

	FOI – Complaints – Assessments	<ul style="list-style-type: none"> Jackie Scolyer OR <ul style="list-style-type: none"> Individual listed as Case Officer
	FOI – Complaints – Declines	Lisa Ktenidis
	FOI – Complaints – Investigations	<ul style="list-style-type: none"> Jackie Scolyer OR <ul style="list-style-type: none"> Individual listed as Case Officer
	FOI Complaints – s 86 Finalisation	<ul style="list-style-type: none"> Jackie Scolyer OR <ul style="list-style-type: none"> Individual listed as Case Officer
Significant Decision	FOI – Significant Decisions	<ul style="list-style-type: none"> Justin Lodge OR <ul style="list-style-type: none"> Individual listed as Case Officer
	Individual listed as Case Officer	Relevant Case Officer
	FOI – Vexatious applicant requests	<ul style="list-style-type: none"> Justin Lodge OR <ul style="list-style-type: none"> Individual listed as Case Officer
	FOI – IC Reviews – s 89K	<ul style="list-style-type: none"> Justin Lodge OR <ul style="list-style-type: none"> Individual listed as Case Officer
Monitoring, Guidance and Engagement	FOI - Guidance – Allocation	<ul style="list-style-type: none"> Sara Peel OR <ul style="list-style-type: none"> Individual listed as Case Officer

OAIC reference:

Agency reference:

Dear XXXX

Extensions of time to comply with a notice or direction issued by the Office of the Australian Information Commissioner will only be granted in exceptional circumstances.

At this time, your request for extension has been filed.

Please note, in the absence of the OAIC advising you that the requested extension has been granted, the original due date applies. If the original due date has passed, you should provide the required information as soon as possible.

Kind regards,

[your signature block]

Registering a New IC Review on Resolve

- New requests usually come through by email or the smartform. Uncommon by post or phone, but not impossible.
 - Application should be in writing (but we have to make reasonable adjustments should an applicant require it)
 - IC review request will be **out of time** if made after 60 days of decision date
 - If it is out of time, invite the applicant to make a request for a s 54T extension of time. Use the template email invitation. Once s 54T request is received, follow steps to register a s 54T EOT (similar to registering EOTs for 15AB/15AC/54D but instead of an agency, it is for an individual)
- 1. On Resolve, click 'Find Client' to search for the correct applicant (be careful with companies/directors etc. – cross reference with decision and review form).
 - a. Enter last name of FOI A
 - b. If there are no hits, click 'New Client' and enter in all possible fields (in particular contacts)
 - i. For Address, click validate and select from existing postcode, or 'Not registered' if there are no options
 - ii. Click save and click 'New Case'
 - c. If there is a hit, open the client page for the correct person and click 'New Case' on top right hand corner
 - d. Select 'IC Review' or appropriate type and click ok
 - e. Everything in orange must be completed
 - f. Enter Review Type – be careful! This cannot be changed post selecting
 - i. Most common options: Access refusal (includes charges and amendment), access grant (when someone opposes to the release of documents)
 - g. Method: To be determined
 - h. Enter respondent/agency's details. Never create an agency unless you are confident that there it is a completely new agency – select from options existing
 - i. Don't need to select an individual for agency, click 'add contact later' unless expressly provided
 - ii. If party is represented, can add additional party in 'Parties' tab
 - i. Received date: date application was received by OAIC and method
 - j. Google the FOI A to see if they are in the media/journalist. If so, flag with supervisor as 'Sensitivity' may need to be changed accordingly
 - k. Summary: brief description of request outlining the request, decision under review [original/internal] decision dated @ - [Practical refusal/Exemptions ss @/Searches]; number of documents at issue; and scope of review. You can complete this in the Triage stage.
 - l. Click save (this creates a case number)
 - m. Two new actions will pop up:
 - i. Record case details and attach docs
 - ii. Send acknowledgement letter
 - n. Clear any categories on email with application etc. to remove any metadata from Outlook and then drag the file onto Resolve.
 - i. On Outlook, move to 'DO NOT USE' folder for actioned emails
 - ii. Drag separate decision letter onto file for easy access and any other key documents

- iii. Add note in document properties: Name 'primary decision' or 'IR decision' whichever is more appropriate
- iv. Change doc type to key documents
- v. Tick off 'Record case details' button in the Actions
- o. Send acknowledgement letter using the template
 - i. Check we have the decision (and check the date to ensure it is within time). If insufficient info is provided, see steps below in 'Triage process' for 'if further info is required' and don't send ack letter yet
 - ii. Prepare letter and ensure dates are up to date
 - iii. Use generic intake signature, send from FOI general inbox
 - iv. Use acknowledgement letter from TRIM/most up to date template
 - v. Copy sent will need to be put on the Resolve file
- p. Move case to 'Triage' queue by ticking the box in Actions
- 2. Purpose of Triage
 - a. Get more info from applicant; or
 - b. Get file prepared and ready for the Mail Assessor stage; or
 - c. Close the file.
- 3. Triage process
 - a. Enter in summary
 - i. Use template:

Summary

Request:

Decision under review: [original/internal] decision dated @ - [Practical refusal/Exemptions ss @/Searches]

Number of documents at issue: @

Scope of review: Applicant seeks review of [Practical refusal/Exemptions ss @/Searches]

- b. Enter decision action
 - i. Go to 'Agency Decisions tab'
 - ii. Click 'Add Agency Decision'
 - iii. Type: Initial/IR review
 - iv. Date of decision: on decision letter
 - v. If name of person is unknown, just put on agency for the name
- c. Click 'Apply' before adding issues individually
- d. Add issues from the Decision
 - i. Review reasons (mostly sections) – apply each separately
 - ii. Right click in empty box and 'add issue' for all reasons/sections
 - 1. Select appropriate concern – e.g. access refused/partial refusal etc and the section that applies to that
 - iii. Enter each section applied by decision – if docs are not covered by the act, select 'Invalid'
 - iv. First will automatically become primary issue but not a problem
- e. Click 'OK'
- f. Assessor Note
 - i. Summary: e.g. 'ss 47F &47C/searches'. If it is too long to list, state 'exemptions/searches'
- g. If everything is ready to move to the next stage, tick 'Allocate Triage Officer' and allocate case to yourself
- h. Tick 'Conduct Triage' box and select appropriate outcome
 - i. If **further info is required**:

1. E.g. see MR18/00935 where there was no express written request for review of AGD decision
2. Email party with request for more information (can use email template but alter appropriately)
3. Tick 'Conduct Triage' in Actions and for status, select 'Seek Further Information' and due date
4. Manually change 'Case Officer' to 'Triage'
5. Enter in Assessor Note 'RFI to A/R due [date]'
6. Once info is received, upload corro into Resolve.
7. Send out full acknowledgement letter without your name.
8. Update Assessor Note
 - ii. If no further info is required: 'Mail Assessor'
- i. Check that everything is available and ready for the Mail Assessor. If yes, check that the Case Officer is allocated to Mail Assessor

New IC Review of Deemed Matters

1. On Resolve, click 'Find Client' to search for the correct applicant (be careful with companies/directors etc. – cross reference with decision and review form).
 - a. Enter last name of FOI A
 - b. If there are no hits, click 'New Client' and enter in all possible fields (in particular contacts)
 - i. For Address, click validate and select from existing postcode, or 'Not registered' if there are no options
 - ii. Click save and click 'New Case'
 - c. If there is a hit, open the client page for the correct person and click 'New Case' on top right hand corner
 - d. Select 'IC Review' or appropriate type and click ok
 - e. Everything in orange must be completed
 - f. Enter Review Type – be careful! This cannot be changed post selecting
 - i. Most common options: Access refusal (includes charges and amendment), access grant (when someone opposes to the release of documents)
 - g. Method: To be determined
 - h. Enter respondent/agency's details. Never create an agency – select from options existing
 - i. Don't need to select an individual for agency, click 'add contact later' unless expressly provided
 - ii. If party is represented, can add additional party in 'Parties' tab
 - i. Received date: date application was received by OAIC and method
 - j. Google the FOI A to see if they are in the media/journalist. If so, flag with supervisor as 'Sensitivity' may need to be changed accordingly
 - k. Click save (this creates a case number)
 - l. Two new actions will pop up:
 - i. Record case details and attach docs
 - ii. Send acknowledgement letter
 - m. Clear categories on email with application etc. and drag onto the file on Resolve.
 - i. On Outlook, put the category back on the email and move to 'Read case' folder

- ii. Tick off 'Record case details' button
2. Potentially check with A whether a decision was provided (send a s 54N email)
3. Check when FOI request was lodged. If it was more than 30 days ago, continue with registration/triage process
4. Conduct Triage process
 - a. Enter in summary
 - i. Paste in template:

***deemed refusal on @. FOI request made @. Pls to R due @**

Summary

Request:

Decision under review: [original/internal] decision dated @ - [Practical refusal/Exemptions ss @/Searches]

Number of documents at issue: @

Scope of review: Applicant seeks review of [Practical refusal/Exemptions ss @/Searches]

- b. Assessor Note
 - i. Summary: Pls to R due [date]
- c. Tick 'Allocate Triage Officer' and allocate case to yourself
- d. Tick 'Conduct Triage' box and select appropriate outcome
 - i. If **further info is required** (usually the case):
 1. E.g. see **s 22**
 2. Conduct Pls under s 54V with agency (use template) and drag email to file
 3. Tick 'Conduct Triage' in Actions and for status, select 'Seek Further Information' and due date and allocation
 4. Manually change 'Case Officer' to 'Allocation – Deemed Decisions – FOI'
 5. Enter in Assessor Note 'Pls to R due [date]'
 6. Once info is received, upload corro into Resolve.
 7. Send out full acknowledgement letter without your name.
 8. Update Assessor Note
5. Send Pls to R using template: [D2018/008878](#) check that it is the most up to date
6. Send ack to A using the newest template (note: no IR possible so delete dot point) and drag email to file
7. Tick send ack letter
8. Add Agency Decision to Agency Decisions tab
 - a. Decision Type: Deemed initial
 - b. Decision Date
 - c. Click apply
 - d. Right click, add issue
 - e. Access refused → s 15AC – no reasons
9. Tick allocate to triage officer and conduct triage (select Further Info). Leave 'Seek Further Info' action unticked
10. Move to 'Allocation - Deemed Decision – FOI' queue

Things to note

- For high profile applicants (e.g. members for parliament), flag with Sandra by sending email of IC review application email and indicate our reference number
- For requests to expedite the IC review, flag in summary on Resolve, and flag with Sandra by sending email of IC review application email and indicate our reference number

-
-

Date	Key Events
	FOI request for:
	Third Party Consultation under ss 26A,27,27A
	Third Party Consultation response(s)
	Original Decision: deemed/exemptions ss
	Name/position of decision maker:
	Number of documents/pages:
	Internal review application received by respondent agency
	Internal review decision
	IC review application received by OAIC
	Section 54T application
	Section 54T grant/decline
	Section 54V Preliminary Inquiries:
	PI's issued
	PI's due
	Substantive decision
	[Proceed][Scope of Review]:
	[Category]:
	Allocated queue:
	Assessment:
	Respondent agency notified under s 54Z
	Applicant notified:
	Request for information issued under @
	Request for information due
	Information received
	Agency request for EOT to respond under s54Z
	Submissions provided to parties
	Revised decision
	Section 55K decision

Summary Field Template:

deemed refusal [or affirmed] on XX*. FOI request [or internal review request] made XX

Request:

Decision under review: original decision dated @.

[Exemptions use]: @ document/s found within scope of request, released/exempt in full/part under exemption/s @.

[Searches use]: No document/s found within scope of request. Access refused under s 24A (insert relevant subsection if known).

[Practical refusal use]: @ document/s found within scope of request. (Insert @ hours to process, decision making etc. any key points)

[Charges use]: \$@ (insert calculation)

Number of documents at issue: @ (delete if not applicable)

Scope of review: Applicant seeks review of [Practical refusal/Exemptions ss @/Searches]. Applicant states (insert any key statements that allude to applicant's scope of request. If not known request in acknowledgement).

Notes for assessor::

Dear XXX,

I refer to your email below dated 0:00AM/PM DD MM YYYY (or this morning/afternoon), in which you forwarded correspondence to both the Department of XXXXXX (abbrv.) and our office, the Office of the Australian Information Commissioner (OAIC)

I understand from your email below that you have accessed your review rights by making a valid application for internal review of the decision by XXXX dated DD MM YYYY (Agency ref no.).

You can ask us for an Information Commissioner (IC) review, if you're not happy with the decision in response to your freedom of information (FOI) request. Under Part VII of the FOI Act we can conduct an IC review of the FOI decision by XXXXX.

However, noting that you have applied for an internal review, we generally recommend that you wait for an outcome from the internal review before starting an IC review. An internal review gives the agency or minister's office the opportunity to reconsider their original decision. Your needs may also be met more quickly – as a 30-day time limit for a decision applies.

As such, and noting that you have not made a valid application for IC review under s 54N of the FOI Act, your email below will not be actioned by the OAIC.

If you are unhappy with the internal review decision, or you do not receive a response from XXXXX before the 30-day statutory time limit to provide a decision expires (DD MM YYYY – provide date), you may seek IC review of the internal review decision. You can make an application for IC review by visiting our website: [Apply for an Information Commissioner review | OAIC](#).

If we can be of any further assistance, please do not hesitate to contact us.

Kind regards,

Thankyou for emailing the FOI branch at the Office of the Australian Information Commissioner (OAIC).

We are unable to determine the action or response you are seeking to your correspondence.

If your correspondence relates to a current IC review or complaint, please respond to this email providing the OAIC reference number.

Further Assistance

You can find information about the OAIC on our [website](#), including:

- IC reviews [Freedom of information reviews | OAIC](#)
- Complaints [Freedom of information complaints | OAIC](#)

If you have any further enquiries, please contact the OAIC Enquiries Line on 1300 363 992.

Kind regards

FOI Branch

Subject line: OAIC – MRXX/XXXXXX – Notification of Finalisation of Information Commissioner review under s 54R of the FOI Act

//

Our reference: MRXX/XXXXX

Agency reference:

Applicant Name
Agency / Minister

By email: [Applicant email address]

By email: [Agency/ Minister email address]

Finalisation of Information Commissioner review application under s 54R of the FOI Act

Dear Parties,

This matter has been withdrawn under s 54R of the *Freedom of Information Act 1982* (Cth).

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

The matter is now closed.

Kind regards,

Our reference: MRXX/XXXXX

Agency reference: PA XX/XX/XXXX

Applicant's Name

Represented by Representative's Name

By email: email

Applicant's name/Your IC review application about a decision by the

s 22

Dear XXXX,

I refer to the application for IC review you submitted to the OAIC on DD MM YYYY regarding your abovenamed clients.

From the information you have provided, it appears the s 22 is dealing with your request under the *Privacy Act 1988* (Cth) ('Privacy Act').

I note in your original FOI request, you provided consent to the Department to process your request under the Privacy Act by stating "If this can be processed faster under the Privacy Act, we are content for this to occur." [IF POSSIBLE: Additionally, on DD MM YYYY, the Department noted your consent and confirmed the matter would be dealt with under the Privacy Act.]

Section 54K of the FOI Act provides that an IC reviewable decision is a decision covered by s 54L(2) (access refusal decisions) or a decision covered by s 54M(2) (access grant decisions).

Decisions released under the Privacy Act 1988 (Cth) are not IC reviewable decisions.

As your request application does not relate to an IC reviewable decision as defined in s 54K of the FOI Act, we have finalised this matter on the basis that the application is not a valid IC review application in accordance with s 54N of the FOI Act.

Please note, an agency must respond to a request for access to personal information within 30 days. If you still have not received a response from the Department, you can lodge a Privacy complaint with the OAIC. More information about this process can be found here: [Access your personal information | OAIC](#) and [Lodge a privacy complaint with us | OAIC](#).

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXXX in all correspondence.

I confirm your application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXXX

Agency file number: BCCXXX/XXXXXXXX [I use the file number from the s 22]

Mr/Mrs/Ms First Last

By email: XXXXX

Application for Information Commissioner Review of Decision by the s 22

Dear Mr/Mrs/Ms Last,

On X XX 2023 the Office of the Australian Information Commissioner (the OAIC) received your application for Information Commissioner review (IC review) of a decision by the s 22 to refuse your s 22 .

Please note, the OAIC regulates the *Privacy Act 1988 (Cth)* (the Privacy Act) and the *Freedom of Information Act 1982 (Cth)* (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to conduct reviews of decisions made under the FOI Act.

The decision you have provided the OAIC is not one made in accordance with the FOI Act, meaning it is not an IC reviewable decision, and we therefore cannot conduct a review of the decision.

Section 54N of the FOI Act says that in order to make a valid application for IC review a person must send a copy of the decision they want reviewed with their application.

Noting that your application does not relate to an IC reviewable decision, it has now been closed as invalid.

[You will need to contact the s 22 [REDACTED] regarding this decision. However, please note that the decision letter states:

“Review rights

There is no right of merits review for this decision.

...

Questions about this decision

We cannot consider your visa application any further.”

OR

However, please note, you have until **close of business of XX XXXX XXXX** to apply to the Administrative Appeals Tribunal (AAT) for a merits review of this decision.

The decision letter you were provided with by the s 22 [REDACTED] gives you details on how to make this application. Alternatively, you can visit this website for more details: [How to apply | Administrative Appeals Tribunal \(aat.gov.au\)](#)

I confirm this application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXX

Mr/Mrs/Ms First Last

By email: XXXXX

Your IC review application about the Department of XXXX

Dear Mr/Mrs/Ms Last,

I refer to your IC review application received by the Office of the Australian Information Commissioner (OAIC) on XX XXXXX XXXX.

It appears from your application that you are seeking to make an FOI request to the Department of XXXXX (the Department) in relation to [e.g. a document titled '1912-royal-warrant'].

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. We are also responsible for handling privacy complaints about ACT Government agencies.

The OAIC does not hold records of other government agencies. If you wish to apply for access to documents held by an Australian or Norfolk Island government agency, then you need to make a request in writing, under the FOI Act, directly to the agency that holds the records. Further information about making an FOI application, including details of what needs to be included, is available on our website here: [How to make a freedom of information request | OAIC](#)

REFER A ONTO HOW TO MAKE AN FOI REQUEST WITH THE SPECIFIC DEPARTMENT [e.g. If you wish to obtain documents from the Department of Home Affairs under the FOI Act, you can email your

request to foi@homeaffairs.gov.au. More information about this process can be found here: [How to make a FOI request \(homeaffairs.gov.au\)](#)]

Section 54N of the Freedom of the Information Act 1982 (the FOI Act) says that in order to make a valid application for IC review a person must send us a copy of the decision they want reviewed with their application.

Noting that your application does not relate to an IC reviewable decision it has now been finalised as invalid.

I confirm your application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXX

By email:

Receipt of your IC review application concerning the XXXXX

Dear XXXXX,

I refer to our email below. It appears we have not received a response.

I note that in your original correspondence of DD Month 2023 to the OAIC you provided what appeared to be an FOI decision made by XXXXX.

However, we were unable to open the decision in the format you provided, and your email contained no other details.

Section 54N of the Freedom of Information Act 1982 (Cth) ('FOI Act') provides that the contents of an IC review application must include a copy of the IC reviewable decision for which an IC review is sought.

On DD Month 2023 we wrote to you at the email address used in your original correspondence, and asked for a copy of the decision.

We have not received a response to that correspondence, and consequently your IC review application has been finalised as invalid under s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXX in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: MRXX/XXXXX

Agency reference: XXXXXXXXXXXX

[Applicant name]

[Representative: xxxxx]

By email: xxxxx@xxxxxx

Information Commissioner Review Application for [INSERT DEPARTMENT] (the Agency) decision.

Dear Mr/Mrs/Ms SURNAME,

On [INSERT DATE] we received your application for Information Commissioner review (IC review).

Section 54N(1)(a) of the *Freedom of the Information Act 1982* (the FOI Act) says that the IC review application must be in writing and must give details of how notices under this Part may be sent to the IC review applicant.

On [INSERT DATE] we reached out by email requesting the attached OAIC Privacy and Authority Consent Form be completed and returned and explained that in order for the IC review application to meet the requirements of section 54L(3) of the FOI Act, we require evidence that the applicant has provided authority for a representative to lodge an IC review and receive notices on their behalf.

We advised, that if we did not receive a response by the due date, the application will be finalised as invalid, as it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

As no third party or representative authority were established, this IC review application is invalid.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXXX in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Yours sincerely,

[INSERT SIG BLOCK]

16 December 2021

Our reference:

Agency reference:

By email:

Your Information Commissioner review application concerning the Department of XXXX

Dear XXXXX,

I refer to your application for Information Commissioner (IC) review received by the Office of the Australian Information Commissioner (OAIC) on XX XXXXX 20XX, concerning the XXX (the Agency).

You sought IC review on the basis that your Freedom of Information (FOI) request of DD Month YYYY was deemed refused on DD Month YYYY.

On DD Month Year, the Agency applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982 (Cth)* (FOI Act) for an extension of time to DD Month Year to process your FOI request.

On DD Month Year, the Information Commissioner granted the Agency an extension of time to DD Month Year under 15AC of the FOI Act, which extended the statutory due date. As such, the FOI decision was not due until DD Month YYYY.

An IC review must relate to an IC reviewable decision as outlined in sections 54L and 54M of the FOI Act. As such, no IC reviewable decision had been made when you applied for this IC review on DD Month Year and therefore, we have finalised your IC review application as invalid under s 54N of the FOI Act.

If...[the Agency fails /has failed to meet the due date outlined above], **OR** [you disagree with the Agency's decision of DD Month YYYY], you can seek a new IC review. Please note, to ensure the most efficient processing of an IC review, applications should be lodged via our [smartform](#).

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number MRXX/XXXX in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,



Australian Government

Office of the Australian Information Commissioner

Our reference: MRXX/XXXX

Agency reference: XXXXX

Mr/Mrs/Ms XXXXX XXXXX

By email: XXXXX

Your application for IC review about the Department of XXXXX

Dear **Mr/Mrs/Ms XXXXX**,

I refer to your application for IC review received by the Office of the Australian Information Commissioner (OAIC) on **XX XXXXX 20XX**.

We understand that you are seeking **[insert what applicant has requested in review application form. e.g., “to have employees of the Australian Taxation Office (ATO) investigated.”]**

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. However, our powers do not extend beyond these acts.

Section 54K of the FOI Act provides that an IC reviewable decision is a decision covered by s 54L(2) (access refusal decisions) or a decision covered by s 54M(2) (access grant decisions).

It appears from your application, that you have not made an FOI request to the **Department of XXXXX**, and therefore no IC reviewable decision currently exists.

As your request application does not relate to an IC reviewable decision as defined in s 54K of the FOI Act, we have finalised this matter on the basis that the application is not a valid IC review application in accordance with s 54N of the FOI Act.

Please note, **[always refer the applicant to the correct governing body. e.g.,**

“if you're not happy with the the ATO’s conduct, you can contact the Inspector-General of Taxation and Taxation Ombudsman by visiting their website at [Home - IGTO](#) “

OR

If you disagree with the decision dated XX XXXXX XXXX and would like an external review of the decision, you can apply to the NSW Information and Privacy Commission or the NSW Civil and Administrative Tribunal (NCAT). More information about these processes can be found here:



Australian Government

Office of the Australian Information Commissioner

[NSW Information Commissioner - How to lodge an application for a review of a government information access decision \(nsw.gov.au\)](#)

[NSW Civil and Administrative Tribunal \(NCAT\) - Access to government information \(nsw.gov.au\)\]](#)

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: MRXX/XXXX

Agency reference: XXXXX

Mr/Mrs/Ms XXXXX XXXXX

By email: XXXXX

Your application for IC review about the Department of **XXXXX**

Dear **Mr/Mrs/Ms XXXXX**,

I refer to your application for IC review received by the Office of the Australian Information Commissioner (OAIC) on **XX XXXXX 20XX**.

We understand that you are seeking **[insert what applicant has requested in review application form. e.g., “to have employees of the Australian Taxation Office (ATO) investigated.”]**

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. However, our powers do not extend beyond these acts.

Section 54K of the FOI Act provides that an IC reviewable decision is a decision covered by s 54L(2) (access refusal decisions) or a decision covered by s 54M(2) (access grant decisions).



Australian Government

Office of the Australian Information Commissioner

It appears from your application, that you have not made an FOI request to the **Department of XXXXX**, and therefore no IC reviewable decision currently exists.

As your request application does not relate to an IC reviewable decision as defined in s 54K of the FOI Act, we have finalised this matter on the basis that the application is not a valid IC review application in accordance with s 54N of the FOI Act.

Please note, **[always refer the applicant to the correct governing body. e.g.,**

“if you're not happy with the the ATO’s conduct, you can contact the Inspector-General of Taxation and Taxation Ombudsman by visiting their website at [Home - IGTO](#) “

OR

If you disagree with the decision dated XX XXXXX XXXX and would like an external review of the decision, you can apply to the NSW Information and Privacy Commission or the NSW Civil and Administrative Tribunal (NCAT). More information about these processes can be found here:

NSW Information Commissioner - [How to lodge an application for a review of a government information access decision \(nsw.gov.au\)](#)

NSW Civil and Administrative Tribunal (NCAT) - [Access to government information \(nsw.gov.au\)](#)]

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

OAIC – MR – Review application about the [Respondent]

Dear [applicant],

I acknowledge that correspondence has been exchanged previously. However, during a standard review of legacy applications, we have determined further verification is required to ensure we protect the privacy of applicants. We apologise for any inconvenience caused.

It remains the focus of the Office of the Australian Information Commissioner (OAIC) to adhere to the [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#), issued by the Australian Information Commissioner under s 55(2)(e)(i) of the *Freedom of Information Act 1982* (FOI Act).

The OAIC service charter further sets out the standard of service applicants can expect from the OAIC and how the OAIC expects applicants to assist us. This includes keeping the OAIC informed about any changes to your contact details. To date, the OAIC has not been informed by you about any changes associated with the Right to Know account.

Moving forward, the OAIC is committed to ensuring that future communications reflect the Information Commissioner's Direction, with an emphasis on seeking required evidence to demonstrate IC review applications are made by, or on behalf of, the person who made the request to which the decision relates.

It remains open to you to seek assistance from [Right to Know](#).

If you are unable to respond by **DD Month Year**, you must request more time at the earliest opportunity and no later than **DD Month Year**. **[two days before due date]** Requests for extension must explain why you need more time, and you must propose a new date to provide your response. The OAIC will determine whether it is appropriate to grant an extension on a case by case basis.

Kind regards,

OR

OAIC – MR – Review application about the [Respondent]

Dear [applicant],

I acknowledge that correspondence has been exchanged previously. However, during a standard review of legacy applications, we have determined further verification is required to ensure we protect the privacy of applicants. We apologise for any inconvenience caused.

It remains the focus of the Office of the Australian Information Commissioner (OAIC) to adhere to the [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#), issued by the Australian Information Commissioner under s 55(2)(e)(i) of the *Freedom of Information Act 1982* (FOI Act).

The OAIC service charter further sets out the standard of service applicants can expect from the OAIC and how the OAIC expects applicants to assist us. This includes keeping the OAIC informed about any changes to your contact details. To date, the OAIC has not been informed by you about any changes associated with the Right to Know account.

Moving forward, the OAIC is committed to ensuring that future communications reflect the Information Commissioner's Direction, with an emphasis on seeking required evidence to demonstrate IC review applications are made by, or on behalf of, the person who made the request to which the decision relates.

You have not complied with the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews and as such, this application is now finalised on the basis that it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

Kind regards,

Dear FOI Officer,

The applicant was unable to comply Information Commissioner's Direction as to certain procedures to be followed by applicants in Information Commissioner reviews and as such, the application was finalised on the basis that it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

I trust the above is of assistance.

Kind Regards,



Omid Azizi

Assistant Review Adviser

Freedom of Information Branch

Office of the Australian Information Commissioner

Sydney | GPO Box 5288 Sydney NSW 2001

P 1300 363 992 **E** FOIDR@oaic.gov.au

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

[Subscribe to Information Matters](#)

Our reference: MRXX/XXXXX

Agency reference:

NAME

By email:

Your application for IC review about the [XXXX]

Dear Mr/Ms/Mrs XXXXX,

On [date] we received your application for Information Commissioner review (IC review).

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. We are also responsible for handling privacy complaints about ACT Government agencies.

Our powers do not extend to State or Territory Government agencies and we therefore do not have jurisdiction to review the decision made by the South Australian Government.

As outlined on the last page of the decision letter, you still have review rights in relation to the request.

NSW Gov

If you disagree with an information access decision made by the NSW Government and would like an external review of the decision, you can apply to the NSW Information and Privacy Commission or the NSW Civil and Administrative Tribunal (NCAT). More information about these processes can be found here:

NSW Information Commissioner - [How to lodge an application for a review of a government information access decision \(nsw.gov.au\)](https://www.oaic.gov.au/foi/foi-review-process)

NSW Civil and Administrative Tribunal (NCAT) - [Access to government information \(nsw.gov.au\)](https://www.ncat.nsw.gov.au/)

SA Gov

If you disagree with a Freedom of Information decision made by the South Australian Government [XXXor name DepartmentXXX] and would like an external review of the decision, you can apply to Ombudsman SA or the South Australian Civil and Administrative Tribunal (SACAT). More information about these processes can be found here:

Ombudsman SA - [Freedom of information | Ombudsman SA](https://www.ombudsman.sa.gov.au/)

South Australian Civil and Administrative Tribunal (SACAT) - [Freedom of Information | South Australian Civil and Administrative Tribunal \(sacat.sa.gov.au\)](https://www.sacat.sa.gov.au/)

[Freedom of information | Attorney-General's Department \(agd.sa.gov.au\)](https://www.agd.sa.gov.au/)

WA Gov

If you disagree with a Freedom of Information decision made by the Western Australian Government {XXXor name DepartmentXXX] and would like an external review of the decision, you can apply to the Western Australian Information Commissioner . More information about these processes can be found here:

WA Information Commissioner - [Application form for external review \(oic.wa.gov.au\)](https://oic.wa.gov.au)
[Apply for a Freedom of Information decision external review | Western Australian Government \(www.wa.gov.au\)](https://www.wa.gov.au)

Section 54N of the Freedom of the Information Act 1982 (the FOI Act) says that in order to make a valid application for IC review a person must send us a copy of the decision they want reviewed with their application. Noting that your application does not relate to an IC reviewable decision within our jurisdiction to conduct a review, your application has now been finalised as invalid.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Email to Applicant – Closure to A

Our reference: MRXX/XXXXX

Mr/Mrs First Last

By email: email address

Application for IC review regarding Agency/Department

Dear XXXXX,

Thank you for your response below.

The Agency/Department (XXXX) is not an agency for the purposes of the Freedom of Information Act 1982 (Cth) ('FOI Act'), which means your request below is not considered a valid request in accordance with the FOI Act. Without a valid request, there is no IC reviewable decision, and the Office of the Australian Information Commissioner (OAIC) does not have the jurisdiction to conduct a review of this request.

We have therefore finalised this application as invalid in accordance with s54N of the FOI Act

However, Agency/Department (XXXX) the TIO is an organisation bound by the Privacy Act 1988 (Cth). Where a request for access to personal information has been made, an agency must respond to the applicant within 30 days. Your request from DD MM YYYY appears to be a request for personal information in accordance with the Privacy Act, and you therefore have the opportunity to lodge a Privacy complaint with the OAIC, having not received a response from the Agency/Department (XXXX).

We will therefore forward your correspondence onto our Privacy branch for assessment, and a member of the branch will be in contact with you shortly about your complaint.

In the meantime, if you have any questions, please contact our Enquiries line on 1300 363 992.

Kind regards,

Email to Privacy Branch (DREnquiries@oaic.gov.au)

Dear Enquiries,

We received an enquiry on DD MM YYYY in relation to a request for access to personal documents held by the Agency/Department (XXXX).

This was originally taken to be an application for IC review, however, the Agency/Department is not an agency for the purposes of the FOI Act, which means the access request is not a valid request in accordance with the FOI Act, and we cannot conduct an IC review.

We have therefore closed this application as invalid.

However, the Agency/Department is an organisation bound by the Privacy Act 1988, and the applicant [INSERT REASON: e.g. has made a request for access to personal information which has gone unanswered for more than 30 days].

We have advised the applicant that this matter has been transferred to the DR branch as a privacy complaint for further actioning.

Please let me know if there is anything else we can do.

Kind regards,

Our reference: MRXX/XXXXX

Agency Reference: XXXXX

Applicant Name

Representatives Name

By email:

Your application for IC review about the **[Agency/Minister]**

Dear Mr/Ms/Mrs XXXXX

On DD/MM/YYYY we received your application for Information Commissioner review (IC review) regarding an FOI request you made to **[Insert MP name]** on DD/MM/YYYY.

Please note, the Office of the Australian Information Commissioner (the OAIC) regulates the *Privacy Act 1988* (Cth) (the Privacy Act) and the *Freedom of Information Act 1982* (Cth) (the FOI Act). The OAIC has the power to investigate complaints about the alleged mishandling of personal information by Australian and Norfolk Island government agencies and many private sector organisations, as well as the power to review FOI decisions. We are also responsible for handling privacy complaints about ACT Government agencies.

However, our powers do not extend to members of Parliament.

The Parliamentary Service Act 1999 was amended in June 2013 to confirm that all parliamentary departments are excluded from the application of the FOI Act. The effect of the amending legislation is that the FOI Act is taken not to apply and not to have ever applied to the parliamentary departments and persons who hold, or perform duties of, an office established under the Parliamentary Service Act, such as a Member of Parliament.

Section 54N of the FOI Act states that in order to make a valid application for IC review, a person must send us a copy of the decision they want reviewed with their application.

Noting that your application does not relate to an IC reviewable decision defined under s 54L or 54M, your application has now been finalised as invalid in accordance with s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXX** in all correspondence.

Your application is now closed.

Review Rights

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Kind regards,

Our reference: XXXXX
Agency reference: XXXXX

FOI Contact Officer
[the Department of XXXXX]
By email: XXXXX

Consultation regarding s 54T extension of time application and IC review application

Dear FOI Contact Officer,

I write to advise [the Department of XXXXX] that the Office of the Australian Information Commissioner (the OAIC) received an IC review application, from XXXXX XXXXX (applicant).

The application relates to the above decision made on DD MM YEAR.

Under s 54S of the *Freedom of Information Act 1982* (Cth) (FOI Act), an IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given. As such, the last day for the applicant to seek IC review of the decision was **DD MM YEAR**.

The OAIC received the applicant's IC review application on **DD MM YEAR**. Consequently, the application for IC review was received XXX days outside the prescribed 60-day statutory timeframe.

The applicant has now applied for an extension of time under s 54T of the FOI Act and advised the OAIC the following:

[INSERT SCREEN SHOT OF REASONS FOR 54T REQUEST]

In consideration of the applicant's extension of time application, the OAIC invites [the Department of XXXXX] to provide any comments or concerns the agency wishes to make in deciding the outcome of this application.

Particularly, we ask that you **[INSERT ANY PARTICULARS YOU MAY NEED E.G. provide a copy of the correspondence the applicant purportedly sent to [the Department of XXXXX] on two occasions after the decision was made]**.

Please respond to this email by **close of business on DD MM YEAR**. If we do not receive a response **by DD MM YEAR**, the decision maker will make a decision on the basis of the information provided to the OAIC.

The OAIC will notify the Department once this decision has been finalised.

Contact

If you have any questions regarding this email, please contact me via email at foidr@oaic.gov.au. Please quote OAIC reference: MRXX/XXXXX in all correspondence.

Kind regards,

Our reference: XXXXXXXXX
Agency reference: XXXXXXXXX

Mr/Ms/Mrs XXXXXXXXX
By email: XXXXXXXXX

IC review application about an FOI decision by XXXXXXXXX

Dear XXXXXXXXX,

[If relevant] I write to you as the authorised representative of [X].

I understand that you are seeking Information Commissioner review (IC review) of a decision made by XXXXX on [date].

Under s 54S of the FOI Act, an IC review application in relation to an access grant decision must be made within 30 days after the day notice of the IC reviewable decision was given. As such, the last day to seek IC review of the Agency's decision was [date].

We received your IC review application on [date]. Consequently, your application for IC review is outside the prescribed 30 day statutory timeframe.

Extension of time under s 54T of the FOI Act

Section 54T of the FOI Act allows the Information Commissioner to extend the time for making an application for IC review if the Information Commissioner is 'satisfied that it is reasonable in all the circumstances to do so'. It is therefore open to you to request an extension of time to make a valid application for IC review.

In considering what is reasonable in all the circumstances, the Information Commissioner may take the following factors into account:

- the length of the delay in applying for IC review
- the reasons for the delay
- any action taken by you regarding the decision after the Department made its decision
- any prejudice to the Department and to the general public due to the delay, and
- the merits of your substantive application for IC review.

Invitation to make a request for an extension under s 54T

Please advise by the close of business on [1 week] whether you wish apply for an extension of time under s 54T of the FOI Act, and if so, please include the reasons why you consider an extension should be granted.

Please note, if you wish to apply for an extension of time under s 54T, under s 54T(4) we require you to notify the [Agency Name] (the Agency) of your intention to seek IC review and request a 54T extension as soon as possible. Please include this email address in your correspondence or provide a copy with your reply email.

If I do not receive a response from you by **[1 week]** your application for IC review will be finalised as invalid under s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXXX** in all correspondence.

Yours sincerely,

Our reference: XXXXXXXXX

Agency reference: XXXXXXXXX

Mr/Ms/Mrs XXXXXXXXX

By email: XXXXXXXXX

IC review application about an FOI decision by XXXXXXXXX

Dear XXXXXXXXX,

I write to you as the authorised representative of [X].

I understand that you are seeking Information Commissioner review (IC review) of a decision **deemed to have been** made by XXXXX on **[date]**.

Under s 54S of the FOI Act, an IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given. As such, the last day to seek IC review of the Department's decision was **[date]**.

We received your IC review application on **[date]**. Consequently, your application for IC review is outside the prescribed 60 day statutory timeframe.

Extension of time under s 54T of the FOI Act

Section 54T of the FOI Act allows the Information Commissioner to extend the time for making an application for IC review if the Information Commissioner is 'satisfied that it is reasonable in all the circumstances to do so'. It is therefore open to you to request an extension of time to make a valid application for IC review.

In considering what is reasonable in all the circumstances, the Information Commissioner may take the following factors into account:

- the length of the delay in applying for IC review
- the reasons for the delay
- any action taken by you regarding the decision after the Department made its decision
- any prejudice to the Department and to the general public due to the delay, and
- the merits of your substantive application for IC review.

Invitation to make a request for an extension under s 54T

Please advise by the close of business on **[1 week]** whether you wish apply for an extension of time under s 54T of the FOI Act, and if so, please include the reasons why you consider an extension should be granted.

If I do not receive a response from you by **[1 week]** your application for IC review will be finalised as invalid under s 54N of the FOI Act.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number **MRXX/XXXXXX** in all correspondence.

Yours sincerely,

Our reference:
Agency Reference:

Applicant name
[represented by:]
By email:

Receipt of your Information Commissioner (IC) review application concerning the **s 22**

Dear **Applicant**,

Thank you for your application for Information Commissioner Review regarding the **decision/ deemed access refusal decision** made by the **[Department /Agency]** **[if represented: on behalf of applicant]**.

Please note your **complaint (CPXX/XXXXX)** has now been **withdrawn**.

The Office of the Australian Information Commissioner (OAIC) is considering your application.

Please note that the OAIC's preference is to receive IC review applications through our online [smartform](#), as this allows an application to be automatically registered and acknowledged, which in turn allows us to progress an application more quickly. Please note that future applications that are made by email will take longer to acknowledge and progress as they require manual registration.

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to FOIDR@oaic.gov.au and quote **MR2XX/XXXXX**

Kind regards,

Subject: OAIC - Receipt of your IC review application concerning the **XXDepartment NameXXX - MRXX/XXXXX**

Our reference:

Agency reference:

By email:

Receipt of your IC review application concerning the **XXDepartment NameXXX**

Dear **Mr/Ms/Mrs XXXX**,

We have reviewed your application for Information Commissioner Review (IC Review) from **[date]**.

From the information you have provided, on **[date]**, you requested documents held by the **[Department Name]** (the **Department**) under the Freedom of Information Act 1982 (the FOI Act).

On **[date]**, the Department responded to your request and notified you of their intention to refuse your request on the basis that the work involved in processing your request would substantially and unreasonably divert the resources of the **Department**. In that notice, the **Department** gave you 14 days to either:

- make a revised request; or
- indicate that you do not wish to revise your request; or
- withdraw your request.

It appears that on **[date]**, the 14 day period expired, and in accordance with section 24AB(7) of the FOI Act, the **Department** considered your request to be withdrawn after not receiving a response from you. They notified you of this on **[date]**.

An agency has the power to finalise a request as deemed to be withdrawn where an applicant fails to respond to their notice. From the correspondence you have provided, it appears that the required notice was given, and that you did not respond to this notice within the required time frame. Therefore the **Department** deemed your request withdrawn.

As your request was deemed withdrawn by the **Department**, there is no reviewable decision for an IC Review to be conducted. We therefore intend to decline this IC Review as invalid under s 54N of the FOI Act.

If you disagree, and believe you did provide a response to the **Department** within the 14 day notice period, please provide a copy of the correspondence you sent to the **Department** between **[date]** and **[date]**.

If we have not heard a response from you by **close of business on [1 week]**, this IC Review application will be closed as invalid.

Kind regards,

Subject: OAIC – MRXX/XXXXX - Extension of time request under s 54T of the FOI Act

Our reference:

Agency reference:

By email:

Extension of time request under s 54T of the FOI Act

Dear [Mr/Mrs/Ms XXXX],

I refer to your request for an extension of time (s 54T) to seek Information Commissioner review (IC review) of the decision **deemed to be** made by the [Agency name] under the *Freedom of Information Act 1982* (the FOI Act).

As noted in our previous correspondence to you inviting your application for extension under s 54T [OR As noted in your application for IC review], your IC review application was received outside of the prescribed statutory timeframe. [IF DECISION MADE AFTER DEEMED DATE: I note that a deemed refusal decision occurred on XX XX XXXX, and you wish to seek review of the decision issued by the Agency/Department on XX XX XXXX].

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 54T of the FOI Act.

I have considered the reasons provided in support of your request for an extension of time. In particular, I have considered...

- [Insert considerations]

In light of this, I have decided under s 54T of the FOI Act to **grant** your extension request.

Based on the information before the OAIC, I am satisfied that granting an extension of time under s 54T of the FOI Act is reasonable in all the circumstances.

As such, your IC review is taken to have been lodged within the statutory timeframe. We will write to you regarding the progress of your IC review in due course.

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number at the top of this email in all correspondence.

Review rights

Judicial review

If you disagree with the OAIC's decision you can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner to grant an extension of time is not legally correct. You can make this application under the Administrative Decisions (Judicial Review) Act 1977.

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

An application for review must be made to the Court within 28 days of the OAIC sending the decision to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

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

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

Accessing your information

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

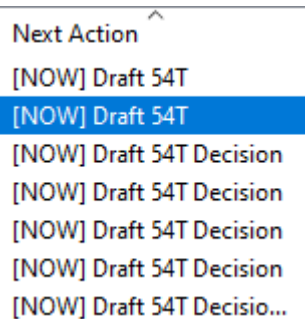
[Signature Block]

Section 54T Extensions

Under s 54S of the FOI Act, an IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given.

Section 54T of the FOI Act allows the Information Commissioner to extend the time for making an application for IC review if the Information Commissioner is 'satisfied that it is reasonable in all the circumstances to do so'. It is therefore open to the applicant to request an extension of time to make a valid application for IC review.

When these out of time applications come through the registering officer will immediately issue a 54T invitation. Once the applicant has responded, the registration officer will label them in Resolve as "[NOW] Draft 54T":

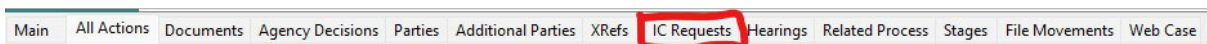


HOW TO PROCESS:

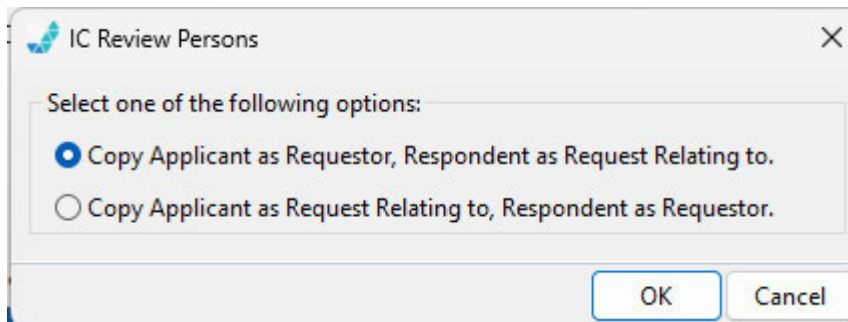
1. If a 54T invite has not already been sent to the applicant, you will need to send one and receive a response before drafting the decision. The template for the 54T Invitation is here: [54T Invitation](#). Provide 1 week to respond before you can move on to the next steps.
 - a. Remember:
 - i. Check if submissions are in original smartform application.
 - ii. Check to see if there are EOT files with the same agency reference number which may tell you the processing period to respond has been extended.
2. Read submissions from A and decide if it's a grant or refusal. If unsure, speak to your EL1 or EL2 for advice. Submissions will be saved in Documents as "54T Response from A", or if this not there, they will be included in the original application form.
3. At this stage, action flow should be up to 'Respondent's View Appropriate', as below:

Action	Due Date	Outcome
<input checked="" type="checkbox"/> Record case details and attach docs (MR I&T)	25-Aug-2023	
<input checked="" type="checkbox"/> Allocate to Triage Officer (MR I&T)	28-Aug-2023	
<input checked="" type="checkbox"/> Send Acknowledgement Letter (MR I&T)	28-Aug-2023	
<input checked="" type="checkbox"/> Generic Application Info Complete? (MR I&T)	28-Aug-2023	Application is Complete
<input checked="" type="checkbox"/> Application Valid? (MR I&T)	28-Aug-2023	No, Out of Time
<input checked="" type="checkbox"/> Request Applicant lodge s54T Request (MR OT)	28-Aug-2023	
<input checked="" type="checkbox"/> Await s54T Request (MR OT)	14-Sep-2023	s54T Request Received
<input checked="" type="checkbox"/> Prepare and Send 54T invitation	28-Aug-2023	
<input type="checkbox"/> Respondent's View Appropriate (MR OT)	31-Aug-2023	

4. Create IC EOT Request:
 - a. Click IC Requests



5. Select New IC Request, and the following window will pop up. It will automatically be set as 'Copy Applicant as Requestor, Respondent as Request Relating to.' Select 'OK'



6. The IC Request file will open and look like this.

New IC Request - IC Request Entry

Save Undo Print Print Preview Close IC Request Search Document Content

Details

Request Type: [] Case Number: [] File Security: OFFICIAL []
 Request from: [] Case Officer: [] Destruction Status: []
 Sub Type: [] Target Date: 19-Nov-2023 [] Retention Class: []
 COVID-19 Delay: []

Title: []

Warning: There is an alert for the Request Relating To Client

Main All Actions Documents Parties XRefs File Movements

Requestor Details

[] Find Open Unknown

Request Relating to

s 22 [] Find Open Unknown

Contact: FOI Contact Officer [] Find Open Select

Represented By (Requestor)

s 22 [] Find Open

Represented By (Request Relating To)

[] Find Open

IC Request Details

Received Date: 9-Nov-2023 [] Agency Request Received: []
 How Received: [] Original Decision Date: []
 Registered By: [] Extension Date: []

7. Begin filling in required yellow fields on main page of IC request (applicant will already be entered – you do not need to add it again).
 - a. Case officer: you (this will already be set)
 - b. Request Type: extension of time
 - c. Request from: Individual/Organisation
 - d. Sub Type: s54T-to lodge an IC review
 - e. How Received: Email or Website (depending on how 54T request was received)
 - f. Received Date: change date to the date the 54T request was received by OAIC

New IC Request - IC Request Entry

Save Undo Print Print Preview Close IC Request Search Document Content

Details

Request Type: Extension of time [] Case Number: []
 Request from: Individual/Organisati [] Case Officer: Lynch, Claire []
 Sub Type: s54T-to lodge an IC r [] Target Date: 19-Nov-2023 []

IC Request Details

Received Date: 9-Nov-2023 []
 How Received: Email []

8. Begin filling in EOT dates and decision fields (you will need to refer back to A's submissions in main IC review file)
 - a. Agency Request Received: this is the date the original FOI request was made (or request for internal review)

- b. Original Decision Date: This will be the date of the Agency/Department’s decision (or deemed refusal decision)
- c. Extension Date: this will be the date the IC review was requested (not the 54T). Will be the date the smart form was received on the website.
- d. Request Decision: Granted or Not Granted
- e. Summary Window: 54T Granted or 54T Not Granted

IC Request Details

Received Date: 27-Oct-2023
 How Received: Email
 Registered By: Lynch, Claire
 Agency Reference Number:

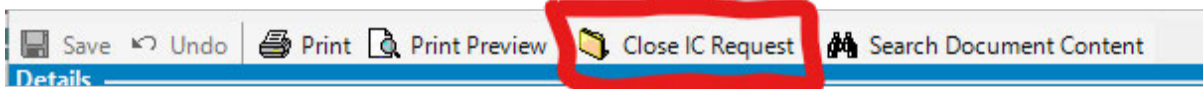
Agency Request Received: 26-Jun-2023
 Original Decision Date: 26-Jul-2023
 Extension Date: 13-Oct-2023
 Days Extended:
 Request Decision: Granted
 Note:

Summary (Press F2 for Full Screen)
 Granted

Open Actions

Action Name	Due Date
-------------	----------

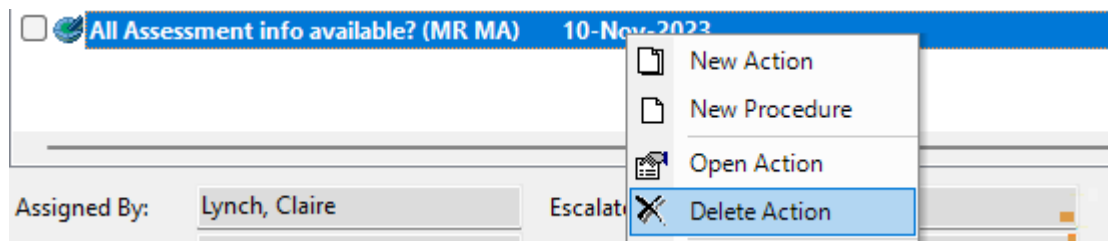
- 9. Save the IC request (Save) this will auto populate more fields
- 10. Then select ‘Close IC Request’



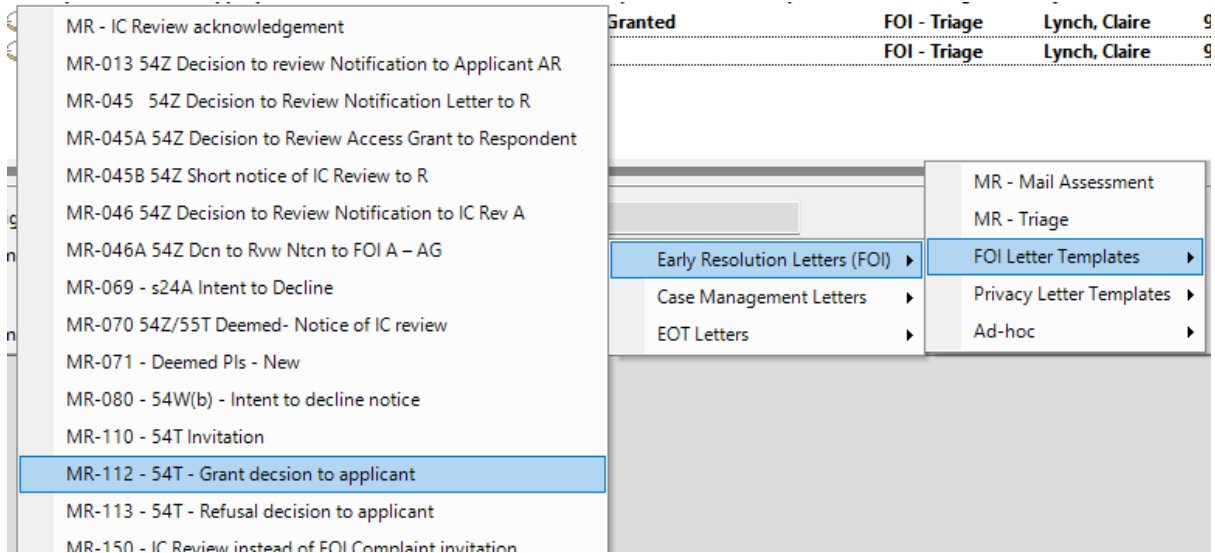
- 11. Return to original IC review MR23/XXXXX file
- 12. Complete actions up to ‘All assessment info available? (MR MA)’. Actions should reflect this:

Action	Due Date	Outcome
<input checked="" type="checkbox"/> Record case details and attach docs (M...	16-Oct-2023	
<input checked="" type="checkbox"/> Allocate to Triage Officer (MR I&T)	18-Oct-2023	
<input checked="" type="checkbox"/> Send Acknowledgement Letter (MR I&...	18-Oct-2023	
<input checked="" type="checkbox"/> Generic Application Info Complete? (M...	18-Oct-2023	Application is Complete
<input checked="" type="checkbox"/> Application Valid? (MR I&T)	18-Oct-2023	No, Out of Time
<input checked="" type="checkbox"/> Request Applicant lodge s54T Request ...	10-Nov-2023	
<input checked="" type="checkbox"/> Await s54T Request (MR OT)	29-Nov-2023	s54T Request Received
<input checked="" type="checkbox"/> Respondent's View Appropriate (MR OT)	10-Nov-2023	No Respondent's View Required
<input checked="" type="checkbox"/> Process 54T Request (MR OT)	10-Nov-2023	s54T Granted
<input checked="" type="checkbox"/> s54T Grant Notification (MR OT)	10-Nov-2023	
<input type="checkbox"/> All Assessment info available? (MR MA)	10-Nov-2023	

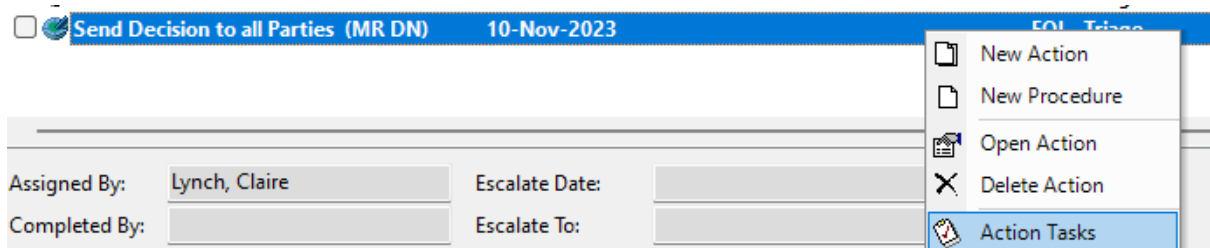
- 13. Delete final action (‘All assessment info available? (MR MA)’). Highlight action > right click > delete action.



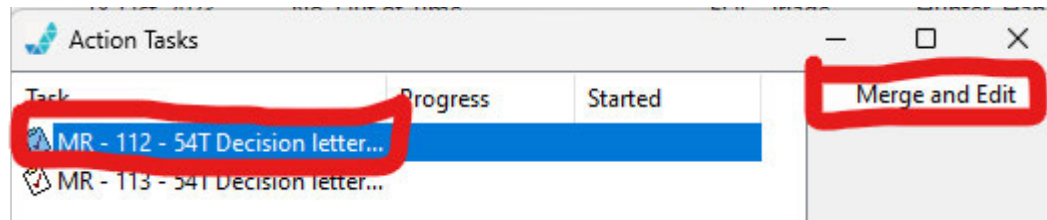
- 14. Right click > new procedure > FOI letter templates > Early resolution letters (FOI) > MR-112 – 54T – Grant decision to A



15. A new action will appear labelled 'Send Decision to all Parties (MR DN)'. Highlight action > right click > action tasks



16. An action tasks window will pop up. The grant decision letter will already be highlighted. Click 'Merge and edit'



17. A recipient's window will pop up. You de-select the respondent and only have the applicant selected. If there is a representative, only have the representative selected. Select ok:

Person	Role
s 22	Respondent Cli...
<input type="checkbox"/> FOI Contact Officer	Respondent Co...
<input type="checkbox"/> [Redacted]	Applicant Clie...
<input checked="" type="checkbox"/> [Redacted]	Represented By ...



18. Resolve will generate letter in Word

19. You will need to amend the layout of the letter, so that the 'Background' section is before the 'Decision' section. Should look like this:

I refer to your request for an extension of time to seek Information Commissioner review (IC review) of the decision deemed to be made by the s 22 under the Freedom of Information Act 1982 (the FOI Act) on Yes.

An IC review application in relation to an access refusal decision must be made within 60 days after the day notice of the IC reviewable decision was given (s 54S of the FOI Act).

On the basis that you have been given notice of the Department/Agency's decision on 26 June 2023, the last day for making an application for IC review of Department/Agency's decision was [Date].¹ Your IC review application was received 13 October 2023 and was consequently made outside of the time prescribed in s 54S of the FOI Act.

Background

On [date], you made a request to the Department under the FOI Act for:

FOI request.....

¹ (delete/complete as appropriate)

Under [3.141] of the FOI Guidelines, the processing period refers to calendar days, not business (working) days. If, however, the last day for notifying a decision that falls on a Saturday, Sunday or a public holiday, the timeframe will expire on the first business day following that day. As such the...

On 26 June 2023, the Department made a decision on your FOI request.

On 26 June 2023, the Department was deemed to have refused your FOI request under s 15AC of the FOI Act when it did not make a decision within the statutory processing period.

On 13 October 2023, you made an application for IC review of the Department/Agency's decision.

On [date], you were invited by the Office of the Australian Information Commissioner (the OAIC) to request an extension of time to apply for IC review of the Department/Agency's decision, and to provide reasons why you consider an extension of time should be granted.

On [date], you sought an extension of time and provided the following reasons:

Reasons....

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 54T of the FOI Act.

Section 54T of the FOI Act provides that the Information Commissioner may extend the time for making an IC review application if satisfied that it is reasonable in all the circumstances to do so.

I have considered the reasons provided in support of your request for an extension of time. In particular, I have considered...

- [Insert considerations]

In light of this, I have decided under s 54T of the FOI Act to grant your request.

Based on the information before the OAIC, I am satisfied that granting an extension of time under s 54T of the FOI Act to is reasonable in all the circumstances.

20. For reasons of decisions (where is says '[insert considerations]'), open our I&ER teams channel > files > triage queue > example 54T reasons.docx. Use whatever of these examples fits the decision you're working on
21. Under the 'Next Steps' heading, remove which ever paragraph doesn't apply. If this is IC review of a deemed decision, you will need to keep the paragraph that talks about preliminary inquiries. If it is an access refusal/access grant, you will need to keep the paragraph that talks about assessment by a senior member of the team

Next steps

You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI Team. The assessment by a senior member of the FOI team can take 8-12 weeks and sometimes longer depending on the complexity of the issues raised in the IC review.

The OAIC will conduct preliminary enquiries with the Department regarding the status of your FOI request of . We will contact you once the Department responds to advise the next steps

22. APS 5 and above can put their name on the letter [REMINDER: If the decision is complex or sensitive, seek EL2 clearance before sending. This is more likely to occur in 'Not Granted' 54T decisions]
23. Save as a copy of the letter as a PDF on your desktop and then save and exit the letter in word. Then make sure document is checked in resolve.
24. Label document in Resolve as 'Draft 54T'
25. Create email and attach PDF from your desktop. Body of email will say:

Subject line – OAIC - MRXX/XXXX - Extension of time request under s 54T of the FOI Act

Our reference: MRXX/XXXX

Agency reference: XXXXXX

Mr/Mrs Applicants name

Represented by XXXXXX

By email:

Extension of time request under s 54T of the FOI Act

Dear XXXXX,

Thank you for your application(s) for an extension of time to apply for Information Commissioner Review (IC review) <on behalf of>.

Please find attached a decision issued under s54T of the FOI Act regarding your extension of time request.

Kind regards,

26. Send email.
27. Save copy of email to resolve
28. Label email as "54T Grant to A"

Draft 54T

OAIC - FOI DR 54T Grant to A

29. Delete all open actions in resolve
 - a. There should only be the send decisions action open from before – you can delete this otherwise it will ruin the action flo
30. Go to All Actions tab in resolve
31. Deselect the action 'Application Valid'

 Application Valid? (MR I&T) 18-Oct-2023 No, Out of Time

32. Then double click the open 'application valid' action
33. Change status to 'application is valid' and click ok

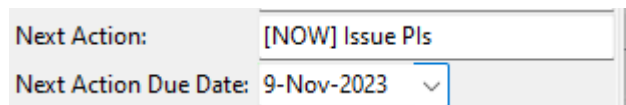
Status:

34. This will open a new action called "deemed refused under ss ..."

- 35. Complete the action depending on whether the matter needs to move deemed queue or assessments queue (Bernie, Georgia and Hannah hunter can assist with this if unsure)
- 36. Update summary window to include all possible details about request and progress of review



- 37. Change case office to move matter to correct queue
- 38. Update 'Next action' note, either:
 - a. [NOW] issue PIs; or
 - b. If moving to assessment, include exemptions that applicant is having reviewed
- 39. Next Action Due Date will be the date you moved the matter onto assessments or deemed. E.g



- 40. Ensure Issues have been added to resolve file

Issues (To add an issue - open the Agency Decision)					
Issue	Review Reason	Comments	Outcome	Primary Issue	Decision Type
access refused - 53A(a)	s15AC - no reasons			Y	Deemed Initial

Issues (To add an issue - open the Agency Decision)					
Issue	Review Reason	Comments	Outcome	Primary Issue	Decision Type
partial access refused - 53A(...)	disclose lawful methods or pr...			Y	Internal Review
partial access refused - 53A(...)	s42 - legal professional privilege			N	Internal Review
partial access refused - 53A(...)	s47C - Deliberative process - c...			N	Internal Review

- 41. Save and close resolve file

Subject line: OAIC – MR - s 54R - Withdrawal of Information Commissioner review

Our reference:

Agency/Minister reference:

Applicant Name

Agency/Minister

By email: Applicant

By email: Agency/ Minister

Withdrawal of Information Commissioner review application under s 54R of the FOI Act

Dear Parties,

I refer to the above matter.

The applicant has advised they wish to withdraw their application for Information Commissioner review.

As such, this Information Commissioner review is now closed under s 54R of the FOI Act.

Thank you for your assistance in this matter.

Kind regards,

Subject: OAIC - MRXX/XXXXX Response Required by DD Month Year- Receipt of your IC review application concerning the [Department Name]

Our reference:

Agency Reference:

By email:

Receipt of your Information Commissioner review application concerning the [Department Name]

Dear Mr/Ms/Mrs XXXXX,

We have received your request for Information Commissioner Review (IC review) dated [date].

I understand from your email that you are seeking IC review of an FOI decision made by [Department name] (the Department).

Information required

To assist in assessing your application, please provide the following:

1. A copy of the original FOI request you submitted to the Department.
2. A copy of any covering letter or email which was sent with your FOI request to the Department.
3. Any acknowledgement, automated or otherwise, which you may have received from the Department after your response was submitted
4. A copy of the FOI Decision letter
5. [If relevant, list other documents mentioned in application]

Section 54N of the *Freedom of Information Act 1982 (Cth)* (FOI Act) provides that the contents of an IC review application must include a copy of the IC reviewable decision for which an IC review is sought.

If we do not receive a response from you by **close of business on [1 week]**, your application will be finalised as invalid in accordance with s 54N of the FOI Act.

Kind regards,

Subject: OAIC – MRXX/XXXXX - Extension of time request under s 54T of the FOI Act

Our reference:

Agency reference:

By email:

Extension of time request under s 54T of the FOI Act

Dear [Mr/Mrs/Ms XXXX],

I refer to your request for an extension of time (s 54T) to seek Information Commissioner review (IC review) of the decision **deemed to be** made by the [Agency name] under the *Freedom of Information Act 1982* (the FOI Act).

As noted in our previous correspondence to you inviting your application for extension under s 54T [OR As noted in your application for IC review], your IC review application was received outside of the prescribed statutory timeframe. [IF DECISION MADE AFTER DEEMED DATE: I note that a deemed refusal decision occurred on XX XX XXXX, and you wish to seek review of the decision issued by the Agency/Department on XX XX XXXX].

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 54T of the FOI Act.

I have considered [include relevant factors]:

- the extent of the delay
- whether the applicant has shown an acceptable explanation for the delay
- whether the applicant has rested on their rights and allowed the decision-maker to believe that the matter was finally concluded or continued to make the decision-maker aware that they contest the finality of the decision
- whether the respondent agency or the general public would suffer prejudice as a result of the extension
- the merits of the substantive application, and
- whether it is fair and equitable in the circumstances to extend time.

I have also considered the reasons you provided in support of your request for an extension of time. In particular, I have considered...

- [Insert considerations]

On the basis of the information before the OAIC, I am not satisfied that granting an extension of time under s 54T of the FOI Act is reasonable in all of the circumstances.

I note that this does not prevent you from making new FOI request with the Department.

The effect of this decision is that your application for IC review is out of time and your IC review has been finalised as being invalid under s 54N of the FOI Act. I confirm that your IC review is now closed. Your review rights are set out below

If you would like to discuss this matter, I can be reached by email at foidr@oaic.gov.au. Please quote the reference number at the top of this email in all correspondence.

Review rights

Judicial review

If you disagree with the OAIC's decision you can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner to grant an extension of time is not legally correct. You can make this application under the Administrative Decisions (Judicial Review) Act 1977.

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

An application for review must be made to the Court within 28 days of the OAIC sending the decision to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

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

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

Accessing your information

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

[Signature Block]

Subject: OAIC – Further Information Required Due DD MM Year- [Applicant name]’s Information Commissioner review application concerning the [Agency name]

Attachment: [OAIC privacy and Authority Consent Form – Feb 2024]

Our reference:

Agency Reference:

Receipt of [Applicant name]’s Information Commissioner review application concerning the [Agency name]

Dear [Representative name],

We have received your request for Information Commissioner Review (IC review) dated [XX] on behalf of the above referenced applicant.

Further Information required

[Option 1] The authority provided with the IC review application is insufficient as it is limited to providing you authority to lodge the original FOI request on behalf of the IC review applicant and does not extend to permitting you to lodge an IC review on their behalf.

[Option 2] You have not provided proof of authority to lodge an IC review on behalf of the IC review applicant with your application.

Please see attached authority and privacy consent form to be completed and returned **by [1 week]**. If you cannot meet this timeframe, please advise us as soon as possible.

Why we need this information

In order for the IC review application to meet the requirements of section 54L(3) of the Freedom of Information Act 1982 (Cth) (‘FOI Act’), we require evidence that the applicant has provided authority for a representative to lodge an IC review on their behalf.

If we do not receive a response from you by the due date your application will be finalised as invalid, as it does not meet the requirements of s 54L(3), and therefore is invalid under s 54N of the FOI Act.

Kind regards,

[Signature]



Assessment of Complaints process – by case category and complexity

Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
Stage 1: Intake	<p>1. Triage:</p> <p>a) Register complaint and send acknowledgment letter to Complainant.</p> <p>b) Determine if complaint is in Jurisdiction</p> <p>c) If Complainant has provided sufficient information to assess jurisdiction and complaint is:</p> <ul style="list-style-type: none"> a. out of jurisdiction (a Category 1 Complaint OOJ) -Decline under s70 b.in jurisdiction – assess whether to: <ul style="list-style-type: none"> i. conduct Preliminary Inquiries with Respondent ii. Decline ii. Investigate <p>d) If Complainant has provided insufficient information to determine jurisdiction (e.g., documents requested or agency not clearly identified as per s7(2)):</p> <ul style="list-style-type: none"> a. obtain further information from Complainant and reassess jurisdiction b. consider if Complainant requires assistance to formulate amended written complaint as per s70(3) and set reasonable timeframes for Complainant to provide amended written complaint c. If Complainant has not provided amended complaint form by due date – follow up by email, phone and letter and provide further opportunity to amend written complaint. If no response -issue intent to close – proceed to Decline d. if Complainant response indicates the complaint is out of jurisdiction(a Category 1 Complaint Out of Jurisdiction) – decline and close under s70 e. If Complainant response indicates the complaint is in jurisdiction (a Category 2-5 complaint) – proceed to assess whether to: <ul style="list-style-type: none"> i. conduct preliminary Inquiries with Respondent ii. Assessment stage 2 – whether to: <ul style="list-style-type: none"> • Defer decision whether to investigate • Decline • Investigate <p>e) If Ombudsman has transferred a complaint to the OAIC – it must be investigated:</p> <ul style="list-style-type: none"> i. if require information from Respondent - proceed to Preliminary Inquiries with Respondent below ii. if do not require information from Respondent – proceed to Assess complexity of complaint and Investigation below . <p>f) If the complaint is about the actions taken by the OAIC – proceed to Transfer to Commonwealth Ombudsman – see below</p>		<ul style="list-style-type: none"> • Acknowledgement letter xxx • Acknowledgement letter where OAIC is respondent xxxx 	
	<p>2. Transfer to the Ombudsman</p> <p>a) Identify whether to transfer complaint to the Ombudsman to avoid overlap in inquiries if satisfied the matter could be more effectively or appropriately dealt with by the Ombudsman or other agency (eg AFCA).</p> <p>b) Relevant factors and types of complaints suitable for transfer to the Ombudsman:</p>		<ul style="list-style-type: none"> • Letter to the Ombudsman transferring the FOI complaint: D2020/021428 • Letter to the Complainant advising that the FOI complaint has been transferred to the Ombudsman: D2020/021429 	



Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	<ul style="list-style-type: none"> a. Category 2 Complaint (Less Complex) about the way the OAIC has dealt with an IC Review, FOI complaint, about an OAIC employee, is a Respondent to a matter the Complainant has on foot before the AAT, Federal court or other forum b. Category 2 to 4 Complaints where the allegations raised is part of a wider grievance about an agency's actions that is either before the Ombudsman or falls in the Ombudsman jurisdiction and includes: <ul style="list-style-type: none"> i. Where the issues raised relate to other active complaints lodged with the Commonwealth Ombudsman c) Refer to Worksheet FOI Complaints – Referral to the Ombudsman under s74 of the FOI Act for process 		<ul style="list-style-type: none"> • Letter to the Respondent agency advising that the FOI complaint has been transferred to the Ombudsman: Dxxx/xxxxx 	
	<p>3.Preliminary Inquiries with Respondent</p> <p>a) Preliminary inquiries with the Respondent agency are conducted in the following circumstances:</p> <ul style="list-style-type: none"> a. Insufficient information before OAIC to determine whether to investigate or decline, including complexity of complaint b. The complaint relates to an access refusal decision and: <ul style="list-style-type: none"> i. there is no related IC Review on foot or ii. it is unclear if the Complainant has lodged an internal review with the Respondent agency and if so, the status of that internal review iii. the OAIC is aware there is an internal agency review on foot and it is unclear if the Respondent agency has completed the internal review iv. It is unclear whether the process issues related to the complaint has been rectified by the Respondent agency?? c. The complaint allegations suggest it may relate to actions not taken by a Respondent agency in the performance of its functions or exercise of powers under the FOI Act d. The complaint relates to a deemed refusal decision and: <ul style="list-style-type: none"> i. It is unclear if the statutory timeframe has expired for making a decision or ii. It is unclear if the Respondent agency has made a decision since lodgement of the OAIC complaint e. The Complainant has lodged a similar complaint with another agency(?) <p>b) Process for conducting preliminary inquiries with Respondent agency:</p> <ul style="list-style-type: none"> a. Issue s72 preliminary inquiries with Respondent agency notifying of complaint and request response <p>Consider response and whether more information is required from Complainant or Respondent agency. Once all information has been received and no further preliminary inquiries are required –proceed to</p>	<p>11.10 (Preliminary inquiries)</p>	<ul style="list-style-type: none"> • 	



Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	Assess complexity of complaint below in order to determine whether to decline or investigate			

Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
2: Assessment	<p>3. Assess complexity of complaint</p> <p>a) Assess complexity of complaint to determine whether to:</p> <ul style="list-style-type: none"> a. Investigate b. Defer decision to investigate c. Decline <p>b) A complaint must be investigated:</p> <ul style="list-style-type: none"> a. unless a ground to decline under s73 arises and b. will depend on the : <ul style="list-style-type: none"> i. complexity and seriousness of the complaint issues raised, and ii. outcomes sought by the Complainant. <p>c) A decision whether to investigate a complaint may be held in abeyance (deferred) pending the outcome of related IC Review -if there is a related IC Review on foot see below.</p> <p>d) Relevant factors and types of complaints suitable to decline under s73 – see below:</p> <p>Relevant factors and types of complaint suitable for investigation- see below.</p>			
	<p>4. Defer decision to investigate</p> <p>a) Relevant factors and types of complaints suitable to defer decision to investigate:</p> <ul style="list-style-type: none"> a. The complaint is a Category 2-4 complaint and b. the issues and outcomes sought are merits review related and more effectively dealt with via IC Review and c. There is a related IC Review on foot. <p>b) Reassess whether to investigate on completion of IC Review – proceed to</p>	<p>11. 5(Relationship with IC Reviews) 11.11 (Deciding not to investigate)</p>		

Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	<p>5. Decline</p> <p>a) Relevant factors and types of complaint suitable to decline under s73:</p> <ul style="list-style-type: none"> a. The complaint is a Category 2-4 type of complaint and does not meet the threshold requirements of a Category 5 or 5.1 complaint – i.e., issues not serious, systemic or in the public interest. b. Section 73(b) -the Category 2-4 complaint issues and outcomes sought are merits review related and more effectively dealt with via IC Review and: <ul style="list-style-type: none"> i. There is a related IC Review on foot in relation to the complaint issues and outcomes raised ii. In addition to merits review issues, the complaint also raises procedural compliance issues which may be addressed by IC Review or related IC Review on foot or iii. The Complainant has not sought review from the Respondent agency or OAIC IC Review in the first instance c. In all other cases, all the information before the OAIC indicates another ground under s73 arises: <ul style="list-style-type: none"> iv. S73(a) – the action is not taken by the agency in the performance of the agency’s functions v. S73(c) the Complainant has a right to complain to another body, has not exercised that right, and is reasonable for the Complainant to exercise that right vi. S73(d) the Complainant has complained to the respondent agency and the respondent agency is dealing with the complaint and not had an adequate opportunity to deal with the complaint vii. The complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith viii. S73(f) – the Complainant does not have a sufficient interest in the subject matter of the complaint. 	<p>11. 5(Relationship with IC Reviews)</p> <p>11.11 (Deciding not to investigate)</p>		



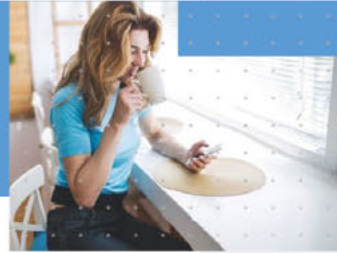
Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
	<p>6. Investigate</p> <p>a) Identify if the complaint meets the threshold requirements warranting investigation</p> <p>b) Relevant factors and types of complaint suitable for investigation include:</p> <ul style="list-style-type: none"> a. the complaint has been referred to the OAIC by the Ombudsman, or b. It is a Category 2-4 complaint which meets the threshold requirements of a Category 5 complaint warranting investigation and c. The Category 2-4 issues raise systemic and/or serious procedural non-compliance issues where: <ul style="list-style-type: none"> i. There are multiple case studies raising the same issue about the agency or group of agencies : <ul style="list-style-type: none"> - this information is likely collected through the IC Review function, other FOI complaints or reported statistics indicating the allegations raised highlight serious non-compliance by the Respondent agency/agencies ii. Allegation(s) may touch on merits review function where the issue appears systemic iii. Allegations raise concerns regarding general access right to access information iv. The allegations raise novel issues and may be a lead case to address systemic issues v. The allegations highlight a recurring pattern of an agency’s non-compliance with procedural and statutory timeframes under the FOI Act and Guidelines vi. Where allegations of non-compliance with process and/or statutory timeframes lead to serious adverse outcomes for the public/complainant (e.g., breach of FOI Act or non-compliance with FOI Guidelines), and d. The risk and impact of non-compliance – the greater the risk and the greater the adverse impact on the public, the more likely that investigation is warranted e. The objects of the FOI Act, and f. The outcomes sought are more appropriately addressed by investigation, and g. Media interest 	<p>11.1-11.4 (Information Commissioner Investigations)</p> <p>11.5-11.6 (Relationship with IC reviews)</p> <p>11.7.11.8 (Power to investigate)</p>	<ul style="list-style-type: none"> • Assessment of FOI Complaints – Case Categories 	



Stage	Process	Guidelines	Sample letters / guidance (under review)	Notes
3: Decision	<p>7. Decline</p> <p>a) Issue intent to decline to the Complaint under relevant provision of s73, or to both the Complainant and Respondent agency where preliminary inquiries were conducted with the Respondent agency:</p> <p>a. s 73: if Complainant and Respondent agency respond, consider the responses and determine whether to proceed to close under s73 – if proceed to close, issue decline letter to both parties under s73.</p> <p>b. If parties do not respond, proceed to close under s73.</p>	<p>11. 5(Relationship with IC Reviews)</p> <p>11.11 (Deciding not to investigate)</p>	<ul style="list-style-type: none"> • 	
	<p>8. Investigate</p> <p>a) Issue notice to investigate to Complaint and Respondent with request for response from Respondent</p> <p>b) Refer to FOI Complaints – Overview of investigation process D2020/021386</p>		<ul style="list-style-type: none"> • FOI Complaints-Overview of investigation process D2020/021386 	



Australian Government
Office of the Australian Information Commissioner



March 2024

FOI complaints – Considering whether complaints are within jurisdiction

Introduction

This checklist provides guidance to review officers on how to consider whether FOI complaints are within jurisdiction. For further information, see [Part 11: Investigations and complaints | OAIC](#).

Checklist

- The application is in writing and identifies the agency against which the complaint is made (s 70(2)).
 - Note: The Information Commissioner cannot investigate a minister’s handling of FOI matters.
- The respondent is an agency or minister subject to the *Freedom of Information Act 1982* (FOI Act). To determine whether a particular body or office falls within the definition of ‘agency’, you should refer to ss 4-7 and Schedules 1 and 2 of the FOI Act as well as the [Part 2 of the Guidelines issued under s 93A of the FOI Act](#).

Exceptions:

- Australian Health Practitioner Regulation Agency (Ahpra): Under the *Health Practitioner Regulation National Law (2009)* (National Law), the *Australian Information Commissioner Act 2010* (Cth), *Freedom of Information Act 1982* (Cth), *Privacy Act 1988* (Cth) and *Ombudsman Act 1976* (Cth) apply to Ahpra, the Ahpra Board and the National Boards as modified by the Health Practitioner Regulation National Law Regulations 2018. The [National Health Practitioner Ombudsman](#) carries out the functions of the Freedom of Information Commissioner, the Privacy Commissioner and the Ombudsman under the relevant legislation, which includes oversight of Ahpra’s FOI functions.
- The applicant is complaining about an action taken by an agency under the FOI Act (s 70(1)). Examples of an action include:
 - a complaint that an agency did not provide adequate assistance to an FOI applicant to make an FOI request
 - a complaint by a third party that an agency failed to consult them before deciding to release a document

- a complaint that an agency did not make a decision on their FOI request within the applicable statutory timeframe
- a complaint alleging a conflict of interest by the decision maker.

Obligation to assist

- The OAI must give 'appropriate assistance' to anyone who wishes to complain and needs help to formulate their complaint (s 70(3)). This need may arise, for example, if a person has language or literacy difficulties or otherwise needs assistance ascertaining the scope of an agency's obligations under the FOI Act or making a complaint against an agency.

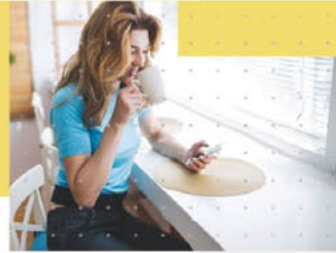
FOI Complaints involving the OAI as a respondent

-

Commented [RA1]: Please include workflow



Australian Government
Office of the Australian Information Commissioner



June 2021

FOI complaints case categories

FOI complaint case categories provide an indication of the complexity and range of issues to be determined in an FOI complaint lodged under s 70 of the *Freedom of Information Act 1982* (Cth) (FOI Act).

FOI complaint case categories are used to allocate FOI complaints efficiently and equitably, and to assist in the implementation of strategies to case manage FOI complaints.

The table below sets out the case categories and identifies the range of issues to be determined within each category.

In relation to matters categorised as category [3] matters (issues raised that touch on OAIC processes), consideration should be given to whether these matters should be transferred to the Commonwealth Ombudsman under s 74 of the FOI Act, consistent with the guidance in FOI Guidelines [11.5] and Transfer of FOI Complaints under s 74 worksheet: [D2020/021386](#)

This worksheet should be read in conjunction with the overview of FOI complaints process worksheet: [D2019/002579](#)

Category	Description	Issues
Category 1	Out of jurisdiction	Allegations relation to state agencies
[Cat 1]	May be resolved by way of closure under s 70	Allegations raised in relation to ministers Allegations raised in relation to actions not taken under the FOI Act
Category 2	Less complex	Allegations in relation to the decision by the agency to refuse access to documents
[Cat 2]	May be resolved by way of ss 73(b) and (e) or s 86	Allegations in relation to an agency's customer service about an action taken in the performance of functions, or exercise of powers under the FOI Act. Allegations in relation to compliance with the statutory processing period Allegations in relation to the consultation process Allegations in relation to s 17 Allegations relating to issues raised in a related IC review Allegations raised that are more appropriately considered under the merits review function

Commented [IN1]: Out of jurisdiction/wrong form/minister/state body etc

Commented [RA6]: Is this tied under 'Allegations raised that are more appropriately considered under the merits review function'?

Commented [IN2]: IC review more appropriate

Commented [RA3R2]: Agree

Commented [IN4]: I have added this in here in case a response to PIs suggest we should go to investigation

Commented [RA5]: May be resolved through early resolution and explanation that issues can be managed IC reviews space.

Commented [RA7]: I would note these under Category 3 – Allegations about an action taken by an agency that have not been previously investigated by the Commissioner

OAIC

Category	Description	Issues
		Complainant has or had a related IC review where the allegations raised were or would be more appropriately considered
Category 2 [Cat 2.1]	May be resolved by way of s 73(e) or s 86	<p>Allegations raised are the same or are similar to issues that have been previously investigated by the Information Commissioner and there is no utility in conducting a further investigation</p> <p>Allegations are without substance, frivolous or vexatious in nature</p> <p>Allegations have been addressed/resolved by the agency</p>
Category 3 [Cat 3]	Complex May be resolved by way of s 74	<p>Allegations raised are about:</p> <ul style="list-style-type: none"> - the processes of the OAIC - an employee of the OAIC - an action taken during the conduct of an OAIC IC process <p>Complainant has a matter on foot in the AAT or Federal court where the OAIC is the respondent</p>
Category 4 [Cat 4]	Complex May be resolved by way of s 73 or s 86	<p>One to two allegations raised</p> <p>Allegations raised are not merits review related</p> <p>Allegations do not appear systemic in nature</p> <p>Allegations raise issues not previously investigated by the Information Commissioner</p>
Category 5 [Cat 5]	FOI complaints with systemic and significant issues More likely to be resolved by way of s 86 Notice or through the conduct of a CII	<p>Allegations appear systemic</p> <p>Multiple case studies raising the same issue</p> <p>Allegation may touch on merits review function where the issue appears systemic</p> <p>Allegations raise concerns regarding general right to access information</p> <p>Media interest</p>
Category 5.1 [Cat 5.1]		<p>Significant and systemic issues identified above and:</p> <p>Subject matter of FOI request which are the basis of the allegations are of significant public interest</p> <p>Information collected through IC review function, other FOI complaints or reported statistics indicate the allegations raised highlight significant non-compliance by the respondent agency</p>

Commented [RA8]: I would merge with Cat 2.

Commented [IN9]: Eg DHS/Home Affairs Respondent and issue and time period around the same

Commented [IN10]: Vex app where issue falls under related vex dec

Commented [RA11]: Consider whether this is an outcome, rather than an issue

Commented [IN12]: S 74 to COMBO

Commented [RA13R12]: I am more inclined to categorise these as less complex as we are not investigating, we are transferring.

Commented [IN14]: Investigate

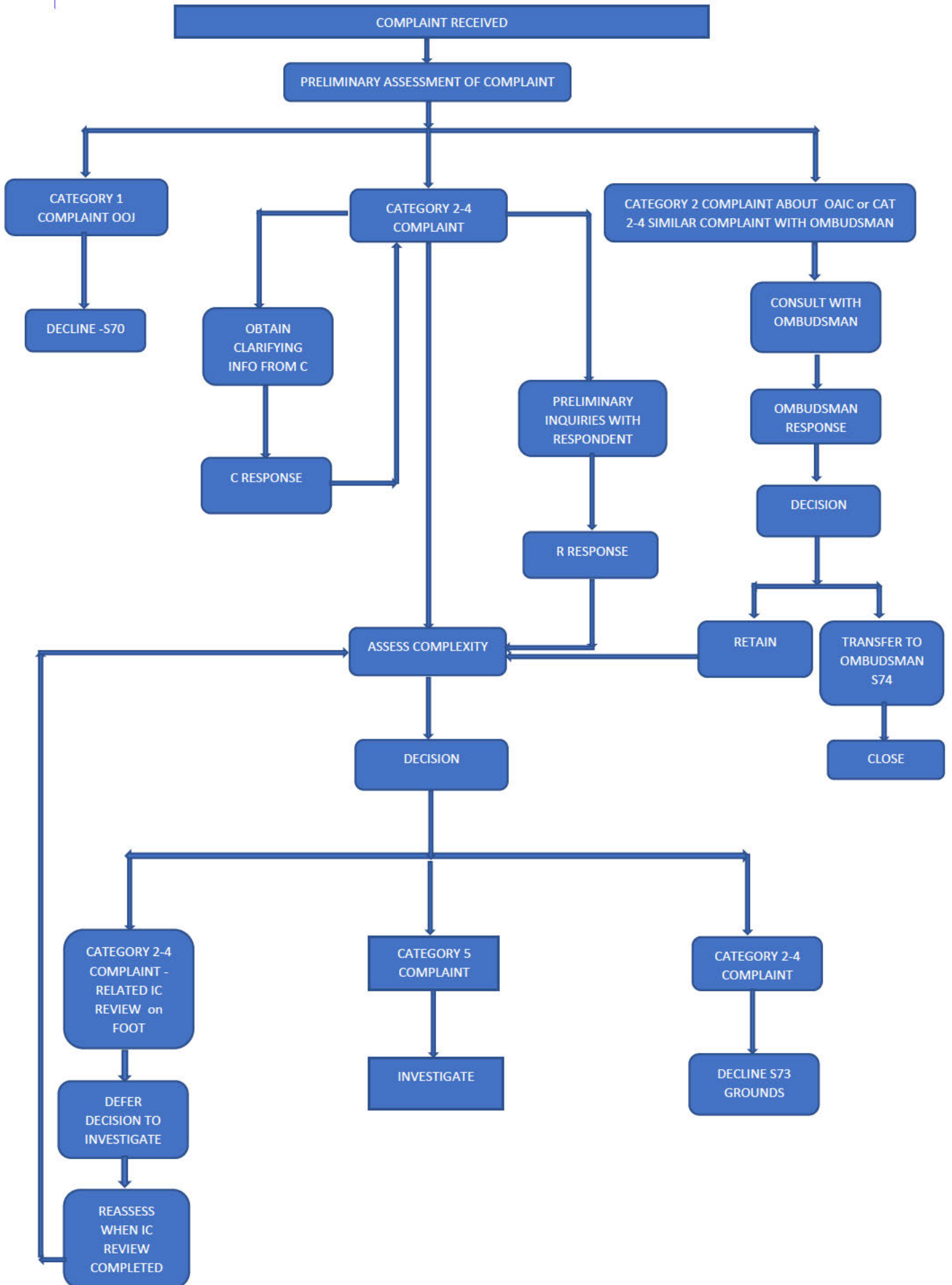
Commented [RA15]: This appears to be more Category 3?

Commented [IN16]: Investigation - systemic

Commented [IN17]: CII

Commented [RA18]: Consider wording - it may sound like it should be dealt with by the Significant and Systemic team





April 2024

FOI Complaint recommendation cases: Overview of process

This resource applies to managing FOI Complaint Recommendation Cases and should be read in conjunction with [Part 11 of the FOI Guidelines](#), the [Regulatory Action Policy](#) and [FOI Complaints: Overview of investigation process](#) resource.

Key principles

- The Information Commissioner can investigate under Part VIIB of the FOI Act agency actions relating to the handling of FOI matters. This involves investigating complaints received from complainants (s 70) as well as conducting own motion investigations (s 69(2)).
- The complaints process set out in Part VIIB is primarily intended to deal with the manner in which agencies handle FOI requests and procedural compliance matters.
- The FOI Act sets out certain rules that apply to the conduct of the Information Commissioner's complaint investigations and Commissioner initiated investigations. The guiding principle is that an investigation shall be conducted in private and in the way the Information Commissioner considers fit (s 76(1)).
- On completing an investigation, the Information Commissioner must provide a 'notice on completion' to the agency and to the complainant (if there is one) (s 86).
- The Information Commissioner's notice must include the investigation results, the investigation recommendations (if any), and the reasons for those results and any recommendations (s 86(2)).
- In addition to including opinions, conclusions or suggestions in a notice on completion, the Information Commissioner may also make 'formal recommendations to the respondent agency that the Information Commissioner believes that the agency ought to implement' (s 88).
- If the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement a formal recommendation, the Information Commissioner may issue a written 'implementation notice' requiring the agency to provide within a specified time particulars of any action the agency will take to implement the Information Commissioner's recommendations (s 89).

FOI Complaint Recommendation Case Process

Stage	Actions
Registration	<ol style="list-style-type: none"> 1. When finalising an FOI complaint, the case Officer will be prompted to record whether any recommendations have been made by the FOI/Information Commissioner. If there has been recommendations made, Resolve will automatically raise a new case type called a 'Recommendation case'.¹ 2. Once a 'Recommendation case has been raised, the Case Officer is to ensure that the Recommendation case file has been x-referenced with the original complaint and add the s 86 Notice to the documents tab of the Recommendation case file. 3. Case Officer to complete triage process including updating any relevant fields on Resolve file. 4. Case Officer to allocate the Resolve Recommendation case file to 'FOI Complaints – Rec' Resolve queue. 5. Director Reviews and Investigations to monitor response due date.
Awaiting agency's response to recommendations	<ol style="list-style-type: none"> 6. Once a response has been received from the agency, Director Reviews and Investigations team to assign the recommendation case to a Case Officer. 7. Case Officer to review the agency's response and provide a recommendation to Director Reviews and Investigations on whether the agency has responded to each recommendation or whether there are any outstanding issues. 8. As part of review, Case Officer to prepare a table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them
Assessment of response to recommendations	<ol style="list-style-type: none"> 9. Director Reviews and Investigations to undertake assessment and assign the matter to relevant Case Officer for next steps. 10. Discuss in collaboration with Director Reviews and Investigations team, Assistant Commissioner and FOI Commissioner (FOI Commissioner input meeting). Considerations on whether the agency has taken reasonable steps to implement the recommendations include: <ul style="list-style-type: none"> — Whether the recommendation related to a systemic issue — Whether the agency has taken any action to implement the recommendation — The investigation conclusions and the agency's actions which led to the recommendation being made — The impact on individual's right to access information if the recommendation is not implemented — Other relevant factors which may impact on an agency's ability to implement a recommendations such as technology issues, occurrence of a pandemic or machinery of government changes. 11. If satisfied with the agency response, proceed to 'Recommendation Acquittal' stage. 12. If not satisfied, proceed to 'Further information required' stage.
Recommendation Acquittal	<ol style="list-style-type: none"> 13. Case Officer to draft the acquittal notice to the Assistant Commissioner FOI outlining the action taken by the agency to implement the recommendations, and, if required, update the table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them. 14. Proceed to assign Resolve clearance action through to the Director Reviews and Investigations

¹ To close a complaint where there are no actions or identifiable workflows, create new action

Stage	Actions
	<p>15. Once the Draft has been cleared by the Director Reviews and Investigations, the case officer will seek Assistant Commissioner approval of:</p> <ul style="list-style-type: none"> - a draft letter of acquittal to the respondent - a table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them. <p>16. The Assistant Commissioner will make an assessment of acceptance of the implementation of recommendations under s 88 of the FOI Act (at the discretion/agreement with of the FOI Commissioner) and recommend the appropriate signatory (FOI Commissioner/Information Commissioner/Assistant Commissioner/Director/case officer if appropriate).</p> <p>17. Once approval obtained from FOI/Information Commissioner to acquit the recommendation case, case officer to provide acquittal notice to respondent.</p> <p>18. Case Officer closes Resolve case file.</p> <p>19. Case Officer to update Outcome of FOI investigations document to include no further action: D2021/020081 and provide to Communications team for publication.</p>
Further information	<p>20. Case Officer Draft RFI to be issued by the Assistant Commissioner.</p> <p>21. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> — Director Reviews and Investigations — Assistant Commissioner — FOI Commissioner <p>22. Once approved, Case Officer to provide RFI to agency.</p> <p>23. Director Reviews and Investigations to monitor response due date.</p> <p>24. Once response is received, update the table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them and return to ‘Assessment of response to recommendations’ stage.</p> <p>25. If satisfied with the agency response, proceed to Acquittal stage.</p> <p>26. If not satisfied, proceed to ‘Implementation notice’ stage.</p>
Implementation notice	<p>27. If FOI/Information Commissioner considers the agency’s actions to implement their recommendations is inadequate in the circumstances and decides to issue an Implementation Notice, Case Officer to draft implementation Notice to agency.</p> <p>28. Proceed to assign Resolve clearance action through the following levels:</p> <p>29. Director Reviews and Investigations</p> <p>30. Assistant Commissioner</p> <p>31. FOI/Information Commissioner</p> <p>32. Once the draft has been approved by the FOI/Information Commissioner, Case Officer to send the Implementation Notice to the agency.</p> <p>33. Case Officer to monitor response due date specified in the Implementation Notice.</p> <p>34. Once response to Implementation Notice has been received, Case Officer to assess the response and provide an Executive Brief to the FOI/Information Commissioner for their consideration on whether the agency’s response outlines whether the agency has taken reasonable steps to implement the investigation recommendations.</p> <p>35. If the FOI/Information Commissioner is satisfied with the agency response:</p> <ul style="list-style-type: none"> — Case Officer to send signed letter from FOI/Information Commissioner to agency. — Case Officer to finalise actions on resolve and closes Resolve file. — Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Comms for publication.

Stage	Actions
	36. If the FOI/Information Commissioner is not satisfied , proceed to ' Report to Minister ' stage.
Report to Minister	<p>37. Commence drafting a report to be provided the Attorney-General as the Responsible Minister. The report must include:</p> <ul style="list-style-type: none"> • A copy of the s 86 Notice on Completion • A copy of the Implementation Notice • The agency's response (if any) to the Implementation Notice • State that the Information Commissioner is not satisfied that the agency has taken adequate action that is adequate and appropriate in the circumstances • state the action that the Information Commissioner believes if taken by the agency, would be adequate and appropriate in the circumstances, to implement the investigation recommendations. <p>38. Once the draft has been approved by the FOI/Information Commissioner, Case Officer to provide a copy of the Draft to the responsible Minister on behalf of the Information Commissioner.</p> <p>39. Information Commissioner to contact the Head of the Agency to advise that a Report has been provided to the responsible Minister.</p> <p>40. Once the Report has been provided to the responsible Minister and it has been tabled in Parliament, Case Officer to close Recommendation Case. Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Comms for publication.</p>



April 2024

FOI Complaints: Overview of investigation process

This resource applies to investigating complaints by individuals and should be read in conjunction with [Part 11 of the FOI Guidelines](#), the [Regulatory Action Policy](#) and [FOI Complaints – Intake and early resolution process](#) resource, FOI Complaints recommendation case – Overview of process (see worksheet D2020/007324) and FOI Complaints – Transfer to Ombudsman (see worksheet D2020/021386).

Key principles

- The Information Commissioner can investigate under Part VIIB of the FOI Act agency actions relating to the handling of FOI matters. This involves investigating complaints received from complainants (s 70) as well as conducting own motion investigations (s 69(2)).
- The complaints process set out in Part VIIB is primarily intended to deal with the manner in which agencies handle FOI requests and procedural compliance matters.
- Generally, it is the Information Commissioner's view that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation for example, where the agency's practice appears to be systemic in nature.
- The FOI Act sets out certain rules that apply to the conduct of the Information Commissioner's complaint investigations and Commissioner initiated investigations. The guiding principle is that an investigation shall be conducted in private and in the way the Information Commissioner considers fit (s 76(1)).
- Section 73 of the FOI Act provides that the Information Commissioner has the discretion not to investigate or continue investigating a complaint in certain circumstances.
- Section 74 of the FOI Act provides the Information Commissioner with the discretion whether to transfer a complaint to the Commonwealth Ombudsman if satisfied that the complaint would be more effectively or appropriately dealt with by the Ombudsman.
- When making a decision to transfer a complaint to the Ombudsman, the Information Commissioner must clearly outline the steps in the decision-making process, namely:
 - Information Commissioner's level of satisfaction must be reached that a complaint could be more effectively or appropriately dealt with by the Ombudsman

FOI Complaint Investigation Process

Stage	Actions
Registration	<ol style="list-style-type: none"> 1. Register complaint and send acknowledgement letter to complainant. 2. Allocate the Resolve complaint case file to 'FOI Complaints – Assessments' Resolve queue. 3. Assign a Resolve action item to Director of Reviews and Investigations for early assessment of complaint.
Assessment	<ol style="list-style-type: none"> 4. Director Reviews and Investigations to assess the complaint to determine whether the complaint should proceed to investigation, be declined or preliminary inquiries are required. Relevant considerations to consider whether to commence investigation includes: <ul style="list-style-type: none"> – whether the practice is systemic – whether significant issues are raised – whether there has been a breach of the FOI Act or non-compliance with the FOI Guidelines – whether there has been non-compliance with the timeframes, or – the outcome sought. 5. Director Reviews and Investigations to allocate complaint to Case Officer. 6. Case Officer to review complaint file and compile evidence matrix (see worksheet: D2019/013612).
Preliminary inquiries	<ol style="list-style-type: none"> 7. Case Officer to draft a set of relevant preliminary inquiries in consultation with Director Reviews and Investigations. 8. Case Officer to provide the preliminary inquiries to the respondent agency. 9. Once a response is received, Case Officer to assess the response to preliminary inquiries and assign a Resolve action item to Director of Reviews and Investigations for re-assessment of complaint. 10. Director Reviews and Investigations to undertake an assessment and assign the matter to Case Officer for next steps. 11. Case Officer to update evidence matrix with next steps: <ul style="list-style-type: none"> – Transfer to the Commonwealth Ombudsman (s 74) Step 12 below – Decline to investigate (s 73) Steps 13 - 22 below – Proceed to investigation Step 10 below 12. Director Reviews and Investigations to Allocate the Resolve complaint case file to the relevant Resolve queue.
Transfer to Commonwealth Ombudsman (s 74)	<ol style="list-style-type: none"> 13. If transferring complaint to Commonwealth Ombudsman (see worksheet: D2020/021386 for next steps and templates).
Discretion not to investigate (s 73)	<ol style="list-style-type: none"> 14. If declining to investigate complaint, Case Officer to draft Intention to Decline (ITD) in consultation with Director Reviews and Investigations. 15. Case Officer to assign a Resolve action item to Director of Reviews and Investigations to clear draft ITD. 16. Director Reviews and Investigations to clear draft ITD and assign a Resolve action item to Case Officer to send ITD to complainant.

Stage	Actions	
	<p>17. Once approved, Case Officer to send ITD to complainant providing a response date of 2 weeks and create a Resolve action 'await response – complainant' to monitor response due date.</p> <p>18. If a response is received, Case Officer to assess the response to ITD and assign a Resolve action item to Director of Reviews and Investigations for re-assessment of complaint.</p> <p>19. Director Reviews and Investigations to undertake an assessment and assign the matter to Case Officer for next steps. Proceed to Step 24</p> <p>20. If no response is received and/or no change to preliminary assessment, then Case Officer is to draft a closure notice (s 75(3)) to complainant to be issued by the FOI Commissioner.</p> <p>21. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> - Director Reviews and Investigations - Assistant Commissioner - FOI Commissioner <p>22. Once approved, Case Officer to send closure notice to complainant.</p> <p>23. Case Officer to close Resolve complaint file.</p>	
Commencement of an investigation	<p>24. Case Officer to prepare correspondence following assessment:</p> <ul style="list-style-type: none"> - draft s 75 investigation notice to the respondent agency, and - draft commencement of investigation letter to complainant. <p>25. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> - Director Reviews and Investigations <p>26. Once draft s 75 Notice has been approved by Director Reviews and Investigations, case officer is to issue (under their signature):</p> <ul style="list-style-type: none"> - issues 75 investigation notice to the respondent agency, and - commencement of investigation letter to complainant. - . 	
Investigation	<p>27. Case Officer to monitor respondent agency's response due date to s 75 Notice.</p> <p>28. Once response received, Case Officer to assess the respondent agency's response and add the information to the evidence matrix.</p> <p>29. Case Officer to discuss next steps with Director Reviews and Investigations and/or Assistant Commissioner. Next steps include:</p> <ul style="list-style-type: none"> - request for further information from the respondent agency - request for further information from the complainant - providing a set of the respondent agency's open submissions to the complainant for their comment - recommend decline to investigate the matter further, or - proceed to s 86 Notice. 	
Section 86 Notice	<p>30. Case Officer to prepare in consultation with Director Reviews and Investigations and Assistant Commissioner:</p> <ul style="list-style-type: none"> - s 86 Notice (including any recommendations) - letter accompanying s 86 Notice to respondent agency - updated evidence matrix, and - snapshot summary. 	

Stage	Actions	
	31. Case Officer when considering whether the findings of the investigation warrant making recommendations consider the appropriateness of recommendations that:	
	– Promote cultural change	
	– Reinforce the requirement to promote the objects of the FOI Act	
	– Implement training	
	– Update FOI manuals	
	– Develop policies and procedures, and	
	– Conduct audits with a reporting timeframe of up to 6 months.	
	32. Once the s 86 Notice has been signed by the Information Commissioner:	
	– Information Commissioner or relevant delegate to call the respondent agency to advise that the matter has been finalised and advise:	
	– whether any recommendations have been made	
	– relevant next steps in the process	
	– if relevant, Case Officer on the advice of the Director Reviews and Investigations or Assistant Commissioner to advise media of the outcome of the investigation prior to sending out the s 86 Notices to the parties	
	– Case Officer to send out the s 86 Notice to the respondent agency inviting any comments within 2 weeks where recommendations have been made or 5 days where no recommendations have been made.	
	– The s 86 Notice will also advise the respondent agency that the complainant will also receive a copy after the 2 week or five day period for the respondent agency to provide comments in response and a summary of the investigation will be published on the OAIC’s website (see Outcomes of investigations summary table: D2021/020081).	
	33. Upon expiration of the 2 week or 5 day period (or once a response has been received from the respondent agency) the Director Reviews and Investigations in consultation with the Assistant Commissioner will review the respondent agency’s comments.	
	34. Where no issues are raised by the respondent agency in response to the investigation outcome, proceed to Step 40	
	35. Where the respondent agency raises concerns regarding the outcome of the investigation, Case Officer is to draft an email to the Information Commissioner advising of the adverse comments which includes:	
	– brief background outlining the complaint, parties and whether recommendations were made	
	– the comments from the respondent agency is provided as an attachment, and	
	– Information which addresses the adverse comments.	
	36. Proceed to assign Resolve clearance action through the following levels:	
	– Director Reviews and Investigations	
	– Assistant Commissioner	
	37. Once approved, Case Officer to send email to Information Commissioner.	
	38. If needed, a follow up discussion between the Director Reviews and investigations, Assistant Commissioner and FOI Commissioner, to discuss next appropriate steps.	