



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

<b>Complainant</b>	Anonymous
<b>Respondent agency</b>	Department of Infrastructure, Transport, Regional Development, Communications and the Arts
<b>Decision date</b>	28 June 2024
<b>OAIC reference number</b>	CP23/00609
<b>Agency reference number</b>	21-052

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 the complainant's FOI complaint under s 73(e) of the FOI Act as I am satisfied the FOI complaint is lacking in substance.

### Background and FOI complaint issue

3. On 28 January 2021, the complainant sought Information Commissioner (IC) review (OAIC ref MR21/00069) of the primary decision dated 30 November 2020 (Agency ref 21-052) made by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Agency).
4. On 10 March 2023, the complainant submitted an FOI complaint to the Office of the Australian Information Commissioner (the OAIC) in accordance with s 70 of the FOI Act, contesting the initial imposition of the charges imposed by the Agency in their decision (Agency ref 21-052).

## Considerations and preliminary inquiries

5. In making my decision, I have had regard to the following:
  - the FOI complaint of 3 February 2023,
  - the complainant's ongoing IC review (OAIC ref MR21/00069),
  - the revised charges decision, waiving the charge amount in full, provided to the complainant by the Agency on 8 December 2022,
  - the Agency's refund of paid charges to the complainant on 9 January 2023,
  - the Agency's submissions of 31 May 2024, in response to the FOI complaint,
  - the FOI Act, in particular ss 29, 55G and 73(e), and
  - 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 Parts 4 and 11.

### Decision not to investigate the FOI complaint

6. 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.
7. In the IC review, the complainant stated that they would like to know if they had been charged incorrectly by the Agency – this was treated by the OAIC as a FOI complaint about the Agency's actions to impose an initial charge. I have considered the substance of the complainant's concerns according to the information available to me.
8. The Agency has confirmed in its response that following notification of the IC review, it reconsidered its decision to impose charges, taking into account a then recent charges decision.<sup>1</sup> On 8 December 2022, the Agency issued a revised decision under s 55G of the FOI Act, resulting in the charge initially imposed being waived in full.
9. The Agency acknowledges that there was a delay in implementing the refund to the complainant as it was not possible for the Agency to refund the money to a pre-paid credit card and the complainant was required to provide further

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<sup>1</sup> *'ABX' and Department of Veterans' Affairs (Freedom of information)* [2022] AICmr 57 (29 July 2022) ([austlii.edu.au](http://austlii.edu.au))

details to enable that refund to occur. The Agency confirmed to the applicant that the charge had been refunded on 9 January 2023.

10. As the Agency has now waived the charge and refunded paid charges to the complainant, investigating the FOI complaint would not promote the objects of the FOI Act (s 3(4)) as the issue has been resolved.

#### Finalisation of the FOI complaint and review rights

11. I confirm the FOI complaint is now finalised and the file is closed. Information about review rights is set out below.
12. Information about how the OAIC's handles a FOI complaint can be accessed on the OAIC's website [here](#).

Yours sincerely,



**Rocelle Ago**  
Assistant Commissioner  
Freedom of Information

28 June 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 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>2</sup> page on our website.

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<sup>2</sup> <https://www.oaic.gov.au/about-us/access-our-information/>.