

<b>Recommendation or Suggestion</b>	<b>Agency response</b>	<b>Assessment of response</b>	<b>Recommendation to IC</b>
<b>Recommendation/ Suggestion</b>			



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

Our references: XXXXXX  
Your reference: XXXXXX

**XXXXX**  
Department XXXXX

By email:  
Also sent to:

**Freedom of information recommendation case under s 88 of the FOI Act – XXXXXXX**

Dear XXXXX

I refer to a complaint by XXXXX, about the XXXXXX (the agency) under the *Freedom of Information Act 1982* (the FOI Act) (OAIC reference number: XXXXX)

Information regarding notice of completion

XXXXXXXXXX

I confirm this matter is now finalised.

Please contact me on (02) 9246 0436 or via email at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) if you would like to discuss this matter.

Yours sincerely

XXXXXXXXX  
Commissioner  
Freedom of Information Commissioner

[XX XX XXXX]



**FOI Complain Assessment Matrix: CPXX/XXX**

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**Nature of IC review**

1. AA applied for an IC review regarding a decision of BB. In summary, the complaint relates to a decision by the BB to CC.
2. The complaint will involve the consideration of the following issues:
  - a)

**Relevant background**

**ANNEXURE A – Background**

Date	Events

**Investigation plan**

Issue/Allegation	FOI Act/FOI Guidelines	Considerations	Recommendations
1.			
2.			

S 86 Assessment				
<ul style="list-style-type: none"><li>• Conclusions<ul style="list-style-type: none"><li>○</li><li>○</li></ul></li><li>• Proposed recommendations<ul style="list-style-type: none"><li>○</li></ul></li></ul>				
Date s 86 case conference with DC/PD	Proceed to s 86 Notice assessed by	Date draft s 86 Notice to Director	Date draft s 86 Notice to Executive	Date s 86 Notice signed by Commissioner

E- Clearance process completed



Australian Government  
Office of the Australian Information Commissioner

Our reference: [insert reference]

[insert complainant's name]

By email: [insert complainant's email or postal address]

## Your complaint to the Office of the Australian Information Commissioner

Dear [insert complainant's salutation and surname],

I am writing in relation to your complaint about [insert name of agency] to the Office of the Australian Information Commissioner (OAIC) which you have sought to make under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act).

On [insert date], you [insert details of how the complaint was received and what the complaint is about].

On [insert date], an officer of the OAIC emailed you and stated as follows [if relevant/otherwise include details of any relevant contact with the complainant]:

[quote correspondence if needed]

On [insert date], [insert any other relevant background].

In respect of the complaint, you have sought to make under s 70 of the FOI Act, this section relevantly states:

*A person (the complainant) may complaint to the Information Commissioner about an action taken by an agency **in the performance of functions, or the exercise of powers, under this Act.** (our emphasis)*

[Include if relevant] The OAIC has attempted to give appropriate assistance to you to formulate your FOI complaint such that the substance can be properly understood as it is required to do so under s 70(3) of the FOI Act.<sup>1</sup>

In the absence of any clarification, it is not apparent that the Information Commissioner has jurisdiction under s 69(1) of the FOI Act to investigate the issues

<sup>1</sup> See s 70(3) of the FOI Act and FOI Guidelines at [11.9].



you have raised in your complaint. This is because your complaint does not meet the requirements of s 70 of the FOI Act.

For this reason, no further action will be taken in respect of your complaint you submitted to the OAIC on [insert date].

If you have any questions about this matter, please email [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

Yours sincerely

**[complaint's officer name]**

[title]

Freedom of Information

[date]



## Decision not to investigate a FOI complaint under s 73 of the *Freedom of Information Act 1982*

<b>Complainant</b>	
<b>Respondent agency</b>	
<b>Decision date</b>	
<b>OAIC reference number</b>	
<b>Agency reference number</b>	

1. As a delegate of the Information Commissioner, I am authorised to make a decision under s 73 of the *Freedom of Information Act 1982* (FOI Act) [not to investigate/not to continue to investigate] a FOI complaint about an action made under s 70 of the FOI Act.
2. I have decided not to investigate the complainant's FOI complaint under s/ss 73(b) and of the FOI Act as [insert reason – relevant decline provision ss 73(a) – (f)].

### Background

3. On [date], the complainant applied to the [agency] for access to:  
[short summary/quote only].
  4. [insert any details about relevant process or procedure]
- OR**
- [Option for this is the background is extensive and ought to be included]
5. [The key procedural steps for this FOI complaint are set out in **Annexure A**.

## Issues raised by complainant

6. The complaint raised the following issues:

- [short summary/quote only]

## Considerations and preliminary inquiries

7. In making my decision, I have had regard to the following:

- the FOI complaint of [date] [and any subsequent complaint submissions or response to preliminary inquiries of [date]]
- the [agency's] response to preliminary inquiries under s 72 of the FOI Act
- [if relevant insert details of FOI decision or internal review decision and related correspondence with the complainant/IC review/ITD/OAIC correspondence]
- the FOI Act, in particular [insert section(s)]
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [insert], and
- [if relevant] relevant case law, in particular [insert].

## Preliminary inquiries [delete if irrelevant]

8. For the purpose of making preliminary inquiries I have assessed the issues and considered the response provided by [insert the agency] In summary the complainant alleges [insert the complaint issues]

9. In the [insert the agency] response to the OAIC of [date] [summarise the agency's response]

10. The respondent's submissions are summarised at **Annexure B.**

## Section 73(a) of the FOI Act [delete if irrelevant]

11. Under s 73(a) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if I am satisfied that the complaint is not about an action taken by [insert the agency] in the performance of its functions or the exercise of its powers under this Act.

12. Relevant provisions of the FOI Act and parts of the FOI Guidelines are set out at **Annexure C.**



13. [Insert reasons why the complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act.]
14. For these reasons, I am satisfied the complaint is not about an action taken by [insert the agency] in the performance of its functions or the exercise of its powers under this Act pursuant to s 73(a) of the FOI Act.

Section 73(b) of the FOI Act [delete if irrelevant]

15. Under s 73(b) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if the complainant:
- i. has or had a right to have the action reviewed by [insert the agency], a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act; and
  - ii. has not exercised, or did not exercise, the right; and
  - iii. it would be, or would have been, reasonable for the complainant to exercise the right.

16. [Insert reasons why the other review is more appropriate than FOI complaint and note if there is an ongoing IC review/no IC review this will determine whether 11.12 or 11.5 will apply below.]

17. **[Use where an IC review is ongoing]** [delete if irrelevant] The FOI Guidelines at [11.12] states:

Where a person has applied for IC review and made an FOI complaint and the issues raised are more appropriately dealt with in the IC review, it is open to the Information Commissioner to decline to investigate the FOI complaint under s 73(b) of the FOI Act on the basis that the IC review has not had a reasonable opportunity to be conducted. The Information Commissioner may exercise this discretion prior to the commencement of an investigation or during the course of an investigation.

18. As set out above in the FOI Guidelines at [11.12], in considering whether to investigate a FOI complaint, it is open to me to decline to investigate the FOI complaint if the issues raised are more appropriately dealt with through IC review and [refer to 3 factors above under s 73(b) and note that IC review is still on foot and the IC has not yet had a reasonable opportunity to deal with the complainant's IC review application].

19. Accordingly, the issues raised in the FOI complaint regarding [insert the agency] decision are more appropriately considered through the ongoing IC review.

20. This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.12].

**OR**

21. **[Use where no IC review has been sought] [delete if irrelevant]** The FOI Guidelines at [11.5] states:

The Information Commissioner's view is that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.

22. The outcome the complainant has sought from the OAIC is to investigate the **[insert the agency]** decision to withhold documents under the FOI Act. IC review will ordinarily be the more appropriate avenue to seek review of the merits of the **[insert the agency]** FOI decision as this is not an outcome that is achievable through the FOI complaints process.

23. As set out above, in considering whether to investigate a FOI complaint, it is open to me to decline to investigate a FOI complaint if the issues raised are more appropriately dealt with through IC review and **[refer to 3 factors above under s 73(b) and deal with each of them]**.

24. Accordingly, the issues raised in the FOI complaint regarding the **[insert the agency]**'s decision to withhold documents is more appropriately considered through the IC review process pursuant to s 73(b) of the FOI Act.

25. This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.5].

26. Should the complainant wish to make an application for IC review of **[insert the agency]** decision further information about this process is available at [here](#) or further assistance please email [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

Section 73(c) of the FOI Act **[delete if irrelevant]**

27. Under s 73(c) of the FOI Act, I may decide **[not to investigate/not to continue to investigate]** a FOI complaint if:

- i. the complainant has or had a right to complain about the action to another body; and
- ii. the complainant has not exercised that right, or did not exercise the right; and
- iii. it would be, or would have been, reasonable for the complainant to exercise the right.

28. **[Insert reasons why the complainant should have complained to another body, if appropriate identify the other body and step through the 3 limbs above]**

29. Accordingly, the issues raised in the FOI complaint regarding **[information about FOI complaint]** is more appropriately considered by **[body]** pursuant to s 73(c) of the FOI Act.

## Section 73(d) of the FOI Act [delete if irrelevant]

30. Under s 73(d) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if the complainant has complained to [insert the agency], and [insert the agency]:

- i. has dealt, or is dealing, adequately with the complaint; or
- ii. has not yet had an adequate opportunity to deal with the complaint.

31. [Insert reasons why about the complaint made to the agency and step through the 2 limbs above]

32. Accordingly, I am satisfied that [insert agency] [insert correct reference to 2 limbs above] with the complaint pursuant to s 73(d) of the FOI Act.

## Section 73(e) of the FOI Act [delete if irrelevant]

33. Under s 73(e) of the FOI Act, I may decide [not to investigate/not to continue to investigate] a FOI complaint if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

34. [Insert reasons why the FOI complaint is to be declined under s 73(e) for instance, why is it lacking in substance].

35. For these reasons, I am satisfied the FOI complaint is lacking in substance pursuant to s 73(e) of the FOI Act.

## Section 73(f) of the FOI Act [delete if irrelevant]

36. Under s 73(f) of the FOI Act, I may decide not to investigate [not to investigate/not to continue to investigate] a FOI complaint if the complainant does not have a sufficient interest in the subject matter of the complaint.

37. [Insert reasons why the complainant does not have sufficient interest in the subject matter of the complaint].

38. For these reasons, I am satisfied the complainant does not have sufficient interest in the subject matter of the FOI complaint pursuant to s 73(e) of the FOI Act.

## Decision not to investigate the FOI complaint

39. In light of my findings above, I consider the discretion under s 73 [not to investigate/not to continue to investigate] the FOI complaint is enlivened in this matter. In deciding whether to exercise the discretion not to investigate the FOI complaint, I have considered that:

- the FOI complaint is [insert s 73 reasons for declining]

- the parties have not provided any additional information that alters my view above, and
- investigating the FOI complaint will not promote the objects of the FOI Act (s 3).

Finalisation of the FOI complaint and review rights

40. I confirm the FOI complaint is now finalised and the file is closed. Information about review rights is set out below.

41. Information about how the OAIC's handles a FOI complaint can be accessed on the OAIC's website [here](#).

Yours sincerely,

**[delegates name (i.e. Rocelle or Liz)]**  
[delegates position (i.e. ACFOI or FOIC)]

[date]



## Annexure B: The respondent's submissions

[Redacted content]

# Annexure C

Relevant provisions of the FOI Act

Relevant parts of the FOI Guidelines and case law



## The complainant's review rights

### Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to investigate, or not to continue to investigate, a complaint under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

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

An application for review must be made to the Court within 28 days of receiving the decision. 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](mailto:FOIDR@oaic.gov.au). More information is available on the [Access our information](#)<sup>1</sup> page on our website.

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<sup>1</sup> <https://www.oaic.gov.au/about-us/access-our-information/>.





## Decision not to investigate a FOI complaint under s 73 of the *Freedom of Information Act 1982*

<b>Complainant</b>	
<b>Respondent agency</b>	
<b>Decision date</b>	
<b>OAIC reference number</b>	
<b>Agency reference number</b>	

1. As a delegate of the Information Commissioner, I am authorised to make a decision under s 73 of the *Freedom of Information Act 1982* (FOI Act) not to investigate a FOI complaint.
2. I have decided not to investigate your FOI complaint under s 73 of the FOI Act as [insert reason – relevant decline provision ss 73(a) – (f)].

[Option for multiple provisions]

3. I have decided not to investigate your FOI complaint under s 73 of the FOI Act for the following reasons:

- I am satisfied that your FOI complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act (s 73(a));
- I am satisfied that your FOI complaint is appropriately considered through an IC review (s 73(b)),
- I am satisfied that your FOI complaint is appropriately considered through another body (s 73(c)),
- I am satisfied that the respondent has adequately dealt with your FOI complaint (s 73(d)),

- I am satisfied that your FOI complaint is lacking in substance (s 73(e))
- I am satisfied that you do not have sufficient interest in the subject matter of your FOI complaint (s 73(f)).

## Background

4. On [date], you applied to the [agency] for access to:  
[insert quote or summarise for long requests].
5. [insert any details about relevant process or procedure]  
  
**OR** if the background is extensive and set out in an attachment in the ITD – this can be used
6. [For the purposes of my decision, I do not propose to repeat the background again but instead, I refer to and rely on the background provided to you on [insert date]. A copy of this correspondence is attached.]

## Issues raised by complainant

7. The complaint raised the following issues:
  - [summarise complaint and/or]
  - [quote complainant's complaint]

## Considerations

8. In making my decision, I have had regard to the following:
  - the FOI complaint of [date]
  - the [agency's] response to your FOI complaint and submissions
  - [if relevant insert details of FOI decision or internal review decision and related correspondence with the complainant/IC review/ITD/OAIC correspondence]
  - the FOI Act, in particular [insert section(s)]
  - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [insert], and
  - [if relevant] relevant case law, in particular [insert].

## Section 73(a) of the FOI Act

Under s 73(a) of the FOI Act, I may decide not to investigate a FOI complaint if I am satisfied that the complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act.

In your FOI complaint, you said:

[quote]

[reasons]

For these reasons, I am satisfied that your FOI complaint is not about an action taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act pursuant to s 73(a) of the FOI Act.

## Section 73(b) of the FOI Act

Under s 73(b) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act and has not exercised that right when it would be reasonable to do so (s 73(b)).

In your FOI complaint, you said:

[quote]

[Use where an IC review is ongoing] The FOI Guidelines at [\[11.12\]](#) states:

Where a person has applied for IC review and made an FOI complaint and the issues raised are more appropriately dealt with in the IC review, it is open to the Information Commissioner to decline to investigate the FOI complaint under s 73(b) of the FOI Act on the basis that the IC review has not had a reasonable opportunity to be conducted. The Information Commissioner may exercise this discretion prior to the commencement of an investigation or during the course of an investigation.

As set out above, in considering whether to investigate an FOI complaint, it is open to me to decline to investigate your FOI complaint if the issues raised are more appropriately dealt with through IC review.

Accordingly, it is my preliminary assessment that the issues you have raised within your FOI complaint regarding the agency's decision are more appropriately considered through your ongoing IC review.

This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [\[11.12\]](#).

[Use where no IC review has been sought] The FOI Guidelines at [\[11.5\]](#) states:

The Information Commissioner's view is that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.

The outcome you have sought from the OAIC is to investigate the non-disclosure of the requested documents from the [agency] under the FOI Act. **The IC review process is the appropriate way to seek this outcome [OR] I consider it would be reasonable for you to exercise your right to have the actions reviewed by the Information Commissioner under Part VII of the FOI Act because the Information Commissioner may also review decisions that are deemed to have been made by an agency or minister whether the statutory timeframe was not met.**

**In contrast, the complaints process will not result in further access to the documents or a change in the Department's decision.**

As set out above, in considering whether to investigate an FOI complaint, it is open to me to decline to investigate a FOI complaint if the issues raised are more appropriately dealt with through IC review.

Accordingly, it is my preliminary assessment that the issues you have raised within your FOI complaint regarding the [the agency]'s decision to withhold documents from you are more appropriately considered through the IC review function pursuant to s 73(b) of the FOI Act.

**OR**

Accordingly, the issue you have raised within your FOI complaint regarding [information about the reviewable decision] is more appropriately considered through an IC review pursuant to s 73(b) of the FOI Act.

This is consistent with the Information Commissioner's approach as per the FOI Guidelines at [11.12].

Section 73(c) of the FOI Act

Under s 73(c) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant has or had a right to complain about the action to another body and has not exercised that right when it would be reasonable to do so (s 73(c)).

In your FOI complaint, you said:

[quote]

[insert reasons]

Accordingly the issues you have raised within your FOI complaint regarding [information about FOI complaint] is more appropriately considered by [body] pursuant to s 73(c) of the FOI Act.

Section 73(d) of the FOI Act

Under s 73(d) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant complained to the respondent agency, and the respondent agency or as not yet had an adequate opportunity to deal with the complaint.

In your FOI complaint, you said:

[quote]

[insert reasons]

Accordingly, the respondent has not had an adequate opportunity to deal with your complaint (s 73(d) of the FOI Act).

Section 73(e) of the FOI Act

Under s 73(e) of the FOI Act, I may decide not to investigate a FOI complaint if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is lacking in substance.

In your FOI complaint, you said:

[quote]

[insert reasons]

For these reasons, I am satisfied that your FOI complaint is lacking in substance pursuant to s 73(e) of the FOI Act.

Section 73(f) of the FOI Act

Under s 73(f) of the FOI Act, I may decide not to investigate a FOI complaint if the complainant does not have a sufficient interest in the subject matter of the request (s 73(f)).

In your FOI complaint, you said:

[quote]

[insert reasons]

For these reasons, I am satisfied that you do not have a sufficient interest in the subject matter of your FOI complaint pursuant to s 73(f) of the FOI Act.

1. For these reasons I have decided to exercise my discretion not to investigate your FOI complaint under s 73(X) of the FOI Act.

2. I confirm that your FOI complaint is now finalised. Information about your review rights is set out below.

Yours sincerely,

**Elizabeth Tydd**  
Freedom on Information Commissioner

[date]



## Your review rights

### Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to investigate, or not to continue to investigate, a complaint under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

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

An application for review must be made to the Court within 28 days of receiving the decision. 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](mailto:FOIDR@oaic.gov.au). More information is available on the [Access our information](#)<sup>1</sup> page on our website.

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<sup>1</sup> <https://www.oaic.gov.au/about-us/access-our-information/>.

Our reference: CPXX/XXXXX

**Mr/Mrs/Ms First Last**

By email: XXXXX

## Your Complaint about the Department of XXXXXX

Dear Mr/Mrs/Ms Last,

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

We understand that you are seeking to make an FOI request for [personal] information held by the Department of XXXXX.

An FOI complaint can only be made to the Australian Information Commissioner in respect to an action taken by a Commonwealth government agency in the performance of functions, or the exercise of powers, under s 70 of the Commonwealth *Freedom of Information Act 1982* (Commonwealth FOI Act).

The OAIC does not hold records of other government agencies. If you wish to apply for access to documents held by a State or Territory Government agency (including police records), 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 in the published here: [How to make a freedom of information request | OAIC](#).

If you wish to obtain documents from the Department of XXXXX under the FOI Act, you can email your request to [insert agency email address or webform]. More information about this process can be found here: [if possible, attach agency's webpage about making FOI requests]



As your complaint has not been made in respect to the performance of functions by a Commonwealth government agency under the Commonwealth FOI Act, your complaint cannot be considered by the Information Commissioner.

We have now finalised your complaint as invalid pursuant to s 70(1) of the Commonwealth FOI Act, as it is outside of the Commissioner's jurisdiction.

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](http://www.ombudsman.gov.au).

Kind regards,

Our reference: CPXX/XXXXX

**Mr/Mrs/Ms First Last**

By email:

**FOI Complaint about XXXXX**

Dear **Mr/Mrs/Ms Last**,

I refer to your FOI complaint received by the Office of the Australian Information Commissioner (OAIC) on **XX XXXXXX XXXX**.

We understand that you are seeking to make a complaint about **XXXXX** in relation to a request you made under the *Freedom of Information Act 1982* (FOI Act).

An FOI complaint can only be made to the Australian Information Commissioner in respect to an action taken by a Commonwealth government agency in the performance of functions, or the exercise of powers, under s 70 of the Commonwealth FOI Act.

**XXXXX** is not a Commonwealth agency for the purposes of the FOI Act and does not fall within the jurisdiction of the OAIC's regulatory powers.

As your complaint has not been made in respect to the performance of functions by a Commonwealth government agency under the Commonwealth FOI Act, your complaint cannot be considered by the Information Commissioner.

Accordingly, we have finalised your complaint as invalid pursuant to s 70(1) of the Commonwealth FOI Act, as it is outside of the Commissioner's jurisdiction.

REFER C ONTO CORRECT REGULATOR [e.g. However, noting that you still have not received a response to your request, you may be able to seek external review through 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 \(nsw.gov.au\)](#)

Please note, this complaint is now closed. If you would like to contact us to discuss this further, please quote the reference CPXX/XXXXX in any correspondence.

## 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](http://www.ombudsman.gov.au).

Kind regards,

I note in your application you have stated:

s 22  
[Redacted text block]

I refer you to the following website: [Fact Sheet - How to make a complaint about us \(nsw.gov.au\)](https://www.nsw.gov.au/fact-sheet/how-to-make-a-complaint-about-us), which outlines the process for making a complaint about the NSW Information and Privacy Commission, particularly:

*“If you are dissatisfied with the handling of your complaint by the IPC, you can contact the NSW Ombudsman, which has responsibility for dealing with complaints about conduct that is illegal, unreasonable, unjust, oppressive, discriminatory, based on improper or irrelevant grounds, based on a mistake of law or fact, or otherwise wrong.”*

Our reference: N/A  
Agency reference: N/A

**Applicant**

Email to:<address>

**Your FOI Complaint about the <Agency> (the Agency/Department)**

Dear Mr/Mrs XXsurnameXX,

We acknowledge receipt of your FOI complaint about the [Agency].

**Please note:**

- Once your application has been assessed, you will be advised by an investigations and review officer about the next steps in our complaints handling process.
- If your circumstances change, or your request has been resolved, please advise us by email as soon as practicable.
- Information about the way we handle your personal information is available in our [privacy policy](#).

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

Should you wish to follow up on this matter, please contact the OAIC by email at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au).

Yours sincerely,

[signature block]

**From:** [AGO,Rocelle](#)  
**To:** [OAIC FOI Branch Directors](#)  
**Subject:** Complaints Closure letters - s 73 - Notification to both parties [SEC=OFFICIAL]  
**Date:** Thursday, 2 May 2024 12:53:48 PM  
**Importance:** High

---

Dear colleagues

In closing matters under s 73, please ensure that the decision letter is sent to both parties at the time of notification, in one email.

The email can simply state:

Dear parties

Please find attached a decision to decline to investigate a complaint made by [insert complainant] against the [insert respondent] under s 73 under the *Freedom of Information Act 1982*.

Kind regards  
Rocelle

Our reference:

FOI reference:

**Applicant Name**

By email:

## Your FOI complaint about the Office of the Australian Information Commissioner

Dear **Mr/Ms/Mrs XX**,

Please find attached a letter in relation to your complaint about the Office of the Australian Information Commissioner.

I confirm your matter has now been transferred to the Commonwealth Ombudsman. The Ombudsman will contact you regarding this matter when they have assessed your complaint.

If you have any questions regarding this matter, please email [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

Kind Regards

**[Signature Block]**

Our reference:

FOI reference:

47E(d)

## Transfer of FOI complaint to Commonwealth Ombudsman

Dear **s 47E(d)**

Please find attached a letter confirming transfer of a complaint made by **XXcomplainant nameXX** about the Office of the Australian Information Commissioner.

Please also find attached:

- a copy of the FOI complaint
- a copy of our letter to the complainant advising of our intention to transfer the complaint to your office and request for a response
- a copy of our letter to the complainant under s74(3) of the FOI Act advising the complaint has been transferred to the Commonwealth Ombudsman.
- **[if relevant]** a copy of complainant's response to our intention to transfer the complaint to your office

Kind Regards

**[Signature Block]**



Our reference:  
Agency reference:

[Name]

By email:

Your Freedom of Information Complaint about the [agency full name]

Dear [Mr/s Surname]

The Office of the Australian Information Commissioner (OAIC) has received your **complaint** about the [agency full name] (agency abbreviated name).

You have advised that:

- [if deemed]
- You made an Freedom of Information (FOI) request with the [agency] for access to information under the FOI Act.
- You have not received a decision within the processing timeframe.
- You wish to lodge a complaint about this action.
- [or, if actual decision]
- You received an FOI decision from the [agency] on [date]
- You wish to lodge a complaint about this decision.

#### Option of IC review

It appears that the issues raised in your **complaint** may be more appropriately managed via an **IC Review** instead of a **complaint**.

The FOI commissioner may decide not to investigate a **complaint**, where the right to seek an **IC Review** is available but is not requested (s 73(b) of the FOI Act).

#### Difference between FOI **IC Reviews** and **Complaints**

<b>IC Review</b>	<b>Complaint</b>
<ul style="list-style-type: none"> <li>• Considers an FOI decision made by an Agency [or an Agency's failure to provide a decision in time (deemed refusal decision)]</li> <li>• Determines what the correct decision on the FOI request should be</li> <li>• May result in an FOI decision being changed (e.g. providing further access to documents)</li> </ul>	<ul style="list-style-type: none"> <li>• Investigates the actions of an Agency relevant to FOI Act powers and functions</li> <li>• Cannot achieve a change of decision on your FOI request/s if you are unhappy with the decision</li> </ul>

#### Action Required

Please respond to this email by [XXXX] to confirm how you wish to proceed.

1. If you require an IC review and do not require a separate complaint, please reply to this email stating:

“I require an IC review. I no longer require a complaint”.

2. If you require an IC review and continue to also require a complaint, please reply to this email stating:

“I require an IC review’ [and provide further information regarding the specific actions of the Agency that your complaint relates to].

3. If you do not require an IC review of the [Agency]’s decision [or Agency]’s failure to provide a decision in time (deemed refusal)], please reply to this email stating:

‘I do not seek IC review’ [and provide further information regarding the specific actions of the Agency that your complaint relates to].

4. [If relevant] Please note, as the [Department] made a [deemed refusal] decision on XX XXXX XXXX, as such the 60 day review period to apply for IC review expired on XX XXXX XXXX.

If you require an IC review, please include a request for an extension of time to apply for IC review (s 54T of the FOI Act). Please include a brief explanation as to why you did not seek IC review before XX XXXX XXXX, and whether you were made aware of your right to seek IC review.

#### Further Information

Please note, withdrawing your complaint will not negatively affect the IC review process. If you chose to withdraw your complaint now, and at the end of the IC review process decide you are still unhappy with the way the agency handled your request, you have the option of lodging a new complaint. Complaints are not subject to statutory time limitations.

Please note, if we have not received a response from you by **XXXXX, XX XXXX XXXX**, the Information Commissioner may decide to finalise your complaint under s 73(b) of the FOI Act and you will be notified of your review rights.

When a complaint is more appropriately addressed by Privacy, particularly when access to documents has been requested from an Agency that are not governed by the FOI Act (APP 12), or FOI applicant has agreed to processing request for information under the Privacy Act (most common with DHA):

Our reference: CPXX/XXXXX

Agency reference: XXXXX

First Last Name

Representative's name and organisation of available

**By email:**

## Your [or of rep - First Last's] FOI Complaint about XXXXX Agency/Department

Dear XXXX,

I refer to your FOI complaint received by the Office of the Australian Information Commissioner (OAIC) on DD MM YYYY.

We understand that you are seeking to make a complaint about XXXXX Agency/Department in relation to a request you made under the Freedom of Information Act 1982 (FOI Act).

An FOI complaint can only be made to the Australian Information Commissioner in respect to an action taken by a Commonwealth government agency in the performance of functions, or the exercise of powers, under s 70 of the Commonwealth FOI Act.

XXXXX Agency/Department is not a Commonwealth agency for the purposes of the FOI Act and does not fall within the jurisdiction of the OAIC's regulatory powers.

As your complaint has not been made in respect to the performance of functions by a Commonwealth government agency under the Commonwealth FOI Act, your complaint cannot be considered by the Information Commissioner.

Accordingly, we have finalised your complaint as invalid pursuant to s 70(1) of the Commonwealth FOI Act, as it is outside of the Commissioner's jurisdiction.

However, XXXXX Agency/Department appears to be an organisation bound by the *Privacy Act 1988* (Cth).

The [Australian Privacy Principles](#) (the APPs) contained in the Privacy Act 1988 (Cth) set out the way many private sector organisations, including health service providers are to handle personal information.

[APP 12](#) provides individuals with a general right to access the personal information that an organization holds about them, unless an exception applies.

I confirm, where a request for access to personal information has been made in accordance with the Privacy Act, an agency must respond to the applicant within 30 days.

[if info is available - 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 XXXXX Agency/Department.

We have forwarded your correspondence onto our Privacy branch for consideration, and a member of the branch will be in contact with you separately about your complaint.

If you have any questions, please contact our Enquiries line on 1300 363 992.

I confirm this CPXX/XXXXX 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](http://www.ombudsman.gov.au).

Kind regards,

[Signature Block]

Email to Privacy branch ([DREnquiries@oaic.gov.au](mailto:DREnquiries@oaic.gov.au))

[Email subject line - Transfer of CPXX/XXXXX to Privacy]

Our reference: CPXX/XXXXX

Agency reference: XXXXX

Dear Enquiries,

We received an FOI Complaint on DD MM YYYY in relation to a request for access to personal documents held by XXXXX Agency/Department.

XXXXX 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 investigate the complaint.

We have therefore closed this as invalid.

However, XXXXX Agency/Department appears to be an organisation bound by the Privacy Act 1988, and the applicant 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 Privacy branch for consideration.

Attached is all correspondence on file.

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

Kind regards,  
[Signature Block]

## 1. RFI/ITD TO A REQUESTING DETAILS

Our reference: XXXXX

XXXXX XXXXX

By email: XXXXX

## Request for Information regarding your FOI Complaint

Dear XXXXX,

We have received your FOI complaint dated DD MM YYYY. We have attached a copy of the form you lodged for your reference.

I understand that you are making a complaint about *[enter details of complaint e.g. an FOI Request that you made which was denied]*. However, it is unclear from the application you submitted which agency your complaint relates to.

We kindly ask that you provide the following information by close of business on DAY, DD MM YYYY:

1. Confirm which agency or Department this FOI complaint relates to
2. Provide a copy of the request you originally made
3. Provide copies of any correspondence between you and the Department/Agency regarding your request, and
4. Provide further reasons as to why you are lodging your Complaint

Section 70(1) of the *Freedom of Information Act 1982 (Cth)* ('FOI Act') provides that a complaint can be made about an action taken by an agency in the performance of functions, or the exercise of powers, under the FOI Act.

Additionally, s 70(2)(b) of the FOI Act requires that an FOI complaint must identify the agency in which the complaint relates to.

As such, if we have not received a response from you by close of business on DAY, DD MM YYYY, your FOI Complaint will be finalised as invalid in accordance with s 70 of the FOI Act.

If you have any questions, please do not hesitate to contact us at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). Please ensure you include the reference CP24/01801 in all correspondence.

Kind regards,

*[if applicant has identified they require assistance include this at top of email; I note from your complaint request form that you require assistance participating in the FOI Complaint process; Could you please email us at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) or call us on 7966 929 698 to inform us of how we can provide you with assistance;]*

## 2. CLOSURE EMAILS TO A

Our reference: XXXXX

XXXXX XXXXX  
By email: XXXXX

## Request for Information regarding your FOI Complaint

Dear XXXXX,

I refer to our correspondence below and note we have not yet received a response.

Section 70(2)(b) of the FOI Act requires that an FOI complaint must identify the agency in which the complaint relates to.

We have been unable to determine which Agency or Minister your FOI Complaint relates to, and as such have finalised your complaint as invalid.

This FOI complaint is now closed.

Please note, once you have identified the Australian Government Agency or Minister you wish to make a complaint about, you can lodge a new FOI complaint here: [Information Commissioner Review Application Form](#).

### 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](http://www.ombudsman.gov.au).

Kind regards,



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

Our reference: [Insert reference number]  
[delete if not relevant] Agency reference: [Insert reference number]

[Complainant's name]

Sent by email: [email]

**Your FOI complaint about the [the agency]**

Dear [name]

I write to you in relation to your complaint about the [agency] (the agency).

A copy of your complaint is attached for your reference.

[delete if not relevant] Your complaint is in relation to the respondent 's decision of [date].

[Delete if not relevant] On [date], you also sought Information Commissioner review (IC review) in relation to the respondent's decision of [date] (OAIC reference: MRXX/XXXXX).

**The scope and outcome of your complaint**

In your complaint, you said:

[quote]

[Option 1] Accordingly, I would be grateful if you could confirm that I have correctly understood the main issues of your complaint to include:

- Eg. The delay processing your request, lack of communication, disclosure log issues etc.

Please also confirm that I have correctly understood the outcome of your complaint to be:

- 

**OR**

[Option 2] if the complainant has provided scope of complaint and further information is required use this

For the purposes of s 70(3) of the FOI Act, we require you to provide further particulars about your complaint by [2 weeks]:





- identifying the agency in respect of which the complaint is made
- whether you have previously complained to the agency about the issue and any response received
- your complaint issues (i.e. the function or power exercised by the agency under the FOI Act)
- the outcomes you seek from the complaints process, and
- any documents you wish to provide in support of your complaint.

In the absence of the above requested information, the OAIC is unable to properly understand the substance of your FOI complaint and the Information Commissioner may decide not to investigate your FOI complaint under s 73 of the FOI Act.

**[Delete if not relevant] The outcome/s you have sought where IC review may be a better option**

Complaints usually focus on how an agency has handled your FOI request or complied with other obligations under the FOI Act, rather than the decision itself. The Information Commissioner can only make non-binding recommendations as a result of a complaint which may address the issues that you have complained about, or suggestions or recommendations that the agency should implement. Therefore, you will not receive a decision and/or the documents as the outcome of a complaint.

I would be grateful if you could clarify the outcome you are seeking from the FOI complaints process. For examples of outcomes and recommendations, please see our website at [Freedom of information investigation outcomes](#) which outlines the types of recommendations the OAIC has previously made in relation to the investigation of complaints.

### **Next steps**

Information about the FOI complaints process is available on the OAIC website at [How we handle a freedom of information complaint | OAIC](#).

A response is required by **[ 2 weeks]**.

Please note, your response may be provided to the agency for their consideration.

If you have any questions about this email, I can be contacted via [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au).

Kind regards



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



**Subject line:** OAIC – CPXX/XXXXX - Response due date - **FOI complaint by [Complainant name] about the [Department/ Agency] - Agency reference: XXXX**

Our reference: CPXX/XXXXX  
Agency reference: XXXX

**FOI Contact Officer**  
**[Department/ Agency]**

By email:

**FOI complaint by [Complainant name] about the [Department/ Agency]**

Dear FOI Contact Officer

I refer to the FOI complaint made by [Complainant name] (the complainant) of [date] about the [Department/ Agency] (the agency) under s 70 of the *Freedom of Information Act 1982* (Cth).

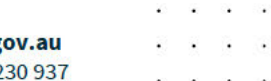
Please find attached a copy of the FOI complaint of [date].

**Preliminary inquiries**

I am conducting preliminary inquiries under s 72 of the FOI Act for the purpose of determining whether the Information Commissioner will conduct an investigation of this FOI complaint made under s 70 of the FOI Act.

To assist in this process, please provide the following with reference to the attached complaint:

1. chronology/timeline of events
2. whether the complainant has or had:
  - (i) a right to cause the action to be reviewed by the respondent agency
  - (ii) the complainant has not exercised, or did not exercise the right, and



- (iii) it would have been reasonable for the complainant to exercise that right

3. whether the complainant made a complaint to the Department directly and, if so:
  - a. please provide copies of relevant correspondence with the complainant regarding the complaint, and
  - b. please confirm whether the agency has:
    - (i) dealt with, or is dealing with the complaint and any outcome, or
    - (ii) not yet had an opportunity to deal with the complaint.
4. brief submissions in response to this FOI complaint
5. submissions addressing any information regarding changes to agency practices and procedures since the FOI complaint was received, including, information regarding changes to practices/procedures etc.

Please note that your substantive response may be shared with the complainant.

**Next steps**

A response is due by **[date]**.

The recent [ICON alert 15 March 2024](#) outlines the OAIC's approach and expectations for agencies to meet timeframes when information is requested and any extension of time requests.

If you have any questions about this email, I can be contacted via [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au).

Yours sincerely,

**[Signature block]**

OAIC reference:  
Agency reference:

**Applicant Name**  
**Agency Name**

## Decision not to investigate a FOI complaint under s 73 of the Freedom of Information Act 1982

Dear Parties,

Please find attached correspondence about the above referenced FOI complaint to the Office of the Australian Information Commissioner (OAIC).

Kind regards,

[Signature]

Subject: OAIC – CPXX/XXXXX – s 74 complaint transfer consultation

Dear Mr [REDACTED]

I write to consult you about the attached complaint the Office of the Australian Information Commissioner (OAIC) has registered under s 70 of the FOI Act. The complaint relates to actions the OAIC has taken in the performance of its functions or exercise of powers under the FOI Act.

Section 69(1) provides that the Information Commissioner must investigate, subject to the Act, a complaint made under s 70 of the FOI Act.

The power to finalise a complaint made under s 70 of the FOI Act is a non-delegable function. The Information Commissioner herself must make a decision on the outcome of an FOI complaint.

Due to the non-delegable power, the Information Commissioner considers it is inappropriate to investigate this complaint lodged under s 70 of the FOI Act.

In accordance with s 74(2) of the FOI Act, I write to request that the Commonwealth Ombudsman considers transfer of the FOI complaint pursuant to s 74 of the FOI Act.

Please see attached copy of the FOI complaint **and related documents** provided by the complainant.

I seek your response by **[1 week]** confirming whether the Commonwealth Ombudsman agrees to the transfer of the complaint. Please find attached a copy of the complaint.

Please let me know if you require any further information.

Kind regards,

**[EL2 Signature]**

**Subject:** OAIC – CPXX/XXXXX – Notice of intention to transfer to the Commonwealth Ombudsman

Our reference:

## Your FOI complaint about the Office of the Australian Information Commissioner

### Notice of intention to transfer to the Commonwealth Ombudsman

Dear [Applicant name],

I refer to your FOI complaint made under s 70 of the *Freedom of Information Act 1982* (FOI Act) about the Office of the Australian Information Commissioner (OAIC) registered by the OAIC on 30 April 2024.

#### Your complaint

In your FOI complaint you raised the following issues in relation to **the OAIC**:

- [Summary of complaint]

Section 69(1) provides that the Information Commissioner must investigate, subject to the Act, a complaint made under s 70 of the FOI Act.

The power to finalise a complaint made under s 70 of the FOI Act is a non-delegable function. The Information Commissioner herself must make a decision on the outcome of an FOI complaint.

Due to the non-delegable power, the Information Commissioner is of the view that it would be inappropriate to investigate an FOI complaint lodged under s 70 of the FOI Act in certain circumstances, including:

1. [If Relevant] whether the complaint is about actions taken by the Office of the Information Commissioner (OAIC), including how the OAIC has dealt with an:
  - Information Commissioner review
  - FOI complaint
  - vexatious applicant declaration application
  - FOI request, or
  - extension of time application
2. [If Relevant] whether there may be a perceived or actual conflict of interest in the Commissioner considering the complaint, including where:
  - the complainant has active complaints under the Privacy Act where the Information Commissioner is the respondent
  - the complaint relates to specific functions exercised by the Information Commissioner under the Privacy Act

- the complainant has active matters in other forums, including the Administrative Appeals Tribunal and Federal Court and the Information Commissioner is the respondent.

### Discretion to transfer FOI complaints to the Commonwealth Ombudsman

Under s 74 of the FOI Act, the Information Commissioner may decide not to investigate an FOI complaint and to transfer it to the Ombudsman if the complaint could more effectively or appropriately be dealt with by the Ombudsman under the *Ombudsman Act 1976*.

I have reviewed your FOI complaints. It is my intention to recommend that your FOI complaint is transferred to the Ombudsman under s 74 of the FOI Act on the basis that:

- The complaint relates to an action of the OAIC
- It would be a conflict for the OAIC to investigate its own actions

The effect of a decision to transfer your FOI complaint to the Ombudsman is that the Information Commissioner will finalise your complaint pursuant to s 74(3) of the FOI Act. The Ombudsman will then contact you in relation to your complaint.

### Next steps

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to transfer your FOI complaint to the Ombudsman.

I invite you to provide submissions in response to my intended recommendation to transfer your FOI complaints to the Ombudsman by **[1 week]**.

If you have any questions regarding this matter please email [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au) . In all correspondence please quote **[OAIC reference]**.

Yours sincerely

**[EL2 Signature Block]**





Our reference:

**Complainant Name**

By email:

**Transfer of your FOI Complaint to the Commonwealth Ombudsman**

Dear Mr/Mrs/Ms XX,

I refer to your FOI complaint made on XXDATEXX under s 70 of the *Freedom of Information Act 1982* (FOI Act) about the Office of the Australian Information Commissioner (OAIC).

**Your complaint**

Your complaint raises concerns with the actions of the OAIC in [processing an FOI request/processing an Information Commissioner Review].

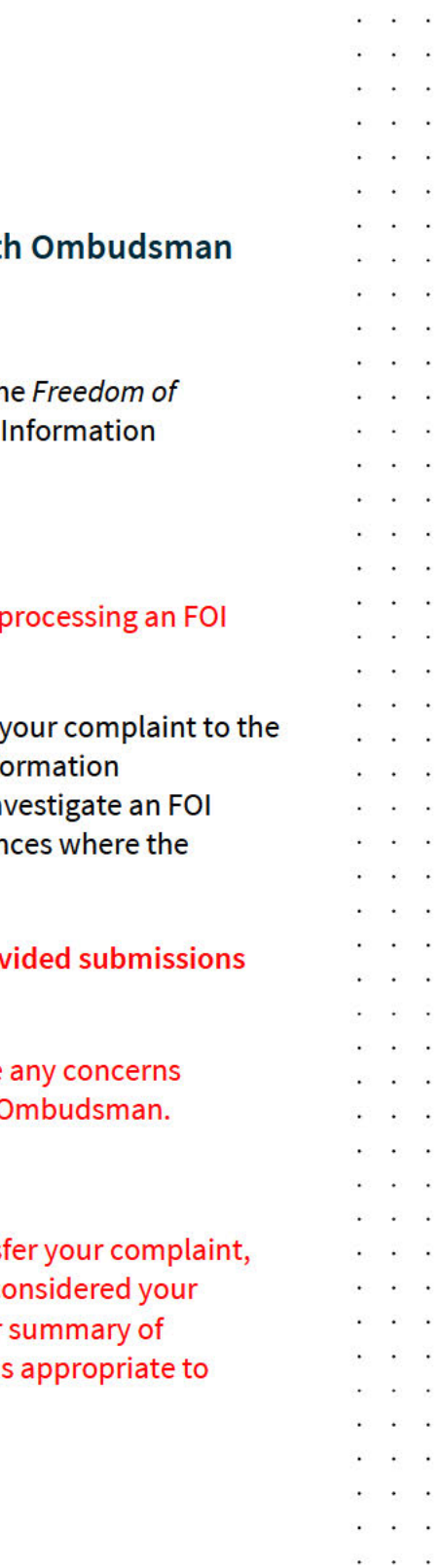
On XXDATEXX, the OAIC wrote to you of its intention to transfer your complaint to the Ombudsman under s 74 of the FOI Act. This was because the Information Commissioner is of the view that it would be inappropriate to investigate an FOI complaint lodged under s 70 of the FOI Act in certain circumstances where the complaint is about action taken by the OAIC.

**Consideration of your submissions [If applicant has provided submissions include this section]**

On XXDATEXX you have provided a response which did not raise any concerns regarding the transfer of this complaint to the Commonwealth Ombudsman.

[OR]

On XXDATEXX in response to the advice of our intention to transfer your complaint, you have provided submissions contesting the transfer. I have considered your submissions, in particular that [insert applicants contentions or summary of contentions]. I have determined in the circumstances, it remains appropriate to transfer this complaint to the Commonwealth Ombudsman.



## Decision to transfer complaint to the Commonwealth Ombudsman

I am a delegate of the Information Commissioner.

Under s 74 of the FOI Act, the Information Commissioner may decide not to investigate a FOI complaint and to transfer it to the Ombudsman if the complaint could more effectively or appropriately be dealt with by the Ombudsman under the *Ombudsman Act 1976*.

In considering whether to transfer your FOI complaint to the Ombudsman, I have had regard to the following:

- your FOI complaint
- the FOI Act, in particular ss 70 and 74
- the Guidelines issued by the Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraph 11.17.

The issue identified in the complaint matter relates to actions taken by the OAIC. It is the view of the Information Commissioner that it would be inappropriate to investigate as the Information Commissioner is the respondent.

The OAIC has consulted the Ombudsman, as required under s 74(2) of the FOI Act.

Following this consultation, I have decided to transfer your complaint to the Ombudsman under s 74(3) of the FOI Act.

The effect of this decision is to finalise your complaint with the OAIC. The file held by this office is now closed. The Ombudsman will contact you regarding this matter when they have assessed your complaint.

If you have any questions regarding this matter, please email [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). In all correspondence, please quote the reference number at the top of this letter.

Yours sincerely

**Hannah Holswilder**

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

21 August 2024

## Your Review Rights

### Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of this IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

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

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

### Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly. If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

### Accessing your information

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



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



Our reference:

47E(d)

[Redacted]

[Redacted]

### Transfer of FOI complaint to Commonwealth Ombudsman

Dear s 47E(d)

I refer to a complaint made by [Complainant name] about the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (the FOI Act), received by the OAIC on XXDATEXX (the complaint).

Section 74 of the FOI Act provides that the Information Commissioner may transfer a complaint to the Ombudsman if the Information Commissioner is satisfied that a complaint about an action under the FOI Act could be more effectively or appropriately dealt with by the Ombudsman.

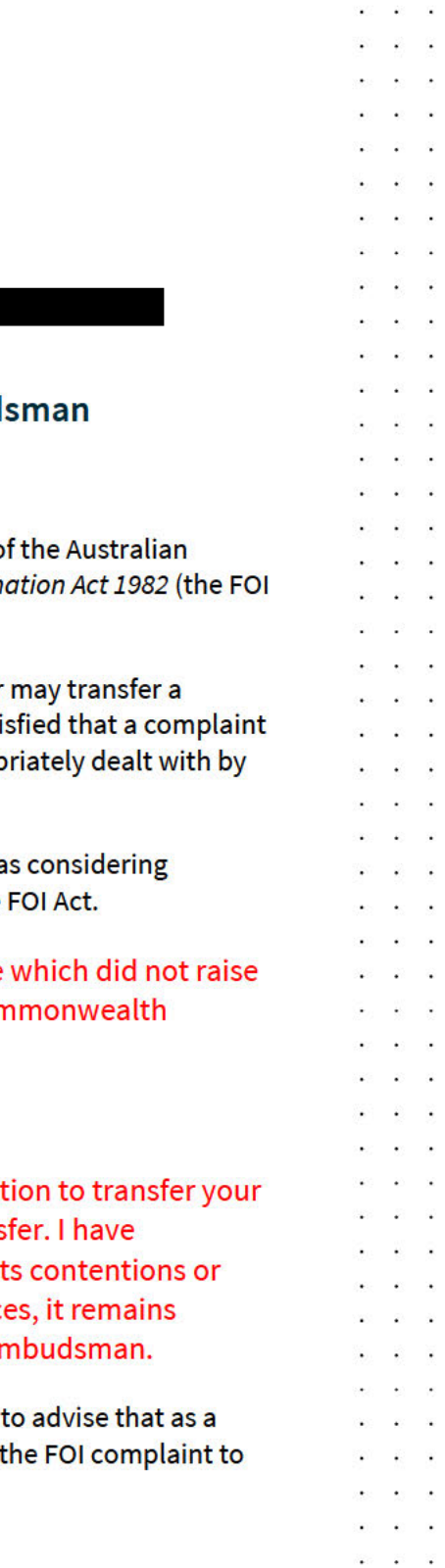
On XXDATEXX, the OAIC advised the complainant that the delegate was considering transferring the complaint to the Ombudsman pursuant to s 74 of the FOI Act.

[If relevant] On XXDATEXX the complainant provided a response which did not raise any concerns regarding the transfer of this complaint to the Commonwealth Ombudsman.

[OR]

[If relevant] On XXDATEXX in response to the advice of our intention to transfer your complaint, you have provided submissions contesting the transfer. I have considered your submissions, in particular that [insert applicants contentions or summary of contentions]. I have determined in the circumstances, it remains appropriate to transfer this complaint to the Commonwealth Ombudsman.

Following the consultation issued to your office on XXDATEXX, I write to advise that as a delegate of the Information Commissioner I have decided to transfer the FOI complaint to you pursuant to s 74 of the FOI Act.



In accordance with s 74(3)(b) of the FOI Act, I attach a copy of the complaint and related documents provided for your consideration.

I have also written to the complainant under s 74(3) of FOI Act to advise them that this complaint has been transferred. A copy of this correspondence is attached.

If you would like to discuss this matter, please contact me via email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). Please quote the reference number at the top of this letter in all correspondence.

Yours sincerely

**Hannah Holswilder**

Director

Intake and Early Resolution Team

Freedom of Information Branch

Office of the Australian Information Commissioner

21 August 2024

Dear XXXX,

Thank you for your email below.

We have registered an IC review file in response to your request, and it has been allocated the OAIC reference number MRXX/XXXX.

Noting that the issues raised in your original complaint (CPXX/XXXX) are now being addressed via the above IC review application, would you kindly respond to this email by **close of business on DD, DD MM YYYY**, and advise whether you wish to continue with this FOI complaints.

If you no longer require the FOI complaint, kindly reply to this email and confirm that you wish to “withdraw” the complaint.

If you wish to continue with the complaint, please provide more detail about why you are unsatisfied with the Department’s handling of your FOI request.

Please note, under s 73(b) of the FOI Act, the Information Commissioner may decide not to investigate a complaint if the complainant has, or had, a right to have the action reviewed by the Information Commissioner under Part VII of the FOI Act and has not exercised that right when it would be reasonable to do so (s 73(b)).

It is important to note, withdrawing this complaint will not negatively affect the IC review application. If you chose to withdraw your complaint now, and at the end of the IC review process decide you are still unhappy with the way the Department handled your request, you have the option of lodging a new complaint. Complaints are not subject to statutory time limitations.

If we do not hear a response from you by **close of business on DD, DD MM YYYY**, the OAIC may finalise this FOI complaint under s 73(b) of the FOI Act.

Please note, the IC reviews (MRXX/XXXXX) will continue to progress.

If you have any questions, please do not hesitate to contact me at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

Kind regards,



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
<b>Registration</b>	<ol style="list-style-type: none"> <li>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'.<sup>1</sup></li> <li>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.</li> <li>3. Case Officer to complete triage process including updating any relevant fields on Resolve file.</li> <li>4. Case Officer to allocate the Resolve Recommendation case file to 'FOI Complaints – Rec' Resolve queue.</li> <li>5. Director Reviews and Investigations to monitor response due date.</li> </ol>
<b>Awaiting agency's response to recommendations</b>	<ol style="list-style-type: none"> <li>6. Once a response has been received from the agency, Director Reviews and Investigations team to assign the recommendation case to a Case Officer.</li> <li>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.</li> <li>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</li> </ol>
<b>Assessment of response to recommendations</b>	<ol style="list-style-type: none"> <li>9. Director Reviews and Investigations to undertake assessment and assign the matter to relevant Case Officer for next steps.</li> <li>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"> <li>— Whether the recommendation related to a systemic issue</li> <li>— Whether the agency has taken any action to implement the recommendation</li> <li>— The investigation conclusions and the agency's actions which led to the recommendation being made</li> <li>— The impact on individual's right to access information if the recommendation is not implemented</li> <li>— 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.</li> </ul> </li> <li>11. If <b>satisfied</b> with the agency response, proceed to '<b>Recommendation Acquittal</b>' stage.</li> <li>12. If not satisfied, proceed to '<b>Further information required</b>' stage.</li> </ol>
<b>Recommendation Acquittal</b>	<ol style="list-style-type: none"> <li>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.</li> <li>14. Proceed to assign Resolve clearance action through to the Director Reviews and Investigations</li> </ol>

<sup>1</sup> 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"> <li>- a draft letter of acquittal to the respondent</li> <li>- a table (matrix) providing an overview of the recommendations and steps taken by the respondent to implement them.</li> </ul> <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: <a href="#">D2021/020081</a> and provide to Communications team for publication.</p>
<b>Further information</b>	<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"> <li>— Director Reviews and Investigations</li> <li>— Assistant Commissioner</li> <li>— FOI Commissioner</li> </ul> <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 <b>‘Assessment of response to recommendations’</b> stage.</p> <p>25. If <b>satisfied</b> with the agency response, proceed to <b>Acquittal</b> stage.</p> <p>26. If not satisfied, proceed to <b>‘Implementation notice’</b> stage.</p>
<b>Implementation notice</b>	<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 <b>satisfied</b> with the agency response:</p> <ul style="list-style-type: none"> <li>— Case Officer to send signed letter from FOI/Information Commissioner to agency.</li> <li>— Case Officer to finalise actions on resolve and closes Resolve file.</li> <li>— Case Officer to update Outcome of FOI investigations document: <a href="#">D2021/020081</a> and provide to Comms for publication.</li> </ul>

Stage	Actions
	36. If the FOI/Information Commissioner is <b>not satisfied</b> , proceed to ' <b>Report to Minister</b> ' stage.
<b>Report to Minister</b>	<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"> <li>• A copy of the s 86 Notice on Completion</li> <li>• A copy of the Implementation Notice</li> <li>• The agency's response (if any) to the Implementation Notice</li> <li>• State that the Information Commissioner is not satisfied that the agency has taken adequate action that is adequate and appropriate in the circumstances</li> <li>• 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.</li> </ul> <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>



Australian Government

Office of the Australian Information Commissioner

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

IC review applicant	«ApplicantClientTitleFirstnameSurname»
Respondent	«RespondentClientTradingName»
Decision date	
OAIC reference number	«CaseNumber»
Agency reference number	«Agency_Reference_Number»

### Decision

1. I refer to the application made by «ApplicantClientTitle» «ApplicantClientSurname» (the applicant) for Information Commissioner review (IC review) of a decision made by the «RespondentClientTradingName» («RespondentClientAbbreviation») on «Agency\_Decision\_Date» under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. As a delegate of the Information Commissioner, I am authorised to make decisions under s 54W(b) of the FOI Act.
3. Under s 54W(b) of the FOI Act, I have decided not to [undertake/continue to undertake] an IC review on the basis that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the Administrative Appeals Tribunal (AAT). A copy of the IC reviewable decision is attached). The effect of my decision is to allow the applicant to apply directly to the AAT.

### Background

4. The key procedural steps in this IC review are set out at **Attachment A**.
5. On [date], the OAIC review officer responsible for this matter, «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname», wrote to the applicant and the «RespondentClientAbbreviation» to advise of their intention

to recommend to the delegate of the Information Commissioner that this application for IC review be finalised under s 54W(b) of the FOI Act on the basis that it is in the interests of the administration of the FOI Act that the IC reviewable decision be considered by the AAT.

6. «InvestigativeOfficerFirstname» «InvestigativeOfficerSurname» invited the parties to provide reasons if they disagreed with the proposed finalisation of this IC review by [date].
7. [if relevant] Based on the information before me, the OAIC has not received a response.
8. OR [insert details of response or that no response was received]

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

9. Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.
10. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup>
11. The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.
12. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

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

13. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

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

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

14. The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.
15. The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
16. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

## Reasons for decision

17. [If relevant, set out parties' submissions here and include consideration of these submissions]
18. I have considered the issues in this matter and I am satisfied that it is in the interests of the administration of the FOI Act that the IC reviewable decision be considered by the AAT because:

- [review and update as appropriate]
- the IC review is linked to ongoing proceedings in the AAT or a court
- there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- the exemptions applied to the documents under s [x] of the FOI Act in this IC review are highly contested and there are a number of affected third parties who must be given a reasonable opportunity to present their case before a final decision is made (s 55(4)(b))
- the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
- the FOI request under review is complex or voluminous, resolving the IC review matter would require a substantial allocation of OAIC resources, and the matter could more appropriately be handled through the procedures of the AAT
- the OAIC is the primary decision-maker of the decision under review
- the material at issue relates to specific functions exercised by the Commissioner under the Privacy Act.

### *[Sample reasons]*

- *It is linked to ongoing proceedings currently before the Administrative Appeals Tribunal. It is clear from the applicant's submissions in this IC review that the applicant is seeking access to information about [provide details of proceedings].*
- *The FOI request under review is complex and voluminous and resolving this matter would require substantial allocation of OAIC resources. For example, the scope of this IC review extends to various exemptions including ss 22, 24A, 33, 42 and 47F of the FOI Act and requires consideration of 200 documents at issue.*



- *The exemption of s 33 of the FOI Act adds complexity to this matter because before the Information Commissioner can determine that a document is not an exempt document under s 33 of the FOI Act, she must first request the Inspector-General of Intelligence to appear and give evidence on the damage that would, or could reasonably be expected to be caused to the security or the Commonwealth, the defence of the Commonwealth or the international relations of the Commonwealth if access to the document were given in accordance with the request (s 55ZB of the FOI Act), and*
- *Further, in circumstances where there is a distinct possibility that, should the IC review continue, any IC review decision will be taken on appeal by either party to the AAT, I consider that it is desirable for the efficient administration of the FOI Act that the IC reviewable decision is reviewed by the AAT at first instance. I also consider that such an approach is consistent with the objects of the FOI Act.*

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

- [review and update as appropriate]
- The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states: One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.
- The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
- In accordance with the objects of the FOI Act, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost efficient method of external merit review.
- [Where the OAIC is the primary decision maker] The perceived conflict of interest in the Information Commissioner reviewing a decision made by their own agency.

20. For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to [undertake / continue to

undertake] an IC review under s 54W(b) of the FOI Act. I confirm that this IC review is now closed.

**Next steps**

21. The applicant now has 28 calendar days from the date of this notice to make an application for review of the IC reviewable decision to the AAT in accordance with s 57A of the FOI Act.
22. If either party disagrees with my decision under s 54W(b) of the FOI Act, information about your review rights is set out below.

Yours sincerely

**[Director Name]**

[Director]

Freedom of information Branch

4 September 2024