IC review relate to an IC reviewable decision as outlined in s 53A (access refusals) or 53B (access grants) of the FOI Act? If No – Go to Step 2 If Yes – Go to Step 3</p>
Step 2	<p>IC review is invalid.</p> <ul style="list-style-type: none"> • Add Next Action: “Invalid/OOJ” • Add a File Note to the record to explain why the matter is invalid • Assign case to “FOI – Triage” Queue <p>Process Ends Here</p>
Step 3	<p>In order for the scope of an IC review to be clear, you must be able to identify which parts of the IC reviewable decision the applicant disputes and why.</p> <p>Is the scope of the IC review clear?</p> <p>If No – Go to Step 4 If Yes – Go to Step 8</p>
Step 4	<p>Send Request for Information to IC review applicant to clarify scope using the template saved here: Scope Clarification Template.</p> <p>Update the Next Action field with the appropriate option:</p> <ul style="list-style-type: none"> • [Draft] RFI to A • [Draft] RFI to A, possible 54W(a)(i) (Please include a file note explaining why) • Possible 54W(b) (Please include a file note explaining why) <p>Go to Step 5</p>
Step 5	<p>Applicant has responded to RFI by due date?</p> <p>If No – Go to Step 6 If Yes – Go to Step 7</p>
Step 6	<p>Move matter to ‘FOI – IC Reviews – Declines’.</p> <p>Update Next Action note to: [PENDING] Draft 54W(c)</p>

	Procedure Ends Here
Step 7	<p>Is the scope of the IC review clear?</p> <p>If No:</p> <ul style="list-style-type: none"> • If appropriate, send a second RFI to attempt to obtain a clear scope. • If inappropriate to send a second RFI or unable to obtain a clear scope after 2 RFI's, matter can be closed under s 54W(c). Go to Step 6 <p>If Yes – Go to Step 8</p>
Step 8	<p>Is the matter appropriate to decline under s 54W(b)?</p> <p>See FOI Guidelines paragraphs 10.104 – 10.105. Examples may include:</p> <ul style="list-style-type: none"> • Complex matter more appropriately handled by AAT • Perceived or actual conflict of interest in OAIC undertaking review • Strong possibility of IC decision appeal to AAT e.g. <ul style="list-style-type: none"> ○ Strong commercial interests ○ Complex/novel: <ul style="list-style-type: none"> ▪ Volume of documents ▪ International jurisdiction ▪ Matter relates to something of current political or cultural significance <p>If Yes:</p> <ul style="list-style-type: none"> • Move to Declines Queue • Add appropriate Next Action: “A has requested 54W(b)” or “Assessed 54W(b)” • Add a file note to explain the reason for moving to the declines queue • Process Ends Here. <p>If No – Go to Step 9</p>
Step 9	<p>Ensure the Agency decision tab is correct and that the issues accurately reflect the scope of the matter.</p> <p>Go to Step 10</p>
Step 10	<p>Complete summary field on main page of Resolve:</p> <p>[Timeline of key case events]</p> <p>Decision under review: Original decision dated/Deemed refusal dated... Revised decision dated @.</p> <p>[Exemptions use]: @ document/s found within scope of request, released/exempt in full/part under exemption/s @.</p> <p>[Searches use]: No document/s found within scope of request. Access refused under s 24A (insert relevant subsection if known).</p> <p>[Practical refusal use]: @ document/s found within scope of request. (Insert @ hours to process, decision making etc. any key points)</p> <p>[Charges use]: \$@ (insert calculation)</p>

	<p>Number of documents at issue: @ (delete if not applicable)</p> <p>Scope of review: Applicant seeks review of [Practical refusal/Exemptions ss @/Searches]. Applicant states (insert any key statements that allude to applicant's scope of request. If not known request in acknowledgement).</p> <p>FOI Request: [Quote if short or provide summary]</p> <p>For searches matter - Go to step 11</p> <p>For all other matters – Go to Step 12</p>
11	<p>For Searches matters:</p> <p>Consider whether further searches by the respondent are required.</p> <p>Examples where further searches may be required:</p> <ul style="list-style-type: none"> - preliminary inquiries have determined the respondent did not search for the correct document/s - preliminary inquiries have determined the searches were insufficient as the relevant location was not searched or relevant business area did not conduct searches. <p>Where you consider further searches are required by the respondent, make a file note and include '55V required' in your assessor note at step 12.</p> <p>Consider whether the statement of reasons is adequate.</p> <p>Examples where statements of reasons may be inadequate are:</p> <ul style="list-style-type: none"> - Applicant states further relevant documents exist but s 24A (unable to locate docs) is not mentioned in the decision letter - The decision letter includes s 24A but no or minimal explanation of searches undertaken is provided. Appropriate searches explanations should include: <ul style="list-style-type: none"> o Address the interpretation of the scope of the request. The scope of the FOI request should be interpreted broadly. o Which area within the agency undertook the searches and why that business area is the most relevant business area to search for docs o Provide details about the searches undertaken, such as systems searched and/or search terms <p>Where you consider the statement of reasons provided is inadequate, make a file note and include '55E required' in your assessor note at step 12.</p> <p>Go to Step 12</p>
Step 12	<p>Determine which 54Z commencement of IC Review template/s will be required for the matter.</p> <p>To do this, make note of which of the following categories apply:</p>

	<ul style="list-style-type: none"> • Deemed • Access Grant • 54L(2) • Searches • Exemptions • Searches and Exemptions • Practical Refusal • Charges • Amendment of Records • 55E required (D2024/020967) • 55V required (D2024/020986) <p>Go to Step 13.</p>
Step 13	<p>Matter is appropriate to proceed to IC review. Undertake the following actions:</p> <ul style="list-style-type: none"> • Add Assessor note with the category of the case e.g. “[CAT 4]” followed by the sections of the act that are relevant to the scope of the review <ul style="list-style-type: none"> ○ IC review categories are outlined in D2020/000377 • At the end of the assessor note add any key words that apply from the list at step 8 • Check/Update the Issue String for the matter • Check/Update the Category field on the main page of Resolve • Add details of any third party to the IC review to the ‘Parties’ tab • Complete Action Flow steps: <ul style="list-style-type: none"> ○ All assessment info available>Ready for Assessment ○ Decide Path>Conduct Review - 54Z ○ Move to Review Allocation <p>End Process</p>

Email template to Third Party advising it is joined as a party under s55A(1)(c) in access refusal IC review

Our reference:

Agency reference:

Dear [name]

Thank you for your email.

As it appears that [you/entity] were consulted by the [respondent] in processing the FOI request, [You/entity] is a party to this IC review under s 55A(1)(c) of the FOI Act. As [you/entity] is a party to the review, [you/entity] will be given a reasonable opportunity to present [your/its] case under s 55(4)(b) of the FOI Act. [You/entity] will also be notified of any decision by the Information Commissioner under s 55K(6).

At this stage, the IC review is awaiting allocation to a review adviser. Once the IC review is allocated, the review adviser will contact the review parties to discuss the next steps.

If you wish to contact us about this matter, please use the reference number [reference].

Kind regards

Email subject line: OAIC – MRXX/XXXXX - Response required by DD Month 2024 [1 week] - [Applicant name]'s/Your IC review application about the [Respondent Name]

Our reference: MRXX/XXXXX

Agency reference: [Insert reference number]

NAME

By email: [Insert email address OR remove if sent by post]

Your Information Commissioner review application - Request for information

Dear [Name],

On DD Month 2024, you applied to the Office of the Australian Information Commissioner (OAIC) for an Information Commissioner (IC) review of the [Agency's/Minister's] Freedom of Information (FOI) decision of [date].

A copy of your IC review application and the [Agency's/Minister's] decision are attached.

In your IC review application, you asked the OAIC to review:

[insert.quote]

[If applicable]. The OAIC is not able to review [insert part of request that is out of scope] because...

Action required by [1 week date]:

To assist with confirming the basis for your IC review application, please tell us why you disagree with the [Agency's/Minister's] decision, including:

- the parts of the decision you want the Information Commissioner to review.
- which documents you consider have been wrongly refused or which exemptions have been incorrectly applied.

You are required to provide this information under paragraph 2.16 of the Commissioner's written [direction to IC review applicants](#). Paragraph 2.22 of the direction requires you to respond to enquiries from the OAIC within the period provided unless there are circumstances warranting a longer period to respond.

Section 54W(c) of the Freedom of Information Act 7~~6~~⁴8 allows the Information Commissioner to decide not to undertake an IC review where an applicant fails to comply with a direction of the Commissioner.

If you do not provide this information by **[due date]**, we intend to exercise the discretion to finalise your IC review application.

Should you have any queries, please do not hesitate to contact me at FOIDR@oaic.gov.au.

Kind regards,

If A requests consideration under s54W(b), but does not provide sufficient reasons, please insert the below template replying to their request and attach a copy of the IC review application for their record and reference.

//

Subject line: OAIC – Response Required - MRXX/XXXXX - [Applicant name]'s/Your request for consideration under s54W(b) of the FOI Act

Our reference: MRXX/XXXXX

Agency reference:

Agency/Minister

By email: [Email Recipient's Email Address]

[Applicant name]'s/Your review application about the [Agency/Minister]

Good morning/afternoon [IC review applicant],

On **Click or tap to enter a date.**, you indicated that you wish for the Information Commissioner (IC) reviewable decision to be considered by the [Administrative Appeals Tribunal](#) (AAT), in accordance with [s 54W\(b\)](#) of the FOI Act.

You have not provided sufficient reasons to support whether it is desirable for a delegate of the Information Commissioner to determine that they should finalise the IC reviewable decision.

In order to consider your request please provide further reasons. You may wish to consider [\[10.88\] of the FOI Guidelines](#) [\[10.104 of the FOI Guidelines\]](#), which outlines the circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC reviewable decision in the first instance.

The circumstances outlined in the [FOI Guidelines](#), are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

To consider your request, please provide your fulsome reasons by **Click or tap to enter a date.**

If we do not receive a response by this time, the Office of the Australian Information Commissioner (the OAIC) will continue to review your application.

Due to the number of IC review applications on hand, and the need to prioritise IC review applications that were received earlier, I am unable to provide a timeframe on when you will next receive correspondence from the OAIC.

To assist you in determining an approximate timeframe, the OAIC is currently focusing on the case management and finalisation of aged matters, particularly those IC review applications that were received in 2020, 2021 and any others that remain on hand. The OAIC received your application for IC review on [Click or tap to enter a date.](#)

If you wish to [withdraw your application for IC review](#) please respond to this email stating “I no longer require an IC review of [\[Insert OAIC reference\]](#). There is no penalty for withdrawing.

You can make a new FOI request to the [Agency/Minister](#) at any time. It also may assist to consider the [other ways to access an Agency’s information](#).

Assistance

If you are unable to respond by [Click or tap to enter a date.](#), please respond to this email and request an extension of time to provide your response.

If you require any other assistance regarding your IC review application, please contact us at foidr@oaic.gov.au.

Please quote the reference [\[Insert OAIC reference\]](#) in all correspondence.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: MR

Agency reference:

Applicant Name

Sent by email:

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear

I refer to your request for Information Commissioner review (IC review) of a decision made by the Agency (Agency) on 6 June 2022, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

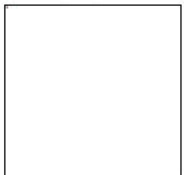
The Office of the Australian Information Commissioner (OAIC) has not received a response from you to our [details and dates of correspondence]. As a delegate of the Information Commissioner, I have decided to not to [undertake/continue to undertake] a review of this IC review under s 54W of the FOI Act. My reasons follow.

Background

[Include the same information in the intention to decline and update to refer to the review officer in the third person]

On [date], the OAIC review officer responsible for this matter, FOI - IC Reviews - Declines, wrote to you to advise you of their intention to recommend to the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(ii) of the FOI Act on the basis that you have failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

FOI - IC Reviews - Declines invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by [date].



Based on the information before me, the OAIC has not received a response.

Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W 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 has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[update as appropriate] The OAIC has not received a response from you to our [insert dates and details of correspondence]. On the basis of the information presently before the Information Commissioner, I am satisfied that you have failed to cooperate in progressing the IC review application without reasonable excuse.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- Based on the information me, including the documents at issue, the **Agency's** submissions, and relevant case law, I consider that the Agency has discharged its onus of establishing that the decision is justified.
- [The OAIC did not receive any submissions/response from you @]
- **Reviewing/continuing** to review this matter will not promote the objects of the FOI Act.

As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you have any questions about this email, please contact FOI - IC Reviews - Declines on or by email . In all correspondence please include OAIC reference MR

Yours sincerely

[First Name Last Name]

Director
Freedom of Information

29 August 2024

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 your 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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government

Office of the Australian Information Commissioner

Our reference: **MR**

Agency reference:

Applicant Name

Sent by email:

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear

I refer to your request for Information Commissioner review (IC review) of a decision made by the Agency (Agency) on 6 June 2022, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to [undertake/continue to undertake] a review of this IC review. My reasons follow.

Background

On [date], you applied to the Agency for access to:

[insert quote or for long requests, attach the FOI request].

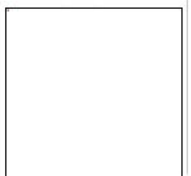
[insert any details about revision to scope]

On [date], the Agency advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the Agency's decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication].



Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

FOI - IC Reviews - Declines has attempted to contact you on several occasions using the contact details that you provided and we have not received a response.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- The OAIC did not receive any submissions/response from you @
- Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your IC review application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you have any questions about this email, please contact FOI - IC Reviews - Declines FOI - IC Reviews - Declines on or by email . In all correspondence please include OAIC reference MR

Yours sincerely

[First Name Last Name]

Director
Freedom of Information

29 August 2024

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 your 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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Our reference: **MR**
Agency reference:

Sent by email:

Your application for Information Commissioner review of [Agency]'s decision

Dear X

I refer to your request for Information Commissioner review (IC review) of a decision made by the **Agency** on 6 June 2022, under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application under s 54W of the FOI Act on the basis the Information Commissioner cannot contact you after making reasonable attempts.

The reasons for my recommendation follow.

Background

On [date], you applied to the **Agency** for access to:

[insert quote or for long requests, attach the FOI request].

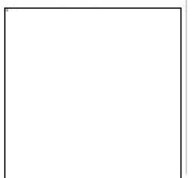
[insert any details about revision to scope]

On [date], the **Agency** advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the **Agency's** decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication]



Discretion not to [undertake/continue to undertake] an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

As discussed above, I have attempted to contact you using the contact details you provided on your IC review application form [and insert other details if relevant] and I have been unable to contact you.

I therefore intend to recommend to the delegate of the Information Commissioner that they exercise the discretion not to [undertake/continue to undertake] a review of this IC review application under s 54W of the FOI Act unless you contact me by [**@ 2 weeks**].

In consideration of the above, it is open to you to withdraw your IC review application by [**@ 2 weeks**].

If I do not hear from you by this date your IC review will be finalised under s 54W and you will be notified of your review rights.

If you have any questions about this email, please contact me on [redacted] or by email [redacted]. In all correspondence please include OAIC reference **MR**

Yours sincerely

FOI - IC Reviews - Declines FOI - IC Reviews - Declines

Freedom of Information

29 August 2024



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	
Choose an item.	
Decision date	Click or tap to enter a date.
OAIC reference number	
Choose an item. reference number	

Decision

1. I refer to the application made by **[applicant name]** (the applicant) for Information Commissioner review (IC review) of a **decision / internal review decision/ deemed access refusal decision / revised decision** made by the **[Respondent's full name]** (the Agency/Minister) on **DD Month Year**, 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:

[contact details of applicant]

An application for IC review must also include the following information (if relevant):

- a. The name and contact details of any person the applicant would like to represent them, as well as evidence that the person has authority to act on the applicant's behalf, where appropriate.
- b. If the applicant requires an interpreter, the language or dialect required.
- c. If the applicant requires any other assistance, the type of assistance required. This is because the IC must provide 'appropriate assistance' to a person

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



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who wishes to apply for IC review and requires assistance to prepare the IC review application.²

d. If the applicant has contacted the OAIC previously about the current application or another matter, the reference number previously provided by the OAIC to the applicant.³

[Authority]

An application for IC review may be made by, or on behalf of, the person who made the FOI request to which an access refusal decision relates (s 54L(3)). In relation to access grant decisions, third parties who were consulted under s 26(2), and third parties who were invited to make submissions in support of exemption contentions under ss 27 and 27A and did so, can also apply for an IC review of that access grant decision (s 54M(3)(a)). The IC may require information about the applicant's identity to establish that they are the person who made the original FOI request or evidence that a third party is authorised to seek review of the decision by that person.⁴

[clarity of scope]

An application for IC review should also:

- a. identify the parts of the decision the applicant wants the Information Commissioner to review
- b. state why the applicant disagrees with the agency's or minister's decision
- c. identify which documents the applicant considers have been wrongly refused or which exemptions have been incorrectly applied
- d. if the FOI request has been refused on the ground that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why the applicant believes the FOI request would not have this impact.⁶

[failing to cooperate]

Failure by an applicant to participate in the engagement process without reasonable excuse may in some cases result in the Information Commissioner not continuing to undertake the IC review on the ground that the IC review applicant has failed to cooperate in progressing the IC review application or IC review without reasonable excuse (see s 54W(a)(ii)).⁷

[failure to respond]

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.⁸



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The OAIC expects that applicants and agencies will engage with the IC review process, with respect and courtesy.^{9,10}

[applicant did not provide submissions]

In seeking submissions from agencies and ministers in support of the IC reviewable decision, the IC will require the agency or minister to send their submissions to the applicant at the same time as they are sent to the IC. The applicant will then have the opportunity to make submissions in response. The applicant will be required to send their submissions to the agency or minister at the same time as they are sent to the IC, within 10 business days of receiving the agency or minister's submissions.¹¹

IC review applicants should be aware that if they do not make submissions when an opportunity to do so has been provided, the review may proceed to a final decision without any further opportunity to make submissions.¹²

[scope of review following revised decision]

A revised decision does not automatically conclude the IC review, and the revised decision becomes the decision under review (s 55G(2)(b)). The OAIC will generally consult the IC review applicant as to whether they want to continue the IC review on the basis of the revised decision. Applicants who are not satisfied with the revised decision must explain why they disagree with the revised decision and the basis on which they wish to proceed with the IC review. If the applicant does not respond to the OAIC's correspondence, the Information Commissioner may decide not to continue to undertake the IC review (s 54W of the FOI Act).¹³

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,

Hannah Holswilder

Director

Freedom of Information Branch



Australian Government

Office of the Australian Information Commissioner

Office of the Australian Information Commissioner

29 August 2024





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Office of the Australian Information Commissioner

ATTACHMENT A

Background

Date	Events
Click or tap to enter a date.	FOI request made to the Agency/Minister .
Click or tap to enter a date.	IC review application received by the Office of the Australian Information Commissioner.
Click or tap to enter a date.	<p>Choose an item. notified of receipt of IC review application and request for documents provided under [s 54Z or 54Z/55T] of the FOI Act.</p>
Click or tap to enter a date.	<p>The Choose an item. issued a [decision / internal review decision / revised decision/ provided access to documents]</p> <p>OR</p> <p>The Choose an item. made submissions that ...</p> <p>[Select relevant option]</p> <p>(Access refusal)</p> <p>... the applicant's FOI request in its current terms would amount to a substantial and unreasonable diversion of the resources of the Agency from its other operations, in accordance with s 24AA(1)(a)(i) of the FOI Act.</p> <p>... the applicant's FOI request in its current terms would substantially and unreasonably interfere with the performance of the Minister's functions, in accordance with s 24AA(1)(a)(ii) of the FOI Act.</p> <p>... the applicant's FOI request in its current terms does not satisfy the requirement in paragraph 15(2)(b) (identification of documents), in accordance with s 24AA(1)(b) of the FOI Act.</p>



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... the applicant's FOI request was refused by the Choose an item. as the documents cannot be found, do not exist or have not been received, in accordance with s 24A(1) of the FOI Act.

(Amendment/Annotation)

... the Choose an item. has decided to/decided not to amend the applicant's record, in accordance with s 50(1)(b) of the FOI Act.

... the Choose an item. has decided to/decided not to annotate the applicant's record, in accordance with s 51b of the FOI Act.

Click or tap to enter a date.

The **Agency/Minister** provided the OAIC with copies of communications and correspondence with the applicant demonstrating reasonable attempts made to resolve the issues in dispute.

Click or tap to enter a date.

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.

OR

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(a)(ii)/ s 54W(a)(iii)]** of the FOI Act, if the applicant failed to comply with the direction by the specified date.

Click or tap to enter a date.

[If relevant] The OAIC attempted to phone the applicant as no written response had been received from the applicant.



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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](#)



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Intention to recommend that an Information Commissioner review not be undertaken / continue to be undertaken under s 54W(a)(i) of the Freedom of Information Act 1982

Information Commissioner review applicant	
Choose an item.	
Recommendation date	Click or tap to enter a date.
OAIC reference number	
Choose an item. reference number	

Summary

1. I refer to the application made by [applicant name] (the applicant) for Information Commissioner review (IC review) of a [decision / deemed access refusal decision / an internal review decision/ revised decision] made by the [Respondent's full name] (the Agency/Minister) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. The purpose of this letter is to advise you of my intention to recommend that the Information Commissioner exercises discretion to decide not to undertake/ continue to undertake an IC review under s 54W(a)(i) of the FOI Act, on the basis that this IC review is [lacking in substance, misconceived, frivolous or vexatious].
3. During an IC review, applicant's will be given a reasonable opportunity to present their case¹. As such, you are being provided an opportunity to comment or make submissions objecting to this recommendation by Click or tap to enter a date. [**@ 2 weeks**].
4. The background of this matter is provided at **Attachment A**.

Discretion not to undertake / continue to undertake an IC review

5. The Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if:

¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.26]

- a. the applicant fails to comply with a direction by the Information Commissioner (s 54W(c)), or
- b. if the Information Commissioner is satisfied:
 - i. the review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith (54W(a)(i))
 - ii. the review applicant has failed to cooperate in progressing the IC review application or the IC review without reasonable excuse (54W(a)(ii))
 - iii. the Information Commissioner cannot contact the applicant after making reasonable attempts (s 54W(a)(iii)) or
- c. if the Information Commissioner is satisfied the IC reviewable decision should be considered by the Administrative Appeals Tribunal (s 54W(b)).²

Scope of IC review

5. The decision under review is the [Agency's/Minister's] [decision / deemed access refusal decision / internal review decision/revised decision], of Click or tap to enter a date. and the issue/s to be decided is whether...

[select relevant option/s]

[Practical Refusal Reason]

... processing the applicant's request in its current terms would substantially and unreasonably divert the resources of the Agency, in accordance with s 24AA(1)(a)(i) of the FOI Act.

... processing the applicant's request in its current terms would substantially and unreasonably interfere with the performance of the Minister's functions, in accordance with s 24AA(1)(a)(ii) of the FOI Act.

[Where conditional exemptions are used or both exemptions and conditional exemptions are used: s 47B, s 47C, s 47D, s 47E, s 47F, s 47G, s47H, s 47J]

... the documents that the Agency/Minister maintains are exempt under [insert relevant exemption/s being contested] of the FOI Act are exempt under that/those provision/s and if so, whether giving access to conditionally exempt information would, on balance, be contrary to the public interest.

² See [Freedom of Information Guidelines, Part 10: Review by the Information Commissioner](#) [10.100]

[Where only exemptions are used: s 33, s 34, s 37, s38, s 42, s 45, s 45A, s 46, s 47, s 47A]

... the documents that the Agency/Minister maintains are exempt under [insert relevant exemption/s being contested] of the FOI Act are exempt under that/those provision/s.

[Where the document is exempt from the operation of the FOI Act: s 5, s 6A, s 7]

s 5: ... the Agency/Minister have properly characterised the documents as relating to the exercise of the Court's substantive adjudicative functions and powers. In which case, the FOI Act does not apply to the documents requested.

s 6A: ... the Agency/Minister have properly characterised the documents as held by, or on behalf of, the Governor-General, as relating to a substantive power or function of the Governor General. In which case, the FOI Act does not apply to the documents requested.

s 7: ... the documents claimed to be within scope of the request are exempt from the operation of the FOI Act.

[Searches]

s24A:...is whether the Agency/Minister has taken all reasonable steps to find documents within the scope of the request.

Reasons for recommendation

6. Having regard to the reasons for seeking an IC review it appears that the Information Commissioner, or a delegated member of staff, should exercise their discretion to decide **not to undertake / not to continue undertake** an IC review under s 54W(a)(i) of the FOI Act because ...

[Select relevant option]

(Lacking Substance)

... the reasons for seeking an IC review lacks any grounds of substance for challenging the decision under review. This is because it appears that [insert specific reasons]

(Misconceived)

... the reasons for seeking an IC review appears to be primarily for the purposes of voicing a grievance.

(Frivolous)

...the underlying merit in the proposed reasons for seeking an IC review appear to be based on a cause of action and do not appear untenable.

(Not made in good faith)

... the reason for seeking an IC review appears to be determinedly instigated so much so that the claims have not been substantiated by the applicant.

(Searches)

... the reasons for seeking an IC review lacks any grounds of substance for challenging the decision under review. This is because it appears that the **Agency/Minister** has taken all reasonable steps to find documents within the scope of the request as it was required to do so and that relevant documents, if they existed, would have been found.

Evidence of searches undertaken [only relevant for searches]

7. The **Agency/Minister** provided the Information Commissioner with details of the searches undertaken in relation to the FOI request and the outcome of those searches. I have considered these records, which indicate that the **Agency/Minister** undertook searches through:
 - Records/Case Management System (for example Content Manager/TRIM, Obejctive)
 - Electronic documents (for example emails in shared or individual Outlook accounts, text messages etc)
 - Hardcopy files
 - Contacting relevant line areas of the Agency such as...
 - [If applicable] Documents held or created by contracted service providers such as...

8. I have also considered the records of the above searches undertaken by the **Agency/Minister** which identified:

[select relevant options – add search specific information if search minute cannot be shared]

- The date searches were undertaken
- The locations searched (For example, [insert relevant line areas])
- The search terms used (For example, [insert search terms])
- The outcomes of the searches undertaken
- [If applicable] The reasons as to why searches returned no document results

Next steps

9. It is open to you to withdraw your IC review. There is no penalty for doing so and you can continue to make new FOI requests to the **Agency/Minister**. If you wish to withdraw your IC review, please respond to this correspondence saying, 'I no longer require an IC review'.
10. If you disagree with the recommendation, please provide us **with further information...** **[insert specific reasoning]**.

[Searches]

11. **If you disagree with the recommendation, please list what specific documents you believe are missing, whether you believe other areas of the Agency may hold the documents and if so, identify which business areas these may be to the best of your ability³, what record keeping systems you believe were not searched adequately and any search terms you believe that were not considered which may aid in locating documents.**
12. In the absence of a response by the above date it will be taken that you do not object to the recommendation. Extensions of time to respond to this recommendation will only be granted in exceptional circumstances. However, if the Information Commissioner receives submissions prior to a decision being made, those submissions will be considered.
13. You will be provided review rights if the IC review is finalised by the Information Commissioner under s 54W(a)(i) of the FOI Act.

Yours sincerely,

[Full Name]

Review Advisor / Acting Review Advisor
Freedom of Information Branch
Office of the Australian Information Commissioner

Click or tap to enter a date.

³ To access the Agency's organisational chart, see [Your guide to the structures, organisations and key people in the Australian Government](#)

ATTACHMENT A

Background

Date	Events
<p>Click or tap to enter a date.</p>	<p>FOI request made to the Agency/Minister for:</p> <p><i>[insert scope of request]</i></p>
<p>Click or tap to enter a date.</p>	<p>The Choose an item. issued an original decision in response to applicant's FOI request.</p> <p>OR</p> <p>The Choose an item. made an original decision outside of the allowable timeframe in the FOI Act. As this was not a valid decision, the purported decision was taken to be a submission.</p>
<p>Click or tap to enter a date.</p>	<p>The applicant sought an internal review of the Agency's decision.</p> <p>OR</p> <p>The applicant sought an internal review of the Agency's decision outside of the allowable timeframe in the FOI Act.</p>
<p>Click or tap to enter a date.</p>	<p>The Choose an item. issued an internal review decision in response to applicant's request for internal review.</p> <p>OR</p> <p>The Choose an item. issued an internal review decision outside of the allowable timeframe in the FOI Act. The principal officer of the Agency/Minister was taken to have affirmed the original decision.</p> <p>OR</p>

	The Choose an item. agreed to process the applicant's invalid request for an internal review. As this was not a valid internal review decision, the purported decision was taken to be a submission.
Click or tap to enter a date.	IC review application received by the Office of the Australian Information Commissioner.
Click or tap to enter a date.	Choose an item. notified of receipt of IC review application and request for documents provided under [s 54Z or 54Z/55T] of the FOI Act.
Click or tap to enter a date.	<p>The Choose an item. issued a revised decision in accordance with s 55G of the FOI Act, in response to the Information Commissioner's notice and direction.</p> <p>OR [where a s55G decision could not be issued]</p> <p>The Choose an item. made a submission in response to the Information Commissioner's notice and direction, establishing why the Information Commissioner should make a decision adverse to the applicant under s 55D(1) of the FOI Act.</p>
Click or tap to enter a date.	<p>An officer of the Information Commissioner asked the applicant if they wished to proceed with the IC review and if so, to provide further information as to why they wished to proceed in accordance with the Information Commissioner's written direction to IC review applicants.</p> <p>The OAIC also advised the applicant that their IC review may be finalised under s 54W of the FOI Act, if the requested information was not received by Click or tap to enter a date.</p> <p>The applicant did not provide a response. OR</p>
Click or tap to enter a date.	<p>The applicant provided the Information Commissioner with the following information:</p> <p><i>'[insert proceed submissions]'</i></p>

Click or tap to enter a date.

[Insert further fields if additional submissions were exchanged between the parties (to include all relevant review material in the ITD)]

Subject line: OAIC - Request for Updated Contact Details - MRXX/XXXXX – Review application about the [Agency/Minister]

//

Our reference: MRXX/XXXXX

Agency reference:

By email: [Email Recipient's Email Address]

Your review application about the [Agency/Minister]

Good morning/afternoon X,

On DD Month Year, the Office of the Australian Information Commissioner (OAIC) received an automatic email, indicating that the email transmission had not been successful (attached).

To assist us in progressing your Information Commissioner review, please confirm if this is no longer your current or preferable contact address and if so, please provide your updated contact details by DD Month Year. (one week)

Intention not to continue to undertake your IC review

Section 54W(a)(iii) of the FOI Act provides that the Information Commissioner may decide not to undertake, or continue to undertake, an IC review where the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

Should we not receive a response from you to this email by DD Month Year your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(iii).

If I can be of any assistance, please do not hesitate to reach out.

Please quote the OAIC reference number at the top of this email in all correspondence.

Kind regards,



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

Information Commissioner review applicant

Choose an item.

Decision date

Click or tap to enter a date.

OAIC reference number

Choose an item. reference number

Decision

1. I refer to the application made by [applicant name] (the applicant) for Information Commissioner review (IC review) of a **decision / internal review decision/ deemed access refusal decision / revised decision** made by the [Respondent's full name] (the **Choose an item.**) 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 undertake / continue to undertake** an IC review under s 54W(b) 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. Under s 54W(b) of the FOI Act, the Information Commissioner may exercise the discretion not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.
5. The effect of such a decision would allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT. AAT filing fees may apply.¹

¹ See [Administrative Appeals Tribunal - Fees](#)

6. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.104] and [10.105], which states:

The Information Commissioner may decline to undertake a review if satisfied ‘that the interests of the administration of the [FOI] Act make it desirable’ that the AAT consider the IC reviewable decision (s 54W(b)). It is intended that the Information Commissioner will resolve most IC review applications. Circumstances in which the Information Commissioner may decide that it is desirable for the AAT to consider the IC reviewable decision instead of the Information Commissioner continuing with the IC review include:²

- where the IC review is linked to ongoing proceedings before the AAT or a court
- where there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- where, should the application progress to an IC review decision, the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
- where the FOI decision under review is of a level of complexity that it will be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Information Commissioner undertaking the IC review, including where:
 - the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
 - the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
 - the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

7. However, the circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

8. Further, the Office of the Information Commissioner (OAIC) may take into account the views of the parties to an IC review before concluding an IC review pursuant to s 54W(b). While the Information Commissioner will consider the views of the review parties before finalising an IC review under s 54W(b), the decision whether it is more appropriate for the AAT to consider the IC reviewable decision ultimately rests with the Information Commissioner. Through the functions conferred on the Information Commissioner under the FOI Act, the Information Commissioner will be in the most informed position to

² See [McKinnon and Department of Immigration and Citizenship \[2012\] AICmr 34](#)

determine whether the interests of the administration of the FOI Act make it desirable for the AAT consider the IC reviewable decision.

Reasons for decision

9. I am satisfied that it is in the interests of the administration of the FOI Act that the IC reviewable decision be considered by the AAT in the first instance because:

- [Insert reasoning]

10. In deciding whether to exercise the discretion not to undertake a review, I have considered:

- the Agency's **decision / internal review decision/ deemed access refusal decision OR submissions** dated **DD Month Year**.
- the documents at issue
- the FOI Act, in particular 54W **[example: s 11A(5), s 22, s33.]**
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act³ to which agencies must have regard in performing a function or exercising a power under the FOI Act, in particular [10.104] and [10.105]
- the views of the parties
- The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009

11. With consideration to the above, I am satisfied, as a delegate of the Information Commissioner, that it would be more appropriate and efficient for the application to be made directly to the AAT. As such, I have decided to exercise my discretion to decide not to **undertake / continue to undertake** an IC review under s 54W(b) of the FOI Act.

12. The applicant has 28 calendar days from the date of this notice to make an application for review of the IC reviewable decision to the AAT, in accordance with s 57A of the FOI Act.

13. I confirm that this IC review is now closed. Your review rights are set out below.

Yours sincerely,

³ 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).

Hannah Holswilder

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

DD Month 2024

ATTACHMENT A

Background

Date	Events
<p>Click or tap to enter a date.</p>	<p>FOI request made to the Choose an item.</p>
<p>Click or tap to enter a date.</p>	<p>IC review application received by the Office of the Australian Information Commissioner</p>
<p>Click or tap to enter a date.</p>	<p>Choose an item, notified of receipt of IC review application and request for documents provided under s 54Z of the FOI Act</p>
<p>Click or tap to enter a date.</p>	<p>The Choose an item, issued an initial decision in response to the IC review applicant's FOI request.</p> <p>OR</p> <p>The Choose an item, provided access to documents outside of the allowable timeframe in the FOI Act. As this was not a valid decision, they are taken to be submissions. The IC reviewable decision remains the deemed access refusal of Click or tap to enter a date.</p> <p>OR</p> <p>The Choose an item, issued a revised decision in accordance with s 55G of the FOI Act, in response to the Information Commissioner's notice and direction.</p> <p>OR [where a s55G decision could not be issued]</p> <p>Choose an item, submission received to establish why the Information Commissioner should make a decision adverse to the applicant under s 55D(1) of the FOI Act.</p>
<p>Click or tap to enter a date.</p>	<p>IC review applicant provided indication/requested that they wished for the Information Commissioner to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act.</p>

Click or tap to enter a date. Information Commissioner requests IC review applicant provide submissions as to why the Information Commissioner should exercise discretion to finalise IC review application s 54W(b) of the FOI Act

Submissions were requested from the applicant, for consideration by a delegate of the Information Commissioner by [Click or tap to enter a date](#).

Click or tap to enter a date. IC review applicant s 54W(b) submissions received, advising:

“[insert applicant submissions (these may be included in the IC review application)]”

Click or tap to enter a date. Information Commissioner provides the Agency with the applicant’s submissions and recommendation for the Information Commissioner to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act.

Submissions were requested from the [Choose an item.](#), for consideration by a delegate of the Information Commissioner by [Click or tap to enter a date](#).

Click or tap to enter a date. [Choose an item.](#) s 54W(b) submissions received, advising:

“[insert Agency/Minister submissions (these will be in response to the IC’s 54W(b) ITD)]”

Alternative Attachment A – where 54W(b) is requested at the time of making the IC review application.

ATTACHMENT A Background

Date	Events
Click or tap to enter a date.	FOI request made to the Choose an item .
Click or tap to enter a date.	The Choose an item issued an initial decision in response to the IC review applicant's FOI request.
Click or tap to enter a date.	IC review application received by the Office of the Australian Information Commissioner. IC review applicant indicated within their IC review application that they wished for the Information Commissioner to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act.
Click or tap to enter a date.	<p>Choose an item notified of receipt of IC review application and issued a recommendation by an officer of the Information Commissioner for a delegate to exercise discretion to finalise IC review application under s 54W(b) of the FOI Act, advising:</p> <p><i>"[Insert applicant submission from IC review application]"</i></p> <p>The Information Commissioner requested the Choose an item to provide submissions as to why the Information Commissioner should not exercise discretion to finalise IC review application s 54W(b) of the FOI Act.</p> <p>Submissions were requested from the Minister, for consideration by a delegate of the Information Commissioner by Click or tap to enter a date.</p>
Click or tap to enter a date.	Choose an item s 54W(b) submissions received, advising:

Click or tap to
enter a date.

Choose an item. s 54W(b) submissions received, advising:

*“[insert Agency/Minister submissions (these will be in response to the IC’s
54W(b) ITD)]”*

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](#)⁴ page on our website.

⁴ www.oaic.gov.au/about-us/access-our-information/.



Australian Government

Office of the Australian Information Commissioner

Intention to recommend that an Information Commissioner review not **be undertaken / continue to be undertaken under s 54W(b) of the *Freedom of Information Act 1982***

Information Commissioner review applicant	
Choose an item.	
Recommendation date	Click or tap to enter a date.
OAIC reference number	
Choose an item. reference number	

Summary

1. I refer to the application made by [applicant name] (the applicant) for Information Commissioner review (IC review) of a **decision / internal review decision/ deemed access refusal decision** made by the [Respondent's full name] (the **Choose an item.**) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. The purpose of this letter is to advise the parties of my intention to recommend that the Information Commissioner should exercise the discretion to decide not to **undertake /continue to undertake** an IC review under s 54W(b) of the FOI Act, as I am of the view that it may be in the interests of the efficient administration of the FOI Act that this review be closed and that the IC review applicant be provided the opportunity of applying directly to the Administrative Appeals Tribunal (AAT) for review, in the first instance.
3. I am writing to both parties in this IC review to offer an opportunity to comment or make submissions objecting this recommendation.

Discretion not to continue to undertake an IC review

4. Under s 54W(b) of the FOI Act, the Information Commissioner may exercise the discretion not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.



Australian Government

Office of the Australian Information Commissioner

5. The effect of such a decision would allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT. AAT filing fees may apply.¹
6. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.104] and [10.105], which states:

The Information Commissioner may decline to undertake a review if satisfied 'that the interests of the administration of the [FOI] Act make it desirable' that the AAT consider the IC reviewable decision (s 54W(b)). It is intended that the Information Commissioner will resolve most IC review applications. Circumstances in which the Information Commissioner may decide that it is desirable for the AAT to consider the IC reviewable decision instead of the Information Commissioner continuing with the IC review include:²

- where the IC review is linked to ongoing proceedings before the AAT or a court
 - where there is an apparent inconsistency between earlier IC review decisions and AAT decisions
 - where, should the application progress to an IC review decision, the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
 - where the FOI decision under review is of a level of complexity that it will be more appropriately handled through the procedures of the AAT
 - where there may be a perceived or actual conflict of interest in the Information Commissioner undertaking the IC review, including where:
 - the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
 - the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
 - the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
 - where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).
7. However, the circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

Reasons for recommendation

8. In this IC review, it appears that it may be in the interests of the efficient administration of the FOI Act that that a delegate of the Information Commissioner exercises the discretion to

¹ <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

² See [McKinnon and Department of Immigration and Citizenship \[2012\] AICmr 34](#)



Australian Government

Office of the Australian Information Commissioner

decide not to undertake / continue to undertake an IC review under s 54W(b) of the FOI Act because:

- [Insert reasons]

Next steps

9. If you disagree with this proposed recommendation, please write to us by [Click or tap to enter a date. \[minimum 2 weeks\]](#) and advise us of your reasons. If you agree with the proposed recommendation, you are not required to respond. However, should either party wish to provide additional information, for consideration by a delegate of the Information Commissioner, you may do so by the abovementioned date.
10. The Office of the Information Commissioner (OAIC) may take into account the views of the parties to an IC review before concluding an IC review pursuant to s 54W(b). While the Information Commissioner will consider the views of the review parties before finalising an IC review under s 54W(b), the decision whether it is more appropriate for the AAT to consider the IC reviewable decision ultimately rests with the Information Commissioner. Through the functions conferred on the Information Commissioner under the FOI Act, the Information Commissioner will be in the most informed position to determine whether the interests of the administration of the FOI Act make it desirable for the AAT consider the IC reviewable decision.
11. In the absence of a response by the above date it will be taken that the parties do not object to the proposed recommendation. The parties will be notified and provided review rights if the IC review is finalised under s 54W(b) of the FOI Act.

Yours sincerely,

[OAIC Officer]

Review Advisor

Freedom of Information Branch

Office of the Australian Information Commissioner

DD Month 2024

Discretion not to **undertake/ continue to undertake** an IC review

If an applicant fails to comply with 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 an IC review or make a decision at their discretion, not to continue with the review. The Direction specifically states:

[select relevant option/s]

- An application for IC review must also include the following information (if relevant):
 - a. The name and contact details of any person the applicant would like to represent them, as well as evidence that the person has authority to act on the applicant's behalf, where appropriate.
 - b. If the applicant requires an interpreter, the language or dialect required.
 - c. If the applicant requires any other assistance, the type of assistance required. This is because the IC must provide 'appropriate assistance' to a person who wishes to apply for IC review and requires assistance to prepare the IC review application.²
 - d. If the applicant has contacted the OAIC previously about the current application or another matter, the reference number previously provided by the OAIC to the applicant.³

//

- An application for IC review may be made by, or on behalf of, the person who made the FOI request to which an access refusal decision relates (s 54L(3)). In relation to access grant decisions, third parties who were consulted under s 26(2), and third parties who were invited to make submissions in support of exemption contentions under ss 27 and 27A and did so, can also apply for an IC review of that access grant decision (s 54M(3)(a)). The IC may require information about the applicant's identity to establish that they are the person who made the original FOI request or evidence that a third party is authorised to seek review of the decision by that person.⁴

//

- An application for IC review must be accompanied by a copy of the agency's or Minister's decision (called a s 26 notice) for which review is sought or, if no decision has been made (for example, when the agency or Minister is taken to have refused the FOI request because they have not made a decision within the statutory time period), a copy of the FOI request.⁵

//

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

² Section 54N(3) of the FOI Act.

³ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.11]

⁴ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.12]

⁵ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.14]

- An application for IC review should also:
 - a) identify the parts of the decision the applicant wants the Information Commissioner to review
 - b) state why the applicant disagrees with the agency's or minister's decision
 - c) identify which documents the applicant considers have been wrongly refused or which exemptions have been incorrectly applied
 - d) if the FOI request has been refused on the ground that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why the applicant believes the FOI request would not have this impact.⁶

//

- Failure by an applicant to participate in the engagement process without reasonable excuse may in some cases result in the Information Commissioner not continuing to undertake the IC review on the ground that the IC review applicant has failed to cooperate in progressing the IC review application or IC review without reasonable excuse (see s 54W(a)(ii)).⁷

//

- 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.⁸

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- The OAIC expects that applicants and agencies will engage with the IC review process, with respect and courtesy.^{9 10}

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- In seeking submissions from agencies and ministers in support of the IC reviewable decision, the IC will require the agency or minister to send their submissions to the applicant at the same time as they are sent to the IC. The applicant will then have the opportunity to make submissions in response. The applicant will be required to send their submissions to the

⁶ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.16]

⁷ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

⁸ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.22]

⁹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

¹⁰ See [OAIC service charter](#).

agency or minister at the same time as they are sent to the IC, within 10 business days of receiving the agency or minister's submissions.¹¹

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- IC review applicants should be aware that if they do not make submissions when an opportunity to do so has been provided, the review may proceed to a final decision without any further opportunity to make submissions.¹²

//

Revised decision only:

- A revised decision does not automatically conclude the IC review, and the revised decision becomes the decision under review (s 55G(2)(b)). The OAIC will generally consult the IC review applicant as to whether they want to continue the IC review on the basis of the revised decision. Applicants who are not satisfied with the revised decision must explain why they disagree with the revised decision and the basis on which they wish to proceed with the IC review. If the applicant does not respond to the OAIC's correspondence, the Information Commissioner may decide not to continue to undertake the IC review (s 54W of the FOI Act).¹³

//

As such, if we do not hear from you by **DD Month 2024** we intend to exercise the discretion to finalise your IC review application.

Assistance

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MR** in all correspondence.

Kind regards,

¹¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

¹² See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

¹³ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.25]

Subject: OAIC – Response Required – MR – Information Commissioner review application about the [Respondent Name]

Our reference:

Agency/Minister reference:

By email: [Email Recipient's Email Address]

Information Commissioner review application about the [Respondent Name]

Good morning/afternoon [Email Recipient Email Address]

I sincerely apologise for the time elapsed between correspondences.

By way of update, the Office of the Australian Information Commissioner (OAIC) is continuing to allocate and review matters received in 2020. As such, given the passage of time and further anticipated delays, I am writing to seek clarification about whether you wish to continue with your review application.

[if relevant] The OAIC has not received correspondence from you since DD Month YEAR, XX days ago.

Action required by you before DD Month 2024: (two -three weeks)

1. If you no longer wish to continue with the IC review, please reply to this email stating “I no longer require an IC review”. There is no penalty for withdrawing and you may continue to submit new FOI requests to the Agency/Minister at any time.
2. If you wish to continue, can you please confirm:
 - Whether any of the material related to the FOI decision under review is linked to ongoing proceedings before the Administrative Appeals Tribunal or court.
 - Whether any of the material you are seeking has been released to you, such as through a more contemporarily made FOI request to the Agency/Minister; and
 - If your reasons for seeking IC review have changed.

Discretion not to continue to undertake an IC review

If an applicant fails to comply with the [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#), the Information Commissioner may in some cases decide not to undertake an IC review or make a decision at their discretion, not to continue with the review. The Direction specifically states:

[insert relevant directions]

-

If we do not hear from you by DD Month 2024 we intend to exercise the discretion to finalise your IC review application.

Assistance

If you are unable to respond by **DD Month 2024**, you must request more time at the earliest opportunity and no later than **DD Month 2024**. **[two days before due date]**. 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

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MR** in all correspondence.

Kind regards,

Subject line: OAIC - MR – s 54W(c) - Decision **not to undertake / continue to undertake** an Information Commissioner review

Our reference:

Agency/Minister reference:

Applicant Name
Agency/Minister

By email: Applicant

By email: Agency/Minister

Copied to: [if relevant]

Finalisation of Information Commissioner review application under s 54W(c) of the FOI Act

Dear Parties,

Please find **attached** a decision finalising this Information Commissioner review under s 54W(c) of the FOI Act.

I confirm our file is now closed.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: «CaseNumber»

Agency reference: «Agency_Reference_Number»

The respondent is:	The applicant is:
«RespondentClientTradingName»	«SendToTitleFirstnameSurname»

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 «RespondentClientTradingName» (the «RespondentClientAbbreviation») 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.

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 «CaseNumber») 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].

29 August 2024

Attachment A



**Direction to
the «RespondentClientTradingName»
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 «CaseNumber», I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the «RespondentClientTradingName» (the «RespondentClientAbbreviation») under s 55(2)(e)(ii) of the FOI Act.

Revised decision – full access

1. Should the «RespondentClientAbbreviation» wish to provide full access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» wish to provide partial access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «CaseNumber») 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 «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» claims are exempt and the particular provisions of the FOI Act the «RespondentClientAbbreviation» is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the «RespondentClientAbbreviation» contends that the applicant should be refused access to the documents.
- 5. Should the «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» provide the OAIC the following:
 - a. Should the «RespondentClientAbbreviation» wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation», 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 «CaseNumber») 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 «RespondentClientAbbreviation» 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 **[15 business days]**.

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

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Attachment B



Notice to produce documents and give information

In relation to «CaseNumber», under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require you [respondent full name], [title] of the «RespondentClientTradingName», to give me the following information by close of business **[15 business days]**:

- 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:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Instructions

Drafting Proceed emails for Deemed Matters

Open Case in Resolve & go to the "Documents" tab to review correspondence relevant to the case.

Read through the correspondence to find the following information (and update key days in the summary box on the main page along the way – see below example):

- Date the Agency advised us of a new decision (beneficial if a copy of the correspondence is enclosed).
- Sometimes, Agencies will CC the OAIC into the decision correspondence to the FOI applicant) to assist in resolving the matter in a timely manner.
- If the decision is not enclosed, and you are unsure, it may be useful to send an “RFI” to the Agency.
- If the decision is provided by the Agency to the OAIC we need to establish when the decision was issued to the applicant (or at a minimum, when the decision was dated as some Agencies date decisions days before it is released to the FOI applicant due to complex clearing processes).
- If possible, what email the Agency issued the decision (if provided)
- Whether the new decision is a revised decision under s55G of the FOI Act (in response to the OAIC issuing a 54Z/55T notice and direction. You can check easily by using the CTRL+F function).
- If the decision is not made in accordance with s55G of the FOI Act, the decision will likely be taken to be as a Agency submission under s 55(2)(e)(ii) of the FOI Act.

Locate the Proceed email template saved to your signatures or here: OAIC-Intake and Early Resolution-TEAM>General>Files>Deemed Queue>Proceed Templates

1. Update the email template content
 - a. Ensure the email is being sent from FOIDR mailbox.
 - b. Ensure that the Applicant and/or representative email address is correct.
 - c. Send the email.
2. Once sent, upload the email to the ‘Documents’ tab of Resolve
 - a. right click the document and select ‘Document properties’ from the menu.
 - b. Update the comment to **Proceed due [XX/XX]**
 - c. Ensure you delete the email/documents from desktop.
3. Update the "Assessor Note" on the main page to **Proceed due XX/XX**
4. Update the Next Action Due Date to the due date of the Proceed email.
5. Update summary
 - **XX/XX/XX - FOI requested**
 - **XX/XX/XX - Deemed Refused**
 - **XX/XX/XX - PI issued (response received XX.XX / not received)**
 - **XX/XX/XX - 54Z/55T issued (response received XX/XX)**
 - **XX/XX/XX - Proceed Issued (response due XX/XX)**
6. Update the “open actions” field
 - * Follow through to “send to applicant to proceed (MR PI)” and tick the box
 - * Leave at “Await Response from Applicant (MR PI)
 - * Hit save

Instructions

Drafting s 54Z /55T notices (bulk notices instructions are further below)

1. Check docs for date FOI was lodged with agency and use the date calculator to confirm the deemed date. (Strictly 30 days and includes public holidays and weekends – not next business day)
 - * Also, check all docs to see if we've received the statement of reasons/substantive decision (out of jurisdiction) [what a FOI decision is called when issued after deemed date] as a PI & 54Z/55T notice will not be required. The applicant will be issued a "proceed" requesting if they now wish to withdraw their IC Review or proceed and review the substantive decision/statement of reasons, in which case they will be used as a submission for the IC review. If they withdraw or don't respond, we issue a 54W(c) Closure Decision
 - * Check for EOT's (up to 30 days) and consultation periods or internal reviews (30 days) - if these periods are still ongoing amend the assessor note to internal review due XX/XX
2. Check for a response from the agency to our Preliminary Inquiry (PI) email
3. Once confirmed that it is deemed, proceed to draft 54Z/55T - edit summary file notes if required
4. Select and double click to open Case in Resolve
 - * Change "Method" in the Details Bar to Preliminary Inquiry and hit save
 - * Go to All Actions tab' and click on 'Add Procedure',
 - * Select FOI Letter templates>Early Resolution Letter (FOI)>§ 22 54Z/55T Deemed-Notice of IC review
 - * New Action will appear at the bottom named "§ 22 54z/55t Deemed- Notice of IC review". Select it, right click and select 'Action Tasks' from the pop-up menu.
 - * New Pop-Up window will appear, only 1 line should appear with task named "§ 22 54Z/55T Deemed- Notice of IC review".
 - * Select to highlight and then click 'Merge and Edit'.
 - * New Pop-Up may appear, the respondent or "FOI Contact Officer" will populate. Sometimes only one option is available, if not, please only select one. It does not matter which option is selected. Click OK.
 - * May take some time to load after clicking OK, a Word document template is being generated and will open automatically. You may close the above pop-up window once the document has been generated.
5. Fill in required details in the template (see example with guidance comments saved in § 47E(d)
 - * Obtain the correct FOI Contacts Officer from the shared file in the Teams Channel called 'Details of Agency Directors' (§ 47E(d)) and replace the "FOI Co Ordinator"
 - * Amend opening title to recipient's name i.e. Ms Fletcher
 - * Amend title to letter from Notice of IC... to Notice of Information Commissioner...
 - * Amend the acronym of the Dept, in the third line in the first paragraph to (the Department) as throughout the document it is referred to as 'the department'
 - * Add the acronym (IC) into the second line after .. Information Commissioner
 - * Drop the last sentence in the first paragraph to it's own line
 - * Add paras (see bottom of document for templates for additional paras) as required to 'Scope of IC review'
 - * May add extra information that you may have relevant to this review * workout 30 days from lodgement and if any EOT's were

granted or consulting periods or internal reviews (use date calculator)

EG:

On 13 November 2023, the FOI applicant lodged a FOI request.

On 8 December 2023, the FOI applicant agreed to a 30 day extension until 12 January 2024.

* refer to Hannah's email date 6/2/24 in the 54Z/55T folder re adding paras for the amendment & annotations cases, in the scope and example in the notice attached

- * Replace my name with Hannah Holswilder (Ctl H)
- * Replace [3 weeks] to actual date plus one day (Ctl H)
- * At the end of the letter, **remove REGULATORY** from sig block
- * Amend the first paragraph in attachment B by removing the 'you' and 'title, respondent full name' i.e. *In relation to s 22 [REDACTED], under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require the s 22 [REDACTED], to give me the following information by close of business 8 February 2024:*
- * *In the letter and attachment A & B, the last paragraph, amend the title and branch details to Director, Freedom of Information Branch, Office of the Australian Information Commissioner and add signature block*
- * delete duplicate letter and attachments if it has replicated itself when merging

6. Once you have completed your 54Z 55T notice, save the document and close Word. (DO NOT SAVE TO DESKTOP)

- * Go to the "documents" tab in resolve, right click on the s 54Z/55T notice and from the pop-up menu click "Check In".
- * Right click on the document and select 'Document properties'. In the comment section please write **Draft 54Z/55T**

7. Go to the 'All Actions' Tab in Resolve

- * The notice needs to be cleared by an EL2 Director. (Usually Hannah Holswilder, however, if the agency is Services Australia, then it will have to go to Heath Baker due to conflict of interest)
- * Click on 'Add Action' and select 'Await Clearance – Director' - A new action will generate.
- * Double click on the action to open it and Update the comment text to **Hi Hannah, please see draft 54Z/55T for your clearance. Thanks, SJ** (add any other comments that you want reviewed)
- * Click ok when complete
- * Ensure 'Action' is assigned to correct person. If not, reassign.

8. In the 'Assessor Note' on the main page of Resolve (within the case), please update the comment from '[NOW] Draft 54Z/55T' to **[CLEARANCE] Draft 54Z/55T with HHO**

9. Push "open actions" to correct work step and clear others

10. **When the Draft 54Z/55T notice has been cleared by the Director** the Resolve action you created 'Await Clearance – Director' will be assigned back to you in Resolve and will appear in your Resolve action list.

When this occurs:

1. Check out and edit any changes, esp the date if returned next day. Check back in. Then save a final PDF version of the cleared 54Z/55T notice to your desktop – preferred method. (Or can use the convert to PDF option in Resolve and no need to save to desktop. Right click on the document you want to convert to PDF and click on the Convert to)
2. Create the notification email to the Respondent using the '54Z+55T notice email' template saved in your inbox signature or **§ 47E(d)**
3. Ensure the email is being sent from FOIDR mailbox.
4. Ensure that a copy of the IC review application (called form-receipt.pdf)/email and the PDF version of the 54Z/55T notice is attached to the email.
5. Ensure that the Agency email address is correct. (NOTE: there may be more than one email address to add)
6. Send the email. Once sent, locate the email and drag the email to the 'Documents' tab of Resolve.
7. Once the document has been sent, ensure you delete any case documents from your desktop/folder.
8. Once the email has been uploaded to Resolve, right click on the email and select 'Document properties' from the menu. Update the comment to **54Z/55T due [XX/XX]** inserting the due date of the notice
9. Update the next Assessor Note on the main page of resolve to **54Z/55T due XX/XX (SJ)**
10. Update the Next Action Due Date to the due date of the 54z/55t notice and hit save.
11. Update the last "Open Actions" item in the main page to "Await response to notice from respondent (MR PI). [Either tick the other actions and they will drop off or double click them and complete the status]. Then Double click on the await response action and amend the date to the correct due date
12. Amend/Add brief timeline summary (and edit) file note i.e
 - a. **XX/XX/XX - FOI requested**
 - b. **XX/XX/XX - Deemed Access Refusal**
 - c. **XX/XX/XX - PI response received / not received.**
 - d. **XX/XX/XX -54Z/55T issued**
13. Keep in Deemed queue so Supervisor and Director can see

Templates for additional paragraphs

“Scope of IC Review” - Insert as 2nd paragraph

Where agency has provided incorrect deemed date in reply to PI

On DD Month/ YEAR, the Department/Agency confirmed to the OAIC that the applicant’s request was deemed to have been refused on DD Month/ YEAR.

I note that the FOI applicant made an FOI request to the Department (Your ref: s 22) on 10 October 2023. Therefore, under s 15(5)(b), the correct deemed refusal date is 9 November 2023.

Where agency has advised they have provided a decision to the applicant (after the PI has commenced)

On DD Month 2023, the Department/Agency/Office notified the Office of the Australian Information Commissioner (OAIC) it provided the FOI applicant with a decision [if provided within 30 day prescribed timeframe]/statement of reasons [preferred] or substantive decision (out of jurisdiction) [if provided outside 30 day prescribed timeframe].. The FOI applicant has advised the OAIC that they disagree with the decision and wish to proceed with their IC review application.

Where applicant has advised they were provided with a decision (after the PI has commenced or lodged IC review same day as receiving the decision)

On DD Month 2023, the Department/Agency/Office provided the FOI applicant with a decision [if provided within 30 day prescribed timeframe]/statement of reasons [preferred] or substantive decision (out of jurisdiction) [if provided outside 30 day prescribed timeframe]. The FOI applicant has advised the OAIC that they disagree with the decision/statement of reasons and wish to proceed with their IC review application.

Where applicant is seeking a review of an agency’s internal review

On 15 January 2024, the Department advised the OAIC that the applicant’s internal review request was deemed to have been affirmed on 15 December 2024.

(Add this para if the agency has advised the incorrect deemed date) I note that the FOI applicant made an FOI request to the Department (Your ref: s 22) on 21 July 2023 and an internal review was due 15 December 2023. Therefore, under s 54D, the correct deemed affirmation date is 15 December 2023.

FOR DHA BULK Notices

1. Look for cases marked "[NOW] Draft 54Z/55T" and matters flagged as "[NOW] Pls In" (most if not all of these will need to be added to this bulk notice. You will need to jump into each, see the rego/triage officer note in the documents tab or open the correspondence from the respondent and check whether the request is deemed and then add them to the bulk notice).
2. Open spread sheet and clear previous data. Gather all information from Resolve (sort by deemed date from earliest to oldest) and
 - * In the Main screen change 'Method' to Preliminary Inquiry
 - * Edit the 'Assessor Note' to **[NOW] Draft 54Z/55T with SJ**
 - * Hit Save
3. Check docs and to ensure they are deemed
 - * amend summary notes and hit save
 - a. **XX/XX/XX - FOI requested**
 - b. **XX/XX/XX - Deemed Refused**
 - c. **XX/XX/XX - PI response received / not received.**
4. Prepare notice from template saved in the teams channel (open it in Word and formatting will sort itself out). Make same amendments as above notices and send to Director to sign
 - * Save to desktop as 'Bulk 54Z 55T Notice Deemed - Notice of Information Commissioner Review as at XX.XX '
 - * Save the draft to the oldest matter.
 - * Right click on the document and select 'Document properties. In the comment section write **Draft 54Z/55T**
 - * Go to the 'All Actions' Tab and 'Add Action' > 'Await Clearance – Director'.
 - * Double click on the action to open it.
 - * Update the comment text to **Hi Hannah, please see draft bulk 54Z/55T for your clearance. Thank you [Initial]** (add any other comments that you want reviewed)
 - * Click ok when complete
 - * Ensure 'Action' is assigned to Hannah. If not, reassign.
 - * In the 'Assessor Note' on the main page of Resolve (within the case), please update the comment from '[NOW] Draft 54Z/55T' to **[CLEARANCE] Draft 54Z/55T with HHO**
5. **When cleared by Director,** amend any edits (change dates where applicable) then save as a PDF and issue email to DHA (Use the template saved in your signature or in teams channel. (Same as above template but tweak to add plurals) No need to attach copy of IC review application
6. Upload email to each case.
7. Once the email has been uploaded, right click on the email and select 'Document properties' from the menu. Update the comment to **54Z/55T due [XX/XX]** inserting the due date of the notice
8. In the Main screen

- * update the "Assessor Note" to 54Z/55T due 27/02 (SJ)
- * update the Next Action Date to the due date and hit save
- * Add to timeline in summary that XX/XX/XX -54Z/55T issued and hit save
- * update the "Open Actions" to "Await Response to Notice from Respondent (MR PI), then double click on it and change the due date
 - *(if no actions added, ask Hannah Hunter to complete - if she's unavailable, right click in box and select 'add a procedure' then select 'add triage' then follow nose through to correct work step)
- * Keep in DHA Deemed queue so Supervisor and Director can see

Instructions

- **ITD (Intention to decline) no longer closed off under s54W(a)(i)** – frivolous, vexatious, misconceived, lacking in substance, not in good faith. Rocelle would like them closed off as 54W(c) so when the applicant does not reply, case can be closed off as “failure to comply”.

Draft 54W(c) Decision

Look for the decision and how the agency finalised their FOI request i.e. Through FOI/Privacy Act/Administrative closure, as you will need to tweak the decision to suit

- If information is not in the decision, check for responses from 54Z/55T and the ‘Proceed’ email
- Tweak summary on main page as you go along as the dates will help when completing the timeline in the decision i.e.
 - XX/XX/XX - FOI requested
 - XX/XX/XX - Deemed Refused (10/30 day EOT granted - if applicable)
 - XX/XX/XX - PI issued (response received XX.XX / not received)
 - XX/XX/XX - 54Z/55T issued (response received XX/XX)
 - XX/XX/XX - Proceed email Issued (response due XX/XX - received XX.XX/not received)
- Hit save

In the “all Actions” tab, select “add Procedure”

- Select FOI Letter template>Early resolution Letters (FOI)>MR – 210 s 54W(c) decision to both parties

Right click and select “action tasks” – merge and edit

- Amend/remove highlighted line in heading and **expand IC**
- Add applicant's name
- Change date to next working day (unless last day of the month)
- Convert first paragraph to the first bullet point and add applicant’s name before the brackets and after the brackets amend wording to ‘for an Information ‘; also add the date (the deemed date)
- Amend/remove point 3 or 4 (edit to either the Dept made a decision under Administrative Access/Privacy Act 1988/ or a substantive decision (out of jurisdiction) under FOI Act 1982 – can copy and paste the wording used from agency)
- Edit wording in point 4 to I have decided not to continue to undertake an IC review under s 54W(c)
- Amend highlighted wording above point 6 and in paragraph “discretion not to continue to undertake...”
- Add date in point 8 i.e. ...to our subsequent correspondence dated [14 December 2023](#), to advise...
- Add date in point 9 (due date to Proceed email)
- Remove first point in point 10,

- in the new first point, add and edit the line from point 3 and
- edit the next point
- Amend point 11 to ... I have decided to exercise my discretion to decide not to continue to undertake an IC review ...
- Drop signature block to the next page and leave a blank space for Hannah to add her signature and amend date to next business day
- Complete timeline in attachment A
 - In the first date when the applicant lodged the FOI request,
 - copy and paste their scope and change to *italics (scope can be found in the dept's decision/letter)*
 - When noting the date of the full access in the 4th point,
 - If this predates the IC review commencement date, cut and paste into chronological order
 - add the line from point 3 above (tweak so it flows),
 - then cut and paste copy of schedule from agency's decision/letter if provided – if it's not provided, remove "to" at the end of the sentence
 - 5th point is the date of the 'Proceed' email
 - Add in correct order any other significant dates/matters i.e a 2nd revised decision made by respondent to provide another revised decision under s 55G of the FOI Act, providing the applicant further access to documents.
 - Remove the last point as we don't make outgoing calls
- Remove blank page
- Ensure all font is same format – Source Sans Pro / 11
- Save the document and close Word (Do not save to desktop)

Check in document into Resolve

- Right click on the document and select 'Document properties'. In the comment section please write **Draft 54W(c)**
- The decision needs to be cleared by an EL2 Director. (Usually Hannah Holswilder, however, if the agency is Services Australia, then it will have to go to Heath Baker due to conflict of interest)
 - Go to the "All Actions" tab in Resolve and click on 'Add Action' and select 'Await Clearance – Director' - A new action will generate. Double click on the action to open it. Update the comment text to **Hi Hannah, please see 54W(c) for your clearance. Thank you, SJ 19/02** (add any other comments that you want reviewed).
 - Click Ok
- Ensure the 'Action' is assigned to the correct person. If not, reassign.
- Amend the 'Assessor Note' in the main tab to **[CLEARANCE] 54W(c)**

Also, in the 'Open Actions' in the main tab or on the Action tab – click through and complete the following actions:

- a. Sent to applicant to proceed
- b. Await Response from Applicant
- c. No response – proceed to s 54w(a) - (c)
- d. ITD – Choose Appropriate Content I (MR DE)

- e. No ITD Required – Proceed to Close

When the Draft 54W(c) notice has been cleared by the Director, the Resolve action you created 'Await Clearance – Director' will be assigned back to you in Resolve and will appear in your Resolve action list. Plus you will have received an email notification.

When this occurs:

1. Edit any amendments (check out, edit and check back in) and save a final PDF version to your desktop.
2. Create one notification email to both the Respondent and Applicant using template saved in email signature or saved here: OAIC-Intake and Early Resolution-TEAM>General>Files>Deemed Queue>Closure to both parties– 54W(c)
 - a. Ensure the email is being sent from FOIDR mailbox.
 - b. Ensure that a PDF version of the 54W(c) letter is attached to the email.
 - c. Ensure that the Applicant and Agency email addresses are correct.
 - d. Send the email.
3. Once sent, go to the FOIDR sent folder and locate the email.
 - a. Click and drag the email to the 'Documents' tab of Resolve to save a copy to the Resolve file.
 - b. Once the document has been uploaded to Resolve, ensure you delete any case documents from your desktop.
 - c. Right click the document in Resolve and select 'Document properties' from the menu. Update the comment to **54W(c) closure**
4. Update/complete the issue strings attached to the 'Agency Decisions' (at bottom of the main page). Will need to review the decision and then come back to the issue string and double click on it and add and exempts etc (if you can't access it then attempt accessing it in the 'Agency Decision' tab)
 - a. For decisions issued under the Privacy Act or Administrative Access, there should be one string attached as shown below (no need to amend as issues only relate to decisions released under FOI Act but may need to add an outcome like below)

 access refused - 53A(a) s15AC - no reasons Substituted Y Deemed Initial

5. On the resolve main tab
 - a. Ensure the prefilled mandatory (orange) fields are at correct work step
 - b. Move the case from the Deemed Queue into your name
 - c. Ensure the IC Decision is "**s54W(c) - failure to comply**"
 - d. Ensure the 55G Decision is complete if applicable (refer to decision if released under FOI Act)
 - e. Update the Assessor Note on the main page of resolve to **54W(c) close**
 - f. Amend/Add brief timeline summary (and edit) file note i.e
 - i. **XX/XX/XX - FOI requested**
 - ii. **XX/XX/XX - Deemed Refused**
 - iii. **XX/XX/XX - PI issued (response received XX.XX / not received)**
 - iv. **XX/XX/XX - 54Z/55T issued (response received XX/XX)**
 - v. **XX/XX/XX - Proceed email Issued (response due XX/XX - received XX.XX/not received)**
 - vi. **XX/XX/XX - 54W(c) Closure Decision issued**

- g. Hit save
- 6. Complete all actions until you are able to close the matter – the action sequence is:
 - a. Tick 'Approve 54W Letter(MR DE) and select '54W Draft Approved'
 - b. Notify relevant parties of intent to close
 - c. Await response from parties
 - d. View Unchanged
 - e. Choose Appropriate Content I (MR DE)
 - f. No Contact/Response - 54W(a)(iii)
 - g. Send 54W(a)(iii) Decline Decision Notice (MR DE)
 - h. Notify relevant parties of closure
 - i. Close case

SES Band 1 54Z/55T notices instructions

For when refusing EOT's requested by agencies to respond to 54Z/55T notices

or

the response to 54Z/55T notice is overdue

1. Draft Template-SES band 1 – 54Z 55T Deemed – Notice of IC Review located in Teams Channel>54z 55t folder>SES Band 1 54Z55T folder\
 - a. Download then open in word and save a copy to your desktop as **MRXX XXXXX SES Band 1 – 54Z 55T Deemed – Notice of IC Review**
 - b. Edit as required
 - i. When you get to the attachments, it's easier to CTRL "H" and replace "MR" with the case number and replace [2 weeks] with the date
 - c. To be cleared and signed by the Director – usually Hannah Holsdwilder (Heath Baker for Support Services cases)
2. Upload to case in Resolve
 - a. Once uploaded, right click and select "Document Properties" and add the following comment **Draft SES Band 1 54Z/55T Notice**
 - b. Delete letter from desktop
3. Draft the template email – do not create a new email if responding to an EOT request. Reply to the email received
 - a. attach a copy of the IC review application
 - b. Do not include the email address in the "TO:" section
 - c. Upload the draft email into Resolve
 - i. Right click on it and select "Document Properties" and add the following comment **Draft email - SES Band 1 due 16/01**
4. Go to the "All Actions" tab and select "Add Action">"Await clearance – Director"
 - a. Double click on that action and add the following comment **Hi Hannah, Please see draft SES Band 1 54Z/55T Notice and draft email below the notice for your clearance and to issue to the dept. Please convert notice to PDF and attach to the email before sending. Also, please upload the sent email replacing the draft email. Thank you, SJ 19/02** (Add any other comments you wish the Director to review)
5. In the main page, remove the "next action" comment and change the "Assessor Note" to **[CLEARANCE] DRAFT SES Band 1 54Z/55T with HHOL**
6. Update summary notes as follows:
 - i. **XX/XX/XX - FOI requested**
 - ii. **XX/XX/XX - Deemed Refused (10/30 day EOT granted - if applicable)**
 - iii. **XX/XX/XX - PI issued (response received XX.XX / not received)**
 - iv. **XX/XX/XX - 54Z/55T issued (response due XX/XX)**
 - v. **XX/XX/XX - EOT request rec'd from agency (if applicable)**
 - vi. **XX/XX/XX - Draft SES Band 1 54Z/55T Notice awaiting clearance**

When cleared by Director

7. The Director will issue the SES Band 1 Notice if all in order and upload to Resolve and make necessary updates within Resolve
8. If an action item is sent back to you to make any amendments (You will receive both a task and email)
 - a. Check out the document, make amendments and check back in
 - b. This time you can convert the notice to PDF and attach it to the email
 - c. Send another action for the Director to clear
 - d. Go to the "All Actions" tab and select "Add Action">"Await clearance – Director"
 - i. Double click on that action and add the following comment **Hi Hannah, please see amended SES Band 1 54Z/55T notice now attached in the email (uploaded to Resolve) for you to review and send. The email addresses are in the body of the email. Also, please upload the sent email replacing the draft email and update the main page in Resolve. Thank you, SJ 19/02**

For Bulk SES Band 1 54Z/55T notices – for cases marked 54Z/55T overdue

1. Prepare spread sheet. AS you go along, update the summary in each case
 - * Change 'Method' to Preliminary Inquiry'
 - * Change Assessor note to **[NOW] Draft BULK SES Band 1 54Z/55T with SJ**
 - * remove notes from next action and remove date from next action due date
2. Create notice. Use the BULK SES Band 1 54Z/55T template in the SES folder (open in Word format and save to desk top to edit)
 - * once uploaded to the oldest case (sort by column F in excel), add **Draft BULK SES Band 1 54Z/55T Notice** in document properties (delete from desktop)
3. Create outgoing email. Use the Bulk SES Band 1 email template in signatures and upload the draft
 - * do not add email addresses to the "TO" field
 - * once uploaded add **Draft email - SES Band 1 due 16/01** in document properties
4. Update the actions to "Issue s55R Notice to Respondent (MR PI)
5. Go to the "All Actions" tab and select "Add Action">"Await clearance – Director"
 - e. Double click on that action and add the following comment **Hi Hannah, Please see draft BULK NSES Band 1 54Z/55T Notice and draft email below the notice for your clearance and to issue to the dept. Please convert notice to PDF and attach to the email before sending. Also, please upload the sent email replacing the draft email**

and update the amin page in Resolve. Thank you, SJ 19/02 (Add any other comments you wish the Director to review)

6. In the main page, remove the “next action” comment and change the “Assessor Note” to [CLEARANCE] DRAFT BULK SES Band 1 54Z/55T with HHOL

7. Update summary notes as below example:
 - i. XX/XX/XX - FOI requested
 - ii. XX/XX/XX - Deemed Refused (10/30 day EOT granted - if applicable)
 - iii. XX/XX/XX - PI issued (response received XX.XX / not received)
 - iv. XX/XX/XX - 54Z/55T issued (response due XX/XX)
 - v. XX/XX/XX - EOT request rec'd from agency (if applicable)
 - vi. XX/XX/XX - Draft BULK SES Band 1 54Z/55T Notice awaiting clearance



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

IC review applicant	«ApplicantClientName2»
Respondent	«RespondentClientTradingName»
Decision date	29 August 2024
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

Decision

1. I refer to the application made by «ApplicantClientName2» (the applicant) for Information Commissioner review (IC review) of a deemed access refusal decision made by the «RespondentClientTradingName» («RespondentClientAbbreviation») on [date] 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. [If a revised decision issued] On [date] the «RespondentClientAbbreviation» made a revised decision under s 55G of the FOI Act, providing the applicant [partial/full/further] access to documents.
4. [If an alternative substantive response provided] On [date] the «RespondentClientAbbreviation» provided a substantive response to the applicant's FOI request, providing the applicant [partial/full/further] access to documents.
5. 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

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

Discretion not to [continue to] undertake an IC review



Australian Government

Office of the Australian Information Commissioner

7. 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.
8. 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.

The OAIC will generally consult the IC review applicant as to whether they want to continue the IC review on the basis of the revised decision. Applicants who are not satisfied with the revised decision must explain why they disagree with the revised decision and the basis on which they wish to proceed with the IC review. If the applicant does not respond to the OAIC's correspondence, the Information Commissioner may decide not to continue to undertake the IC review (s 54W of the FOI Act).¹

9. 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

10. 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 [date], their IC review would be finalised by a delegate of the Information Commissioner under s 54W(c) of the FOI Act.
11. In deciding whether to exercise the discretion not to undertake a review, I have considered:
 - The OAIC attempted to contact the applicant by phone on [date] but was unable to reach the applicant.
 - The applicant has not provided any indication to the OAIC that they disagree with the «RespondentClientAbbreviation»'s revised decision [or, that they remain dissatisfied with

¹ Direction as to certain procedures to be followed by applicants in Information Commissioner reviews | OAIC) [2.16]



Australian Government

Office of the Australian Information Commissioner

the deemed decision in light of the «RespondentClientAbbreviation»'s substantive response].

- It does not appear that reviewing this matter will promote the objects of the FOI Act [if relevant: particularly noting that access to documents has now been provided to the applicant].

12. 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.

13. I confirm that this IC review is now closed. Your review rights are set out below.

14. If either party would like to discuss this matter, please contact us by email at FOIDR@oaic.gov.au. In all correspondence, please quote «CaseNumber».

Yours sincerely,

Hannah Holswilder

Director

Freedom of information Branch

29 August 2024



Australian Government

Office of the Australian Information Commissioner

ATTACHMENT A

Key procedural steps

Date	Events
	FOI request made to the respondent for access to documents
	IC review application received by the OAIC
	IC review commenced by OAIC
	Revised decision made by respondent to provide access to documents
	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.
	The OAIC attempted to phone the applicant as no written response had been received from the applicant



Australian Government

Office of the Australian Information Commissioner

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/.

Subject: OAIC – MRXX/XXXXX – Your Ref: XXXXXXXX - Notice issued under 54Z – 55T – Due XX xxxx
XXXX

Our reference: MRXX/XXXXX

Agency reference: XXXXX

Applicant:

Agency:

Applicant email:

Agency email:

Notice of Information Commissioner review and request for documents

Dear parties,

Please find attached a notice of Information Commissioner review (IC Review) and request for documents.

As outlined in the attached notice, a decision was not made within time (as defined by section 15AC of the FOI Act) and thus the IC reviewable decision was a deemed access refusal.

We refer the parties to the directions issued by the FOI Commissioner which outline the obligations of applicants and respondents:

- [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#)
- [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#)

In order to simplify the IC review process, we encourage the respondent agency to make a revised decision, which specifies the decision is made under section 55G of the FOI Act. A decision made under the Privacy Act 1988 or administrative access, is not a valid FOI decision and does not comply with the FOI request.

Please note, a response from the Respondent Agency is requested in this matter by **[3 weeks]**. The Agency must send any submissions to the Applicant at the same time as the OAIC. No action is required by the IC Review Applicant at this time.

If the Respondent Agency requires an extension of time, they must make a request in writing to the Information Commissioner with supporting evidence of the need for extension prior to the due date.

Kind regards,

[Signature Block]

BULK NOTICE EMAIL

Subject: OAIC – Bulk Notice issued under 54Z – 55T – Due XX Month 2024

Our reference: See Attachment A

Agency reference: See Attachment A

XXNAMEXX

XXTITLEXX

XXNAME OF TEAM/BRANCH/SECTIONXX

XXName of Department/AgencyXX

By email: XXXAgency/Department FOI emailXX

Bulk notice of Information Commissioner reviews and request for documents

Dear Mr/Ms/Mrs XXSURNAMEXX,

Please find attached a notice of Information Commissioner review (IC Review) and request for documents.

As outlined in the attached notice, a decision was not made within time (as defined by section 15AC of the FOI Act) and thus the IC reviewable decision was a deemed access refusal.

We refer you to the directions issued by the FOI Commissioner which outline the obligations of respondents:

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

In order to simplify the IC review process, we encourage the respondent agency to make a revised decision, which specifies the decision is made under section 55G of the FOI Act. A decision made under the Privacy Act 1988 or administrative access, is not a valid FOI decision and does not comply with the FOI request.

Please note, a response from the Respondent Agency is requested in this matter by **[3 weeks]**. The Agency must send any submissions to the Applicant at the same time as the OAIC.

If the Respondent Agency requires an extension of time, they must make a request in writing to the Information Commissioner with supporting evidence of the need for extension prior to the due date.

Kind regards,

[Signature Block]

54Z/55T issued to SES band 1 template – forward on from agency's email requesting EOT if responding to an EOT request and declining

Subject: OAIC – MR - Direction and Notice to produce – Due [2 weeks]

OAIC ref: MR

Agency ref:

Dear [SES band 1 title and surname]

Please find attached a direction under s 55 and notice to produce under s 55T of the FOI Act.

The [Agency name] (the Agency) is required to comply with the specifics set out in the notice by [2 weeks].

I note that the FOI request relevant to this IC review was received by the Agency on XXdateXXX, XX months ago.

The Department became aware of the IC review on XXdateXX when the OAIC conducted preliminary inquiries.

[If relevant] As such, I do not consider that the extension requested (in trail below) to the previous and now overdue ss 54Z and 55T notice and direction is appropriate.

[If relevant] As such, I note that the response to the ss 54Z and 55T notice and direction is overdue and I do not consider it appropriate that any extension of time to respond is granted.

Should you wish to request an extension to respond to this direction and notice, I request that you provide evidence of communication with the applicant regarding the ongoing delays and the proposed revised decision date, including their response.

If the Agency does not provide a response to this notice and direction by the due date, or any approved extended due date, please note that a s 55R notice will be issued to the SES band 2 responsible for FOI within the Agency. A person who fails to comply with a s 55R notice commits an offence.

Kind regards,

[Director Signature block]

Subject Line: OAIC - MR00/00000 – s54W(a) Decision Not to Continue to Undertake an IC Review -
Agency reference: *Insert Agency Reference*

//

Our reference: MR00/00000
Agency reference: *Insert Agency Reference*

Applicant Name

By email: Applicant email

Finalisation of IC review application under s 54W(a) of the FOI Act

Dear Mr/Ms/,

Please find **attached** a decision finalising this IC review under s 54W(a) of the FOI Act.

I confirm our file is now closed.

Kind regards,

[Signature Block]

//

Resolve Naming Convention: Closure to A

Resolve Assessor Note Naming Convention: Closed – 54W(a)(i) / 54W(a)(ii) / 54W(a)(iii)

Subject line: OAIC - MR – s 54W(c) - Decision **not to undertake / continue to undertake** an Information Commissioner review

Our reference:

Agency/Minister reference:

Applicant Name
Agency/Minister

By email: Applicant

By email: Agency/Minister

Copied to: [if relevant]

Finalisation of Information Commissioner review application under s 54W(c) of the FOI Act

Dear Parties,

Please find **attached** a decision finalising this Information Commissioner review under s 54W(c) of the FOI Act.

I confirm our file is now closed.

Kind regards,

[Signature block]

//

Resolve Naming Convention: Closure to A & R

Resolve Assessor Note Naming Convention: Closed – 54W(c)

*As at 01.07.24 - If a Right to Know applicant has applied for IC review using a verified, but alternative email address that the Agency has not been provided, please BCC the applicant when issuing the closure email.

Instructions

Drafting Preliminary Inquiry (PIs) emails for Deemed Matters

Open Case in Resolve

Go to the "Documents" tab to review correspondence relevant to the case.
Read through the correspondence to find the following information:

- The Respondent Agency
- The OAIC reference number
- The Agency reference number
- What type of FOI request was lodged by the applicant:
 - An original FOI access request (deemed decision under s 15AC(3))
 - An amendment/annotation request (deemed decision under s 51DA(2))
 - An internal review request (deemed affirmed under s 54D(2))

Save the [Preliminary Inquiry email template](#) to your outlook signatures.

Create a new email with the template wording.

Update the content of the email according to your findings in resolve.

Ensure the Sender is set at the FOIDR mailbox.

Ensure the recipient email address is correct.

Send the email.

Go to the sent folder of the FOIDR mailbox and locate the email (search via the OAIC reference is required).

Drag and drop the email from outlook into the Documents tab of Resolve.

A pop-up window will appear, ensure you click OK.

The sent email should now appear on the documents list in Resolve.

Right click on the document in resolve and select 'Document properties'

In the Comments section of the pop-up window add 'PIs due **XX/XX**' (add the due date for response), then click OK.

Action flow and allocate to Deemed Queue

In the 'Assessor Note' on the main page of Resolve, please update the comment from '[NOW] Issue Proceed' to '**PIs due**' and update the next action due date to the due date of the PIs email response.

Ensure the following actions are marked as complete in Resolve:

- Deemed refused under ss15AC(3), 51DA(2) or 54D(2)? > Preliminary Inquiry Required
- Send PI to Respondent

Change Case Officer to Relevant Deemed Queue.



Australian Government

Office of the Australian Information Commissioner

Our reference numbers: See Attachment A

Agency references: See Attachment A

Notice of IC review and request for documents

The Office of the Australian Information Commissioner (OAIC) has received an applications for Information Commissioner (IC) review of a deemed access refusal decisions made by the 22 (the Agency) under the *Freedom of Information Act 1982* (the FOI Act).

A copy of the respective IC review applications has previously been provided to the Agency at the time of conducting preliminary inquiries pursuant to s 54V of the FOI Act.

The IC will commence review of the deemed access refusal decisions and provides this notice under s 54Z of the FOI Act.

Scope of IC review

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

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 B**). 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[s] 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 «CaseNumber») 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 C**.

Please note, you are required to send any submissions prepared in response to the Direction at **Attachment B**, 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].

29 August 2024

Attachment A

IC review applications relevant to this Notice

Applicant name	OAIC reference	Your Agency reference	Date of FOI request	Date of deemed refusal decision

Attachment B



**Direction to
the «RespondentClientTradingName»
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 «CaseNumber», I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the «RespondentClientTradingName» (the «RespondentClientAbbreviation») 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 the Agency make a revised decision[under s 55G of the FOI Act and provide the revised decision[s] to the applicant[s] 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 the Agency make a revised decision under s 55G of the FOI Act and provide the revised decision[s] to the applicant[s] and the OAIC.
3. Please also provide the following documents to the OAIC:
 - a. The FOI request[s], and any correspondence that modifies the 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 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[s] and the OAIc the following:
 - a. Submissions explaining the access refusal decision[s]. 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[s] 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 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 the Agency makes a submission to the OAIC in support of an access refusal decision, it must send the submission to the applicant[s] 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[s] with copies of other documents requested under this notice.

The requested information is required to be provided to the OAIC by **[15 business days]**.

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

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Attachment C



Notice to produce documents and give information

In relation to «CaseNumber», under ss 55T of the FOI Act, I, [REDACTED], delegate of the Australian Information Commissioner, require you [respondent full name], [title] of the «RespondentClientTradingName», to give me the following information by close of business **[15 business days]**:

- 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[s].

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

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024



Australian Government

Office of the Australian Information Commissioner

Our reference: «CaseNumber»

Agency reference: «Agency_Reference_Number»

The respondent is:	The applicant is:
«RespondentClientTradingName»	«SendToTitleFirstnameSurname»

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 «RespondentClientTradingName» (the «RespondentClientAbbreviation») 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.

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 «CaseNumber») 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].

29 August 2024

Attachment A



**Direction to
the «RespondentClientTradingName»
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 «CaseNumber», I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the «RespondentClientTradingName» (the «RespondentClientAbbreviation») under s 55(2)(e)(ii) of the FOI Act.

Revised decision – full access

1. Should the «RespondentClientAbbreviation» wish to provide full access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» wish to provide partial access to the documents within the scope of the request, I request that «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «CaseNumber») 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 «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» claims are exempt and the particular provisions of the FOI Act the «RespondentClientAbbreviation» is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the «RespondentClientAbbreviation» contends that the applicant should be refused access to the documents.
- 5. Should the «RespondentClientAbbreviation» wish to refuse access, I request that the «RespondentClientAbbreviation» provide the OAIC the following:
 - a. Should the «RespondentClientAbbreviation» wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation» 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 «RespondentClientAbbreviation», 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 «CaseNumber») 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 «RespondentClientAbbreviation» 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 **[15 business days]**.

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

Signed:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

Attachment B



Notice to produce documents and give information

In relation to «CaseNumber», under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require you [respondent full name], [title] of the «RespondentClientTradingName», to give me the following information by close of business **[15 business days]**:

- 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:

Hannah Holswilder
Director, Freedom of Information Branch

29 August 2024

OAIC ref: Refer to attachment A
Agency ref: Refer to attachment A

By email: [SES email address](#)
CC: [email address initial 54Z/55T notice issued to](#)

Dear [Name of SES band 1](#),

Please find attached a direction under s 55 and notice to produce under s 55T of the FOI Act.

The [\[Agency name\]](#) (the [Agency/office](#)) is required to comply with the specifics set out in the notice by [\[2 weeks\]](#).

I note that part 3.163 of the FOI Guidelines states “Where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the FOI request”.

Your [agency/office](#) became aware of the IC reviews when the OAIC conducted preliminary inquiries. (refer to attachment A)

I note that the responses to the ss 54Z and 55T notices and directions are overdue, and I do not consider it appropriate that any extension of time requested be granted.

If an extension of time is required to respond to the attached notices of IC reviews, you must make a request in writing to the Information Commissioner with supporting evidence of the need for extension prior to the due date.

If the Department does not provide a response to this notice and direction by the due date, or any approved extended due date, please note that a s 55R notice will be issued to the SES band 2 responsible for FOI within the Agency. A person who fails to comply with a s 55R notice commits an offence.

Kind regards,

Hannah Holswilder

Director - Freedom of Information Branch
Office of the Australian Information Commissioner
GPO Box 5288 Sydney NSW 2001
P: 1300 636 992 E: foidr@oaic.gov.au

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

[Subscribe to Information Matters](#)

Subject Line: OAIC – MR - Response due **DD Month YEAR (one week)** - Notice of request for Information Commissioner review and Preliminary Inquiries under s 54V - Agency Reference

//

Our reference:

Agency/Minister reference:

By email: [Insert Agency/ Minister Email Address]

Notice of request for Information Commissioner review and Preliminary Inquiries under s 54V

Dear FOI Contact Officer,

Response required by **5:00pm, Day of week DD Month YEAR. (one week)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review (IC review) of a purported deemed access refusal decision made by the [Agency/Minister] (the Minister/Agency) under **s 15AC(3), s 51DA(2) or s 54D(2)** of the *Freedom of Information Act 1982* (the FOI Act).

A copy of the IC review application is attached.

Preliminary Inquiries (s 54V)

To assist the OAIC in progressing the applicant's IC review application, pursuant to s 54V of the FOI Act, please provide a response to the following by **5:00pm, Day of week DD Month YEAR(5 business days)**:

1. What date was the FOI request received by the Agency/Minister and were any provisions under the FOI Act utilised which would affect the due date of the FOI decision?
 - a. If provisions were utilised under the FOI Act that affected the timeframe for processing the request (such as s24AB, s 15AA or s 15(6)), please provide a copy of all relevant correspondence between the Agency/Minister and FOI applicant.
2. Is the applicant's FOI request deemed to have been refused pursuant to **s 15AC(3), s 51DA(2) or s 54D(2)**?
 - a. If yes, please advise the date the decision became deemed pursuant to **s 15AC(3), s 51DA(2) or s 54D(2)** and when it is anticipated that the applicant will receive a decision.

- b. If a decision has since been provided to the applicant, please provide a copy of the correspondence enclosing the decision so that we may contact the applicant with regard to next steps.
3. If the decision is not deemed to have been refused, please provide a submission addressing why the **Agency/Minister** considers that **s 15AC(3), s 51DA(2) or s 54D(2)** does not apply.

Kind regards,

//

Resolve Document Naming Convention: PIs due DD/MM

Resolve Assessor Note Naming Convention: [DD/MM] PIs due

Email subject line: OAIC – MRXX/XXXXX - Response required by DD Month 2024 - [Applicant name]'s/Your IC review application about the [Respondent Name]

Our reference: MRXX/XXXXX

Agency reference: XXXXXXX

Applicant Name

[Represented by:]

By email: [Email Recipient's Email Address]

[Applicant name]'s/Your review application about the [Respondent Name]

Good morning/afternoon [Email Recipient Name],

[IF APP HAS IDENTIFIED REQUIREMENT FOR INTERPRETER IN APPLICATION – You have previously stated you may need the help of an interpreter. You may wish to call the Translating and Interpreting Service on 131 450, and ask for help speaking with the Office of the Australian Information Commissioner]

On DD Month 2023, you made a Freedom of Information (FOI) request to the [Respondent name] (the Department/Agency/Office)[on behalf of if there is a representative].

On DD Month 2023, you requested an Information Commissioner (IC) review of your Freedom of Information [or information access] request to the Department/Agency/Office because you had not received a decision by the due date.

On DD Month 2023, the Department/Agency/Office notified the Office of the Australian Information Commissioner (OAIC) it has now provided you with a decision, dated DD Month 2024.

[If possible, i.e. R has provided the relevant info] The Department/Agency/Office notified the OAIC that the decision was provided to the email address 'XXX@emailaddress.com.au' on DD Month 2023.

OR//

On DD Month 2023, the Department/Agency/Office notified the OAIC that it provided the documents administratively, in accordance with the *Privacy Act 1988*.

The Department/Agency/Office notified the OAIC that the decision was provided to the email address 'XXX@emailaddress.com.au' on DD Month 2023.

As you have now received a decision, the reason for your IC review application appears to be resolved.

[If decision is access refusal in full] : The OAIC would like to confirm whether you wish to proceed with your IC review application, noting that the Department's decision is to, refuse access in full.

Action required by you before [DD Month 2023 - 2 weeks from send date]:

1. If [the decision has satisfied your request and] you no longer require an IC review, please reply to this email stating “I no longer require an IC review”.
2. If you wish to proceed with your IC review application, you must tell us which parts of the decision you disagree with and why, including:
 - which documents you consider were not provided or should have been provided, or
 - which exemptions you consider should not have been applied.

OR// [only if processed under the Privacy Act]

- if you disagree with the decision to process the request under the *Privacy Act 1988*.

OR// [only if related to an amendment or annotation request]

- state why you disagree with the decision not to amend or annotate the record.

Intention not to continue to undertake Applicant name's/your IC review

The Commissioner's written [direction to IC review applicants](#) provides that:

- where an applicant wishes to proceed with a review of a substantive [or revised] decision they **must explain** why they disagree with the decision and the basis on which they wish to proceed with the IC review [2.25], and
- applicants **must respond** to enquiries from the OAIC within the period provided unless there are circumstances warranting a longer period to respond [2.22].

Section 54W(c) of the *Freedom of Information Act 1982* provides that the IC may decide not to continue to undertake a review where an applicant fails to comply with a direction of the IC.

As such, if we do not hear from you by [DD Month 2023 -- 2 weeks from send date], we intend to exercise the discretion to finalise your IC review application.

Assistance

If you are unable to respond by [DD Month 2023 - 2 weeks from send date], please respond to this email and request an extension of time to provide your response.

If you require an interpreter, please call the Translating and Interpreting Service on 131 450, and ask for help speaking with the Office of the Australian Information Commissioner. Alternatively, you may wish to be supported by a person of your choosing anytime throughout this process.

Third Party Authority

It appears from our records we do not yet have an authority authorising you to act on the applicant's behalf.

The Information Commissioner must be satisfied that a third party has authority to act on behalf of the FOI applicant. As such, may I please request a written authority signed by the FOI applicant that indicates you will be acting on their behalf for the purposes of the IC review.

If you require assistance regarding this email, please contact us at foidr@oaic.gov.au.

Please quote the reference **MRXX/XXXXX** in all correspondence.

Kind regards,

[Signature Block]



Australian Government

Office of the Australian Information Commissioner

Our reference numbers: See Attachment A

Agency references: See Attachment A

Name

Title

Department Team

Name of Agency

By email:

CC: [email where original notice sent]

Notice of Information Commissioner reviews and requests for documents

Dear [NAME]

The Office of the Australian Information Commissioner (OAIC) has received applications for Information Commissioner review (IC review) of deemed access refusal decisions made by the [INSERT AGENCY NAME] (the Agency) under the *Freedom of Information Act 1982* (the FOI Act).

A copy of the respective IC review applications has previously been provided to the Agency at the time of conducting preliminary inquiries pursuant to s 54V of the FOI Act.

The Agency has been asked to respond to confirm it has failed to meet the statutory processing timeframe in respect to the FOI requests. Based on the information before the OAIC, we are satisfied the Agency is deemed to have refused access to documents in each request pursuant to s 15AC(3) of the FOI Act.

As such, the Information Commissioner commenced IC review for each of the deemed access refusal decisions.

Scope of IC review

The IC review applicant[s] contest that the Agency has not provided a decision within the processing timeframe as set out in the FOI Act.

The IC review process will consider the Agency's reasons for refusing access and will also provide the Agency with an opportunity to issue each FOI applicant a revised decision under s 55G of the FOI Act, where appropriate.

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

The Information Commissioner 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 Information Commissioner in progressing these IC reviews, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment B**).

Information as to the method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether documents are exempt documents, require the documents to be produced (s 55T of the FOI Act).

Should the scope of any particular IC review[s] (as outlined in **Attachment A**) involve exempt material (excluding exempt material under ss 33, 34 and/or 45A), a marked up and un-redacted copy of all documents identified within the scope of the respective FOI request[s] is required pursuant to the notice issued under s 55T of the FOI Act (see **Attachment B**).

Obligations during the IC review process

The obligations of the Agency 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 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

29 August 2024

Attachment A

IC review applications relevant to this Notice

Applicant name	OAIC reference	Your Agency reference	Date of FOI request	Date of deemed refusal decision	Date OAIC conducted preliminary inquiries with your agency

Attachment B



**Direction to
the [INSERT AGENCY NAME]
under s 55(2)(e)(ii) and notice to produce under s 55T
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 IC review applications identified in **Attachment A**, I, Hannah Holswilder, delegate of the Australian Information Commissioner, issue the following direction to you, **[Insert name of person notice issued to]**, under s 55(2)(e)(ii) of the FOI Act and require your production of documents, where indicated, under s 55T of the FOI Act:

Revised decision – full access

1. Should the Agency wish to provide full access to the documents within the scope of a particular request, I request that Agency make a revised decision under s 55G of the FOI Act and provide the revised decision[s] to the respective applicant[s] and the OAIC by **[2 weeks]**.

Revised decision – partial access

2. Should the Agency wish to provide partial access to the documents within the scope of a particular request, I request that Agency make a revised decision under s 55G of the FOI Act in respect to the relevant request[s] and provide the revised decision[s] to the respective applicant[s] and the OAIC by **[2 weeks]**.
3. Please also provide the following documents to the OAIC by **[2 weeks]**.
 - a. The FOI request[s], and any correspondence that modifies the scope of each request[s].
 - 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) in relation to the request[s].

- 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 in relation to the request[s].
- e. A marked up and un-redacted copy of all documents identified within scope of the request[s] that is subject of IC review, as identified in Attachment A, in an electronic format (under s 55T of the FOI Act).

Submissions – access refusal and amendment or annotation refusal

- 4. Should the Agency wish to refuse access to documents or refuse the amendment or annotation requested in any request[s] in their entirety, I request that the Agency provide the respective applicant[s] and the OAIC the following documents by **[2 weeks]**.
 - a. Submissions explaining the refusal decision[s]. 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, including circumstances where the Agency contends a practical refusal reason exists.
 - include clear particulars about why the Agency contends that the record should not be amended or annotated.
 - b. The FOI request[s] and any correspondence (including informal or formal consultations) 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 or foreign 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 (except material claimed to be exempt under ss 33, 34 and/or 45A) we require the production of a marked up and un-redacted copy of all documents identified that is subject of the IC review[s] as outlined in Attachment A, in an electronic format (under s 55T of the FOI Act).
- g. Should the Agency wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A 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.

Compliance with this Direction can be met by delivering the responses electronically to foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Agency provides during the IC reviews with the applicants unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document[s] at issue.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch,
Office of the Information Commissioner

Signed:

Hannah Holswilder

Intake and Early Resolution Team
Freedom of Information Branch
Office of the Australian Information Commissioner

29 August 2024



Australian Government

Office of the Australian Information Commissioner

Our reference:

Agency reference:

SES Band 1 Name

Role

Branch/Group/Division

Department/Agency

By email: **SES Band 1 Email Address**

Copied to: **Agency FOI Email Address**

Notice of Information Commissioner review and request for documents

Dear **SES Band 1 Name**,

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

On **DD Month 20XX**, the Information Commissioner notified, the Agency of the commencement of the review of the deemed access refusal decision, providing notice under s 54Z of the FOI Act.

In the absence of compliance with the initial notice and direction issued, the OAIC issues the attached notice and direction. A copy of the IC review application is attached.

A timeline of correspondence with the Agency regarding this IC review is listed below.

Scope of IC review

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

On **DD Month 20XX**, the Agency confirmed to the OAIC that the applicant's request was deemed to have been refused on **DD Month 20XX**.

On **DD Month 20XX**, the Information Commissioner commenced a review of the deemed access refusal decision and notified the Agency that a response to the written direction was due on **XX Month 20XX**.

[Example]

On DD Month 20XX, in the absence of a response, the Information Commissioner sought an update from the Agency and granted an extension of time to provide an update to DD Month 20XX.

Optional

On DD Month 20XX, in the absence of a response, the Information Commissioner sought a final response to our notice and granted an extension of time to provide this by DD Month 20XX. At this time, the Agency was advised that if they fail to provide a response to the notice and direction as requested, the Information Commissioner may proceed to require the provision of information and the production of documents pursuant to s 55R(3) of the FOI Act.

Since this time, no response to our notice has been received.

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

The Information Commissioner 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 Information Commissioner 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 Information Commissioner 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 un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference **MR**) 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**.

Obligations during the IC review process

The obligations of the Department 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 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].

29 August 2024

Attachment A



**Direction to
the [Insert Agency]
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 MR, I, Hannah Holswilder, delegate of the Information Commissioner, issue the following direction to the [Agency] (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 the Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **[2 weeks]**.

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 the Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **[2 weeks]**.
3. Please also provide the following documents to the OAIC by **[2 weeks]**:
 - 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 **MR**) 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 by **[2 weeks]**:
 - 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 including include clear particulars about why the contends that the applicant should be refused access to the documents including circumstances where the Agency contends a practical refusal reason exists.
 - include clear particulars about why the Agency contends that the record should not be amended or annotated.

5. Should the Agency wish to refuse access, I request that the Agency provide the OAIC the following by **[2 weeks]**:
- 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 **MR**) 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.

The Information Commissioner will share the submissions the Agency provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

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

29 August 2024

Attachment B



Notice to produce documents and give information

In relation to **MR**, under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Information Commissioner, require you, **[Role, Insert SES Band 1 Name, Branch/Group/Division] of the [Agency]** (the Agency), to give me the following information by close of business **[2 weeks]**:

- a marked up and un-redacted 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.

Notice 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

29 August 2024



Australian Government
Office of the Australian Information Commissioner



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to [undertake/continue to undertake] a review of your IC review application. My reasons follow.

Background

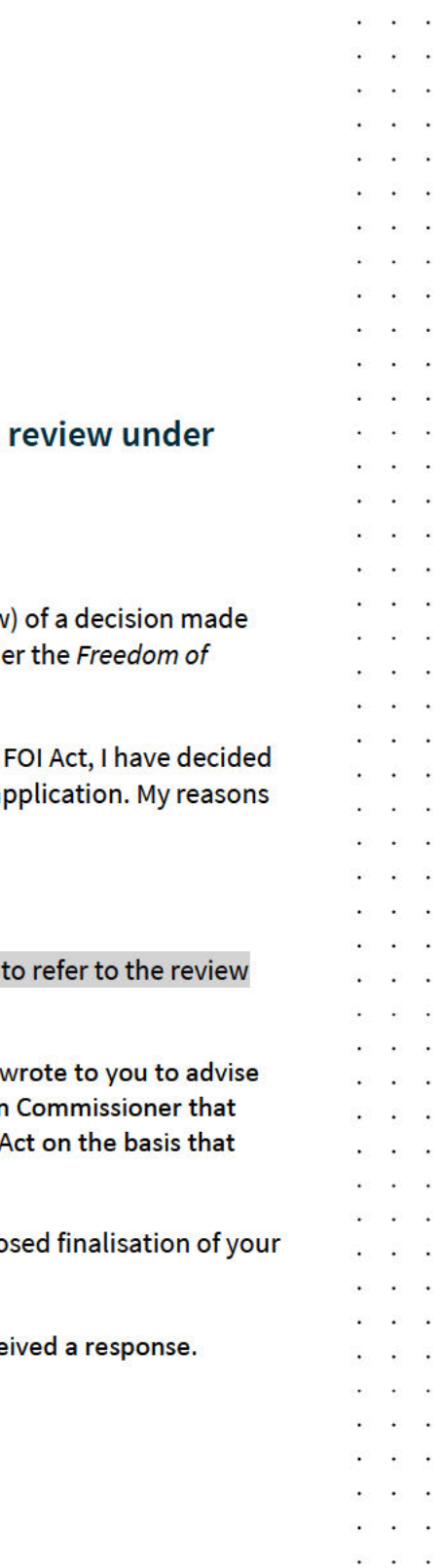
[Include the same information in the intention to decline and update to refer to the review officer in the third person]

On [date], the OAIC review officer responsible for this matter, [name], wrote to you to advise you of their intention to recommend to the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(i) of the FOI Act on the basis that [insert].

[Name] invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by [date].

[if relevant] Based on the information before me, the OAIC has not received a response.

OR [insert details of response or that no response was received]



Scope of IC review

The issues in this IC review are [insert wording from intention to decline letter].

In making a decision about whether to finalise this matter under s 54W(a)(i), I have had regard to the following [insert wording from intention to decline letter and any other relevant information].

[use heading to introduce discussion about the issues in the IC review]

[insert discussion from the intention to decline letter]

[discuss any submissions received in response to the intention to decline letter]

Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

I have had regard to:

- the [agency/minister]'s decision and reasons for decision
- [if relevant insert details of internal review decision / revised decision]
- [if relevant] an unedited copy of the documents identified as falling within the scope of the request
- the FOI Act, in particular [insert section(s)]
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [insert]
- [if relevant] relevant case law, in particular [insert], and
- the parties' submissions.

[Set out summary of reasons for findings as set out in intention to decline letter and consideration of any submissions received in response to intention to decline letter].

On this basis, I am satisfied that the matter is [frivolous, vexatious, misconceived, lacking in substance, or not made in good faith].

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- Based on the information me, including the documents at issue, the [agency/minister]'s submissions, and relevant case law, I consider that the [agency/minister] has discharged its onus of establishing that the decision is justified.
- [The OAIC did not receive any submissions/response from you @]
- [Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact [name] on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[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 your 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>.

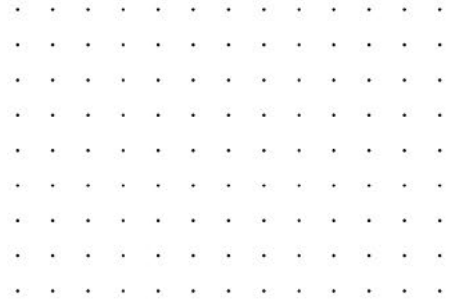
Accessing your information

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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The Office of the Australian Information Commissioner (OAIC) has not received a response from you to our [insert dates and details of correspondence]. As a delegate of the Information Commissioner, I have decided to not to [undertake/continue to undertake] a review of this IC review under s 54W of the FOI Act. My reasons follow.

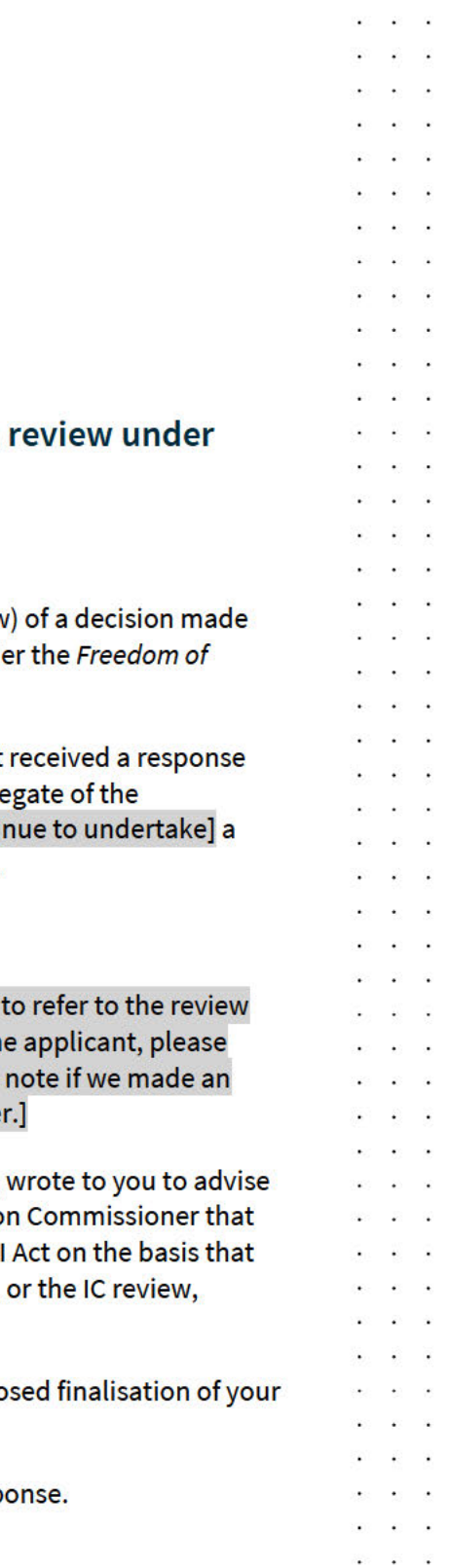
Background

[Include the same information in the intention to decline and update to refer to the review officer in the third person. If we made multiple attempts to contact the applicant, please outline each attempt (with a new paragraph for each attempt. Please note if we made an effort to call and note if the applicant did not provide a phone number.)

On [date], the OAIC review officer responsible for this matter, [name], wrote to you to advise you of their intention to recommend to the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(ii) of the FOI Act on the basis that you have failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[Name] invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by [date].

Based on the information before me, the OAIC has not received a response.



Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W 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 has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[update as appropriate] The OAIC has not received a response from you to our [insert dates and details of correspondence]. On the basis of the information presently before the Information Commissioner, I am satisfied that you have failed to cooperate in progressing the IC review application without reasonable excuse.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- Based on the information me, including the documents at issue, the [agency/minister]'s submissions, and relevant case law, I consider that the [agency/minister] has discharged its onus of establishing that the decision is justified.
- [The OAIC did not receive any submissions/response from you @]
- Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact [name] on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[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 your 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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our references: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Decision not to [undertake/continue to undertake] a review under s 54W of the FOI Act

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to [undertake/continue to undertake] a review of this IC review. My reasons follow.

Background

On [date], you applied to the [agency/minister] for access to:

[insert quote or for long requests, attach the FOI request].

[insert any details about revision to scope]

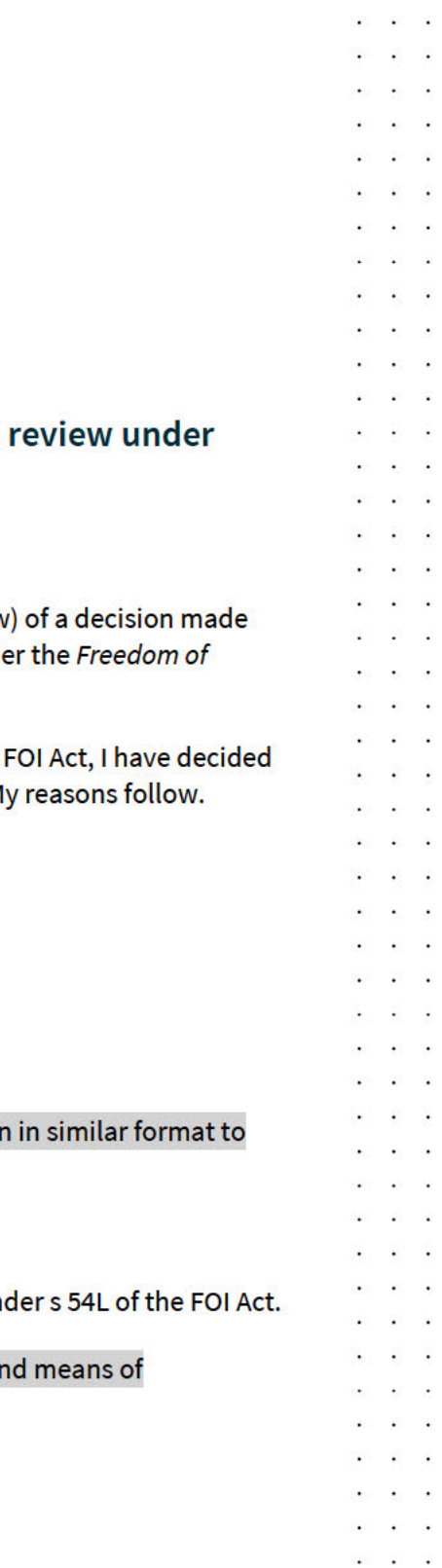
On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication. E.g.

On [DATE] the OIAC sent you an email asking...



On [DATE] we sent you an email following up, and advising if you did not respond...

On [DATE] we sent you a further email advising you that if we did not hear from you we intend to decline to continue the IC review...

We have not been able to call you as you did not provide a phone number in your IC review application].

Decision not to [undertake/continue to undertake] a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

[Name of review officer] has attempted to contact you on several occasions using the contact details that you provided and we have not received a response.

In deciding whether to exercise the discretion not to [undertake/continue to undertake] a review, I have considered:

- The OAIC did not receive any submissions/response from you @
- Reviewing/continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to undertake] a review of your IC review application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact [name] on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[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 your 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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Your application for Information Commissioner review of [agency/minister]'s decision

Dear [Mr/Ms Name]

I refer to your application for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application under s 54W of the FOI Act on the basis that your IC review application is [is frivolous, vexatious, misconceived, lacking in substance or not made in good faith], and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

The reasons for my recommendation follow.

Background

On [date], you applied to the [agency/minister] for access to:

[insert quote or for long requests, attach the FOI request].

[insert any details about revision to scope]

On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.



[insert any other relevant background information, such as a revised decision under s 55G of clarification of the issues in the IC review]

Scope of IC review

The issues in this IC review are [insert].

In forming my view as review officer, I have had regard to the following:

- the [agency/minister]'s decision and reasons for decision
- [if relevant insert details of internal review decision / revised decision]
- [if relevant] an unedited copy of the documents identified as falling within the scope of the request
- the FOI Act, in particular [insert section(s)]
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [insert]
- [if relevant] relevant case law, in particular [insert], and
- the parties' submissions.

[use heading to introduce discussion about the issues in the IC review]

Discuss the following, using headings where appropriate:

- the applicant's IC review application and/or submissions
- the agency/minister's reasons for decision and submissions
- any evidence you have had regard to (e.g. the documents at issue, evidence of searches)
- relevant sections of the FOI Act and paragraphs of the FOI Guidelines
- relevant IC review/AAT/Federal Court decisions

Discretion not to [undertake/continue to undertake] an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

[Insert reasons for your view about why the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith].

For these reasons, I intend to recommend that the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] this IC review under s 54W,

because I am of the view that this IC review application is [frivolous, vexatious, misconceived, lacking in substance or not made in good faith].

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide [not to undertake a review/not to continue to undertake a review] in this case.

If you disagree with this proposed recommendation, please write to us by [**@ 2 weeks**] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review may be finalised under s 54W and you will be notified of your review rights.

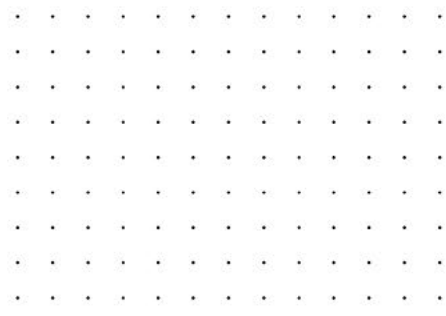
If you would like to discuss this matter, please contact me on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[date]



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

By email to: [insert]

Your application for Information Commissioner review of [agency/minister]'s decision

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application on the basis that you have failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

The reasons for my recommendation follow.

Background

On [date], you applied to the [agency/minister] for access to:

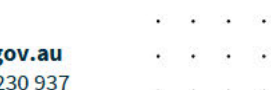
[insert quote or for long requests, attach the FOI request].

[insert any details about revision to scope]

On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.



[insert history of contact with the applicant throughout the IC review process with reference to dates, a summary of the information provided to or sought from the applicant and whether responses were received]

Discretion not to [undertake/continue to undertake] an IC review

Under s 54W 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 has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

[update as appropriate] As I have not received your response to my correspondence of [insert], I am unable to progress your IC review application. I therefore intend to recommend to the delegate of the Information Commissioner that they exercise the discretion to decide not to [undertake/continue to undertake] a review of this IC review under s 54W of the FOI Act.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide [not to undertake a review/not to continue to undertake a review] in this case.

If you disagree with this proposed recommendation, please write to us by [**@ 2 weeks**] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your review request will be closed and you will be notified of your review rights.

If you would like to discuss this, please contact me on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[**First Name Last Name**]

[Position Title]

[date]



Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

Your application for Information Commissioner review of [agency/minister]'s decision

Dear [Mr/Ms Name]

I refer to your request for Information Commissioner review (IC review) of a decision made by the [agency/minister] ([agency/minister shorthand]) on [date] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to [undertake/continue to undertake] a review of your IC review application under s 54W of the FOI Act on the basis the Information Commissioner cannot contact you after making reasonable attempts.

The reasons for my recommendation follow.

Background

On [date], you applied to the [agency/minister] for access to:

[insert quote or for long requests, attach the FOI request].

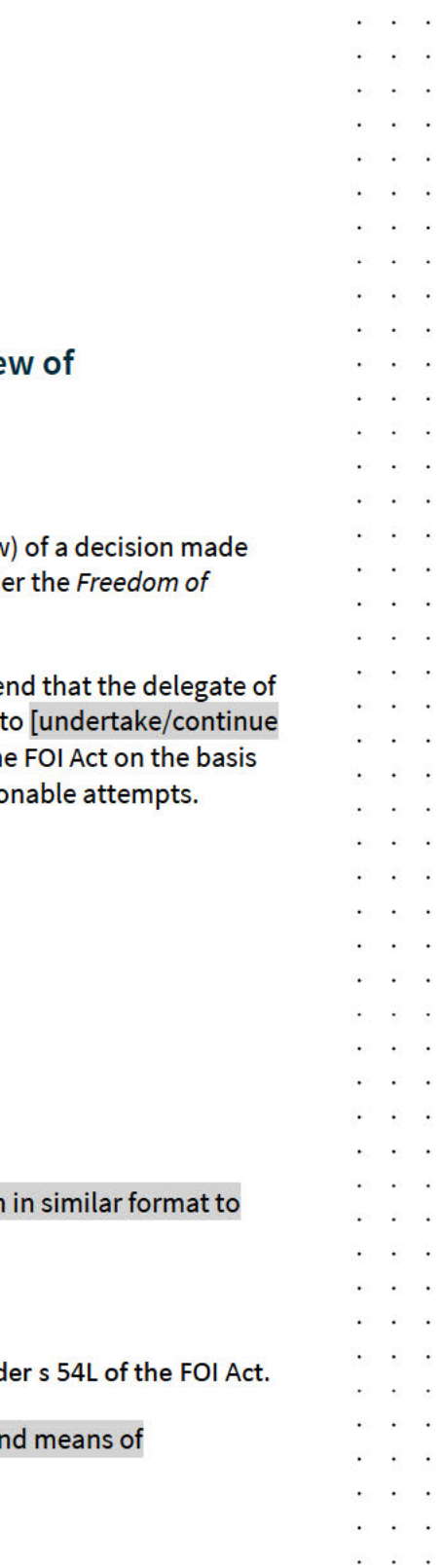
[insert any details about revision to scope]

On [date], the [agency/minister] advised you [insert details of decision in similar format to how it is set out in an IC review decision].

[if relevant, insert details of internal review application and decision]

On [date], you sought IC review of the [agency/minister]'s decision under s 54L of the FOI Act.

[insert history of attempts to contact the applicant, including dates and means of communication].



Discretion not to [undertake/continue to undertake] an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner cannot contact the IC review applicant after making reasonable attempts.

As discussed above, I have attempted to contact you using the contact details you provided on your IC review application form [and insert other details if relevant] and I have been unable to contact you.

I therefore intend to recommend to the delegate of the Information Commissioner that they exercise the discretion not to [undertake/continue to undertake] a review of this IC review application under s 54W of the FOI Act unless you contact me by [**@ 2 weeks**].

If I do not hear from you by this date your IC review will be finalised under s 54W and you will be notified of your review rights.

I can be contacted on (02) [xxxx] [xxxx] or on [name]@oaic.gov.au. In all correspondence please quote [OAIC reference number].

Yours sincerely

[First Name Last Name]

[Position Title]

[date]