



Our reference: MR17/00242

Ms Verity Pane

Sent via email to: foi+request-3184-583b21e4@righttoknow.org.au

Dear Ms Pane

Your application for IC review of a decision of the OAIC

I refer to your application for IC review of a decision of the Office of the Australian Information Commissioner (OAIC) made on 4 May 2017 under the *Freedom of Information Act 1982* (the FOI Act).

As a delegate of the Information Commissioner, I am writing to advise that it is my intention to finalise your application for IC review under s 54W(b) of the FOI Act to allow you to seek review by the Administrative Appeals Tribunal (AAT).

I am writing to give you an opportunity to comment prior to a final decision being made in this matter.

Background

On 4 March 2017, you made a request under the FOI Act to the OAIC for access to documents relating to any consultation undertaken between the Privacy Commissioner or the OAIC and Department of Veterans' Affairs (DVA), the Minister for Veterans' Affairs, or any other Commonwealth Minister or official, on the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016.

On 23 March 2017, the OAIC transferred part of your request to DVA pursuant to s 16 of the FOI Act.

On 3 April 2017, the OAIC made a decision identifying 45 documents as relevant to the request. The OAIC granted access to seven documents in full and refused access to four documents in part, and five documents in full, under ss 47C, 47E(d) and/or 47F of the FOI Act. The remaining documents were released with deletions to remove material that was regarded as irrelevant to your request under s 22(1)(a)(ii) of the FOI Act.

On 4 April 2017, you sought internal review of the OAIC's decision. Specifically, you sought review of the application of s 47E(d) of the FOI Act to the documents.

On 4 May 2017, the OAIC made a decision on internal review and found that the documents at issue were exempt under s 47E(d) of the FOI Act.

On 8 May 2017, you sought IC review of the OAIC's internal review decision.

Discretion to close application under s 54W(b)

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or continue to undertake a review, if satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

Relevantly, in the OAIC's decision record of 4 May 2017, you were notified that:

The Information Commissioner considers that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of an FOI decision made by the agency that the Information Commissioner heads: the OAIC.

For this reason, if you make an application for IC review of [the OAIC's] decision, it is likely that the Information Commissioner will decide (under s 54W(b) of the FOI Act) not to undertake an IC review on the basis that it is desirable that any review be undertaken by the AAT. Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

For this reason, it is my view that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision made by the OAIC be considered by the AAT.

In the circumstances, it is my intention as a delegate of the Information Commissioner to finalise your application under s 54W(b) of the FOI Act to allow you to apply directly to the AAT. I note that you will have 28 days from the date your IC review is finalised to lodge an application for review with the AAT in accordance with ordinary AAT processes.

Next steps

If you would like to provide any submission on this proposed course of action, please respond by **18 May 2017**. Any submission will be taken in account before I make a final decision under s 54W(b) of the FOI Act.

If you would like to discuss this matter, please contact Ishani Jayaweera on 02 9284 9882 or by emailing ishani.jayaweera@oaic.gov.au.

Yours sincerely



Andrew Solomon
Assistant Commissioner
Dispute Resolution Branch

11 May 2017