



Our reference: FOIREQ24/00508

Attention: CR

By email: foi+request-11865-d10807ba@righttoknow.org.au

Dear CR

Freedom of Information Request – FOIREQ24/00508

I am writing to advise you of my decision in response to your application for internal review of a decision made on 9 September 2024 under the *Freedom of Information Act 1982* (**FOI Act**), by the original decision maker, Ms Tahlia Pelaccia, of the Office of the Australian Information Commissioner (**OAIC**).

An internal review is a fresh decision made by a person other than the person who made the original decision (s 54C of the FOI Act). All materials available to the original decision maker have been made available to me.

Background

Scope of your request

By way of background, your FOI request of 9 August 2024 sought access to the following information:

1. *Operating procedures or similar documents that govern how an IC Review is conducted, including template documents and template emails.*
2. *Operating procedures or similar documents that govern how an FOI Complaint is conducted, including template documents and template emails.*

All documents should be the most up-to-date versions, without any editing markup.

Exclusions:

1. *Duplicate documents*
2. *FOI Guidelines and other documents published on the OAIC's website (except those on the OAIC's disclosure log)*
3. *The FOI Act and IC Reviews*
4. *Emails (except email templates)*
5. *Documents tracking IC Reviews or FOI Complaints.*

For clarity, the following is provided as guidance only on the scope and intentions of my request:

I am seeking documents similar to those released in the following FOI requests:

- FOIREQ23/00196 (excluding Document 4 as it is irrelevant to IC Reviews or FOI Complaints)
- FOIREQ2300156, including:
 - The latest version of all documents relevant to IC Reviews and FOI Complaints. All relevant documents listed under the 'Sample letters/guidance' column in Document 57 "IC review process"
- FOIREQ23/00111 (latest versions)
- FOIREQ24/00330, including:
 - The template email "Recent charges decision and invitation to make a revised decision"
 - The template Attachment to document 1 – Letter about charges

My intention is to access the updated versions of the above-mentioned documents, as well as any similar relevant documents not captured in the previous FOI requests.

On 13 August 2024, the OAIC sought to consult with you on the scope of your request as follows:

<p>‘Operating Procedures’ or ‘Operating Information’</p>	<p>We note that your request uses the term ‘operating procedures or similar documents’.</p> <p>We have interpreted this to have the same meaning as ‘operational information’ set out in section 8A of the FOI Act. ‘Operational information’ is defined as ‘information held by the agency to assist the agency to perform or exercise [its] functions or powers’, and includes ‘rules, guidelines, practices and precedents’ held by the agency to assist in making decisions. For the purposes of this request, we consider templates held by the OAIC to be operational information.</p> <p>That is, we interpret your request to be seeking policies, procedures and templates that govern how the OAIC processes IC reviews and FOI complaints.</p>
---	---

	<p>Please kindly confirm whether you agree with this interpretation of operating procedures or similar documents.'</p>
<p>Duplicate Provision of Documents</p>	<p>We note that your request expressly excludes 'FOI Guidelines and other documents published on the OAI's website' from scope, however, <u>does not</u> exclude documents already uploaded onto the disclosure log.</p> <p>Specifically, you provide the following matter numbers by way of illustration of documents you are requesting:</p> <ol style="list-style-type: none"> 1. FOIREQ23/00111 2. FOIREQ23/00156 3. FOIREQ23/00196 4. FOIREQ24/00330 <p>I note that of these requests, you were the FOI applicant in FOIREQ23/00156 and FOIREQ24/00196. This means that, in addition to these documents being uploaded onto the disclosure log and thus public information, you are already in possession of the documents located as part of this request.</p> <p>To assist in maintaining efficient practices for FOI processing, we interpret the scope of your request as excluding documents already provided to yourself, and documents already uploaded onto the disclosure log.</p> <p>This will enable the OAI to focus on locating any updated material and avoid duplicate processing of requests and duplicate provision of documents.</p>
<p>Updated Versions</p>	<p>In line with the above, our understanding of your request is that you are only seeking access to updated versions, if any, of the policies,</p>

	<p><i>procedures and templates previously released under the following matter numbers:</i></p> <ol style="list-style-type: none"><i>1. FOIREQ23/00111</i><i>2. FOIREQ23/00156</i><i>3. FOIREQ23/00196</i><i>4. FOIREQ24/00330</i> <p><i>Please kindly confirm whether you agree with this interpretation.</i></p>
--	--

That same day you replied, advising:

I agree with your first interpretation regarding operational information.

I agree with your second interpretation regarding exclusions, on the condition that you list each document excluded in this manner and provide its location. For example: "Document ABC123 is excluded as it is available on FOIREQ12/12345 Document 47." Please also release the "Schedule of Documents" for FOIREQ23/00111. If this is not possible, documents already on the disclosure log remain within the scope of my request.

I partially agree with your third interpretation. I am seeking updated versions of the policies, procedures, and templates from the previously released documents (related to IC Review and FOI Complaints). However, I am also seeking any other similar documents (if they exist) that were not included in FOIREQ23/00111, FOIREQ23/00156, FOIREQ23/00196, and FOIREQ24/00330.

Upon assessment of the amended scope, the OAIC made a decision to process your request based on the terms of your initial request, dated 9 August 2024.

On 9 September 2024, by way of original decision, you were granted access in full to 159 documents and in part to 24 documents. You made your internal view request of the initial decision on 8 October 2024. In making your application for review you have advised of the following:

My request for review is based on two main concerns:

- 1. Potentially Missing Documents:
I believe there may be documents within the scope of my request that were not released. These include:
- 55R letter template*

- 55R covering email template
- From FOIREQ24/00330: the template email of "Recent charges decision and invitation to make a revised decision" and template "Attachment to document 1 – Letter about charges"

I request a fresh search for documents that fit the scope of "policies, procedures and templates that govern how the OAIC processes IC reviews and FOI complaints."

2. Inclusion of Previously Released Documents:

The scope of my original request did not exclude documents already uploaded to the disclosure log. This means that documents released under FOIREQ23/00111, FOIREQ23/00156, FOIREQ23/00196, and FOIREQ24/00330 should be within the scope of this request.

== Request for assistance ==

In line with the above, to avoid duplicate provision of documents, I would like to know if you can process the following as part of this internal review:

- Updated versions, if any, of the policies, procedures and templates previously released under the following matter numbers:

- 1. FOIREQ23/00111*
- 2. FOIREQ23/00156*
- 3. FOIREQ23/00196*
- 4. FOIREQ24/00330*

If this is not possible as part of the internal review, please advise if a fresh FOI request would be more appropriate for these updated documents.

Request timeframe

Section 54C of the FOI Act requires me to review the original decision and make a fresh decision on behalf of the OAIC within 30 days after the day on which your internal review request was made. So, I must make a fresh decision on behalf of the OAIC no later than 7 November 2024.

Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

I have decided to vary the original decision, having identified a further 79 documents within the scope of your request, following additional searches of documents by the Freedom of Information Branch. I have decided to grant you access in full to 77 documents, and access in part to two documents.

I have grouped four of the 79 documents as 'bundles' for easier reference. These bundles pertain to materials previously released under FOIREQ23/00111, FOIREQ23/00156, FOIREQ23/00196 and FOIREQ23/00196, and are materials presently available on the OAIC's disclosure log.

Additionally, a further 14 documents were identified as draft documents not yet finalised or approved as 'operational documents', which accordingly I have decided fall outside of the scope of your request (discussed below).

Searches Undertaken

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request. The FOI Guidelines at [3.89] explain:

"Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment.

At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- *the subject matter of the documents*
- *the current and past file management systems and the practice of destruction or removal of documents*
- *the record management systems in place*
- *the individuals within an agency who may be able to assist with the location of documents, and*
- *the age of the documents."*

Following your request for review of the original decision including a request for 'a fresh search for documents that fit the scope of "policies, procedures and templates that govern how the OAIC processes IC reviews and FOI complaints,"' the following teams within the Freedom of Information Branch conducted searches for documents relevant to your request:

- the Significant Decisions team
- the FOI Reviews & Investigations team

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's document holding systems – Content Manager/TRIM and SharePoint
- OAIC's email system, Outlook, as well as
- documents saved on computer desktops

Having consulted with the relevant line areas and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request.

Reasons for decision

Material taken into account

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

- your FOI request dated 9 August 2024, and the 8 September 2024 decision made in respect of that request
- your 13 August 2024 correspondence
- your internal review request dated 9 October 2024
- the searches undertaken by the Freedom of Information Branch from 22-24 October 2024
- the FOI Act, in particular including sections 3, 11, 11A, 15, 22, 26, and 47E of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- relevant IC review decisions and case law, including *Singh v Commonwealth Ombudsman* [2024] AATA 969.

Access to edited copies with irrelevant and exempt matter deleted (section 22)

In accordance with section 22 of the FOI Act, an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to an FOI request where material has been identified as exempt or irrelevant to the request.

I have determined that FOI Act exemptions apply to this material at documents 18 and 73. Accordingly, the exempt material has been removed in accordance with s 22(1)(a)(i).

I have also identified the following material within document 18 which appears to be irrelevant or outside the scope of your request, and have accordingly made an edited version of the document in accordance with s 22(1)(a)(ii) of the FOI Act:

- information concerning IC review and FOI complaints, which appear to have been inadvertently left in the templates after use.

Additionally, I note that you have requested that all operational (or similar) documents within scope be the most up-to-date versions, excluding documents with editing markup from your request. Fourteen (14) documents identified during the document searches are drafts which have not been finalised or approved for use. These accordingly fall outside of the scope of your request. Where this has been practicable to do so, I have also removed this material in accordance with s 22(1)(a)(ii) of the FOI Act.

Section 47E(d) – Proper and efficient conduct of the OAIC’s operations

The material that I have decided is subject to conditional exemption comprises:

1. details of the OAIC’s security assets at document 18; and
2. the names and direct contact details of Commonwealth Ombudsman (COMBO) staff at document 73.

Section 47E(d) of the FOI Act concerns documents which disclose certain operations of agencies and relevantly provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraphs [6.14]-[6.16] of the FOI Guidelines explain the test “would or could reasonably be expected to”:

6.14 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

6.15 The use of the word ‘could’ is less stringent than ‘would’ and requires analysis of the reasonable expectation rather than the certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

6.16 The mere risk, allegation, possibility, or chance of prejudice does not qualify as a reasonable expectation. There must be, based on reasonable grounds, at least a real, significant or material possibility of prejudice, if they can be included without disclosing exempt material (s 26, see Part 3).

The FOI Guidelines further advise on the meaning of ‘substantial adverse effect’ at [6.18]:

*383]. The term ‘substantial adverse effect’ broadly means ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person’ (see *Re Thies and Dept of Aviation* [1986] AATA 141 [24]). The word ‘substantial’, taken in the context of substantial loss or damage, has been interpreted as ‘loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal’ [see *Tillmanns Butcheries Pty Ltd v Australasian Meat Employees Union* (1979) 27 ALR 367*

(Footnotes included)

OAIC security assets

The parts of document 18 which I have concluded are conditionally exempt under s 47E(d) concern certain security assets of the OAIC, which require robust protection to ensure the confidentiality and integrity of the information they hold.

These assets ensure that only authorised staff can access relevant information holdings, applications, and networks, in order to perform their functions and duties, established under the *Australian Information Commissioner Act 2010* (Cth). I am of the view that disclosure of the particulars of certain security assets could compromise the safety and security of the OAIC’s information holdings. Compromise of key security assets could impact productivity and lead to delays in critical workflows, which would in turn have a serious adverse impact on the functions and responsibilities of OAIC staff.

For the reasons given above, I consider the relevant parts of document 18 identified in the schedule are conditionally exempt under section 47E(d) of the FOI Act.

Ombudsman staff names and contact details

The parts of document 73, which I have concluded are conditionally exempt under s 47E(d), concern particular names and email addresses of COMBO staff which are not, as I understand it, used for public communications. As was explained to you in the 8 September 2024 decision made in respect of your original request:

Primarily, the COMBO is the oversight body for complaints made to Commonwealth Agencies or Departments. The COMBO works to assist to resolve complaints made by

investigating the process if the agency, provider or organisation does not change their decision or offer a better explanation of the decision. The role of the COMBO is to facilitate a genuine complaint process within the Commonwealth government, promoting accountability and procedural fairness.

Disclosure of names and direct email addresses could thwart the COMBO's approach of centralising complaints management through a public contact address.

It is reasonable to expect that persons wishing to voice complaints might use alternate contact details if disclosed, instead of the publicly approved contact information provided for that purpose. In *Singh v Commonwealth Ombudsman* [2024] AATA 969, Deputy President Bitton-Jones expressed this view concerning the role of the COMBO in handling public complaints (see particularly [40]).

For the reasons given above, I consider the relevant parts of document 73 identified in the schedule are conditionally exempt under section 47E(d) of the FOI Act.

As section 47E is a conditional exemption, I am also required to consider the application of a public interest test, discussed below.

Application of the public interest test – (section 11A and 11B)

If the documents are conditionally exempt, s 11(5) provides that access must be given to them unless access at that time would, on balance, be contrary to the public interest.

Section 11B(3) provides:

Factors favouring access include whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set in sections 3 and 3A)
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person to access his or her own personal information.

Bar factor (a), the promoting of the objects of the FOI Act, the other factors have no or little relevance to the conditionally exempt material in documents 18 and 73. Even then, the disclosure of that material I found conditionally exempt would shed little light or scrutiny or do little to enhance the transparency of government decision-making.

Though section 11B(4) provides factors which are not to be taken into account in making a decision (which I have had regard to), it does not further prescribe the factors against disclosure to be considered.

I have already concluded that release of information concerning the OAIC's security assets in document 18 could have a detrimental impact on the OAIC's functions and responsibilities. This is a substantial factor that weighs against disclosure, given disclosure could have substantially adverse consequences for the maintenance of effective performance of those functions and responsibilities. In my view, when considering where the balance lies, this factor outweighs the factors in favour of disclosure.

I have also concluded that release of the names and contact details in document 73 could adversely impact the COMBO's operational procedures. This is a substantial factor that weighs against disclosure, given disclosure could have substantially adverse consequences for the effective and efficient management of the COMBO's complaint handling function. In my view, when considering where the balance lies, this factor outweighs the factors in favour of disclosure.

I conclude that giving you access to this information would accordingly, on balance, be contrary to the public interest.

Other Matters

You will note from the document schedule that there are a number of documents provided to you which have come into existence after the date of your original request for access. I have decided that these documents are documents that would have otherwise fallen within the ambit of the decision under review.

I am satisfied that they are documents relevant to your request for access, and in the spirit of the pro-disclosure principle embodied in the objects of the FOI Act, I have decided to release those documents to you.

Disclosure log decision

Section 11C of the FOI Act requires agencies to publish online document released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of document

The documents are enclosed for release.

Please see the following page for information about your review rights.

Regards

The logo for the Office of the Australian Information Commissioner (OAIC) is a dark blue square with the letters "OAIC" in white, sans-serif font.

Caren Whip (she/her)

Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001

P +61 2 9942 4172 **E** caren.whip@oaic.gov.au

If you disagree with my decision

Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Review Tribunal (ART).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 30 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the ART, the Information Commissioner may decide not to undertake an IC review.

s 57A of the FOI Act provides that, before you can apply to the ART for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Or by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

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