



Australian Government
Department of Health
Therapeutic Goods Administration

TRIM Ref: R16/704855

Mr Stuart McCarthy

Email: foi+request-1916-8e6fd6d6@righttoknow.org.au

Dear Mr McCarthy

FREEDOM OF INFORMATION REQUEST FOI 222-1516
Notice of Decision

I refer to your request dated 4 May 2016 under the *Freedom of Information Act 1982* (the FOI Act) and subsequent correspondence between you and the TGA in which the scope of your request was clarified as being for access to the following documents:

"I hereby request the TGA to provide documents relating to any approvals/notifications for the ADF or Department of Defence to administer tafenoquine to Australian personnel in Bougainville and Timor during that period, for any purpose during 1999-2001, specifically:

- a. Requests/notifications from ADF for Defence officials for TGA approval to use tafenoquine*
- b. Minutes of meetings, records of conversations, or other correspondence between the TGA and Defence officials, relating to such requests.*
- c. Internal TGA correspondence relating to proposed Defence use of tafenoquine, including minutes of meetings, records of conversation or emails.*
- d. Correspondence between TGA officials and GlaxoSmithKline relating to the proposed use of tafenoquine.*
- e. Written approvals by the TGA for Defence use of tafenoquine.*
- f. Reports from Defence officials to the TGA relating to adverse events experienced by ADF personnel administered tafenoquine during this period.*

Another smaller tafenoquine study was conducted by the ADF during this period. That study was for tafenoquine in the treatment of recurrent vivax malaria. Given that TGA documents relating to that study have recently been made public via the media, I do not need access to those documents via this FOI request."

Decision Maker

I am the Therapeutic Goods Administration (TGA) officer authorised to make this decision under section 23 of the FOI Act. What follows is my decision under the FOI Act.

Scope of the FOI request

The TGA has identified ninety-seven (97) documents falling within the scope of your request.

Background

On 4 May 2016 the TGA received a request from you under the FOI Act.

In correspondence between you and the TGA dated 9, 13, 24 and 25 May 2016, the scope of your request was clarified and confirmed.

On 3 June 2016, under section 15AB of the FOI Act, an extension of thirty (30) days was granted by the Office of the Australian Information Commissioner (OAIC).

On 4 July 2016, under section 15AB of the FOI Act, a further extension of twenty-five (25) days was granted by the OAIC in which to process your request.

On 29 July 2016 you were advised that the cost of processing your request amounted to \$850.28 and you were asked to pay a deposit of \$212.57. You were also advised at this time of the need to conduct a third party consultation in relation to your request. Accordingly, the timeframe for processing your request was extended by 30 days pursuant to subsection 15(6) of the FOI Act.

On 1 August 2016 the TGA received a deposit in the amount of \$212.57 for the processing of your request. On 1 August 2016, you also confirmed that, apart from the names of Commonwealth officials, you were not seeking personal information of any other individuals. The third party consultation was subsequently initiated on 8 August 2016.

On 12 September 2016, you emailed the TGA indicating that the timeframe for processing the request had expired.

On 15 September 2016, the TGA confirmed that the timeframe for processing the request had elapsed and apologised for the oversight.

Under section 15AC of the FOI Act, where a decision is not made within the statutory timeframe, it is considered a deemed refusal. However, even in the case of a deemed refusal, it is possible to apply for an extension to finish the processing of the request and, if allowed, the deemed refusal does not apply and is taken never to have applied.

As set out in the TGA's email dated 15 September 2016, the TGA applied for a further extension under section 15AC of the FOI Act to continue processing the request.

On the same date, the OAIC granted the TGA a further extension until 21 September 2016 to process your FOI request.

Under regulation 5 of the *Freedom of Information (Charges) Regulations 1982*, where a request is not processed within the required statutory timeframe including as extended under section 15AB, the FOI applicant is not liable to pay any charge. Therefore, the deposit you have paid towards the processing of this request will be refunded to you. Please refer to the information below on information required from you in order for TGA to refund your deposit.

Material Considered in Decision-Making

In coming to my decision I had regard to the following:

- the correspondence from you of 4, 13 and 25 May 2016 including the terms of your FOI request;
- the documents falling within the scope of the FOI request;
- all relevant papers in the TGA FOI processing file;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*;
- correspondence and telephone discussions between you and the TGA; and

- consultations with relevant third parties.

Decision

My decision in relation to the documents falling within the scope of the FOI request is to release 97 documents in full.

A schedule listing the documents along with the documents themselves are at **Attachment A**.

Information irrelevant to the scope of the request, i.e., personal information relating to individuals who are not Commonwealth officials, has been redacted under subsection 22(1) of the FOI Act.

Release of Documents

The preliminary estimate of charges associated with processing this FOI request was \$850.28. This amount included the first five hours of decision making at no cost. However, and as set out above, as the decision was not made within the statutory timeframe, charges cannot be imposed for providing access. As you have already paid the deposit of \$212.57, this amount will be refunded to you in accordance with Regulation 14 of the *Freedom of Information (Charges) Regulations 1982*.

The TGA will refund the deposit amount of \$212.57 via Electronic Funds Transfer (EFT) and the documents are being released to you now.

In order to arrange an EFT refund, please send the following details to TGA.FOI@tga.gov.au:

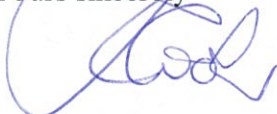
- BSB;
- account number; and
- account name.

Review and Complaint Rights

If you are not satisfied with this decision, you can either seek internal review or apply to the Office of the Australian Information Commissioner for review of the decision. A statement of review rights is at **Attachment B** to this letter.

If you have any queries regarding this matter, please contact Elizabeth Santolin on (02) 6232 8664.

Yours sincerely



Dr Jane Cook

Head

Pharmacovigilance & Special Access Branch

Therapeutic Goods Administration

19 September 2016

FOI Request FOI 222-1516 in relation to Tafenoquine.

The request is for the following:

"I hereby request the TGA to provide documents relating to any approvals for the ADF or Department of Defence to administer tafenoquine to Australian personnel during 1999-2001, specifically:

- Requests from ADF or Defence officials for TGA approval to use tafenoquine.*
 - Minutes of meetings, records of conversations, or other correspondence between TGA and Defence officials, relating to such requests.*
 - Internal TGA correspondence relating to proposed Defence use of tafenoquine, including minutes of meetings, records of conversation or emails.*
 - Correspondence between TGA officials and GlaxoSmithKline relating to the proposed use of tafenoquine.*
 - Written approvals by the TGA for Defence use of tafenoquine.*
 - Reports from Defence officials to the TGA relating to adverse events experienced by ADF personnel administered tafenoquine during this period.*
- Another smaller tafenoquine study was conducted by the ADF during this period. That study was for tafenoquine in the treatment of recurrent vivax malaria. Given that TGA documents relating to that study have recently been made public via the media I do not need access to those documents via this FOI request."*

Schedule of Relevant Documents

Doc. No.	File No.	Folio No.	Author	Addressee	Date	Description	Pages	Decision	Relevant sections
1	2000/023677	25-27	TGA	Defence	19/7 /1999	Cover sheet and section 19(1)(b) approval	3	Release in full	
2	2000/023677	28	Australian Army Malaria Institute	TGA	11/11/1999	Import request for export	1	Release in full	
3	2000/023677	29	TGA	TGA	11/11/99	Request for consideration	1	Release in full	
4	2000/023677	30-31	TGA	Defence	17/11/99	Section 19(1)(b) approval	2	Release in full	
5	2000/023677	32	Defence	TGA	14/04/2000	Fax cover letter to the TGA with endorsement for Dr George Blackwood	1	Release in full	
6	2000/023677	33	Balmoral Naval Hospital	TGA	14/04/2000	Agreement to Treatment direction	1	Release in full	

7	2000/023677	34-35	Australian Army Malaria Institute	TGA	14/04/2000	AMI endorsement of Dr G Blackwood	2	Release in full	
8	2000/023677	36	TGA			Literature article	1	Release in full	
9	2000/023677	37	TGA	Defence	04/05/2000	Request for further information	1	Release in full	
10	2000/023677	38-40	TGA	Defence	22/05/2000	Authorised Prescriber letter	3	Release in full	
11	2000/023677	41	TGA	Defence	19/05/2000	Instrument of Authorisation	1	Release in full	
12	2000/023670	2	TGA	Australian Army Malaria Institute	10/5/2000	Fax transmission report (ok)	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
13	2000/023670	3	TGA	Australian Army Malaria Institute	10/5/2000	Fax transmission report (ok)	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
14	2000/023670	4	TGA		10/5/2000	File note	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
15	2000/023670	5-6	TGA	Australian Army Malaria Institute	10/5/2000	Section 19(1)(a) approval	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act

16	2000/023670	7-14	Defence	TGA	20/7/2000	Fax – cover sheet & 7 SAS B & C forms	8	Release in full	Irrelevant information redacted under section 22 of the FOI Act
17	2000/023670	15-16	TGA		21/7/2000	Email re SAS applications	2	Release in full	
18	2000/023670	17	TGA	Defence	21/7/2000	Request & SAS approval for 7 patients	1	Release in full	
19	2000/023670	18-19	Defence	TGA	21/7/2000	Fax – SASB form	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
20	2000/023670	20	TGA	Defence	21/7/2000	Request & SAS approval for 1 patient	1	Release in full	
21	2000/023670	21	TGA	Defence	28/7/2000	Fax cover note	1	Release in full	
22	2000/023670	22-24	TGA	Defence	26/7/2000	Section 19(a)(a) approval letter	3	Release in full	Irrelevant information redacted under section 22 of the FOI Act
23	2000/023670	25	Defence	TGA	9/8/2000	SAS application	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
24	2000/023670	26	TGA		10/8/2000	Request & SAS approval for 1 patient	2	Release in full	

25	2000/023670	27-28	TGA	Defence	15/8/2000	Section 19(a)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
26	2000/023670	29-31	Defence	TGA	11/8/2000	Fax – SAS B & C form	3	Release in full	Irrelevant information redacted under section 22 of the FOI Act
27	2000/023670	32	TGA		11/8/2000	Request & SAS approval for 1 patient	1	Release in full	
28	2000/023670	33-34	TGA	Defence	16/8/2000	Section 19(1)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
29	2000/023670	35	Defence	TGA	18/8/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
30	2000/023670	36	TGA		18/8/2000	Request & SAS approval for 1 patient	1	Release in full	
31	2000/023670	37-38	TGA	Defence	23/8/2000	Section 19(1)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
32	2000/023670	39	Defence	TGA	21/8/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act

33	2000/023670	40	TGA		21/8/2000	Request & SAS approval for 1 patient	1	Release in full	
34	2000/023670	41-42	TGA	Defence	25/8/2000	Section 19(1)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
35	2000/023670	43	TGA		12/9/2000	Request & SAS approval for 1 patient	1	Release in full	
36	2000/023670	44	Defence	TGA	11/9/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
37	2000/023670	45-46	TGA	Defence	18/9/2000	Section 19(1)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
38	2000/023670	47	Defence	TGA	8/9/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
39	2000/023670	48	TGA		11/9/2000	Request & SAS approval for 1 patient	1	Release in full	
40	2000/023670	49-50	TGA	Defence	18/9/2000	Section 19(1)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act

41	2000/023670	51	Defence	TGA	15/9/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
42	2000/023670	52	TGA		15/9/2000	Request & SAS approval for 1 patient	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
43	2000/023670	53-54	TGA	Defence	20/9/2000	Section 19(1)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
44	2000/023670	55	TGA		18/9/2000	Request & SAS approval for 1 patient	1	Release in full	
45	2000/023670	56	Defence	TGA	16/9/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
46	2000/023670	57-58	TGA	Defence	21/9/2000	Section 19(1)(a) approval letter	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
47	2000/023670	59-62	TGA		14/9/2000	Fax 4 SAS B & C forms	5	Release in full	Irrelevant information redacted under section 22 of the FOI Act

48	2000/023670	63	TGA		26/9/2000	Request & SAS approval for 5 patients	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
49	2000/023670	64	Defence	TGA	14/9/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
50	2000/023670	65-67	TGA	Defence	29/9/2000	Section 19(1)(a) approval letter	3	Release in full	Irrelevant information redacted under section 22 of the FOI Act
51	2000/023670	68-70	Defence	TGA	29/9/2000	Fax 2 SAS B & C forms	3	Release in full	Irrelevant information redacted under section 22 of the FOI Act
52	2000/023670	71	TGA		3/10/2000	Request & SAS approval for 2 patients	1	Release in full	
53	2000/023670	72-74	TGA	Defence	6/10/2000	Section 19(1)(a) approval letter	3	Release in full	Irrelevant information redacted under section 22 of the FOI Act
54	2000/023670	75	Defence	TGA	3/11/2000	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act

55	2000/023670	76	Defence	TGA	18/1/2001	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
56	2000/023670	77	Defence	TGA	6/2/2001	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
57	2000/023670	78	TGA	Defence	8/2/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
58	2000/023670	79	Defence	TGA	9/2/2001	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
59	2000/023670	80	TGA	Defence	13/2/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
60	2000/023670	81	Defence	TGA	19/2/2001	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
61	2000/023670	82	TGA	Defence	20/2/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act

62	2000/023670	83-85	Defence	TGA	29/1/2001	Fax SAS B & C form	3	Release in full	Irrelevant information redacted under section 22 of the FOI Act
63	2000/023670	86	TGA	Defence	8/2/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
64	2000/023670	87-88	Defence	TGA	29/3/2001	Fax SAS B & C form	2	Release in full	Irrelevant information redacted under section 22 of the FOI Act
65	2000/023670	89	TGA	Defence	2/4/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
66	2000/023670	90	Defence	TGA	1/8/2001	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
67	2000/023670	91	TGA	Defence	12/4/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
68	2000/023670	92	Defence	TGA	24/4/2001	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act

69	2000/023670	93	TGA	Defence	27/4/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
70	2000/023670	94-96	TGA	Defence	3/5/2001	Fax SAS B & C form	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
71	2000/023670	97	TGA	Defence	3/5/2001	SAS Approval letter	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
72	1999/046867	46	TGA		23/6/2000	Email Re TGA CTN	1	Release in full	
73	1999/046867	47	TGA		26/6/2000	Email Re 19.5	1	Release in full	
74	1999/046867	48	TGA		26/6/2000	Email Re 19.5	1	Release in full	
75	1999/046867	53-56	Defence	TGA	31/5/2000	Fax Re Authorised Prescriber application	4	Release in full	
76	1999/046867	51-62	Defence	TGA	8/6/2000	Fax Re Authorised Prescriber application	6	Release in full	
77	1999/046867	63-65	Defence	TGA	29/6/2000	Fax Re Authorised Prescriber application	3	Release in full	
78	1999/046867	66	TGA	Defence	22/6/2000	Fax Re SAS Cat B & C form	1	Release in full	
79	1999/046867	67	TGA		14/7/2000	Email Re Army Malaria Institute (AMI)	1	Release in full	

80	1999/046867	68	TGA		14/7/2000	Email Re Army Malaria Institute (AMI) – duplicate of folio 67	1	Release in full	
81	1999/046867	69	TGA		14/7/2000	Subsection 19(5) Authorisation	1	Release in full	
82	1999/046867	70-71	TGA		19/7/2000	Subsection 19(5)	2	Release in full	
83	1999/046867	72-73	TGA	Defence	14/7/2000	Subsection 19(5) not valid	2	Release in full	
84	1999/046867	74-75	TGA	Defence	19/7/2000	Subsection 19(5) not valid	2	Release in full	
85	2000/027032	7-9	Defence	TGA	5/6/2000	CTN submission	3	Release in full	
86	2000/027032	10	Defence	TGA	5/6/2000	Enterprise details form	1	Release in full	
87	2000/027032	11	Defence	TGA	8/6/2000	Covering letter	1	Release in full	
88	2000/027032	12-13	TGA	Defence	20/6/2000	CTN Acknowledgement letter	2	Release in full	
89	R12/722672		TGA	GSK	20/11/2001	ADR further info - Tafenoquine -	1	Release in full	Irrelevant information redacted under section 22 of the FOI Act
90	2001/005138		GSK	TGA	6/7/2001	Overseas adverse drug reaction reports	9	Release in full	Irrelevant information redacted under section 22 of the FOI Act
91	2001/005138		GSK	TGA	9/7/2001	Adverse event 166389	3	Release in full	Irrelevant information redacted under section 22 of the FOI Act

92	2001/005138		GSK	TGA	7/5/2001	Adverse event 164339	4	Release in full	Irrelevant information redacted under section 22 of the FOI Act
93	2001/005138		GSK	TGA	7/5/2001	Adverse event 164025	8	Release in full	Irrelevant information redacted under section 22 of the FOI Act
94	2001/005138		GSK	TGA	7/5/2001	Adverse event 163376	4	Release in full	Irrelevant information redacted under section 22 of the FOI Act
95	2001/005138		GSK	TGA	7/5/2001	Adverse event 163375	4	Release in full	Irrelevant information redacted under section 22 of the FOI Act
96	2001/005138		GSK	TGA	21/12/2000	Adverse event 163217	18	Release in full	Irrelevant information redacted under section 22 of the FOI Act
97	2001/005138		Defence	TGA	3/7/2001	Tafenoquine safety alert	65	Release in full	Irrelevant information redacted under section 22 of the FOI Act



Freedom of information – Your review rights

April 2011

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see FOI fact sheet 13 – *Freedom of information: How to make a complaint*.

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

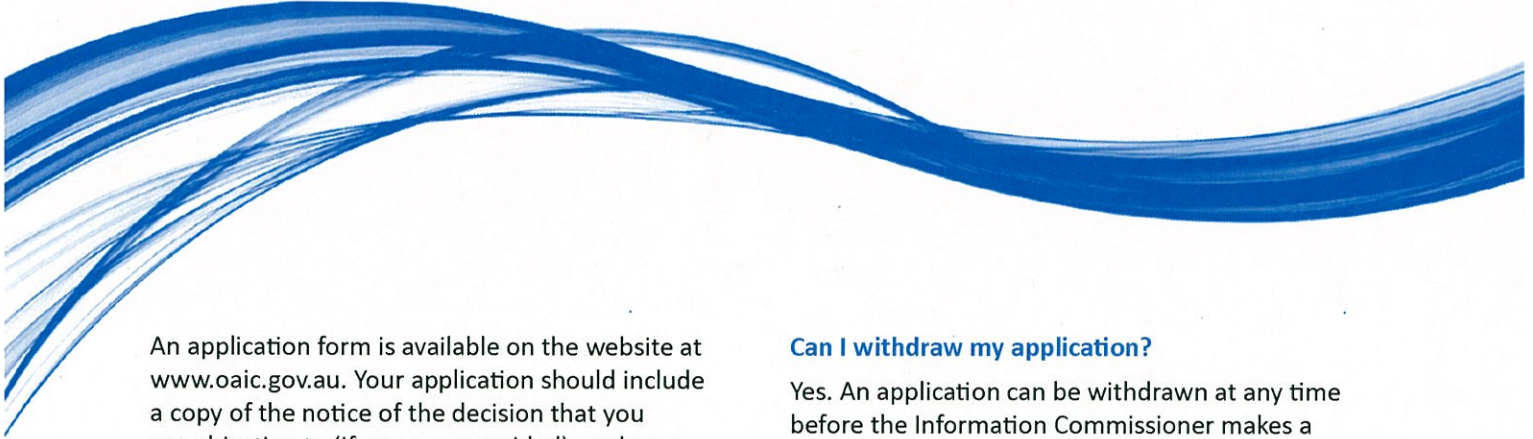
Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

online: www.oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
fax: +61 2 9284 9666
email: enquiries@oaic.gov.au
in person: Level 3,
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.



What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. The fee for lodging an AAT application is \$777 (at November 2010), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

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

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au



Freedom of information – How to make a complaint

October 2010

You may complain to the Australian Information Commissioner if you have concerns about how an Australian Government agency handled a request for documents under the *Freedom of Information Act 1982* (the FOI Act) or took any other action under that Act. If you are unhappy with the agency's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process.

Disagree with an FOI decision?

If you disagree with an agency's or minister's decision on your request under the FOI Act, you have the right to have the decision reviewed. You can ask an agency to review its decision internally. You also have the right to ask the Information Commissioner to review an agency's or minister's decision. See **FOI Fact Sheet 12 Freedom of information – Your review rights** for more information about the review process.

If you are concerned about the way an agency has handled your matter, you can complain to the Information Commissioner.

What are the powers of the Information Commissioner?

The Information Commissioner can investigate a complaint about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The Information Commissioner cannot investigate a complaint about a minister.

In conducting the investigation the Information Commissioner has the power to:

- make inquiries of an agency
- obtain information from any person
- take possession of, or inspect, any relevant documents.

If the Information Commissioner decides to investigate your complaint, the agency you have complained about will be notified in writing of the complaint. The Information Commissioner conducts investigations of complaints in private.

Who can make a complaint?

Any person can make a complaint about the actions of an agency in relation to an FOI activity. You do not need to have requested documents under the FOI Act.

When should I make a complaint?

You can complain to the Information Commissioner at any time. If your complaint relates to an FOI request you can make the complaint at any stage of the process.

Before making a complaint to the Information Commissioner, you should contact the agency directly to try to resolve your concerns. The Information Commissioner may decide not to investigate your complaint if you have not raised your concerns first with the agency or you have not given the agency a reasonable opportunity to deal with your complaint.



How do I make a complaint?

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to us using the details at the end of this fact sheet. A complaint form is also available on our website at www.oaic.gov.au.

If you need help we can assist you. You can contact us on 1300 363 992 or by email to enquiries@oaic.gov.au.

What information do I need to put in the complaint?

To help the Information Commissioner give the best consideration to your complaint, please provide as much relevant information as possible. Be clear about the issues in your complaint and what action or outcome you would like to see as a result.

Is there a fee for making a complaint?

No. There are no costs involved in making a complaint to the Information Commissioner.

What will happen to my complaint?

An officer of the Information Commissioner will contact you to discuss your complaint and you will be kept informed of the progress of your complaint along the way.

Before deciding whether to investigate your complaint the Information Commissioner may make preliminary inquiries of the agency you have complained about.

If the Information Commissioner decides to investigate your complaint, the Commissioner will write to the agency and request information to assist with the investigation.

Can the Information Commissioner decide not to investigate my complaint?


Yes. The Information Commissioner may decide not to investigate, or may discontinue an investigation, if:

- your complaint does not concern an agency's action under the FOI Act
- it is more appropriate for you to complain to another body (such as the agency or the Commonwealth Ombudsman)
- it is more appropriate for you to ask for the decision to be reviewed
- the agency you complained about has dealt with your complaint, or is in the process of dealing with it
- your complaint is frivolous, lacking in substance or not made in good faith
- you do not have sufficient interest in the matter.

If the Information Commissioner decides not to investigate or discontinues an investigation, the Commissioner will notify you and the agency of the reasons for this in writing.

How will my complaint be resolved?

In some cases the Information Commissioner's investigation and intervention may result in the agency addressing the issues that you have complained about. In other cases the Information Commissioner may make suggestions or recommendations that the agency should implement. You and the agency will be notified in writing of the outcome of the investigation.



If an agency fails to take adequate and appropriate action to implement any recommendations, the Information Commissioner may issue a formal implementation notice. This notice requires the agency to explain what action it will take to implement the recommendations. The Information Commissioner may also provide a written report to the minister responsible for the agency, and the report will be tabled in Parliament.

Your name will not be included in the report unless there is a special reason and you were first consulted.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint and all relevant documents must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

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