



Australian Government

Office of the Australian Information Commissioner

Our reference: MR19/00101

Agency reference: CRM 2019/229

Sam

Sent by email: foi+request-4920-9cf1f312@righttoknow.org.au

Decision not to undertake a review under s 54W

Dear Sam

I refer to your request for Information Commissioner review (IC review) of a decision deemed to have been made by the Australian Federal Police (the AFP) on 11 January 2019 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The Office of the Australian Information Commissioner (OAIC) has not received a response from you to our correspondence of 8 February 2019 and 21 February 2019 seeking your advice as to whether you wished to proceed with your IC review application. As a delegate of the Information Commissioner, I have decided to finalise this IC review under s 54W of the FOI Act. My reasons follow.

Background

On 28 October 2018, you made a request to the AFP under the FOI Act via the website www.righttoknow.org.au.

On 29 November 2018, the AFP sought a further period of 45 days in which to finalise your request on the basis that there had been a delay in receiving the 227 folios the subject of your request from the relevant line areas.

On 13 December 2018, a delegate of the Information Commissioner granted the AFP an extension of time until 11 January 2019 to finalise your request under s 15AC of the FOI Act.

On 4 February 2019, you applied for IC review on the basis that the AFP had failed to make a decision on your request within the statutory timeframe.

On 8 February 2019, the OAIC conducted preliminary inquiries with the AFP under s 54V of the FOI Act.

On 8 February 2019, the AFP made a substantive decision on your request. The AFP identified 20 documents within the scope of your request, and gave you access to some documents in full, some documents in part and refused access to the remaining documents in full. In refusing access to the relevant material, the AFP relied on the certain persons or bodies

exemption (s 7), the documents affecting enforcement of law or protection of public safety exemption (s 37), the certain operations of agencies exemption (s 47E) and the business exemption (s 47G) of the FOI Act. The AFP also deleted material in the documents considered irrelevant to your request under s 22 of the FOI Act.

On 8 February 2019, the OAIC review adviser responsible for this matter, Mr Carl English, wrote to you seeking your advice as to whether you wished to proceed with the IC review and if so, requesting a submission on the grounds on which you wished to proceed. Mr English requested your response by 15 February 2019. The OAIC did not receive a response from you.

In the absence of a response to his correspondence of 8 February 2019, Mr English wrote to you again on 21 February 2019 seeking your advice as to whether you wished to proceed with your IC review application. In his correspondence, Mr English advised that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse.

Mr English advised that should the OAIC not receive a response from you to his email by 28 February 2019, your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

Based on the information before me, the OAIC has not received a response to its correspondence of 8 February 2019 and 21 February 2019.

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 8 February 2019 and 21 February 2019 seeking your advice as to whether you wish to proceed with the IC review following the AFP's substantive decision of 8 February 2019. As such, the OAIC is unable to progress your IC review application.

On the basis of the information presently before the Information Commissioner, I am satisfied that you have failed to cooperate in progressing your IC review application without reasonable excuse.

In deciding whether to exercise the discretion not to undertake a review, I have considered the information before me including:

- your application for IC review dated 4 February 2019

- the AFP's substantive decision of 8 February 2019, and
- that the OAIC did not receive any response from you to our correspondence of 8 February 2019 and 21 February 2019.

As a delegate of the Information Commissioner, I have decided to exercise my discretion 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 MR19/00101.

Yours sincerely



Allan Teves
Director
Freedom of Information

22 March 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/.