



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ19/00218

Julie

By email: [foi+request-5697-b065321c@righttoknow.org.au](mailto:foi+request-5697-b065321c@righttoknow.org.au)

## Your Freedom of Information request – decision on access

Dear Julie,

I refer to your request for access to documents, made under the *Freedom of Information Act 1982* (Cth) (the FOI Act), and received by the Office of the Australian Information Commissioner (OAIC) on 6 October 2019.

On 6 October 2019 you requested access to:

Firstly, copy of any record/document use by officers of the Office of the Australian Information Commissioner (OAIC) to guide them in any exercise (intention or otherwise) of s 54W of the Freedom of Information Act (only that part of the document or record that pertains to s 54W if it also extends to other matters).

Secondly, a s 17 produced document is sought, being a statistical report, covering the last year (365 days, or as near as to), totalling the number of IC Review not withdrawn after a s 55G substitution occurred, and the number of those that subsequently received a notice of intention (s 54W) letter from the OAIC.

On 21 October 2019, the OAIC advised you that in relation to part two of your request our case management system is unable to render a report detailing the information you are seeking. However, the OAIC advised you that the system could render a report which identifies the number of IC reviews finalised under s 54W of the FOI Act within the past year and the line area can then manually review the files to determine whether they were finalised subsequent to a 55G decision being issued.

The OAIC advised you that a document could be produced as follows:

Number of IC reviews finalised under s 54W in past 12 months: **XX**

Number of IC reviews finalised under s 54W in past 12 months that were subject to a s 55G decision prior to finalisation: **XX**

On 24 October 2019, the OAIC generated a report. The report returned some 370 lines of data; however, after removing any duplicated case numbers the number was reduced to 219.

## Decision

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

I have identified 20 documents within the scope of your request. I have decided to give you access to 14 documents in full, 2 documents in part and exempt 4 documents in full, with exempt material redacted under s 42 of the FOI Act.

A schedule describing the documents and the access decision I have made is at Appendix A to this decision.

I have also redacted material under s 22 that it not relevant to your FOI request. This information is about internal OAIC guidance that does not relate to guidance about s 54W decisions.

In addition, further information and guidance on when the Commissioner may decide to use her discretion under s 54W is found [Part 10 of the OAIC's FOI Guidelines](#) and is available on our website.

## Reasons for decision

### Material taken into account

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

- your freedom of information request of 6 October 2019
- the documents you have requested
- the FOI Act, in particular s 42
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (the FOI Guidelines).

## Legal Professional Privilege (s 42)

Documents 16 to 21 contain information that would be privileged from production in legal proceedings on the ground of legal professional privilege (LPP).

Section 42 of the FOI Act provides:

(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.

The FOI Guidelines refer to the AAT case of *Ransley and Commissioner of Taxation (Freedom of information)* [2015] AATA 728. In that case, Tamberlin DP discussed that ‘communications and information between an agency and its qualified legal advisers for the purpose of giving or receiving advice will be privileged whether the legal advisers are salaried officers [or not], provided that they are consulted in a professional capacity in relation to a professional matter and the communications arise from the relationship of lawyer client.’

The documents contain information that involves communication between the OAIC’s external legal services provider and the FOI dispute resolution team and our internal legal services team. The external legal services provider provided legal advice to the dispute resolution and legal services teams in a professional capacity.

I am satisfied that the information I have exempted from the documents was created for the main purpose of providing legal advice. Accordingly, I am satisfied that this material is subject to legal professional privilege for the purposes of s 42 and have redacted the information.

Please see the following page for information about your review rights and information about the OAIC’s disclosure log.

Yours sincerely,



**Delaney Smith**  
Legal Services Officer

12 November 2019

## **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, or an internal review 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, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

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 can submit your application by email to [foi@oaic.gov.au](mailto:foi@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](#) page on our website.

## Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that it would be unreasonable to publish.

The documents I have decided to release to you do not contain business or personal information that would be unreasonable to publish. As a result, the documents will be published on our [disclosure log](#) shortly after being released to you.