



Australian Government

Office of the Australian Information Commissioner

**Our reference: FOIREQ18/00135**

**By email to: [foi+request-4823-6463bd9a@righttoknow.org.au](mailto:foi+request-4823-6463bd9a@righttoknow.org.au)**

Dear Mr Knowles,

I refer to your FOI request sent to the OAIC on 19 September 2018.

In your FOI application you request the OAIC, under s 17 of the FOI Act, to compile a document with the following information for the 2018 calendar year to date:

- a) the number of explicit s 36(4) requests (given the OAIC requires applications to be explicit) for assistance made to the OAIC, for assistance in formulating privacy complaints;
- b) the number of times the OAIC refused to provide assistance under s 36(4);
- c) the number of times the OAIC has told s 36(4) requesters that they would have to lodge a privacy complaint before assistance would be provided;
- d) if no explicit refusal, the number of times the applicant indicated to the OAIC that it had satisfactorily resolved the s 36(4) request;
- e) the number of times the OAIC had advised s 36(4) requesters it would respond by a certain date, but then subsequently failed to do so; and
- f) if the s 36(4) requester clearly requested the assistance to be provided by via email or telephone, how many times the OAIC did not provide that assistance via the communication channel requested.

## Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I have refused your request for documents under s 24A of the FOI Act on the basis that no such document exists.

## Reasons for decision

### Material taken into account

In making my decision, I have had regard to the following:

- your freedom of information request dated 19 September 2018
- the FOI Act
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines), specifically [3.85]-[3.91], and [3.207].
- searches I conducted with the OAIC's Information Systems Manager and enquiries staff on our case management system.

### Documents cannot be found or do not exist (s 24A)

I have refused your request for a document under s 24A of the FOI Act on the basis that no such document exists.

Section 24A provides as follows:

#### **Requests may be refused if documents cannot be found, do not exist or have not been received**

##### *Documents lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document;  
and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist

### Section 17 of the FOI Act

You have requested the OAIC to compile a document from our computer systems under s 17 of the FOI Act to show statistics about the requests the OAIC receives under section 36(4) of the FOI Act.

Section 17(1)(c) of the FOI Act requires that where an:

agency could produce a written document containing the information in discrete form by:

- (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
- (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession

### Searches undertaken

If the OAIC receives a request under s 36(4) of the Privacy Act it is recorded as an enquiry in our case management system. In order to assist me with compiling the document under s 17 of the Act, which you requested, I consulted the Information Systems Manager who manages the OAIC's information and communication systems, and case management systems. I also consulted enquiries staff members who conducted searches and determined the number of enquiries.

Searches were conducted through the case management system, using the search term '36(4)'. No enquiries or privacy complaints relating to s 36(4) enquiries were found. The case management system is not capable of functioning independently to collate the relevant information and produce the document you have requested.

In the timeframe you have requested, the OAIC has received 16,090 enquiries. In order to determine which of these enquiries relate to section 36(4) of the Privacy Act a staff member would be required to manually open each enquiry and read the summary contained in the file.

In this instance, the OAIC is unable to produce a report from our computer system for the statistics you have requested.

### Conclusion

I am satisfied that a document cannot be created from the OAIC computer system to satisfy your FOI request. Therefore, no document exists in the OAIC that falls within the scope of your request.

Your review rights are outlined on the following page.

Yours sincerely

Amanda Nowland  
Senior Lawyer

19 October 2018

## **If you disagree with my decision**

### **Internal review**

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

### **Further Review**

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my 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 my decision be considered 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.

Applications for internal review or IC review can be submitted to:

Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Alternatively, you may submit your application by email to [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au) or by fax on 02 9284 9666.

### **Accessing your information**

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

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<sup>1</sup> See <https://www.oaic.gov.au/about-us/access-our-information/>.