

From: [ENGLISH,Carl](#)
To: [BOYD,Alistair](#); [LAI,Bernie](#); [LYNCH,Claire](#)
Cc: [STRATHEARN,Tania](#); [GOEL,Dipali](#); [KARIM,Samra](#)
Subject: Management of incoming correspondence - ER queues.
Date: Thursday, 16 March 2023 11:37:00 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi everyone

I've been talking to Samra and Dipali about the management of incoming correspondence for the ER queues (deemed/ER/assessment/declines etc) in order to establish a standard approach and ensure that urgent correspondence are actioned promptly (for example s 55G decisions, queries from either party, withdrawals and EOT requests).

We have come up with the following table. Bernie, given you will be looking after the Deemed queues in the future, please let me know your thoughts; Alistair and Claire, your expertise in the Deemed area is also appreciated. Let me know whether it makes sense, achieves the purpose, suggestions etc.

Queue	Type of correspondence	Assessor note	Resolve action required
All queues	An update request	N/a	Case update action. You do not need to allocate the action.
All queues	A query from either party to the review (other than a case update). For example a question about how to comply with a notice, clarification about an RFI etc.	[NOW] Query from (A/R)	Incoming correspondence action. Please allocate the action to the relevant AD.
All queues	A s 55G revised decision (note that this may be attached to a s 54Z response or a response to preliminary inquiries.)	[NOW] Process s 55G decision.	Incoming correspondence action. Please allocate the action to the officer or the relevant AD if it is unclear who the relevant officer should be.
All queues	A withdrawal	[NOW] Process withdrawal	Incoming correspondence action. Please allocate the action to the

			relevant officer. If that officer is not working that day, please allocate to relevant AD. Alternatively processed by mailbox officer.
All queues	Miscellaneous/not sure. Eg, email transaction failure.	N/a	Incoming correspondence action. Consider urgency and whether AD or D should be sent a message on teams.
Deemed refusal queues (DHA and non-DHA)	Response from Respondent to preliminary inquiries or 54Z/55T notice.	[NOW] review R's response	N/a
	Response from the applicant to a proceed email (other than a withdrawal).	[NOW] review A's response	N/a
Decline queues (IC review and Complaints)	Response from the applicant	[NOW] review A's response	N/a
	Response from the Respondent	[NOW] review R's response	N/a
Early Resolution (not ER assessments)	Response from Respondent to a 54Z notice.	[NOW] review R's response	N/a
	Extension of time to comply with s 54Z	[NOW] EOT sought to (date)	Incoming correspondence action. Allocate action to relevant AD.

Kind regards



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FOIDR Inbox Guide

General - FOIDR- I&ER team	Type	Action	Tips
	'Notifications from R' to download docs from online portals	Download documents, save them to the respective file and file note the relevant case officer or director if it's not yet allocated	Passwords can be found in the ' <u>for Information</u> ' folder. If the documents contain 'exempt material' this must also be file noted.
	Journey Manager Notifications	Move to 'for Information'	Catherine & Peter also received copies and therefore rarely requires action
	Misdirected enquiry	Flag as enquiry- Jas will register enquiry & respond	Usually relate to -requesting docs from state based agency (not within our jurisdiction) close.
	Privacy related enquiries	Flag as privacy- Forward to Jake Barry cc enquiries	enquiries@oaic.gov.au
	Post-triage queue	If matter is in post-triage queue and requests update, add case update request & allocate Sandra, update assessor note [Case update request]	
	E-R queue	54Z responses should be saved on file, Assessor note updated to 'Review 54Z'	Try to send an ack to R if multiple emails have been sent to confirm all have been received
	Exempt Material	Save the material on file, right click to change the document properties of the email to show it is exempt material and create a file note for 'Exempt Material' indicating the date it was saved on file	Enter e.g. 'Refer Docs tab 3/2' CC

FOIDR Inbox Guide

	EOT requests	<p>If it relates to</p> <ul style="list-style-type: none"> Email from agency about <u>Notice of review/requested documents-54Z</u>- flag in FOIDR as "EOT-54Z" and leave in inbox <p>Save email on file then label 'EOT' in assessor note</p>	<p>If you can see it's an urgent request or relates to Directions under 55E or significant matters, please also file note Sandra</p>
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Registration/early triage	Type	Action	Tips
	IC review applications	Flag as "IC review" then move to Tom's F/U folder under FOIDR at the bottom of the folders	Make sure it clearly states A is seeking an IC review * if not sure, ask
	Third party enquiries	Flag -3 rd party enquiry then move to Tom's F/U folder.	<p>This assists Tom to identify what emails relate to which action</p> <p>If it related to DSS or Industry I typically ask Tom to prioritise as they call TS if a response is not received quickly</p>

Deemed queue-I&ER	Type	Action	Tips
	Ack of Pls	Save on file- no further action	
	Update re Pls	Saved on file and update the Assessor note to say 'Pls in'	
	Decision has been made	Save on file and update the Assessor Note to '[@@] Proceed'	This prompts officers handling deemed to issue the proceed email

FOIDR Inbox Guide

	Withdrawal	Flag as withdrawal- save on file- update the Assessor Note as 'withdrawal'	If you receive a withdrawal email on the last day of the month, please also flag with Tania on teams
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Reviews queue	Type	Action	Tips
	Case update request	Save the email on file, allocate "case update request" file note to Justin Lodge, and fw email to Justin Lodge then move that email to 'IC review queues inbox'	This is only for applications where the has been a case update request and it is not yet allocated to a case officer
	Responses from Agencies/Applicants	Save the email on file, update the Assessor note to 'Corro'. And file note Justin Lodge	

FOIDR Inbox Guide

Significant & Systemic queue	Type	Action	Tips
	Enquiries from Agencies/Respondents	<p>If it doesn't relate to a current S&S matter, flag as "enquiry" and tick the actual flag so Jas can action for enquiries.</p> <p>If it relates to matter in S&S File note to S&S Director- Suseela Durvasula.</p>	<p>These are typically questions about the FOI guidelines, Statistics, specific queries about FOI processing that require more than general guidance.</p> <p>Sometimes we receive case update request from agencies for all their current matters on foot</p>
	Update requests where no action has been taken	File note Director-Suseela Durvasula and update assessor note[Case update request]	
	EOT requests	Enter 'EOT' on the assessor	If you can see if it's an urgent request or relates to Directions under 55E or significant matters, please also file note Sandra

FOIDR Inbox Guide

OAIC Legal- legal related correspondence	Type	Action	Tips
	<p>New FOI requests directed to OAIC</p>	<p>Please send these to legal@oaic.gov.au .</p> <p>After sent, move email to <u>Legal to FOI requests/consults folder</u> including your sent email- so we know what's been actioned</p>	<p>These should be done asap so they can ack'ed within the 14-day timeframe</p>
	<p>Search & retrieval requests from Legal</p>	<p>Forward to Sandra for action ASAP</p> <p>After sent, flag as yellow</p> <p>move original S&R remail to <u>FOI requests/consults folder</u> and fwd email to S- so we know what's been actioned</p>	<p>Should also be done asap as we are typically only given a few days to revert</p>
	<p>Consultation emails from other agencies</p>	<p>Please send these to legal@oaic.gov.au</p> <p>Move email and sent email to <u>FOI requests/consults folder</u> so we know what's been actioned</p>	<p>Again should be done asap given the limited timeframes</p>

FOIDR Inbox Guide

Complaints & Investigations	Type	Action	Tips
	New complaints	Please flag them and leave in inbox. Jas will action & determine if it will be registered as an enquiry or complaint	
	New Vex Applications	Flag as VEX- leave in inbox. Forward to Irene Nicolaou first for next steps	
	EOT correspondence – 15AA related	Direct agency to notify of 15AA via OAIC website	We no longer accept notifications via FOIDR inbox- template wording for this
	EOT correspondence – all others	<p>If you see 15AB or 15AC responses from applicants or respondents- action them ASAP-</p> <p>Save on file and if there is an officer already allocated file note, or file note Irene Nicolaou</p>	
	Complaints- update emails	File note Irene Nicolaou	

FOIDR Inbox Guide

General Intake Functions

Type	Action	Tips
IC review applications	Move to Tom's F/U folder	
'Activity notifications' from online portals	Download documents, save them to the respective file and file note the relevant case officer or director if it's not yet allocated	Passwords can be found in the 'for Information' folder. If the documents contain 'exempt material' this must also be file noted.
Journey Manager Notifications	Move to 'for Information'	Catherine & Peter also received copies and therefore rarely requires action
Third party enquiries	Move to Tom's F/U folder	If it related to DSS or Industry I typically ask Tom to prioritise as they call TS if a response is not received quickly
Media updates from 'Media OAIC'	Move to for information folder	Flag with the team if it might be relevant to new IC reviews e.g. journalist has tweeted about FOI decision
Misdirected enquiry	Register enquiry & respond	If these are curly, I usually flag as pending and discuss with TS
Privacy related enquiries	Forward to Jake Barry	enquiries@oaic.gov.au if no longer operational
Post-triage	If applicant is in post-triage queue and requests update, file note to PN to issue 54Z notice	
E-R queue	54Z responses should be saved on file, Assessor note updated to 'Review 54Z'	
Exempt Material	Save the material on file, change the properties of the email to show it is exempt material and create a file note for 'Exempt Material' indicating the date it was saved on file	Enter e.g. 'Refer Docs tab 3/2' CC

Deemed

Type	Action	Tips
Ack of PIs	Save on file- no further action	
Update re PIs	Saved on file and update the Assessor note to say 'corro'	
Decision has been made	Save on file and update the Assessor Note to '['@@] Proceed'	This prompts officers handling deemed to issue the proceed email
Withdrawal	Save on file an update the Assessor Note as 'withdrawal'	If you receive a withdrawal email on the last day of the

FOIDR Inbox Guide

		month, please also flag with TS on teams
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Significant and systematic

Type	Action	Tips
Enquiries from Agencies/Respondents	File note to Carly Warren	These are typically questions about the FOI guidelines and Statistics. If unsure, check with PN
Update requests where no action has been taken	File note Suseela Durvasula	Check the documents tab
Emails where there has been action from I &ER	Update the Assessor note section to 'Corro'	
EOT requests	Enter 'EOT' on the assessor	If you can see if it's an urgent request or relates to Directions under 55E or significant matters, please also file not Sandra

Reviews Queue

Type	Action	Tips
Reviews Queue – Follow up email	Save the email on file, allocate file note to Justin Lodge and move the email to the 'IC review queues inbox'	This is only for applications where the has been a case update request and it is not yet allocated to a case officer
Reviews Queues- Responses from Agencies/Applicants	Save the email on file, update the Assessor note to 'Corro'.	

Complaints & Investigations

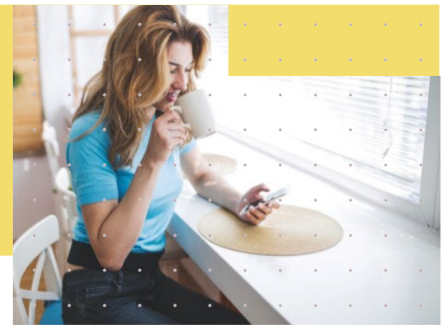
Type	Action	Tips
New complaints	Please flag them in the inbox for discussion	
New Vex Applications	Forward to SW	
EOT correspondence – 15AA related	Action or discuss with Tom Hanee	
EOT correspondence – all others	Save on file and if there is an officer already allocated file note, or file note Shelley Napper	
Complaints- update emails	File note Irene Nicolaou	

Legal related correspondence

Type	Action	Tips
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FOIDR Inbox Guide

New FOI requests	Please send these to legal@oaic.gov.au with a copy to SW	These should be done asap so they can ack'ed within the 14-day timeframe
Search & retrieval requests from Legal	Forward to SW for action	Should also be done asap as we are typically only given a few days to revert
Consultation emails from other agencies	Please send these to legal@oaic.gov.au with a copy to SW	Again should be done asap given the limited timeframes



May 2020

New IC review: Triage Process work sheet

Introduction

This checklist provides general guidance to review officers in the Intake and Early Resolution Team for the registration and triage process of IC review applications.

Checklist to assist with Registration of IC review applications

- Conduct a search on resolve, click 'Find Client' to search for the correct applicant (exercising caution with companies/directors etc. – cross reference with decision and review form)
- Enter last name of FOI applicant
- If there are no hits, check 'New Client' and enter in all possible fields (in particular contacts)
 - i. For Address, check validate and select from existing postcode, or 'Not registered' if there are no options
 - ii. Check save and check 'New Case'
- If there is a hit, open the client page for the correct person and click 'New Case' on top right-hand corner
- Select 'IC Review' or appropriate type and click ok
- Everything in orange must be completed
- Enter Review Type – be careful! This cannot be changed post selecting
 - i. Most common options: Access refusal (includes charges and amendment), access grant (when someone opposes to the release of documents)
- Method: To be determined
- Enter respondent/agency's details. Never create an agency – select from options existing
 - i. There is no need to select an individual for agency – select from options existing
 - ii. If a party is represented the review adviser should add an additional party in 'Parties' tab
- Received date: This is the date the application was received by the OAIC. The review adviser should include the method of receipt.

- Complete a google search of the FOI applicant to determine if the applicant has any media links. If so flag with supervisor to determine if sensitivity needs to be changed.
- Save the entries – This should create a case number.
- The review adviser will notice two new actions popping up:
 - i. Record case details and attach documents
 - ii. Send acknowledgment letter
- Clear categories on email with application etc. and drag onto the file on Resolve.
 - i. On outlook, put the category back on the email and move to ‘Read case’ folder
 - ii. Check off ‘Record case details’ button

Applications received via smart form

Does the IC review request include a full copy of the decision?

Section 54N(1)(b) of the FOI Act provides that in order to make a valid application for IC review a person must include a copy of the notice given under s 26 of the IC reviewable decision for which an IC review is sought.

Check that:

- the decision has been provided
- the decision is complete and that there are no missing pages or attachments
- the applicant has not sought IC review of more than one decision. If this is the case, register separate decisions

If the decision is complete, fill in the ‘Agency Decision’ tab on resolve, include decision maker ‘add issue’ and allocate to FOI IC reviews Assessment.

IC review request does not include a copy of the decision, conduct inquiries with the applicant

- In the first instance by phone. If the applicant has not provided a phone number,
- By email – See attachment A for Template email correspondence to the applicant requesting the applicant to provide the decision within one week
- Create a resolve action reminder due in 7 days
- If a decision is not provided in 7 days, draft a s 54N decision – see attachment B for Template s 54N decision and refer the draft decision to your Director for clearance
- If the decision is cleared, notify the applicant and close the IC review.

If the decision is provided,

Conduct the Triage process on resolve

- Enter in summary

- Paste template. See sample Attachment C for assessor notes entered on resolve and allocate to FOI IC Reviews Assessments.

IC review contains subject matter that is time critical or sensitive in nature such as review of an access grant decision

- If yes, immediately contact the Department for the details of the FOI applicant notifying the Department that a third party who was consulted has sought review. Invite the Department not to release the documents pending the outcome of the access grant IC review application.
- If no, allocate to FOI IC reviews Assessments

IC review applicant is also seeking to lodge a complaint about the way an agency has handled their FOI request

- Check whether the applicant has sought review using the IC complaint smart form or indicated that they wish to lodge a complaint
- Check the outcome that the applicant is seeking
- Consider whether to contact the applicant to discuss whether to proceed with a complaint or an IC review application. In particular;
 - the outcome that the applicant is seeking
 - the time frames involved
 - ask the applicant to clarify the outcome they are seeking in writing
 - if the applicant is seeking to proceed with a complaint refer the applicant's correspondence to your Assistant Director for discussion at the weekly complaints meeting

Attachment A – Template for requesting decision

Our reference: **MRXX/XXXXX**

Agency reference: **XXXXX**

Mrs / Mr [Firstname] [Lastname]

By email:

Dear Ms/Mr **[Lastname]**

Thank you for your application for review.

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

If you wish to proceed with this IC review, please provide a copy of the FOI decision you wish to have reviewed by **@1week**. If no decision letter is provided, the matter will be closed as invalid.

If you would like to discuss this matter you may contact me on [enter phone number] or via email FOIDR@oaic.gov.au. Please quote the reference number **MR@@@**.

Yours sincerely

Attachment B – Template for s54N decision

Our reference: (ref number)
Agency reference: (ref number)

(applicant)
Sent by email: (email)

Dear (name)

Your IC review application about the (agency)

I write to you regarding your application for IC review about the (agency) (the Department) decision made (date).

On (date), I wrote to you and asked you to provide a copy of the decision you wanted the Information Commissioner to review. I asked you to provide the requested information by (date).

On (date), I wrote to you again advised that s 54N of the Freedom of the Information Act 1982 says that in order to make a valid application for IC review a person must send us a copy of the decision they want reviewed with their application. I advised that if you do not provide the requested information by (date), your matter would be closed as invalid.

You have not responded to my email. I confirm that this matter has been closed under s 54N of the FOI Act.

Kind regards

Attachment C – Template for assessor notes entered on resolve main page

Summary

Request:

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

Number of documents at issue: @

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

- a. Assessor Note
 - i. Summary:
- b. Tick 'Conduct Triage' box and select appropriate outcome (seek further info)
 - i. E.g. see MR19/00050
 - ii. Conduct PIs under s 54V with agency (use template) and drag email to file

- iii. Tick 'Conduct Triage' in Actions and for status, select 'Seek Further Information' and due date and allocation
- iv. Manually change 'Case Officer' to 'Allocation – FOI IC reviews
- v. Enter in Assessor Note: any issues that you think you need to highlight for the Assessor's attention e.g if the applicant has indicated that they have pending court proceedings
- vi. Send out full acknowledgement letter – see attachment D for template for acknowledgment letter
- vii. Update Assessor Note

Attachment D – Template for acknowledgement letter to applicant

Our reference: [Insert reference number]

Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]

[Address Line 1]

[Address Line 2]

Your IC review application about an FOI decision by the [Agency] (Reference No)

Dear (applicant)

Thank you for your correspondence seeking to lodge an IC review application with the [Office of the Australian Information Commissioner](#) (the OAIC) about the [name of agency] (agency).

Please note:

- The OAIC has initiated preliminary inquiries with the (agency), we will contact you once the (agency) responds to advise the next steps. **(remove if not deemed)**.
- If you have submitted a request to the (agency) for internal review of its decision and it has not yet provided you with an internal review decision, please advise by return email. **(remove if not relevant)**
- You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI team. Depending on the issues you have raised, this may take up to 4 – 8 weeks **(delete if deemed/or seeking further info from A)**

- If your circumstances change, or your request has been resolved directly with the (agency), please advise us by email as soon as practicable.
- Information about the way we handle your personal information is available in our [privacy policy](#).

Should you wish to follow up on this matter, please contact the OAIC by email at foidr@oaic.gov.au and quote the reference number at the top of this email.

Yours sincerely

Attachment D – Template for letter to applicant seeking to clarify complaints process

Our reference: [Insert reference number]

Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]

[Address Line 1]

[Address Line 2]

Your IC review application about an FOI decision by the [Agency] (Reference No)

Dear (applicant)

Thank you for your complaint about the [name of agency] (agency) in relation to your FOI request.

(delete)

I note you have also made a complaint about the way the Department has handled your FOI request. Your concerns about the process will be considered during the IC review.

(Delete)

The [FOI Guidelines](#) at [11.4] state:

The 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.

You have sought [outcome]. I note that the Information Commissioner can only make non-binding recommendations as a result of a complaint.

Consequently, at this stage it would appear that an IC review is the more appropriate and effective mechanism, rather than an FOI complaint, to address the issues you have raised.

However, if wish to pursue a complaint about the Department as well as an IC review, can you please advise by return email.

Please note:

- The OAIC has initiated preliminary inquiries with the (agency), we will contact you once the (agency) responds to advise the next steps. **(remove if not deemed)**.
- If you have submitted a request to the (agency) for internal review of its decision and it has not yet provided you with an internal review decision, please advise by return email. **(remove if not relevant)**
- You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI team. Depending on the issues you have raised, this may take up to 4 – 8 weeks **(delete if deemed/or seeking further info from A)**
- If your circumstances change, or your request has been resolved directly with the (agency), please advise us by email as soon as practicable.
- Information about the way we handle your personal information is available in our [privacy policy](#).

Should you wish to follow up on this matter, please contact the OAIC by email at foidr@oaic.gov.au and quote the reference number at the top of this email.

Yours sincerely

Was the IC review application made within 60 days (in the case of access grant decisions 30 days) after the day notice of the IC reviewable decision was given under s 26?

If the application for IC review was not made within 60 days in the case of an access refusal IC review application and 30 days in the case of an access grant decision, follow the process under *conducting an IC review: Applications for extension of time to apply for IC review – s 54T worksheet* at TRIM LINK: [D2019/003336](#)

From: OAIC - FOI DR <foidr@oaic.gov.au>
Sent: Friday, June 17, 2022 3:41 PM
To: NOUVELLE,Amalin
Cc: WAVAMUNNO,Sandra <Sandra.Wavamunno@oaic.gov.au>
Subject: Post Triage queue- 54Z process

Hi Amelin

Following our discussion about the Post Triage queue & how we issue 54Z notices, I have outlined the steps involved below for your reference, and included the email templates we use for applicants and respondents at the bottom.

Resolve steps

1. Prepare 54Z notice

- Select 54Z template in Open Actions window under: New Procedure-> FOI Letter Templates-> Early Resolution Letters-> **MR045B 54Z Short notice of IC review to R.**
- Complete 54Z template:
 1. Ensure the respondent's email address is correct
 2. Select the relevant paragraph under Scope of IC review*
 3. Insert due date [in 3 weeks]
 4. Save 54Z notice to PDF.

*To check scope of review, refer to the assessor notes field and comments in summary window. You can also check the IC review application if required.

2. Send 54Z notice to respondent

- Attach PDF 54Z notice, as well as the IC review application and the decision under review into an email [check you have all 3 attachments]
- Use cover email for respondents as outlined below, and send
- Place copy of sent email onto Resolve and label it '54Z to R'

3. Send opening notice to applicant

- Send opening notice to applicant, as outlined in template below
- Place copy of sent email onto Resolve and label it 'Opening letter to A'

4. Complete Resolve actions

- Re-assign the case officer in Resolve to the **FOI- IC Reviews- ER queue**
- Update the Resolve assessor notes field with due date, with '[date] 54Z due', e.g. [08/07] 54Z due.
- Hit 'Save' at top.

Email templates to applicants and respondents

54Z cover email for respondents

Our reference: XXXXX

Agency reference: XXXXX

FOI Contact Officer

[Agency full name]

By email: XXXXX

Notice of IC review and request for documents

Dear FOI Contact Officer

Please find attached the notice of IC review and request for documents.

Please note, the Information Commissioner will share the submissions you provide during IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the documents at issue. Should you wish to provide submissions in confidence, please refer to the [IC Review Procedure Direction](#) which sets out the process for making such a request.

[Officer full name]

Opening notice to applicants

Our reference: MRXX/XXXXX

Agency reference: XXXXX

Mrs / Mr [Firstname] [Lastname]

By email:

Dear Ms/Mr [Lastname]

Thank you for your application for review. We have today informed [Agency] that the Information Commissioner will undertake an IC review and requested information to assist with progressing the review.

We will provide you with an update when we have heard from the [Agency].

[Officer full name & signature block]

Many thanks for your assistance Amelin! As always please let me know if you have any questions at all.

Kind regards

Tania

From: STRATHEARN, Tania <Tania.Strathearn@oaic.gov.au>

Sent: Friday, June 24, 2022 9:23 AM

To: BOYD, Alistair <Alistair.Boyd@oaic.gov.au>; CLARKE, Jasmin <Jasmin.Clarke@oaic.gov.au>; NOUVELLE, Amalin <Amalin.Nouvelle@oaic.gov.au>; HANAEE, Thomas <Thomas.Hanaee@oaic.gov.au>

Cc: WAVAMUNNO, Sandra <Sandra.Wavamunno@oaic.gov.au>

Subject: New Proceed email for applicants

Hi team, please use the revised email template below when issuing a proceed to an applicant following a 55G revised decision.

[This is to make it more consistent with the opening notice we send applicants in deemed matters once we issue the 54Z/55T, and to ensure it addresses what is required of applicants who wish to proceed, as outlined in the IC review [procedure direction](#)]. Thank you! Tania

Our reference: **

Agency reference: **

Mr/Ms Applicant

By email: **

Your IC review application about the agency

Dear Mr/Ms A

I refer to your application for IC review of a decision the agency (the agency) was deemed to have refused.

On date, the agency notified the Office of the Australian Information Commissioner (the OAIC) it had made a revised decision to give you full access to the document you requested/give you access to further documents.

Can you please notify us by @2weeks, if you now wish to:

- Withdraw the IC review application, or
- Proceed with the IC review application, and make a submission about the grounds on which you wish to proceed that address each of the following:
 1. identify the aspect(s) of the agency or Minister's decision about which the review is sought
 2. state why you disagree with the agency or Minister's decision
 3. identify which documents you consider have been wrongly refused or which exemptions have been incorrectly applied

4. [only include if relevant- otherwise delete] if the request has been refused on the grounds that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why you believe the FOI request would not have this impact.

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by @2weeks, your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact us via email at foidr@oaic.gov.au. Please quote the OAIC reference number at the top of this email in all correspondence.

Yours sincerely

From: STRATHEARN, Tania <Tania.Strathearn@oaic.gov.au>
Sent: Wednesday, September 7, 2022 10:41 AM
To: ZHOU, Jennifer <Jennifer.Zhou@oaic.gov.au>; GOEL, Dipali <Dipali.Goel@oaic.gov.au>; HARRIS, Noah <Noah.Harris@oaic.gov.au>; KARIM, Samra <Samra.Karim@oaic.gov.au>
Cc: WAVAMUNNO, Sandra <Sandra.Wavamunno@oaic.gov.au>; ENGLISH, Carl <Carl.English@oaic.gov.au>
Subject: FOIDR mailbox training [SEC=OFFICIAL]

Hi team

Further to our first training session in the FOIDR mailbox last week, I have provided a summary of what we looked over below:

- **Actioning 54Z responses** [copy to file, update assessor notes field to advise 'Review 54Z response', and move matter from Early Res queue to 'ER Assessments' queue]
- **Actioning 54Z/55T responses** [copy to file- ensuring any 55G decision is copied to file separately and categorised as a '55G decision' in doc properties, and update assessor notes field to advise '54Z/55T response in']
- **Case update requests** [copy to file, create 'case update request' action and assign to person managing relevant queue:
 - Deemed queue: Alistair Boyd
 - Triage queue: Jasmin Clark
 - Assessments queue: Sandra Wavamunno
 - Early Res/ ER queues: Louise McDermottor to the case officer assigned to the matter, or to relevant Director if with the IC Reviews or S&S teams (Justin Lodge- IC Reviews, and Raewyn Harlock- Significant and Systemic- until Suseela Durvasula returns in 2 weeks)
The case update action should just say in comments that an update request has been received from the A [applicant] or R [respondent] requiring a response].
- **Extension of time requests** from parties seeking further time to respond to a 54Z, 54Z/55T or with submissions [you can provide first time extensions of up to 2 weeks, otherwise file note Carl for approval of longer or supplementary EOT requests]
- **IC review applications** [feel free to use your individual follow up folders in the FOIDR mailbox to assign yourselves matters to register out of the mailbox [provided you will have capacity to deal with it quickly (no more than a few days), and Tom will also allocate registrations to you this way].

Once you become more familiar with the mailbox we'll show you how to deal with other different kinds of correspondence in the mailbox.

Samra, please keep Carl posted on your service request with DESE- once this is sorted so we can show you how to issue 54Zs and 54Z/55T notices!

I have moved to the Compliance & Investigations (C&I) team today so please don't hesitate to sing out to Carl or one of the team if you have any questions or need any assistance with anything, lovely working with you all for that short time!

Kind regards

Tania 😊

From: WAVAMUNNO,Sandra <Sandra.Wavamunno@oaic.gov.au>
Sent: Thursday, November 17, 2022 4:33 PM
To: STRATHEARN,Tania <Tania.Strathearn@oaic.gov.au>; ENGLISH,Carl <Carl.English@oaic.gov.au>
Cc: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: Assessment/Categorisation - Handover notes [SEC=OFFICIAL]

Dear Tania and Carl

Congratulations! I am sure you will both do an amazing job! The team is in safe hands!!!!

Here are a few handover notes specific to the Assessment and categorisation function to assist you both.

ASSESSMENT AND CATEGORISATION TOOLS

To assist with assessment activities, please refer to the worksheets at

- a) TRIM Links: [D2019/002542](#) – conducting IC reviews - assessments and
- b) TRIM Links [D2020/000377](#) - Conducting IC reviews – case categorisation

The worksheets will assist with assessing and categorising matters.

Frequency of assessment/categorisation activities

Ideally the senior officer undertaking assessment activities should work closely with the registry officer to

- i) Assess significant matters for referral to the AC as they come in
- ii) Complete assessments of new weekly IC reviews on a weekly basis. [The plan was to always complete assessment of the matters received in the week as a Friday afternoon activity]

NB: since the change to the short version IC review notice under s54Z referring to paragraph 10.100 of the guidelines, I have been using the assessor notes set out below **PART C** to reflect that change.

CATEGORISATION

Each IC review matter that we receive must go through the categorisation process.

Category 5 for the S&S queue;- all category 5 assessments must be reviewed by the Assistant commissioner – [AC review] [Cat 5.2] [S&S] in the assessor note.

The Assistant Commissioner will move the matter to the Post Triage queue after completing the review of the assessment.

Refer to [D2019/001898](#) for Conducting IC reviews: Identification of systemic and significant issues worksheet and Conducting IC reviews of access grant decisions in S&S queue [D2020/005871](#)

- Matters where the applicant is a significant member of the public i.e. Journalist, MP, Senator or where the issues in the FOI request relate to a matter of significant public

interest, or amendment/annotation of records, access grant matters, assign a category of 5 for the S&S team.

- Where the refusal is limited to one exemption or issues relate to ss 4, 5, 6A, 7, 12, 20, 24A, 24AA, 29, assign an incremental category i.e. 5.2 up to 5.4 depending on the complexity.
- Matters where the access refusal is on the basis of searches/charges or practical refusal, assign a category of 1 for the the S&S queue 5.1 [Cat 5.1] [S&S]
- Matters where the access refusal is based on one exemption with less than 50 pages worth of documents to review assign category 5.2 [Cat 5. 2] [S&S]
- Matters where the access refusal is based on mutliple exemptions with less than 50 pages worth of documents to review, assign category 5.3 [Cat5. 3] [S&S]
- Matters where the access refusal is based on multiple exemptions with more than 50 pages worth of documents to review, assign category 5.4 [Cat5. 4] [S&S]

For details please read the IC reviews categorisation worksheet.

Categories 1 through to 4 for the IC reviews queue

- Matters where the access refusal is on the basis of searches/charges or practical refusal, assign a category of 1 for the the Reviews queue [Cat 1] [Reviews]
- Matters where the access refusal is based on one exemption with less than 50 pages worth of documents to review assign category 2 [Cat 2] [Reviews]
- Matters where the access refusal is based on mutliple exemptions with less than 50 pages worth of documents to review, assign category 3 [Cat 3] [Reviews]
- Matters where the access refusal is based on multiple exemptions with more than 50 pages worth of documents to review, assign category 4 [Cat 4] [Reviews]

For details please read the IC reviews categorisation worksheet.

ASSESSMENTS

PART A

Assessments queue/responsible officer

I understand the EL1 in the I&ER will be responsible for the assessments queue.

There are approximately 255 matters in the assessments queue at the moment and I am working to assess all matters up to the end of June.

PART B

Assessment actions

- a) Complete Assessor notes with relevant details e.g. [Cat 4] [Reviews] ss 45, 47, 47C, 47E. See below for details on categorisation
- b) Complete assessment notes under the summary screen (**Press F2 for full screen**) example of assessment summary screen

[Category]:[Cat 4] [Reviews] ss 45, 47, 47C, 47E

Allocated queue: Reviews

Assessment:

TO A: Confirm the scope of the review

*TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions **ss 37, 38,42,45,46,47,47A,47B,47C,47D, 47E, 47F***

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Copies of correspondence including file notes of relevant telephone conversations between the agency or minister and anyone consulted*
- *A marked up and unredacted copy of the documents at issue where material claimed to be exempt is highlighted with reference made to the exemptions applied*
- *Any submissions in support of the agency or minister's decision, **including the application of s 11B of the FOI Act in relation to conditional exemption claims where applicable***
- *If any third parties are notified of the IC review, a copy of the written notifications under s 54P*

SW: 17/11/22

- c) Copy the details in the summary screen
- d) Check the open actions – All assessment info available?
- e) Under the status bar, check Ready for assessment
- f) Under the open actions, check the Decide path action
- g) Paste the copied details at [C] above in the comments box
- h) Under status, check the Conduct Review – 54Z notice [This action will move the matter out of the Assessment queue to the Post Triage queue for the team to issue the s54Z notice]

PART C

ASSESSMENT NOTES

Access refusal exemptions (part IV Divisions 2 and 3, except ss 33, 34, 45A)

TO A: Confirm the scope of the review

*TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions **ss 37, 38,42,45,46,47,47A,47B,47C,47D, 47E, 47F***

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Copies of correspondence including file notes of relevant telephone conversations between the agency or minister and anyone consulted*
- *A marked up and unredacted copy of the documents at issue where material claimed to be exempt is highlighted with reference made to the exemptions applied*
- *Any submissions in support of the agency or minister's decision, **including the application of s 11B of the FOI Act in relation to conditional exemption claims where applicable***

- *If any third parties are notified of the IC review, a copy of the written notifications under s 54P*

Access refusal exemptions (Part IV Division 2, ss 33, 34 and 45A)

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions

ss 33, 34, 45A and request the agency for:

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Copies of correspondence including file notes of relevant telephone conversations between the agency or minister and anyone consulted*
- *Evidence, on affidavit or otherwise, including by way of submissions, that documents are exempt under **ss 33, 34, or 45A***
- *If any third parties are notified of the IC review, a copy of the written notifications under s 54P*

Access refusal – request does not fall within FOI Act: Part I and ss 4, 5, 6A, 7, 12, 20 and schedules to the FOI Act

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions

ss 4,5,6,6A,7,12,20 and request the agency for:

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Information about the nature of the document in question*
- *The agency or minister’s response to the applicant*
- *Any submissions in support of the agency or minister’s decision*

Access grant (Part IV Division 2 and 3 ss 47, 47F and 47G) refer to Conducting IC reviews of access grant decisions in S&S queue [D2020/005871](#)

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access grant where the agency decides to give an FOI applicant access to documents after third party contentions under ss 47, 47F and 47G request the agency for:

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Copies of correspondence with the third party*
- *The documents in dispute*
- *The reasons for the decision to release the documents despite the third party’s objections*
- *Any submissions in support of the agency or minister’s decision*

Access refusal - charges (Part III, s29) [Refer these matters to the Director Reviews to liaise with the Assistant Director progressing the charges matters following the FOIC’s decision in [ABX](#)

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal Charges s 29

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *A copy of the charges notice sent to the FOI applicant*
- *A copy of the preliminary estimates notice sent to the FOI applicant and the applicant’s response*
- *Any further explanation the agency or minister wishes to provide as to why the charge was imposed or how it was calculated, including any documentary evidence which supports the agency or minister’s calculation of charges*

- Any submissions in support of the agency or minister's decision to impose a charge or in the alternative, a revised decision under s 55G of the FOI Act waiving the charge in full please refer to [ABX and Department of Veterans' Affairs \(Freedom of Information\) \[2022\] AICmr 57 \(29 July 2022\)](#)

Access refusal – Refusal to amend or annotate a record of personal information – some of these matters may need to be declined and referred to:

- a) The s54W(b) queue where the matters involve consideration of evidence e.g where D.O.B records from other jurisdictions need to be considered, medical evidence such as dental records to determine the age of an individual, records from jurisdictions other than Australia that need assessment, Immigration records etc. Please seek the views of the AC before moving such matters to the decline queue.
- b) The s54W(a)(i) - Decline queue in circumstances where they appear to be lacking in substance
- c) The s54V preliminary inquiry with the agency where it is apparent on the face of the record that the amendment/annotation is clearly wrong e.g where the agency has not spelt the amended name correctly etc

To A: Confirm the scope of the review

To R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal to amend or annotate a record of personal information and request the agency for:

- A copy of the documents that were given to the FOI applicant
- The reasons why the agency or minister considers that no amendment should be made under s 50, or the reasons why the requested annotation of records was not made under s 51
- Any submissions in support of the agency or minister's decision

Access refusal – Failure to provide all documents/adequacy of searches (Part III, s 24A)

To A: Confirm the scope of the review

To R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access on the basis of searches - documents cannot be found or do not exist and request the agency for:

- The FOI request, and any correspondence that modifies its scope
- A copy of any document that records searches conducted, including if applicable:
- Notes kept by individuals conducting searches
- Correspondence between the FOI decision maker and individuals who conducted searches
- Any other records of searches or recorded consideration of where to search
- Any other relevant information that the agency or minister wishes to provide in support of its decision
- Evidence of searches

Access refusal – Practical refusal (Part III, 24A)

To A: Confirm the scope of the review

To R: Refer R to //10.100 and request information specific to Access refusal - practical refusal (Part III, 24A and request), including submissions in support of the Department's decision; Information request is for:

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- Copies of any correspondence including file notes of telephone conversations relating to the agency of minister's request consultation process, including a copy of; the letter sent to the applicant, and the applicant's response (if any).

- Records that demonstrate the number of documents and/or pages encompassed by the request, including but not limited to notes of any searches conducted, and consultations with relevant staff members
- An estimation of the number of hours processing time involved, and a breakdown of this time to demonstrate what this is based on
- Evidence of document sampling, if undertaken
- The names and contact details of anyone who was consulted by agency or minister, formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies)
- Any submissions in support of the agency or minister's decision

PART D

ASSESSMENT OF DEEMED MATTERS [where the agency has provided documents under s 54Z/55T but applicant wishes to proceed on searches]

Access refusal – following a s54Z/55T of a deemed refusal or deemed affirmation of original decision and the matter is referred back to assessments for categorising and assessment.

This requires a different assessment depending on the circumstances of each case. The alternatives are considered below:

- a) *Where the applicant wishes to proceed and the respondent has not provided the documents required under s55T proceed as set out below*

To A: Confirm the scope of the review and request the applicant to:

- *identify the aspect(s) of the agency or Minister's decision about which the review is sought*
- *state why you disagree with the agency or Minister's decision*
- *identify which documents you consider have been wrongly refused, or which exemptions have been incorrectly applied*
- *if the request has been refused on the grounds that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why they believe the FOI request would not have this impact.*

To R: refer to the s54Z/55T notice issued following the agency's confirmation that the decision is deemed. Advise the agency that the applicant wishes to proceed. If the applicant wishes to proceed on the basis that the agency has not undertaken sufficient searches to identify all documents in the scope of the request, request the agency to refer to //10.100 of the Guidelines and information requested where the access refusal is based on s24A searches. If exemptions have been applied request material relevant to the exemption.

Action: *Move the IC review to the IC reviews Early resolution queue*

PART E

Access refusal – following a s54Z/55T of a deemed refusal or deemed affirmation of original decision and the Department has produced all documents required under the notice with access refused under exemptions

Circumstance:

The applicant wishes to proceed. Request the applicant to:

- a) *identify the aspect(s) of the agency or Minister's decision about which the review is sought*

- b) *state why you disagree with the agency or Minister's decision*
- c) *identify which documents you consider have been wrongly refused, or which exemptions have been incorrectly applied*
- d) *if the request has been refused on the grounds that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why they believe the FOI request would not have this impact.*

The respondent has provided all documents relevant to the revised decision

Action:

- a) Advise the Respondent that the applicant wishes to proceed with the review and invite further comments from the respondent addressing comments from the applicant
- b) Move the matter to the IC reviews – Early Resolution – Assessments queue for the Assistant Director to assess submissions and determine whether further submissions are required from the parties before moving to the appropriate IC reviews queue.

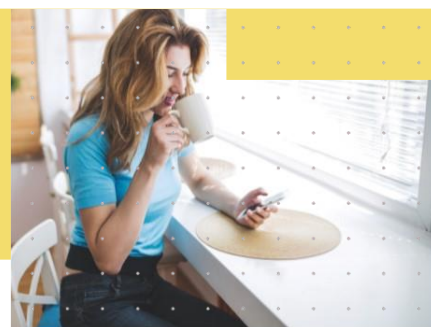
Kind regards

Sandra



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Updated June 2023

Conducting IC review: Assessments

This worksheet provides guidance to assist with assessing IC review applications. This worksheet should be read in conjunction with the FOI Guidelines and other guidance material, including the IC review case categories ([D2020/000377](#)) and Identification of Systemic and Significant Issues worksheets: [D2019/001898](#).

Preliminary assessments

Once an IC review application has been registered and assessed for validity, it proceeds to preliminary assessment ('FOI – Assessment' queue).

Preliminary assessment involves a review of:

- the FOI request
- the decision under review
- the applicant's reasons for review
- any responses to preliminary requests for information, including submissions
- assigning a case category.

The preliminary assessment will need to be included within the Summary field and the 'Decide Path' Action and summarised in the 'Assessor's note field'.

The preliminary assessment will typically address the following issues and/or include the following information:

- Assigning a case category
- Whether the application was out of time and a decision has been made to allow the applicant to make an application
- Whether internal review request was lodged following IC review application
- Whether there has been a request for expedition and/or a hearing
- Whether the application relates to an ongoing complaint or recommendation case
- Whether it relates to an existing vexatious applicant declaration or to an ongoing vexatious applicant declaration request
- Whether further information is required
- Whether agreement should be explored under s 55F
- Whether the application should be declined under s 54W(a)
- Whether the application should be declined under s 54W(b) in line with part [10.88] of the FOI Guidelines, in particular:
 - Where the application is linked to ongoing proceedings in the AAT or Federal Court and should be declined under s 54W(b)

- the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
- Where the application is associated with cohorts which have previously been identified as desirable for the AAT to consider instead of the Commissioner continuing with the IC review
- Where the application is assessed as a category [cat 4] and [cat 5.4] under the IC review case categories worksheet at TRIM Link [D2020/000377](#).
- In an access refusal matter, whether the agency or minister has discharged onus of establishing that its decision is justified or that the Commissioner should give a decision adverse to the FOI applicant
- In access grant matter, whether the IC review applicant has discharged onus of establishing that a decision refusing the request is justified or that the Commissioner should give a decision adverse to the FOI applicant
- Whether to commence review as set out in paragraph [10.188] of the FOI Guidelines and if so,
 - what the letters to the parties should include:
 - The letter to the applicant ordinarily confirms the scope of the review and may also seek further information.
 - The letter to the respondent ordinarily requests the processing documentation, material at issue and submissions, and in some circumstances, a preliminary view on the issues/exemptions raised
 - relevant precedents for the Intake/Early Resolution team or the Review Adviser to consider
- Whether the matter raises significant or systemic issues
- Whether the matter relates to an existing or previous application for IC review
- The status of any related matter and a comment on how the IC review should be progressed in light of the related matter
- Whether guidance for review advisers can only be provided following receipt of documents at issue and whether scope of review can be narrowed
- The Assessor's initials and date the assessment was undertaken.

Attachment A sets out particular guidance on specific issues under review.

Attachment B sets out sample summaries.

Attachment C sets out sample assessor notes for common issues.

Attachment A: Issues and considerations

The table below sets out specific issues in IC review applications and the considerations which should be undertaken in assessing how the case should be managed.

Issues	Considerations
OAIC is the Respondent	<ul style="list-style-type: none"> Whether the application should be declined under s 54W(b) Sample assessment: <i>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.</i> <i>Please proceed to draft an intent to decline to the applicant under s 54W(b) and send a copy of the decline separately to the FOI decision maker at the OAIC copied to the Legal Services at legal@oaic.gov.au. Please invite a response from the Legal Services team to the s 54W(b) proposal within 2 weeks, noting that in the absence of a response we will assume it has no objections to the proposal.</i>
Applicant requests expedition of IC review application	<ul style="list-style-type: none"> Sample assessment: <i>Applicant requests to have the application expedited. Contact Respondent to seek their comments, including whether the Respondent is able to make a revised decision under s 55G of the FOI Act and request a response by [insert 2 weeks],</i>
Applicant requests matter to be finalised under s 54W(b)	<ul style="list-style-type: none"> Sample assessment: <i>Applicant seeks to have the matter finalised under s 54W(b). Contact Respondent to seek their comments and request a response by [insert 2 weeks].</i>

Attachment B

Case Summary field

**Current template

Summary

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

Request:

Decision under review: original decision dated @.

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

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

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

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

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

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

Applicant states (insert any key statements that allude to applicant's scope of request. If not known request in acknowledgement).

Notes for assessor:

New Assessor notes:

All matters generally:

Post triage notes: Commence review & send opening letters:

Opening letter to A: Standard opening email.

Opening letter to R: Request information outlined in paragraph 10.100 of the Guidelines that relate to this review- [include issue, e.g. exemptions under xxx / searches etc].

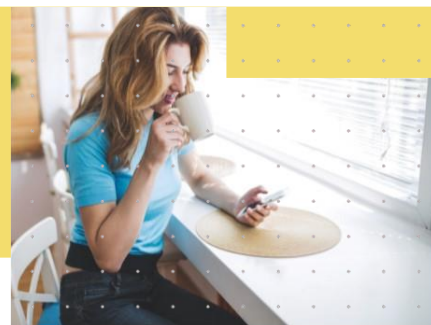
Practical refusal matters:

Post triage notes: Commence review & send opening letters:

Opening letter to A: Standard opening email.

Opening letter to R: Request information outlined in paragraph 10.100 of the Guidelines that relate to this review: Access refusal – Practical refusal (Part III, 24A). Please also include the following advice:

At any stage during an IC review, the Information Commissioner may resolve an application in whole or in part by giving effect to an agreement between the parties (s 55F). Therefore in your response, please notify the OAIC whether you wish to propose a revised scope for the applicant's consideration, for the purpose of attempting resolution under s 55F agreement.



June 2023

IC review case categories

IC review case categories provide an indication of the complexity and range of issues to be determined in an IC review application.

IC review case categories are used to allocate IC reviews efficiently and equitably across all teams and assist in the implementation of strategies to address the backlog in IC reviews awaiting allocation.

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

In relation to matters assessed as a categories [cat 4] and [cat 5.4] (most complex and voluminous), consideration may be given as to whether the application should be declined under s 54W(b) in line with part [10.88] of the FOI Guidelines. This worksheet should be read in conjunction with the conducting IC review assessments worksheet: [D2019/002542](#)

Related guidance

These documents contain further guidance about the issues to be determined in IC reviews:

Conducting an IC review: Identification of systemic and significant issues: [D2019/001898](#).

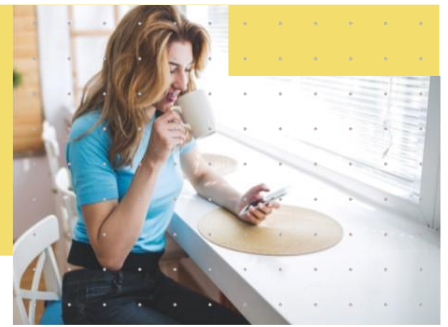
Conducting IC reviews: Assessments: [D2019/002542](#).

Category	Description	Issues
Category 0 [Cat 0]	Invalid applications	<p>Section 54N (Out of Jurisdiction)</p> <p>The IC review application does not meet the requirements of s54N (copy of decision not provided) – after a reasonable opportunity to provide one.</p> <p>The IC review application does not meet the requirements of s 54S and a s54T extension of time has been declined/or not been made following an invitation to make one (IC review application is out of time)</p> <p>The IC review application is intended for a state jurisdiction.</p> <p>Misdirected (Not FOI related)</p> <p>Misdirected (FOI request not yet made)</p> <p>No IC reviewable decision (e.g., in circumstances where an agency has issued a Practical refusal consultation notice)</p>

Category	Description	Issues
Category 0.5 [Cat 0.5]	Deemed access refusal	Access refusal reason: s15AC (decision not made on request within time) – deemed refusal.
Category 1 [Cat 1]	Less complex May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: charges Access refusal reason: searches (sole issue) Access refusal reason: material irrelevant to FOI request (s 22 only) Access refusal reason: exception to FOI Act (s 7 only) Access refusal reason: s 4 Access refusal reason: s 20 Access refusal reason: s 21
Category 2 [Cat 2]	Less complex May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: practical refusal Access refusal reason: searches and s 12 Access refusal reason: searches and s 17 Access refusal reason: s 25 Access refusal reason: single non-conditional exemption (may include s 22) (33, 34, 37, 38, 42, 45, 46, 47) Access refusal reason: searches and single non-conditional exemption (may include s 22) (ss 33, 34, 37, 38, 42, 45, 46, 47) Access refusal reason: single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J) Access refusal reason: searches and single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J)
Category 3 [Cat 3]	Complex May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: various exemptions (more than one) involving a small number (<50) of documents OR < 200 pages of exempt material Access refusal reason: searches and various exemptions (more than one) involving a small number (<50) documents OR < 200 pages of exempt material May involve third party issues
Category 4 [Cat 4]	Most complex and voluminous May be resolved by way of of ss 54W, 55F or 55K	Access refusal reason: amendment Access refusal reason: various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material Access refusal reason: searches and various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material May involve third party issues
Category 5 [Cat 5]	IC reviews with systemic and significant issues More likely to be resolved by way of s 55K decision	IC reviews with the following significant and systemic issues: <ul style="list-style-type: none"> - Access grant decisions - IC review applicant is a Parliamentarian - IC review applications relating to Ministers (Respondents or subject matter).

Category	Description	Issues
		<ul style="list-style-type: none"> - Access refusal reason includes following exemptions (4, 25, 33, 34, 46, 47B, 47D, 47H, 47J) - Request relates to official documents of a minister, senior officials' diaries, electronic communications, incoming government briefs - Requests relates to ongoing public debate or highly publicised investigations - Exemptions relate to waiver of privilege - Whether novel issues raised or whether it can be a lead case to address systemic issues - Request relates to PID complaint
Category 5.1	Category 5.1	Significant and systemic issues identified above and :
[Cat 5.1]	[Cat 5.1]	<p>Access refusal reason: charges</p> <p>Access refusal reason: searches (sole issue)</p> <p>Access refusal reason: material irrelevant to FOI request (s 22 only)</p> <p>Access refusal reason: exception to FOI Act (s 7 only)</p> <p>Access refusal reason: s 4</p> <p>Access refusal reason: s 20</p> <p>Access refusal reason: s 21</p>
Category 5.2	Category 5.2	Significant and systemic issues identified above and :
[Cat 5.2]	[Cat 5.2]	<p>Access grant decisions</p> <p>Access refusal reason: practical refusal</p> <p>Access refusal reason: searches and s 12</p> <p>Access refusal reason: searches and s 17</p> <p>Access refusal reason: s 25</p> <p>Access refusal reason: single non-conditional exemption (may include s 22) (33, 34, 37, 38, 42, 45, 46, 47)</p> <p>Access refusal reason: searches and single non-conditional exemption (may include s 22) (33, 34, 37, 38, 42, 45, 46, 47)</p> <p>Access refusal reason: single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J)</p> <p>Access refusal reason: searches and single conditional exemption (may include s 22) (47B, 47C, 47D, 47E(b), 47E(c), 47E(d), 47F, 47G, 47H, 47J)</p>
Category 5.3	Category 5.3	Significant and systemic issues identified above and :
[Cat 5.3]	[Cat 5.3]	<p>Access refusal reason: various exemptions (more than one) involving a small number (<50) of documents OR < 200 pages of exempt material</p> <p>Access refusal reason: searches and various exemptions (more than one) involving a small number (<50) documents OR < 200 pages of exempt material</p> <p>May involve third party issues</p>

Category	Description	Issues
Category 5.4 [Cat 5.4]		<p>Significant and systemic issues identified above and:</p> <p>Access refusal reason: amendment</p> <p>Access refusal reason: various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material</p> <p>Access refusal reason: searches and various exemptions (more than one) involving a large number (>50) of documents OR > 200 pages of exempt material</p> <p>May involve third party issues</p>



Updated June 2023

Conducting an IC review: Identification of systemic and significant issues

The identification of systemic and significant issues can occur through 4 stages:

- Intake
- Senior assessment: pre-commencement of review
- Senior assessment: post-commencement of review, including review of documents at issue prior to allocation
- IC Review: Case management

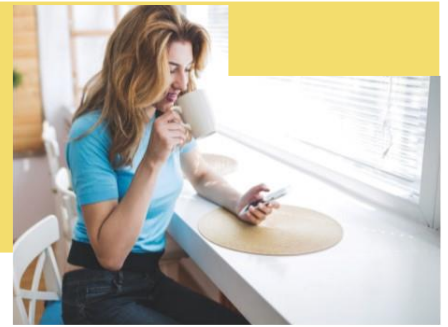
The table below sets out the considerations taken at each stage to enable identification of systemic and significant issues and the potential actions and next steps.

IC reviews involving systemic and significant issues are assigned case category 5.

This worksheet should be read in conjunction with IC Review Case Categories ([D2020/000377](#)) and Conducting an IC review: Assessments worksheets: [D2019/002542](#).

Stages	Considerations	Actions/next steps
<ul style="list-style-type: none"> • Intake 	<ul style="list-style-type: none"> • Applications made by parliamentarians • IC review applications relating to Ministers (Respondents or subject matter) • Exemptions: ss 4(1) (whether documents are official documents of a minister/party/political), 25 (Neither confirm nor deny), 33 (National Security), 34 (Cabinet), 46 (Contempt of Parliament), 47B (Commonwealth/State relations), 47D (Financial interests or property interests of the Commonwealth), 47H (Research), 47J (The Economy) • Whether request relate to official documents of a minister, senior officials' diaries, electronic communications, incoming government briefs • Whether request relates to ongoing public debate or highly publicised investigations • Whether exemptions relate to waiver of legal professional • Whether request relates to a <i>Public Interest Disclosure</i> 	<ul style="list-style-type: none"> • Identify appropriate category under 'sensitivity' • Identify relevant exemptions under 'Assessor note' • Add relevant cross-references • If deemed access refusal, proceed with preliminary inquiries process. • For all other matters, proceed to Mail Assessment.

Stages	Considerations	Actions/next steps
<ul style="list-style-type: none"> Senior assessment: pre-commencement of review 	<ul style="list-style-type: none"> In accordance with intake considerations Whether novel issues raised or whether it can be a lead case to address systemic issues Whether there is an application currently before the OAIC for a vexatious applicant declaration to be made in relation to the IC review applicant or an investigation into a complaint 	<ul style="list-style-type: none"> Note in assessment Insert relevant cross-references
<ul style="list-style-type: none"> Senior assessment: post-commencement of review, including review of documents at issue prior to allocation 	<ul style="list-style-type: none"> In accordance with senior assessment: pre-review of documents considerations Whether respondent's decision or ability to make a revised decision is affected by consultation with other government agencies 	<ul style="list-style-type: none"> Note in assessment Insert relevant cross-references
<ul style="list-style-type: none"> IC Review: Case management 	<ul style="list-style-type: none"> In accordance with intake considerations Whether respondent's decision or ability to make a revised decision is affected by consultation with other government agencies 	<ul style="list-style-type: none">



April 2020

Conducting IC reviews of access grant decisions in S&S queue – Checklists

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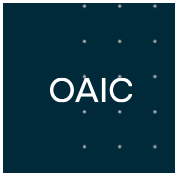
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Introduction

The purpose of this checklist is to assist the Significant and Systemic issues (S&S) team in progressing IC reviews of access grant decisions in the S&S allocations queue. This project is a sub-project of the S&S project to reduce the number of unallocated matters in the allocations queue and allocation time (see *Conducting an IC review: Progressing unallocated matters in the Significant and Systemic issues queue Checklists: [D2020/005872](#)*).

This project could increase efficiency of the S&S team in the mid-term through the progress of unallocated matters where parties have the capacity to participate in an IC review at this time, noting that:

- the current remote work situation and wider circumstances have affected the ability of some parties to effectively participate in IC reviews, and
- the early assessment of access grant matters could facilitate the use of alternative dispute resolution methods such as telephone conferences or s 55F agreements to resolve complex matters earlier on the assumption that parties are more amenable to changing their position earlier in the IC review process (based on advice from AHRC mediation training/Privacy complaints handling procedures). Section 55F agreements and telephone PVs have already been used to resolve access grant matters that have been allocated to the S&S team (see Attachment A – tracking progress of access grant matters by the S&S team)
- 10 of the 16 access grants finalised between 30 March 2019 and 30 March 2020 were finalised by the S&S team (62.5%), and
- of the 10 access grant matters finalised by the S&S team between 30 March 2019 and 30 March 2020:
 - 4 were finalised under s 54W(a)(i) (40%)
 - 4 were finalised under s 55K (40%)
 - 1 was finalised pursuant to a s 55F agreement (10%), and
 - 1 application for IC review was withdrawn by an applicant following a telephone preliminary view (10%).

Number of IC reviews of access grant decisions on foot

As at 3 April 2020, 37 IC reviews of access grant decisions are on foot. The following table provides a breakdown of these applications by stage:

Stage	Number
currently being assessed	4
in triage	2
in post-triage	2
in the early resolution queue	4
In the S&S allocations queue	12
allocated	13
Total	37

Developing a strategy to progress all access grant matters in S&S queue

Stage 1: Design a worksheet

Develop a worksheet to determine the path of an IC review of an access grant decision and contact that can be made with the parties at this time (Attachment B).

Stage 2: Reassess matters in S&S queue

As per the checklist in Attachment B to *Conducting an IC review: Progressing unallocated matters in the Significant and Systemic issues queue Checklists: [D2020/005872](#)*, the S&S team has identified access grant matters as a cohort that can be efficiently progressed in the S&S unallocated queue.

Stage 3: Implement – schedule time to progress access grant matters in S&S queue

As per the Schedule in Attachment C, the S&S team will schedule focus time to progress unallocated access grant matters on Monday 6 April 2020 and Tuesday 14 April 2020 (consistent with the schedule in Attachment C to the *Conducting IC reviews: Progressing unallocated matters in the Significant and Systemic issues queue Checklists* resource).

Stage 4: Re-evaluate

Evaluate the feasibility of this project after 3 weeks by measuring the progress of the 12 unallocated access grant matters within this time (see Attachment D: *Conducting IC reviews of access grant decisions in S&S queue – Interim Report (24 April 2020)*). This pilot will require each S&S officer to progress two unallocated matters per week.

As noted in *Conducting an IC review: Progressing unallocated matters in the Significant and Systemic issues queue Checklists: [D2020/005872](#)*, if it is possible to progress this volume of unallocated access grant matters within a 2-week period, all matters in the unallocated queue will have been progressed within 6 months.

Attachment A – tracking progress of access grant matters by the S&S team (at 3 March 2021)

Access grant matters in S&S allocations queue

Matter ref	Applicant	Respondent	Pages at issue	Date reviewed	Exemptions	Legal Rep	Action + Date	Final subs recd	Outcome	Case officer
1	s47G	s47G	64	13 Apr	ss 47, 47F, 47G	s47G				SP
2	s47F	s47F	13	6 Apr	s 47F		ITD s 54W(a)(i) on 21/04- No response. Decision drafted.		Section 54W(a) closure – 8/08/20	JM
3	s47G	s47G	39	6 Apr	s 47F		PV to A on 8/4 Section 55F by 4/5		54R Withdrawal- 22/04/20	RR
4	s47F	s47F	221 docs	8 and 17 Apr	ss 47F and 47G		PV to A on 21/4 ITD to A on 12/5		55K decision drafted	RR [5.4]
5	s47F	s47F	67	14 Apr	s 47F	s47F	Attempted to contact FOIA 20/04		Closed 54W(a)- 1/12/20	JM
6	s47G	s47G	2	6 Apr	s 47F		s 55F to A on 20/4; R by 15/5		Section 55F decision- 13/05/20	RR

7	s47G	s47G	s47G	23	13 Apr	s 47G		PV to A on 8/09/20		54R Withdrawal-30/09/20	SP
8	s47F	s47F	s47F	67	14 Apr	s 47F	s47F	PV to A on 07/05		55K decision-14/08/20	JM
9	s47F	s47F	s47F	6	6 Apr	s 47F		Attempted to contact FOIA 20/04			Queue
10	s47G	s47G	s47G	3	17 Apr	s 47G		PV to A on 9.06.20		Withdrawal-17/08/20	SP
11	s47G	s47G	s47G	120	8 and 20 Apr	ss 47F, 47G	s47G	PV to A 21/4 Section 55F by 21/5		Section 55F decision-18/06/20	RR [5.4]
12	s47G	s47G	s47G	41 (on USB in safe)	17 Apr	ss 47, 47G	s47G				Queue

Access grant matters allocated to S&S team

Matter ref	Applicant	Pages at issue	Date allocated	Date reviewed	Exemptions	Legal Representative	Date of telephone PV	Date of follow-up email	Final subs	Status	Case officer	
1	s47G	s47G	14	20 Jul 2018	Feb 2020 (reallocated)	47G(1)(a)	s47G	N/A	N/A	8 May 2019	S 55K IC decision – Affirm-29/05/20	RR

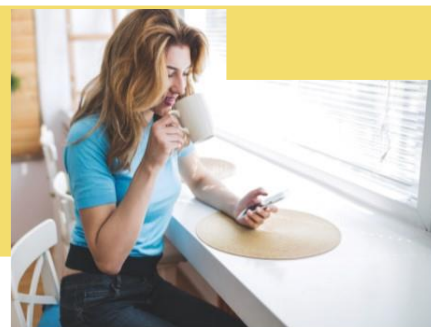
2	s47G	s47G	298	5 Sep 2019	20 Sep 2019	47G	No	15 Nov 2019	22 Nov 2019	22 May 2020	55K decision-18/09/20	RR
3	s47G	s47G	155	30 May 2019	20, 25, 26, 27 June 2019	47, 47F, 47G(1)(a), 47G(1)(b)	s47G	9 July 2019	9 July 2019 (10 pages)	23 July 2019	Withdrawal 25/06/20	SP
4	s47F	s47F		5 Sep 2019		47F	No	19 Nov 2019			R to undertake additional third party consultation	ML
5	s47G	s47G	146	25 Sep 2019	Sep 2019	47G(1)(a)	s47G	13 Jun 2019	14 Jun 2019	19 Jul 2019	S 55K - 29/05/20	RR
6	s47F	s47F	256	25 Sep 2019	8 Nov 2019	47F	No				s 54W(b) close-1/02/21	JM
7	s47G	s47G	67	17 May 2019	5 December 2019	47G(1)(a), 47G(1)(b)	s47G				Withdrawal-21/05/2020	SP
8	s47F	s47F	2 discs, too large to email	17 May 2019			No				54R-withdraw-21/09/20	JM

9	s47F	s47F	11	17 May 2019	27 June 2019	47F	No	17 July 2019	17 July 2019	31 July 2019	s 55F decision- 8/04/20	JM
10	s47F	s47F		5 Sep 2019			No				Clarify scope with A.	JM
11	s47F	s47F	78	17 May 2019		47	No				54R withdraw- 9/12/20	LM
12	s47G	s47G	300	17 May 2019	20 January 2020	47, 47G(1)(a)	s47G				S 55K IC decision – 30/06/20	SP
13	s47G	s47G	102	17 May 2019	5 December 2019	47, 47F, 47G(1)(a), 47G(1)(b)	s47G				54R Withdrawal on 22/07/20	SP

Access grant matters finalised by S&S team between 30 March 2019 and 30 March 2020

Matter ref	Applicant	Pages at issue	Date allocated	Date reviewed	Exemptions	Legal Representative	Date of telephone PV	Date of follow-up email	Final subs	Outcome	Case officer	
1	s47F	s47F	4	29 May 2019	29 May 2019	47F	No	30 May 2019	11 Jun 2019 – ITD under s 54W(a)(i) and (ii)	N/A	Decline under s 54W(a)	RR
2	s47G	s47G	16	17 May 2019	5-6, 12 June 2019	47G(1)(a), 47G(1)(b)	s47G	25 June 2019	25 June 2019 (7 pages)	None	Withdrawal on 10 July 2019	RR

3	s47F	s47F	266	16 Jul 2019	22 July 2019	47F	No	N/A	22 July 2019	5 Aug 2019	Decline under s 54W(a)(ii)	RR
4	s47F	s47F		5 Sep 2019		47F	s47F	N/A	N/A	N/A	Decline under s 54W(a)(iii)	RR
5	s47F	s47F	2	5 Sep 2019	20 Sep 2019	47F	No	N/A - requested	N/A	N/A	Section 55F agreement	JM
6	s47G	s47G	7	17 May 2019	25 June 2019	47G(1)(a)	No	15 July 2019	15 July 2019	A - 29 Jul; R - 2 Aug	S 55K IC decision - Affirm	JM
7	s47G	s47G					s47G				S 55K IC decision - Affirm	RR
8	s47G	s47G					s47G				S 55K IC decision - Affirm	RR
9	s47F	s47F					s47F				S 55K IC decision - Affirm	RR
10	s47F	s47F					No				Decline under s 54W(a)(i)	KC



Attachment B – Checklist to assist in the progress of unallocated access grant matters in the S&S queue

Review

- Check **whether the file is complete and all documents at issue have been received** (see *Conducting IC reviews: Assessments: [D2019/002542](#), DRAFT IC reviews queue management checklist: [D2020/002819](#)*)
- Check the file for any correspondence from the FOI applicant, including in relation to whether the FOI applicant has requested to be made a party (s 55A) or has requested anonymity
- Consider whether to contact the parties with:
 - a request to clarify scope**
 - a request for information**
 - a decision on an interim application**
 - a short PV** (see *Conduct an IC review – Preliminary view checklist – November 2018: [D2018/016245](#)*)
 - time for **a telephone conference** (see *Access grant - Preliminary view via telephone checklist: [D2019/005301](#)*)
 - a draft s 55F agreement**
 - an update that the matter has progressed to a **s 55K IC decision since the submissions rely on the reasons for decision** (see *Conduct an IC review – Decision Writing Checklist – December 2018: [D2018/016241](#)*)

Discuss

- Discuss approach to IC review at the daily S&S meeting

Progress

- Contact parties with a procedural or substantive update as discussed at the meeting.

Record

- Record progress using table at Attachment A

Report

- Report on progress to FOI team with a view to informing:
 - strategies to resolve applications for IC review of access grant matters: developing the *Approach to access grant matters* resource, updating the *Access grant - Preliminary view via telephone checklist*: [D2019/005301](#), and
 - future agency resources on best practice in making access grant decisions: developing the *Agency resource on third party consultation*.

Other relevant resources and projects:

- *Conducting an IC review: Identification of systemic and significant issues*: [D2019/001898](#)
- *IC review case categories*: [D2020/000377](#)
- *Conducting an IC review: Progressing unallocated matters in the Significant and Systemic issues queue Checklists*

Attachment C - Schedule

Date	Focus
30 March to 3 April	Worksheet for access grant matters (S&S team)
6 April	Progress 6 of 12 access grants in S&S queue – ss 47, 47F, 47G <ul style="list-style-type: none"> • Clarify scope • Request further information / short preliminary view • Consider s 55F agreements • Schedule telephone PVs (Rachel, Sujini, Jenna)
14 April	Progress 6 of 12 access grants in S&S queue – ss 47, 47F, 47G <ul style="list-style-type: none"> • Clarify scope • Request further information / short preliminary view • Consider s 55F agreements • Schedule telephone PVs (Rachel, Sujini, Jenna)
20 April	Measure progress <ul style="list-style-type: none"> • Has the S&S team reviewed all access grant matters in S&S queue? • Have all parties been provided a substantive or procedural update? • Are there any early indicators of increased efficiency in particular matters or across the cohort? (Rachel, Sujini, Jenna)
27 April	Report on project to the FOI team: Attachment D - Conducting IC reviews of access grant decisions in S&S queue – Interim Report (24 April 2020) (S&S team)

Attachment D – Interim Reports

Conducting IC reviews of access grant decisions in S&S queue – Interim Report (24 April 2020)

Purpose

The Significant and Systemic issues (S&S) team developed a project to progress IC reviews of access grant decisions in the S&S allocations queue to:

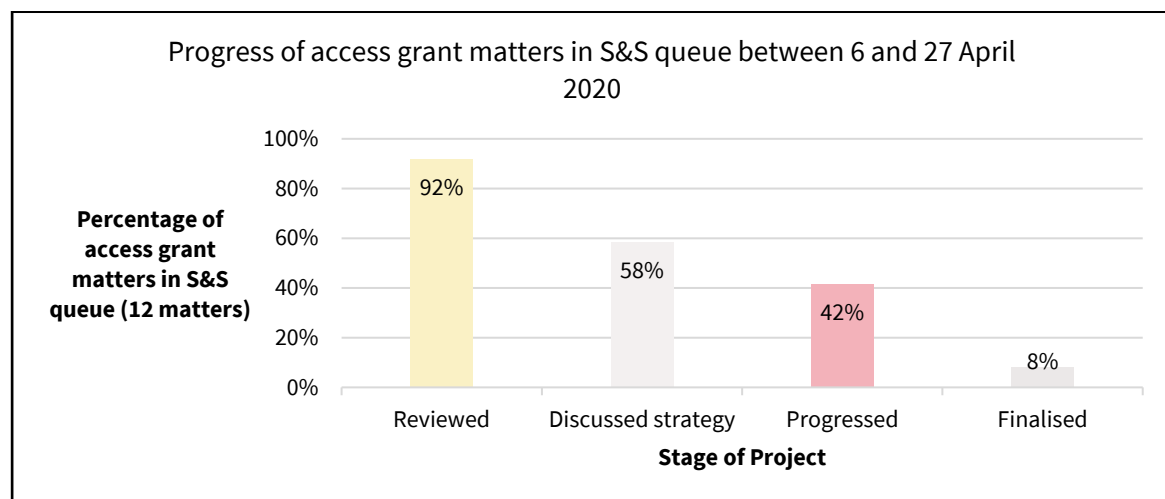
- enhance the efficient resolution of unallocated IC reviews
- develop internal and external resources relevant to access grant matters, and
- build team capacity to design projects to resolve matters in cohorts.

This is the first S&S project to reduce the number of unallocated matters in the allocations queue and allocation time (see *Conducting an IC review: Progressing unallocated matters in the Significant and Systemic issues queue Checklists: [D2020/005872](#)*).

Scope/Methodology

The S&S team scheduled time to progress the 12 access grant matters in the S&S queue. Each officer allocated up to one day per week or 20% of their time to focus on 4 access grant matters.

Interim results



Interim findings

1. Working on a discrete cohort of matters is efficient and develops subject matter expertise
2. At least one day is required to review, discuss and progress more complex access grant matters
3. A hybrid PV/ITD can be sent with the s 54Z notice if:
 - a. the IC review applicant has provided the documents at issue and decision under review when making the IC review application, and
 - b. the application is not valid because the applicant has not relied on exemptions they were consulted on (i.e. exemptions other than ss 47, 47B, 47F and 47G).
4. Case officers can efficiently resolve access grant matters by:

- a. proposing s 55F agreements where parties are in agreement
- b. clarifying the scope of the FOI Request early
- c. ensuring that the submissions of the applicant are focused and limited to the relevant exemptions by including the following in the opening letter:
 - i. targeted questions to obtain relevant submissions with reference to the specific exemptions the applicant was consulted on
 - ii. a brief discussion on the specific exemptions and public interest
 - iii. advice on onus, and
 - iv. advice that the applicant does not have standing to raise exemptions they were not consulted on and the IC will not consider submissions on those exemptions, and
- d. declining a matter under s 54W(a) where the IC review applicant:
 - i. relies on exemptions they were not consulted on, or
 - ii. is non-responsive to preliminary views in the IC review noting the onus is on the applicant to justify an access refusal decision by the Information Commissioner.

Attachment E - Conducting IC reviews of access grant decisions in S&S queue – Second Interim Report (May 2020)

Applications of Interim findings (discussion with PD on 1 May 2020)

1. Advising agencies to include specific review rights for access grant decisions and limiting the issues that third parties can rely on when seeking IC review
2. Updating the smartform
 - a. Linking to template submissions for the IC review applicant
 - b. Providing interactive forms that parties can engage with when providing submissions (could assist in affording parties procedural fairness)
3. Highlighting agency resources on OAIC website and ICON
4. Scoping early with hybrid s 54Z/PV/s55F
 - a. Designing workflows
 - b. Designing template hybrid s 54Z/PV/s55F
5. Developing a template IC decision for access grant decisions:
 - a. Decision templates made available on Resolve
 - b. Particular clauses can be selected for a tailored template decision on ss 47, 47F, 47G of the FOI Act

Attachment F – Conducting IC reviews of access grant decisions in S&S queue – Third Interim Report (31 July 2020)

- 12 access grant matters finalised by the S&S team between 31 March 2020 and 31 July 2020:
 - 5 applications for IC review were withdrawn by the applicant (42%)
 - 3 were finalised pursuant to a s 55F agreement (25%)
 - 3 were finalised under s 55K (25%), and
 - 1 was finalised under s 54W(a)(i) (8%).
- 10 access grant matters finalised by the S&S team between 30 March 2019 and 30 March 2020:
 - 4 were finalised under s 54W(a)(i) (40%)
 - 4 were finalised under s 55K (40%)
 - 1 was finalised pursuant to a s 55F agreement (10%), and
 - 1 application for IC review was withdrawn by an applicant following a telephone preliminary view (10%).

Interim findings

1. **More than tripled the finalisation rate** of access grant matters within the S&S team since 31 March 2020
2. **47% increase in matters finalised prior to a decision under s 55K or 54W:**
 - a. 32 % increase in applications for IC review withdrawn by applicants
 - b. 15 % increase in application for IC review finalised pursuant to a s 55F agreement
3. **47% decline in matters finalised by decision under s 55K or 54W.**

From: STRATHEARN,Tania <Tania.Strathearn@oaic.gov.au>
Sent: Wednesday, February 15, 2023 4:26 PM
To: OAIC FOI Intake and Early Resolution
<DL_OAIC_FOI_Intake_and_Early_Resolution@external.dese.gov.au>
Subject: File notes and clearance [SEC=OFFICIAL]

Hi team

To assist me in managing the volume of matters in my inbox I'd be grateful if you could contact your immediate supervisor in the first instance if you have any questions about how to progress a matter or if you are seeking feedback on draft correspondence [including EOT decisions], unless you need me to sign off on a s 54W decision or 54Z/55T notice.

As a reminder, case update requests don't need to be assigned to anyone, they just need a 'case update' action created on the relevant file, and going forward these will be monitored by Romina [based on the Power BI report] who will follow up with the relevant teams.

For the time being until further notice, please contact the following people if you have any queries or require guidance:

- for queries concerning Mailbox/ Registrations/ Webcases or Triage- please contact Tom in the first instance, and given Carl's experience in the FOI group, any complex matters requiring further guidance can be escalated to Carl for the time being.
- for queries relating to EOT matters, including for review of draft EOT decisions, please consult Bernie in the first instance going forward.
- for queries relating to deemed matters- unless an urgent response is required please just update the assessor notes rather than leave a file note, otherwise please contact Alistair for complex/urgent matters.
- for queries relating to matters in the Assessments, Post Triage, Declines or Early Res queues please consult Carl.
- For FOI complaints please contact me directly.
- For correspondence that needs to go out via SPOC, or if we need to search for a response in the SPOC mailbox, please contact Bernie or Carl.

For matters that you have already assigned to me I will either action these as soon as practicable or I will re-allocate to the appropriate supervisor, so no need to send any new actions.

I will of course be available should any matters require further guidance or escalation after you have consulted your immediate supervisors or peers.

Many thanks team! Let me know if you have any questions at all.

Kind regards

Tania



Tania Strathearn | A/g Director
Intake and Early Resolution Team
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From: STRATHEARN,Tania <Tania.Strathearn@oaic.gov.au>
Sent: Friday, March 24, 2023 12:30 PM
To: ENGLISH,Carl <Carl.English@oaic.gov.au>
Subject: FW: Assessment notes - revised [SEC=OFFICIAL]

Hi Carl- pls disregard previous email and refer to the below templates, a small correction was needed.

I propose we use the following assessment notes given our new shortened 54Z. I have added a second template for prac refusal decisions to help encourage resolution:

All matters generally:

Post triage notes: Commence review & send opening letters:

Opening letter to A: Standard opening email.

Opening letter to R: Request information outlined in paragraph 10.100 of the Guidelines that relate to this review- [include issue, e.g. exemptions under xxx / searches etc].

Practical refusal matters:

Post triage notes: Commence review & send opening letters:

Opening letter to A: Standard opening email.

Opening letter to R: Request information outlined in paragraph 10.100 of the Guidelines that relate to this review: Access refusal – Practical refusal (Part III, 24A). Please also include the following advice:

At any stage during an IC review, the Information Commissioner may resolve an application in whole or in part by giving effect to an agreement between the parties (s 55F). Therefore in your response, please notify the Oaic whether you wish to propose a revised scope for the applicant's consideration, for the purpose of attempting resolution under s 55F agreement.

Where appropriate feel free to add additional comments in your assessor notes, for example, in opening letter to A, where there has been an extended delay in progressing the review we should add a note to include apology to applicant; or where the scope isn't entirely clear we could confirm scope in our email to applicant. In opening letter to R, we may also want them to include a response to A's subs.

As discussed, I will consult Rocelle regarding Cat 5 matters and the preferred method for obtaining AC clearance moving forward.

Let me know if you agree with or have any questions about the above.

Kind regards

Tania

From: WAVAMUNNO,Sandra <Sandra.Wavamunno@oaic.gov.au>
Sent: Thursday, 17 November 2022 4:33 PM
To: STRATHEARN,Tania <Tania.Strathearn@oaic.gov.au>; ENGLISH,Carl <Carl.English@oaic.gov.au>
Cc: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: Assessment/Categorisation - Handover notes [SEC=OFFICIAL]

Dear Tania and Carl

Congratulations! I am sure you will both do an amazing job! The team is in safe hands!!!!

Here are a few handover notes specific to the Assessment and categorisation function to assist you both.

ASSESSMENT AND CATEGORISATION TOOLS

To assist with assessment activities, please refer to the worksheets at

- a) TRIM Links: [D2019/002542](#) – conducting IC reviews - assessments and
- b) TRIM Links [D2020/000377](#) - Conducting IC reviews – case categorisation

The worksheets will assist with assessing and categorising matters.

Frequency of assessment/categorisation activities

Ideally the senior officer undertaking assessment activities should work closely with the registry officer to

- i) Assess significant matters for referral to the AC as they come in
- ii) Complete assessments of new weekly IC reviews on a weekly basis. [The plan was to always complete assessment of the matters received in the week as a Friday afternoon activity]

NB: since the change to the short version IC review notice under s54Z referring to paragraph 10.100 of the guidelines, I have been using the assessor notes set out below **PART C** to reflect that change.

CATEGORISATION

Each IC review matter that we receive must go through the categorisation process.

Category 5 for the S&S queue;- all category 5 assessments must be reviewed by the Assistant commissioner – [AC review] [Cat 5.2] [S&S] in the assessor note.

The Assistant Commissioner will move the matter to the Post Triage queue after completing the review of the assessment.

Refer to [D2019/001898](#) for Conducting IC reviews: Identification of systemic and significant issues worksheet and Conducting IC reviews of access grant decisions in S&S queue [D2020/005871](#)

- Matters where the applicant is a significant member of the public i.e. Journalist, MP, Senator or where the issues in the FOI request relate to a matter of significant public interest, or amendment/annotation of records, access grant matters, assign a category of 5 for the S&S team.
- Where the refusal is limited to one exemption or issues relate to ss 4, 5, 6A, 7, 12, 20, 24A, 24AA, 29, assign an incremental category i.e. 5.2 up to 5.4 depending on the complexity.
- Matters where the access refusal is on the basis of searches/charges or practical refusal, assign a category of 1 for the the S&S queue 5.1 [Cat 5.1] [S&S]

- Matters where the access refusal is based on one exemption with less than 50 pages worth of documents to review assign category 5.2 [Cat 5. 2] [S&S]
- Matters where the access refusal is based on multiple exemptions with less than 50 pages worth of documents to review, assign category 5.3 [Cat5. 3] [S&S]
- Matters where the access refusal is based on multiple exemptions with more than 50 pages worth of documents to review, assign category 5.4 [Cat5. 4] [S&S]

For details please read the IC reviews categorisation worksheet.

Categories 1 through to 4 for the IC reviews queue

- Matters where the access refusal is on the basis of searches/charges or practical refusal, assign a category of 1 for the the Reviews queue [Cat 1] [Reviews]
- Matters where the access refusal is based on one exemption with less than 50 pages worth of documents to review assign category 2 [Cat 2] [Reviews]
- Matters where the access refusal is based on multiple exemptions with less than 50 pages worth of documents to review, assign category 3 [Cat 3] [Reviews]
- Matters where the access refusal is based on multiple exemptions with more than 50 pages worth of documents to review, assign category 4 [Cat 4] [Reviews]

For details please read the IC reviews categorisation worksheet.

ASSESSMENTS

PART A

Assessments queue/responsible officer

I understand the EL1 in the I&ER will be responsible for the assessments queue.

There are approximately 255 matters in the assessments queue at the moment and I am working to assess all matters up to the end of June.

PART B

Assessment actions

- Complete Assessor notes with relevant details e.g. [Cat 4] [Reviews] ss 45, 47, 47C, 47E. See below for details on categorisation
- Complete assessment notes under the summary screen (**Press F2 for full screen**) example of assessment summary screen

[Category]:[Cat 4] [Reviews] ss 45, 47, 47C, 47E

Allocated queue: Reviews

Assessment:

TO A: Confirm the scope of the review

*TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions **ss 37, 38,42,45,46,47,47A,47B,47C,47D, 47E, 47F***

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Copies of correspondence including file notes of relevant telephone conversations between the agency or minister and anyone consulted*
- *A marked up and unredacted copy of the documents at issue where material claimed to be exempt is highlighted with reference made to the exemptions applied*
- *Any submissions in support of the agency or minister's decision, **including the application of s 11B of the FOI Act in relation to conditional exemption claims where applicable***
- *If any third parties are notified of the IC review, a copy of the written notifications under s 54P*

SW: 17/11/22

- c) Copy the details in the summary screen
 - d) Check the open actions – All assessment info available?
 - e) Under the status bar, check Ready for assessment
 - f) Under the open actions, check the Decide path action
 - g) Paste the copied details at [C] above in the comments box
 - h) Under status, check the Conduct Review – 54Z notice [This action will move the matter out of the Assessment queue to the Post Triage queue for the team to issue the s54Z notice]
- -----

PART C

ASSESSMENT NOTES

Access refusal exemptions (part IV Divisions 2 and 3, except ss 33, 34, 45A)

TO A: Confirm the scope of the review

*TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions **ss 37, 38,42,45,46,47,47A,47B,47C,47D, 47E, 47F***

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Copies of correspondence including file notes of relevant telephone conversations between the agency or minister and anyone consulted*
- *A marked up and unredacted copy of the documents at issue where material claimed to be exempt is highlighted with reference made to the exemptions applied*
- *Any submissions in support of the agency or minister's decision, **including the application of s 11B of the FOI Act in relation to conditional exemption claims where applicable***
- *If any third parties are notified of the IC review, a copy of the written notifications under s 54P*

Access refusal exemptions (Part IV Division 2, ss 33, 34 and 45A)

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions ss 33, 34, 45A and request the agency for:

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- Copies of correspondence including file notes of relevant telephone conversations between the agency or minister and anyone consulted
- Evidence, on affidavit or otherwise, including by way of submissions, that documents are exempt under **ss 33, 34, or 45A**
- If any third parties are notified of the IC review, a copy of the written notifications under s 54P

Access refusal – request does not fall within FOI Act: Part I and ss 4, 5, 6A, 7, 12, 20 and schedules to the FOI Act

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal exemptions ss 4,5,6,6A,7,12,20 and request the agency for:

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- Information about the nature of the document in question
- The agency or minister's response to the applicant
- Any submissions in support of the agency or minister's decision

Access grant (Part IV Division 2 and 3 ss 47, 47F and 47G) refer to Conducting IC reviews of access grant decisions in S&S queue [D2020/005871](#)

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access grant where the agency decides to give an FOI applicant access to documents after third party contentions under ss 47, 47F and 47G request the agency for:

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- Copies of correspondence with the third party
- The documents in dispute
- The reasons for the decision to release the documents despite the third party's objections
- Any submissions in support of the agency or minister's decision

Access refusal - charges (Part III, s29) [Refer these matters to the Director Reviews to liaise with the Assistant Director progressing the charges matters following the FOIC's decision in ABX

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal Charges s 29

- The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request
- A copy of the charges notice sent to the FOI applicant
- A copy of the preliminary estimates notice sent to the FOI applicant and the applicant's response
- Any further explanation the agency or minister wishes to provide as to why the charge was imposed or how it was calculated, including any documentary evidence which supports the agency or minister's calculation of charges
- Any submissions in support of the agency or minister's decision to impose a charge or in the alternative, a revised decision under s 55G of the FOI Act waiving the charge in full please refer to [ABX and Department of Veterans' Affairs \(Freedom of Information\) \[2022\] AICmr 57 \(29 July 2022\)](#)

Access refusal – Refusal to amend or annotate a record of personal information – some of these matters may need to be declined and referred to:

- a) *The s54W(b) queue where the matters involve consideration of evidence e.g where D.O.B records from other jurisdictions need to be considered, medical evidence such as dental records to determine the age of an individual, records from jurisdictions other than Australia that need assessment, Immigration records etc. Please seek the views of the AC before moving such matters to the decline queue.*
- b) *The s54W(a)(i) - Decline queue in circumstances where they appear to be lacking in substance*
- c) *The s54V preliminary inquiry with the agency where it is apparent on the face of the record that the amendment/annotation is clearly wrong e.g where the agency has not spelt the amended name correctly etc*

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access refusal to amend or annotate a record of personal information and request the agency for:

- *A copy of the documents that were given to the FOI applicant*
- *The reasons why the agency or minister considers that no amendment should be made under s 50, or the reasons why the requested annotation of records was not made under s 51*
- *Any submissions in support of the agency or minister's decision*

Access refusal – Failure to provide all documents/adequacy of searches (Part III, s 24A)

TO A: Confirm the scope of the review

TO R: Refer to //10.100 of the guidelines and request information to be provided by the Respondent specific to access on the basis of searches - documents cannot be found or do not exist and request the agency for:

- *The FOI request, and any correspondence that modifies its scope*
- *A copy of any document that records searches conducted, including if applicable:*
- *Notes kept by individuals conducting searches*
- *Correspondence between the FOI decision maker and individuals who conducted searches*
- *Any other records of searches or recorded consideration of where to search*
- *Any other relevant information that the agency or minister wishes to provide in support of its decision*
- *Evidence of searches*

Access refusal – Practical refusal (Part III, 24A)

To A: Confirm the scope of the review

To R: Refer R to //10.100 and request information specific to Access refusal - practical refusal (Part III, 24A and request), including submissions in support of the Department's decision; Information request is for:

- *The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request*
- *Copies of any correspondence including file notes of telephone conversations relating to the agency of minister's request consultation process, including a copy of; the letter sent to the applicant, and the applicant's response (if any).*
- *Records that demonstrate the number of documents and/or pages encompassed by the request, including but not limited to notes of any searches conducted, and consultations with relevant staff members*
- *An estimation of the number of hours processing time involved, and a breakdown of this time to demonstrate what this is based on*
- *Evidence of document sampling, if undertaken*

- *The names and contact details of anyone who was consulted by agency or minister, formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies)*
 - *Any submissions in support of the agency or minister's decision*
-
-
-

PART D

ASSESSMENT OF DEEMED MATTERS [where the agency has provided documents under s 54Z/55T but applicant wishes to proceed on searches]

Access refusal – following a s54Z/55T of a deemed refusal or deemed affirmation of original decision and the matter is referred back to assessments for categorising and assessment.

This requires a different assessment depending on the circumstances of each case. The alternatives are considered below:

- a) Where the applicant wishes to proceed and the respondent has not provided the documents required under s55T proceed as set out below*

To A: Confirm the scope of the review and request the applicant to:

- *identify the aspect(s) of the agency or Minister's decision about which the review is sought*
- *state why you disagree with the agency or Minister's decision*
- *identify which documents you consider have been wrongly refused, or which exemptions have been incorrectly applied*
- *if the request has been refused on the grounds that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why they believe the FOI request would not have this impact.*

To R: refer to the s54Z/55T notice issued following the agency's confirmation that the decision is deemed. Advise the agency that the applicant wishes to proceed. If the applicant wishes to proceed on the basis that the agency has not undertaken sufficient searches to identify all documents in the scope of the request, request the agency to refer to //10.100 of the Guidelines and information requested where the access refusal is based on s24A searches. If exemptions have been applied request material relevant to the exemption.

Action: *Move the IC review to the IC reviews Early resolution queue*

PART E

Access refusal – following a s54Z/55T of a deemed refusal or deemed affirmation of original decision and the Department has produced all documents required under the notice with access refused under exemptions

Circumstance:

The applicant wishes to proceed. Request the applicant to:

- identify the aspect(s) of the agency or Minister's decision about which the review is sought*
- state why you disagree with the agency or Minister's decision*
- identify which documents you consider have been wrongly refused, or which exemptions have been incorrectly applied*
- if the request has been refused on the grounds that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why they believe the FOI request would not have this impact.*

The respondent has provided all documents relevant to the revised decision

Action:

- a) Advise the Respondent that the applicant wishes to proceed with the review and invite further comments from the respondent addressing comments from the applicant
 - b) Move the matter to the IC reviews – Early Resolution – Assessments queue for the Assistant Director to assess submissions and determine whether further submissions are required from the parties before moving to the appropriate IC reviews queue.
-
-
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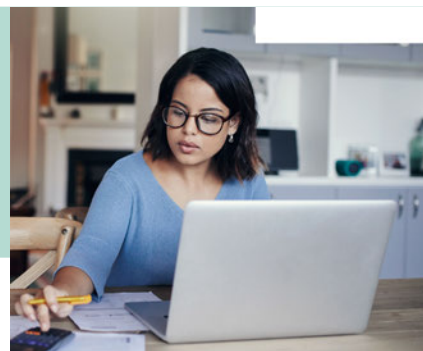
Kind regards

Sandra



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Applying to the Administrative Appeals Tribunal after receiving a section 54W(b) decision

You can apply to the Administrative Appeals Tribunal (AAT) for review of:

- an agency or minister's FOI decision, if the Information Commissioner has decided not to undertake a review under s 54W(b) of the *Freedom of Information Act 1982* (FOI Act), or
- the Information Commissioner's decision to affirm, vary or set aside an FOI decision under s 55K of the FOI Act.

This Fact Sheet explains the effect of an Information Commissioner decision under s 54W(b) of the FOI Act and how to ask the AAT to review the FOI decision or internal review decision (the 'IC reviewable decision').

What is a s 54W(b) decision?

A person who disagrees with an agency or minister's FOI decision on their request for access to a document under the FOI Act can apply to the Information Commissioner for review of the original decision or the internal review decision.

The Information Commissioner does not just review the reasons given by the agency or minister but will determine the correct or preferable decision in all the circumstances. In some cases, the Information Commissioner may exercise a discretion not to review an FOI decision if it is desirable that it is considered by the AAT, in the interests of the administration of the FOI Act. The Information

Commissioner can do this under s 54W(b) of the FOI Act.

Circumstances in which the Information Commissioner may decide it is better for the AAT to undertake the review instead of the Information Commissioner include when:

- the IC review is linked to ongoing proceedings before the AAT or a court
- there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- 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 and would be more appropriately handled by the AAT
- there may be a perceived or actual conflict of interest in the Information Commissioner undertaking the review, because the FOI request under review was made to or decided by the Information Commissioner or their delegate, or the request relates to specific functions exercised by the Information Commissioner under the Privacy Act
- the applicant has active matters in other forums, such as the AAT or Federal Court, and the Information Commissioner is the respondent
- whether consideration by the AAT would further the objects of the FOI Act.

How to apply for review by the AAT

If the Information Commissioner makes a decision under s 54W(b), you can apply to the AAT for review of the original FOI decision or the internal review decision (that is, the IC reviewable decision). The AAT will then consider the issues raised in the review.

If you want to apply for review by the AAT, you must do so within 28 days after receiving notice of the s 54W(b) decision. You must apply in writing.

You can apply on the AAT website: online.aat.gov.au. You can also complete the [AAT application form](#) and send it to the AAT by email, fax or post, or deliver it to an AAT Registry.¹

You can find the AAT's contact details at aat.gov.au/contact-us. The AAT can be contacted by telephone on 1800 228 333 for more information about how to apply.

You should provide the AAT with a copy of two decisions with your application (both are attached):

- The IC reviewable decision – this is the agency or the minister's decision that you were seeking to be reviewed by the Information Commissioner. This will be the latest decision made by the agency or the minister in response to an FOI request, if you have more than one decision. For example, if an internal review was undertaken, the IC reviewable decision will be the internal review decision. If a revised decision has been made under s 55G of the FOI Act, the IC reviewable decision will be the s 55G decision.
- The 54W(b) decision – this is the letter from the delegate of the Information Commissioner explaining the decision not to undertake a review under s 54W(b) of the FOI Act.

The AAT application form asks for the date you received the decision you want reviewed.

¹ aat.gov.au/landing-pages/application-forms/application-for-review-of-decision-individual

You should provide the date you received the letter from the delegate of the Information Commissioner that contains the decision not to undertake a review under s 54W(b).

The AAT application form also asks you to describe the 'decision'. If you have attached the decision of the Information Commissioner's delegate and the last decision of the government agency or minister (IC reviewable decision), you can write 'See attached decision'. Otherwise, you should describe these decisions.

The AAT application form asks that you write the reason(s) why you want the decision reviewed. This can be a short summary. The AAT will give you an opportunity to say more later in the process.

An application fee of \$1,011 must usually be paid when you apply to the AAT. However, in some cases, no fee is payable. You may also be eligible to pay a reduced fee of \$100. More information about [application fees](#) is on the AAT website.²

More information

- Apply for a review: aat.gov.au/apply-for-a-review/freedom-of-information-foi
- Steps in a review: aat.gov.au/steps-in-a-review/freedom-of-information-foi

² aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees

Deemed refusal matters - Key progress steps and information required

Intake and registration

Triggered by receipt IC review application

Validity considered, including 54T decision.

Conduct preliminary inquiries

Triggered by receipt of valid IC review application.

Outcome: agency will either confirm matters is deemed refused, submit the matter is not deemed or fail to respond.

Issue 54Z/55T

Triggered by response confirming deemed refusal, or lack of response.

Conduct further inquiries

Triggered if PI response indicates decision is not deemed refused.

To the applicant If it appears the request is invalid/misdirected or just not received.

To the respondent if they contend the matter is not deemed for various reasons (advice may need to be sought from AD or DR). Primary example is where the agency has treated it as a request under the privacy Act.

Does the applicant wish to proceed

Triggered by receipt of a statement of reasons (because a revised decision was made/submissions have been provided or a mistake in transmission has been rectified).

Email sent to the applicant requesting advice re proceeding and submissions.

Closure?

Triggered by receipt of a withdrawal, or failure to provide reasons for proceeding (after two attempts).

Proceeding to assessment - what do we need?

Confirmation that the applicant wishes to proceed.

Certainty about the scope of the IC review.

Theoretically we should already have the documents at issue and/or processing documents at this stage, but sometimes these are not provided if the agency makes a revised decision.

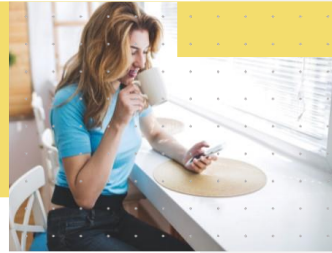
Next steps

Move the IC review to the assessment queue.

What will happen next will depend on whether we have the documents at issue/processing material.

If not the assessor will move the matter to post-triage to follow up with the agency about the further information.

Matter leaves ER control



March 2019– June 2020

Making and assessing FOI complaints

A person may complain to the Information Commissioner about an action taken by an agency in the performance of functions, or the exercise of powers under the *Freedom of Information Act 1982* (FOI Act). FOI complaints can only be made about an agency. Ministers are exempt.

An FOI complaint must be in writing and must identify the agency in respect of which the complaint is made. A person can lodge a complaint by using the FOI complaint form https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

Complaints usually focus on how an agency has handled an FOI request or complied with other obligations under the FOI Act. Further information about the FOI complaints process can be accessed at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-11-complaints-and-investigations/>

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

This worksheet provides guidance to assist with assessing complaints made to the Information Commissioner about the way agencies may have handled an application made under the *Freedom of Information Act 1982* (FOI Act). This worksheet should be read in conjunction with the Part 11 of the FOI Guidelines and other guidance and other guidance material including the FOI Complaints – Investigation Overview worksheet.

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Commented [SN1]: Should we specify up front that an FOI complaint can't be made against a Minister?

Commented [IN2]: For discussion: not sure whether we need this depending on audience.

Commented [SW3]: Hi Irene, I thought we might add an introductory section here.

Commented [IN4R3]: Thanks Sandra

FOI Complaints: Intake and Early Resolution process

Stages	Actions	Next steps
<ul style="list-style-type: none"> Intake 	<ul style="list-style-type: none"> Review correspondence and determine whether: <ul style="list-style-type: none"> <u>Whether the complaint identifies the agency in respect of which the complaint is made. If it does</u> 	

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OAIC

Stages	Actions	Next steps
	<p>not, request further information from the complainant</p> <p>the complaint relates to Ministers, State, Territory or local government agencies. If it does, advise the complainant that the OAIC does not investigate such complaints can only investigate actions taken by an agency under the FOI Act (Cth).</p> <p>it is an IC review or complaint; to determine whether it is an IC review or complaint, assess the outcome the complainant is seeking. If the outcome is to obtain documents advise the complainant referring to https://www.oaic.gov.au/freedom-of-information/frequently-asked-questions/what-is-the-difference-between-a-complaint-and-an-application-for-review-of-a-freedom-of-information-decision/.</p> <p>It is a complaint, if the complaint is within jurisdiction and identifies the agency satisfying s 70, raise the FOI complaint at weekly Investigations and Compliance Complaints, Vexatious Applicant Declaration and Extension of time meeting (Assessment meeting).¹</p> <p>If the Complainant provides further information advising that they withdraw the FOI complaint and are seeking IC review only, close the FOI complaint as</p>	<p>If required request further information from the complainant if the jurisdiction or agency is unclear in FOI complaint form.</p> <p>If no further information is required and the complaint is outside of jurisdiction or about a Minister finalise the</p> <p>Finalise complaint as invalid (out of jurisdiction) and notify the complainant.</p> <p>Send an email see attachment A</p> <p>If the complainant does not wish to proceed with the complaint, but wishes to proceed with the IC review, finalise the complaint as withdrawn and register the IC review</p> <p>If it is apparent that the complainant needs assistance with formulating the complaint refer to the Director, Compliance and Complaints</p> <p>Discuss at meeting. Register complaint: Assistant Review and Investigation Adviser to enter complaint details in Resolve and send acknowledgement email to the complainant; matter left in the 'Triage - FOI' queue.</p>

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Commented [SW8]: This is only proposed correspondence. We have been using attachment B where applicants lodge both an IC review and Complaint. However, with the introduction of the smart form, where applicants are using the complaint form in circumstances where the merits review would be appropriate, we are proposing this letter.

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Commented [SW9]: Irene, are you happy with this approach, or would you prefer that we discuss all complaints at the complaints meeting before taking this action?

Commented [IN10R9]: I think at this stage Sandra we should discuss all complaints at the meeting (except clear not in jurisdiction ones)

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Commented [SW11]: Let me know your views on this ...

Commented [IN12R11]: I think this could be addressed at the weekly meeting.

Commented [HK5]: Should we insert a step to complete Complaint Tracker and sending email to complaint meeting attendees the day before the complaint meeting (Tuesday afternoon) highlighting new complaints to discuss and provide link to complaint tracker on Trim.

Commented [IN6]: Verbal ITD process where they have requested both IC review and Complaint or the complaint is solely review issue:

- I&ER to call C have a conversation raising:
- Complaints function
 - IC review function
 - Outcome of processes
 - Advise that if they were not minded to withdraw complaint on the basis of the info they would recommend to IC to decline the complaint as it is more appropriately dealt with under the review function.

Follow up email:
Short template which states:
Thank you for time
As discussed
I confirm your withdrawal of complaint OR
Proceed to recommend to IC decline

If proceeding to IC for decline then transferred to I&C team.

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¹ The Investigations and Compliance Complaints, Vexatious Applicant Declaration and Extension of time weekly meeting is attended by the Principal Director, the Investigations and Compliance team and the Assistant Director and Assistant Review Adviser of the Intake and Early Resolution team.

Stages	Actions	Next steps	Formatted Table
	<p>‘withdrawn’ and proceed to register an IC review.</p> <ul style="list-style-type: none"> • If the Complainant refuses to withdraw the complaint once an IC review is registered, I&ER to provide verbal ITD over the telephone that the IC would likely decline to investigate the complaint on the basis that it is linked to an IC review. • If the Complainant provides further information indicating that the issues raised in the complaint are genuinely matters that can be included in an IC review, and refuses to proceed with IC review in lieu of complaint, I&ER to provide verbal ITD over the telephone that the IC would likely decline to investigate the complaint on this basis. • It is a complaint about an agency’s IPS or disclosure log. Discuss with Assistant Director or Director if unclear or contact the complainant/applicant to seek further clarification 	<p>If Complainant does not agree to withdraw Complaint following verbal ITD:</p> <ul style="list-style-type: none"> • Assistant Review Adviser within I&ER to draft ITD on the basis that Complaint is linked to an ongoing IC review (one-page template to be developed) <p>If Complainant does not agree to withdraw Complaint following verbal ITD:</p> <ul style="list-style-type: none"> • Assistant Review Adviser within I&ER to draft ITD on the basis that issues raised in the complaint could be addressed in an IC review (one-page template to be developed) <p>Discuss at meeting</p> <ul style="list-style-type: none"> • Discuss at meeting. Assign action to relevant Review and Investigation Adviser 	<p>Formatted: Bulleted + Level: 1 + Aligned at: 0.63 cm + Indent at: 1.27 cm</p> <p>Commented [HK7]: Should we develop a template to assist with providing verbal ITD?</p> <p>Formatted: No bullets or numbering</p> <p>Commented [SW13]: Should we have a consultation process here? i.e Assistant review adviser to seek the views of the Investigations and Compliance Director prior drafting this ITD?</p> <p>Who will be responsible for the initial ITD clearance? I&ER director or I&C Director?</p> <p>Formatted: Font: 11 pt</p> <p>Formatted: Indent: Left: 0.63 cm, No bullets or numbering</p> <p>Commented [SW14]: Just thought I would include this type as there are a few complaints of this nature</p> <p>Formatted: No bullets or numbering</p>
	<ul style="list-style-type: none"> • Assessment meeting • Assessment of an FOI complaint will include the consideration of: <ul style="list-style-type: none"> o Whether the FOI complaint is within jurisdiction o The outcome the complainant seeks o Whether the issues raised are more appropriately dealt with under the merit review process o Whether the issues raised are systemic in nature o Whether the complainant has previously complained to the respondent o At what stage of the processing did the action take place that the complaint relates to 	<p>If assessed as a valid FOI complaint:</p> <ul style="list-style-type: none"> • Register complaint: Assistant Review and Investigation Adviser to enter complaint details in Resolve and send acknowledgement email to the complainant; matter allocated to ‘FOI – Complaints’ queue. <p>If assessed as a valid FOI Complaint and IC review:</p> <ul style="list-style-type: none"> • Register complaint: Assistant Review and Investigation Adviser to enter complaint details in Resolve and send acknowledgement email to 	<p>Formatted: No bullets or numbering</p> <p>Commented [SW15]: Is tis where we insert the complaints tracker? It may be appropriate to include a // for I&ER to consult I&C before registering the complaint.</p> <p>Formatted: No bullets or numbering</p> <p>Formatted: Indent: Left: 0 cm, Hanging: 0.63 cm</p>



Stages	Actions	Next steps	
	<ul style="list-style-type: none"> Whether the complaint is about an agency's IPS or disclosure log 	<ul style="list-style-type: none"> the complainant; matter allocated to 'FOI - Complaints' queue. Register related IC review. See XXXXXX for next steps in the IC review process. <p>If assessed as IC review only:</p> <ul style="list-style-type: none"> Register related IC review. See XXXXXX for next steps in the IC review process <p>If assessed as requiring further information from the complainant:</p> <ul style="list-style-type: none"> Send an email to the complainant see attachment A If the complainant does not wish to proceed with the complaint, but wishes to proceed with the IC review, finalise the complaint as withdrawn and register the IC review. See XXXXXX for next steps in the IC review process. If the complainant wishes to proceed with the complaint and provides further particulars list matter for reassessment at the next assessment meeting. 	<p>Formatted Table</p> <p>Formatted</p> <p>Formatted: Highlight</p> <p>Formatted: Indent: Left: 0.5 cm, No bullets or numbering</p> <p>Commented [IN16]: TRIM link to be provided</p> <p>Formatted: Indent: Left: 0.52 cm, No bullets or numbering</p> <p>Commented [IN17]: TRIM link to be provided</p> <p>Formatted: Indent: Left: 0.64 cm</p> <p>Formatted: No bullets or numbering</p> <p>Formatted: Font: Bold</p> <p>Commented [SW18]: This is only proposed correspondence. We have been using attachment B where applicants lodge both an IC review and Complaint. However, with the introduction of the smart form, where applicants are using the complaint form in circumstances where the merits review would be appropriate, we are proposing this letter.</p> <p>Commented [IN19R18]: Thanks Sandra</p> <p>Formatted: Default Paragraph Font, Font color: Text 1</p> <p>Commented [IN20]: TRIM link to be provided</p> <p>Commented [SW21]: Noting the Deputy Commissioner's comments re: 54T policy</p> <p>Formatted: Indent: Left: 0 cm, Hanging: 0.63 cm</p> <p>Commented [SW22]: Include in the complaints tracker register</p> <p>Commented [SN23]: Do we need to add the 'Next Steps' option for the Assessment meeting outcome to be that the matter is considered an IC review only? i.e. where the issues raised are more appropriately dealt with as an IC review and no complaint is registered?</p>
<ul style="list-style-type: none"> Preliminary inquiries 	<ul style="list-style-type: none"> Review complaint and consider appropriate preliminary inquiries to be conducted with the agency <p>Agency response to be assessed to determine whether further preliminary inquiries required or whether matter to move to 'Mail Assessor' queue</p>	<ul style="list-style-type: none"> Review and Investigation Adviser/Assistant Director to prepare preliminary inquiries and refer send to Director for review and approval/clearance. Matter left remains in the 'Triage - FOI - Complaint' queue until response received from agency Review and Investigation Adviser/Assistant Director to monitor response from agency and follow-up as necessary Review and Investigation Adviser/Assistant Director to acknowledge receipt of 	<p>Formatted: No bullets or numbering</p>



Stages	Actions	Next steps	Formatted Table
<ul style="list-style-type: none"> Senior assessment 	<ul style="list-style-type: none"> Complaint and agency response to preliminary inquiries to be assessed to determine whether the complaint should proceed to investigation, be declined or that further preliminary inquiries are required. 	<p>preliminary inquiries response.</p> <ul style="list-style-type: none"> Review and Investigation Adviser to prepare further preliminary inquiries if required and refer to Director for review and approval If further preliminary inquiries not required, Review and Investigation Adviser to reassign matter to 'Mail Assessor' queue Director or Principal Director to undertake assessment; assessment to be recorded in the 'Summary' field for the matter in Resolve; matter to remain in 'FOI-Complaint' queue awaiting allocation be reassigned to a Review and Investigation Adviser (or other officer as appropriate) 	<p>Commented [IN24]: DC proposed process – no PIs conducted. Will need to be deleted if settled approach is that no PIs are being conducted.</p> <p>Commented [IN25]: Will need to be deleted if settled approach is that no PIs are being conducted.</p>
<ul style="list-style-type: none"> Post triage 	<ul style="list-style-type: none"> Review and Investigation Adviser to prepare correspondence following assessment Response to investigation notice to the agency, a notice of intention to decline to the complainant or further preliminary inquiries to the agency to be assessed 	<ul style="list-style-type: none"> Review and Investigation Adviser to prepare an investigation notice to the agency, a notice of intention to decline to the complainant or further preliminary inquiries to the agency If notice of intention to decline: Director and Principal Director to review and approve If investigation notice: Assistant Director, Director, Principal Director and Assistant Commissioner, Dispute Resolution to review and approve; if required, hold meeting to discuss information to be contained in the investigation notice If further preliminary inquiries: Director to review and approve Review and Investigation Adviser to consider response received If response to notice of intention to decline: consider submissions and discuss with Director, if no change to 	<p>Commented [IN26]: DC? Who will be delegate issuing investigation notices (currently delegated down to APS 5)</p>



Stages	Actions	Next steps	Formatted Table
		<p>preliminary assessment, Review and Investigation Adviser to prepare closure letter for review and approval by Director, Principal Director, Assistant Commissioner Dispute Resolution, Deputy Commissioner and Information Commissioner</p> <ul style="list-style-type: none"> • If response to further preliminary inquiries: Review and Investigation Adviser to reassign matter to 'Mail Assessor' queue • If response to investigation notice: Review and Investigation Adviser to ensure agency has responded to issues raised; Director to reallocate matter to 'Allocation - FOI Complaints' queue 	

Attachment A: Letter to Complainant

Commented [SW27]: This is a proposed letter. We are not using it yet!

Our reference: [Insert reference number]

Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]

[Address Line 1]

[Address Line 2]

Complaint about the handling of your FOI request by the [Agency] (Reference No)

Dear (applicant)

Thank you for your complaint about the [name of agency] (agency) in relation to your FOI request. If you have not done so already, we encourage you to lodge your complaint with the agency before lodging your complaint with us.

The FOI Guidelines at [11.4] state:

The 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.

You have sought [outcome].

I note that the Information Commissioner can only make non-binding recommendations as a result of a complaint. Further information about the difference between FOI complaints and IC reviews is available on our <https://www.oaic.gov.au/freedom-of-information/frequently-asked-questions/what-is-the-difference-between-a-complaint-and-an-application-for-review-of-a-freedom-of-information-decision/>

During a complaint investigation about the actions of an agency, the Information Commissioner will not make a conclusion on whether the agency has made the correct and preferable decision in relation to your request for information. The Information Commissioner will only consider the merits of an agency's decision in an

[IC review. Further information about the difference between FOI complaints and IC reviews is available on our website.](#)

[Consequently, at this stage it would appear that an IC review is the more appropriate and effective mechanism, rather than an FOI complaint, to address the issues you have raised.](#)

[If we do not hear from you, we will](#) assess your complaint to determine whether it is more appropriately handled as an IC review. We will let you know if we decide to treat your complaint as an IC review.

[Please note:](#)

- [If your circumstances change, or your request has been resolved directly with the \(agency\), please advise us by email as soon as practicable.](#)
- [Information about the way we handle your personal information is available in our privacy policy.](#)

[Should you wish to follow up on this matter, please contact the OAIC by email foidr@oaic.gov.au and quote the reference number at the top of this email.](#)

[Yours sincerely](#)

Attachment B: Letter to IC Review applicant seeking to lodge a complaint as well

Commented [SW28]: This is the sample correspondence that we are currently using

Our reference: [Insert reference number]
Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]

[Address Line 1]

[Address Line 2]

Your IC review application about an FOI decision by the [Agency] (Reference No)

Dear (applicant)

Thank you for your correspondence seeking to lodge an IC review application with the [Office of the Australian Information Commissioner](#) (the OAIC) about the [name of agency] (agency).

(delete)

Thank you for your complaint about the [name of agency] (agency) in relation to your FOI request.

(delete)

I note you have also made a complaint about the way the Department has handled your FOI request. Your concerns about the process will be considered during the IC review.

(Delete)

The [FOI Guidelines](#) at [11.4] state:

The 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.

You have sought [outcome]. I note that the Information Commissioner can only make non-binding recommendations as a result of a complaint.

[During a complaint investigation about the actions of an agency, the Information Commissioner will not make a conclusion on whether the agency has made the correct and preferable decision in relation to your request for information. The Information Commissioner will only consider the merits of an agency's decision in an IC review.](#)

Consequently, at this stage it would appear that an IC review is the more appropriate and effective mechanism, rather than an FOI complaint, to address the issues you have raised.

However, if wish to pursue a complaint about the Department as well as an IC review, can you please advise by return email.

To enable us to properly investigate your complaint, please give as much information as possible including:

- Why you are dissatisfied with the agency's handling of your FOI request
- Details of what has occurred and who you dealt with
- What action or result you want

Please note:

- The OAIC has initiated preliminary inquiries with the (agency) regarding your IC review, we will contact you once the (agency) responds to advise the next steps. **(remove if not deemed)**.
- If you have submitted a request to the (agency) for internal review of its decision and it has not yet provided you with an internal review decision, please advise by return email. **(remove if not relevant)**
- You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI team. Depending on the issues you have raised, this may take up to 4 – 8 weeks **(delete if deemed/or seeking further info from A)**
- If your circumstances change, or your request has been resolved directly with the (agency), please advise us by email as soon as practicable.
- Information about the way we handle your personal information is available in our [privacy policy](#).

Should you wish to follow up on this matter, please contact the OAIC by email foidr@oaic.gov.au and quote the reference number at the top of this email.

Commented [SW29]: Irene, this is a new proposed //

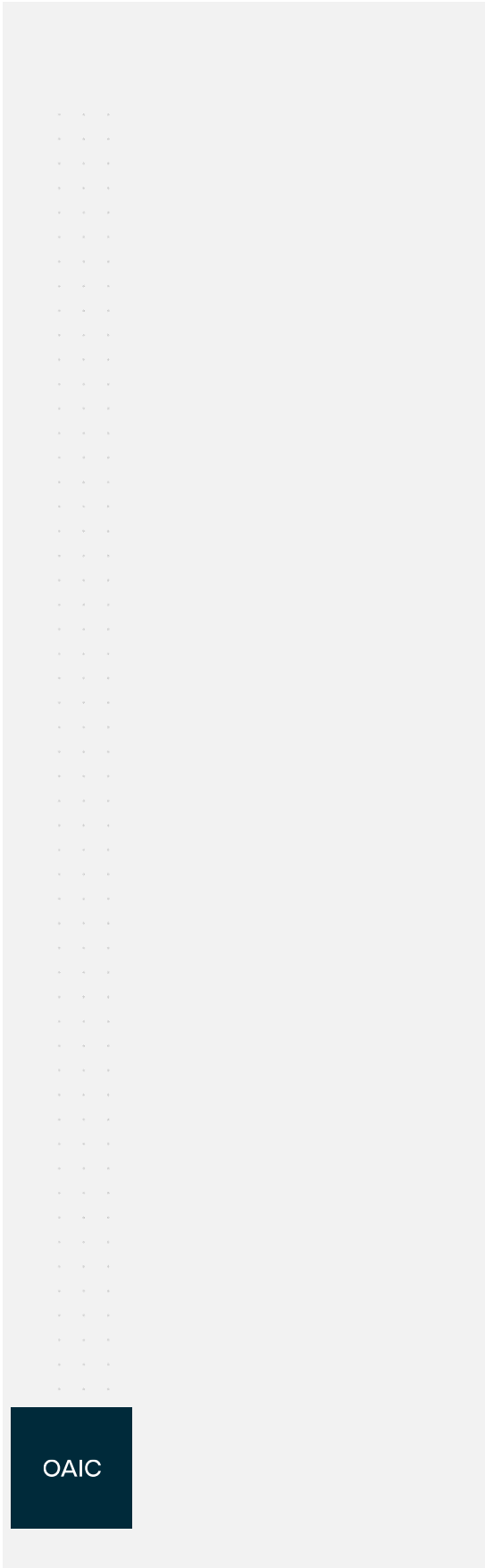
Commented [IN30R29]: Thanks – I've also added a para above.

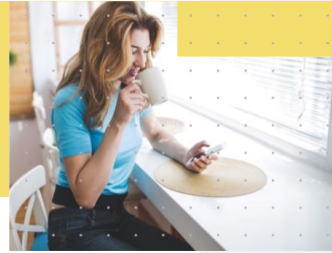
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OAIC

Yours sincerely

|





Updated June 2023

Conducting an IC review: Deemed access refusal matters

This worksheet provides guidance to assist with managing IC reviews of deemed refusal decisions made under s ss 15AC(3), 51DA(2) or 54D(2) of the FOI Act.

This worksheet should be read in conjunction with:

- [Part 10 of the FOI Guidelines](#)
- [Direction as to certain procedures to be followed in IC reviews](#) (for respondents)
- [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews | OAIC](#), and
- [the OAIC's Regulatory Action Policy](#)

Deemed refusal decisions are currently dealt with by the Intake and Early Resolution Team, and primarily involved their 'Registrations sub team' [including registration, acknowledgment and issuing of preliminary inquiries], and the 'Intake sub team', who are responsible for both the triaging of invalid applications, and progression of valid applications through the IC review process. The 'Early Res sub team' is responsible for assessment of applications that later progress to review of a subsequent revised decision.

Deemed decisions- key principles

- The statutory processing period to process a FOI request is defined in s 15(5) of the FOI Act as being 30 days after the date of receipt of the FOI request.
- The statutory processing period may be extended prior to the expiration of that period under various sections of the FOI Act to allow for additional processing time (see ss 15AA and 15AB) or for third party consultation (see ss 26A, 27 and 27A). The statutory processing period may also be extended after the expiration of the processing period under s 15AC of the FOI Act by the Information Commissioner.
- Section 15AC(3) of the FOI Act provides that where an agency or Minister has not made a decision on a request within the statutory processing period, the principal officer of the agency or the Minister is taken to have made a decision personally refusing to give access to the document.
- Similarly, s 54D(2) of the FOI Act provides that where an agency or Minister has not made a decision on an internal review application within 30 days (as required by s 54C(3)), the principal officer of the agency is taken to have made a decision personally affirming the original decision. The period for making an internal review decision can only be extended after the 30 day period has expired (see s 54D(3)).

Commented [RH1]: Later in the text the Procedure Direction is referred to – should this be included here?

Commented [IN2R1]: <https://www.oaic.gov.au/freedom-of-information/reviews/direction-as-to-certain-procedures-to-be-followed-in-ic-reviews/>

Commented [IN3]: will need to add in applicant direction

- Section 51DA of the FOI Act contains similar provisions in relation to deemed decisions with respect to applications for amendment and/or annotation (s 48) of personal records. The period for making a decision on an amendment or annotation application may only be extended after the 30 day period has expired (see s 51DA(3)).

Conducting IC review of deemed access refusal decisions

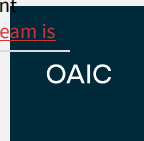
Stage	Actions
Registration and Triage	<ol style="list-style-type: none"> <u>The Registrations Officer is to register the IC review and the Intake sub-team is to consider whether the FOI request is has been a deemed access refusal decision on the FOI request.</u> Factors to consider include: <ul style="list-style-type: none"> <u>whether the statutory processing period has expired</u> <u>whether there has been an application or a request by the agency to 'passively agree' to an extension of time</u> <u>where a request consultation 24AB process under s 24AB has commenced, did whether the process has commenced during the statutory processing period or once the request became there has been a deemed access refusal.?</u> <u>If the matter is has been a deemed access refusal, the Intake sub-team is to consider whether the application for IC review is valid (including whether it and has been made within time); and, if the application for IC review is out of time, refer to 'Conducting an IC review – Section 54T Extension of Time Application Checklist', which can be found here: D2019/003336.</u> <u>If the IC review application is valid (because it has been made within time, among other things), the Registrations Officer is to send acknowledgement letter to the applicant.</u> <u>If the application is valid, the Registrations Officer is also to allocate the Resolve file to 'FOI – IC reviews – Deemed' queue or 'FOI- IC reviews – DHA Deemed' queue if the Department of Home Affairs [DHA] is the respondent.</u> <u>If the application is invalid, for example because it has been made out of time or does not include evidence of the FOI request, no preliminary inquiries under s 54V to the respondent are yet required. Instead, the Registrations Officer is to allocate the Resolve file to 'FOI – Triage' queue for follow-up actions by the Intake sub-team. The Registrations Officer to mark the 'Assessor Note' field noting the reason for the invalid application being invalid, using the following convention: '[NOW] 54T required' or '[NOW] FOI request required, or '[NOW] out of jurisdiction'.</u>
Valid applications only: Issue preliminary inquiries	<ol style="list-style-type: none"> <u>The Registrations Officer is to send s 54V preliminary inquiries email to the respondent. The respondent is given 1 week to respond. The template can be found here: D2020/007259.</u> <u>The Registrations Officer is to mark the 'Assessor Note' field, noting when the preliminary inquiries response is due, using the following convention: '[DD/MM] Pls due'.</u> <u>The Intake sub-team is to monitor response due from the agency response's due date. If a response has not been provided by the due date, the Intake sub-team is to call or email the respondent to follow up on the response.</u>

¹ A 'passive agreement' refers to an agency requesting an extension of time under s 15AA and advising the applicant that where an applicant does not respond to the request, the agency takes that as a purported passive agreement by the applicant to extend the processing period.

Stage	Actions
	<p>9. If no response is received <u>after a follow-up attempt, the Intake sub-team is to</u> escalate to Director Intake and Early Resolution Team for consideration of issuing a s 54Z/55T <u>n</u>Notice.</p>
<p>Preliminary inquiries response received: respondent confirms deemed decision</p>	<p>10. If the respondent responds to the preliminary inquiries confirming a deemed decision has been made, <u>the Intake sub-team is to</u> draft a s 54Z/55T <u>n</u>Notice requesting a revised decision or submissions and relevant processing documentation within 3 weeks. <u>[The Use template s 54Z/55T notice in Resolve can be found under the 'All Actions' tab of the Resolve file by clicking under 'AddNew Procedure', 'FOI Letter Templates', 'Early Resolution Letters (FOI)' and 'MR-070 54Z/55T Deemed Notice of IC review']</u>.</p> <p>11. <u>The Intake sub-team is to then a</u>Allocate an 'Await <u>Director C</u>learance - <u>Director</u>' action in Resolve to Director Intake and Early Resolution Team.</p> <p>12. Director <u>Intake and Early Resolution Team is</u> to have regard to the <u>Direction as to certain procedures to be followed in Information Commissioner reviews ('IC review pProcedure dDirection')</u> and Part 10 of the <u>FOI Guidelines</u>, when considering whether to issue a s 54Z/55T <u>n</u>Notice.</p> <p>13. Once the s 54Z/55T <u>n</u>Notice has been approved, <u>the Intake sub-team is</u> to send the notice to the respondent. <u>Response period providedThe respondent is given 3 weeks to respond</u>, in accordance with the IC review procedure direction.</p> <p>14. <u>The Intake sub-team is to u</u>Update the 'Assessor <u>Notefield</u>' <u>field</u> with the following convention: '[DD/MM] 54Z/55T due'.</p>
<p>Preliminary inquiries response received: respondent denies deemed decision</p>	<p>15. If the respondent responds to the preliminary inquiries advising that no deemed <u>access refusal</u> decision has been made, <u>the Intake sub-team is</u> to assess the circumstances <u>and to</u> conduct further <u>preliminary inquiries</u> with <u>the</u> respondent, if necessary, <u>to</u> determine <u>the</u> correct status of <u>the</u> decision, and establish jurisdiction.</p> <p>16. If no access refusal decision has been made [for example, where the applicant's FOI request was deemed to have been withdrawn by the applicant pursuant to s 24AB(7) following a request consultation process, and that notice was issued within the statutory processing timeframe], <u>the Intake sub-team is to</u> notify the applicant that the IC review application is invalid given no reviewable access refusal decision has been made, and invite <u>the</u> applicant's comments within 7 days. <u>As part of this invitation to comment, the Intake sub-team is to i</u>include notice of intention to finalise <u>the</u> application as invalid in the absence <u>of</u> a response within 7 days. <u>The Intake sub-team to</u> consult Assistant Director <u>Intake sub-team</u> for guidance in the first instance where required, including where the applicant provides a response contesting their application is not invalid.</p> <p>17. If the Intake sub-team is satisfied that a deemed access refusal decision has been made [for example, where the respondent has refused to deal with an invalid request when a request consultation process was required to have been undertaken], consult Assistant Director <u>Intake sub-team</u> in the first instance, prior to drafting a s 54Z/55T notice commencing a review [refer to steps <u>6-10</u> above]. The Assistant Director may wish to phone the respondent to discuss the OAIC's views prior to <u>considering whether to draft a s 54Z/55T notice</u> commencing a review. The Assistant Director <u>is</u> to inform <u>the Intake sub-team</u> as to when the <u>s 54Z/55T</u> notice should be drafted. The <u>s 54Z/55T</u> notice should include a summary of the OAIC's reasons as to why <u>there has been a decision is</u> deemed <u>access refusal decision ed</u> contrary to the respondent's views.</p>
<p><u>If No</u> response to s 54Z/55T <u>n</u>Notice <u>received</u>:— issue follow-up</p>	<p>18. If no response to s 54Z/55T <u>n</u>Notice has been received <u>by the due date, the Intake sub-team is</u> to call or email respondent and request a response within 7 days. If no response received by this date, Assistant Director <u>Intake sub-team is</u> to contact <u>the</u> respondent advising that the next step in the process is to issue a s 55R Notice. <u>The Intake sub-team is</u></p>

Commented [BL4]: Tania - should this be steps 10-14 instead?

Commented [S5R4]: yes



Stage	Actions
	<p>to draft a s 55R Notice for consideration by the Director Intake and Early Resolution Team. <u>The template</u></p> <p>18. <u>Section 55R Notice template</u> can be found here: D2020/007254.</p> <p>19. Relevant considerations to be taken into account when deciding whether to issue a s 55R Notice include:</p> <ul style="list-style-type: none"> - The reasons given by the respondent for non-compliance with the s 55E Notice - The length of time that the FOI request has been on foot - The subject matter of the FOI request - Whether there are any significant or systemic issues to consider - Part 10 of the FOI Guidelines - the IC Review Procedure Direction. <p>Further guidance on issuing s 55R Notices can be found here: D2019/014476</p> <p>20. Once the s 55R Notice has been cleared by the Director Intake and Early Resolution Team, the Director is to raise a Resolve Action to Assistant Commissioner FOI for clearance.</p> <p>21. Once the s 55R Notice has been approved by the Assistant Commissioner FOI, the Intake sub-team is to send the notice to the respondent.</p> <p>22. The Intake sub-team is to update the 'Assessor Note' field with the following convention: '[DD/MM] 55R due'.</p>
<p>Response to s 54Z/55T notice received: Respondent has provided a revised decision to the applicant</p>	<p>23. Once the OAIC has been advised by the respondent that a revised decision has been provided to the applicant and a copy of the decision provided to the OAIC, the Intake sub-team is to send a 'proceed' email to the applicant. The applicant is given 14 days to advise if they wish to proceed or withdraw their application for IC review. The proceed email requires that the applicant provide reasons in the event they wish to proceed with the review in accordance with the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews ('IC review procedure direction for applicants') Commissioner's procedure direction for applicants. This email also is to contain notice that if a response is not received by the due date, the IC review will be finalised under s 54W(c) of the FOI Act based on a failure to comply with the Commissioner's procedure direction.</p> <p>The 'proceed' email template can be found here: D2023/013037.</p> <p>24. The Intake sub-team is to mark the 'Assessor Note' field with the following convention: '[DD/MM] ITD to A due'.</p> <p>25. Once a revised decision has been provided, the Registrations Officer is to update the Resolve file with the s 54Z/55T response including the new agency decision details under the 'Agency Decisions' tab of the file. The revised decision should be copied to the file as a stand-alone document and categorised as a '55G revised decision' through 'Document Properties' to ensure it can be captured for reporting purposes. The 55G decision drop down indicator on the Resolve home screen should also be completed to show that a revised decision has been received in response to a deemed access refusal decision.</p>
<p>If no response to proceed email is received</p>	<p>26. If no response to the 'proceed' email has been received, the Intake sub-team is to follow up with the applicant by phone where phone number has been provided. The Intake sub-team is to file note the phone contact attempt.</p>
<p>Closure of IC review under s 54W(c)</p>	<p>27. If no response to the follow-up action or to the 'proceed' email is received, the Intake sub-team is to draft a decision to finalise the matter under</p>

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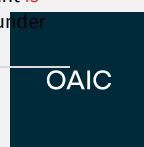
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Commented [BL6]: Hi Tania, should this be 's 54Z/55T' instead?

Commented [S7R6]: yes

Commented [RH8]: What do they do if no phone number has been provided?

Commented [IN9R8]: Proceed to next step



Stage	Actions
	<p>s 54W(c) of the FOI Act for consideration by the Director Intake and Early Resolution Team.</p> <p>The Decision to finalise a matter under s 54W(c) closure letter template can be found here: D2023/013035.</p> <p>Further guidance on consideration of whether to close an IC review under s 54W can be found here: D2018/016247.</p> <p>28. The Intake sub-team is to aAllocate a Resolve file action to Director Intake and Early Resolution Team for clearance. Assistant Commissioner FOI clearance of s 54W(c) closure letters is at the discretion of the Director for contentious or sensitive matters.</p> <p>29. Once the closure letter has been approved, the Intake sub-team is toconvert the closure letter to a PDF and send a copy to the applicant and the respondent, in separate emails.</p> <p>30. The Intake sub-team is to immediately update the 'Agency Decisions' tab of the Resolve file, finalising any outstanding issues under s 54W(c), and finalise the IC review. The staff member may prefer to allocate the matter into their name prior to finalisation.</p> <p>31. The Intake sub-team is to close the IC review.</p>

Commented [BL10]: Hi Tania, the CM reference is missing here - I can't find it on CM.

Commented [S11R10]: added

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<p>Response to proceed email received: Applicant advises that they wish to proceed with an IC review</p>	<p>32. If the applicant advises that they wish to proceed with the IC review, the Intake sub-team is to send an acknowledgement email to the applicant, confirming the scope of the review. If the scope of the review unclear, the Intake sub-team is to send an acknowledgement email to include request for reasons to be provided in support of IC review within 14 days. Acknowledgement email can be found here:</p> <p>33. The Intake sub-team is to send an update email to the respondent advising that the applicant wishes to proceed with the IC review. Template email can be found here:</p> <p>34. If reasons are required from the applicant, mark the Assessor field with the following convention: '[DD/MM] Subs from A due'.</p> <p>35. The Intake sub-team is to ensure a full response has been provided to the s 54Z/55T notice prior to moving matter to Assessments queue [for example, any processing documentation or submissions required in the notice should be on file].</p> <p>36. The Intake sub-team is to update the Resolve file [for example, to update the 'Agency Decisions' tab to including issues under review, and the summary field] and allocate the matter to the 'FOI - IC reviews - Assessment' queue. The Intake sub-team is to mMark the 'Assessor Note' field: noting there has been a decision was deemed access refusal decision and the matter is ready for further assessment using the following convention: '[NOW] Deemed refusal'.</p>
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Commented [BL12]: I suggest deletion of this sentence, as I'm unable to locate it on Resolve or CM; I understand that the sub-team has been sending this acknowledgement email without a template.

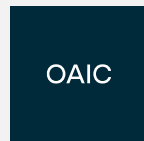
Commented [S13R12]: Pls delete for now Bernie we can add it in later

Commented [BL14]: I suggest deletion of this sentence, as I'm unable to locate it on Resolve or CM; I understand that the sub-team has been sending this acknowledgement email without a template.

Commented [S15R14]: Pls delete for now we can add this in later

<p>Response to proceed email received: Applicant advises that they wish to withdraw their IC review application</p>	<p>37. If the applicant advises that they wish to withdraw their IC review, the Registrations Officer is to send a withdrawal acknowledgement email to the applicant. Email template can be found here: D2020/007272.</p> <p>38. The Registrations Officer is to notify the respondent by email that the applicant has withdrawn their request for IC review and confirm that the matter is now closed. Email template can be found here: D2020/007270.</p> <p>39. The Registrations Officer isteam to update the Resolve file and close the file without delay, finalising outstanding issues in the 'Agency Decisions' tab as withdrawn.</p>
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May 2020 June 2023

New IC review: Triage Process work sheet

Introduction

This checklist provides general guidance to review officers in the Intake and Early Resolution Team for the registration and triage process of IC review applications.

Checklist to assist with Registration of IC review applications

Any time a new IC review application is received via email, post OR if more than one matters has been listed to be reviewed in a single webform matter, do the following:

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- Conduct a search on resolve, ~~select~~click 'Find Client' to search for the correct applicant (exercising caution with companies/directors etc. – cross reference with decision and review form)
- Enter last name of the FOI applicant
- If there are no hits, ~~check~~select 'New Client' and enter in all possible fields (in particular phone and email contacts)
 - i. For Address, check validate and select from existing postcode, or 'Not registered' if there are no options
 - ii. Check save and check 'New Case'
- If there is a hit, open the client page for the correct person and click 'New Case' on top right-hand corner
- If there is a hit and the IC review application relates to an existing client but relates to a different FOI request made on the Right to Know website, select 'New Client' and enter in all possible fields (in particular phone and email contacts). This is because whenever an applicant makes an FOI request via the Right to Know website, a unique email address to the FOI request in the format of 'foi+request-...@righttoknow.org.au' is generated. [Please do NOT choose any existing client profile about the same entity, which likely contains an email address that relates to a different Right to Know matter].
 - i. Check save and check 'New Case'
- Select 'IC Review' or appropriate type and click ~~o~~Ok
- Everything in orange must be completed
- Select Enter Review Type – be careful! This cannot be changed post selectioning

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- i. ~~Two options~~Most common options: Access refusal (includes charges and amendment to personal information) ~~and~~ access grant (when someone opposes to the release of documents for either personal or business reasons)

Method: To be determined

Enter respondent/agency's details. Never create an agency – select from options existing profiles

~~i. There is no need to select an individual for agency – select from options existing~~

~~ii. When selecting an agency or department, ensure that either 'FOI Contact Officer' is selected in the individual below or that the email on the agency profile is one which matches the agency's primary FOI email.~~

If a party is represented the review adviser ~~should~~ add an additional party in 'Parties' tab

Received date: This is the date the application was received by the OAIC. The review adviser should include the method of receipt, whether it be via post, email or website.

Complete a google search of the FOI applicant to determine if the applicant has any media links. If so, flag with supervisor to determine if sensitivity needs to be changed.

Save the entries – This should create a case number.

The review adviser will notice a new action popup: 'Record case details and attach documents'

Clear categories on email with application etc. and drag onto the file on Resolve.

- i. On outlook, put the category back on the email and move to 'Read case' folder
- ii. Check off 'Record case details' button

Applications received via smart form

Does the IC review request include a full copy of the decision?

Section 54N(1)(b) of the FOI Act provides that in order to make a valid application for IC review a person must include a copy of the notice given under s 26 of the IC reviewable decision for which an IC review is sought.

Check that:

- the decision has been provided
- the decision is complete and that there are no missing pages or attachments
- the applicant has not sought IC review of more than one decision. If this is the case, register separate decisions per the above instructions

If the decision is complete, fill in the 'Agency Decision' tab on resolve, include decision maker 'add issue' and allocate to FOI IC reviews Assessment. When completing this tab ensure that you enter all of the relevant issues and exemptions applied in the decision.

If there is no decision, but they provide a copy of the initial purported FOI request or an acknowledgment letter from the respondent agency, and claim no decision was made then issue preliminary inquiries to the respondent agency using the . The respondent is given 1 week to respond. Template can be found here: [D2020/007259](https://www.oaic.gov.au/foi/foi-ic-reviews/foi-ic-reviews-templates).

Commented [HK1]: Hi Sandra, could we include instructions for selecting "FOI Contact Officer" as the Agency contact, this assists greatly when creating the s 54Z notices on resolve as the letter will not populate without a contact having been selected.

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Commented [HK2]: Should we include instructions for categorising the documents (such as key document for decision, general for internal correspondence etc).

Commented [SW3]: Steph, please complete this part including steps that are not referred to above

IC review request does not include a copy of the decision or the FOI request, issue conduct inquiries a request for information with to the applicant

In the first instance by phone. If the applicant has not provided a phone number,

By email – See attachment A for Template email correspondence to the applicant requesting the applicant to provide the decision within one week Use template MR-152 under FOI Letter Templates → Early Resolution Letters (FOI) to send to the applicant via their preferred contact method

Create a resolve action reminder due in 7 days Noting in the assessor notes field, a due-date of 7 days noting [<One week>] ‘RFI due’

If a decision is not provided in 7 days, draft a s 54N decision – see attachment B for Template using MR-155 under FOI Letter Templates → Early Resolution Letters (FOI) s 54N decision and refer the draft decision to your Director for clearance

If the decision is cleared, notify the applicant and close the IC review.

If the decision is provided, then process the resolve case file as per the above instructions, filing out the summary field (per the below) and the ‘agency decisions’ tab.

Conduct the Triage process on resolve

Enter in summary field

Paste template. See sample Attachment C for assessor notes entered on resolve and allocate to FOI IC Reviews Assessments.

Does IC review contains subject matter that is time critical or sensitive in nature such as review of relates to an access grant decision?

If yes, immediately contact the Department for the details of the FOI applicant notifying the Department that a third party who was consulted has sought review. Invite the Department not to release the documents pending the outcome of the access grant IC review application. Refer to attachment D for a copy of the email that should be issued regarding access grant review requests. Once notice has been issued, move the matter FOI – IC Reviews Assessments queue.

If no, allocate to FOI IC reviews Assessments.

Does IC review contains subject matter that is sensitive or high-profile in nature?

If yes, complete ‘Sensitivity’ indicator on Main screen in Resolve under Review Details by selecting one of the following options:

Sensitivity:	Member of Parliament
Validation:	Not sensitive
Deemed decision:	Media Interest
Summary (Press F2):	Member of Parliament
Summary	Ministerial
Summary	Safety concerns
Summary	Time critical
Summary	Whistle-blower

Also notify Director by email of any sensitive requests, prior to moving to FOI IC reviews Assessments queue.

Commented [SW4]: Steph, please include attachment B as a sample letter of correspondence to the applicant advising that the IC review is closed under s 4N

Commented [HK5]: Should we include that in rare circumstances we might consider conducting informal PI's with the Agency in order to obtain the decision, however this should be discussed with a supervisor on a case by case basis.

Commented [SW6]: Rocelle, are you happy with this approach?

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OAIC

If no, leave indicator at default setting of 'Not sensitive'

IC review applicant is also seeking to lodge a complaint about the way an agency has handled their FOI request

- Check whether the applicant has sought review using the IC complaint smart form or indicated that they wish to lodge a complaint
- Check the outcome that the applicant is seeking
- Consider whether to contact the applicant to discuss whether to proceed with a complaint or an IC review application. In particular;
 - the outcome that the applicant is seeking
 - the time frames involved
 - ask the applicant to clarify the outcome they are seeking in writing
 - if the applicant is seeking to proceed with a complaint refer the applicant's correspondence to your Assistant Director for discussion, at the weekly complaints meeting

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Commented [SW7]: To insert TRIM Link to complaints process at D2019/002579 and refer to correspondence to A seeking clarification of complaint or merits review.

Attachment A – Template for requesting decision

Our reference: MRXX/XXXXX
Agency reference: XXXXX

Mrs / Mr [Firstname] [Lastname]
By email:

Dear Ms/Mr [Lastname]

Thank you for your application for review.

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

If you wish to proceed with this IC review, please provide a copy of the FOI decision you wish to have reviewed by @1week. If no decision letter is provided, the matter will be closed as invalid.

If you would like to discuss this matter you may contact me on [enter phone number] or via email FOIDR@oaic.gov.au. Please quote the reference number MR@@@.

Yours sincerely

Attachment B – Template for s54N decision

Our reference: [ref number]
Agency reference: [ref number]

[applicant]
Sent by email: [email]

Commented [SW8]: Please confirm that this is the one you use

Commented [L9]: Tom has suggested deletion of these two templates, as they are already in Resolve.



Dear (name)

Your IC review application about the (agency)

I write to you regarding your application for IC review about the (agency) (the Department) decision made (date).

On (date), I wrote to you and asked you to provide a copy of the decision you wanted the Information Commissioner to review. I asked you to provide the requested information by (date).

On (date), I wrote to you again advised that s 54N of the Freedom of the Information Act 1982 says that in order to make a valid application for IC review a person must send us a copy of the decision they want reviewed with their application. I advised that if you do not provide the requested information by (date), your matter would be closed as invalid.

You have not responded to my email. I confirm that this matter has been closed under s 54N of the FOI Act.

Kind regards

Attachment A€ – Template for assessor notes summary field entered on rResolve main page

Summary

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

Request:

Decision under review: original decision dated @.

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

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

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

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

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

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

Notes for assessor::

Summary

Request:

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

Number of documents at issue: @

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

- a. Assessor Note
 - i. Enter the relevant exemptions or action status if preliminary enquiries undertakenSummary:
 - b. Tick 'Conduct Triage' box and select appropriate outcome (seek further info)
 - i. E.g. see MR19/00050
 - ii. Conduct PIs under s 54V with agency (use template) and drag email to file
 - iii. Tick 'Conduct Triage' in Actions and for status, select 'Seek Further Information' and due date and allocation
 - iv. Manually change 'Case Officer' to 'Allocation — FOIC reviews
 - v. Enter in Assessor Note: any issues that you think you need to highlight for the Assessor's attention e.g if the applicant has indicated that they have pending court proceedings
 - vi. Send out full acknowledgement letter — see attachment D for template for acknowledgment letter
 - vii. Update Assessor Note

Attachment **DB** – Template for acknowledgement letter to applicant (where the matter is deemed)

Our reference: <CASE NO>

Agency Reference: <REF>

By email: <Email>

Receipt of your IC review application

Dear Mr/Ms A,

Thank you for your application for Information Commissioner Review (IC review).

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

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to FOIDR@oaic.gov.au and quote <CASE NO>.

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

Kind Regards,

Our reference: [Insert reference number]

Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]

[Address Line 1]

[Address Line 2]

Your IC review application about an FOI decision by the [Agency] (Reference No)

Dear (applicant)

Thank you for your correspondence seeking to lodge an IC review application with the Office of the Australian Information Commissioner (the OAIC) about the [name of agency] (agency).

Please note:

- The OAIC has initiated preliminary inquiries with the (agency), we will contact you once the (agency) responds to advise the next steps. **(remove if not deemed)**.
- If you have submitted a request to the (agency) for internal review of its decision and it has not yet provided you with an internal review decision, please advise by return email. **(remove if not relevant)**
- You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI team. Depending on the issues you have raised, this may take up to 4 – 8 weeks **(delete if deemed/or seeking further info from A)**
- If your circumstances change, or your request has been resolved directly with the (agency), please advise us by email as soon as practicable.
- Information about the way we handle your personal information is available in our privacy policy.

Should you wish to follow up on this matter, please contact the OAIC by email at foidr@oaic.gov.au and quote the reference number at the top of this email.

Yours sincerely

Attachment C – Template for acknowledgement letter to applicant (where the decision is provided)

Our reference: XXXXX

Agency reference: XXXXX

Applicant name

By email: XXXXX

Receipt of your IC review application

Dear [Mr/Ms name]

Thank you for your application for Information Commissioner Review (IC review).

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

[If scope is clear] We understand that you are seeking a review of...[e.g. the exemptions applied to the documents under ss XX and XX of the FOI Act; the searches undertaken by the respondent to identify all documents relevant to your request etc.]

or

[If scope of review is unclear] To assist us in assessing your application, can you please respond by [2 weeks] with the following information:

1. identify the aspect(s) of the agency or Minister's decision about which the review is sought
2. state why you disagree with the agency or Minister's decision
3. identify which documents you consider have been wrongly refused, or which exemptions have been incorrectly applied
4. [only include if relevant- otherwise delete] if the request has been refused on the grounds that it would substantially or unreasonably divert an agency's resources or interfere with the performance of a minister's functions (ss 24 and 24AA) – specify the reasons why they believe the FOI request would not have this impact.

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to FOIDR@oaic.gov.au and quote <CASE NO>

Otherwise we will write to you with an update on next steps once your application has been assessed.

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

Kind Regards,

Attachment D – Template for acknowledgement letter to applicant (where OAIC is respondent)

Our reference: XXXXX

Agency reference: XXXXX

Applicant name

By email: XXXXX

Copied to: Legal@oaic.gov.au

Receipt of your IC review application

Dear [Mr/Ms name]

Thank you for your application for Information Commissioner Review (IC review) of an FOI decision made by the Office of the Australian Information Commissioner (the OAIC).

I intend to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake this IC review under s 54W(b) of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

The effect of such a decision would be to finalise this IC review application and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes.

The reasons for this recommendation follow.

Discretion under s 54W(b) of the FOI Act

Under s 54W(b), 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.

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 states:

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

In this IC review, it is my view that it is in the interests of the administration of the FOI Act that this review be closed and that you be provided the opportunity of applying directly to the AAT for review, because it is apparent that:

- The FOI request under review was processed and decided by the OAIC.
- There may therefore be a perceived conflict of interest in the Commissioner undertaking a review of a decision made by their own agency.

[Only if relevant: In this case, I also note the OAIC has already had an opportunity to reconsider the decision under internal review].

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

Next steps

If you disagree with this proposed recommendation, please write to us by [2 weeks] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W(b).

In the absence of a response by this date this IC review application may be finalised under s 54W(b), and the parties will be notified of their review rights.

Yours sincerely

[Name]

Intake and Early Resolution Team

[Date]

Attachment D—Template for letter to applicant seeking to clarify complaints process

Our reference: [Insert reference number]

Agency reference: [Insert reference number]

[First Name Last Name]

[Company Name]

[Address Line 1]

[Address Line 2]

Your IC review application about an FOI decision by the [Agency] (Reference No)

Dear (applicant)

Thank you for your complaint about the [name of agency] (agency) in relation to your FOI request.

{delete}

I note you have also made a complaint about the way the Department has handled your FOI request. Your concerns about the process will be considered during the IC review.

{Delete}

The FOI Guidelines at [11.4] state:

The 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.

You have sought [outcome]. I note that the Information Commissioner can only make non-binding recommendations as a result of a complaint.

Consequently, at this stage it would appear that an IC review is the more appropriate and effective mechanism, rather than an FOI complaint, to address the issues you have raised.

However, if wish to pursue a complaint about the Department as well as an IC review, can you please advise by return email.

Please note:

- The OAIC has initiated preliminary inquiries with the (agency), we will contact you once the (agency) responds to advise the next steps. (remove if not deemed).
- If you have submitted a request to the (agency) for internal review of its decision and it has not yet provided you with an internal review decision, please advise by return email. (remove if not relevant)
- You will be advised about the next steps in the IC review process once your application has been assessed by a senior member of the FOI team. Depending on the issues you have raised, this may take up to 4 – 8 weeks (delete if deemed/or seeking further info from A)
- If your circumstances change, or your request has been resolved directly with the (agency), please advise us by email as soon as practicable.
- Information about the way we handle your personal information is available in our [privacy policy](#).

Should you wish to follow up on this matter, please contact the OAIC by email at foidr@oaic.gov.au and quote the reference number at the top of this email.

Yours sincerely

Attachment ED – Access Grant notification to affected agency

Our reference: <OAIC Ref>

Your reference: <Agency Ref>

FOI Contact Officer

By email: <Agency FOI Contact Email>

New Third Party IC Review Application

Dear FOI Contact Officer

On <IC Review Application Date>, a third party applied to the OAIC for IC review of an access grant decision made by the <Department/Agency Name> (Department/Agency) on <Access Grant Decision Date>.

A copy of the IC review application and the <Agency's> decision are attached.

To assist us in assessing this application, can you please respond to confirm that the <Agency> has not already released the relevant documents to the FOI applicant?

If the <Agency> has not already released the documents, please do not release the documents as these will be subject to review by the Commissioner.

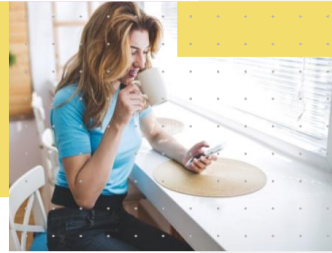
I would appreciate your earliest response, or by COB <1 Week> please.

Was the IC review application made within 60 days (in the case of access grant decisions 30 days) after the day notice of the IC reviewable decision was given under s 26?

If the application for IC review was not made within 60 days in the case of an access refusal IC review application and 30 days in the case of an access grant decision, follow the process under *conducting an IC review: Applications for extension of time to apply for IC review – s 54T worksheet* at TRIM LINK: [D2019/003336](#)

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Commented [SW10]: This document is pending approval by the Principal Director



March 2020 Updated June 2023

PROCESSING EXTENSION OF TIME REQUESTS

The *Freedom of Information Act 1982 (Cth)* requires agencies and ministers to comply with statutory timeframes for processing FOI requests. In some limited circumstances, the timeframe may be extended, for example, with the agreement of the applicant or with the approval of the Information Commissioner.

Further information on processing FOI requests can be found in [Part 3 of the FOI Guidelines](#).

Where an agency is unable to process a request within the statutory processing period, the FOI Act provides that the Information Commissioner is able to grant an extension of time to finalise the FOI request.¹

Delegation for making administrative decisions on extension of time applications is APS 5 and above.

If an agency or a minister is unable to process a FOI request and the statutory processing clock is still running – an agency or minister can request an extension of time under s 15AB of the FOI Act.

If an agency or a minister has not been able to process an FOI request within the statutory processing period – that is the processing clock has expired, ~~a minister or an agency~~ **or a minister** is able to request an extension under s 15AC of the FOI Act.

When requesting an extension of time, agencies and ministers are required to provide submissions in support of ~~its~~ **the** request. The information that the OAIC requires includes:

- Contact details of the applicant
- Date of receipt of the FOI request
- Scope of the FOI request
- Whether the statutory processing period has been extended under any other provision in the FOI Act (e.g. imposition of charges, consultation process, consultation with third parties or consultation with international governments)
- Whether the agency or minister has requested an agreement from the applicant to extend the processing period under s 15AA
- A plan on how the agency or minister intends to utilise the extra time if granted

¹ Australian Information Commissioner and Privacy Commissioner, *Delegation of freedom of information powers and functions*, 20 June 2019.

Commented [RA1]: Please include a footnote referring to delegation instrument on the website.

Commented [L2R1]: Footnote added below.

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OAIC

- Submissions in support of its request

Where an agency or minister does not particularise provide sufficient the reasons why it is to support its seeking an extension of time sufficiently in request order for the decision maker to make an informed decision, it is open to the decision maker to request further information from the agency or minister, but there is no obligation to do so.

The OAIC has developed a Smartform which sets out the required information for an extension of time application. Agencies and ministers are encouraged to use the Smartform when requesting extensions of time.

Commented [RA3]: Please include reference to

Agency resource, which sets out guidance to agencies EOT smartform, which agencies are encouraged to use

Commented [IN4R3]: Please see revision and link to smartform

Extension with the applicant's agreement (s 15AA)

An agency may extend the processing period by up to 30 days if the applicant agrees in writing. The agency can also ask applicants for further extensions under s 15AA as long as the combined length of all agreed extensions does not exceed 30 days. The agency must give written notice of an extension to the OAIC as soon as practicable after the agreement is made. If the agency does not tell the OAIC, the extension is invalid.

A s 15AA agreement cannot be made once an FOI request has become a deemed refusal under s 15AC.

15AB – Voluminous and/or complex

Section 15AB of the FOI Act allows an agency or Minister to apply to the Information Commissioner (IC) for an EOT, where they consider the initial period insufficient to deal with an FOI request because the request is complex or voluminous (these are the only two issues we are able to take into consideration when deciding whether to grant an 15AB EOT).

An extension of time can be granted for a period of 30 days or other period as the Information Commissioner considers appropriate.

The following considerations should be taken into account when making an extension of time decision Points to consider:

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- Delegation: Delegation for making administrative decisions on extension of time applications is APS 5 and above.
- The due date of the request, having regard to other statutory provisions which have been applied? (Note: these are generally checked at the triage/registration stage)
Example:
 - Agreement by applicant (s 15AA)
 - Consultation with third parties (s 15(6))
 - Consultation for the purposes of a practical refusal reason (s 24AB)
 - Application of any charges (s 29)

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- The due date of the request, having regard to What other statutory provisions which have been applied to extend the processing period already? Eg 15AA, 15(6) etc
- Is the Whether the processing period has ended: FOI request still in time? If the due date for the decision has passed, then an application under s 15AB is not available cannot be made. If this occurs discuss with See Assistant Director or Director of the Investigations and Compliance Intake and Early Resolution team.

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Commented [RA5]: Include charges, practical refusals. Note this is normally checked at triage/registration.

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• Is Whether the request is voluminous? In determining whether a request is voluminous, regard must be had to the number of documents within the scope of the request. The agency's size should also be taken into consideration the size of the agency. A smaller agency will may consider a request of 300 pages voluminous, whereas larger agencies such as the ATO may routinely process requests into the thousands involving >1000 pages.

□ Is the request complex? Whether the request is complex? In determining whether a request is voluminous complex, regard must be had to:

- The scope and nature of the documents requested, including any sensitivities that exist, and the range of documents captured by the request
- Whether multiple third party consultations are required (for example, where it may involve cabinet material or national security material)

• Any challenges involved in the search and retrieval of relevant documents, including w
Are there multiple consultations? Does it involve international offices? Is it highly sensitive or classified information where only a few people can handle the request? Do
Whether the documents need to be retrieved from an offshore location or external storage facility, or where documents do not exist in a discrete form and the agency is attempting to collate the requested information from multiple databases or platforms; which may involve 5 business days. (this can easily add at least a week to processing)-

— Whether specialised specialised subject matter expertise is required to assess release of the documents. This is a consideration in relation to the types of requests that certain agencies process, for eExample, s include:

- for example TGA (DOH) tend to deal with complex matters as they relate to requests for sensitive business information such as formulas for generic medicines and approvals for medicines which require expertise outside of the FOI team, or specialised tax information the FOI team are unfamiliar with and may need to get internal assistance to assess the documents.

□ Whether the FOI applicant objects or may object to an extension and whether consultation with the FOI applicant is required: What other statutory provisions have been applied to extend the processing period already? Eg 15AA, 15(G) etc

- Agencies may include in their application if they have attempted to seek an extension of time agreement under s 15AA
- If a previous s 15AB application has been made, review the relevant R
if there have been previous 15ABs granted look at that resolve record to see if the for any apparent objections from the applicant raised any objections etc. (if there have been previous 15ABs in such circumstances, it is a preferred approach to please consult with the FOI applicant prior to making a decision). For further information, see Consulting on EOT applications Consulting on EOT applications Consulting on EOT applications Consulting on EOTs.

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Commented [RA8]: Are there other examples that can be provided?

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□ The time requested by the agency: Whether the time requested is reasonable, having regard to the work undertaken to date and the plan for additional time (see below). The timeframe granted can be varied (for example, an extension of two additional weeks rather than the four additional weeks sought).

• □ Steps undertaken by Has the agency been actively using the time to progress the request? Consider the submissions provided by the agency, including the Ask them for a breakdown in the timeframe of how it has been used eg of how the statutory processing timeframe has been used:

EXAMPLE: Work done to date: The ATO started the search and retrieval process, but paused its searches when the size of the initial request became apparent.

- The FOI decision maker then issued a practical refusal notice. The applicant responded by reducing the scope of the request, and the practical refusal reason was removed. The size was reduced to a little more than 300 pages of documents, by the time searching was complete.
- As outlined above, the content of the documents were such that the ATO needed to consult with the Department of Industry. At the time of making this application, the FOI decision maker has not yet received the Department of Industry's submissions.

• □ The agency's plan for additional time: Agencies should provide their plan for the additional time to be granted Does the agency have an ongoing plan? This should be set out in their application. Eg:

- ⇒ **Example: Work to be done in the additional time**
- ⇒ Days 1 -7 – review and the Department of Industry's submissions (when they arrive), and consult internally if required
- ⇒ Days 8-15 – review and edit the documents, further consultation with internal stakeholders if required
- ⇒ Days 15 - 21 – schedule the documents, prepare the draft decision letter, and have the decision letter peer reviewed.

• □ If in doubt, don't hesitate to ask the agency to provide further details, eg 840 pages, 3 agencies to consult and 12 third parties. Time to be used, 2 weeks to finalise agency consultations, 1 week to consider submissions, 1 week to finalise request.

• □ If the request is over 30 days or previous extensions have raised objections, contact the applicant and seek their view – by phone or email is fine (see Applicant consultation notes below).

• □ Are there charges involved? Section 29 of the FOI Act provides that an agency or minister may impose a charge to process a FOI request. If an agency is requesting an extension of time within the statutory processing period – the imposition of any charges remain. If an agency does not provide a response within the processing period – the agency or minister is unable to impose the charge and as a result must refund any payment made by the FOI applicant.

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Commented [RA11]: I thought we were relying heavily on the submissions and making decisions based on evidence submitted?

Commented [IN12R11]: We do both. Happy to delete if you want to make a firm directive that we do not go back for RFI.

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Commented [RA13]: We need expand this

Commented [IN14R13]: Please see revision

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- We can't take reasons such as people being on holiday into account. We do at Christmas/New Year, but not generally during the year.

Preparing and finalising an extension of time decision

- Once you have made a decision to either grant or decline an extension of time, complete the Resolve fields below: **If you are considering declining the request speak to your Director so they are aware in case there are follow on effects or resulting issues.**

You also have the option to vary the request ie — granting 2 weeks instead of 4.

- Complete the relevant template on TRIM listed in the tables below.
- Whilst completing the decision you should have regard to the sample letters on [decision making](#) located here: [TRIM LINK](#)
- Once a decision for the agency or minister and the applicant has been drafted place these on the Resolve file marking the property field accordingly:
 - 'Draft decision to FOI applicant'
 - 'Draft decision to Requestor'
- Raise an action for clearance assigned to the Assistant Director or Director of the Investigations and Compliance Intake and Early Resolution team to 'Await Clearance - Assistant Director' or 'Await Clearance - Director'

Commented [RA15]: For discussion

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 Regard to sample letters on decision making
 Decision to agency
 Decision to applicant
 Clearance and QA process
 How decisions are sent

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Commented [IN20R18]: Noted thank you – revised throughout

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- [Once the decisions have been cleared, insert your signature \(APS employees\) and convert the document to a PDF.](#)
- [Proofread the decisions to ensure:](#)
 - [FOI applicant details are correct](#)
 - [Decision date is correctly recorded](#)
 - [Reasons have been particularised](#)
 - [Delegated decision maker has signed the decision](#)
- [Send the individual decisions to the parties from the FOIDR@oaic.gov.au mailbox](#)
- [Place the sent emails onto the Resolve file](#)
- [Close the resolve file.](#)

Key Resources: s 15AB

Key s 15AB extension of time documents can be found in the below TRIM links

15AB - Sample request for further information to agency or minister	D2020/005199
15AB - Sample consultation email to FOI applicant	D2020/005196
15AB - Sample acknowledgement email to agency or minister	D2020/005200
15AB - Template decision to grant letter to agency or minister both parties	D2020/005098D2022/026838
15AB - Template decision to decline letter to FOI applicant both parties	D2020/005097D2022/026774

15AC – Deemed decisions

Section 15AC applies where a request for access to documents under the FOI Act:

- has been made to an agency or Minister
- the initial period for making a decision on the application must have lapsed (usually 30 days unless an EOT applies), and
- notice of the decision has NOT been received by the applicant.

In this situation, the application is *deemed* to have been refused by the agency or Minister on the last day of the decision period (30 days or last day of any EOT).

In this situation, the agency or Minister may apply to the OAIC for an extension of time under s 15AC of the FOI Act. [An application under s 15AC can only be granted once and cannot be varied or extended.](#)

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- Commented [IN21]: For discussion – does everyone have access to this?
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- Commented [RA22]: Note Resolve template?
- Commented [IN23R22]: For discussion – the resolve templates are still not working properly. The formatting is an issue which we have been told cannot be fixed. Happy to try again with these templates loaded onto resolve.
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What you always have to have in the back of your mind when assessing a 15AC EOT is that the applicant's ability to seek IC review will be impacted by your decision. For example, if you are granting the 15AC you are affecting their right to come to the OAIC or if you decline the EOT you are affecting the applicants right to seek internal review with the agency or minister.

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15AC can only be granted once and these cannot be varied or extended.

Once a matter becomes deemed regardless of whether a s 15AC EOT is granted the agency or minister is unable to impose a charge for processing the FOI request.

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Considerations The reasons why an agency or Minister is requesting an extension of time is not limited to only whether the request is complex or voluminous in nature in a 15AC EOT application.

The following considerations should be taken into account when making an extension of time decision:

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- Delegation: Delegation for making administrative decisions on extension of time applications is APS 5 and above.
- The due date of the request, having regard to other statutory provisions which have been applied? (Note: these are generally checked at the triage/registration stage)
Eg Example:
 - Agreement by applicant (s 15AA)
 - Consultation with third parties (s 15(6)) etc.
 - Consultation for the purposes of a practical refusal reason (s 24AB)
 - Application of any charges (s 29)

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- Whether the processing period has ended: If the due date for the decision has passed, then an application under s 15AB cannot be made. See Assistant Director or Director of the Investigations and Compliance team Assistant Director/Director.
- The factors which have affected the agency's ability to meet the processing timeframe
 - Whether the request is complex or voluminous (see 15AB – Voluminous and/or complex 15AB – Voluminous and/or complex 15AB – Voluminous and/or complex 15AB – Extension of time applications for further information)
 - Has the agency taken steps to provide timely access to information within the scope of the request, for example, has the agency provided information to a staged in-tranche release and will continue to do so?
 - Whether there have been operational issues that have impacted on the FOI team or the agency, for example:

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- Availability of decision maker
- Availability of area to process FOI request, including ~~due to staffing shortages~~ absence of key decision making personnel
- Enlivenment of Business Continuity Plan, which redeployed FOI staff to high priority functions

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□ Whether the FOI applicant objects or may object to an extension and whether consultation with the FOI applicant is required:

- Agencies may include in their application if they have attempted to seek an extension of time agreement under s 15AA
- If a previous s 15AB application has been made, review the relevant Resolve record for any apparent objections from the applicant. In such circumstances, please consult with the FOI applicant prior to making a decision. For further information, see [Consulting on EOT applications](#) [Consulting on EOT applications](#) [Consulting on EOT applications](#) [Consulting on EOTs](#).

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□ The time requested by the agency: Whether the time requested is reasonable, having regard to the work undertaken to date and the plan for additional time (see below).

— Steps undertaken by the agency to progress the request: Consider the submissions provided by the agency, including the breakdown of how the statutory processing timeframe has been used:

□

EXAMPLE: Work done to date: *The ATO started the search and retrieval process, but paused its searches when the size of the initial request became apparent.*

- *The FOI decision maker then issued a practical refusal notice. The applicant responded by reducing the scope of the request, and the practical refusal reason was removed. The size was reduced to a little more than 300 pages of documents, by the time searching was complete.*
- *As outlined above, the content of the documents were such that the ATO needed to consult with the Department of Industry. At the time of making this application, the FOI decision maker has not yet received the Department of Industry's submissions.*

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□ The agency's plan for additional time: Agencies should provide their plan for the additional time to be granted:

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Example: Work to be done in the additional time

- Days 1-7 – review and the Department of Industry's submissions (when they arrive), and consult internally if required*
- Days 8-15 – review and edit the documents, further consultation with internal stakeholders if required*
- Days 15-21 – schedule the documents, prepare the draft decision letter, and have the decision letter peer reviewed.*

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Points to consider:

- What has caused the delay and will additional time allow for processing of the request?
- Has the agency made progress in the initial period?
- Does the agency have a plan to finalise?
- Over 30 days, seek the applicant's view
- If there have been previous 15ABs it is preferable to consult with the Applicant.
- Has the agency provided tranche releases?
- Any sensitivities that need to be considered
- What have been the issues which have impacted on the agency's ability to finalise the request?
- Has the agency already made a decision after since it has become deemed the statutory processing period has expired and it is requesting an extension of time for administrative purposes?
- Whether the FOI Applicant has sought IC review of the deemed access refusal decision.

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Commented [RA32]: What do we mean by this?

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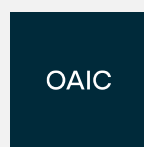
Preparing and finalising an extension of time decision

- Once you have made a decision to either grant or decline an extension of time, complete the Resolve fields below:

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 Regard to sample letters on decision making
 Decision to agency
 Decision to applicant
 Clearance and QA process
 How decisions are sent

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The screenshot shows the 'IC Request Entry' window for request RQ20/. The interface includes a 'Details' section with fields for Request Type (Extension of time), Case Number (RQ2), File Security, Request from (Agency), Case Officers (Nicolaou, Irene), Destruction Status, Sub Type (s15AC - deemed refu), Target Date, and Retention Class. Below this is a 'Requestor Details' section for 'DHS - Department of Human Services' with contact information. The 'IC Request Details' section shows the request was received on 12-Mar-2020 via a spreadsheet, registered by the Spreadsheet Queue, and has an agency reference number. The 'Open Actions' section lists options: Granted, Granted with conditions, Granted varied, Not granted, Withdrawn, and Invalid. A 'Summary' box at the bottom provides key dates: Imported from Spreadsheet (16/03/2020), Date spreadsheet submitted (16/03/2020), Date FOI request received (3/02/2020), Agreed length of extension (45), Current date decision is due (4/03/2020), and New decision date with agreed extension (18/04/2020).



- Complete the relevant template on TRIM listed in the tables below.
- Whilst completing the decision you should have regard to the sample letters on decision making located here: [\[15AC grant\] D2023/006079](#) [\[15AC decline\] TRIM LINK](#)
- Once a decision for the agency or minister and the applicant has been drafted place these on the Resolve file marking the property field accordingly:
 - 'Draft decision to FOI applicant'
 - 'Draft decision to Requestor'
- Raise an action for clearance assigned to the Assistant Director or Director of the Investigations and Compliance team
- Once the decisions have been cleared, insert your signature (APS employees) and convert the document to a PDF.
- Proofread the decisions to ensure:
 - FOI applicant details are correct
 - Decision date is correctly recorded
 - Reasons have been particularised
 - Delegated decision maker has signed the decision
- Send the individual decisions to the parties from the FOIDR@oaic.gov.au mailbox
- Place the sent emails onto the Resolve file
- Close the resolve file.

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~~What you always have to have in the back of your mind when assessing a 15AC EOT is that the applicant's ability to seek IC review will be impacted by your decision. For example, if you are granting the 15AC you are affecting their right to come to the Oaic or if you decline the EOT you are affecting the applicants right to seek internal review with the agency or minister. 15AC can only be granted once and these cannot be varied or extended.~~

~~Once a matter becomes deemed regardless of whether a s 15AC EOT is granted the agency or minister is unable to impose a charge for processing the FOI request.~~

Key Resources ~~Key s 15AC extension of time documents can be found in the below TRIM links: 15AC~~

15AC - Sample request for further information to agency or minister	D2020/005199
15AC - Sample consultation email to FOI applicant	D2020/005197
15AC - Sample acknowledgement email to agency or minister	D2020/005200
15AC - Template decision to grant EOT letter to agency or minister both parties	D2023/006078 D2020/005100

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<u>15AC - Decline letter to FOI applicant Template decision to refuse EOT letter to both parties</u>	<u>D2023/006079D2020/005099</u>
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Consulting on EOT applications:

The FOI Guidelines provide that when considering extension of time applications, the Information Commissioner will take into consideration the application and whether discussions with the applicant about the delay and extension application have occurred.²

The FOI Guidelines also provide:

There is no obligation upon the Information Commissioner to seek the views of an applicant about a request for an extension of time under s 15AC following a deemed decision. However, the Information Commissioner is not precluded from seeking the views of an applicant where it is a relevant consideration in deciding whether to grant the request for an extension of time.³

Circumstances where FOI applicants must be consulted

- If a previous extension of time has been granted
- If the request is for over 630 days or more
- Where the agency or minister has advised that the applicant has raised concerns regarding the delay in processing or has refused an extension of time under s 15AA
- Where the FOI applicant may reasonably object to the extension being granted and it is reasonably practicable to conduct consultation which includes the consideration of the likelihood of receiving a response from the applicant within the three day consultation timeframe. is a member of parliament
- If the request relates to an FOI applicant who is a journalist, or a current or former parliamentarian

Circumstances where FOI applicants should be consulted

- If the extension sought is significant in length [30 days or more] and the FOI applicant's views on the request have not otherwise made known to us
 - If the scope of the request is significant or sensitive in nature, for example, if the FOI request relates to a subject of high public or media interest, or the FOI request has been made by a journalist, social influencer, minister or member of parliament, or
 - If the agency or minister has imposed charges to process the request.
- If the agency or minister has imposed charges to process the request

² FOI Guidelines [3.157].

³ FOI Guidelines [3.158].

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Commented [L41]: For discussion - the approach of the EOT sub-team as of June 2023, as instructed, has been to consult every applicant where the request is for 30 days or more.

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Commented [RA43R42]: Consider consultation requirements working in ss 27, 27A etc

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3.76 The consultation requirements in relation to documents that are business documents (s 27) or documents affecting personal privacy (s 27A) only require an agency or minister to undertake consultations if it is reasonably practicable to give that person a reasonable opportunity to make submissions in support of the exemption contention (ss 27(5) and 27A(4)). In determining whether it would be reasonably practicable to consult, the agency or minister ...

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Consultation process

- The FOI applicant is ordinarily provided 3 working days to provide a response.
- Consultation may be conducted by phone [for less complex requests] or by email.
- A copy of the agency's reasons [excluding staff contact officer details] should be provided to the FOI applicant for consideration.
- ~~During the consultation process, advise the agency that a decision will be provided once a response has been received from the FOI applicant.~~

When consulting with an applicant it is reasonable to request a response within 3 working days.

~~Where you are consulting with an applicant, provide an acknowledgement to the requesting agency and advise them that a decision will be provided once we have received a response from the applicant.~~

Key Resources~~Key consultation documents can be found in the below TRIM links: Consultation~~

Sample consultation email to FOI applicant	D2020/005196
Sample acknowledgement email to agency or minister	D2020/005200

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For further information

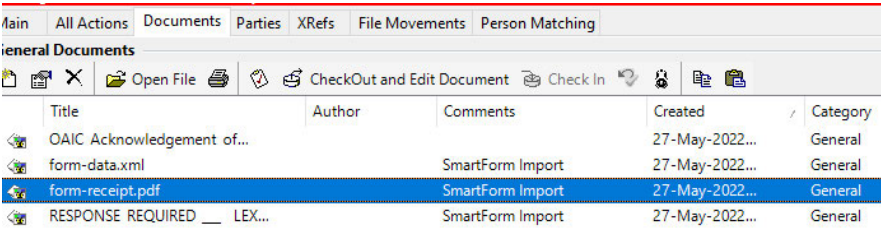
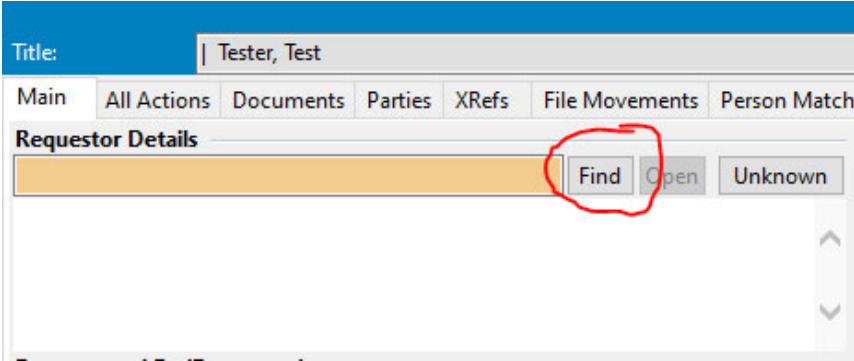
GPO Box 5218 Sydney NSW 2001 | P 1300 363 992 | E enquiries@oaic.gov.au

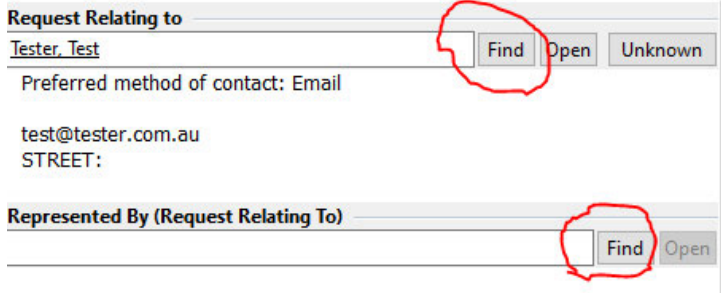
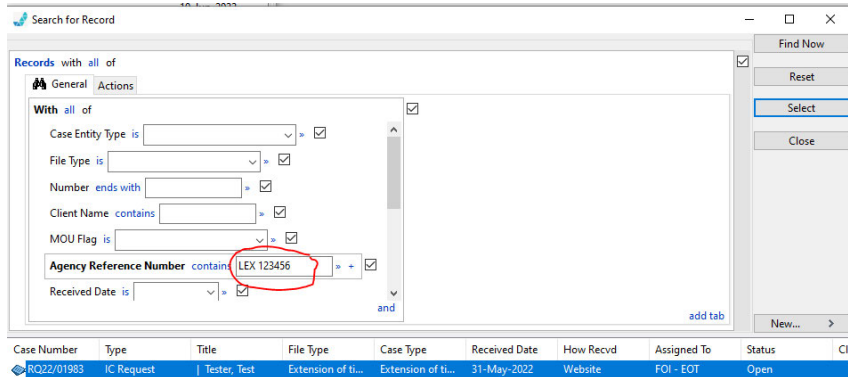
Or visit our website www.oaic.gov.au

The information provided in this resource is of a general nature. It is not a substitute for legal advice.

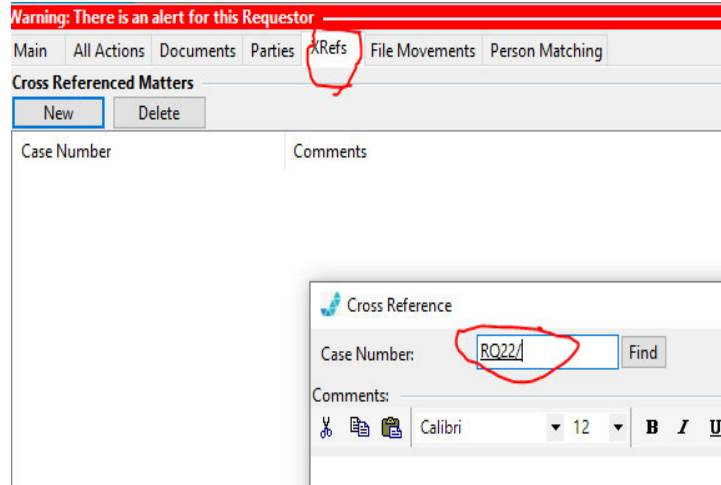


Triage:

Step	Issue	Action
1	Read application form	 <p>Proceed to step 2</p>
2	Check against the application form if the correct Requestor details have been uploaded into Resolve	<p>If yes proceed to step 3.</p> <p>If not:</p>  <p>Then type in the display name</p> <p>Find now</p> <p>Select (or add new client)</p> <p>Then add in agency contact</p> <p>Select ok and it will autofill the details.</p> <p>Proceed to step 3.</p>

3	<p>Check if the correct Request relating to (FOIA) details have been uploaded</p>	<p>If yes proceed to step 4</p> <p>If not:</p>  <ul style="list-style-type: none"> - Find - Display name - Check contact email is correct (Check both the EOT application as well as the original FOI request) - Select <p>If the FOIA is represented you will need to add in the Representative details following the same steps as above.</p> <p>Select OK and it will autofill the details.</p> <p>Proceed to step 4.</p>																				
4	<p>X- Ref any previous EOT applications for the same agency number</p>	<p>In the Resolve mainframe select 'Find case'</p>  <table border="1" data-bbox="475 1637 1326 1675"> <thead> <tr> <th>Case Number</th> <th>Type</th> <th>Title</th> <th>File Type</th> <th>Case Type</th> <th>Received Date</th> <th>How Recvd</th> <th>Assigned To</th> <th>Status</th> <th>CI</th> </tr> </thead> <tbody> <tr> <td>RQ22/01983</td> <td>IC Request</td> <td>Tester, Test</td> <td>Extension of ti...</td> <td>Extension of ti...</td> <td>31-May-2022</td> <td>Website</td> <td>FOI - EOT</td> <td>Open</td> <td></td> </tr> </tbody> </table> <ul style="list-style-type: none"> - Enter the Agency reference number provided in the EOT application - Find now - You may also need to run the search again removing or adding any spaces between letters and numbers to ensure all are captured. - If no related EOTs are found proceed to step 5. 	Case Number	Type	Title	File Type	Case Type	Received Date	How Recvd	Assigned To	Status	CI	RQ22/01983	IC Request	Tester, Test	Extension of ti...	Extension of ti...	31-May-2022	Website	FOI - EOT	Open	
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RQ22/01983	IC Request	Tester, Test	Extension of ti...	Extension of ti...	31-May-2022	Website	FOI - EOT	Open														

- If related cases are found go back to the Resolve matter file and click on the 'X-ref' tab:

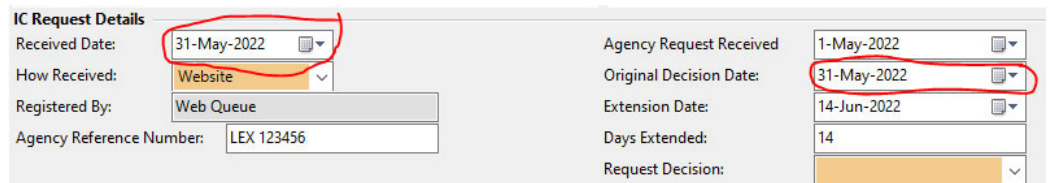


- Click 'New'
- Type in the related RQ number (identified in 'Find case' search above).
- Click 'OK'
- Repeat the process for any other related EOTs

Proceed to step 5.

5

Check dates provided by agency are correctly entered



For 15AB applications:

Original decision due date is *after* the EOT received date = still within processing period = valid 15AB application.

For 15AC applications:

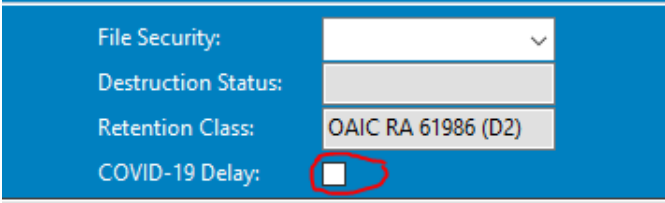
Original decision due date is *before* the date the EOT received date = outside processing period = valid 15AC application.

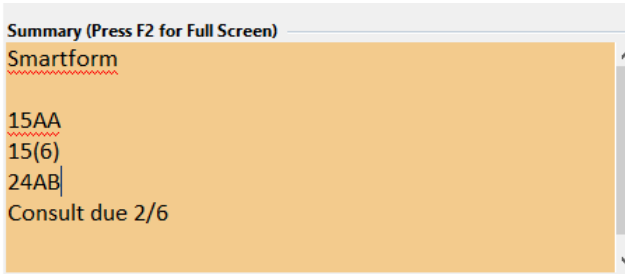
For 54D applications:

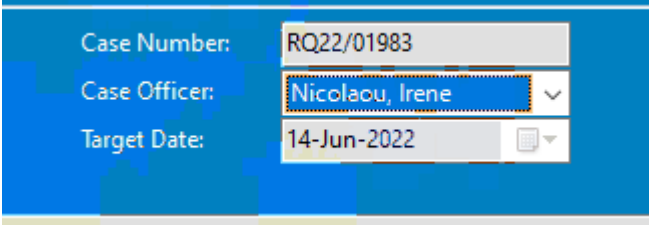
Original decision due date is *before* the date the EOT received date = outside internal review processing period = valid 54D application

		<p>Confirm dates by checking against the EOT application including the original FOI request to the agency for an indication on when the processing period started. Then check any clock stoppage periods (will be provided in the submissions in the application) and any previous EOTs granted (ss 15AA or 15AB). Confirm your calculation of the received date is the same as the agency's due date. If not correct check with Assistant Director or Director and consider RFI to agency seeking further particulars.</p> <p>If correct proceed to Step 6 for assessment.</p>
--	--	---

Assessment:

6	Read application	<p>Paying attention to whether there are any of the following:</p> <ul style="list-style-type: none"> - Covid related reasons for delay - Processing period affected by: <ul style="list-style-type: none"> o S 24AB process o Charges o Third party consultation o Previous EOTs (consider whether granted or declined) - Applicant's views on extension (if known) - Reasons provided (sufficiently address the elements?) - Any sensitive issues/subject matter that need to be escalated to EL2? If so notify EL2. <p>Go to step 7</p>
7	Record if covid related reasons	<p>If no Covid related reasons go to step 8.</p> <p>If covid related reasons click the Covid-19 box:</p>  <p>Proceed to step 8</p>

8	Notes added to Summary (yellow) box	<p>In summary box include the applicable notations:</p> <ul style="list-style-type: none"> - Smartform - 24AB - 15AA - Charges - 15(6) - Previous 15AB - Consult to FOIA due @ 3 days - RFI to R due @ 1-2 days <p>Example:</p>  <p>Press save</p> <p>If awaiting a response (either RFI or consult) ensure matter remains in 'FOI- EOT' queue and close the file.</p> <p>Once a response is received or if no further response received, proceed to Step 9.</p>
9	Assessment and allocate	<p>If there is no further outstanding information required (RFI or consult response from FOIA) then add the notation to the summary field:</p> <ul style="list-style-type: none"> - 'Proceed to decision' <p>Make any additional notes such as:</p> <ul style="list-style-type: none"> - 'applicant agrees' - 'applicant 'objects'' - 'Note sensitive submissions' - 'EL1 or EL 2 to clear decision prior to finalisation'

		<p>Summary (Press F2 for Full Screen)</p> <p>Smartform</p> <p>15AA 15(6) 24AB Consult due 2/6 in agrees Proceed to Decision - R </p> <p>Proceed to step 10</p>
10	Allocate to decision maker	<p>From the 'case officer' drop down menu select decision maker:</p>  <p>Press save</p> <p>Close the file.</p> <p>The matter is then allocated to the decision maker who will consider the application and proceed to make a decision.</p>

FOI Intake and Early Resolution Team – Extension of Time (EOT) queue management

1. As an internal KPI, the OAIC aims to respond to extension of time (EOT) applications within 10 calendar days.
2. ‘Red Zone’ matters are:
 - a. all EOT applications that are 6 to 10 days old
 - b. s 15AC and s 54D applications where the time between the date of EOT request and the EOT due date sought is less than 5 days.
3. ‘Non-Red Zone’ matters are all EOT applications other than ‘Red Zone’ matters, including:
 - a. s 15AB, s 15AC or s 54D applications that are 0 to 5 days old
 - b. s 15AB, s 15AC or s 54D applications that are over 10 days old (backlog matters).
4. The ‘Target Date’ column of the EOT queue will generally assist in identifying ‘Red Zone’ and ‘Non-Red Zone’ matters.
5. The officer rostered for ‘Non-Red Zone’ matters should aim to send consultation emails to Applicants or sending Request for Further Information (RFI) emails to Agencies **within 1 day of receipt**. This is to ensure that a decision can be made when those matters become ‘Red Zone’. Generally, a consultation email to an Applicant should be sent after an Agency’s RFI response has been received, where sending a RFI email to the Agency is required.
6. The officer rostered for ‘Red Zone’ matters on a Friday or on a day before a public holiday should be mindful of matters that will become 10-day-old on the following Saturday/Sunday or public holiday.
7. To increase visibility of all open EOT matters, generally an officer should not assign a matter to their own queue, unless the officer intends to close the matter by COB of the same day of assigning or it is more appropriate for one officer to take ownership of the matter due to its complexity or a higher volume of engagement with the Applicant or the Agency.
8. The following officers are responsible for progressing and, where possible, finalising ‘Red Zone’ or ‘Non-Red Zone’ matters in the EOT queue on their rostered days.

Table 1: Roster – EOT (from 1 July 2023)

	Monday	Tuesday	Wednesday	Thursday	Friday
Red Zone matters	Tom	Tom	Tom	Tom	Bernie
Non-Red Zone matters	Bernie	Bernie	Bernie	Bernie	Tom

9. Despite the roster in Table 1, EL1/EL2 may regularly allocate any EOT matters to any officers, taking into account staff leave and operational needs (for example, where there are more Non-Red Zone matters than Red Zone matters on any given day [and vice versa]).

LAI, Bernie

From: LAI, Bernie
Sent: Monday, 27 February 2023 9:53 AM
To: HARRIS, Noah; SELVARAJAH, Avanithah
Cc: STRATHEARN, Tania
Subject: EOT queue management worksheet

Hi Noah and Avi,

Please find here ([D2023/004379](#)) a worksheet on our new process of managing the EOT queue, including our roster:

Table 1: Roster – EOT (from 27 February 2023)

	Monday	Tuesday	Wednesday	Thursday	Friday
Red Zone matters	Noah	Avi	Avi	Noah	Bernie
Non-Red Zone matters	Bernie	Bernie	Noah	Avi	Bernie

I'm keen for us to trial this new process to see if it will make us manage the queue even more efficiently. I will also keep monitoring the numbers of Red Zone matters and Non-Red Zone matters each day to ensure that the workload of the 2 rostered officers each day is not disproportionate.

Also, please note that following on our meeting last Wednesday, I've included an example where we may assign a matter to our own queue – where 'it is more appropriate for one officer to take ownership of the matter due to its complexity or a higher volume of engagement with the Applicant or the Agency' to ensure that our efforts are not doubled (or tripled). For example, this may be ideal for a matter where you find yourself, or anticipate that you will be, writing extensive file notes on the Resolve file on your interactions with either party. If you encounter one of those matters, feel free to just assign it to yourself and let me/Tania know.

Cheers,
Bernie



Bernie Lai | Assistant Director
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+61 2 9297 9006 | bernie.lai@oaic.gov.au



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LAI, Bernie

From: LAI, Bernie
Sent: Friday, 17 March 2023 10:03 AM
To: SELVARAJAH, Avanihah; HARRIS, Noah
Cc: STRATHEARN, Tania
Subject: RE: EOT queue management worksheet - update

Hi Avi and Noah,

Just updating our EOT roster, as Avi is now working on Fridays:

Table 1: Roster - EOT (from 13 March 2023)

	Monday	Tuesday	Wednesday	Thursday	Friday
Red Zone matters	Noah	Avi	Avi	Noah	Bernie
Non-Red Zone matters	Bernie	Bernie	Noah	Avi	Avi

Cheers,
Bernie

From: LAI, Bernie
Sent: Monday, 27 February 2023 9:53 AM
To: HARRIS, Noah <Noah.Harris@oaic.gov.au>; SELVARAJAH, Avanihah <Avanihah.Selvarajah@oaic.gov.au>
Cc: STRATHEARN, Tania <Tania.Strathearn@oaic.gov.au>
Subject: EOT queue management worksheet

Hi Noah and Avi,

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Also, please note that following on our meeting last Wednesday, I've included an example where we may assign a matter to our own queue – where 'it is more appropriate for one officer to take ownership of the matter due to its complexity or a higher volume of engagement with the Applicant or the Agency' to ensure that our efforts are not doubled (or tripled). For example, this may be ideal for a matter where you find yourself, or anticipate that you will be, writing extensive file notes on the Resolve file on your interactions with either party. If you encounter one of those matters, feel free to just assign it to yourself and let me/Tania know.

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LAI, Bernie

From: LAI, Bernie
Sent: Wednesday, 1 March 2023 10:58 AM
To: SELVARAJAH, Avanihah; HARRIS, Noah
Cc: STRATHEARN, Tania
Subject: Sharing agencies' responses in EOT applications with applicants in consult emails

Hi Avi and Noah,

As discussed individually with you earlier this week, going forwards when we send a consult email to an FOI applicant about an agency's EOT application, we will generally share the agency's response to our standard 5 RFI questions usually found on the 2nd last page of the PDF version of the EOT application. This is mainly for procedural fairness reasons. I also note that before an agency submits an EOT application via the online smart form, there is a warning twice which indicates that the OAIC will share the EOT application including any attachments with the applicant.

You may do this by either:

- copying the agency's response in its entirety and pasting it to the section in the consult email to the applicant, where it says '[Agency] has advised the OAIC that: ...' (which will likely require re-formatting of the copied text), or
- taking a screenshot of the agency's response in its entirety by using the 'Snip & Sketch' app which should be installed in your laptop, before pasting it as an image in the consult email to the applicant where it says '[Agency] has advised the OAIC that: ...' [I'd be happy to facilitate a demonstration of this].

That said, please review the agency's response carefully – if the agency states that a particular piece of information is not to be shared with the applicant for confidentiality or otherwise, please flag this with me/Tania – in which case, we may ask the agency to submit a version of the EOT application that can be shared with the applicant (and, therefore, can be considered by an OAIC decision maker in deciding their EOT application). We don't and won't do any redactions on behalf of the agency. RQ23/00639 is an example where I asked an agency to re-submit their EOT application for a similar reason.

Please let me know if you have any questions about this new approach.

Thanks,
Bernie



Bernie Lai | Assistant Director
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Extensions of time training

FOI team



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Office of the Australian Information Commissioner

Types of Extensions of time

The *Freedom of Information Act 1982* (Cth) (the FOI Act) provides that a valid FOI request must be processed within the statutory processing period.

The statutory processing period is 30 days from the date on which the request was received unless validly extended (s 15(5)(b)).

Extensions without application to the Information Commissioner

The FOI Act allows the agency or minister to extend the statutory processing period in certain circumstances:

- s 15AA by agreement with the applicant.
- s 15(6) for consultation with a third party (s 26A Commonwealth-State; s 27 business; s 27A person privacy).
- s 15(8) for consultation with a foreign entity.

Extensions of time by application to the Information Commissioner

The FOI Act also provides that an agency or minister can apply to the Information Commissioner for further time to process a request where the agency has been unable to finalise the matter within the statutory processing period:

- s15AB – complex or voluminous requests.
- s 15AC – deemed access refusals.
- s 51DA – deemed refusal for amendment or annotation.
- s 54D – deemed internal review decisions.

The current delegations to make extension of time decisions are at APS 5 level (for APS employees).



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'Stop clock' provisions

Provisions where the processing clock stops

Section 24AB – request consultation

Section 24AB(8) of the FOI Act provides:

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

Provisions where the processing clock stops cont.

Section 31 – decision to impose a charge

Section 31 of the FOI Act provides:

Processing period to be calculated disregarding period when charge unpaid

- (2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:
 - (a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;
 - (b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;
 - (c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

Note: A decision under section 29 relating to the imposition of a charge or the amount of a charge may be the subject of an internal review (see Part VI), an IC review (see Part VII) or review by the Tribunal (see Part VIIA).



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Extensions of time – provisions and decision making

Section 15AA

15AA Extension of time with agreement

An agency or Minister may extend the period referred to in paragraph 15(5)(b) for dealing with a request, or that period as extended under subsection 15(6) or (8) (consultation), by a further period of no more than 30 days if:

- (a) the applicant agrees in writing to the extension; and
- (b) the agency or Minister gives written notice of the extension to the Information Commissioner as soon as practicable after the agreement is made.

Section 15AB

15AB Extension of time for **complex or voluminous requests**

- (1) An agency or Minister may apply to the Information Commissioner for an extension of the period referred to in paragraph 15(5)(b) for dealing with a request if the agency or Minister considers that the period is insufficient to deal adequately with a request **because the request is complex or voluminous.**
- (2) If the Information Commissioner is satisfied that the application is **justified**, the Information Commissioner may, by written instrument, **extend the period by a further period of 30 days, or such other period** as the Information Commissioner considers appropriate.

Note: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (3) The Information Commissioner must, as soon as practicable, inform the following persons of the period for which the extension has been given:
 - (a) the applicant;
 - (b) the agency or Minister.

Section 15AC

15AC Decision not made on request within time—deemed refusal

Scope

- (1) This section applies if:
 - (a) a request has been made to an agency or Minister; and
 - (b) the period (the *initial decision period*) covered by subsection (2) has ended since the day the request was received by, or on behalf of, the agency or Minister; and
 - (c) notice of a decision on the request has not been received by the applicant.
- (2) The initial decision period covered by this subsection is the period of 30 days mentioned in paragraph 15(5)(b) (or that period as extended, otherwise than under this section).

Deemed refusal

- (3) Subject to this section:
 - (a) the principal officer of the agency or the Minister is taken to have made a decision personally refusing to give access to the document on the last day of the initial decision period; and
 - (b) notice of the decision is taken to have been given under section 26 to the applicant on the same day.

Section 15AC cont.

Agency or Minister may apply for further time

- (4) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the request.
- (5) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the request.
- (6) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.
- (7) Subsection (3) (deemed refusal) does not apply, and is taken never to have applied, if the agency or Minister:
 - (a) makes a decision on the request within the further time allowed; and
 - (b) complies with any condition imposed under subsection (6).
- (8) However, subsection (3) (deemed refusal) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (5) if the agency or Minister:
 - (a) does not make a decision on the request within the further time allowed; or
 - (b) does not comply with any condition imposed under subsection (6).

No further time allowed

- (9) If subsection (8) (deemed refusal after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (3) in its operation as affected by subsection (8).

Decision making

- Based on the facts and circumstances
- Is the extension appropriate?
- Consider the FOI applicant's comments
- Decision makers can grant, decline or vary



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Tips and questions

Tips

- Check the dates – agencies don't always get it right
- Has the agency applied for the correct type of EOT?
- Has the OAIC been notified of the s 15AA? – if not request a copy
- Is the reasoning adequate? – if not, conduct RFIs
- Do I need to consult with the FOI applicant?

Questions, discussion, shared
wisdom from our FOI team's
extensive experience...

LAI, Bernie

From: STRATHEARN, Tania
Sent: Thursday, 25 May 2023 11:01 AM
To: LAI, Bernie; HANAEE, Thomas; HARRIS, Noah
Subject: 15AC EOT requests [SEC=OFFICIAL]

Hi team

In relation to deciding 15AC EOT requests, the agency would still need to justify why the additional processing time is appropriate, and our decisions should include the reasons as to why we consider the extension justified. It would not be sufficient to say that granting the extension is justified because it supports the purpose behind 15AC- otherwise the granting of extensions be an automated function.

While the purpose of a 15AC extension is to avoid the need for the applicant to seek IC review of the deemed refusal, s 15AC(5) states that the Commissioner '*may allow further time considered appropriate*' for the agency or minister to deal with the request. It is clear from these terms that any granting of an extension would still need to be justified, and it will not be appropriate in every case for an extension to be granted.

Our [FOI Essentials guidance](#) makes clear that reasons need to be provided by the agency to support an extension of time:

Extension following a deemed refusal decision (ss 15AC, 54D, 51DA)

An agency may apply to the OAIC for further time after a decision has become deemed (either under s 15AC or under s 54D after an application for internal review). The application may only be made after the processing period has finished. An extension in these circumstances can only be granted once and, once granted, cannot be extended further.

The agency must justify why an extension is appropriate. The OAIC may extend the processing period by an amount of time suitable to the circumstances and may impose conditions on the extension.

...

When applying to the OAIC for an extension of time, make sure you explain your reasons for seeking an extension of time... At a minimum, agencies should explain:

- the reason for needing an extension (it is not sufficient to say that the request is voluminous — explain how many documents are covered by the request; the number of duplicates (if known); the nature of the documents (their size, format or classification may be relevant); any factors slowing their processing; whether the agency has consulted with the applicant to try to reduce the scope of the request; whether a schedule of documents has been developed; whether the schedule has enabled the agency to identify documents appropriate for earlier staged release and so on)
- work already undertaken in processing the request
- work required to finalise the request
- work undertaken on the request following any earlier extension granted
- any consultation with the applicant concerning length of time
- whether other agencies or parties have an interest in the request
- measures that would be taken to ensure a decision is made within the period of extension and to keep the applicant informed about progress.

The OAIC does not take decisions to extend timeframes lightly and agencies should use the text box to provide formal, structured and complete reasoning.

The FOI Essentials also provides clarity around the implications of a 15AC decision, including where an extension under 15AC(5) is or isn't granted:

What happens if you do not meet the statutory timeframe

Agencies should continue to process an FOI request even where the statutory timeframe has expired and an extension of time has been refused or not sought. The expiry of the timeframe gives the applicant the right to apply for review of a deemed decision — it does not remove the agency's obligation to process the request. The agency's obligation ceases only when the Information Commissioner commences a review of a deemed decision (that is, the date the OAIC notifies the parties that it is commencing a review, not the date an application for IC review is lodged). At that point, the Information Commissioner has assumed jurisdiction over the matter and the provisions of the FOI Act relating to IC review apply (including an agency's power to vary an access refusal decision under s 55G).

This means that where we refuse to grant a 15AC, or the agency hasn't requested an extension under 15AC, that it still retains an obligation to continue to process the request until such time as the applicant seeks IC review of the deemed decision [in which case it will be more appropriate that a 55G decision is made where appropriate].

We will be revising the 15AC decision templates shortly to make them consistent in style to the new 15AB templates, but the current templates should still include clear reasoning.

Where the reasons provided are insufficient to justify the further time requested, we should either be inviting further reasons from the agency to justify the extension, or declining the request. Our decisions are also subject to review by the Federal Court and need to be legally defensible.

Also as you know, 15AC decisions to grant can only be made before the agency has notified the applicant of its decision.

If you think it would be helpful to have a separate training session or discussion about 15AC requests, please let me know.

Kind regards

Tania



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June 2023

FOI Complaint recommendation cases: Overview of process

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

Key principles

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

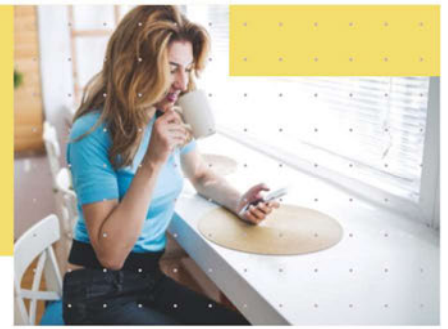
FOI Complaint Recommendation Case Process

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

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

Stage	Actions
	<p>15. Once approval obtained from FOI/Information Commissioner, case officer to provide acquittal notice to respondent.</p> <p>16. Case Officer closes Resolve case file.</p> <p>17. Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Communications team for publication.</p>
Further information	<p>18. Case Officer Draft RFI to be issued by the Assistant Commissioner.</p> <p>19. Proceed to assign Resolve clearance action through the following levels:</p> <ul style="list-style-type: none"> — Director Reviews and Investigations — Assistant Commissioner — FOI Commissioner <p>20. Once approved, Case Officer to provide RFI to agency.</p> <p>21. Director Reviews and Investigations to monitor response due date.</p> <p>22. Once response is received, return to ‘Assessment of response to recommendations’ stage.</p> <p>23. If satisfied with the agency response, proceed to Acquittal stage.</p> <p>24. If not satisfied, proceed to ‘Implementation notice’ stage.</p>
Implementation notice	<p>25. 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>26. Proceed to assign Resolve clearance action through the following levels:</p> <p>27. Director Reviews and Investigations</p> <p>28. Assistant Commissioner</p> <p>29. FOI/Information Commissioner</p> <p>30. Once the draft has been approved by the FOI/Information Commissioner, Case Officer to send the Implementation Notice to the agency.</p> <p>31. Case Officer to monitor response due date specified in the Implementation Notice.</p> <p>32. 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>33. If the FOI/Information Commissioner is satisfied with the agency response:</p> <ul style="list-style-type: none"> — Case Officer to send signed letter from FOI/Information Commissioner to agency. — Case Officer to finalise actions on resolve and closes Resolve file. — Case Officer to update Outcome of FOI investigations document: D2021/020081 and provide to Comms for publication. <p>34. If the FOI/Information Commissioner is not satisfied, proceed to ‘Report to Minister’ stage.</p>
Report to Minister	<p>35. Commence drafting a report to be provided the Attorney-General as the Responsible Minister. The report must include:</p> <ul style="list-style-type: none"> • A copy of the s 86 Notice on Completion • A copy of the Implementation Notice • The agency’s response (if any) to the Implementation Notice • State that the Information Commissioner is not satisfied that the agency has taken adequate action that is adequate and appropriate in the circumstances

Stage	Actions
	<ul style="list-style-type: none"><li data-bbox="523 248 1469 342">• state the action that the Information Commissioner believes if taken by the agency, would be adequate and appropriate in the circumstances, to implement the investigation recommendations. <p data-bbox="435 353 1458 448">36. 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 data-bbox="435 465 1458 528">37. Information Commissioner to contact the Head of the Agency to advise that a Report has been provided to the responsible Minister.</p> <p data-bbox="435 539 1469 633">38. 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>



cJune 2023

FOI Complaints: Overview of investigation process

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

Key principles

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

- Ombudsman must be consulted, and
- Information Commissioner must make a decision not to investigate or not to continue to investigate the complaint.



FOI Complaint Investigation Process

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

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