



**Australian Government**

**Department of Health  
Therapeutic Goods Administration**

TRIM Ref: D19-5714605

Mr Robert O'Dea

Email: [foi+request-5386-f8b98362@righttoknow.org.au](mailto:foi+request-5386-f8b98362@righttoknow.org.au)

Dear Mr O'Dea

**FREEDOM OF INFORMATION REQUEST FOI 1132-1819  
Notice of Decision**

I refer to your request dated 17 April 2019 under the *Freedom of Information Act 1982* (the FOI Act) and subsequent correspondence between you and the TGA in which the scope of your request was clarified as being for access to the following documents:

*"...the request submitted to the TGA for Scheduling of Thymosin Beta 4 and Tb500 as indicated in the link below.*

*<https://www.tga.gov.au/book-page/27-performance-and-image-enhancing-drugs>.*

*I am requesting specifically access to the application for inclusion of Thymosin Beta 4 and Tb500 on the Schedules List. I would request all supporting data that was presented in the application that supports the claims.*

*Any/all clinical and scientific evidence that supports the claims of performance and image enhancement.*

*Any evidence that supports any medical benefit at all from the use of Thymosin Beta 4 or Tb500.*

*I would ask for clarification on what appears to be a contradiction in the rationale for the acceptance of the application. The reasons state limited evidence of therapeutic benefits, not registered anywhere in the world (by definition no clinical evidence of efficacy or safety), experimental and yet it is accepted as being performance and image enhancing."*

**Decision Maker**

I am the Therapeutic Goods Administration (TGA) officer authorised to make this decision under section 23 of the FOI Act. What follows is my decision under the FOI Act.

**Scope of the FOI request**

The TGA has identified one (1) document falling within the scope of your request.

**Background**

On 17 April 2019 the TGA received a request from you under the FOI Act.

On 16 May 2019 you were advised that the cost of processing your request amounted to \$130.08 and you were asked to pay a deposit of \$32.52. You were also advised at this time of the need to conduct a third party consultation in relation to your request. On the same day, the TGA received a deposit in the amount of \$32.52 for the processing of your request. The third party consultation was subsequently initiated.

On 29 May 2019 you confirmed you were not seeking the scheduling applicant's name or contact details in relation to the scope of your request.

On 12 June 2019 you confirmed you are seeking the names and titles of any third parties referred to in the application, especially where they are linked to the evidence provided within the application. On the same day you agreed to a thirty (30) day extension under section 15AA of the FOI Act for the processing of your FOI request.

### **Material Considered in Decision-Making**

In coming to my decision I had regard to the following:

- the correspondence between the TGA and yourself;
- the documents falling within the scope of the FOI request;
- all relevant papers in the TGA FOI processing file;
- the provisions of the FOI Act, in particular section 22 of the FOI Act;
- the guidelines issued by the Office of the Australian Information Commissioner (OAIC) under section 93A of the *Freedom of Information Act 1982*; and
- consultation with third parties whose documents are involved.

### **Decision**

My decision in relation to the documents falling within the scope of the FOI request is to release one (1) document in full.

The preliminary estimate of charges associated with processing this FOI request was \$130.08. This amount includes the first five hours of decision making at no cost. In accordance with the *Freedom of Information (Charges) Regulations 2019* (the Charges Regulations) I have calculated the actual charges that can be imposed for processing your request. In this case, the actual charges that can be imposed are \$160.20. While these charges exceed the estimate of charges previously provided to you, the Charges Regulations provides that a higher amount can be charged if providing full access to the documents. As my decision is to give you full access to the documents, I have decided to impose the actual charges associated with processing your request.

Therefore, as you have already paid the deposit in the amount of \$32.52, you are required to pay the balance of the actual costs, being \$127.68, before the documents can be released to you.

### **Payment**

Payment can be made via one of the following options:

- **Credit card payment:**  
Complete the *attached* form (also available via the following link):  
[www.tga.gov.au/form/credit-card-payment-authorisation](http://www.tga.gov.au/form/credit-card-payment-authorisation).
- **Electronic Funds Transfer:**  
Payment can be made in the form of electronic funds transfer to the following account:  
Bank: Commonwealth Bank of Australia  
Account Name: Therapeutic Goods Administration  
BSB: 062909  
Account: 10215498

- **Cheque:**

Please make cheques payable to Therapeutic Goods Administration, and post to

FOI Coordinator  
Therapeutic Goods Administration  
PO Box 100  
WODEN ACT 2606

**Please include reference to FOI 1132-1819 in all forms of payment.**

Details of how to pay and other payment methods can be found at:

[www.tga.gov.au/about/fees-payments-options.htm](http://www.tga.gov.au/about/fees-payments-options.htm).

**IMPORTANT:** Once payment has been made, please notify the FOI Team via the following email address: [TGA.FOI@tga.gov.au](mailto:TGA.FOI@tga.gov.au).

Failure to notify the FOI Team of payment will result in delays to the processing of your FOI request.

**Reasons for Decision**

***Relevant Documents***

There is one (1) document that has been identified as relevant to your request. A schedule listing the document identified as falling within the scope of your request is at **Attachment A**. The schedule refers to the exemption provisions which are claimed to apply to each document.

Under subsection 22 of the FOI Act, irrelevant information has been redacted from the document as it is considered to be outside the scope of your request. The reason for the application of section 22 (irrelevant information) to the document in issue are set out in detail below.

***Subsection 22(1): Documents containing information that is irrelevant to the FOI request***

The effect of subsection 22(1) of the FOI Act is that where granting access to a document would disclose information that is not within the scope of the request and it is possible to provide a copy with information deleted, the agency can do so unless it is evident that the applicant does not wish to be provided access to such a copy. A copy of subsection 22(1) is at **Attachment B**.

The relevant documents contain information that does not fall within the scope of your FOI request. Specifically, the documents contain the scheduling applicant's name and contact details which you confirmed you were not seeking as part of your request. Therefore, I consider this information to be outside the scope of your request.

I consider that to provide you with full access to the documents would disclose information that does not fall within the scope of your FOI request. Accordingly, I have decided that the irrelevant information will be deleted under section 22(1) of the FOI Act and a copy of the documents, with the irrelevant information deleted, will be provided to you.

***Publicly available documents***

Document 1 refers to a *February 2013 Australian Crime Commission Report* (ACC Report), which is publicly available. For ease of reference, this document has been provided to you.

**Release of Documents**

Once you have paid the balance of the charges, being \$127.68, the documents can be released to you.

### **Review and Complaint Rights**

If you are not satisfied with this decision, you can either seek internal review or apply to the OAIC for review of the decision. A statement of review rights is at **Attachment C** to this letter.

If you have any queries regarding this matter, please contact the FOI Team on (02) 6232 8806.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Daniel Flood', with a stylized flourish at the end.

Daniel Flood  
A/g Assistant Secretary  
Regulatory Engagement & Planning Branch  
Therapeutic Goods Administration  
11 July 2019

**FOI Request 1132-1819 in relation to Scheduling of Thymosin**  
**The request is for the following:**

*"...the request submitted to the TGA for Scheduling of Thymosin Beta 4 and Tb500 as indicated in the link below.*

<https://www.tga.gov.au/book-page/27-performance-and-image-enhancing-drugs>.

*I am requesting specifically access to the application for inclusion of Thymosin Beta 4 and Tb500 on the Schedules List. I would request all supporting data that was presented in the application that supports the claims.*

*Any/all clinical and scientific evidence that supports the claims of performance and image enhancement.*

*Any evidence that supports any medical benefit at all from the use of Thymosin Beta 4 or Tb500.*

*I would ask for clarification on what appears to be a contradiction in the rationale for the acceptance of the application. The reasons state limited evidence of therapeutic benefits, not registered anywhere in the world (by definition no clinical evidence of efficacy or safety), experimental and yet it is accepted as being performance and image enhancing."*

**Schedule of Relevant Documents**

Doc. No.	Folder Number	Document Number	Author	Addressee	Date	Description	Pages	Decision	Relevant Sections of the Act
1	E19-548637	D19-5424769	Third Party	ACMS #16 November 2015	Nov 2015	Consolidated Agenda paper for ACMS #16 Meeting	20	Release in full	Section 22(1)



## Freedom of Information Act 1982

### 11A Access to documents on request

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

### 22 Deletion of exempt matter or irrelevant material

- (1) Where:

- (a) an agency or Minister decides:

- (i) not to grant a request for access to a document on the ground that it is an exempt document; or
- (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and

- (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy:

- (i) would not be an exempt document; and
- (ii) would not disclose such information; and

- (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy;

the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

- (2) Where access is granted to a copy of a document in accordance with subsection (1):

- (a) the applicant must be informed:

- (i) that it is such a copy; and
- (ii) of the ground for the deletions; and
- (iii) if any matter deleted is exempt matter because of a provision of this Act—that the matter deleted is exempt matter because of that provision; and

- (b) section 26 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him or her a notice in writing in accordance with that section.

## 27 Consultation—business documents

### *Scope*

- (1) This section applies if:
- (a) a request is made to an agency or Minister for access to a document containing information (***business information***) covered by subsection (2) in respect of a person, organisation or undertaking; and
  - (b) it appears to the agency or Minister that the person, organisation or proprietor of the undertaking (the ***person or organisation concerned***) might reasonably wish to make a contention (the ***exemption contention***) that:
    - (i) the document is exempt under section 47 (trade secrets etc.); or
    - (ii) the document is conditionally exempt under section 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (2) This subsection covers the following information:
- (a) in relation to a person—information about the person’s business or professional affairs;
  - (b) in relation to an organisation or undertaking—information about the business, commercial or financial affairs of the organisation or undertaking.
- (3) In determining, for the purposes of paragraph (1)(b), whether the person or organisation concerned might reasonably wish to make an exemption contention because of business information in a document, the agency or Minister must have regard to the following matters:
- (a) the extent to which the information is well known;
  - (b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.

### *Opportunity to make submissions*

- (4) The agency or Minister must not decide to give access to the document unless:
- (a) the person or organisation concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and
  - (b) the agency or the Minister has regard to any submissions so made.
- (5) However, subsection (4) only applies if it is reasonably practicable for the agency or Minister to give the person or organisation concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

### *Notice of decision to give access*

- (6) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:
- (a) the person or organisation concerned;
  - (b) the applicant.

*Access not to be given until review or appeal opportunities have run out*

- (7) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person or organisation concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have **run out**, see subsection 4(1).

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

- (8) Subsections (6) and (7) do not apply unless the person or organisation concerned makes a submission in support of the exemption contention as allowed under paragraph (4)(a).

*Edited copies and business information*

- (9) This section applies:
- (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
  - (b) in relation to a document containing business information—to the extent to which the document contains such information.

**27A Consultation—documents affecting personal privacy***Scope*

- (1) This section applies if:
- (a) a request is made to an agency or Minister for access to a document containing personal information about a person (including a person who has died); and
  - (b) it appears to the agency or Minister that the person or the person's legal personal representative (the **person concerned**) might reasonably wish to make a contention (the **exemption contention**) that:
    - (i) the document is conditionally exempt under section 47F; and
    - (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).
- Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).
- (2) In determining, for the purposes of paragraph (1)(b), whether the person concerned might reasonably wish to make an exemption contention because of personal information in a document, the agency or Minister must have regard to the following matters:
- (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the information;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.

*Opportunity to make submissions*

- (3) The agency or Minister must not decide to give the applicant access to the document unless:



- (a) the person concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and
  - (b) the agency or the Minister has regard to any submissions so made.
- (4) However, subsection (3) only applies if it is reasonably practicable for the agency or Minister to give the person concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

*Decision to give access*

- (5) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:
- (a) the person concerned;
  - (b) the applicant.

*Access not to be given until review or appeal opportunities have run out*

- (6) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have **run out**, see subsection 4(1).

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

- (7) Subsections (5) and (6) do not apply unless the person concerned makes a submission in support of the exemption contention as allowed under paragraph (3)(a).

*Edited copies and personal information*

- (8) This section applies:
- (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
  - (b) in relation to a document containing personal information—to the extent to which the document contains such information.

### **33 Documents affecting national security, defence or international relations**

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or
  - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

### 37 Documents affecting enforcement of law and protection of public safety

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
  - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
  - (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
  - (c) endanger the life or physical safety of any person.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
  - (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
  - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
  - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:
  - (a) witnesses; or
  - (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
  - (c) any other people who, for any other reason, need or may need, such protection.
- (3) In this section, *law* means law of the Commonwealth or of a State or Territory.

### 42 Documents subject to legal professional privilege

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.
- (3) A document is not an exempt document under subsection (1) by reason only that:
  - (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
  - (b) the information is operational information of an agency.

**45 Documents containing material obtained in confidence**

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
  - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
  - (b) an agency, the Commonwealth or Norfolk Island.

**47 Documents disclosing trade secrets or commercially valuable information.**

- (1) A document is an exempt document if its disclosure under this Act would disclose:
  - (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

**47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

#### **47F Public interest conditional exemptions—personal privacy**

##### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
  - (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

##### *Access given to qualified person instead*

- (4) Subsection (5) applies if:
  - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
  - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
  - (a) carries on the same occupation, of a kind mentioned in the definition of *qualified person* in subsection (7), as the first-mentioned qualified person; and
  - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

**qualified person** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

#### **47G Public interest conditional exemptions—business**

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
  - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

*FOI fact sheet 12***FREEDOM OF INFORMATION – YOUR REVIEW RIGHTS**

July 2012

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

*Internal review*

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

*Review by the Information Commissioner*

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

*Is a review the same as a complaint?*

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see [How do I make an FOI complaint?](#)

*Do I have to go through the agency's internal review process first?*

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

*Do I have to pay?*

No. The Information Commissioner's review is free.

*How do I apply?*

You must apply in writing and you can lodge your application in one of the following ways:

online: [www.oaic.gov.au](http://www.oaic.gov.au)

post: GPO Box 5218, Sydney NSW 2001

fax: +61 2 9284 9666

email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

### *Can I get help in completing the application?*

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

### *When do I have to apply?*

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

### *Who will conduct the review?*

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

### *Does the Information Commissioner have to review my matter?*

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

### *Can I withdraw my application?*

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

### *What happens in the review process?*

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

### *Will there be other parties to the review?*

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

### *Can someone else represent me?*

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

### *Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?*

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

### *What powers does the Information Commissioner have?*

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

### *What decisions can the Information Commissioner make?*

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

### *Will the decision be made public?*

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

### *What can I do if I disagree with the Information Commissioner's review decision?*

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a [fee for lodging an AAT application](#), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

### *FOI applications made before 1 November 2010*

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

**The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.**

This information can also be found at:  
<https://www.oaic.gov.au/resources/freedom-of-information/foi-resources/foi-fact-sheets/foi-factsheet-12-your-review-rights.pdf>