



Australian Government

Office of the Australian Information Commissioner

Our reference: MR22/01669

Agency reference: FOI-2022-10073

Polly **s47E(d)**

Director

Legal Team

Commonwealth Ombudsman

By email: Information.Access@ombudsman.gov.au

Notice of IC review and request for documents

Dear Ms **s47E(d)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a deemed access refusal decision made by the Commonwealth Ombudsman (the Ombudsman) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the Ombudsman has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**).

Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject

of IC review (OAIC reference MR22/01669) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Ombudsman during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the [Guidelines issued under s 93A of the FOI Act](#), which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- [Direction as to certain procedures to be followed in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely



Sandra Wavamunno

Director
Freedom of Information Regulatory Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

2 November 2022

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* *1982*

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR22/01669, I, Sandra Wavamunno, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Ombudsman) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Ombudsman wish to provide full access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **23 November 2022**.

Revised decision – partial access

2. Should the Ombudsman wish to provide partial access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **23 November 2022**.
3. Please also provide the following documents to the OAIC by **23 November 2022**:
 - a. The FOI request, and any correspondence that modifies its scope.

- b. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).
- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Ombudsman and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR22/01669) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the applicant and the OAIC the following by **23 November 2022**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Ombudsman claims are exempt and the particular provisions of the FOI Act the Ombudsman is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Ombudsman contends that the applicant should be refused access to the documents.
- 5. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the OAIC the following by **23 November 2022**:
 - a. Should the Ombudsman wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Ombudsman is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.

- i. The submissions could also refer to any other relevant information that the Ombudsman wishes to provide in support of its decision.
- b. The FOI request, and any correspondence that modifies its scope.
- c. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Ombudsman, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR22/01669) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Ombudsman provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Sandra Wavamunno, Director, Freedom of Information
Regulatory Branch

Signed:



Sandra Wavamunno
Director

2 November 2022

Attachment B



Notice to produce documents and give information

In relation to MR22/01669, under ss 55T of the FOI Act, I, Sandra Wavamunno, delegate of the Australian Information Commissioner, require you Polly **s47E(d)** Director, Legal Team, Commonwealth Ombudsman, to give me the following information by close of business **23 November 2022**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Sandra Wavamunno, Director, Freedom of Information Regulatory Branch

Signed:

A handwritten signature in blue ink, appearing to be 'S Wavamunno'.

Sandra Wavamunno
Director

2 November 2022



Our reference: MR23/00397
Agency reference: FOI-2023-10025

Mr David **s47E**
Legal Officer
Legal Team
Commonwealth Ombudsman

By email: Information.Access@ombudsman.gov.au

Notice of IC review and request for documents

Dear Mr **s47**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a deemed access refusal decision made by the Commonwealth Ombudsman (the Ombudsman) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject

of IC review (OAIC reference MR23/00397) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the [Guidelines issued under s 93A of the FOI Act](#), which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- [Direction as to certain procedures to be followed in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely



Tania Strathearn

Intake and Early Resolution Team
Freedom of Information Regulatory Branch

[Enclosed: IC review application].

26 May 2023

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* 1982

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/00397, I, Tania Strathearn, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Ombudsman) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Ombudsman wish to provide full access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Friday, 16 June 2023**.

Revised decision – partial access

2. Should the Ombudsman wish to provide partial access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Friday, 16 June 2023**.
3. Please also provide the following documents to the OAIC by **Friday, 16 June 2023**:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Ombudsman and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00397) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the applicant and the OAIC the following by **Friday, 16 June 2023**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Ombudsman claims are exempt and the particular provisions of the FOI Act the Ombudsman is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Ombudsman contends that the applicant should be refused access to the documents.
- 5. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the OAIC the following by **Friday, 16 June 2023**:
 - a. Should the Ombudsman wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Ombudsman is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Ombudsman wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.

- c. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Ombudsman, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00397) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Ombudsman provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Tania Strathearn, Acting Director, Freedom of Information Branch

Signed:



Tania Strathearn

26 May 2023

Attachment B



Notice to produce documents and give information

In relation to MR23/00397, under s 55T of the FOI Act, I, Tania Strathearn, delegate of the Australian Information Commissioner, require you, David s47E Legal Officer of the Legal Team of the Commonwealth Ombudsman, to give me the following information by close of business **Friday, 16 June 2023**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Tania Strathearn, Acting Director, Freedom of Information Branch

Signed:

A handwritten signature in cursive script that reads "Tania Strathearn".

Tania Strathearn

26 May 2023



Australian Government

Office of the Australian Information Commissioner

Our reference: MR23/00073

Agency reference: FOI-2022-10143

Sallie **s47E(d)**

Acting Director

Legal Team

Commonwealth Ombudsman

By email: Information.Access@ombudsman.gov.au

Notice of IC review and request for documents

Dear Sallie **s47E(d)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a deemed access refusal decision made by the Commonwealth Ombudsman (the Ombudsman) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject

of IC review (OAIC reference MR23/00073) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the [Guidelines issued under s 93A of the FOI Act](#), which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- [Direction as to certain procedures to be followed in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. English', is positioned above the typed name.

Carl English

Acting Director
Freedom of Information Regulatory Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

13 July 2023

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* *1982*

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/00073, I, Carl English, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Ombudsman) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Ombudsman wish to provide full access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **3 August 2023**.

Revised decision – partial access

2. Should the Ombudsman wish to provide partial access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **3 August 2023**.
3. Please also provide the following documents to the OAIC by **3 August 2023**:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Ombudsman and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00073) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the applicant and the OAIC the following by **3 August 2023**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Ombudsman claims are exempt and the particular provisions of the FOI Act the Ombudsman is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Ombudsman contends that the applicant should be refused access to the documents.
- 5. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the OAIC the following by **3 August 2023**:
 - a. Should the Ombudsman wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Ombudsman is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Ombudsman wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.

- c. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Ombudsman, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00073) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Ombudsman provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Carl English, Acting Director, Freedom of Information Branch

Signed:

A handwritten signature in blue ink, appearing to read 'C. English', is positioned above the typed name.

Carl English
Acting Director

13 July 2023

Attachment B



Notice to produce documents and give information

In relation to MR23/00073, under ss 55T of the FOI Act, I, Carl English, delegate of the Australian Information Commissioner, require you, s47E(d), Acting Director, Legal Team, Commonwealth Ombudsman, to give me the following information by close of business **3 August 2023**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Carl English, Acting Director, Freedom of Information Regulatory Branch

Signed:

A handwritten signature in blue ink, appearing to be 'C. English'.

Carl English
Acting Director

13 July 2023



Australian Government

Office of the Australian Information Commissioner

Our reference: MR23/00790

Agency reference: FOI-2023-10058

Jodie s47E(d)

Director

Defence, Investigations, ACT & Legal Branch

Commonwealth Ombudsman

By email: Information.Access@ombudsman.gov.au

Notice of IC review and request for documents

Dear Jodie **s47E(d)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a deemed access refusal decision made by the Commonwealth Ombudsman (the Ombudsman) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the Ombudsman has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**).

Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject

of IC review (OAIC reference MR23/00790) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Ombudsman during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the [Guidelines issued under s 93A of the FOI Act](#), which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- [Direction as to certain procedures to be followed in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. English', is positioned above the typed name.

Carl English

Acting Director
Freedom of Information Regulatory Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

14 July 2023

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* *1982*

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/00790, I, Carl English, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Ombudsman) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Ombudsman wish to provide full access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **4 August 2023**.

Revised decision – partial access

2. Should the Ombudsman wish to provide partial access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **4 August 2023**.
3. Please also provide the following documents to the OAIC by **4 August 2023**:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Ombudsman and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00790) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the applicant and the OAIC the following by **4 August 2023**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Ombudsman claims are exempt and the particular provisions of the FOI Act the Ombudsman is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Ombudsman contends that the applicant should be refused access to the documents.
- 5. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the OAIC the following by **4 August 2023**:
 - a. Should the Ombudsman wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Ombudsman is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Ombudsman wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.

- c. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Ombudsman, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00790) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Ombudsman provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Carl English, Acting Director, Freedom of Information Regulatory Branch

Signed:

A handwritten signature in blue ink, appearing to read 'C. English', is placed over a rectangular stamp area.

Carl English

Acting Director

14 July 2023

Attachment B



Notice to produce documents and give information

In relation to MR23/00790, under ss 55T of the FOI Act, I, Carl English, delegate of the Australian Information Commissioner, require you, Jodie **s47E(d)** Director, Defence, Investigations, ACT & Legal Branch, Commonwealth Ombudsman, to give me the following information by close of business **4 August 2023**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Carl English, Acting Director, Freedom of Information Regulatory Branch

Signed:

A handwritten signature in blue ink, appearing to read "C. English".

Carl English

Acting Director

14 July 2023



Our reference: MR23/00477
Agency reference: FOI-2023-10039

Ms Jodie **s47E(d)**
Director
Defence, Investigations, ACT & Legal Branch
Commonwealth Ombudsman

By email: Information.Access@ombudsman.gov.au

Notice of IC review and request for documents

Dear Ms **s47E(d)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a deemed access refusal decision made by the Commonwealth Ombudsman (the Ombudsman) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

On 11 July 2023, the Ombudsman confirmed to the OAIC that the applicant's request was deemed to have been refused on 19 April 2023.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00477) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely



Tania Strathearn

Intake and Early Resolution Team
Freedom of Information Branch

[Enclosed: IC review application].

17 August 2023

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* 1982

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/00477, I, Tania Strathearn, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Ombudsman) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Ombudsman wish to provide full access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Thursday, 7 September 2023**.

Revised decision – partial access

2. Should the Ombudsman wish to provide partial access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Thursday, 7 September 2023**.
3. Please also provide the following documents to the OAIC by **Thursday, 7 September 2023**:
 - a. The FOI request, and any correspondence that modifies its scope.

- b. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).
- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Ombudsman and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00477) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the applicant and the OAIC the following by **Thursday, 7 September 2023**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Ombudsman claims are exempt and the particular provisions of the FOI Act the Ombudsman is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Ombudsman contends that the applicant should be refused access to the documents.
- 5. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the OAIC the following by **Thursday, 7 September 2023**:
 - a. Should the Ombudsman wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Ombudsman is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.

- i. The submissions could also refer to any other relevant information that the Ombudsman wishes to provide in support of its decision.
- b. The FOI request, and any correspondence that modifies its scope.
- c. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Ombudsman, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/00477) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Ombudsman provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Tania Strathearn, Acting Director, Freedom of Information Branch

Signed:



Tania Strathearn

17 August 2023

Attachment B



Notice to produce documents and give information

In relation to MR23/00477, under s 55T of the FOI Act, I, Tania Strathearn, delegate of the Australian Information Commissioner, require you, Ms Jodie §47E(d) Director, Defence, Investigations, ACT & Legal Branch, Commonwealth Ombudsman, to give me the following information by close of business **Thursday, 7 September 2023**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Tania Strathearn, Acting Director, Freedom of Information Regulatory Branch

Signed:

A handwritten signature in cursive script that reads 'Tania Strathearn'.

Tania Strathearn

17 August 2023



Australian Government

Office of the Australian Information Commissioner

Our reference: MR23/01385

Agency reference: FOI-2023-10090

Jodie **s47E(d)**

Director

Defence, Investigations, ACT & Legal Branch

Commonwealth Ombudsman

By email: Information.Access@ombudsman.gov.au

Notice of IC review and request for documents

Dear Ms **s47E(d)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a deemed access refusal decision made by the Commonwealth Ombudsman (the Ombudsman) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject

of IC review (OAIC reference MR23/01385) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the [Guidelines issued under s 93A of the FOI Act](#), which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- [Direction as to certain procedures to be followed in IC reviews](#) issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

11 December 2023

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* *1982*

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/01385, I, Hannah Holswilder, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Ombudsman) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Ombudsman wish to provide full access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **15 January 2024**.

Revised decision – partial access

2. Should the Ombudsman wish to provide partial access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **15 January 2024**.
3. Please also provide the following documents to the OAIC by **15 January 2024**:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Ombudsman and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01385) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the applicant and the OAIC the following by **15 January 2024**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Ombudsman claims are exempt and the particular provisions of the FOI Act the Ombudsman is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Ombudsman contends that the applicant should be refused access to the documents.
- 5. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the OAIC the following by **15 January 2024**:
 - a. Should the Ombudsman wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Ombudsman is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Ombudsman wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.

- c. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Ombudsman, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01385) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Ombudsman provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Hannah Holswilder, Freedom of Information Branch

Signed:



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

11 December 2023

Attachment B



Notice to produce documents and give information

In relation to MR23/01385, under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require you Ms Jodie **s47E(d)** Director, the Commonwealth Ombudsman, to give me the following information by close of business **15 January 2024**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Hannah Holswilder, Freedom of Information Branch

Signed:

A handwritten signature in black ink, appearing to read "Hannah Holswilder".

Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

11 December 2023



Our reference: MR23/01277
Agency reference: FOI-2023-10080

Jodie s47E(d)
Director
Defence, Investigations, ACT & Legal Branch
Commonwealth Ombudsman

By email: Information.Access@ombudsman.gov.au

Notice of IC review and request for documents

Dear Ms s47E(d)

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a deemed access refusal decision made by the Commonwealth Ombudsman (the Ombudsman) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act. A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the respondent has not provided a decision within the processing timeframe as set out in the FOI Act.

I note that the Ombudsman has advised the applicant agreed to an extension of the processing period under s 15AA of the FOI Act. We have been unable to locate notification of this agreement to the OAIC as required under s 15AA(b), and as such we consider the extension agreement is invalid and as such the applicant's FOI request was deemed to be refused on 15 September 2023.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**). Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01277) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely,



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

21 December 2023

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* 1982

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/01277, I, Hannah Holswilder, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Ombudsman) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Ombudsman wish to provide full access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **23 January 2024**.

Revised decision – partial access

2. Should the Ombudsman wish to provide partial access to the documents within the scope of the request, I request that Ombudsman make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **23 January 2024**.
3. Please also provide the following documents to the OAIC by **23 January 2024**:
 - a. The FOI request, and any correspondence that modifies its scope.
 - b. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).

- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Ombudsman and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01277) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

- 4. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the applicant and the OAIC the following by **23 January 2024**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Ombudsman claims are exempt and the particular provisions of the FOI Act the Ombudsman is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Ombudsman contends that the applicant should be refused access to the documents.
- 5. Should the Ombudsman wish to refuse access, I request that the Ombudsman provide the OAIC the following by **23 January 2024**:
 - a. Should the Ombudsman wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Ombudsman is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.
 - i. The submissions could also refer to any other relevant information that the Ombudsman wishes to provide in support of its decision.
 - b. The FOI request, and any correspondence that modifies its scope.

- c. The names and contact details of anyone who was consulted by the Ombudsman formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Ombudsman, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01277) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Ombudsman provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Hannah Holswilder, Freedom of Information Branch

Signed:

Yours sincerely,



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

21 December 2023

Attachment B



Notice to produce documents and give information

In relation to MR23/01277, under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require you the Commonwealth Ombudsman, Director, Jodie s47E(d) to give me the following information by close of business **23 January 2024**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Hannah Holswilder, Freedom of Information Branch

Signed:

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Hannah Holswilder', written in a cursive style.

Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

21 December 2023



Our reference: MR23/01226
Agency reference: FOI 2021-102996

Jodie **s47E(d)**
Director
Defence, Investigations, ACT & Legal Branch
Commonwealth Ombudsman Director

By email: Information.Access@ombudsman.gov.au

Notice of Information Commissioner review and request for documents

Dear Ms **s47E(d)**

The Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review (IC review) of a deemed access refusal decision made by the Commonwealth Ombudsman (the Agency) under the *Freedom of Information Act 1982* (the FOI Act). The Information Commissioner will commence review of the deemed access refusal decision and provides this notice under s 54Z of the FOI Act.

A copy of the IC review application is attached.

Scope of IC review

The IC review applicant contests that the Agency has not provided a decision within the processing timeframe as set out in the FOI Act.

Direction pursuant to s 55(2)(e)(ii) of the FOI Act

The Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review (s 55(2)(e)(ii)).

In order to assist the Information Commissioner in progressing this IC review, I am issuing the attached written direction under s 55(2)(e)(ii) of the FOI Act (see **Attachment A**).

Information as to method and timeframe of compliance are contained in the direction.

Notice to produce documents and give information

The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced (s 55T of the FOI Act).

Should the scope of the IC review involve exempt material, please provide a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01226) in an electronic format under s 55T of the FOI Act. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Obligations during the IC review process

The obligations of the Respondent during the IC review process are set out under:

- ss 55D, 55DA and 55Z of the FOI Act
- Part 10 the Guidelines issued under s 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act
- Direction as to certain procedures to be followed in IC reviews issued under s 55(2)(e)(i) of the FOI Act.

Yours sincerely,



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

[Enclosed: IC review application].

18 January 2024

Attachment A



Direction to the Commonwealth Ombudsman under s 55(2)(e)(ii) of the *Freedom of Information Act* 1982

Section 55(2)(e)(ii) of the *Freedom of Information Act 1982* (FOI Act) provides that the Information Commissioner may give written directions as to the procedure to be followed in relation to a particular IC review.

In relation to MR23/01226, I, Hannah Holswilder, delegate of the Australian Information Commissioner, issue the following direction to the Commonwealth Ombudsman (the Agency) under s 55(2)(e)(ii) of the FOI Act:

Revised decision – full access

1. Should the Agency wish to provide full access to the documents within the scope of the request, I request that Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Thursday, 8 February 2024**.

Revised decision – partial access

2. Should the Agency wish to provide partial access to the documents within the scope of the request, I request that Agency make a revised decision under s 55G of the FOI Act and provide the revised decision to the applicant and the OAIC by **Thursday, 8 February 2024**.
3. Please also provide the following documents to the OAIC by **Thursday, 8 February 2024**:
 - a. The FOI request, and any correspondence that modifies its scope.

- b. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A, 27A, or informally (including consultations with other government agencies).
- c. If any third parties have been notified of this IC review a copy of the written notifications.
- d. Copies of any correspondence between the Agency and anyone who was consulted, including file notes of any relevant telephone conversations.
- e. A marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01226) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

Submissions – access refusal

4. Should the Agency wish to refuse access, I request that the Agency provide the applicant and the OAIC the following by **Thursday, 8 February 2024**:
 - a. Submissions explaining the access refusal decision. The submissions should be provided by an officer who is appropriately qualified to provide evidence about the material.
 - i. The submissions should:
 - identify where appropriate, the total number of documents.
 - identify the documents the Agency claims are exempt and the particular provisions of the FOI Act the Agency is relying on (noting the relevant document and page numbers).
 - include clear particulars about why the Agency contends that the applicant should be refused access to the documents.
5. Should the Agency wish to refuse access, I request that the Agency provide the OAIC the following by **Thursday, 8 February 2024**:
 - a. Should the Agency wish to claim that the documents at issue are exempt under ss 33, 34 and/or 45A then the Agency is requested to provide evidence on affidavit or otherwise including by way of submissions, that the documents are exempt under ss 33, 34 or 45A. If the Information Commissioner is not satisfied on the basis of the submissions, the OAIC may require the documents to be produced for inspection in accordance with s 55U.

- i. The submissions could also refer to any other relevant information that the Agency wishes to provide in support of its decision.
- b. The FOI request, and any correspondence that modifies its scope.
- c. The names and contact details of anyone who was consulted by the Agency formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).
- d. If any third parties have been notified of this IC review a copy of the written notifications.
- e. Copies of any correspondence between the Agency, and anyone who was consulted, including file notes of any relevant telephone conversations.
- f. Should the scope of the IC review involve exempt material, a marked up and un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review (OAIC reference MR23/01226) in an electronic format. A notice to produce under s 55T of the FOI Act is set out at **Attachment B**.

If alternative arrangements are required, please contact the OAIC at foidr@oaic.gov.au.

The Information Commissioner will share the submissions the Agency provides during the IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the document/s at issue.

Direction issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Yours sincerely,



Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

18 January 2024

Attachment B



Notice to produce documents and give information

In relation to MR23/01226, under ss 55T of the FOI Act, I, Hannah Holswilder, delegate of the Australian Information Commissioner, require the Commonwealth Ombudsman to give me the following information by close of business **Thursday, 8 February 2024**:

- a marked up and un-redacted copy of all documents identified within scope of the FOI request in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemption/s applied.

Compliance with this notice can be met by delivering the responses to the above notices electronically to foidr@oaic.gov.au.

Notice issued by Hannah Holswilder, Director, Freedom of Information Branch

Signed:

Yours sincerely,

A handwritten signature in black ink, appearing to read "Hannah Holswilder".

Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

18 January 2024