

**LODGE,Justin**

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**From:** 47E(d)  
**Sent:** Tuesday, 1 February 2022 1:24 PM  
**To:** FOIDR  
**Subject:** Application - Vexatious Applicant s89k  
**Attachments:** 2022\_02\_01 Ltr and Application to the Information Commissioner.pdf; Application for Vexatious Applicant Declaration - 1 February 2022.DOC

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good Afternoon

I attach an application by the 47E(d) under section 89k of the *Freedom of Information Act 1982* (Cth).

As the files supporting this application are large, they can not be included in this email however, they can be downloaded from link 47E(d)

The password is 47E(d)

If you have any problems with the link, please let me know.

Kind Regards,

47E(d)

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The views expressed in this e-mail are not necessarily those of 47E(d) unless otherwise stated. 47E(d) does not warrant that this message is free from viruses or any other defect or error.

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Please consider the environment before printing.

47E(d)



1 February 2022

The Australian Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

By email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Dear Information Commissioner

**Section 89K Freedom of Information Act 1982 application for a vexatious applicant declaration against 47E(d)**

We enclose a copy of an application for a vexatious applicant declaration dated 21 January 2022.

The attachments referred to in the application are available to access and download from the link embedded within the covering email.

Please advise if you have any difficulties accessing the attachments.

Given the potential for a large number of additional access actions to be taken by the Applicant at any time, 47E(d) respectfully requests that your office give urgent consideration to this application.

Yours sincerely

47E(d)



47E(d)



21 January 2022

## SECTION 89K FREEDOM OF INFORMATION ACT 1982 (CTH) APPLICATION FOR A VEXATIOUS APPLICANT DECLARATION

To: The Australian Information Commissioner

1. I, **47E(d)** am the **47E(d)**
2. **47E(d)** is an "agency" subject to the *Freedom of Information Act 1982 (Cth) (FOI Act)*. I am writing, on behalf of **47E(d)** to apply for a vexatious applicant declaration pursuant to section 89K of the FOI Act in relation to **47E(d)** (the Applicant).

### Background

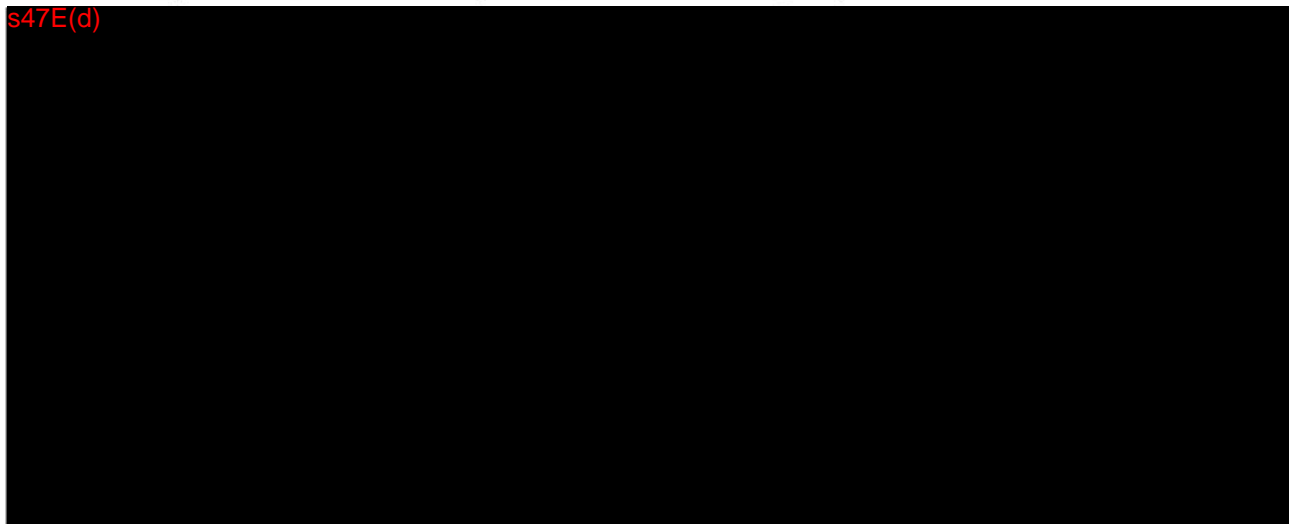
3. Between 1 September 2021 and 4 January 2022, **47E(d)** has received 54 FOI requests from the Applicant (the FOI requests) comprised of the following:
  - a. 44 requests received by **47E(d)** from the Applicant between 1 September 2021 and 1 October 2021.
  - b. 3 requests received by **47E(d)** from the Applicant on 4 October 2021.
  - c. 1 request received by **47E(d)** from the Applicant on 19 October 2021.
  - d. 2 requests received by **47E(d)** from the applicant on 29 October 2021.
  - e. 2 requests received by **47E(d)** from the Applicant on 6 November 2021.
  - f. 1 request received by **47E(d)** from the Applicant on 8 November 2021.
  - g. 1 request received by **47E(d)** from the Applicant on 4 January 2022.
4. This application refers to the status of each of the FOI requests as at 17 January 2022. As **47E(d)** continues to receive and send correspondence in relation to many of the FOI requests, due to resourcing constraints, it was not possible to continuously update this application and supporting documentation to the date of signing. However, **47E(d)** can provide further updates on the status of each FOI request, and provide further documentation, upon request.
5. The FOI requests relate to a range of different subject matters.
6. **47E(d)** has been attempting to process each of the FOI requests within the applicable processing periods. As at 17 January 2022, **47E(d)** has decided 29 of the FOI requests.<sup>1</sup>

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<sup>1</sup> That is, request numbers **47E(d)**

One of those decided requests was the subject of an internal review which has now been completed. As at 17 January 2022, of the remaining requests:

s47E(d)



7. Enclosed as Attachment 1 to this letter is a schedule of the FOI requests.
8. Enclosed as Attachment 2 to this letter is a PDF bundle of all relevant correspondence between 47E(d) and the Applicant in relation to the FOI requests. An index appears at the start of the PDF. The PDF includes bookmarks which can be used to navigate between documents. Some of the emails provided in Attachment 2 contain redactions of forwarding or related correspondence not relied upon as supporting material.
9. Attachment 1 describes the status of each request, including what action 47E(d) has taken, and is currently taking, to process each request as at the date of this letter.
10. 47E(d) notes that nearly all of the requests have been made by the Applicant from the email address s 22 . However, 2 of the requests have been made by the Applicant from the email address s 22
11. On 14 October 2021, 47E(d) wrote to the Applicant advising that it was considering making an application for a vexatious applicant declaration and invited the Applicant to

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47E(d)



<sup>2</sup> Request number 47E(d)

<sup>3</sup> Request number 47E(d)

<sup>4</sup> Request number 47E(d)

<sup>5</sup> Request numbers 47E(d) and 47E(d)

<sup>6</sup> Request numbers 47E(d)



consult with a view to removing the need for a declaration.<sup>7</sup> On 15 October 2021, the Applicant provided a response to 47E(d) letter.<sup>8</sup>

12. Following 47E(d) letter of 14 October 2021, it received the following new FOI requests:

- a. 1 request received by 47E(d) from the Applicant on 19 October 2021.
- b. 2 requests received by 47E(d) from the Applicant on 29 October 2021. .
- c. 2 requests received by 47E(d) from the Applicant on 6 November 2021.
- d. 1 request received by 47E(d) from the Applicant on 8 November 2021.

13. In this respect, the Applicant has re-lodged some requests after they were taken to be withdrawn under section 24AB following the Applicant failing to respond to 47E(d) consultation request letters.<sup>9</sup>

14. It has been necessary for 47E(d) to send consultation request letters to the Applicant with respect to many of its purported requests on the basis of the “practical refusal” reason contained in section 24AA. This is variously because many of the FOI requests do not provide such information concerning the document(s) sought as is reasonably necessary to enable the responsible officer of 47E(d) to identify the document(s). The Applicant has also sent correspondence to 47E(d) requesting extensions of time to respond to consultation request letters for requests that have been taken to have been withdrawn. 47E(d) has advised the Applicant that it is unable to extend the period for consultation after a request has been taken to have been withdrawn.<sup>10</sup>

15. In addition, to exacerbate the difficulties 47E(d) is experiencing in processing the very large number of requests within the applicable statutory processing period, the Applicant has from time to time not responded to extension request letters. It has been necessary for 47E(d) to seek these extensions, sometimes with minimal notice to the Applicant because of the large number of requests 47E(d) has been processing at any one time. With respect to the non-response to extension request letters issued on 26 October 2021, the result was that 11 requests were to result in deemed refusal decisions.<sup>11</sup> With respect to other requests for extensions of time made by 47E(d) to

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<sup>7</sup> See document number 1 (pages 1 to 3) of Attachment 2.

<sup>8</sup> See document number 2 (pages 4 to 22) of Attachment 2.

<sup>9</sup> See for example, following request number 47E(d) being taken to be withdrawn the Applicant re-lodged the request (see request number 47E(d) ); following request number 47E(d) being taken to be withdrawn the Applicant re-lodged the request (see request number 47E(d) ).

<sup>10</sup> See document number 43 (pages 11 to 13) of Attachment 2 (in relation to request numbers 47E(d) 47E(d) ).

<sup>11</sup> See request numbers 47E(d) .



the Applicant, the Applicant has, at times, requested that 47E(d) provide the details of the original request in order to respond to the extension request (including, at times, not responding to the request at all).<sup>12</sup> The 47E(d) has taken steps to make an application to your office with respect to all of the requests under section 15AC. Your office approved those requests and with one exception,<sup>13</sup> 47E(d) was able to decide all of the requests within the extended period.<sup>14</sup> However, the 47E(d) is concerned about the impact of this conduct given that the Applicant was aware of the difficulties being experienced by 47E(d) in processing the substantial number of requests it has made and the consequences of not granting an extension.

16. On 11 November 2021, 47E(d) issued the Applicant with a letter addressing a range of matters relating to the FOI requests.<sup>15</sup> The letter addressed the Applicant's 29 October 2021 and 3 November 2021 requests for a 14 day extension of time to respond to certain consultation request letters. The 11 November 2021 letter advised the Applicant that 47E(d) is unable to extend the consultation period for requests which have been taken to have been withdrawn by operation of the FOI Act. The letter also reiterated that the access actions the Applicant had continued to take had only served to increase the burden on 47E(d) limited resources.
17. Despite s47E(d) 11 November 2021 letter, the Applicant sent a further email to 47E(d) on 1 December 2021 and letter by email to 47E(d) on 2 December 2021, reiterating many of the issues that 47E(d) had previously addressed.<sup>16</sup>
18. In the circumstances, 47E(d) considers that there is a need for a vexatious applicant declaration.

#### Grounds on which 47E(d) seeks a declaration

19. 47E(d) seeks a vexatious applicant declaration on the grounds that, pursuant to section 89L(1)(a), the Applicant has repeatedly engaged in access actions and the repeated engagement involves an abuse of the process for the access actions.
20. 47E(d) considers that, pursuant to section 89L(2)(a), the Applicant has repeatedly engaged in an access action as s22 has made multiple requests for access to document(s) under the FOI Act. As indicated above, the Applicant has made 54 requests under the FOI Act in the period of 1 September 2021 to 4 January 2022.

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<sup>12</sup> See for example, request number 47E(d)

<sup>13</sup> See request number 47E(d).

<sup>14</sup> See document numbers 170 (request no. 47E(d)), 193 (request no. 47E(d)), 199 (request no. 47E(d)), 204 (request no. 47E(d)), 230 (request no. 47E(d)), 235 (request no. 47E(d)), 239 (request no. 47E(d)), 244 (request no. 47E(d)), 249 (request no. 47E(d)), 254 (request no. 47E(d)) and 269 (request no. 47E(d)) of Attachment 2.

<sup>15</sup> See document number 5 (pages 29 to 43) of Attachment 2.

<sup>16</sup> See documents numbered 6 and 7 (pages 44 to 48) of Attachment 2.

21. 47E(d) considers that the repeated engagement in access actions involves an abuse of the process for the access actions as, pursuant to section 89L(4)(b), the actions of the Applicant is unreasonably interfering with the operations of 47E(d)

22. The reason why this ground is, in the 47E(d) submission, engaged by the Applicant's access actions since 1 September 2021, are set out below.

Comparison of number of FOI requests received by 47E(d)

23. 47E(d) has received the following number of FOI requests in the four financial years prior to the current period:

- 01.07.2017 – 30.06.2018 – 2 FOI requests.
- 01.07.2018 – 30.06.2019 – 48 FOI requests.
- 01.07.2019 – 30.06.2020 – 24 FOI requests.
- 01.07.2020 – 30.06.2021 – 21 FOI requests.

24. The following is the largest number of requests received by 47E(d) from any one applicant in each of those four previous financial years:

- 01.07.2017 – 30.06.2018 – 2 FOI requests received from one applicant.
- 01.07.2018 – 30.06.2019 – 36 FOI requests received from one applicant.
- 01.07.2019 – 30.06.2020 – 15 FOI requests received from one applicant. The applicant that lodged the 15 FOI requests in that period was the 47E(d) (i.e. the Applicant).
- 01.07.2020 – 30.06.2021 – 15 FOI requests received from one applicant. The applicant that lodged the 15 FOI requests in that period was the 47E(d) (i.e. the Applicant).

25. In addition to the 54 requests received by 47E(d) from the Applicant since 1 September 2021, 47E(d) has also received 14 FOI requests from two other applicants. These additional 14 requests made by other applicants represent a significant increase compared with the number of FOI requests 47E(d) normally receives in an equivalent period.

26. 47E(d) has ordinarily been able to process the regular volume of FOI requests it receives without significant interference with, or an unreasonable burden placed on, 47E(d) resources and operations. As demonstrated by the previous financial years, 47E(d) has been able to process a reasonable number of FOI requests made by the Applicant.

27. The 54 FOI requests received from the Applicant between 1 September 2021 and 4 January 2022 represents a significant increase in the ordinary number of FOI requests received by 47E(d) in any given period. The number of requests made by the Applicant

is also significantly more than the ordinary number of FOI requests 47E(d) receives from any one applicant in a given financial year.

Time spent processing access actions of the applicant and interference with 47E(d) resources

28. 47E(d) is a 47E(d) 47E(d) has 47E(d) available and trained to process and deal with FOI requests received by 47E(d) That 47E(d) 47E(d) Due to 47E(d) 47E(d), it has been unable to reasonably allocate additional resources to process the FOI requests. The volume and frequency of the Applicant’s repeated engagement in access actions has had a significant and acute impact on 47E(d)

29. 47E(d) estimates that between 1 September 2021 and 17 January 2022 alone, the 47E(d) has spent a minimum of approximately 500 hours processing the FOI requests. Further, 47E(d) estimates that between 1 September 2021 and 17 January 2022 alone, the 47E(d) has spent a minimum of approximately 35 hours assisting the 47E(d) with searches. 47E(d) also estimates that in that same period alone, the 47E(d) has spent a minimum of approximately 35 hours assisting with searches. 47E(d) estimates that 47E(d) have spent approximately 15 hours assisting with the FOI requests. Further, 47E(d) estimates that the Finance Department has spent approximately 15 hours assisting with the FOI requests. In addition, due to the volume of the FOI requests and 47E(d) limited resources, it has been necessary to engage external solicitors to assist with providing advice in relation to the processing of the FOI requests, at a significant expense to 47E(d)

30. In addition to the 47E(d) 47E(d)



47E(d)



31. The time spent processing the FOI requests has substantially, and in my opinion, unreasonably, interfered with 47E(d) resources and operations. The high number of access actions had led to a substantial and prolonged processing burden on 47E(d). 47E(d) considers that the Applicant's repeated access actions has led to a burden that is excessive and disproportionate to a reasonable exercise by the Applicant of the right to engage in access actions.

32. As a direct result of the time required to be spent processing the FOI requests:

- A substantial workload impact has arisen.
- Service deliverables have been delayed including:

47E(d)



47E(d)



47E(d)

33. In addition to the volume of the FOI requests, the substantial burden placed on 47E(d) resources and operations has also arisen as a result of:

- Many of the FOI requests being poorly framed and difficult to discern (including because requests often do not include a date range), resulting in additional time being spent consulting with the Applicant.
- Many of the FOI requests being requests for documents that do not exist / which may amount to requests for information to be prepared in response to a request.<sup>17</sup>
- A request for documents in identical terms to a previous request decided by 47E(d)<sup>18</sup>

34. 47E(d) has sought the cooperation of the Applicant in the processing of the FOI requests. Despite 47E(d) efforts to engage with the Applicant to process the FOI requests, 47E(d) notes that by letter dated 2 December 2021, the Applicant advised that s 22

35. 47E(d) has used other provisions of the FOI Act to lessen the impact of the FOI requests on its operations. For example, 47E(d) has sought extensions of time to process applications.<sup>20</sup>

36. 47E(d) considers that the access actions engaged in by the Applicant 47E(d) Further, 47E(d) submits that some of the Applicant's correspondence in respect of the FOI requests has been used by the Applicant 47E(d) and

(pages 44 to 48) of Attachment 2.

<sup>17</sup> See for example, request numbers, 47E(d).

<sup>18</sup> See for example, request numbers 47E(d)

<sup>19</sup> See document number 7 of Attachment 2.

<sup>20</sup> See for example, request number 47E(d) (document numbers 93, 94 and 95) of Attachment 2.

37. 47E(d) is also aware that the Applicant has publicly published details about making FOI requests to 47E(d) in an s 22 Enclosed as Attachment 4 is a copy of that s 22.

#### General considerations

38. 47E(d) considers that there is a clear and convincing need for a declaration. There are a number of general considerations applying to this application.

#### Errors identified in processing of FOI requests

39. On 29 October 2021, the Applicant sent an email to 47E(d) referring to “wrong reference numbers” used by 47E(d) in correspondence regarding the FOI requests.<sup>21</sup>

40. For example, on 11 November 2021, 47E(d) issued the Applicant with a letter advising that where errors in correspondence have been identified, 47E(d) has taken corrective action as soon as possible.<sup>22</sup> 47E(d) is not aware of any additional correspondence sent to the Applicant with errors which have not yet been corrected.

#### Previous advice to Applicant about scope and content of FOI requests

41. 47E(d) has advised the Applicant on a number of occasions that 47E(d) needs to breakdown its FOI requests so that it is clearly identified what the requests seek access to. The Applicant has been advised to be specific in drafting s 22 FOI requests. The Applicant was advised that if 47E(d) required different, specific documents, 47E(d) should lodge a separate request for each specific document. Further, the Applicant was advised that 47E(d) is only entitled to access documents in existence, not to request access to information. The Applicant was reminded of 47E(d) advice in that regard by its letter dated 11 November 2021.<sup>23</sup>

42. Despite that, the Applicant has not adopted 47E(d) advice, instead, the Applicant continues to lodge requests, including requests which seek:

- a. access to a number of different categories of documents;<sup>24</sup>
- b. access to documents that are unclear, ambiguous and require consultation;<sup>25</sup> and
- c. access to information rather than to documents in existence.<sup>26</sup>

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<sup>21</sup> See document number 44 (request number 47E(d) - pages 14 to 17) of Attachment 2.

<sup>22</sup> See document number 5 (pages 29 to 43) of Attachment 2.

<sup>23</sup> See document number 5 (pages 29 to 43) of Attachment 2.

<sup>24</sup> See for example, request number 47E(d).

<sup>25</sup> See, for example, request numbers 47E(d).

*Alternatives exhausted by this agency*

43. 47E(d) has taken other steps to regulate or reduce the impact that the FOI requests may have on the workload and operations of 47E(d). In particular, 47E(d) has:
- engaged in request consultation processes with the Applicant about numerous FOI requests under section 24AB of the FOI Act;
  - sought the Applicant's agreement to extensions of processing time under section 15AA of the FOI Act; and
  - applied to the OAIC for an extension of processing time after decisions have become deemed refusal decisions under section 15AC of the FOI Act.

s47E(d)



45. 47E(d) has previously advised the Applicant that 47E(d) may seek access to documents by way of administrative access. 47E(d) has also considered whether any of the FOI requests may be able to be dealt with by way of administrative access. To-date, it has not been possible for 47E(d) to process any of the FOI requests by way of administrative access. 47E(d) advised the Applicant of these matters by its letter dated 11 November 2021.<sup>27</sup>

*Objects of the FOI Act*

46. 47E(d) has taken into account the balancing of its interests and the interests of the Applicant. 47E(d) has had regard to the general objects set out in section 3 of the FOI Act.
47. 47E(d) considers that a decision to grant the declaration sought would not compromise the objects of the FOI Act.

*Exercise of discretion*

48. 47E(d) acknowledges that the power to make a declaration is discretionary. In light of the material and information relied upon, 47E(d) considers that an exercise of the discretion to make the declaration sought against the Applicant would be appropriate in this case.

*OAIC Decisions on Applications for Vexatious Applicant Declarations*

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<sup>26</sup> See, for example, request numbers 47E(d).

<sup>27</sup> See document number 5 (pages 29 to 43) of Attachment 2.



49. 47E(d) has considered each of the decisions made by the OAIC in which vexatious applicant declarations have been made. In formulating this application and 47E(d) proposed terms and conditions for a declaration, 47E(d) has considered not only the number of access actions in each decision, but also the circumstances and factors that were relevant to the declarations made in each decision.

50. I enclose as **Attachment 5** a schedule of OAIC decisions on applications for vexatious applicant declarations.

51. Ultimately, 47E(d) considers that if a vexatious applicant declaration is not made, the Applicant will continue to repeatedly lodge access actions with 47E(d) causing further unreasonable interference with 47E(d) operations and resources.

### Supporting evidence

52. In support of 47E(d) application, I enclose the following documents:

- **Attachment 1** – Schedule of FOI requests made by the Applicant between 1 September 2021 to 4 January 2022 (schedule current as at 17 January 2022).
- **Attachment 2** – Index and relevant correspondence between the Applicant and 47E(d) (current as at 17 January 2022).

s47E(d)

- **Attachment 4** - Copy of extract of s 22
- **Attachment 5** – Schedule of OAIC decisions on applications for vexatious applicant declarations.

53. Due to the size of the attachments, I have made the attachments available for download from a link contained in the email attaching this application. Please advise if you are unable to access and download the attachments.

### Proposed terms and conditions for declaration

54. 47E(d) considers that any declaration should include the following proposed terms and conditions:

Respondent = 47E(d)

For a period of two (2) years, from the date of this decision, 47E(d) is not required to consider:

- Any request by the Respondent under section 15 of the *Freedom of Information Act 1982* (FOI Act); or
- Any application by the Respondent for internal review of an access refusal decision;

UNLESS

The Respondent has applied in writing to the Office of the Australian Information Commissioner (OAIC) to make the request or application and the OAIC has granted written permission for the request or application to be made;

AND

The Respondent has provided a document from the OAIC evidencing that permission has been granted.

The OAIC will not consider any application by the Respondent for permission unless:

- (a) The request meets the requirements of section 15 of the FOI Act; and
- (b) The request or internal review application is not vexatious in nature.

The Respondent is limited to making one application for permission to make one request under section 15 of the FOI Act or one application for internal review under section 54B of the FOI Act to the OAIC per calendar month.

47E(d) is not required to further process:

- (a) any request for access pursuant to section 15 of the FOI Act which has been made by the Respondent but has not yet been decided as at the date of this declaration; Or
- (b) any application for internal review pursuant to section 54B of the FOI Act which has been made by the Respondent but has not yet been decided as at the date of this declaration.

55. 47E(d) submits that the Respondent should be named in any decision published by the OAIC.

#### Contact details

56. Given the potential for a large number of additional access actions to be taken by the Applicant at any time, the 47E(d) respectfully requests that your office give urgent consideration to this application.

57. Should you require any further information, or wish to discuss this application further, please contact 47E(d) 47E(d) using the details below:

47E(d)

Yours sincerely

47E(d)



21 January 2022

[1 February 2022]

## SECTION 89K FREEDOM OF INFORMATION ACT 1982 (CTH) APPLICATION FOR A VEXATIOUS APPLICANT DECLARATION

To: The Australian Information Commissioner

1. I, **47E(d)**
2. **47E(d)** is an “agency” subject to the *Freedom of Information Act 1982 (Cth) (FOI Act)*. I am writing, on behalf of **47E(d)** to apply for a vexatious applicant declaration pursuant to section 89K of the FOI Act in relation to the **47E(d)** (the Applicant).

### Background

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s47E(d)



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**47E(d)**



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<sup>6</sup> Request numbers **47E(d)**



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13. In this respect, the Applicant has re-lodged some requests after they were taken to be withdrawn under section 24AB following the Applicant failing to respond to [47E(d)] consultation request letters.<sup>9</sup>

14. It has been necessary for [47E(d)] to send consultation request letters to the Applicant with respect to many of its purported requests on the basis of the “practical refusal” reason contained in section 24AA. This is variously because many of the FOI requests do not provide such information concerning the document(s) sought as is reasonably necessary to enable the responsible officer of [47E(d)] to identify the document(s). The Applicant has also sent correspondence to [47E(d)] requesting extensions of time to respond to consultation request letters for requests that have been taken to have been withdrawn. [47E(d)] has advised the Applicant that it is unable to extend the period for consultation after a request has been taken to have been withdrawn.<sup>10</sup>

15. In addition, to exacerbate the difficulties [47E(d)] is experiencing in processing the very large number of requests within the applicable statutory processing period, the Applicant has from time to time not responded to extension request letters. It has been necessary for [47E(d)] to seek these extensions, sometimes with minimal notice to the Applicant because of the large number of requests [47E(d)] has been processing at any one time. With respect to the non-response to extension request letters issued on 26 October 2021, the result was that 11 requests were to result in deemed refusal decisions.<sup>11</sup> With respect to other requests for extensions of time made by [47E(d)] to

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<sup>7</sup> See document number 1 (pages 1 to 3) of Attachment 2.

<sup>8</sup> See document number 2 (pages 4 to 22) of Attachment 2.

<sup>9</sup> See for example, following request number [47E(d)] being taken to be withdrawn the Applicant re-lodged the request (see request number [47E(d)]); following request number [47E(d)] being taken to be withdrawn the Applicant re-lodged the request (see request number [47E(d)]).

<sup>10</sup> See document number 43 (pages 11 to 13) of Attachment 2 (in relation to request numbers [47E(d)] [redacted]).

<sup>11</sup> See request numbers [47E(d)] [redacted].

the Applicant, the Applicant has, at times, requested that 47E(d) provide the details of the original request in order to respond to the extension request (including, at times, not responding to the request at all).<sup>12</sup> The 47E(d) has taken steps to make an application to your office with respect to all of the requests under section 15AC. Your office approved those requests and with one exception,<sup>13</sup> 47E(d) was able to decide all of the requests within the extended period.<sup>14</sup> However, the 47E(d) is concerned about the impact of this conduct given that the Applicant was aware of the difficulties being experienced by 47E(d) in processing the substantial number of requests it has made and the consequences of not granting an extension.

16. On 11 November 2021, 47E(d) issued the Applicant with a letter addressing a range of matters relating to the FOI requests.<sup>15</sup> The letter addressed the Applicant's 29 October 2021 and 3 November 2021 requests for a 14 day extension of time to respond to certain consultation request letters. The 11 November 2021 letter advised the Applicant that 47E(d) is unable to extend the consultation period for requests which have been taken to have been withdrawn by operation of the FOI Act. The letter also reiterated that the access actions the Applicant had continued to take had only served to increase the burden on 47E(d) limited resources.
17. Despite 47E(d) 11 November 2021 letter, the Applicant sent a further email to 47E(d) on 1 December 2021 and letter by email to 47E(d) on 2 December 2021, reiterating many of the issues that 47E(d) had previously addressed.<sup>16</sup>
18. In the circumstances, 47E(d) considers that there is a need for a vexatious applicant declaration.

#### Grounds on which 47E(d) seeks a declaration

19. 47E(d) seeks a vexatious applicant declaration on the grounds that, pursuant to section 89L(1)(a), the Applicant has repeatedly engaged in access actions and the repeated engagement involves an abuse of the process for the access actions.
20. 47E(d) considers that, pursuant to section 89L(2)(a), the Applicant has repeatedly engaged in an access action as it has made multiple requests for access to document(s) under the FOI Act. As indicated above, the Applicant has made 54 requests under the FOI Act in the period of 1 September 2021 to 4 January 2022.

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<sup>12</sup> See for example, request number 47E(d).

<sup>13</sup> See request number 47E(d).

<sup>14</sup> See document numbers 170 (request no. 47E(d)), 193 (request no. 47E(d)), 199 (request no. 47E(d)), 204 (request no. 47E(d)), 230 (request no. 47E(d)), 235 (request no. 47E(d)), 239 (request no. 47E(d)), 244 (request no. 47E(d)), 249 (request no. 47E(d)), 254 (request no. 47E(d)) and 269 (request no. 47E(d) of Attachment 2.

<sup>15</sup> See document number 5 (pages 29 to 43) of Attachment 2.

<sup>16</sup> See documents numbered 6 and 7 (pages 44 to 48) of Attachment 2.

21. 47E(d) considers that the repeated engagement in access actions involves an abuse of the process for the access actions as, pursuant to section 89L(4)(b), the actions of the Applicant is unreasonably interfering with the operations of 47E(d)
22. The reason why this ground is, in the 47E(d) submission, engaged by the Applicant's access actions since 1 September 2021, are set out below.

Comparison of number of FOI requests received by 47E(d)

23. 47E(d) has received the following number of FOI requests in the four financial years prior to the current period:
  - 01.07.2017 – 30.06.2018 – 2 FOI requests.
  - 01.07.2018 – 30.06.2019 – 48 FOI requests.
  - 01.07.2019 – 30.06.2020 – 24 FOI requests.
  - 01.07.2020 – 30.06.2021 – 21 FOI requests.
24. The following is the largest number of requests received by 47E(d) from any one applicant in each of those four previous financial years:
  - 01.07.2017 – 30.06.2018 – 2 FOI requests received from one applicant.
  - 01.07.2018 – 30.06.2019 – 36 FOI requests received from one applicant.
  - 01.07.2019 – 30.06.2020 – 15 FOI requests received from one applicant. The applicant that lodged the 15 FOI requests in that period was the 47E(d) (i.e. the Applicant).
  - 01.07.2020 – 30.06.2021 – 15 FOI requests received from one applicant. The applicant that lodged the 15 FOI requests in that period was the 47E(d) (i.e. the Applicant).
25. In addition to the 54 requests received by 47E(d) from the Applicant since 1 September 2021, 47E(d) has also received 14 FOI requests from two other applicants. These additional 14 requests made by other applicants represent a significant increase compared with the number of FOI requests 47E(d) normally receives in an equivalent period.
26. 47E(d) has ordinarily been able to process the regular volume of FOI requests it receives without significant interference with, or an unreasonable burden placed on, 47E(d) resources and operations. As demonstrated by the previous financial years, 47E(d) has been able to process a reasonable number of FOI requests made by the Applicant.
27. The 54 FOI requests received from the Applicant between 1 September 2021 and 4 January 2022 represents a significant increase in the ordinary number of FOI requests received by 47E(d) in any given period. The number of requests made by the Applicant



is also significantly more than the ordinary number of FOI requests 47E(d) receives from any one applicant in a given financial year.

Time spent processing access actions of the applicant and interference with 47E(d) resources

28. 47E(d) is a 47E(d) 47E(d) has only 47E(d) available and trained to process and deal with FOI requests received by 47E(d) 47E(d). The FOI officer also enlists the assistance of 47E(d) 47E(d). Due to 47E(d) 47E(d) it has been unable to reasonably allocate additional resources to process the FOI requests. The volume and frequency of the Applicant's repeated engagement in access actions has had a significant and acute impact on 47E(d).

29. 47E(d) estimates that between 1 September 2021 and 17 January 2022 alone, 47E(d) has spent a minimum of approximately 500 hours processing the FOI requests. Further, 47E(d) estimates that between 1 September 2021 and 17 January 2022 alone, 47E(d) has spent a minimum of approximately 35 hours assisting the 47E(d) with searches. 47E(d) also estimates that in that same period alone, the 47E(d) has spent a minimum of approximately 35 hours assisting with searches. 47E(d) estimates that 47E(d) have spent approximately 15 hours assisting with the FOI requests. Further, 47E(d) estimates that the Finance Department has spent approximately 15 hours assisting with the FOI requests. In addition, due to the volume of the FOI requests and 47E(d) limited resources, it has been necessary to engage external solicitors to assist with providing advice in relation to the processing of the FOI requests, at a significant expense to 47E(d).

30. In addition to the 47E(d)

47E(d)

47E(d)



31. The time spent processing the FOI requests has substantially, and in my opinion, unreasonably, interfered with 47E(d) resources and operations. The high number of access actions had led to a substantial and prolonged processing burden on 47E(d) considers that the Applicant's repeated access actions has led to a burden that is excessive and disproportionate to a reasonable exercise by the Applicant of the right to engage in access actions.

32. As a direct result of the time required to be spent processing the FOI requests:

- A substantial workload impact has arisen.
- Service deliverables have been delayed including:

47E(d)



47E(d)



47E(d)

33. In addition to the volume of the FOI requests, the substantial burden placed on 47E(d) resources and operations has also arisen as a result of:

- Many of the FOI requests being poorly framed and difficult to discern (including because requests often do not include a date range), resulting in additional time being spent consulting with the Applicant.
- Many of the FOI requests being requests for documents that do not exist / which may amount to requests for information to be prepared in response to a request.<sup>17</sup>
- A request for documents in identical terms to a previous request decided by 47E(d)<sup>18</sup>

34. 47E(d) has sought the cooperation of the Applicant in the processing of the FOI requests. Despite 47E(d) efforts to engage with the Applicant to process the FOI requests, 47E(d) notes that by letter dated 2 December 2021, the Applicant advised that s 22

35. 47E(d) has used other provisions of the FOI Act to lessen the impact of the FOI requests on its operations. For example, 47E(d) has sought extensions of time to process applications.<sup>20</sup>

36. 47E(d) considers that the access actions engaged in by the Applicant 47E(d) Further, 47E(d) submits that some of the Applicant's correspondence in respect of the FOI requests has been used by the Applicant 47E(d)

s47E(d)

(pages 44 to 48) of Attachment 2.

<sup>17</sup> See for example, request numbers, 47E(d)

<sup>18</sup> See for example, request numbers 47E(d)

<sup>19</sup> See document number 7 of Attachment 2.

<sup>20</sup> See for example, request number 47E(d) (document numbers 93, 94 and 95) of Attachment 2.

37. 47E(d) is also aware that the Applicant has publicly published details about making FOI requests to 47E(d) in an s 22 Enclosed as Attachment 4 is a copy of s 22

### General considerations

38. 47E(d) considers that there is a clear and convincing need for a declaration. There are a number of general considerations applying to this application.

### *Errors identified in processing of FOI requests*

39. On 29 October 2021, the Applicant sent an email to 47E(d) referring to “wrong reference numbers” used by 47E(d) in correspondence regarding the FOI requests.<sup>21</sup>

40. For example, on 11 November 2021, 47E(d) issued the Applicant with a letter advising that where errors in correspondence have been identified, 47E(d) has taken corrective action as soon as possible.<sup>22</sup> 47E(d) is not aware of any additional correspondence sent to the Applicant with errors which have not yet been corrected.

### *Previous advice to Applicant about scope and content of FOI requests*

41. 47E(d) has advised the Applicant on a number of occasions that 47E(d) needs to breakdown s 22 FOI requests so that it is clearly identified what the requests seek access to. The Applicant has been advised to be specific in drafting s 22 FOI requests. The Applicant was advised that if 47E(d) required different, specific documents, 47E(d) should lodge a separate request for each specific document. Further, the Applicant was advised that 47E(d) is only entitled to access documents in existence, not to request access to information. The Applicant was reminded of 47E(d) advice in that regard by its letter dated 11 November 2021.<sup>23</sup>

42. Despite that, the Applicant has not adopted 47E(d) advice, instead, the Applicant continues to lodge requests, including requests which seek:

- a. access to a number of different categories of documents;<sup>24</sup>
- b. access to documents that are unclear, ambiguous and require consultation;<sup>25</sup> and
- c. access to information rather than to documents in existence.<sup>26</sup>

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<sup>21</sup> See document number 44 (request number 47E(d) - pages 14 to 17) of Attachment 2.

<sup>22</sup> See document number 5 (pages 29 to 43) of Attachment 2.

<sup>23</sup> See document number 5 (pages 29 to 43) of Attachment 2.

<sup>24</sup> See for example, request number 47E(d)

<sup>25</sup> See, for example, request numbers 47E(d)



*Alternatives exhausted by this agency*

43. [47E(d)] has taken other steps to regulate or reduce the impact that the FOI requests may have on the workload and operations of [47E(d)]. In particular, [47E(d)] has:
- a. engaged in request consultation processes with the Applicant about numerous FOI requests under section 24AB of the FOI Act;
  - b. sought the Applicant's agreement to extensions of processing time under section 15AA of the FOI Act; and
  - c. applied to the OAIC for an extension of processing time after decisions have become deemed refusal decisions under section 15AC of the FOI Act.

s47E(d)



45. [47E(d)] has previously advised the Applicant that [redacted] may seek access to documents by way of administrative access. [47E(d)] has also considered whether any of the FOI requests may be able to be dealt with by way of administrative access. To-date, it has not been possible for [47E(d)] to process any of the FOI requests by way of administrative access. [47E(d)] advised the Applicant of these matters by its letter dated 11 November 2021.<sup>27</sup>

*Objects of the FOI Act*

46. [47E(d)] has taken into account the balancing of its interests and the interests of the Applicant. [47E(d)] has had regard to the general objects set out in section 3 of the FOI Act.
47. [47E(d)] considers that a decision to grant the declaration sought would not compromise the objects of the FOI Act.

*Exercise of discretion*

48. [47E(d)] acknowledges that the power to make a declaration is discretionary. In light of the material and information relied upon, [47E(d)] considers that an exercise of the discretion to make the declaration sought against the Applicant would be appropriate in this case.

*OAIC Decisions on Applications for Vexatious Applicant Declarations*

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<sup>26</sup> See, for example, request numbers [47E(d)]

<sup>27</sup> See document number 5 (pages 29 to 43) of Attachment 2.

49. [47E(d)] has considered each of the decisions made by the OAIC in which vexatious applicant declarations have been made. In formulating this application and [47E(d)] proposed terms and conditions for a declaration, [47E(d)] has considered not only the number of access actions in each decision, but also the circumstances and factors that were relevant to the declarations made in each decision.
50. I **enclose** as **Attachment 5** a schedule of OAIC decisions on applications for vexatious applicant declarations.
51. Ultimately, [47E(d)] considers that if a vexatious applicant declaration is not made, the Applicant will continue to repeatedly lodge access actions with [47E(d)] causing further unreasonable interference with [47E(d)] operations and resources.

### Supporting evidence

52. In support of [47E(d)] application, I **enclose** the following documents:
- **Attachment 1** – Schedule of FOI requests made by the Applicant between 1 September 2021 to 4 January 2022 (schedule current as at 17 January 2022).
  - **Attachment 2** – Index and relevant correspondence between the Applicant and [47E(d)] (current as at 17 January 2022).
  - **Attachment 3** – 3.10 [47E(d)] [REDACTED]
  - **Attachment 4** - Copy of extract of s 22 [REDACTED].
  - **Attachment 5** – Schedule of OAIC decisions on applications for vexatious applicant declarations.
53. Due to the size of the attachments, I have made the attachments available for download from a link contained in the email attaching this application. Please advise if you are unable to access and download the attachments.

### Proposed terms and conditions for declaration

54. [47E(d)] considers that any declaration should include the following proposed terms and conditions:

**Respondent** = [47E(d)] [REDACTED]

For a period of two (2) years, from the date of this decision, [47E(d)] [REDACTED] is not required to consider:

- Any request by the Respondent under section 15 of the *Freedom of Information Act 1982* (FOI Act); or
- Any application by the Respondent for internal review of an access refusal decision;

UNLESS

The Respondent has applied in writing to the Office of the Australian Information Commissioner (OAIC) to make the request or application and the OAIC has granted written permission for the request or application to be made;

AND

The Respondent has provided a document from the OAIC evidencing that permission has been granted.

The OAIC will not consider any application by the Respondent for permission unless:

- (a) The request meets the requirements of section 15 of the FOI Act; and
- (b) The request or internal review application is not vexatious in nature.

The Respondent is limited to making one application for permission to make one request under section 15 of the FOI Act or one application for internal review under section 54B of the FOI Act to the OAIC per calendar month.

47E(d) is not required to further process:

- (a) any request for access pursuant to section 15 of the FOI Act which has been made by the Respondent but has not yet been decided as at the date of this declaration; Or
- (b) any application for internal review pursuant to section 54B of the FOI Act which has been made by the Respondent but has not yet been decided as at the date of this declaration.

55. 47E(d) submits that the Respondent should be named in any decision published by the OAIC.

#### Contact details

56. Given the potential for a large number of additional access actions to be taken by the Applicant at any time, the 47E(d) respectfully requests that your office give urgent consideration to this application.

57. Should you require any further information, or wish to discuss this application further, please contact 47E(d) 47E(d) using the details below:

47E(d)

Yours sincerely

47E(d)



1 February 2022

**LODGE,Justin**

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**From:** 47E(d)  
**Sent:** Thursday, 17 February 2022 5:54 PM  
**To:** FOIDR  
**Cc:** 47E(d)  
**Subject:** Application pursuant to section 89K of the FOI Act [Our ref 47E(d)] [SEC=OFFICIAL]  
**Attachments:** 20220211 - Application under s 89K of the FOI Act for further VAD - s 47F, 47E(d) (updated).pdf;  
20211111 - Attachment A - All communications from s 47F, 47E(d) since 24 February 2020 -  
21007429.pdf; Attachment B - s 47F, 47E(d) Access Application History.XLSX

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognise the sender and know the content is safe.

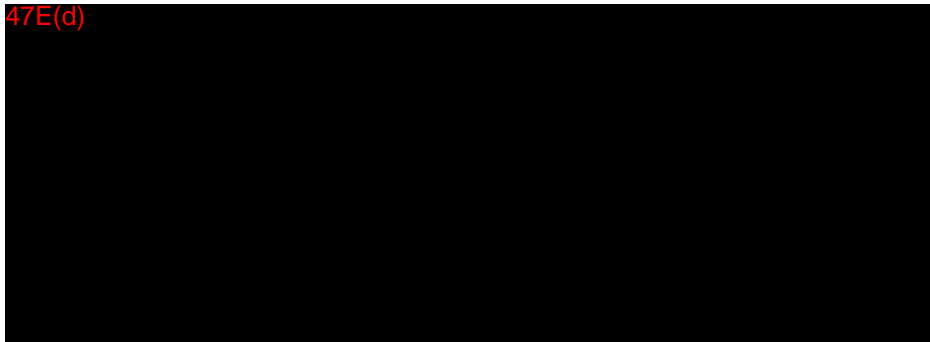
Dear Office of the Australian Information Commissioner,

Please find attached an application from 47E(d) dated 17 February 2022 for a 47E(d) vexatious applicant declaration against s 47F, 47E(d)

Please do not hesitate to contact me should you have any difficulty opening the attachments.

Yours sincerely

47E(d)



47E(d) acknowledges the Traditional Owners of the land now called Australia. We pay our respect to all Elders, past, present and emerging of all Aboriginal and Torres Strait Islander nations.

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47E(d)

If not delivered return to 47E(d)

17 February 2022

Our ref. 47E(d)

Elizabeth Hampton  
Acting Freedom of Information Commissioner  
Office of the Australian Information Commissioner

By email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Dear Ms Hampton

**Application for 47E(d) vexatious applicant declaration against 47E(d), s 47F**

1. 47E(d) (the Agency) seeks 47E(d) pursuant to s 89K of the *Freedom of Information Act* 1982 (Cth) (FOI Act) against s 47F, 47E(d) 47E(d) 47E(d) 47E(d)
2. s47E(d)
3. The terms of the declaration that 47E(d) seeks are as follows:
  1. 47E(d), 47E(d) is not required to consider:
    - a. any s47E( requests by the respondent s 47F, 47E(d) under s 15 of the FOI Act, or
    - b. any application by the respondent s 47F, 47E(d) for internal review of an access refusal decision.
  2. 47E(d) is not required to further process:
    - a. any outstanding request for access by the respondent s 47F, 47E(d) under s 15 of the FOI Act, or
    - b. any outstanding application for internal review of an access refusal decision under s 54B of the FOI Act.
  3. 47E(d), the OIAC will not consider any request to the OIAC by the respondent under s 15

of the FOI for access to a document relating to any matter between the respondent and 47E(d)

4. 47E(d) submits that a declaration of three years (36 months) is necessary and appropriate as, 47E(d) 47E(d) § 47F, 47E(d) continues to harass and abuse agency staff in relation to § 22 various longstanding grievances. § 22 continues to display a pattern of behaviour that indicates an intention to use the FOI Act for collateral purposes unrelated to a genuine intention to seek access to documents. 47E(d) is concerned that, without an 47E(d) the pattern of behaviour will escalate.
5. In support of this position, 47E(d) relies on the following supporting documentation.

### SUPPORTING DOCUMENTATION

6. In support of this application, we provide the following attachments:
  - a. **Attachment A** – a bundle containing all documents sent by § 47F, 47E(d) since the 47E(d) starting with § 47F, 47E(d) FOI request received on 30 November 2020, and
  - b. **Attachment B** – a spreadsheet setting out the correspondence 47E(d) has received from § 47F, and been required to deal with related to § 22 access actions from 26 September 2017 to 24 September 2021.

### PART 1 – BACKGROUND

7. As is reflected in Attachment B, and was considered in 47E(d) § 47F, 47E(d) has a history of engagement with 47E(d) (formerly the § 47F s47E(d) In a two-year period from 25 September 2017 to 21 October 2019, 47E(d), § 47F made 102 separate access actions to the Agency under the FOI Act, over 60 external enquires to the Agency's Freedom of Information Team (FOI Team) and seven Freedom of Information (FOI) complaints about 47E(d) to the OAIC.

s47E(d)

10. In addition to the access requests, § 47F, 47E(d) has also sent 47E(d) 39 pieces of correspondence including: invoices addressed to particular 47E(d)

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<sup>1</sup> Requests are at pages 1 and 2, and the Agency's response is at page 4 (and attached repeatedly to later correspondence).

47E(d) §47E(d)

§ 22

11. In this correspondence, § 47F, 47E(d) continues to make unsubstantiated, derogatory and inflammatory allegations against 47E(d) staff, which exposes them to offensive material that has caused distress. The correspondence indicates that § 47F, 47E(d) is not responsive to the reasonable restrictions on use of access actions, and despite these restrictions, § 22 continues to engage in harassing conduct directed towards individual agency officers.

**FOI workload of 47E(d)**

12. By way of context, 47E(d) 47E(d) Further, 47E(d) has 47E(d) As noted in the § 47F 47E(d) estimated that over a six-month period from June to November

2018, FOI officers had dedicated in excess of 245 hours to deal with s 47F, 47E(d) various access actions and enquiries. While it is not possible to estimate the total time taken and 47E(d), the total volume of correspondence s 47F, 47E(d) has sent (as shown in Attachment B) is more than 3 times the amount received in that period.

## **PART 2 – GROUNDS FOR DECLARATION**

### **Relevant provisions of the FOI Act**

13. Section 89L(1) of the FOI Act provides:
  - (1) The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:
    - (a) that:
      - (i) the person has repeatedly engaged in access actions; and
      - (ii) the repeated engagement involves an abuse of the process for the access action;
    - (b) a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;
    - (c) a particular access action in which the person engages would be manifestly unreasonable.
14. Section 89L(2) provides that a person makes an access request if they make a request for access to documents, a request pursuant to s 48 of the FOI Act for amendment or annotation of a record, an application for internal review or an application for IC review.
15. Section 89L(4) defines 'abuse of process' as:

***abuse of the process for an access action*** includes, but is not limited to, the following:

  - (a) harassing or intimidating an individual or an employee of an agency;
  - (b) unreasonably interfering with the operations of an agency;
  - (c) seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.
16. As noted in the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**)
  - 12.55 A vexatious applicant declaration may be revoked or varied (s 33 of the *Acts Interpretation Act 1901*).
  - 12.56 The power to revoke or vary a vexatious applicant declaration under s 33(3) of the AI Act is exercisable 'in the like manner and subject to the like conditions' as the original decision. In order to vary a vexatious applicant declaration, the Information Commissioner must be satisfied of the grounds in s 89L at the time of the variation. While the information relied upon in making the

original decision may continue to be relevant, the Information Commissioner will also need to consider any new, relevant information that has arisen since that time and comply with procedural fairness obligations contained in s 89L(3).

**s 47F, 47E(d) access actions s47E(d) involve an abuse of process:  
s 89L(1)(a)**

17. **47E(d)** submits an **47E(d)** against **s 47F, 47E(d)** would be appropriate as **s 22** access actions **s47E(d)** **s4** amount to an abuse of process.
18. The access actions **s 47F, 47E(d) s47E(d)** together with other correspondence **s 22** sends, shows **s 22** continues to be unwilling to moderate **s 22** use of access actions. Further, **s 47F, 47E(d)** correspondence displays a continuation of **s 22** previous pattern of aggravation, harassment and abusive conduct towards individual agency officers and the agency as a whole.
19. A number of the access actions that **s 47F, 47E(d)** sought to make for documents about **s 22** include defamatory and unsubstantiated allegations that, on their face, are manifestly unreasonable in the circumstances.
20. **s47E(d)**

**s47E(d)**



s47E(d)

*Harassing or intimidating an individual or an employee of the agency*

25. s47E(d) submits that s 47F, 47E(d) access actions amount to an abuse of process on the basis that it constitutes harassment and intimidation of an individual or an employee of the agency within the meaning of s 89L(4)(a).
26. As indicated in the FOI Guidelines at [12.22], *“The terms ‘harassing’ and ‘intimidating’ are not defined in the FOI Act and therefore have their ordinary meaning. To ‘harass’ a person is to disturb them persistently or torment them; and to ‘intimidate’ a person is to use fear to force or deter the actions of the person, or to overawe them.”*
27. s 47F, 47E(d)s47E(d) access actions demonstrate the following circumstances that may establish harassment and intimidation indicated at [12.24] of the FOI Guidelines:
  - the content, tone and language of a person’s correspondence with an agency, especially if language is used that is insulting, offensive or abusive
  - unsubstantiated, derogatory or inflammatory allegations against agency staff
  - requests that are designed to intimidate agency staff and force them to capitulate on another issue
  - requests of a repetitive nature that are apparently made with the intention of annoying or harassing agency staff
  - a person’s refusal or failure to alter dubious conduct after being requested by an agency to do so.
28. The content directed at individual officers personally and the combative tone of both access actions was clearly intended to harass and intimidate agency staff. The access actions also included:
  - 28.1. unsubstantiated, derogatory and inflammatory allegations against Agency and OAIC staff of money laundering and fraud, stalking, attempting to create false records and abuse of power.
  - 28.2. requests designed to intimidate agency staff and force them to capitulate on s 47F, 47E(d) other demands including through threats to pursue accounts issued by s 47F, 47E(d) and implied threats that officers would be referred for criminal prosecution or face civil proceedings
  - 28.3. requests of a repetitive nature similar to those referred to in [15] of the s47E(d) in which s 47F, 47E(d) pattern of sending correspondence to specific FOI staff who have previously provided decisions and advising s 22 will be charging the individual in hourly rates (see letter received 1/2/2021 at page 8 and each subsequent piece of correspondence at Attachment A), and
  - 28.4. an evident unwillingness to alter s 22 dubious conduct since being requested to do so (see [61] to [68] of the s47E(d))

s47E(d)

*Conduct is both subjectively and objectively harassing and intimidating*

29. In 'W', the IC indicated the question of harassment or intimidation must be approached objectively (at [31]). The FOI Guidelines also make this point at paragraph [12.23], indicating the issue is whether a person has engaged in behaviour that could reasonably be expected on at least some occasions to have the effect, for example, of tormenting, threatening or disturbing agency employees.
30. However, in *Sweeney and Australian Information Commissioner and Australian Prudential Regulation Authority (Joined Party)* [2014] AATA 539, Deputy President Constance indicated that 'an individual or an employee must be shown to have felt harassed and/or intimidated in fact and the conduct must be shown to be harassing and/or intimidating on an objective basis' (at [52]). On this view, the harassment and/or intimidation must be subjectively felt by an officer as well as the conduct itself being shown that it could reasonably be regarded as harassing and/or intimidating.
31. 47E(d) submits that the nature and content of s 47F, 47E(d) valid request, as well as s 22 invalid request and written correspondence are both subjectively and objectively harassing and intimidating. Over the course of several years staff members of the 47E(d) FOI team have reported feeling harassed by the voluminous, bundled nature of s 47F, 47E(d) correspondence along with the personal nature of correspondence and repetitive, threatening and offensive content (such as threats of financial charges and legal action against individuals and the offensive, misogynistic nature of the content in s 47F, 47E(d) s47E(d)).
32. 47E(d) submits that it has exercised considerable goodwill towards s 22 in the past and has responded to s 22 requests in accordance with the objects and purposes of the FOI Act, 47E(d)
33. However, despite all efforts made by 47E(d) to limit the impact of s 22 access actions and the operation of the 47E(d) s 47F, 47E(d) continues to make access actions and send significant volumes of correspondence to the FOI team. In these circumstances, 47E(d) submits that the circumstances warrant a 47E(d) being made in the proposed terms on the basis of the abuse of process from actions that harass or intimidate agency employees.

***Unreasonably interfering with the operations of the agency***

34. 47E(d) contends that s 47F, 47E(d) pattern of access actions are also an abuse of process because they unreasonably interfere with the operations of 47E(d) within the meaning of s 89L(4)(b), and it is expected that the access requests and offensive conduct will escalate should the 47E(d)
35. The following factors identified in the FOI Guidelines at [12.27] relevant to considering this type of abuse of process are evident in s 47F, 47E(d) conduct:
- 35.1. The impact of s 22 access actions on the FOI administration in the agency that was extreme before the 47E(d) has reduced but remains

significant with repetitive and bulk correspondence related to other complaints and entirely irrelevant material (s47E(d))

35.2. 47E(d) has used all of the available provisions under the FOI Act to lessen the impact of s 47F, 47E(d) access actions on its operations without any indication s 22 intends to confine s 22 behaviour to alter s 22 dubious conduct (see 47E(d))

35.3. s 47F, 47E(d) actions continue to portray an immoderate prolongation of matters that have been dealt with previously (including charges for previous access actions that led to 47E(d)) and

35.4. s 22 and has not cooperated reasonably with 47E(d) s47E(d)

36. In addition to the above factors from the FOI Guidelines, the nature of 47E(d) role is relevant to the unreasonable interference with agency functions. As 47E(d) is an agency 47E(d) s 47F, 47E(d) pattern of repeated access actions require substantial time to review, process and track. 47E(d) estimates this has taken in excess of 40 hours for staff in the FOI team 47E(d)

37. Previously, when s 47F, 47E(d) was able to make access requests, this equated to an excess of 245 hours of 47E(d) time 47E(d) 47E(d) would expect, 47E(d), that s 47F, 47E(d) would seek to further engage in repeated access actions given s 22 unchanging behaviour to date that would again require the dedication of excessive amounts of 47E(d) time to respond to s 22 requests.

***Particular access action would be manifestly unreasonable***

38. 47E(d) also submits that s 47F, 47E(d) first access action received on 30 November 2020 would be manifestly unreasonable. In this request s 22 sought access to:

s 22

39. The nature of the request is clearly designed to seek the personal information of s 47F, 47E(d) s 22

40. It is evident from the nature of the request and correspondence provided by s 47F, 47E(d) such as the s 22 that:

# s 22

41. The FOI Guidelines at [12.31] state that:

The term 'manifestly unreasonable' is not defined in the FOI Act. The factors that are relevant in applying this ground are likely to be similar to those discussed above in relation to whether a particular access action or series of actions would be an abuse of process under the FOI Act.

42. s 47F, 47E(d) correspondence includes repeated and specific, unsubstantiated, derogatory and inflammatory allegations against s 22 [REDACTED] There is no indication that s 47F, 47E(d) s 22 [REDACTED] actions to seek documents held by 47E(d) [REDACTED] about s 22 [REDACTED]

43. 47E(d) [REDACTED] submits that in these circumstances, and in the context of s 47F, 47E(d) s47E(d) [REDACTED]

## CONCLUSION

44. 47E(d) [REDACTED] contends that these matters justify the 47E(d) [REDACTED]

45. We would be happy for your office to provide a copy of this submission and its attachments to s 47F, 47E(d) [REDACTED], or if requested, to send a copy of this submission to s 22 [REDACTED]

Yours sincerely

47E(d) [REDACTED]

Email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

<sup>2</sup> Attachment A, Page 25 - s 22 [REDACTED]

<sup>3</sup> Attachment A, Page 26 - s 22 [REDACTED]

<sup>4</sup> Ibid

<sup>5</sup> Above, n 2.

**LODGE,Justin**

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**From:** 47E(d)  
**Sent:** Tuesday, 14 June 2022 3:40 PM  
**To:** OAIC - FOI DR  
**Cc:** 47E(d)  
**Subject:** 47E(d) Vexatious Applicant Declaration - s 47F, 47E(d) [SEC=OFFICIAL:Sensitive]  
**Attachments:** FOI - Vexatious Applicant Declaration - 47E(d), s 47F .pdf

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

**OFFICIAL: Sensitive**

Good afternoon

Please see attached correspondence from 47E(d) requesting the Information Commissioner exercise the discretion under section 89K of the *Freedom of Information Act 1982* to declare 47E(d), s 47F a vexatious applicant.

Should you require more information please contact 47E(d) or the FOI team at 47E(d)

Kind regards

47E(d)

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IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

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47E(d)

47E(d)

Official: Sensitive

Mr Leo Hardiman PSM QC  
Freedom of Information Commissioner  
Office of the Australian Information Commissioner  
By email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Dear Commissioner

Application for a vexatious applicant declaration: 47E(d), s 47F

I am writing on behalf of the 47E(d) (the Department) to request the Information Commissioner exercise the discretion under section 89K of the *Freedom of Information Act 1982* (the FOI Act) to declare 47E(d), s 47F a vexatious applicant in connection with access actions for:

47E(d)

Subsection 89L(1) of the FOI Act provides that the Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Commissioner is satisfied of any of the following:

- (a) that (i) the person has repeatedly engaged in access actions; and (ii) the repeated engagement involves an abuse of the process for the access action;
- (b) particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;
- (c) a particular access action in which the person engages would be manifestly unreasonable.

The Department submits that 47E(d), s 47F 'has repeatedly engaged in access actions' (s 89L(1)(a)(i)); 'the repeated engagement involves an abuse of the process for the access action' (s 89L(1)(a)(ii)); and the repeated access actions are also an abuse of process by 'unreasonably interfering with the operations of an agency' (s 89L(4)).

Between 1 August 2019 and 3 May 2022 the Department has received 87 separate access actions from 47E(d), s 47F regarding 47E(d) (full details at Attachment B) comprising:

- 63 requests from 47E(d), s 47F, 47E(d), s 47F;

47E(d)

- 20 applications for internal review from 47E(d), s 47F; and
- Notice of 4 applications for an Information Commissioner review from 47E(d), s 47F

In accordance with paragraph 12.33 of the *Guidelines issued by the Australian Information Commissioner under s. 93A of the Freedom of Information Act 1982* (the **FOI Guidelines**), on 29 July 2021, the Department notified 47E(d), s 47F that should s 22 continue to repeatedly engage in access actions under the FOI Act, the Department would consider seeking a vexatious applicant declaration from the Information Commissioner (the **vexatious applicant consideration notice**) (**Attachment A**).

The Department is aware that the 47E(d) have received requests for access to documents relating to the 47E(d). The Department has received eight consultation requests from 47E(d) in relation to access actions under the FOI Act received from 47E(d), s 47F.

Separately, 47E(d), s 47F has made several access actions in connection with the Department's handling of s 22 FOI requests, including the Department's consideration of applying for a vexatious applicant declaration. More details are below.

#### Context relevant to the access actions

The matters dealt with by the Department under the 47E(d) include

47E(d)

47E(d)

47E(d)  
s 47F, 47E(d) | s 22

47E(d)

s 47F, 47E(d) | s 22

47E(d)

s 47F, 47E(d) s 22 [redacted] The Department has advised 47E(d), s 47F [redacted] and other parties s 22 [redacted] of this outcome a number of times.

47E(d), s 47F [redacted]

47E(d), s 47F [redacted] ineligibility for the s47E(d) [redacted] turns on the exclusion of commercial contractors, however 47E(d) [redacted] has utilised the FOI system to assert publicly that the Department is affected by fraud or misconduct. An annotation from 47E(d), s 47F [redacted] on 47E(d) s 22 [redacted]

S 22

In some instances, 47E(d), s 47F [redacted] has made these allegations against named officers in the Department.

The allegation appears in part connected to two documents released to 47E(d), s 47F [redacted] under FOI. 47E(d) [redacted]

47E(d), s 47F [redacted] or 47E(d) [redacted]

s 22 [redacted] 47E(d), s 47F [redacted] has made numerous FOI requests for documents the Department holds relating to 47E(d) [redacted]. The Department has repeatedly notified 47E(d), s 47F [redacted] that no documents exist.

The other document is a 47E(d) [redacted] he Department understands that 47E(d), s 47F [redacted] was provided 47E(d) [redacted]

47E(d)

Ultimately, 47E(d)

Following an Information Commissioner review decision (see F 47E(d)) the Department provided 47E(d), s 47F 47E(d)

#### Grounds for application – extracts from the FOI Act and FOI Guidelines

The Department has considered Part VIII, Division 1 of the FOI Act which sets out the regime for a vexatious applicant declaration, and Part 12 of the FOI Guidelines dealing with a declaration of that kind.

Subsection 89L of the FOI Act provides (in part):

- (1) *The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Commissioner is satisfied of any of the following:*
  - (a) *that:*
    - (i) *the person has repeatedly engaged in access actions; and*
    - (ii) *the repeated engagement involves an abuse of the process for the access action;*
  - (b) *a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;*
  - (c) *a particular access action in which the person engages would be manifestly unreasonable.*
- (2) *A person engages in an **access action** if the person does any of the following:*
  - (a) *makes a request;*
  - (b) *makes an application under section 48;*
  - (c) *makes an application for internal review;*
  - (d) *makes an IC review application.*
- (4) *In this section:*

***Abuse of the process for an access action*** *includes, but is not limited to, the following:*

  - (a) *harassing or intimidating an individual or an employee of an agency;*
  - (b) *unreasonably interfering with the operations of an agency;*
  - (c) *seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.*

For reasons set out below, the Department contends that [47E(d), s 47F] has repeatedly engaged in access actions regarding [47E(d)] and that the repeated engagement involves an abuse of process for the purposes of subsection 89L(1)(a) of the FOI Act. The access actions collectively cover requests and applications of the types described in subsections 89L(2)(a), (c) and (d).

Person has repeatedly engaged in access actions – subparagraph 89L(1)(a)(i)

The FOI Guidelines provide:

*12.17 There is no fixed number of access actions required to establish a pattern of repeated requests. Whether such a pattern exists will depend in part on the nature of the abuse of process that is said to be involved. For example, if it is asserted that a person is repeating a request that has earlier been processed and decided by an agency, or is harassing agency employees, a small number of requests may establish a pattern. On the other hand, if it is asserted that a person has repeatedly made different requests that in combination unreasonably interfere with an agency's operations, a higher number of requests may be required to establish a pattern of repeated requests.*

*12.18 The agency or minister is not required to show that all of the conduct of the person is an abuse of process. For the purposes of s 89L(1)(a), '[i]t is sufficient that some of the access actions can be characterised as an 'abuse of process for the access action.'*

A short outline of the access actions follows. A detailed summary of access actions by [47E(d), s 47F] is set out at Attachment B.

In addition to receiving access requests from [47E(d), s 47F], the Department notes it has received overlapping or similar requests for [47E(d)] from a range of other persons.

Between 1 August 2019 and 28 July 2021 (the date before the Department sent the vexatious applicant consideration notice), the Department received 67 access actions:

- 50 FOI requests from [47E(d), s 47F]
- 15 internal review requests from [47E(d), s 47F]; and
- 2 Information Commissioner review applications from [47E(d), s 47F]

Since [47E(d), s 47F] received the vexatious applicant consideration notice, between the period 29 July 2021 and 8 June 2022 the Department received 20 access actions:

- 13 FOI requests related to [47E(d)], including 4 related to the vexatious applicant consideration notice [47E(d)];
- 5 internal review requests related to [47E(d)]; and
- 2 Information Commissioner review applications.

Many of the access actions repeatedly seek the same information including:

- [47E(d)] (d)



- 47E(d) 47E(d)
- the Department's handling of 47E(d), s 47F FOI requests, including the Department's consideration of applying for a vexatious applicant declaration. For one of these requests, the Department prepared a record of all FOI requests made by 47E(d), s 47F (see 47E(d)).

While the access actions are predominantly concerned with 47E(d), s 47F, 47E(d) has made repeated requests in the same or similar terms or covering decisions and documents already provided to s 22

- 47E(d), s 47F has submitted a number of requests for 47E(d) 47E(d) and documents 47E(d) 47E(d) and in 2012 47E(d) ) which do not exist.
- For requests in similar terms, see for example 47E(d) at Attachment B.
- For requests covering a previous access action process which has concluded or where a right of review has expired, see for example 47E(d)

In total, the Department can identify 87 access actions attributed to 47E(d), s 47F spanning a period of less than 4 years. The Department has made a range of decisions covering full access, partial access, no documents and practical refusal decisions.

47E(d) s 22 or to limit s 22 requests to a more reasonable amount.

The Department considers that 47E(d), s 47F repeated access actions s 22

The Department submits that 47E(d), s 47F has made multiple applications on the same facts to seek a different outcome for 47E(d) as well as previous access actions decisions which have already been decided. The Department notes that some of 47E(d) s 22 (see for example, 47E(d))

The Department also notes 47E(d), s 47F has submitted requests for information and documents exempted through a previous or historical access action process which has concluded or in relation to

<sup>6</sup> FOI Guidelines [12.27].

which <sup>s 22</sup> no longer has a right of review **47E(d)**

Given there is no new information (including no further documents in the Department's possession), the Department submits that **47E(d), s 47F** requests have become vexatious and oppressive.

The Department contends the volume of access actions for **47E(d)** since mid-2019 meets the criterion in subparagraph 89L(1)(a)(i), that is, that a person has repeatedly engaged in access actions.

The repeated engagement involves an abuse of the process for the access action – subparagraph 89L(1)(a)(ii)

The grounds that constitute an 'abuse of the process for an access action' are not exhaustively defined in subsection 89L(4) of the FOI Act. The Department contends that **47E(d), s 47F** repeated access actions are an abuse of process that satisfy both paragraphs (a) and (b) of the definition of 'Abuse of the process for an access action' in subsection 89L(4) of the FOI Act.

*Harassing or intimidating an individual or employee (abuse of process ground)*

**47E(d), s 47F** appears aware of the impact of <sup>s 22</sup> access actions on the Department.

- **s 22**

**47E(d)**

**47E(d), s 47F** has not curbed <sup>s 22</sup> access actions since the Department sent a vexatious applicant consideration notice on 29 July 2021. In that letter, the Department asked **47E(d), s 47F** to consider whether continuing to make access requests under the FOI Act is achieving <sup>s 22</sup> goal **47E(d)** **47E(d)** and to re-consider the need to make further FOI requests or limit these to a more reasonable amount (**Attachment A** refers).

Since receiving the vexatious applicant consideration notice, **47E(d), s 47F** has submitted at least 20 access actions under the FOI Act. This includes 4 requests for information regarding the Department's consideration of **47E(d), s 47F** as a vexatious applicant (**47E(d)** **47E(d)**), one of which was also the subject of an application for an internal review **47E(d)**

The FOI Guidelines explain that harassment and intimidation for the purposes of subsection 89L(4)(a) of the FOI Act may be established by a variety of circumstances. The Department considers that **47E(d)** repeated access actions are somewhat analogous to the following circumstances listed at paragraph 12.24 of the FOI Guidelines:

- requests that are designed to intimidate agency staff and force them to capitulate on another issue,

- requests of a repetitive nature that are apparently made with the intention of annoying or harassing agency staff.

The Department contends it is reasonable to infer from the repeated access actions that [REDACTED] 47E(d), s 47F's access actions are designed either to force a change in policy and/or to fuel [REDACTED] s 22 assertions of maladministration, fraud or misconduct by named officers in the Department. It is the Department's view that [REDACTED] 47E(d), s 47F intends to cause annoyance or frustration to officers in the Department through a sustained campaign of making access requests for [REDACTED] 47E(d).

Importantly, against a context that [REDACTED] 47E(d) [REDACTED] the Department contends that the repeated access actions constitute unreasonable badgering in support of a personal objective and grievance with the Department. This comprises a form of harassment or intimidation and is an abuse of the process for access actions under the FOI Act.

*Unreasonably interfering with the operations of an agency (abuse of process ground)*

The Department contends that the harassing or intimidating conduct by [REDACTED] 47E(d), s 47F referenced above of itself constitutes unreasonable interference with the operations of the Department and is an abuse of the process for access actions for the purposes of subsection 89L(4)(b) of the FOI Act.

Having regard to the matters identified in paragraph 12.27 of the FOI Guidelines, it is also the Department's contention that the repeated access actions are an excessive and unreasonable burden on Departmental resources and as such constitute an unreasonable interference with the Department's operations.

The access actions are handled by officers in the Department's FOI team, the Branch responsible for [REDACTED] 47E(d) and three [REDACTED] 47E(d) officers who make decisions associated with the access actions. The high volume of requests for [REDACTED] 47E(d) means that since August 2019 there has been an almost continuous processing impact across one or more of these work areas.

Processing the access actions is made more complex as previous related decisions need to be reviewed. The Department has at times sought to manage the requests by involving the same officers to make processing the requests more efficient. However, officer mobility means that those arrangements have not been enduring over time and case officers need to read into the complex and voluminous background in relation to access actions for the [REDACTED] 47E(d).

In processing access actions, the Department has, at various times, worked with [REDACTED] 47E(d), s 47F to revise the scope of [REDACTED] s 22 requests, guided [REDACTED] s 22 to publicly available information and in some cases, released information under administrative access arrangements (see for example [REDACTED] 47E(d)).

On the basis of a modest average time to process an initial request of 20 hours (combined time of all officers involved in processing an initial request), and a modest average time to process an internal review of 10 hours, this equates to approximately 1,838 hours (comprising 63 initial requests and 20

internal review requests received from **47E(d), s 47F**). This equates to approximately 49 weeks for one officer at the Department working 37.5 hours per week. We consider this is a very modest estimate for the long period of sustained access actions. Additional resource impacts apply to responding to requests in connection with IC review applications, including the preparation of submissions.

For the above reasons, including the matters discussed above relating to the repetitive and overlapping nature of the requests, the Department contends the repeated access actions by **47E(d), s 47F** represent a wholly unreasonable resource impact, unreasonably interfere with the operations of the Department, and constitute an abuse of the process within the meaning of subsection 89L(4)(b) of the FOI Act.

### Proposed declaration

The FOI Guidelines provide that an application for a vexatious applicant declaration must include any proposed terms or conditions which the agency or minister believes the declaration should include<sup>7</sup>.

The Department proposes this declaration apply to any access actions by **47E(d), s 47F** (or by persons acting on **s 22** behalf) relating to the following matters:

**s 22**

The proposed declaration should provide that for a period of five (5) years the Department is not required to consider:

- any on-hand or future requests from **47E(d), s 47F** under section 15 of the FOI Act,
- any on-hand or future applications from **47E(d), s 47F** for an internal review of an access refusal decision,
- any on-hand or future requests under section 15 of the FOI Act where the request is made on behalf of **47E(d), s 47F**, or
- any on-hand or future applications for internal review of an access refusal decision by any person where the application is made on behalf of **47E(d), s 47F**.

The Department currently has 2 actions on-hand from **47E(d), s 47F**. Separately, the Department is dealing with 1 further action from other parties on the same subject matter. Such a declaration would allow the Department to direct its resources towards its other operations, including other FOI requests, which have been disrupted by these access actions.

<sup>7</sup> FOI Guidelines, [12.34].

The Department does not request that <sup>47E(d), s 47F</sup> be named in the published decision. The Department notes that <sup>47E(d), s 47F</sup> did not consent to <sup>s 22</sup> name, email, address or phone number being disclosed in relation to one of <sup>s 22</sup> requests <sup>s47E(d)</sup>

Should you require more information, please contact <sup>47E(d)</sup>

Yours sincerely

**47E(d)**

14 June 2022

## OAIC - FOI DR

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**From:** 47E(d)  
**Sent:** Tuesday, 28 June 2022 10:27 AM  
**To:** OAIC - FOI DR  
**Subject:** Application for a vexatious applicant declaration [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]  
**Attachments:** Application for a vexatious applicant declaration - s 47F, 47E(d).pdf  
**Categories:** 47E(d)

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The sender of this email certifies that its contents, and any attachments, are of an 'OFFICIAL: Sensitive // Legal Privilege' nature.

Good morning,

Please find attached an Application for a vexatious application declaration from the 47E(d)

Regards,

47E(d)

47E(d)

47E(d)



47E(d)

Mr Leo Hardiman PSM QC  
Freedom of Information Commissioner  
Office of the Australian Information Commissioner

By email: foidr@oaic.gov.au

Dear Commissioner

**Application for a vexatious applicant declaration—s 47F, 47E(d)**

1 This is an application by the Office of Parliamentary Counsel (47E(d)) under section 89K of the *Freedom of Information Act 1982 (FOI Act)*. I am writing to request that you exercise the discretion under that section to declare s 47F, 47E(d) to be a vexatious applicant in connection with access actions for documents held by 47E(d)

2 This application is related to an application made under section 89K of the FOI Act in relation to s 47F, 47E(d) on behalf of 47E(d). I understand that the 47E(d) has been submitted to your office, and accordingly, this application refers to the 47E(d) rather than repeating material it contains.

3 Under section 89L of the FOI Act, the Information Commissioner may make a vexatious applicant declaration in relation to a person only if satisfied that:

- (a) the person has repeatedly engaged in access actions and the repeated engagement involves an abuse of the process for the access action (paragraph 89L(1)(a)); or
- (b) a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action (paragraph 89L(1)(b)); or
- (c) a particular access action in which the person engages would be manifestly unreasonable (paragraph 89L(1)(c)).

4 The grounds on which a declaration is sought in this instance are that:

- (a) s 47F, 47E(d) has repeatedly engaged in access actions, and the repeated engagement involves an abuse of the process for the access action (paragraph 89L(1)(a)), by:

47E(d)

# OFFICIAL: Sensitive // Legal Privilege

- (i) harassing or intimidating employees of 47E(d) (paragraph 89L(4)(a)); and
  - (ii) unreasonably interfering with the operations of 47E(d) (paragraph 89L(4)(b)); and
- (b) if the Information Commissioner makes a determination preventing 47E(d) from making access applications to 47E(d) documents, future access actions to 47E(d) by s 47F, 47E(d) for 47E(d) would involve an abuse of the process for the access action (paragraph 89L(1)(b)).

5 For the reasons detailed below, there is a clear and convincing need for the declaration.

6 47E(d) has not yet notified s 47F, 47E(d) of this application. This approach was taken for the following reasons:

- (a) s 47F, 47E(d) was notified by 47E(d) that 47E(d) was considering seeking a vexatious applicant declaration and so is aware of this possibility;
- (b) 47E(d) understands that, after s 47F, 47E(d) was notified by 47E(d) on 29 July 2021, 47E(d) received at least 20 access actions from s 47F, 47E(d) and 47E(d) does not have the resources to deal with an increased level of access actions;
- (c) your office may wish to consider our application together with the 47E(d) leaving insufficient time for 47E(d) to notify s 47F, 47E(d) separately.

7 However, 47E(d) is willing to defer consideration of this application until s 47F, 47E(d) is notified of this application, if your office views this as the most appropriate course.

8 47E(d) understands that s 47F, 47E(d) has not yet been given a copy of the 47E(d) 47E(d) preference is that, if possible, s 47F, 47E(d) is not notified of this application until after s 22 has received a copy of the 47E(d). The purpose of 47E(d) application will not be clear to s 47F, 47E(d) until s 22 is aware of the detail of the 47E(d). Further, it appears possible that s 47F, 47E(d) will make further access actions once notified of any application relating to s 22 as a vexatious applicant. 47E(d) has fewer FOI resources than 47E(d) to deal with an increased level of access actions.

## Context

9 47E(d), s 47F involvement with other agencies in relation to 47E(d) is detailed in the 47E(d)

10 Following a transfer of functions in October 2012, 47E(d) holds file number 47E(d) created by the 47E(d)

47E(d)

// Legal Privilege

# OFFICIAL: Sensitive // Legal Privilege

11 [47E(d)] view, supported by case law, is that the relevant material is subject to legal professional privilege.<sup>1</sup> [47E(d)] as the client agency, is the holder of the privilege, rather than [47E(d)] [47E(d)] has confirmed that privilege [47E(d)] in the relevant material has not been waived.

12 [47E(d)] understands that your office will give a copy of this application to [s 47F, 47E(d)]. To ensure legal professional privilege in the relevant material is maintained, this application does not contain information about the relevant material. If this information is required to consider this application, [47E(d)] would first need to ensure arrangements satisfactory to [47E(d)] and [47E(d)] are in place to ensure there is no loss of privilege.

## ***Repeated engagement in access actions (subparagraph 89L(1)(a)(i))***

13 [s 47F, 47E(d)] has made 12 access actions to [47E(d)].

14 Details of these access actions, and how they were dealt with by [47E(d)] are provided in **Attachment A**. [47E(d)] can provide copies of the access actions and decisions themselves if your office requires.

15 Ten of the actions relate to the relevant material, or information about the relevant material. The other two actions relate to FOI requests relating to the relevant material. Access to material has been granted where appropriate. Decision makers have consistently found the relevant material in particular to be subject to legal professional privilege, and advised [47E(d)] accordingly.

16 As the actions primarily relate to the same material, and entirely relate to the same issue, this represents a pattern of repeated requests.<sup>2</sup>

## ***Abuse of process—harassing or intimidating an individual or employee (subparagraph 89L(1)(a)(ii) and paragraph 89L(4)(a))***

17 Paragraph 12.22 of the FOI Guidelines indicates that persistently disturbing an agency with requests can constitute “harassing”. [47E(d), s 47F] requests have been persistent, and have had an impact on [47E(d)] and its staff. This is detailed further below.

18 Further, the [47E(d)] outlines how repeated access actions by [s 47F, 47E(d)] to [47E(d)] amount to a form of harassment or intimidation of [47E(d)] officers. [47E(d)] notes in particular the reference in the [47E(d)] to circumstances mentioned in paragraph 12.24 of the Guidelines issued by the Information Commissioner under s 93A of the FOI Act (FOI Guidelines). [47E(d)] requests that [47E(d), s 47F] repeated access actions to [47E(d)] be considered as part of the same behaviour. As [47E(d)] needs to consult with [47E(d)] regarding requests for release of the relevant material, [47E(d)] is aware of requests made to [47E(d)] giving rise to similar consequences for [47E(d)] officers. The access actions to [47E(d)] are part of the same campaign of badgering relating to the grievance with [47E(d)].

<sup>1</sup> *State of New South Wales v Betfair* [2009] FCAFC 160

<sup>2</sup> *Commonwealth Ombudsman and ‘S’* [2013] AICmr 31 recognises that seven FOI requests can amount to repeatedly engaging in access actions.

**Abuse of process—unreasonably interfering with the operations of <sup>47E(d)</sup> (subparagraph 89L(1)(a)(ii) and paragraph 89L(4)(b))**

19 <sup>47E(d)</sup> repeated access actions interfere with the operations of <sup>47E(d)</sup> contends that the interference is unreasonable, having regard to factors mentioned in paragraph 12.27 of the FOI Guidelines. As noted in the FOI Guidelines, these are drawn from the relevant case law.

<sup>47E(d)</sup> FOI resources correspond to its <sup>s47E(d)</sup>

20 <sup>47E(d)</sup> is a <sup>47E(d)</sup>. At 12 May 2022, <sup>47E(d)</sup> had <sup>47E(d)</sup> <sup>47E(d)</sup> FOI work is one part of one <sup>47E(d)</sup>

21 <sup>47E(d)</sup> is responsible for <sup>47E(d)</sup> <sup>47E(d)</sup> <sup>47E(d)</sup>

<sup>47E(d)</sup> has been required to assist with responding to <sup>47E(d), s 47F</sup> access actions, due to their comparative complexity and <sup>47E(d)</sup> awareness of the sensitive context. Internal reviews are undertaken by an <sup>47E(d)</sup>. A conservative estimate of combined time for all officers per recent access action by <sup>s 47F, 47E(d)</sup> would be as follows:

- (a) FOI request: 17 hours
- (b) Internal review: 6.5 hours

22 I expect this is an underrepresentation of the amount of time spent, as it does not account for some access actions requiring greater consideration than others. Also, it includes time spent on access actions only, and does not include correspondence with <sup>s 47F, 47E(d)</sup> on other issues.

23 At this stage, we are unable to estimate resources required to respond to an IC review application as those processes are ongoing.<sup>4</sup> However, <sup>47E(d)</sup> has found it necessary to engage an external legal provider to assist with IC reviews as <sup>47E(d)</sup> existing resources are insufficient.

24 This represents a substantial and prolonged processing burden on a <sup>47E(d)</sup> <sup>47E(d)</sup> cannot reasonably continue to allocate the resources that <sup>47E(d), s 47F</sup> access actions require.

**Number of access actions is disproportionate<sup>5</sup>**

25 <sup>47E(d), s 47F</sup> access actions represent a disproportionate amount of <sup>47E(d)</sup> FOI work. During the period from 13 September 2019 to 24 June 2022 <sup>47E(d)</sup> received <sup>s4</sup> access actions in total (including by way of transfer from other agencies). <sup>47E(d), s 47F</sup> requests represent more than one-third of those access actions. <sup>47E(d), s 47F</sup> requests are also more resource

<sup>3</sup> FOI Guidelines, paragraph 12.27, fifth dot point

<sup>4</sup> <sup>47E(d)</sup>

<sup>5</sup> FOI Guidelines, paragraph 12.27, first dot point

intensive than most requests we receive. For example, during that period [47E(d)] had 4 internal review applications and 2 IC review applications from [s 47F, 47E(d)] and none from any other applicant.

## Repetitive access actions give rise to substantial workload impact<sup>6</sup>

26 There is a substantial workload impact arising from multiple FOI requests for documents to which access has already been refused. The majority of [47E(d), s 47F] requests are in effect different ways of attempting to obtain the same information. It is not within [47E(d)] power to give access to this information because it is subject to legal professional privilege held by another agency.

## Diversion of resources from core business<sup>7</sup>

27 [47E(d)]

## [47E(d)] processes FOI requests adequately<sup>8</sup>

28 [47E(d)] seeks to address all FOI requests in an efficient and compliant way. [47E(d)] has, when appropriate given the wider context, sought to lessen the impact of [47E(d), s 47F] access actions on its operations by using:

- (a) administrative access (see 27 September 2020 and 13 July 2021 access actions in Attachment A); and
- (b) the request consultation process (see 12 August 2021 access action in Attachment A).

29 [47E(d)] has explained to [s 47F, 47E(d)] how the relevant material is subject to legal professional privilege by drawing [47E(d)] attention to case law dealing specifically with this point.

## Factors relating to [s 47F, 47E(d)]

30 [47E(d)] asks that the access actions made to [47E(d)] be considered as part of the pattern of behaviour described in the [47E(d)]. That is:

- (a) the access actions made to [47E(d)] are part of an immoderate prolongation of a separate grievance with [47E(d)] and
- (b) the access actions made to [47E(d)] represent a continued pursuit of information to which access has already been refused by [47E(d)] in accordance with the FOI Act.

<sup>6</sup> FOI Guidelines, paragraph 12.27, second dot point

<sup>7</sup> FOI Guidelines, paragraph 12.27, third dot point

<sup>8</sup> FOI Guidelines, paragraph 12.27, fourth and last dot points, see also paragraph 12.11

<sup>9</sup> FOI Guidelines, paragraph 12.27, sixth and seventh dot points

## ***Abuse of process—future requests to [47E(d)] (paragraph 89L(1)(b))***

31 If [s 47F, 47E(d)] is declared a vexatious applicant as a result of the [47E(d)] access actions to [47E(d)] in relation to the relevant material would become an abuse of the process for an access action. If a declaration of the Information Commissioner prevented [47E(d)] from making access actions to [47E(d)] in relation to [47E(d)], permitting access actions by [s 47F, 47E(d)] to [47E(d)] for the relevant material would allow [47E(d)] to circumvent the declaration.

## ***Proposed terms of determination***

32 [47E(d)] proposes that this declaration apply to any access actions by [s 47F, 47E(d)] (or by persons acting on [s 22] behalf) that are made after [s 47F, 47E(d)] is made aware of this application and that relate to the following matters:

- (a) [47E(d)]
- (b) [47E(d)] personnel or internal processes;
- (c) [47E(d)] handling of access actions by [s 47F, 47E(d)] including in respect of:
  - (i) any application to have [s 47F, 47E(d)] declared a vexatious applicant; or
  - (ii) correspondence with [47E(d)] regarding access actions or vexatious applicant declarations.

33 The proposed declaration should provide that for a period of 5 years [47E(d)] is not required to consider:

- (a) any requests from [s 47F, 47E(d)] under section 15 of the FOI Act;
- (b) any applications from [s 47F, 47E(d)] for an internal review of an access refusal decision;
- (c) any requests under section 15 of the FOI Act where the request is made on behalf of [s 47F, 47E(d)]
- (d) any applications for internal review of an access refusal decision by any person where the application is made on behalf of [s 47F, 47E(d)]

34 The proposed terms align with the determination proposed in relation to [47E(d)]. If the determination applied for by [47E(d)] is made, it could be circumvented unless a similar determination is made in relation to [47E(d)].

35 [47E(d)] currently has no actions on hand from [s 47F, 47E(d)] or other persons in relation to the relevant material. [47E(d)] is aware that IC review of [s 47F, 47E(d)] actions is currently in progress.

36 [47E(d)] does not request that [s 47F, 47E(d)] be named in the published decision. [47E(d)]  
[s 22]

37 Please contact me if you require further information.



**47E(d)**

28 June 2022

## OAIC - FOI DR

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**From:** 47E(d)  
**Sent:** Monday, 31 October 2022 3:51 PM  
**To:** OAIC - FOI DR  
**Subject:** Application for Vexatious Applicant Declaration - s 47F, 47E(d) [SEC=OFFICIAL:Sensitive]  
**Attachments:** Application for Vexatious Applicant Declaration - s 47F, 47E(d) (31.10.2022).pdf; 47E(d)  
47E(d)

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

### OFFICIAL: Sensitive

Dear Commissioner,

Please find **attached** 47E(d) application seeking a vexatious applicant declaration.

Please note that due to the large file size of the annexures that accompany this application, we will provide the annexures to the OAIC separately via our secure dropbox.

#### ***Dropbox instructions***

You should receive an email shortly providing access to the documents via the secure dropbox. Please refer to the instructions attached for when you receive this email.

Please note, you will need to use your email as the username. For your password, please type in anything (e.g. 123); this will make a pop up appear that says the password is incorrect. The site will ask if you would like to reset your password.

Your new password must adhere to the following criteria:

- Must be at least 14 characters long
- Must have at least 2 alphabet characters (minimum of 1 uppercase and 1 lowercase)
- Must have at least 1 number
- Must have at least 1 special character (e.g. !@#\$%/)

Once your new password is set, you should be able to log in and access the documents.

Please contact us if you have any difficulty accessing the annexures via our secure drop box.

Sincerely,

47E(d)

Please note: This email and attachments may contain information subject to legal professional privilege or information that is otherwise sensitive and confidential. If you are not the intended recipient of this email, you are prohibited from using or disseminating this communication. If you have received this communication in error please notify the sender immediately and permanently deleted this email.

Sensitive: This document may contain sensitive information as defined under Section 6 of the Privacy Act. NOTICE: This e-mail message and attachments may contain confidential, personal or legally privileged information. If you are not the intended recipient you should not use or disclose any information in the message or attachments. If received in error, please notify the sender by return email immediately, if possible, or **47E(d)** **47E(d)** does not waive any confidentiality or privilege. For information about how we handle personal information, please visit **47E(d)** and request a copy of our Privacy Policy

47E(d)

31 October 2022

Our ref: 47E(d)

Office of the Australian Information Commissioner  
By email: [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au)

Dear Commissioner,

**Application for Vexatious Applicant Declaration – s 47F, 47E(d)**

1. I am writing on behalf of 47E(d) to seek that s 47F, 47E(d) be declared a vexatious applicant under section 89K of the *Freedom of Information Act 1982* (the FOI Act). 47E(d) seeks this declaration on the basis that the number and subject matter of access requests made by s 47F, 47E(d) under the FOI Act is unreasonable and involves an abuse of process.
2. I provide the following details in support of 47E(d) application for this declaration and for the Office of the Australian Information Commissioner's consideration.

**Background**

s 22

4. Between 1 January 2018 and 26 September 2022 s 47F, 47E(d) has made 264 access requests to 47E(d) comprising of:
  - 168 requests made under the FOI Act including reviews and Information Commissioner Reviews (IC Reviews); and
  - 91 requests made under the Privacy Act.

s47E(d)

5. Relevantly, since 1 January 2018 <sup>s 47F, 47E(d)</sup> has also made 192 complaints under the Privacy Act.
6. The volume of requests made by <sup>s 47F, 47E(d)</sup> since 1 January 2018 constitutes repeated engagement with <sup>47E(d)</sup> and involves an abuse of process. Specifically, <sup>s 47F, 47E(d)</sup> access requests to <sup>47E(d)</sup> cover similar subject matter and often target specific <sup>47E(d)</sup> employees in an intimidating manner.
7. <sup>47E(d)</sup> considers that <sup>s 47F, 47E(d)</sup> access requests appear to be designed to annoy or harass <sup>47E(d)</sup> staff and many of the requests appear to seek that <sup>47E(d)</sup> <sup>47E(d)</sup> <sup>47E(d)</sup>.

#### Previous Notifications to <sup>s 47F, 47E(d)</sup>

8. On 10 July 2018, <sup>47E(d)</sup> wrote to <sup>s 47F, 47E(d)</sup> and notified <sup>s 22</sup> that <sup>47E(d)</sup> intended to lodge an application with the OAI seeking that <sup>s 22</sup> be declared a vexatious applicant under section 89K of the FOI Act if <sup>s 22</sup> did not limit the number of FOI requests <sup>s 22</sup> was making. <sup>47E(d)</sup> also invited <sup>47E(d)</sup> to moderate <sup>s 22</sup> behaviour by only lodging one FOI request at a time and by not making requests that duplicate, or substantially duplicate earlier requests. A copy of <sup>47E(d)</sup> letter dated 10 July 2018 is contained at **Annexure A**.
9. Despite <sup>47E(d)</sup> letter, <sup>s 47F, 47E(d)</sup> continued to make a further 41 access requests under the FOI Act<sup>1</sup> to <sup>47E(d)</sup> between 10 July 2018 and 9 September 2019 which constituted an abuse of process. The requests continued to cover similar subject matter and often targeted specific <sup>47E(d)</sup> employees in an intimidating manner. Relevantly, during this period <sup>s 47F, 47E(d)</sup> also made 16 requests under the Privacy Act for access to personal information and made 14 privacy complaints to <sup>47E(d)</sup> <sup>s 47F, 47E(d)</sup> privacy requests addressed substantively the same subject matter as <sup>s 22</sup> previous FOI requests.
10. On 9 September 2019, <sup>47E(d)</sup> again wrote to <sup>s 47F, 47E(d)</sup> advising <sup>s 22</sup> that it considered the number and subject matter of access requests <sup>s 22</sup> continued to make under the FOI Act was unreasonable and an abuse of process. <sup>47E(d)</sup> again notified <sup>s 47F, 47E(d)</sup> it intended to seek that <sup>s 22</sup> be declared a vexatious applicant and advised that <sup>s 22</sup> needed to cease making such requests to <sup>47E(d)</sup> <sup>47E(d)</sup> also advised <sup>s 47F</sup> that <sup>s 22</sup> broader contact with <sup>47E(d)</sup> was unreasonable, including <sup>s 22</sup> making Information Commissioner complaints, APP 12 requests, privacy complaints and other complaints, which targeted specific <sup>47E(d)</sup> employees in an intimidatory manner and were vexatious in nature. A copy of <sup>47E(d)</sup> letter dated 9 September 2019 is contained at **Annexure B**.
11. Despite <sup>47E(d)</sup> 9 September 2019 letter, <sup>s 47F, 47E(d)</sup> made a further 109 access requests under the FOI Act to <sup>47E(d)</sup> during the period 10 September 2019 and 16 August 2022, which related to similar subject matter and continued to target <sup>47E(d)</sup> employees in an intimidating manner. Relevantly, during this period <sup>s 47F, 47E(d)</sup> also made 75 access requests under the Privacy Act and 175 privacy complaints relating to substantially the same subject matter.

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<sup>1</sup> 'access requests' include requests made under s15 and s48 of the FOI Act, and requests for internal review and OAI IC review made under the FOI Act.

12. On 16 August 2022, 47E(d) again wrote to s 47F, 47E(d) to notify s 22 that 47E(d) intended to make an application to the Information Commissioner seeking that s 22 be declared a vexatious applicant under section 89K of the FOI Act because s 22 continued to make an excessive number of access requests that constituted an abuse of process. 47E(d) requested that s 47F, 47E(d) cease making requests and withdraw the 13 requests that s 22 had made since 21 July 2022 that were largely similar to previous requests s 22 had made. A copy of 47E(d) letter dated 16 August 2022 is contained at Annexure C. s 47F, 47E(d) did not withdraw any of s 22 13 access requests as requested and 47E(d) was required to process the requests.
13. On 17 August 2022, s 47F, 47E(d) wrote to 47E(d) and advised that s 22 did not agree with 47E(d) assertions that s 22 has made an unreasonable number of access requests as contained in its 16 August 2022 letter. s 47F, 47E(d) stated that:

s 22

14. On 9 September 2022, s 47F, 47E(d) made a further complaint regarding a previous decision issued by 47E(d) in response to an APP 12 request s 22 made for documents. Contained within that complaint was a further APP 12 request for documents that was largely similar to s 22 initial APP 12 request regarding 47E(d) decision on s 22 47E(d)

### Terms of Declaration Sought

15. It is clear that s 47F, 47E(d) does not have any intention of modifying s 22 behaviour and that s 22 intends to continue to submit access requests, privacy requests and other communications to 47E(d) that address the same subject matter and have been addressed by 47E(d) previously.
16. Accordingly, it is apparent that the only avenue available to 47E(d) at this time, is to seek that s 22 be declared a vexatious applicant and be restrained from making further access requests to 47E(d) on the following proposed terms:

#### *Proposed terms of declaration*

1. Under s 89K(1) of the Freedom of Information Act 1982 (Cth) (FOI Act), I declare the Respondent to be a vexatious applicant on the basis that they have repeatedly engaged in access actions that involve an abuse of process.
2. Subject to paragraph 4, for a period of five (5) years from the date of this declaration, 47E(d) is not required to consider:
  - (a) Any request by the Respondent under the FOI Act, or
  - (b) Any application by the Respondent for internal review of a decision under the FOI Act.

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<sup>2</sup> A copy of s 47F, 47E(d) email dated 17 August 2022 is contained at Annexure D.

3. Subject to paragraph 4, 47E(d) is not required to consider
  - (a) Any application made under section 48 of the FOI Act for amendment or annotation of personal records s 22
4. The terms in paragraphs 2 and 3 will apply unless the Respondent has first applied in writing to the Office of the Australian Information Commissioner (OAIC) for permission to make the request or application and written permission has been granted by the OAIC for the request or application to be made.
5. For a period of 5 years, OAIC is not required to consider any application for permission received within ninety (90) days of a prior application for permission having been received).<sup>3</sup>

### Grounds for declaration

6. Pursuant to section 89K of the FOI Act, the Information Commissioner may, by written submission, declare a person to be a vexatious applicant. However, 47E(d) must first demonstrate that 47E(d) conduct satisfies the grounds for a vexatious applicant declaration to be made under section 89L of the FOI Act.
7. Relevantly, section 89L of the FOI Act states:
  - (1) *The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:*
    - (a) that:**
      - (i) the person has repeatedly engaged in access actions; and**
      - (ii) the repeated engagement involves an abuse of the process for the access action;**
    - (b) a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;*
    - (c) a particular access action in which the person engages would be manifestly unreasonable.*
8. 47E(d) acknowledges that a declaration will not be made lightly because, as the FOI Guidelines state, “it has the practical effect of preventing a person from exercising an important legal right conferred by the FOI Act.” However, 47E(d) considers in this instance there is “a clear and convincing need for a declaration”.<sup>4</sup>

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<sup>3</sup> For ease, a separate copy of the proposed terms of declaration is contained at **Annexure E** for the Information Commissioner’s consideration.

<sup>4</sup> FOI Guidelines [12.7].

9. Accordingly, the grounds for declaration that **47E(d)** consider are established in these circumstances and upon which it seeks to rely for this application are as follows:

- **s 47F, 47E(d)** has repeatedly engaged in access actions (s 89L(1)(a)(i)) and
- the repeated engagement involves an abuse for process for the access action (s 89L(1)(a)(ii)), namely:
  - harassment and intimidation of **47E(d)** staff (s 89L(4)(a))
  - unreasonable interference with **47E(d)** operations (s 89L(4)(b)).

Each of these issues are addressed in turn below.

**Has **s 47F, 47E(d)** repeatedly engaged in access actions with **47E(d)****

10. Section 89L(2) of the FOI Act prescribes that:

*(2) A person engages in an **access action** if the person does any of the following:*

- (a) makes a request;*
- (b) makes an application under section 48;*
- (c) makes an application for internal review;*
- (d) makes an IC review application.*

11. Since 1 January 2018, **s 47F, 47E(d)** has engaged in a total of 168 separate ‘access actions’ with **47E(d)** under the FOI Act, comprising of the following:

Type of access action	Number of access actions
FOI request (including applications under section 48 for amendment)	<b>121</b>
Application for internal review	<b>30</b>
Application for Information Commissioner Review	<b>17</b>

\*Table 1.

12. Further details of each of **s 47F, 47E(d)** access actions can also be found in the spreadsheet contained at **Annexure F**. This spreadsheet includes details of the type, date, and nature of each of **s 47F, 47E(d)** access requests.

13. Relevantly, section 89L(1)(a)(i) indicates that a person must have ‘repeatedly’ engaged in access actions and paragraphs 12.16 to 12.17 of the FOI Guidelines provide the following:



The term 'repeatedly' is not defined in the FOI Act and can be interpreted within its ordinary meaning: 'done, made or said again and again'.

There is no fixed number of access actions required to establish a pattern of repeated requests. Whether such a pattern exists will depend in part on the nature of the abuse of process that is said to be involved. For example, if it is asserted that a person is repeating a request that has earlier been processed and decided by an agency, or is harassing agency employees, a small number of requests may establish a pattern. On the other hand, if it is asserted that a person has repeatedly made different requests that in combination unreasonably interfere with an agency's operations, a higher number of requests may be required to establish a pattern of repeated requests.<sup>5</sup>

14. Since 1 January 2018, [s 47F, 47E(d)] has engaged in a total of 168 access actions under the FOI Act in relation to [47E(d)]. Many of those access actions are requests concerning substantially the same subject matter that [47E(d)] has addressed with [s 47F, 47E(d)] previously, as detailed in **Annexure F**. Despite [47E(d)] many requests for [s 47F, 47E(d)] to amend [s 22] behaviour, [s 22] has continued to engage in access actions with [47E(d)] on a repeated basis.
15. On this basis, [47E(d)] asserts that [s 47F, 47E(d)] has engaged in a continuing pattern of access actions which amount to a repeated engagement in access actions for the purposes of section 89L(1)(a) of the FOI Act.

#### Broader pattern of contact

16. It is also relevant to note that since 1 January 2018, [s 47F, 47E(d)] broader contact with [47E(d)] has been unreasonable,<sup>6</sup> as detailed in the following table:

Type of matter	Total
APP 12 and APP 1 requests	53
APP 13 requests	38
Privacy Complaints (including Information Commissioner Complaints)	192

\*Table 2

17. While [47E(d)] understands that members of the public have a right to complain about an agency and its actions, many of [s 47F, 47E(d)] complaints relate to substantially the same matters that [47E(d)] has previously addressed and resolved.
18. It is also relevant that many of [s 47F, 47E(d)] requests made under Australian Privacy Principle 12 (APP 12) appear to be used to target specific [47E(d)] employees and are intimidatory given that

<sup>5</sup> FOI Guidelines [12.16] – [12.17] (footnotes omitted); *Services Australia and 'WE' (Freedom of information)* [2020] AICmr 62 (14 December 2020) at [26] quoting FOI Guidelines.

<sup>6</sup> FOI Guidelines [12.14].

these requests are made following determinations where s 22 has been unsatisfied with the employees' actions.

19. Further details of s 47F, 47E(d) broader unreasonable contact with 47E(d) are contained in the spreadsheet at **Annexure F**.

**Has there been an abuse of process?**

20. To establish if the declaration sought ought to be made under subsection 89L(1)(a), the Information Commissioner must also be satisfied that the repeated engagement involves an abuse of process.

21. Relevantly, subsection 89L(4) of the FOI Act states that 'abuse of the process for an access action' includes, but is not limited to:

- (a) harassing or intimidating an individual or an employee of an agency
- (b) unreasonably interfering with the operations of an agency

...

**Has s 47F, 47E(d) has engaged in access actions that have unreasonably interfered with 47E(d) operations?**

22. The FOI Guidelines explain that the provisions of the FOI Act seek to balance the right of access to government-held documents while ensuring that access requests do not interfere unreasonably with agency operations.<sup>7</sup> The FOI Guidelines at paragraph 12.27 provide examples of the factors that may be considered in deciding if there is a pattern of repeated access actions that unreasonably interfere with an agency's operations.

23. 47E(d) submits that the following factors as outlined in the FOI Guidelines<sup>8</sup> should be considered by the Information Commissioner in deciding if s 47F, 47E(d) has engaged in a pattern of repeated access actions that unreasonably interfere with an 47E(d) operations.

***Whether a high number of access actions has led to a substantial or prolonged processing burden on the agency or a burden that is excessive and disproportionate to a reasonable exercise by an applicant of the right to engage in access actions***

24. Relevantly, in balancing a person's right to engage in access actions under the FOI Act and the repetitive nature of their access actions, it is appropriate to consider Senior Member Manetta's comments in relation to a person's requests for amendment in *Francis and Australian Information Commissioner (Freedom of information)* [2015] AATA 936:<sup>9</sup>

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<sup>7</sup> *Services Australia and 'WE' (Freedom of information)* [2020] AICmr 62 (14 December 2020) [34].

<sup>8</sup> The Guidelines note that the application of the factors is discussed in *Australian Securities and Investments Commission and Sweeney* [2013] AICmr 62 [18]-[20], [30]-[49]; *Australian Prudential Regulation Authority and Sweeney* [2013] AICmr 63 [31]-[41]; and *Re Sweeney and Australian Securities and Investments Commission* [63]-[78]. See also *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10 concerning factors relevant in deciding if a practical refusal reason exists for refusing a request.

<sup>9</sup> Referred to in *Services Australia and 'WE' (Freedom of information)* [2020] AICmr 62 (14 December 2020) [38].

*Having received multiple rejections, an applicant who persists must, at some point, become “vexatious”. I do not say that point is necessarily reached as early as the second application, but I am satisfied that it was reached here on Mr Francis’s fifth application if not earlier. The statutory scheme under the FOI Act includes rights of review that are available to be pursued and, in the normal course, should be pursued if an applicant is dissatisfied with a departmental response. The scheme envisages an application, a departmental response, and the exercise of review rights; but it does not authorise multiple applications on the same facts.*

*It might he (sic) argued that an applicant could properly elect to reapply to an agency, which is an administrative body, rather than invoke the statutory review process because an agency may be persuaded to change its mind. Even on that assumption, however, a point must come where an applicant’s persistence, in the absence of new information, becomes “vexatious” and “oppressive” because all that is sought is a different outcome from the same statutory process on the same facts. Mr Francis has now applied five times to the Department and, in addition, has appealed adverse prior departmental decisions to the Tribunal on four occasions, with one appeal to the Federal Court.<sup>10</sup>*

25. Further, the Acting Australian Information Commissioner, Elizabeth Hampton stated in her decision of *Services Australia and 'WE' (Freedom of information)*<sup>11</sup> that:

39. *In its application [for a vexatious applicant declaration], Services Australia submits that the respondent’s FOI requests are excessive and disproportionate to a reasonable exercise of their rights under the FOI Act, because of the number of access requests and the frequent, repetitious and overlapping nature of their requests.*

40. *Between 19 March 2018 and 8 April 2020, the respondent has engaged in 102 access actions with Services Australia directly. In the same period the respondent has requested three IC reviews<sup>[8]</sup>. Since 8 April 2020 the respondent has engaged in a further 11 access actions. I am satisfied that the nature of the requests relate to the four categories discussed at [28].*

41. *Based on the information before me, I am satisfied that the nature of the respondent’s access actions on Services Australia’s FOI administration would have a substantial workload impact on Services Australia’s FOI administration.*

26. 47E(d) submits that s 47F, 47E(d) has made a total of 168 access actions under the FOI Act to 47E(d) during the period of 1 January 2018 to 26 September 2022. s 47F, 47E(d) high number of access actions have led to a prolonged processing burden on the FOI administration in 47E(d) that is excessive and disproportionate to a reasonable exercise of the right to engage in requests. This is because of the sheer number of access requests submitted by s 47F, 47E(d) and the frequent, repetitious, and overlapping nature of the requests.

27. s 47F, 47E(d) requests are often duplicative or substantially similar to previous requests. For example, s 47F, 47E(d) submits FOI requests even where 47E(d) has previously granted full access

<sup>10</sup> *Francis and Australian Information Commissioner (Freedom of information)* [2015] AATA 936 [42] – [43].

<sup>11</sup> [2020] AICmr 62 (14 December 2020).

to the relevant documents sought or where it should be reasonably known to § 47F, 47E(d) that the documents do not exist. Examples of § 47F, 47E(d) repetitive and overlapping access requests are contained at **Annexure G**.

**Whether a substantial workload impact on FOI administration in § 47E(d) has arisen from the nature of § 47F, 47E(d) access actions**

28. The Guidelines provide at paragraph 12.27, the following examples of the nature of access actions that may create a substantial workload impact:

*... multiple FOI requests that are poorly-framed or for documents that do not exist, requests for documents that have already been provided or to which access was refused, or requests that are difficult to discern and distinguish from other complaints a person has against the agency.*

29. § 47E(d) further submits, that a substantial workload impact on FOI administration in § 47E(d) has arisen from the nature of § 47F, 47E(d) requests, which are often repetitive, lengthy, and poorly framed. § 22

§ 47E(d) The nature of § 47F, 47E(d) requests requires FOI officers to take greater time than would reasonably be anticipated to determine the scope of § 47F, 47E(d) requests. Examples of § 47F, 47E(d) lengthy and poorly framed access requests are contained at **Annexure H**.

30. § 47E(d) submits that it has been required to dedicate a considerable amount of resources to processing § 47F, 47E(d) requests for a prolonged period. These requests have had a significant impact on the operational work of § 47E(d) During the past four financial years from 1 July 2018 to 30 June 2022, § 47E(d) received a total of 839 access requests made under section 15 of the FOI Act. During that period, § 47F, 47E(d) made a total of 107 access requests under section 15 of the FOI Act. § 47F, 47E(d) requests represented 12.75% of all FOI section 15 access request received by § 47E(d) during the past four financial years<sup>12</sup>. The high number of § 47F, 47E(d) requests has led to a prolonged processing burden that is excessive and disproportionate to a reasonable exercise of the right to engage in requests. This is compounded by the fact that § 47F, 47E(d) requests are often for the same documents or subject matter that § 22 has previously received access to.

**Whether the person has cooperated reasonably with § 47E(d) to enable efficient FOI processing**

31. In deciding whether there is a pattern of repeated access actions that unreasonably interfere with an agency's operations, it is relevant to consider whether the person has cooperated reasonably with the agency to enable efficient FOI processing. Including, whether the person's access actions portray an immoderate prolongation of a separate grievance the person has against the agency, or the continued pursuit of a matter that has already been settled through proceedings in another dispute resolution forum.<sup>13</sup>

<sup>12</sup> § 47E(d)

<sup>13</sup> FOI Guidelines [12.27].

32. Relevantly, in *Australian Securities and Investments Commission and Sweeney* [2013] AICmr 62, former Information Commissioner Professor McMillan stated:

*Caution is needed in evaluating the public interest dimension of a person's FOI requests. Even so, the inescapable impression in Mr Sweeney's case is that many of his requests are aimed at re-agitating a grievance of long-standing that has been acknowledged and investigated by ASIC and other agencies, albeit not to his satisfaction. It is inappropriate that the FOI Act should become the platform to support the immoderate prolongation of a personal grievance. The impact and inconvenience of Mr Sweeney's requests upon ASIC operations is disproportionate to his campaign for 'justice' in relation to his own affairs and more widely.<sup>14</sup>*

33. In *Morris and Australian Information Commissioner (Freedom of information)* [2017] AATA 363, Senior Member Walsh considered that a number of Ms Morris' access actions re-agitated matters already decided or actioned without offering any reasonable explanation or new evidence and that Ms Morris's pattern of access actions could be characterised as manifestly unreasonable by their unnecessary and unjustified repetition and properly labelled as "vexatious".<sup>15</sup>

34. s 47F, 47E(d) access actions are part of an immoderate prolongation s 22 [REDACTED]

35. As established above, s 47F, 47E(d) has repeatedly made the same or very similar requests designed to re-agitate s 22 [REDACTED]. s 47F, 47E(d) has repeatedly made requests for documents that 47E(d) has previously provided to s 22 or that 47E(d) has advised cannot be found or do not exist. Accordingly, most of s 47F, 47E(d) access actions amount to a continued pursuit of a matter that has already been settled through proceedings in another forum.

36. Further, as outlined above 47E(d) has written to s 47F, 47E(d) formally on three separate occasions to request that s 22 cease making an excessive unreasonable number of access requests. Despite 47E(d) letters, s 47F, 47E(d) has continued to issue a high number of access requests and broader communication, including complaints and APP 12 requests to 47E(d)

37. Most recently, on 17 August 2022 s 47F, 47E(d) responded to 47E(d) letter of 16 August 2022 indicating that s 22 disagrees with 47E(d) assertions that s 22 has made an unreasonable number of access requests. Among other things, s 47F, 47E(d) denied that s 22 has ever made a request under section 48 of the FOI Act. Evidence of section 48 requests s 47F, 47E(d) has made to 47E(d) is contained at Annexure I. s 47F, 47E(d) has also claimed in s 22 email that s 22 has not requested

<sup>14</sup> *Australian Securities and Investments Commission and Sweeney* [2013] AICmr 62 [44]. This decision was later affirmed by the Administrative Appeals Tribunal in *Sweeney and Australian Information Commissioner and Australian Prudential Regulation Authority (Joined Party)* [2014] AATA 539. This decision was referenced in *Services Australia and 'WE' (Freedom of information)* [2020] AICmr 62 (14 December 2020) [48].

<sup>15</sup> *Morris and Australian Information Commissioner (Freedom of information)* [2017] AATA 363 [40] – [41]; as referenced in *Services Australia and 'WE' (Freedom of information)* [2020] AICmr 62 (14 December 2020) [49].

documents that § 22 has previously received and where there may be an overlap any such prior documents have been removed from scope. This is not correct, evidence of the significant number of repetitive requests § 47F, 47E(d) has made are detailed in the spreadsheet at **Annexure F**.

**Whether 47E(d) has used other provisions under the FOI Act to lessen the impact of the person's access actions on its operations**

38. To determine whether § 47F, 47E(d) has engaged in a pattern of repeated access actions that unreasonably interfere with 47E(d) operations, it is relevant to consider whether 47E(d) has used other provisions under the FOI Act to lessen the impact of § 22 access actions on its operations.<sup>16</sup>

39. 47E(d) submits that it has used other provisions under the FOI Act in attempts to lessen the impact of § 47F, 47E(d) repeated access actions on its operations. However, on several occasions, § 47F, 47E(d) has not cooperated reasonably with the agency to enable efficient FOI processing under these other FOI Act provisions.

40. Examples of the steps taken by 47E(d) to reduce the impact of § 47F, 47E(d) access actions on its operations include the following:

- 47E(d) has provided documents that § 47F, 47E(d) has requested under section 15 of the FOI Act to § 22 by way of administrative release. Examples of where 47E(d) has assisted § 47F, 47E(d) in this matter, include:
  - FOI request reference 47E(d) 47E(d) located 7 documents (430 pages) that fell within the scope of § 47F, 47E(d) FOI request. 47E(d) decided to grant § 47F, 47E(d) full access to 4 documents (425 pages) under administrative arrangements and full access to 1 document (3 pages) under the FOI, part access to 1 document (1 page) under the FOI Act and refuse access to part of the request under s24A of the FOI Act.<sup>17</sup>
  - FOI request reference 47E(d) On 22 April 2022, § 47F, 47E(d) made a request to 47E(d) for information under section 15 of the FOI Act. On 4 May 2020, 47E(d) acknowledged § 47F, 47E(d) request and advised that it has administrative access arrangements for the release of certain documents without the need for a formal FOI request. 47E(d) identified three documents (18 pages) that related to § 47F, 47E(d) request and decided to provide § 47F, 47E(d) access to those documents through the administrative access arrangements on 22 May 2020. § 47F, 47E(d) FOI request was then taken as withdrawn.<sup>18</sup>
- 47E(d) has contacted § 47F, 47E(d) informally to request that § 22 consider revising the scope of many of § 22 access requests. However, § 47F, 47E(d) has often provided unhelpful responses to 47E(d) requests that § 22 consider revising or clarify the scope of an access request, which

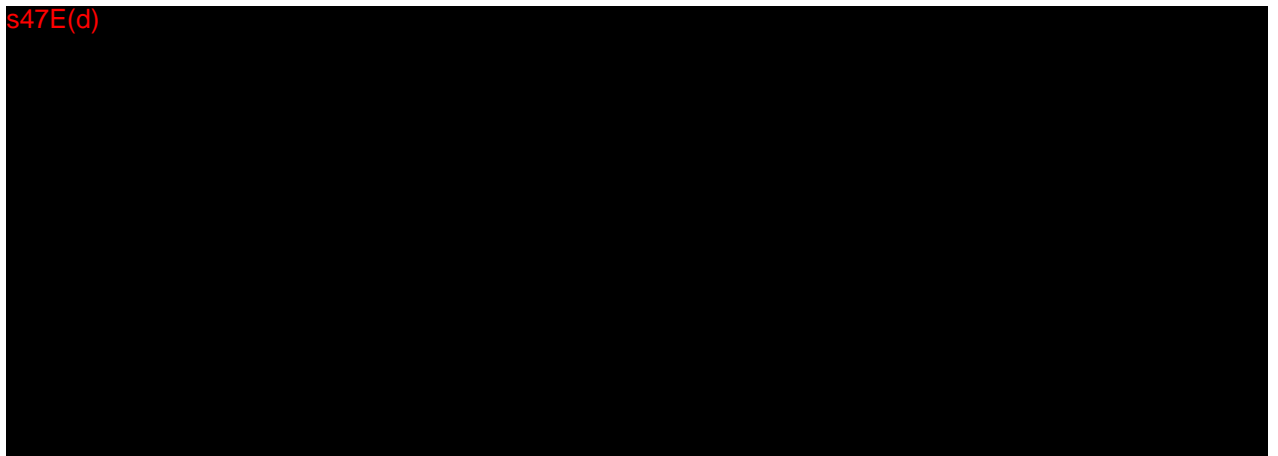
<sup>16</sup> FOI Guidelines [12.27].

<sup>17</sup> A copy of 47E(d) decision dated 7 August 2019 in which 47E(d) released documents to § 47F, 47E(d) by way of administrative release is contained at **Annexure J**.

<sup>18</sup> A copy of 47E(d) decision letter dated 22 May 2020 providing administrative access to § 47F, 47E(d) is contained at **Annexure K**.

has led § 47E(d) to consult formally with § 47F, 47E(d) under s24AB of the FOI Act and has required § 47E(d) staff to spend additional time clarifying § 47F, 47E(d) requests. § 47F, 47E(d) has also previously refused to revise scope of § 22 access requests when contacted. Examples of instances where § 47F, 47E(d) has been unhelpful or refused to work with § 47E(d) to revise the scope of § 22 request are contained at Annexure L.

- § 47E(d) has issued section 24AB notifications to § 47F, 47E(d) to assist § 22 to revise the scope of § 22 access requests formally. However, § 47F, 47E(d) has on many occasions, refused to revise the scope of those request following § 22 receipt of § 47E(d) notification.



- § 47E(d) has previously made requests for an extension of time from § 47F, 47E(d) to enable to agency to respond to § 22 requests. However, § 47F, 47E(d) has often unreasonably refused to grant the extension. In these instances, § 47E(d) was required to apply to the OAIC for the required extension of time, which further impacted the FOI team's resources.

For example, on 28 November 2018, § 47F, 47E(d) made a FOI request ( § 47E(d) ) for documents which was very similar to several previous requests submitted by § 47F, 47E(d) § 47E(d) requested an extension of time from § 47F, 47E(d) for the agency to provide a response to this request due to the occurrence of Christmas public holidays. § 47F, 47E(d) refused to grant the extension. § 47E(d) was then required to seek an extension from the OAIC, which was granted.<sup>20</sup>

41. Additionally, § 47F, 47E(d) has had access to § 47E(d) § 47E(d) § 47E(d) provided § 47F, 47E(d) with 419 pages following § 47F request for § 22 On 1 May 2019

42. Accordingly, § 47E(d) submits that § 47F, 47E(d) actions have led to a substantial impost on § 47E(d) FOI processing and administration that is excessive and disproportionate to a reasonable exercise by § 47F, 47E(d) of § 22 right to engage in access actions under the FOI Act. § 47E(d)

<sup>19</sup> A copy of § 47F, 47E(d) original FOI request dated 12 April 2018, and § 47E(d) decision letter detailing the attempts made to assist § 47F, 47E(d) to revise the scope of § 22 request, § 47F, 47E(d) refusal to assist § 47E(d) and § 22 further requests for information made during the consultation process are contained at Annexure M.

<sup>20</sup> Further details of this request are contained in the spreadsheet at Annexure F.

§47E(d) access actions are therefore an abuse of process because they unreasonably interfere with §47E(d) operations.

Has § 47F, 47E(d) has engaged in access actions that have harassed or intimidated employees at §47E(d)

43. The FOI Guidelines state:

*12.22 The terms ‘harassing’ and ‘intimidating’ are not defined in the FOI Act and therefore have their ordinary meaning. To ‘harass’ a person is to disturb them persistently or torment them; and to ‘intimidate’ a person is to use fear to force or deter the actions of the person, or to overawe them.*

*12.23 The occurrence of harassment or intimidation must be approached objectively. The issue to be resolved is whether a person has engaged in behaviour that could reasonably be expected on at least some occasions to have the effect of, for example, tormenting, threatening or disturbing agency employees.*

...

44. The FOI Guidelines at paragraph 12.24, further provide that harassment and intimidation may be established by a variety of circumstances including:

- requests that are designed to intimidate agency staff and force them to capitulate on another issue
- requests of a repetitive nature that are apparently made with the intention of annoying or harassing agency staff.

45. §47E(d) submits that § 47F, 47E(d) repeated access actions amount to an abuse of process on the basis that the actions were harassing or intimidating to individual employees of §47E(d). Specifically, the repetitive nature and sheer volume of § 47F, 47E(d) access actions as detailed above appear to be made with the intention of annoying or harassing §47E(d) staff. § 47F, 47E(d) repetitive requests appear to be designed to intimidate §47E(d) staff and drive capitulation on §22

46. As stated above, §47E(d) wrote to § 47F, 47E(d) on 10 July 2018 and 9 September 2019 and most recently on 16 August 2022 to advise § 22 that §47E(d) considers the volume and nature of §22 continuous access actions have had a detrimental impact on §47E(d) resources and operations. §47E(d) also addressed § 47F, 47E(d) unreasonable broader contact with §47E(d) as highlighted above, in which § 47F, 47E(d) has repeatedly made complaints and requests under Australian Privacy Principal 12 and 13 regarding similar subject matter and identified specific §47E(d) staff.<sup>21</sup> Despite §47E(d) letters, § 47F, 47E(d) continued to make further excessive access requests and continued to unreasonably target §47E(d) staff.

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<sup>21</sup> The spreadsheet at Annexure F identifies privacy actions made by § 47F, 47E(d) where §22 has named §47E(d) staff.



47. Many of § 47F, 47E(d) access requests target specific 47E(d) employees in an intimidating manner. For example, in circumstances where § 47F, 47E(d) has not been pleased with a decision made in respect of an access request that § 22 has previously made, § 47F, 47E(d) has proceeded to submit further access requests and make privacy complaints that specifically name and target 47E(d) employees who have been involved with § 22 matters. Of the 168 access actions that § 47F, 47E(d) has made to 47E(d) since 1 January 2018, § 22 has specifically named and targeted 47E(d) employees in approximately 70 of those access actions.<sup>22</sup>

48. More specifically, an example of § 47F, 47E(d) unreasonable and intimidatory behaviour includes § 22 repetitive access requests targeting 47E(d) employee, 47E(d) who was involved with § 47F, 47E(d) § 22. § 47F, 47E(d) has made at least 21 FOI access requests since 29 June 2018 that specifically name 47E(d). § 47F, 47E(d) has also made repeated baseless accusations against 47E(d) including that § 47F, 47E(d) § 47F, 47E(d) § 47E(d) § 47E(d). Despite 47E(d) issuing a decision in response to § 47F, 47E(d) access request 47E(d), § 47F, 47E(d) continued to submit multiple access requests, including review requests and requests under the Privacy Act, seeking the alleged recording and records from all work related and personal electronic devices accessed by the employee, including records from their personal mobile phone and computer. Examples of § 47F, 47E(d) repeated unreasonable access actions targeting 47E(d) and 47E(d) responses are contained in **Annexure N**.

### Other relevant considerations

The OAIC FOI Guidelines also provide that in determining if a vexatious applicant declaration should be made, the Information Commissioner may consider an agency's FOI administration, either generally or in relation to the person whose actions are under consideration. In particular, the Commissioner may consider whether:

- deficiencies in agency administration impaired its processing of the person's requests
- actions taken by the agency contributed to or might explain the person's access actions
- the agency consulted with the person about their access actions before applying to the Commissioner for a declaration
- deficiencies in agency FOI administration should be addressed by the agency before further consideration is given to making a declaration.<sup>23</sup>

47E(d) does not consider that its FOI administration has impaired the processing of § 47F, 47E(d) access actions at all and certainly not to an extent that would warrant § 47F, 47E(d) making such an unreasonable volume of access actions. Nor have the actions taken by 47E(d) contributed to or provided explanation for § 47F, 47E(d) repeated abuse of process in submitting an excessive volume of access requests to harass and intimidate 47E(d) staff. Despite 47E(d) many attempts to consult with § 47F, 47E(d) about § 22 unreasonable access actions, § 47F, 47E(d) has failed to amend § 22 behaviour and

<sup>22</sup> The spreadsheet at **Annexure F** identifies each FOI access action where § 47F, 47E(d) has specifically named or requested the details of 47E(d) staff.

<sup>23</sup> *FOI Guidelines* [12.13].

continued to repeatedly engage in access actions involving an abuse of process causing an unreasonable interference with 47E(d) operations.

Accordingly, for the reasons outlined above 47E(d) submits that s 47F, 47E(d) conduct satisfies the grounds for a vexatious applicant declaration to be made under section 89L of the FOI Act. 47E(d) seeks that the Information Commission declare s 47F, 47E(d) a vexatious applicant in accordance with proposed declaration terms at **Annexure E**.

If you have any questions in relation to this matter please do not hesitate to contact me by email to 47E(d)

Yours sincerely,

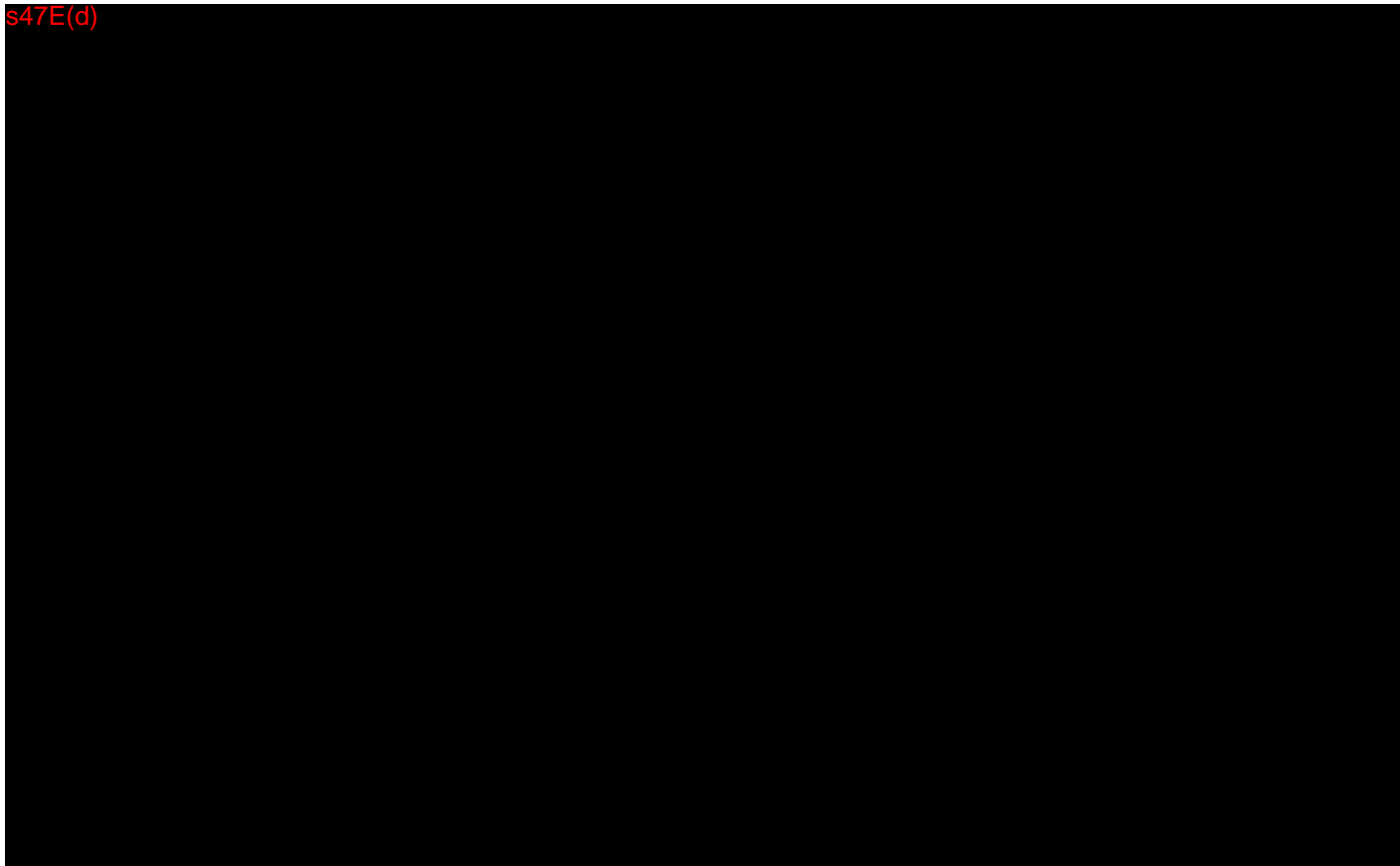
47E(d)

## Index of Annexures

s47E(d)



s47E(d)



**OAIC - FOI DR**

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**From:** 47E(d)  
**Sent:** Wednesday, 8 February 2023 3:59 PM  
**To:** OAIC - FOI DR  
**Subject:** s 47F, 47E(d) - Application to be declared a vexatious applicant [SEC=OFFICIAL:Sensitive]  
**Attachments:** Quick start guide - SecureDoc - Guests.pdf

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

**OFFICIAL: Sensitive**

Dear Information Commissioner

47E(d) would like to make an application to declare the following person to be a vexatious applicant under section 89K(1) of the *Freedom of Information Act 1982 (FOI Act)*:

<b>Applicant</b>	s 47F, 47E(d)
<b>Applicant's contact details</b>	s 22

We have uploaded our application and relevant documentation to SecureDoc, which can be accessed [here](#). To access the documents, you will be asked to set a password for your guest account. A *Quick start guide* has been attached with this email, which outlines the steps to set your password and sign in for the first time.

If you have any difficulties accessing the documents on SecureDoc, please let us know.

Kind regards

47E(d)

IMPORTANT NOTICE:

This e-mail is intended solely for the person or organisation to whom it is addressed, and may contain secret, confidential or legally privileged information.

If you have received this e-mail in error or are aware that you are not authorised to have it, you **MUST NOT** use or copy it, or disclose its contents to any person. If you do any of these things, you may be sued or prosecuted.

If you have received this e-mail in error, please contact the sender immediately.

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47E(d)

s47E(d)

7 October 2022

s47E(d)

**APPLICATION TO INFORMATION COMMISSIONER FOLLOWING YOUR FREEDOM OF INFORMATION REQUESTS TO** 47E(d)

Dear s 47F, 47E(d)

I refer to your recent requests to the 47E(d) for access to documents under the *Freedom of Information Act 1982* ('FOI Act').

As a result of the volume and nature of these requests, 47E(d) intends to make an application to the Information Commissioner (IC) to have you declared as vexatious applicant under section 89K(1) of the FOI Act.

The purpose of this letter is to outline 47E(d) intention to make this application, the circumstances which underpin 47E(d) initial view that it is appropriate to make this application and provide you with an opportunity to respond.

*Your access requests*

From 26 April 2022 until 12 August 2022, 47E(d) received 19 initial access requests and one internal review request from you. By comparison, 47E(d) received a total of 27 initial access requests for the same time period. Relevantly, your access requests:

- a. Are primarily for documents relating to one 47E(d) 47E(d)
- b. Total over 699 pages of correspondence to 47E(d) requesting access to documents pursuant to the FOI Act;
- c. Include a request seeking access to a 47E(d) 47E(d)
- d. Are often duplicative of earlier requests in that they seek access to the same documents which you have already requested from 47E(d) under the FOI Act. For example, you requested a copy of a trust deed which had already been disclosed to you by 47E(d) and which had also previously been disclosed to you by 47E(d) 47E(d)

47E(d)

For the 16 access requests that are in respect of 47E(d) [redacted] access was sought to copies of documents that would ordinarily be protected under 47E(d) [redacted] secrecy obligations 47E(d) [redacted] 47E(d) [redacted] 47E(d) [redacted] unless the entity consented to the information being disclosed or the documents were otherwise publicly available.

*Impact on 47E(d) operations*

47E(d) [redacted] has aimed to balance the rights of applicants to access documents held by 47E(d) [redacted] against its statutory purposes for which it was established. It is 47E(d) [redacted] initial view that your repeated access requests meet the abuse of process threshold under section 89K(1), as the access requests are unreasonably interfering with 47E(d) [redacted] operations.

47E(d) [redacted] operations are being substantially and unreasonably interfered with as a result of it having to respond to 19 initial access requests made directly to 47E(d) [redacted] 47E(d) [redacted]

In assessing whether the receipt of access requests generally would have an unreasonable interference on its operations, 47E(d) [redacted] bases the allocation of its limited resources for Freedom of Information (FOI) on its past number of access requests. Given the size of 47E(d) [redacted] and the extent of the resources available for it to deal with FOI, 47E(d) [redacted] allocation of resources to deal with FOI is more than reasonable in the circumstances.

In 47E(d) [redacted] view, the frequent and repeated access requests are an unreasonable interference with the 47E(d) [redacted]

These access requests are interfering with the critical role of 47E(d) [redacted]

*47E(d) intention to make an application to the IC*

For the reasons outlined in this letter, 47E(d) [redacted] has formed the preliminary view that is appropriate to seek a declaration from the IC that you are a vexatious applicant and that the declaration includes a condition that you may not make an access request or internal review application to 47E(d) [redacted] unless the IC has granted you permission to do so.

*Next steps*

Should you wish to provide a response to the matters outlined in this letter, you are required to do so by no later than **5pm (AEST) on Monday, 24 October 2022**. Please provide any response in writing via email to 47E(d) [redacted] or return mail to:

47E(d)



In the event that you do not respond by this time, 47E(d) may proceed to apply to the IC without further notice to you.

Yours sincerely,

FOI Officer

47E(d)

[Redacted signature line]

S 47F, 47E(d)



s 47F, 47E(d),

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