



Our reference: MR17/00242

Ms Verity Pane

Sent via email to: [foi+request-3184-583b21e4@righttoknow.org.au](mailto:foi+request-3184-583b21e4@righttoknow.org.au)

Dear Ms Pane

## Finalisation of 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).

On 11 May 2017, I advised you of my intention, as a delegate of the Information Commissioner, 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 advised that I was of the view that the interests of the administration of the FOI Act make it desirable for the IC reviewable decision made by the OAIC to be considered by the AAT for the following reason, relevantly contained in the OAIC's decision record of 4 May 2017:

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.

You were invited to make any submissions by 18 May 2017 prior to a final decision being made. However, as at today's date, you have not provided a response to the OAIC.

Accordingly, I am writing to advise that I have decided to finalise the IC review under s 54W(b) of the FOI Act.

## 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.

As noted above, on 11 May 2017, I notified you of my intention to finalise your application for IC review under s 54W(b) of the FOI Act. You were provided an opportunity to make any submissions by 18 May 2017. However, to date you have not provided any submissions.

#### **Discretion to close application under s 54W(b)**

I am a delegate of the Information Commissioner.

For the reason given in my letter of 11 May 2017, I am of the view that it is in the interests of the administration of the FOI Act that the IC review be closed under s 54W(b) of the FOI Act to allow you to apply directly to the AAT. The effect of this decision is to finalise your IC review application.

I have also included your review rights with respect to the decision to finalise this IC review below, however, I note that you now have the opportunity to seek merits review in the AAT of the IC reviewable decision on your FOI request to the OAIC.

#### **Next steps**

You now have 28 calendar days to lodge an application for review of the IC reviewable decision with the AAT in accordance with s 57A of the FOI Act. AAT filing fees may apply.

If you would like to discuss this matter, please contact Ms Ishani Jayaweera on 02 9284 9882 or by emailing [ishani.jayaweera@oaic.gov.au](mailto:ishani.jayaweera@oaic.gov.au).

Yours sincerely



Andrew Solomon  
Assistant Commissioner  
Dispute Resolution Branch

25 May 2017

## External review

### Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of your IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision to you. You may wish to seek legal advice as the process can involve fees and costs.

Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

### Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.