

ATTACHMENT A

OFFICE OF THE AUSTRALIAN
INFORMATION COMMISSIONER

Application for a vexatious applicant declaration

s 22

Applicant

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL
RESEARCH ORGANISATION (CSIRO)
Agency

1. Commonwealth Scientific and Industrial Research Organisation (CSIRO) is seeking a vexatious applicant declaration from the Information Commissioner under s 89K of the *Freedom of Information Act 1982* (Cth) ('FOI Act').
2. **Grounds for declaration:**
3. CSIRO submits that the applicant, s 22 has repeatedly engaged in access actions that involve an abuse of process and should be declared a vexatious applicant by the Information Commissioner.
4. **The relevant law:**
5. Section 89L(1) of the FOI Act provides:

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;
 - (ii) the repeated engagement involves an abuse of the process for that access action;
 - (b) a particular access action in which the person engages involves, or would involve, an abuse of process for that access action;
 - (c) a particular access action in which the person engages would be manifestly unreasonable.
6. Abuse of process in this context 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 the agency;
 - (c) seeking to use the Act for the purposes of circumventing restriction on access to a document (or documents) imposed by a court (s 89L(4) of the FOI Act).
7. Part 12 of the Guidelines issued by the Australian Information Commissioner under 93A of the FOI Act ('Guidelines') relate to vexatious applicant declarations.

Evidence

8. CSIRO submits the following evidence supports a finding that the criteria in s 89L(1) are established and a declaration under s 89K should be made.

Repeated engagements in access actions

9. **s 22** has made 33 access actions to CSIRO in the period from January 2010 to date. A summary of these access actions are at Attachment B to this application.

Engaging in repeated access actions is an abuse of process:

10. CSIRO submits that the repeated access actions is an abuse of process for that access action in that it unreasonably interferes with the operations of CSIRO.
11. The Guidelines at 12.4 provide guidance as to what constitutes an abuse of process:

'Abuse of process' includes harassing or intimidating an individual or agency employee; unreasonably interfering with an agency's operations...In a similar context the Federal Court of Australia in *Ford v Child Support Register* noted that a series of FOI applications of a repetitive nature and apparently made with intention or annoying or harassing agency staff could be classified as vexatious. Also relevant in considering ***an abuse of process is whether an applicant has made repeated requests for documents which have been provided earlier or to which access has been refused*** [our emphasis].

12. *Ford v Child Support Register* [2009] FCA 328 Ryan J held that 'the frequency of the applicant's FOI request and applications for review of decisions on those applications, when seen in the context of their repetitive nature and their occasional withdrawal, leaves open the inference that the requests and applications were made for purposes other than a genuine concern to have access to the contents of the subject documents'.

Unreasonable Interference

Interference

13. The 33 access requests made by **s 22** have interfered with the normal operations of CSIRO. Not only have these requests significantly diverted resources of the FOI line area, but have required specific employees to undertake many extensive searches (see paragraph 17 below).
14. The FOI line area has received **54** FOI requests since 10 January 2010. **33** of those requests have been made by **s 22**. His requests account for 60% of CSIRO's FOI line area workload.
15. Most of **s 22** requests have been directed to specific employees. Of the 33 requests:
- a. 18 requests specifically mention **s 22** and required him to conduct extensive searches
 - b. 12 requests specifically mention **s 22** of and required him to conduct extensive searches
 - c. 9 requests specifically mention **s 22** and required her to conduct extensive searches
16. The time spent by these employees on searching for relevant documents has significantly impacted on their workload. They have been required to search their emails, electronic records and paper files in response to each request. For example,

in relation to FOI request dated 4 March 2010 – s 22 a total of 10 hours and 40 minutes of search time was conducted. Please refer to **Attachment C** for a copy of search and time control sheet undertaken. CSIRO can supply the time control sheets for each access request by each of those employees if it would be of assistance to the Information Commissioner.

Unreasonable

17. The interference has been unreasonable on the basis of:
- The sheer volume of the access requests
 - The repetitious nature of the access requests
 - Directing requests to CSIRO employees other than CSIRO's FOI Officer when he has been requested to send them to the FOI Officer.

The sheer volume of the access requests

18. s 22 has persistently made access requests since January 2010 as set out in paragraph 16 above and at Attachment A. The sheer volume of these requests and their processing has had a significant impact on CSIRO's operations. It has diverted relevant officers from their usual duties to a large extent and has affected the handling by the FOI line area of other non-repetitive FOI requests.

Repetitious nature of access requests:

19. On 1 July 2011 s 22 made a FOI request s 22 for:

s 22

20. This requests substantially the same documents as previous FOI requests including:

- a. The FOI request dated 10 February 2011 - s 22 for:

s 22

- b. The FOI request dated 7 April 2011 - s 22 containing s 22:

s 22

- s 22
21. On 19 April 2011 s 22 stated that, 'I have recently received from you folios corresponding to 2, 3, and 4 we may deleted this from the list'. However, on 1 July 2011, s 22 made requested the same material for a third time.
22. On 7 April 2011 s 22 made a FOI request s 22 for documents including:
s 22
- This was similar to the FOI request on 12 February 2010 s 22 s 22 for:
s 22
23. Although the new request requested an extended date range (February - June 2010), it is of a substantially similar nature and captured many of the same documents.
24. On 7 April 2011 s 22 made a FOI request s 22 for documents including:
s 22
25. This was similar to the FOI request made on 4 August 2010 s 22 for:
s 22
26. And the subsequent FOI request of 17 August 2010 s 22 s 22 for:
s 22
27. Relevant documents in response to the first request s 22 were provided to the s 22 on 24 August 2010.
28. s 22 has engaged in email correspondence and phone calls to s 22, General Counsel CSIRO. He has consistently disputed CSIRO's internal review decisions and ignored advice on the avenues of appeal open to him.

Other information

29. On 2 and 5 October 2010 the applicant wrote to CSIRO stating that he had 7 outstanding, unacknowledged FOI requests.
30. On 14 November 2010 the applicant was advised that CSIRO had not received one of these requests and that the other 6 had been acknowledged and were either being processed or a decision had been made.
31. On 7 April 2011 s 22 made an FOI request s 22 for the same material that he had been advised were processed (or processing). This is another example of the unreasonableness of s 22 access actions.

Declaration sought

32. That s 22 be declared a vexatious applicant and be prohibited from making any request under the FOI Act to CSIRO.

33. In the first alternative, CSIRO seeks under s 89M(2)(a) a declaration that CSIRO may refuse to process any access request or an application for internal review by s 22 unless the request has been approved by the Information Commissioner.
34. In the second alternative, CSIRO seeks a vexatious applicant declaration under s 89M subject to terms and conditions that CSIRO can refuse to process any access request or internal review requests made by s 22 :
 - a. that substantially replicates, or is similar in its terms to any of the 33 previous access requests made
 - b. that are not directed to the CSIRO FOI Officer s 22 .