



Australian Government

Office of the Australian Information Commissioner



### Direction to the Australian Public Service Commission under s 55(2)(e)(ii) of the *Freedom of Information Act 1982*

In relation to [insert reference number] 1, , Director, Freedom of Information, Delegate of the Australian Information Commissioner for the purposes of the [Freedom of Information Act 1982](#), issue the following direction to the [insert name of agency] under s 55(2)(e)(ii) of the FOI Act:

1. To make further reasonable attempts to engage with the IC review applicant to resolve or narrow the issues in dispute in the IC review.
2. To provide information regarding engagement with the applicant, or attempts to engage the applicant, by [2 weeks] to the OAIC via [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

I draw your attention to the following matters:

#### **Compliance with this direction**

Section 55(2)(e)(ii) of the 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.

Compliance with this direction can be met by taking the steps set out above. I draw your attention to your positive obligation under the FOI Act. Section 55DA requires your agency to use your best endeavours to assist the Information Commissioner to make a decision.

Non-compliance may result in:

- a decision adverse to your interests may be made in the absence of the information requested; and
- further regulatory action including examination of your agency's performance of functions under the FOI Act.

*FOI Guidelines and procedure direction*

The Information Commissioner has issued guidelines under s 93A of the FOI Act that Australian Government agencies and Ministers must have regard to when performing a function or exercising a power under the FOI Act. For information about the IC review process, see [Part 10 of the FOI Guidelines](#).

The '[Direction as to certain procedures to be followed in IC reviews](#)' applies to agencies and Ministers during IC reviews and during preliminary inquiries prior to the commencement of an IC review, if such inquiries are undertaken. The Procedure Direction sets out the procedures that agencies and ministers must follow in respect of the production of documents, the provision of a statement of reasons where access has been deemed to be refused and the provision of submissions.

The IC Review Procedure Direction also explains that:

- because the model litigant obligation under the Legal Services Directions 2017 extends to Commonwealth entities involved in merits review proceedings, failure to adhere to the requirements of this Direction may amount to non-compliance with the model litigant obligation.
- the IC may report non-compliance with this Direction in the OAIC's Annual Report.
- the IC may also report non-compliance with this Direction to the Office of Legal Services Coordination in the Attorney-General's Department
- the IC may also consider non-compliance within this Direction as part of investigations they conduct under Part VIIB of the FOI Act.

Direction issued by [name], Director, Freedom of Information

Signed:

Date: 29 August 2024



Our reference:  
Agency reference:

[SES BAND 1/EL2]

Sent by email:

## Notice to produce information and documents under s 55U

Dear [NAME]

The Office of the Australian Information Commissioner (OAIC) is conducting an Information Commissioner review (IC review) of a decision of the [AGENCY/MINISTER] (the Department) to refuse access to documents requested By [NAME] (the applicant). For ease of reference, the Department's decision and the application for IC review are attached.

### Background

On [DATE], the applicant applied to the Department for access to:

...

On [DATE], the Department was deemed to have made a decision under s 15AC of the FOI Act.

On [DATE], the applicant sought IC review of the Department's decision under s 54L of the FOI Act.

On the same date, the Department identified XX documents within the scope of the request and refused access to X documents in full based on the Cabinet submissions exemption (s 34(1)(a)). The Department refused to give access to one document in part based on the deliberative processes exemption (s 47C) and its consideration that certain material in that document is irrelevant to the request (s 22).

On [DATE], the applicant advised that they wish to proceed with their IC review application.

During the course of the IC review, the Department has provided submissions which the OAIC has reviewed and considered.

The Department has not provided the OAIC with a copy of the documents it claims are exempt under s 34 of the *Freedom of Information Act 1982* (FOI Act).

## Production of documents and information under s 55U(3) of the FOI Act

As a delegate of the Information Commissioner, I am authorised to exercise the Information Commissioner's powers under s 55U of the FOI Act.

Section 55U(3) of the FOI Act provides that if the Information Commissioner is not satisfied by evidence on affidavit or otherwise that documents are exempt documents under [s 33, 34 or 45A], the Commissioner may require that the document be produced for inspection.

[insert reasoning e.g.:]

s 22  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I am not satisfied, based on the submissions and reasons provided by the Department to date, that the Department has provided sufficient evidence to establish that the relevant documents are exempt under s 34 of the FOI Act.

Therefore, under s 55U of the FOI Act, I require you to produce a marked up and unredacted copy of the documents that the Department found to be exempt under s 34 of the FOI Act.

### Compliance with this notice

Compliance with this notice can be met by delivery of the required documents via safe-hand delivery. Please contact [CASE OFFICER] on [PHONE NUMBER] to arrange safe-hand delivery.

I require you to produce the documents requested no later than **close of business [DATE]**.

Yours sincerely

Director  
Freedom of Information  
Office of the Australia Information Commission

29 August 2024



Australian Government

Office of the Australian Information Commissioner

Our reference numbers: [MRYX/XXXXX / See Attachment A]

Agency references: [XXXXXXX / See Attachment A]

Name

Title

Branch

Agency

By email:

CC:

## Information Commissioner reviews request for documents

Dear [Name],

The Office of the Australian Information Commissioner (OAIC) is conducting Information Commissioner reviews (IC reviews) of decisions made by **the Agency** (the Agency) under the *Freedom of Information Act 1982* (the FOI Act) for the matter/s listed in **Attachment A**.

The OAIC provided the agency a copy of the respective IC review applications at the time of issuing a notice of IC review under section 54Z of the FOI Act.

When the OAIC issued these notices, it requested information in line with paragraph 10.100 of 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.

Based on the information before me, it appears that the agency has not provided the information the OAIC requested from the agency for these IC reviews.

### 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 unredacted 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

**Heath Baker**

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024







Australian Government

Office of the Australian Information Commissioner

## Attachment B



# Direction to the Agency 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, Heath Baker, delegate of the Australian Information Commissioner, issue the following direction to you, **[Name]**, 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:

### Documents required if no revised decision made

1. Paragraph 10.100 of the Guidelines issued under s 93A of the FOI Act sets out the information that the Agency must provide to the OAIC. Please provide the information outlined in paragraph 10.100 of the Guidelines that relate to these reviews by **[3 WEEKS]**.

### Documents required if revised decision made granting full access

2. 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 **[3 WEEKS]**.

### Documents required if revised decision made granting partial access

3. 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 **[3 WEEKS]**.
4. Please also provide the following documents to the OAIC by **[3 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).

Compliance with this Direction can be met by delivering the responses electronically to [foidr@oaic.gov.au](mailto: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 Heath Baker, Director, Freedom of Information Branch, Office of the Information Commissioner

Signed:

Heath Baker  
Director,  
Freedom of Information Branch  
Office of the Australian Information Commissioner

29 August 2024

## Attachment C



## Notice to produce documents and give information

In relation to IC review applications identified in **Attachment A**, under ss 55T of the FOI Act, I, Heath Baker, delegate of the Information Commissioner, require the [AGENCY NAME] to give me the following information by close of business [**3 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](mailto:foidr@oaic.gov.au).

Notice issued by Heath Baker, Director, Freedom of Information Branch

Signed:

**Heath Baker**  
Director  
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

**Review Case Plan – Intake and Early Resolution**

*The purpose of the review case plan – Intake and Early Resolution is to:*

- *ensure that all relevant procedural fairness steps are taken in a timely manner at the appropriate stage of the IC review process*
- *prevent unnecessary delays by ensuring procedural issues are addressed when they arise*
- *increase efficiency and prevent replication by giving staff the tools to build on the work done and knowledge gained by their colleagues at each stage of the case management process and*
- *provide confidence to staff and the Executive that matters allocated to the Reviews and Investigations Team are ready for case management.*

*Review advisers in the Intake and Early Resolution Team should complete the review case plan prior to transferring the matter to the Reviews and Investigations Team.*

Overview/Application details «CaseNumber» [Map to Resolve]	
<b>Applicant</b>	«ApplicantFirstnameFamilyname» [Map to Resolve – applicant details]
<b>Respondent</b>	«RespondentClientTradingName» [Map to Resolve – respondent details]
<b>Third parties (s 55A)</b>	[Map to Resolve - see additional parties tab]
<b>Date received</b>	[Map to Resolve – see received date]
<b>FOI request</b>	[Map to Resolve]
<b>Decision under review</b>	<ul style="list-style-type: none"> <li>• <i>Advise what decision is under review eg the internal decision dated X [Map to Resolve - See Agency Decisions tab – ‘Decision type’ field and ‘Date field’]</i></li> </ul>
<b>Scope of review</b>	<ul style="list-style-type: none"> <li>• <i>Explain what exemptions are within scope of this IC review</i></li> <li>• <i>Explain any modifications to scope that have occurred during the Intake and Early Resolution process (e.g., the applicant agrees to narrow scope, documents are released by agency informally, s 55G decision, partial s 54W etc).</i></li> </ul>
<b>Case category as originally assessed</b>	<ul style="list-style-type: none"> <li>• <i>Explain whether it is Category 1, Category 2 etc. [Map to Resolve]</i></li> </ul>

<b>Actions</b>	<b>Action (All applicable actions must be completed before transfer)</b>	<b>Notes (optional)</b>
1. Review commenced and information requested under s 54Z (and parties advised of the commencement of the Review)	Choose an item.	

Actions	Action (All applicable actions must be completed before transfer)	Notes (optional)
2. All documents under review (marked up and with the relevant exemptions flagged) received	Choose an item.	
3. Exempt material action generated	Choose an item.	
<p>4. Agency has provided the OAIC with a schedule of documents flagging which exemption applies to each document</p> <p><i>A schedule will not be required in all cases, for example, where there are only a small number of documents. If you consider a schedule is not required please note this in the 'Notes' column, and mark the action complete</i></p>	Choose an item.	
5. Scope of IC review identified/settled	Choose an item.	
<p>6. Third parties notified of the IC review</p> <p><i>If there are no third parties, please mark the action not applicable</i></p> <p><i>If there is a third party but you consider a procedural fairness step is not required because it appears sufficiently clear that the decision will not be adverse to the them, please mark the action complete and note this in the 'Notes' field</i></p>	Choose an item.	
7. Requests for <u>confidential submissions</u> addressed and where relevant, a non-confidential version of the submission has been provided by the agency.	Choose an item.	

Actions	Action (All applicable actions must be completed before transfer)	Notes (optional)
<i>If there have been no requests for confidential submissions, please mark the action not applicable</i>		

<b>Completed by</b>	[insert name and position] [Map to Resolve – case officer]
<b>Date of completion</b>	

Dear [Name],

Your matter is currently awaiting allocation to a review advisor. When this happens the review advisor will contact you.

Please note, we are unable to give an estimate of the time it will take to finalise your IC review. As a guide, the OIAC is working through a large backlog and is currently prioritising 2020 matters.

Regards,

**Use below example where we are waiting for R response – Short Version:**

Dear [Name],

Thank you for your email.

We are currently awaiting information from the [Respondent name] in relation to this matter. We anticipate receiving this information in [date e.g. month and year OR specific date such as 1 July 2024].

However, due to the number of IC review applications on hand, and the need to prioritise IC review applications that were received earlier, we are unable to provide a timeframe on when you will receive an outcome for this matter.

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 and any others that remain on hand. The OAIC received your application for IC review in [date eg October 2023].

If you have any questions regarding this matter, please do not hesitate to contact us at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Kind Regards

**Use below update to A where we have received R s54Z resp and docs but need to review to ensure we have all we need to progress to Reviews Team:**

Dear [Name],

Thank you for your request[s] for an update on [xx month 202X], and please accept my sincere apologies the delayed response.

We have received information from [Respondent] in response to our notice of commencement of IC review and request for documents. Your matter is awaiting review of that information to ensure we have all information required for progression to the Reviews and Investigation team where it will wait allocation to a Review Adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.



Please note as the OAIC is currently focussing on the case management and finalisation of aged matters, we are unable to provide an indicative timeframe at this stage. To assist you in determining an approximate timeframe, the OAIC is focussing on progressing the 2020 IC review applications and which remain on hand. Your IC review was received on [date month year], and it will take some time before your IC review is allocated and progressed. However, once your matter is allocated to a Review Adviser, they will contact you to provide a further update and advise of the next steps.

Further information about [the IC review process](#) is available in [Part 10](#) of the FOI Guidelines.

Kind Regards

**Use below update to A where have not yet received R s54Z response/have followed up R for s54Z response and waiting for it**

Dear [Name],

Thank you for your request[s] for an update on [ xx month 202X], and please accept my sincere apologies the delayed response.

**Options 1-3 below for second paragraph:**

**Option 1:** We will be contacting the Respondent for further information in order to progress your matter. Once we have received the information it will be reviewed to ensure it can be progressed to the Reviews and Investigation team where it will wait allocation to a Review Adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.

**OR**

**Option 2:** We have requested further information from the Respondent which we expect to receive by [date]. Once we receive this further information, it will be reviewed to ensure all material requested is received for progression to the Reviews and Investigation team and await allocation to a Review Adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.

**OR**

**Option 3:** The document requested from the [Respondent name] have now been received. The requested documents are awaiting review to ensure all material requested has been received. Once this is complete, your matter will move to the Reviews and Investigation team and await allocation to a review adviser for further assessment. This will involve case management, including the exchange of submissions between the parties, assessment of the material received, and/or a forming of a preliminary view where appropriate, ahead of any decision by the Commissioner under s 55K.

Please note as the OAIC is currently focussing on the case management and finalisation of aged matters, we are unable to provide an indicative timeframe at this stage. To assist you in determining an approximate timeframe, the OAIC is focussing on progressing the 2020 IC review applications and which remain on hand. Your IC review was received on [date month year], and it will take some time before your IC review is allocated and progressed. However, once your matter is allocated to a Review Adviser, they will contact you to provide a further update and advise of the next steps.

Further information about [the IC review process](#) is available in [Part 10](#) of the FOI Guidelines.

Kind Regards

**Allow**

Dear [name]

I will allow you to make confidential submissions for this matter because [reason].

However, you should keep the confidential submission as brief as possible and it should only contain the information that cannot be shared with the applicant. Everything else should be in the open submission.

Regards,  
[EL2 name]

**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 - [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 202X, you requested an Information Commissioner (IC) review of the FOI decision made by the Department/Agency/Office.

The Department/Agency/Office has notified the Office of the Australian Information Commissioner (OAIC) it made a revised decision on DD Month 2024.

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

1. If 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.

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

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

- where an applicant wishes to proceed with a review of a 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.

If you require assistance regarding this email, please contact us at [foidr@oaic.gov.au](mailto: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



**Direction to the Australian Public Service Commission  
under s 55(2)(e)(ii) of the *Freedom of Information Act 1982***

In relation to MR23/01470, I, , Director, Freedom of Information, Delegate of the Australian Information Commissioner for the purposes of the [Freedom of Information Act 1982](#), issue the following direction to the [Agency] under s 55(2)(e)(ii) of the FOI Act:

1. To provide information in response to the request for further information provided to the Department on [date sent], by [2 weeks] to the OAIC via [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

*Your obligations*

I draw your attention to the following matters:

*Freedom of Information Act 1982*

Section 55(2)(e)(ii) of the 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.

Compliance with this direction can be met by taking the steps set out above.

*FOI Guidelines and procedure direction*

The Information Commissioner has issued guidelines under s 93A of the FOI Act that Australian Government agencies and Ministers must have regard to when performing a function or exercising a power under the FOI Act. For information about the IC review process, see [Part 10 of the FOI Guidelines](#).

The '[Direction as to certain procedures to be followed in IC reviews](#)' applies to agencies and Ministers during IC reviews and during preliminary inquiries prior to the commencement of an IC review, if such inquiries are undertaken. The Procedure Direction sets out the procedures that agencies and ministers must follow in respect of the production of documents, the provision of a statement of reasons where access has been deemed to be refused and the provision of submissions.



The IC Review Procedure Direction also explains that:

- in the event of non-compliance with the IC review Procedure Direction, the Information Commissioner may proceed to make a decision under s 55K of the FOI Act on the basis that the agency or minister has failed to discharge their onus under s 55D of the FOI Act
- as the model litigant obligation under the Legal Services Directions 2017 extends to Commonwealth entities involved in merits review proceedings, failure to adhere to the requirements of the IC Review Procedure Direction may amount to non-compliance with the model litigant obligation.

Direction issued by Heath Baker, Director, Freedom of Information

Signed:

Date: 29 August 2024





OAIC reference: [include reference]  
Department reference: [include reference]

[Name of agency or minister contact]

[Title of agency or minister contact]

[Name of agency or minister]  
Sent by email: [include email address]

### Written direction and notice – *Freedom of Information Act 1982* – s 55V(2)

Dear [name of agency or minister contact]

I refer to Information Commissioner (IC) review of the [agency or minister] decision made [date of decision], under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am writing to advise that in order to assist the Information Commissioner in progressing this IC review, I am issuing the attached notice under s 55V(2), for the [agency or minister]’s compliance by [2 weeks].

The purpose of the notice is to require the [agency or minister] to conduct further searches for documents relevant to the FOI request under s 55V(2).

#### Key issue

The key issue in this IC review is whether the [agency or minister] has taken all reasonable steps to identify the documents relevant to the scope of the applicant’s FOI request.

#### Evidence of searches undertaken for documents

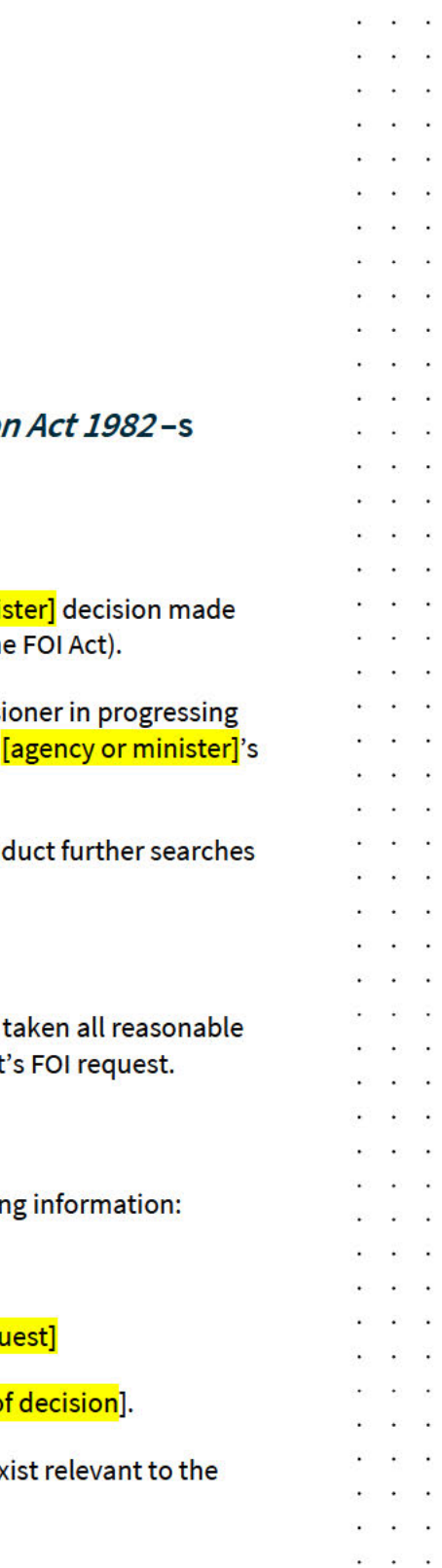
On [date of FOI request], the applicant made a request for the following information:

[Quote the FOI request]

[If relevant, include details about the amendment of scope of FOI request]

On [date], the [agency or Minister] made a decision to [insert details of decision].

The applicant contends that [documents/further documents] should exist relevant to the scope of their request.



In an IC review of an access refusal decision, the [agency or minister] bears the onus of establishing that their decision is justified or that I should give a decision adverse to the IC review applicant (s 55D(1)).

Section 24A of the FOI Act requires that an agency take 'all reasonable steps' to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

Based on the [agency or minister's] decision, I am not satisfied that the [agency or minister] has demonstrated that it has taken all reasonable steps to find the requested document[s] and that the document[s] cannot be found or does not exist/ no further documents can be found.

This is because: [provide reasons as to why the OAIC is not satisfied that the agency/minister has complied with s 24A,]

For example:

*The scope of the applicant's request appears to have been misinterpreted*

*It is not evident that any steps have been taken to search for relevant documents*

Accordingly, to assist the Information Commissioner in progressing this IC review, I am issuing the attached notice under ss 55V(2) (**Attachment A**), and a checklist to be completed by the [agency or minister] in conducting further searches (**Attachment B**).

Yours sincerely

**[Name of delegate]**

Director  
Freedom of Information Branch  
Office of the Australian Information Commissioner

**[Date]**

## Attachment A



### Notice to [agency or minister] to conduct further searches under s 55V of the *Freedom of Information Act 1982*

In relation to [case reference], I, [name of delegate], [role title], delegate of the Australian Information Commissioner for the purposes of the *Freedom of Information Act 1982* (Cth) (FOI Act), require the [agency or minister] to:

- conduct further searches under s 55V(2) of the FOI Act for documents relevant to the scope of the applicant's FOI request
- complete the attached checklist (**Attachment B**), as evidence of completion of the further searches
- Return the completed checklist to the OAIC via [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), by **[2 weeks]**

Notice issued by [name of delegate], [role title], Freedom of Information Branch

Signed:

[Date]

## ATTACHMENT B

Branch/section/team/officer[s] within the agency that conducted searches:

Search location	Has search been undertaken?	If search has not been undertaken, provide reasons why not.	If search has been undertaken, provide details of who did the search, when, the parameters of the search and the outcome of the search.
Internal record management system [insert name]	Y <input type="checkbox"/> N <input type="checkbox"/>		
Digital files in group drives and Home drives	Y <input type="checkbox"/> N <input type="checkbox"/>		
Any stand-alone computers, laptops or tablets	Y <input type="checkbox"/> N <input type="checkbox"/>		
Mobile phones (text messages and instant messaging applications)	Y <input type="checkbox"/> N <input type="checkbox"/>		
Hand written notes in diaries or notebooks	Y <input type="checkbox"/> N <input type="checkbox"/>		
Records in Microsoft Outlook Calendars and digital diaries	Y <input type="checkbox"/> N <input type="checkbox"/>		
Hardcopy files	Y <input type="checkbox"/> N <input type="checkbox"/>		
Email accounts	Y <input type="checkbox"/> N <input type="checkbox"/>		
All documents currently with an external provider (solicitors, consultants etc)	Y <input type="checkbox"/> N <input type="checkbox"/>		
Any other locations	Y <input type="checkbox"/> N <input type="checkbox"/>		

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 corresponded with you since DD Month YEAR.

### 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](mailto:foidr@oaic.gov.au).

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

Kind regards,

Our reference:  
Agency reference:

**Name**

By email:

**Withdrawal of IC review application**

Dear

Thank you for your response.

This matter is now considered withdrawn under s 54R of the *Freedom of Information Act 1982* (Cth).

Section 54R(2) states that if an IC review application is withdrawn, it is taken never to have been made.

The matter is now closed.

Kind regards

Subject line: OAIC – MR - Response due DD Month YEAR - Notice of request for Information Commissioner review and request for documents

//

Our reference:

Agency/Minister reference:

**FOI Contact Officer**

Agency/Minister

By email: [Agency/Minister email]

## **Notice of request for Information Commissioner review and request for documents**

Dear FOI Contact Officer,

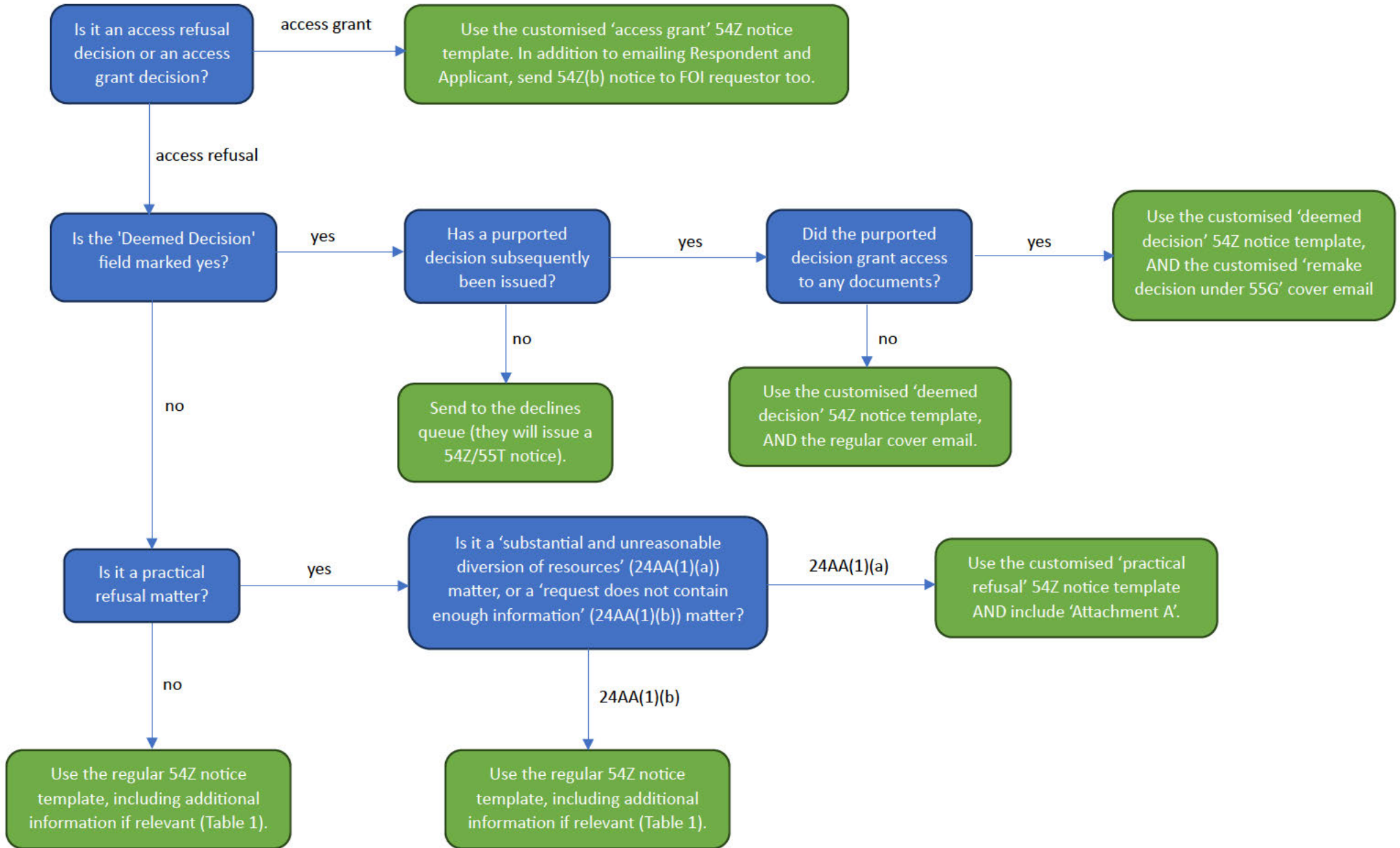
Please find **attached** notice of Information Commissioner (IC) review and request for documents. A response is required by **DD Month YEAR**.

The Information Commissioner will share the submissions you provide 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 documents at issue. Should you wish to provide submissions in confidence, please refer to the [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) which sets out the process for making such a request.

Extensions of time to comply with a notice issued by the Office of the Australian Information Commissioner (OAIC) will only be granted in exceptional circumstances. Please note, in the absence of the OAIC advising you that the requested extension has been granted, the original due date applies.

Kind regards,





**Table 1: scope of IC review in standard 54Z notice**

	<b>Scope of IC Review</b>
Searches	The IC review applicant contests that further documents exist within the scope of their request (s 24A(1)).
Exemptions	The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review.
Searches <u>and</u> Exemptions	The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review and that further documents exist within the scope of their request (s 24A(1)).
Practical Refusal (24AA(1)(b))	The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review.
Charges	<p>The issue to be decided in this IC review is whether the respondent's decision in relation to the imposition of a charge was the correct and preferable decision in the circumstances.</p> <p>In this regard, we draw the respondent's attention to a recent decision made by the Freedom of Information Commissioner; <i>ABX' and Department of Veterans' Affairs (Freedom of information)</i> [2022] AICmr 57 (29 July 2022).</p> <p>In ABX, the FOI Commissioner noted that agencies should reconsider whether a charge should be imposed having regard to the amount of the charge imposed and the public resource applied to date.</p> <p>Accordingly, we invite the respondent to consider making a revised decision under s 55G of the FOI Act relieving the applicant from liability to pay the charge.</p>
Amendment of Records	The IC review applicant contests the respondent's reasons for refusing to amend records under review as provided in s 53A(g) of the FOI Act.



Australian Government  
Office of the Australian Information Commissioner

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Our reference: [Insert reference number]

[First Name Last Name]

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

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### Notification of application for IC review

Dear Mr/Ms [Last name]

On date, the Office of the Australian Information Commissioner (the OAIC) received an application for Information Commissioner review (IC review) of an **internal review access grant decision** made by the **Department (the Department)** on **date** under the *Freedom of Information Act 1982* (the FOI Act) from an affected third party.

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### Commencement of IC review

I write under s 54Z(b) of the FOI Act to notify you that the Information Commissioner (IC) will conduct a review of the **Department's** decision of **date** to grant access to documents that are the subject of your FOI request.

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At this stage, the matter is awaiting allocation to a review adviser. Due to the number of IC review applications on hand, and the need to prioritise IC review applications that were received earlier, this may not occur for some time. After the file is allocated, the review adviser will contact you to advise of next steps in the matter.

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### Next steps

Please advise by **date** whether you would like to apply to the IC to become a party to the IC review. Following your application, the IC may make you an IC review party in writing under s 55A(3) of the FOI Act.

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If you are joined as a party to the review, you will be given a reasonable opportunity to present your case under s 55(4)(b) of the FOI Act. You will also be notified of any decision by the Information Commissioner under s 55K(6).

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Please note, at this stage we do not require any submissions from you. Once allocated, the review officer will review any documentation or submissions provided by the affected third party and **Department**. The review officer may then contact you to advise you of their view on the appropriate next steps in the matter.

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## Further information

Further information about the [IC review process](#) is available in [Part 10](#) of the FOI Guidelines (at [\[10.1\]](#) – [\[10.157\]](#)).

Further information about [access grant decisions](#) is available at [\[10.9\]](#) of the FOI Guidelines, while further information about applying to become a review party is available at [\[10.54\]](#) – [\[10.57\]](#) of the FOI Guidelines.

Should you wish to discuss this matter, please contact the OAIC enquiries line on 1300 363 992 or email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) and quote the reference number at the top of this email.

Yours sincerely,

To add Signature:  
Right-click and select 'Replace Picture'.

**[First Name Last Name]**

[Position Title]

Date

## Submissions in support of claiming a practical refusal exists under s 24 of the FOI Act

Please provide the completed document to the OAIIC with the information the respondent is required to provide in accordance with paragraph [3.14] of the [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) (the Procedure Direction). Completion of the following tables will be taken as the respondent's submissions in this IC review. The respondent is required to send these submissions to the applicant at the same time as they are sent to the OAIIC (see the Procedure Direction at [3.23]).

Details of submission	
Agency reference	
OAIIC reference	
Date submitted to OAIIC	

Processing timeline and request consultation process (s 24AB)	
Event	Date
FOI request received	
Request consultation notice sent	
Applicant's response	
Further contacts with applicant (if relevant)	
Applicant notified of decision	
Internal review request received (if relevant)	
Internal review decision made (if relevant)	

<b>Request consultation process (s 24AB) – Assistance provided to applicant (s 24AB(3))</b>	
Information provided to applicant to assist revision of request. (For example, suggestions as to a scope that can be processed, directing to applicant to publicly available information, explanation about difficulties processing request. Please provide detail.)	
Telephone contact attempted with applicant. (Yes/no – if Yes please provide detail)	
Request revised during request consultation process (yes/no)	

<b>Breakdown of estimated processing time (minutes/hours)</b>			
Total number of documents		Total estimated processing time	
Identifying, locating or collating		Consulting	
Examining		Making a copy	
Deciding to grant, refuse or defer access		Notifying decision	
Any relevant additional information related to the estimated processing time			

<b>Sampling</b>	
Sample examined? (Yes or No)	
Sample size (as a %)	
Number of electronic documents	
Number of hardcopy documents	
Number of non-exempt documents	
Number of partially exempt documents	
Number of fully exempt documents	
Exemptions proposed applied	
Number of documents to which a consultation requirement applies (s 26A, 27 or 27A)	
Any relevant additional information related to sampling	

<b>Whether processing the request would be unreasonable</b>	
Size of the agency (in terms of number of employees).	
Number of employees dedicated to FOI processing	
Number or requests received in the last financial year	

<b>Whether processing the request would be unreasonable</b>	
Other factors the Respondent may consider to be relevant (see FOI Guidelines [3.117] and ACW at [22])	
The staffing resources available to an agency or Minister for FOI processing	
Whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities	
The impact that processing a request may have on other work in an agency or Minister's office, including FOI processing	
Whether an applicant has cooperated in framing a request to reduce the processing workload	
Whether there is a significant public interest in the documents requested	



<b>Whether processing the request would be unreasonable</b>	
Steps taken by an agency or Minister to publish information of the kind requested by an applicant	
<b>[Only relevant to Ministers]</b> Responsibilities of the Minister and demands on the Minister's time, and whether it is open to the Minister to obtain assistance from an agency in processing the request.	



**Australian Government**  
**Office of the Australian Information Commissioner**



Our reference:  
Agency reference:

[name]

Sent by email:

## Your application for IC review of an FOI decision

Dear [name]

I refer to your application for Information Commissioner review (IC review) of a [n internal review] access grant decision made by the [agency] (the Department) on [date] under the *Freedom of Information Act 1982* (the FOI Act).

### Commencement of IC review

The Information Commissioner has decided to commence review of the Department's decision of [date]. The Office of the Australian Information Commissioner (OAIC) is currently considering your IC review application and is conducting inquiries with the Department.

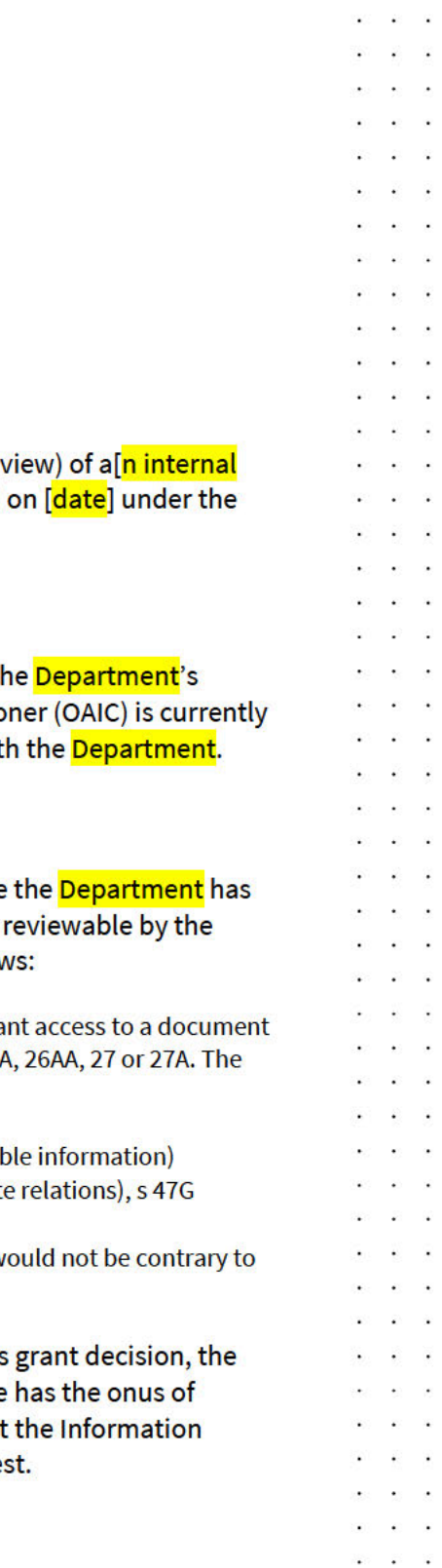
### Access grant decisions

Please note that in access grant decisions, only those decisions where the Department has relied on exemptions under ss 47, 47B, 47F and 47G of the FOI Act are reviewable by the Information Commissioner. The FOI Guidelines at [10.9] state as follows:

An 'access grant decision' is defined in s 53B to mean a decision to grant access to a document where there is a requirement to consult with a third party under ss 26A, 26AA, 27 or 27A. The agency or minister will have decided that the document:

- is not exempt under s 47 (trade secrets or commercially valuable information)
- is not conditionally exempt under s 47B (Commonwealth-State relations), s 47G (business documents) or s 47F (personal privacy), or
- is conditionally exempt under ss 47B, 47G or 47F, but access would not be contrary to the public interest (see Part 6 of these Guidelines).

Section 55D(2) of the FOI Act provides that in an IC review of an access grant decision, the affected third party for the document to which the decision was made has the onus of establishing that a decision refusing the FOI request is justified or that the Information should give a decision adverse to the person who made the FOI request.



## Next steps

At this stage, the matter is awaiting allocation to a review adviser. Due to the number of IC review applications on hand, and the need to prioritise IC review applications that were received earlier, this may not occur for some time. After the file is allocated, the review adviser will contact you to advise of next steps in the matter.

Your review will continue to progress through the initial stages of an IC review. The initial stages of an IC review may include assessment by a senior member of the team, conducting preliminary inquiries with an agency, requesting submissions from the agency in support of their FOI decision or requesting the documents at issue.

Further information about [the steps in the Information Commissioner review process](#) is available in [Part 10](#) of the FOI Guidelines at [\[10.116\]](#).

Please note, during an IC review the OAIC will generally share the submissions you provide with the **Department**.

Should you wish to discuss this matter, please contact the OAIC enquiries line on 1300 363 992 or email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) and quote the reference number at the top of this email.

Yours sincerely

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

[Enclosed: IC review application and decision under review].

29 August 2024



## Attachment A

### Submissions in support of claiming a practical refusal exists under s 24 of the FOI Act

Please provide the completed document to the OAIC with the information the respondent is required to provide in accordance with paragraph [3.14] of the [Direction as to certain procedures to be followed by agencies and ministers in IC reviews | OAIC](#). Completion of the following tables will be taken as the respondent's submissions in this IC review. The respondent is required to send these submissions to the applicant at the same time as they are sent to the OAIC (see the Procedure Direction at [3.23]).

#### Details of submission

Agency reference	
OAIC reference	
Date submitted to OAIC	

#### Processing timeline and request consultation process (s 24AB)

Event	Date
FOI request received	
Request consultation notice sent	
Applicant's response	
Further contacts with applicant (if relevant)	
Applicant notified of decision	
Internal review request received (if relevant)	
Internal review decision made (if relevant)	

<b>Request consultation process (s 24AB) – Assistance provided to applicant (s 24AB(3))</b>	
Information provided to applicant to assist revision of request. (For example, suggestions as to a scope that can be processed, directing to applicant to publicly available information, explanation about difficulties processing request. Please provide detail.)	
Telephone contact attempted with applicant. (Yes/no – if Yes please provide detail)	
Request revised during request consultation process (yes/no)	

<b>Breakdown of estimated processing time (minutes/hours)</b>			
Total number of documents		Total estimated processing time	
Identifying, locating or collating		Consulting	
Examining		Making a copy	
Deciding to grant, refuse or defer access		Notifying decision	
Any relevant additional information related to the estimated processing time			

<b>Sampling</b>	
Sample examined? (Yes or No)	
Sample size (as a %)	
Number of electronic documents	
Number of hardcopy documents	
Number of non-exempt documents	
Number of partially exempt documents	
Number of fully exempt documents	
Exemptions proposed applied	
Number of documents to which a consultation requirement applies (s 26A, 27 or 27A)	
Any relevant additional information related to sampling	

<b>Whether processing the request would be unreasonable</b>	
Size of the agency (in terms of number of employees).	
Number of employees dedicated to FOI processing	
Number or requests received in the last financial year	

<b>Whether processing the request would be unreasonable</b>	
Other factors the Respondent may consider to be relevant (see FOI Guidelines [3.117] and ACW at [22])	
The staffing resources available to an agency or Minister for FOI processing	
Whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities	
The impact that processing a request may have on other work in an agency or Minister's office, including FOI processing	
Whether an applicant has cooperated in framing a request to reduce the processing workload	
Whether there is a significant public interest in the documents requested	

<b>Whether processing the request would be unreasonable</b>	
Steps taken by an agency or Minister to publish information of the kind requested by an applicant	
<b>[Only relevant to Ministers]</b> Responsibilities of the Minister and demands on the Minister's time, and whether it is open to the Minister to obtain assistance from an agency in processing the request.	





**Australian Government**

**Office of the Australian Information Commissioner**

Our reference: «CaseNumber»

Agency reference: «Agency\_Reference\_Number»

The <b>respondent</b> is:	The <b>applicant</b> 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 the respondent's access grant decision, made on [date] under the *Freedom of Information Act 1982* (the FOI Act). The IC review application and decision under review are attached.

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

### Scope of IC review

A key issue in this IC review is whether the respondent has correctly determined that the documents that are the subject of the FOI request are not exempt pursuant to **[ss 47, 47B, 47G, 47F]**.

### Onus

Section 55D(2) of the FOI Act provides that when an IC review application is made under s 54M (access grant), the affected third party has the onus of establishing that a decision refusing the request is justified or that the Information Commissioner should give a decision adverse to the person who made the request.

## Requirement for parties to engage and share submissions

As part of this process:

- the OAIC requires respondents and applicants to engage with each other to attempt to resolve or narrow the issues in dispute. The respondent should initiate this process
- the respondent has until **[30 business days]** to complete the engagement and share its submission with the OAIC and the applicant. The applicant then has 10 business days to share their submission with the OAIC and the respondent
- the respondent also has until **[30 business days]** to provide the OAIC with the information set out in Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#).

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

## Request for information from respondent

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

Respondents can comply with this notice by delivering the response to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) by **[30 business days]**.

## Obligations during the IC review process

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

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

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

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

Yours sincerely

**[First Name Last Name]**

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

[Enclosed: IC review application and decision under review].29 August 2024

## Annexure A: Further information for applicants

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

### Obligation for you to engage

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

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

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

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

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

### Sharing submissions between you and the respondent

If respondents make a submission in support of their FOI decision, they must send their submission to you at the same time as sending them to the OAIC. You can then make a

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

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

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

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

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

submission in response. You will have 10 business days<sup>6</sup> to make a submission about why you disagree with the respondent, and you are required to send your submission to the respondent at the same time as sending to the OAIC.<sup>7</sup>

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

The OAIC will generally proceed with making an IC review decision on the basis of the evidence respondents provide in response to this notice, and any submissions the parties make. If you do not make submissions when an opportunity to do so has been provided, the OAIC may make a final decision without giving any further opportunity to make submissions.<sup>8</sup>

You can ask the OAIC to make a submission in confidence. Your request must give reasons why you want to make a confidential submission and the OAIC will consider those reasons and decide whether to accept the submission on a confidential basis. If the OAIC agrees to treat a submission confidentially, you will generally be required to provide a second version of the submission which can be shared.<sup>9</sup>

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<sup>6</sup> Respondents have 30 business days because they must engage with applicants as well as providing information and making submissions. You have 10 business days because you are only required to make submissions.

<sup>7</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

<sup>8</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

<sup>9</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.30]

## Annexure B: Further information for respondents

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

### Obligation for respondents to engage

Respondents are required to engage make reasonable attempts to engage with applicants.<sup>10</sup> The engagement should aim to resolve or narrow the issues in dispute in the IC review.

Engagement may comprise a phone call or video conference between the respondent and the applicant. The OAIC will not be involved in arranging or attending these.<sup>11</sup> Applicants can tell respondents if they would prefer to engage another way.<sup>12</sup>

Respondents must provide the OAIC with information to demonstrate the actions they have taken to engage the applicant to resolve or narrow the issues in dispute in the IC review.<sup>13</sup> The IC has published a checklist to assist agencies and ministers provide relevant information relating to the agency or minister's engagement with the applicant during the IC review: see [IC Review Practice Documents](#).

The OAIC will advise the respondent if they consider the respondent should undertake further engagement with the applicant during the IC review.<sup>14</sup>

If applicants fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue their IC reviews.<sup>15</sup>

We expect that applicants and respondents will engage in the IC review process with respect and courtesy.<sup>16</sup>

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<sup>10</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.8]

<sup>11</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.9]

<sup>12</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.10]

<sup>13</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.11]

<sup>14</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.13]

<sup>15</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

<sup>16</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

## Sharing submissions between the respondent and applicant

If respondents make submissions in support of their FOI decisions, they must send their submissions to applicants at the same time as sending them to the OAIC.<sup>17</sup> Respondents should include prominent reminders in covering correspondence that applicants will have 10 business days from the date of receiving the correspondence to make submissions.

Applicants will be required to send their submissions to respondents at the same time as they are sent to the IC.<sup>18</sup>

Respondents should be aware that if they do not make submissions when an opportunity to do so has been provided, reviews may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions. Respondents should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.<sup>19</sup>

The OAIC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue. Where the OAIC accepts a submission in confidence, respondents must provide an open version of the submission to the IC review applicant.<sup>20</sup>

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

<sup>18</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

<sup>19</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.24-5\]](#)

<sup>20</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.26-7\]](#)



Australian Government

Office of the Australian Information Commissioner

Our reference: «CaseNumber»

Agency reference: «Agency\_Reference\_Number»

The <b>respondent</b> is:	The <b>applicant</b> is:
«RespondentClientTradingName»	«SendToTitleFirstnameSurname»

## Notice of IC review application and request for documents

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

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

### Scope of IC review

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

The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review and that further documents exist within the scope of their request (s 24A(1)).

The IC review applicant contests the respondent's reasons for refusing access as set out in the decision under review, with the exception of [free text].

### Requirement for parties to engage and share submissions

As part of this process:

- the OAIC requires respondents and applicants to engage with each other to attempt to resolve or narrow the issues in dispute. The respondent should initiate this process
- the respondent has until **[30 business days]** to complete the engagement and share its submission with the OAIC and the applicant



- the respondent also has until **[30 business days]** to provide the OAIC with the information set out in Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#)
- the applicant has 10 business days after receiving the respondent's submission to share their submission with the OAIC and the respondent.

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

### Request for information from respondent

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

Respondents can comply with this notice by delivering the response to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) by **[30 business days]**.

### Obligations during the IC review process

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

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

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

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

Yours sincerely

«CurrentUserFirstnameSurname»

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

[Enclosed: IC review application and decision under review].29 August 2024

## Annexure A: Further information for applicants

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

### Obligation for you to engage

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

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

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

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

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

### Sharing submissions between you and the respondent

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

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

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

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

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

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

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

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

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

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

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

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

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

## Annexure B: Further information for respondents

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

### Obligation for respondents to engage

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

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

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

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

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

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

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

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

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

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

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

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

### **Sharing submissions between the respondent and applicant**

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

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

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

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

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

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

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

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

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



Australian Government

Office of the Australian Information Commissioner

Our reference: «CaseNumber»

Agency reference: «Agency\_Reference\_Number»

The <b>respondent</b> is:	The <b>applicant</b> is:
«RespondentClientTradingName»	«SendToTitleFirstnameSurname»

## Notice of IC review application and request for documents

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

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

### Scope of IC review

The applicant has sought a review of the Respondent's decision to refuse the applicant's request under s 24 of the FOI Act, [Option1] on the basis that processing the applicant's request would substantially and unreasonably divert the resources of an agency from its other operations or unreasonably interfere with the performance of the Minister's functions.[Option 2] on the basis that the request did not provide the information reasonably necessary to document/s to be identified.

### Requirement for parties to engage and share submissions

As part of this process:

- the OAIC requires respondents and applicants to engage with each other to attempt to resolve or narrow the issues in dispute. The respondent should initiate this process
- the respondent has until [**30 business days**] to complete the engagement and share its submission with the OAIC and the applicant. The applicant then has 10 business days to share their submission with the OAIC and the respondent

- the respondent also has until **[30 business days]** to provide the OAIC with the information set out in Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#).

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

## Request for information from respondent

Table A of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#) sets out the information the respondent must provide to the OAIC. In relation to decisions made to refuse an applicant's request under s 24, on the basis that a practical refusal reason exists in relation to the documents, the Respondent must provide the following:

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- Copies of any correspondence including file notes of telephone conversations relating to the Respondent's request consultation process, including a copy of; the letter sent to the applicant, and the applicant's response (if any).
- Records that demonstrate the number of documents and/or pages encompassed by the request, including but not limited to notes of any searches conducted, and consultations with relevant staff members
- An estimate of the number of hours processing time involved, and a breakdown of this time to demonstrate how the time was estimated
- Evidence of document sampling if undertaken<sup>1</sup>
- The names and contact details of anyone who was consulted by the Respondent, formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies)
- Submissions in support of the respondent's decision in the form prescribed by the OAIC. This is the form set out at **Attachment A**, which will be taken as submissions in support of the practical refusal reason.

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<sup>1</sup> See [the FOI Guidelines](#) at [3.121].



Respondents can comply with this notice by delivering the response to foidr@oaic.gov.au by **[30 business days]**.

### Obligations during the IC review process

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

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

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

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

Yours sincerely

«CurrentUserFirstnameSurname»

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

[Enclosed: IC review application and decision under review].29 August 2024

## Annexure A: Further information for applicants

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

### Obligation for you to engage

The respondent must initiate engagement with you and make reasonable attempts to engage.<sup>2</sup> The engagement aims to resolve or narrow the issues in dispute in the IC review.

Engagement could involve a phone call or video conference between you and the respondent. You can tell the respondent if they would prefer to engage another way.<sup>3</sup>

The respondent must demonstrate to the OAIC what they have done to engage with you to resolve or narrow the issues in dispute in the IC review. If the respondent does not take sufficient actions to engage with you, the OAIC will direct them to engage further.<sup>4</sup>

If you fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue the IC review. This will be on the ground you have failed to cooperate in progressing the IC review without reasonable excuse.<sup>5</sup> The OAIC will warn you if we are considering this possibility and give you the opportunity to respond.

We expect that you and the respondent will engage in the IC review process with respect and courtesy.<sup>6</sup>

### Sharing submissions between you and the respondent

If respondents make a submission in support of their FOI decision, they must send their submission to you at the same time as sending them to the OAIC. You can then make a

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<sup>2</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.17]

<sup>3</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.19]

<sup>4</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.20]

<sup>5</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

<sup>6</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

submission in response. You will have 10 business days<sup>7</sup> to make a submission about why you disagree with the respondent, and you are required to send your submission to the respondent at the same time as sending to the OAIC.<sup>8</sup>

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

The OAIC will generally proceed with making an IC review decision on the basis of the evidence respondents provide in response to this notice, and any submissions the parties make. If you do not make submissions when an opportunity to do so has been provided, the OAIC may make a final decision without giving any further opportunity to make submissions.<sup>9</sup>

You can ask the OAIC to make a submission in confidence. Your request must give reasons why you want to make a confidential submission and the OAIC will consider those reasons and decide whether to accept the submission on a confidential basis. If the OAIC agrees to treat a submission confidentially, you will generally be required to provide a second version of the submission which can be shared.<sup>10</sup>

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<sup>7</sup> Respondents have 30 business days because they must engage with applicants as well as providing information and making submissions. You have 10 business days because you only need to make submissions.

<sup>8</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

<sup>9</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

<sup>10</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.30]

## Annexure B: Further information for respondents

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

### Obligation for respondents to engage

Respondents are required to engage make reasonable attempts to engage with applicants.<sup>11</sup> The engagement should aim to resolve or narrow the issues in dispute in the IC review.

Engagement may comprise a phone call or video conference between the respondent and the applicant. The OAIC will not be involved in arranging or attending these.<sup>12</sup> Applicants can tell respondents if they would prefer to engage another way.<sup>13</sup>

Respondents must prove the OAIC with information to demonstrate the actions they have taken to engage the applicant to resolve or narrow the issues in dispute in the IC review.<sup>14</sup> The IC has published a checklist to assist agencies and ministers provide relevant information relating to the agency or minister's engagement with the applicant during the IC review: see [IC Review Practice Documents](#).

The OAIC will advise the respondent if they consider the respondent should undertake further engagement with the applicant during the IC review.<sup>15</sup>

If applicants fail to participate in the engagement process (without reasonable excuse), the OAIC may decide to not continue their IC reviews.<sup>16</sup>

We expect that applicants and respondents will engage in the IC review process with respect and courtesy.<sup>17</sup>

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<sup>11</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.8]

<sup>12</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.9]

<sup>13</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.10]

<sup>14</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.11]

<sup>15</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.13]

<sup>16</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.21]

<sup>17</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

## Sharing submissions between the respondent and applicant

If respondents make submissions in support of their FOI decisions, they must send their submissions to applicants at the same time as sending them to the OAIC.<sup>18</sup> Respondents should include prominent reminders in covering correspondence that applicants will have 10 business days from the date of receiving the correspondence to make submissions.

Applicants will be required to send their submissions to respondents at the same time as they are sent to the IC.<sup>19</sup>

Respondents should be aware that if they do not make submissions when an opportunity to do so has been provided, reviews may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions. Respondents should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.<sup>20</sup>

The OAIC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue. Where the OAIC accepts a submission in confidence, respondents must provide an open version of the submission to the IC review applicant.<sup>21</sup>

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<sup>18</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

<sup>19</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.23\]](#)

<sup>20</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.24-5\]](#)

<sup>21</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews \[3.26-7\]](#)



Australian Government

Office of the Australian Information Commissioner

Our reference:

Agency reference:

The <b>respondent</b> is:	The <b>applicant</b> is:
By email:	By email:

## Notice of IC review application and request for documents

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

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

- the respondent has until **[15 business days]** to share its submission with the OAIC and the applicant.
- the respondent also has until **[15 business days]** to provide the OAIC with the information set out in Paragraph 4.1 of Annexure A.2 of the [Directions as to certain procedures to be followed by agencies and ministers in IC reviews](#)
- the applicant has **10 business days** after receiving the respondent's submission to share a submission with the OAIC and the respondent.

**Annexure A** has more information for applicants about sharing submissions.

**Annexure B** has more information for respondents about sharing submissions.

**[If relevant] Annexure C** contains a notice [to conduct further searches under s 55V/to provide an adequate statement of reasons under s 55E] or the FOI Act.

### Scope of IC review

The IC review applicant contests that further documents exist within the scope of their request (s 24A(1)).

**[Where issuing 55V]** On the basis of the information contained in the application for IC review [and the information provided by the respondent during preliminary inquiries] a notice

under s 55V has been included at **Annexure C** requiring the respondent to undertake further searches.

[Where issuing 55E] On the basis of the information contained in the application for IC review [and the information provided by the respondent during preliminary inquiries] a notice under s 55E has been included at **Annexure C** requiring the respondent to provide an adequate statement of reasons.

### Request for information

Paragraph 4.1 of Annexure A.2 of the Directions as to certain procedures to be followed by agencies and ministers in IC reviews sets out the information the respondent must provide to the OAIC.<sup>1</sup> Please provide the information that relates to this review.

Respondents can comply with this notice by delivering the response to foidr@oaic.gov.au by **6 August 2024**.

### Obligations during the IC review process

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

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

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

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

Yours sincerely

Intake and Early Resolution Team  
Freedom of Information Branch

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<sup>1</sup> Direction as to certain procedures to be followed by agencies and ministers in IC reviews [A.2, 4.1]

Office of the Australian Information Commissioner  
29 August 2024

[Enclosed: IC review application and decision under review].



## Annexure A: Further information for applicants

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

We expect that you and the respondent engage in the IC review process with respect and courtesy.<sup>2</sup>

### Sharing submissions between you and the respondent

If respondents make a submission in support of their FOI decision, they must send their submission to you at the same time as sending them to the OAIC. You can then make a submission in response. You will have 10 business days to make a submission about why you disagree with the respondent, and you are required to send your submission to the respondent at the same time as sending to the OAIC.<sup>3</sup>

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

The OAIC will generally proceed with making an IC review decision on the basis of the evidence respondents provide in response to this notice, and any submissions the parties make. If you do not make submissions when an opportunity to do so has been provided, the OAIC may make a final decision without giving any further opportunity to make submissions.<sup>4</sup>

You can ask the OAIC to make a submission in confidence. Your request must give reasons why you want to make a confidential submission and the OAIC will consider those reasons and decide whether to accept the submission on a confidential basis. If the OAIC agrees to treat a submission confidentially, you will generally be required to provide a second version of the submission which can be shared.<sup>5</sup>

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<sup>2</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.23]

<sup>3</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.27]

<sup>4</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.28]

<sup>5</sup> [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#) [2.30]

## Annexure B: Further information for respondents

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

We expect that applicants and respondents will engage in the IC review process with respect and courtesy.<sup>6</sup>

### Sharing submissions between the respondent and applicant

If respondents make submissions in support of their FOI decisions, they must send their submissions to applicants at the same time as sending them to the OAIC.<sup>7</sup> Respondents should include prominent reminders in covering correspondence that applicants will have 10 business days from the date of receiving the correspondence to make submissions.

Applicants will be required to send their submissions to respondents at the same time as they are sent to the IC.<sup>8</sup>

Respondents should be aware that if they do not make submissions when an opportunity to do so has been provided, reviews may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions. Respondents should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.<sup>9</sup>

The OAIC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue. Where the OAIC accepts a submission in confidence, respondents must provide an open version of the submission to the IC review applicant.<sup>10</sup>

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<sup>6</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [2.7]

<sup>7</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.23]

<sup>8</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.23]

<sup>9</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.24-5]

<sup>10</sup> [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#) [3.26-7]

**[If relevant]** Annexure C: s 55V Notice



**Notice to conduct further searches under s 55V of the  
*Freedom of Information Act 1982***

Under s 55V(2) I, [name of delegate], [role title], delegate of the Australian Information Commissioner for the purposes of the *Freedom of Information Act 1982* (Cth) (FOI Act), require the [agency or minister] to:

- Conduct further searches for documents relevant to the scope of the applicant's FOI request [*if relevant*: In particular, documents relating to [update as appropriate]].
- Provide the OAIC with evidence of the further searches conducted and the outcomes of those searches
- Complete and return the searches checklist included below at **Annexure C.1**.

Direction issued by [name of EL1 delegate], Assistant Director, Freedom of Information Branch

Signed:

Date:

## Annexure C.1 – searches checklist

Search location	Has search been undertaken?	If search has not been undertaken, provide reasons why not.	If search has been undertaken, provide details of who did the search, when, the parameters of the search and the outcome of the search.
Internal record management system [insert name]	Y <input type="checkbox"/> N <input type="checkbox"/>		
Digital files in group drives and Home drives	Y <input type="checkbox"/> N <input type="checkbox"/>		
Any stand-alone computers, laptops or tablets	Y <input type="checkbox"/> N <input type="checkbox"/>		
Mobile phones (text messages and instant messaging applications)	Y <input type="checkbox"/> N <input type="checkbox"/>		
Hand written notes in diaries or notebooks	Y <input type="checkbox"/> N <input type="checkbox"/>		
Records in Microsoft Outlook Calendars and digital diaries	Y <input type="checkbox"/> N <input type="checkbox"/>		
Hardcopy files	Y <input type="checkbox"/> N <input type="checkbox"/>		
Email accounts	Y <input type="checkbox"/> N <input type="checkbox"/>		

<b>All documents currently with an external provider (solicitors, consultants etc)</b>	Y <input type="checkbox"/> N <input type="checkbox"/>		
<b>Any other locations</b>	Y <input type="checkbox"/> N <input type="checkbox"/>		

**[If relevant] Annexure C: s 55E Notice**



**Notice to provide an adequate statement of reasons under s 55E(2) of the Freedom of Information Act 1982**

Section 55(E) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may require an agency or Minister to provide an adequate statement of reasons as mentioned in subsection 26(1) of the FOI Act.

As such, I require you to:

- Provide an adequate statement of reasons under s 26(1) in response to the applicant's FOI request that address the searches undertaken to find relevant documents in accordance with s 24A, as relevant to this IC review.
- Provide the OAIC, and the applicant, with a copy of the statement of reasons by **15 business days**.

Delivery of the response should be made via email to [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

Notice issued by [**name of EL1 delegate**], Assistant Director, Freedom of Information Branch

Signed:

29 August 2024

Subject: OAIC – MR - Commencement of Information Commissioner review

Our reference: MR

Agency/Minister reference:

**Applicant Name**

By email: [Applicant email]

**Commencement of Information Commissioner review**

Dear [Applicant],

Thank you for your application for Information Commissioner (IC) review about a decision made by the [Respondent Name] (the Agency/Minister).

Today we notified the Agency/Minister that the Information Commissioner will undertake an IC review and has requested further information to assist with progressing the review.

We will provide you with an update when we have heard from the Agency/Minister.

If you require assistance regarding this email, please contact us at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au).

Please quote the reference MR in all correspondence.

Kind regards,

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],

On DD Month 2023, you requested an Information Commissioner (IC) review of your Freedom of Information request to the Agency/Minister (the Agency/Minister) as you contested the FOI decision was incorrect.

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

As you have now received a revised decision, the OAIC would like to confirm whether you wish to proceed with your IC review application.

### **Action required by you before [ DD Month 2024 - 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 revised 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 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 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.

If you require assistance regarding this email, please contact us at [foidr@oaic.gov.au](mailto: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

FOI Contact Officer

s 22

By email: s 22

## Notice of Information Commissioner review and requests for documents

Dear FOI Contact Officer,

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 s 22 (the Agency) under the *Freedom of Information Act 1982* (the FOI Act).

Copies of the respective IC review applications are attached.

### Scope of IC review

The IC review applicant contests that the Agency has made a decision that purports to give, in accordance with the applicant's requests, access to documents to which the requests relate, but the Agency has not actually given that access.

In its response to preliminary inquiries, the Agency advised that it has issued decisions to the applicant.

In response to that advice, the applicant has stated:

...

s 22

## Guidance relating to forms of access

### Section 20 of the FOI Act

- (1) Access to a document may be given to a person in one or more of the following forms:
- (a) a reasonable opportunity to inspect the document;
  - (b) provision by the agency or Minister of a copy of the document;
  - (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
  - (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.
- (2) Subject to subsection (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form.
- (3) If the giving of access in the form requested by the applicant:
- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his or her functions, as the case may be;
  - (b) would be detrimental to the preservation of the [document](#) or, having regard to the physical nature of the [document](#), would not be appropriate; or
  - (c) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an [agency](#) or a [State](#)) subsisting in matter contained in the [document](#), being matter that does not relate to the affairs of an [agency](#) or of a [Department](#) of [State](#);
- access in that form may be refused and access given in another form.
- (4) Subject to [subsection](#) 17(1), where a person [requests](#) access to a [document](#) in a particular form and, for a reason specified in [subsection](#) (3), access in that form is refused but access is given in another form, the [applicant](#) shall not be required to pay a charge in respect of the provision of access to the [document](#) that is greater than the charge that he or she would have been required to pay if access had been given in the form [requested](#).

## FOI Guidelines<sup>1</sup>

Paragraph 3.206 of the Guidelines provides:

The right to access a document in a particular form may be refused and access given in another form in the following circumstances:

- where access would interfere unreasonably with the agency's operations or the performance of a minister's functions (s 20(3)(a)) — for example, if an applicant asks to inspect documents that an agency requires for everyday operations
- if it would be detrimental to the preservation of the document or not appropriate given the physical nature of the document (s 20(3)(b)) — for example, if a document is fragile or if giving access outside its normal environment might result in damage, or the document cannot be photocopied due to its condition or because it is a painting, model or sculpture
- if giving an applicant access to a document in a certain form would, but for the FOI Act, involve an infringement of copyright in relation to the matter contained in the document (s 20(3)(c)). This provision does not apply where the matter contained in the document relates to the affairs of an agency or department of state or if the copyright holder is the Commonwealth, an agency, or a State.

Paragraph 3.208 of the Guidelines provides:

The FOI Act gives a legally enforceable right of access to documents that already exist, and an agency is not required to create a new document to satisfy an FOI request. However, an agency should consult with an applicant as to the most effective manner of providing access to the information an applicant seeks, including by administrative release of information that has been compiled from documents or a database (see [3.2]).

It appears that the preliminary issue that remains at this stage of the IC review is whether access should be provided in the form requested by the applicant (s 20).

In considering whether access in a different form is justified, I draw your attention to s 20(3) of the FOI Act and the FOI Guidelines as set out above. To assist in progressing this review, the OAIC would like to give the Agency an opportunity to provide documents to the applicant in the form he has proposed. Should the Agency decline to do so, the OAIC would appreciate receiving the below information by **26 March 2024**.

---

<sup>1</sup> 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,

## Request for information

In order to demonstrate the agency has complied with section 20 (3) of the FOI Act, the OAIC requests the information below:

- a submission addressing how giving access in the form requested by the applicant would:
  - interfere unreasonably with the Agency's operations – including
    - an estimate of the processing time involved in providing the documents in the applicant's preferred form,
    - a breakdown of the time to demonstrate what it is based on
    - an estimate of the direct costs the Agency would incur by providing the documents in the form preferred by the applicant
    - evidence of the steps the Agency has taken to negotiate an acceptable method of delivering the documents to the applicant
  - be detrimental to the preservation of the documents or having regard to the physical nature of the documents would not be appropriate or
- but for the FOI Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an agency or State) subsisting in matter contained in the document being matter that does not relate to the affairs of an agency or of a Department of State
- a submission addressing whether the Agency has given a written notice to the applicant stating that the applicant is liable to pay a charge and if so, a submission addressing s 20(4) of the FOI Act.

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 by agencies and ministers in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

**Heath Baker**

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 IC review application

Email subject line: **OAIC – Response Due DD Month YEAR - MR - Notice of Information  
Commissioner review – Agency reference**

Our reference:

**Agency/Minister** reference:

FOI Contact Officer

**Agency/Minister**

By email: **[Agency/Minister]**

Copied to: **[if relevant]**

**[Applicant]**

**Represented by:** **[if relevant]**

**By email:** **[Applicant]**

## **Information Commissioner review - Notice of commencement**

Dear parties,

Please find attached notice of commencement for the above referenced Information Commissioner review (IC review).

Please note, Annexure A and B of the notice also provides information about the obligations of parties during the IC review process.

Kind regards,

[Signature Block]

This email is to be used in instances where:

- the decision under review is a deemed decision
- the OIAC has not issued a 54Z notice
- the Agency makes a subsequent decision providing access.

Subject line: OIAC – Response due DD Month YEAR - MR - Notice of Information Commissioner review – Agency reference

//

Our reference:

Agency/Minister reference:

FOI Contact Officer

Agency/Minister

By email: [Agency/Minister]

Copied to: [if relevant]

[Applicant]

Represented by: [if relevant]

By email: [Applicant]

## Information Commissioner review - Notice of commencement

Dear parties,

Please find attached notice of commencement for the above referenced Information Commissioner review (IC review).

As outlined in the notice, it appears that the Agency's/Minister's decision dated DD Month YEAR, was not made within the statutory timeframe. As such, the IC reviewable decision remains the Agency's/Minister's deemed access refusal decision of DD Month YEAR. The purported decision, taken to be a submission, cannot be considered a variation of an access refusal decision under s 55G of the FOI Act. Should the Agency/Minister decide to grant access during the IC review process, this must be made in accordance with s 55G of the FOI Act.

Please note, Annexure A and B of the notice also provides information about the obligations of parties during the IC review process.

Kind regards,

[Signature Block]





**Australian Government**  
**Office of the Australian Information Commissioner**

Our reference:

Agency reference:

Director (EL2 of equivalent)

ROLE

AGENCY

By email: [Agency/Minister email]

Copied to: [if relevant]

## Request for documents

Dear [Director],

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review (IC review) of a **decision / internal review** made by the [Agency/Minister] (the **Agency/Minister**) under the *Freedom of Information Act 1982 (Cth)* (the FOI Act).

### 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 **MRXX/XXXXX**) 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 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 by agencies and ministers in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

**Heath Baker**

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024

## Attachment A



**Direction to  
the [Agency/Minister]  
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 MRXX/XXXXX, I, Heath Baker, delegate of the Information Commissioner, issue the following direction to the [Agency/Minister] (the *Agency/Minister*) under s 55(2)(e)(ii) of the FOI Act:

**Revised decision – full access**

1. Should the *Agency/Minister* wish to provide full access to the documents within the scope of the request, I request that *Agency/Minister* make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Day of week, DD Month 2024.**

**Revised decision – partial access**

2. Should the *Agency/Minister* wish to provide partial access to the documents within the scope of the request, I request that *Agency/Minister* make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Day of week, DD Month 2024.**
3. Please also provide the following documents to the OAIC by **Day of week, DD Month 2024:**
  - 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/Minister* 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/Minister** 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 **MRXX/XXXXX**) 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/Minister** wish to refuse access, I request that the **Agency/Minister** provide the applicant and the OAIC the following by **Day of week, DD Month 2024**:
  - 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/Minister** claims are exempt and the particular provisions of the FOI Act the **Agency/Minister** is relying on (noting the relevant document and page numbers).
      - include clear particulars about why the **Agency/Minister** 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/Minister** contends a practical refusal reason exists.
      - include clear particulars about why the **Agency/Minister** contends that the record should not be amended or annotated.
- 5. Should the **Agency/Minister** wish to refuse access, I request that the **Agency/Minister** provide the OAIC the following by **Day of week, DD Month 2024**:
  - a. Should the **Agency/Minister** wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the **Agency/Minister** 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/Minister** 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/Minister**, 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 **MRXX/XXXXX**) 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](mailto:foidr@oaic.gov.au).

The Information Commissioner will share the submissions the **Agency/Minister** 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 Heath Baker, Director, Freedom of Information Branch

Signed:

**Heath Baker**

Director

Intake and Early Resolution Team

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 **MRXX/XXXXX**, under ss 55T of the FOI Act, I, Heath Baker, delegate of the Information Commissioner, require the **[Agency/Minister]**, to give me the following information by close of business **Day of week, DD Month 2024:**

- 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](mailto:foidr@oaic.gov.au).

Notice issued by Heath Baker, Director, Freedom of Information Branch

Signed:

**Heath Baker**

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

29 August 2024

Subject: OAIC – Response Required - MRXX/XXXXX – 55(2)(e)(ii) Direction and 55T Notice to Produce  
- Due DD Month 2024

Our reference:

Agency reference:

Director (EL2 of equivalent)  
ROLE  
AGENCY

By email: [Agency/Minister email]

Copied to: [if relevant]

## s 55(2)(e)(ii) Direction and s 55T Notice to Produce

Dear [Director],

Please find attached written direction and notice to produce, in accordance with s 55(2)(e)(ii) and s 55T of the FOI Act.

The Information Commissioner will share the submissions you provide during Information Commissioner review (IC review) with the applicant unless there are compelling reasons not to. We do not provide the applicant with copies of the documents at issue.

Should you wish to provide submissions in confidence, please refer to the [IC Review Procedure Direction](#) which sets out the process for making such a request.

Please note a response is requested in this matter by **DD Month Year**.

If an extension of time is required to respond to the written direction and notice to produce, you 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,