



Australian Government

Office of the Australian Information Commissioner

Our reference: MR19/00029
Agency reference: FOI 24434

Julie

By email to: foi+request-4798-cb04f8a0@righttoknow.org.au

Decision not to undertake a review under s 54W of the FOI Act

Dear Julie

I refer to your request for Information Commissioner review (IC review) of a decision deemed to have been made by the Department of Veterans' Affairs (the Department) under the Freedom of Information Act 1982 (Cth) (the FOI Act) on 25 October 2018.

The Office of the Australian Information Commissioner (the OAIC) has not received a response from you to our notice of intention to finalise your IC review application dated 16 May 2019. As a delegate of the Information Commissioner, I have decided to not to continue to undertake a review of this IC review under s 54W of the FOI Act. My reasons follow.

Background

On 11 September 2018, you applied to the Department under the FOI Act for access to:

... The following is an extract of ANAO's Performance Audit Report entitled "Efficiency of Veterans Service Delivery by the Department of Veterans' Affairs" published 27 June 2018 and therefore should be quite current:

3.35 Governance and oversight of R&C is the responsibility of a national business manager located in Melbourne. An extensive suite of reports and analysis is prepared on a monthly, weekly and daily basis containing metrics about R&C operations. The reports focus on the caseload, staffing, claims intake and TTTP broken down by locations and individuals. The standard reports also include exception reporting of all cases with a TTTP of 240 days or longer, 365 days or longer and separate reporting of the 'top 20' oldest claims. Along with TTTP reporting, the standard suite of reports provide details of quality assurance activities and results.

It therefore is apparent that DVA has produced on a monthly basis a standard report that details the aforementioned summary statistics, along with a list of the top 20 oldest claims still outstanding, as a normal routine managerial report.

I therefore seek copy of each monthly report from July 2017 thru to and including June 2018 under FOI.

While summary statistics contain no personal information, it is possible the 'Top 20' list may refer to the individual names of veterans, so consent is given to redact the name of any private individual (as I'm only interested in the time they have been outstanding).

From what I understand, the monthly report doesn't drill down into details, being a summary report, but if any private individuals' personal information is contained within them, then this of course may be redacted with consent.

As the aforementioned ANAO report highlighted that despite the number of cases-on-hand / work-in progress files has fallen by 17.9 per cent (2,266) from the start of the 2015 to 2017 period to its end, but the DVA average TTTP (time taken to process) only fell between 3 per cent and 9 per cent across all R&C claim categories in the same period, inferring that DVA is considerably less efficient at processing liability claims than it used to be, it is hoped this information may shed some light on the causes of this loss of efficiency...

On 6 December 2018, you sought IC review under s 54L of the FOI Act on the basis that the Department had not made a decision on your request within the statutory timeframe.

On 7 January 2019, the OAIC conducted preliminary inquiries with the Department under s 54V of the FOI Act.

On 26 March 2019, the Department advised you of its decision on your request. The Department identified one document as falling within the scope of your request and gave you access to the document in full.

On 27 March 2019, Mr Carl English of the OAIC wrote to noting that the OAIC had been informed that the Department has issued its decision on your request, and asking whether you now wished to withdraw your IC review application, or proceed with the IC review application and make a submission about the grounds on which you wished to proceed. Mr English asked you to respond by 10 April 2019.

On 16 May 2019, in the absence of a response to his correspondence of 27 March 2019, Mr English wrote to you to advise you of his intention to recommend the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(ii) of the FOI Act on the basis that you have failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

Mr English invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by 30 May 2019.

Based on the information before me, the OAIC has not received a response.

Decision not to undertake a review

I am a delegate of the Information Commissioner.

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the IC review applicant has failed to

cooperate in progressing the IC review application, or the IC review, without reasonable excuse.

The OAIC has not received a response from you to our correspondence of 27 March 2019 seeking your advice as to whether you wished to proceed with the IC review, and of 16 May 2019 advising you of our intention to finalise your IC review. On the basis of the information presently before the Information Commissioner, I consider that you have failed to cooperate in progressing the IC review application without reasonable excuse.

In deciding whether to exercise the discretion not to undertake a review, I have considered that:

- the Department granted you access in full to the one document falling within the scope of your FOI request
- the OAIC did not receive any response from you to our correspondence of 27 March 2019 and 16 May 2019, and
- reviewing this matter will not promote the objects of the FOI Act.

As a delegate of the Information Commissioner, I have decided exercise my discretion to decide not to undertake a review of your application under s 54W of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact Mr Carl English on (02) 9284 9745 or on foidr@oaic.gov.au. In all correspondence please quote MR19/00029.

Yours sincerely



Allan Teves
Director, Intake and Early Resolution
Freedom of Information

21 June 2019

Review rights

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 or determination 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>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#)¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.