



Ref: FOI 25/45

18 December 2024

Nir

By email: foi+request-12487-a93aab7e@righttoknow.org.au

Dear Nir,

Notice of Decision - Freedom of Information (FOI) Request FOI 25/45

The purpose of this letter is to advise you of my decision following your request to the National Anti-Corruption Commission's (Commission) for documents under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Authorised decision-maker

I am an authorised decision maker under subsection 23(1) of the FOI Act to make a decision on this FOI request.

Decision

I have decided to **grant access in full** to the document created under section 17 of the FOI Act (**Attachment A**).

Your request

I refer to your application of 5 December 2024 in which you sought access to:

[...] any and all documents showing the number of corruption referrals pending assessment that were received by the NACC in each of:

i) July 2023;

ii) August 2023;

iii) September 2023.

If a document does not exist but is able to be generated in line with section 17 of the FOI Act 1982 (Cth), please provide access to the generated document.

If possible, I would like a document in which the pending assessment are organised by reference to each month in which the referrals were received (i.e. X referrals received in July 2023 still pending assessment; Y referrals received in August 2023 still pending assessment; Z referrals received in September 2023 still pending assessment).

On 6 December 2024, an FOI officer of the Commission responded stating:

1) Informal invitation to revise scope

After preliminary consultation with the relevant team within the Commission, it appears likely that a document can be created under section 17 of the FOI Act in response to your request for the statistical data sought. However, we note that your request also makes reference to 'access to any and all documents'. We take this opportunity to informally invite you to revise your request by removing references to 'any and all documents' if this is not the intention of the request. We note that the OAIC's FOI Guidelines at [3.115] states that a broadly worded request is more likely to constitute an unreasonable diversion of resources than a request that is narrowly focused.

2) Clarification of request

With respect to your references to 'corruption referrals pending assessment', please clarify whether this is intended to mean, either:

a) 'Pending assessment' - i.e. when a case has passed through triage but has not yet been assigned to an assessment officer, or

b) 'Under assessment' - i.e. when a case has passed triage and has been assigned to an assessment officer.

[...]

On 8 December 2024, you responded stating:

1) Informal revision of scope

Thank you for confirming that it is likely that a document can be created under section 17 of the FOI Act in response to my FOI request. In the light of your email, I will revise my FOI request so that it no longer extends to "any and all documents". I am more than happy for the section 17 document to be provided to me in response to my request, so long as that document contains the that I am seeking.

2) Clarification of request

Thank you for drawing a distinction between the references that are reasonably contained within the terms "corruption referrals pending assessment". Specifically, you have noted that those terms may mean:

a) a referral that has passed through triage but has not yet been assigned to an assessment officer; and

b) a referral that has passed triage and has been assigned to an assessment officer.

I would very much appreciate being provided with data in respect of both categories (a) and (b) in respect of each of July 2023, August 2023 and September 2023.

To avoid misunderstanding, I would appreciate being provided with the following data:

July 2023

a) referrals received in July 2023 that have passed through triage but have not yet been assigned to an assessment officer; and

b) referrals received in July 2023 that have passed triage and have been assigned to an assessment officer,

August 2023

a) referrals received in August 2023 that have passed through triage but have not yet been assigned to an assessment officer; and

b) referrals received in August 2023 that have passed triage and have been assigned to an assessment officer,

September 2023

a) referrals received in September 2023 that have passed through triage but have not yet been assigned to an assessment officer; and

b) referrals received in September 2023 that have passed triage and have been assigned to an assessment officer.

On 10 December 2024, an FOI officer of the Commission acknowledged the revised scope of your request.

Documents identified within the scope of the request

A document was created under section 17 of the FOI Act matching the description of the request:

a) document was produced containing the information by using 'a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information' s17(1)(c)(i), and

b) producing the document did not substantially and unreasonably divert resources of the agency from its other operations s17(2).

Material taken into account

I have taken the following material into account in making my decision:

- the terms of your original FOI request of 5 December 2024 and revised request of 8 December 2024,
- the FOI Act (specifically section 17),
- the FOI guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, and
- responses to internal requests for searches.

My findings of fact and reasons for the decision are set out below.

Reasons for decision

Section 17 of the FOI Act provides that:

(1) Where:

(a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

(ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

(c) the agency could produce a written document containing the information in discrete form by:

(i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

(ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

After consultation with the relevant business area within the Commission it was determined that information relevant to your request was not held by the Commission in a discrete document form.

In order to provide you access to the information sought in your request, the relevant business area extracted the data from the appropriate system and created the table at **Attachment A**.

Review rights

If you are dissatisfied with my decision, you may seek review of it. Your review rights are outlined in **Attachment B**.

FOI Disclosure Log

The details of this request will be published on the Commission's website.

Further information

If you have any questions or would like to discuss this decision, please respond in one of the following ways:

Email foi@nacc.gov.au

Post FOI Coordinator
National Anti-Corruption Commission
GPO Box 605
CANBERRA ACT 2601

Phone (02) 6141 2300 (request to speak with an FOI Officer)

Yours sincerely

FOI Officer

Attachment B: Review rights

You are entitled to:

- apply to the Commission for an internal review of the decision
- apply to the Information Commissioner for a review of the decision, and/or
- make a complaint to the Information Commissioner about the conduct of an agency under the FOI Act.

Internal review

Under section 54 of the FOI Act, you may apply to the Commission for an internal review of this decision.

An application must be made in writing within 30 days of receiving this notice. No particular form is required to apply although it will assist your case if you set out your reasons for seeking a review.

If you intend to seek an internal review of this decision, please email your application to foi@nacc.gov.au.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Information Commissioner for a review of this decision.

An application for Information Commissioner review must be made in writing within 60 days of the date of the notice.

If you intend to seek an Information Commissioner review of this decision, you can apply in one of the following ways:

- [Apply online to seek an Information Commissioner review of this decision](#)
- Email: foidr@oaic.gov.au
- Post: Director of FOI Dispute Resolution
GPO Box 5218
Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>.

FOI complaints

Under section 70 of the FOI Act, you may lodge a complaint with the Information Commissioner about an action taken by an agency in the performance of functions or exercise of powers under the FOI Act.

A complaint must be made in writing and identify the agency (and NACC, if your complaint relates to the conduct of a different agency).

The Information Commissioner has discretion within section 73 of the FOI Act to investigate the complaint.

You can lodge a complaint in one of the following ways:

- [Lodge a complaint online](#)
- Email: foidr@oaic.gov.au
- Post: Director of FOI Dispute Resolution
GPO Box 5218
Sydney NSW 2001

More information about complaints is available on the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.