

From: [Julie A.](#)
To: FOIDR; [Amanda Nowland](#)
Subject: Fwd: Re: FOIREQ10/00196- Your freedom of information request [SEC=OFFICIAL]
Date: Wednesday, 6 November 2019 12:58:41 PM
Attachments: [image002.png](#)
[image003.png](#)
[image005.png](#)
[image004.png](#)

Dear Amanda,

In the documents you withheld from release, until today, allegedly under s 27(A), because as you stated on 24 September 2019 that “the OAIC is required to consult the individuals under s 27A of the FOI Act before making a decision on release of the documents” and that “For this reason, the period for processing your request has been extended by 30 days to allow time to consult (see s 15(6) of the FOI Act) [The processing period for your request will now end on 25 October 2019]”.

Following further enquiry, initially resisted by you, it was identified that the only third party involved was the Australian Digital Health Agency (and its employees carrying out their official duties).

You, however, refused to identify the nature of the alleged personal information, or how official communications between the OAIC and the ADHA would reasonably be found to contain personal information that would enliven s 27(A).

Furthermore, you (as sometimes Acting Principal Lawyer for the OAIC) misrepresented in bad faith that s 53B of the Freedom of Information Act 1982 (Cth) as meaning that a decision to withhold documents under s 27(A) was an access grant decision, when such an interpretation was very untenable and legally unreasonable and clearly contrary to the plain and clear wording of that section (which is that, if access has been granted to an applicant of documents previously withheld under s 27A, that is an access grant decision the third party can seek review on).

Having reviewed the documents released today (late), they all comprise official correspondence between the OAIC and the ADHA, and the OAIC RESOLVE report (with no redactions applied), with none of the material containing anything that would constitute anything other than official information.

Before proceeding further, outline what content in these documents released you based your alleged reasonable belief on that enlivened s 27(A) as I can find nothing to give rise to any such belief, let alone a reasonable one.

Ciao,

Julie

----- Forwarded message -----

From: Amanda Nowland<amanda.nowland@oaic.gov.au>
Date: On Wed, Nov 6, 2019 at 10:07 am
Subject: Fwd: Your FOI Request [SEC=OFFICIAL]
To: Julie A.
Cc:

FOIREQ19/00196

Dear Julie,

Please find attached the remaining documents in relation to your FOI request. The opportunity to seek review for the consulted third party has now expired.

Regards,

Amanda



Legal Services

Office of the Australian Information Commissioner

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----- Forwarded message -----

From: Julie A.

Date: On Fri, Oct 11, 2019 at 5:07 pm

Subject: Fwd: Re: FOIREQ19/00196 - Your Freedom of Information Request [SEC=OFFICIAL]

To: Amanda Nowland <amanda.nowland@oaic.gov.au>, FOIDR <foidr@oaic.gov.au>

Cc:

Dear Amanda,

You will find the following helpful - it is an extract from Page 27 of the Revised Explanatory Memorandum for the FOI (Reform)

Act: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4163_ems_e66e9257-d096-4307-b3f3-3a5a5f44c278/upload_pdf/342722.pdf;fileType=application%2Fpdf

Proposed section 53A defines an ‘access refusal decision’. Proposed section 53B defines an ‘access grant decision’. The former is concerned with the review rights for applicants. The latter is concerned with the review rights of certain third parties affected by a decision to give access to a document. These terms are also used in connection with Information Commissioner review and AAT review. Decisions of this kind are amenable to internal review by virtue of proposed section 54 (internal review access refusal decision) and proposed section 54A (internal review access grant decision). These provisions establish the right for an applicant to apply for internal review of those decisions.

Again, this makes clear that s 53B is what happens when an FOI decision-maker grants access to a previously claimed conditionally exempt document - not when it is withheld.

Ciao

Julie

----- Forwarded message -----

From: Julie A.

Date: On Fri, Oct 11, 2019 at 4:39 pm

Subject: Fwd: Re: FOIREQ19/00196 - Your Freedom of Information Request

[SEC=OFFICIAL]

To: Amanda Nowland <amanda.nowland@oaic.gov.au>, FOIDR <foidr@oaic.gov.au>

Cc:

Dear Amanda,

I am considering your response, which I do recommend you provide in contrast to your earlier perfunctory comment that came before it, as it gives better insight into what you consider is the support of your belief.

This is necessary because ultimately it is the reasonableness of that belief and the

statutory construction of the Act, that will resolve the current controversy and aggrievement of my interests and rights.

Importantly, the exercise of a discretion under s 27A (and it is a discretionary action, as it requires a “state of satisfaction” to be formed by the decision maker [s 27A(1)(b)] as to whether someone might “reasonably wish” to make an objection to release **AND** that the decision-maker must have regard to certain specified factors [s 27A(2)(a-d)]) is a decision made under enactment - it is not, as you infer *an exercise of executive (non-statutory) “administrative process” or prerogative powers*. The source of power to defer access under s 27A is a statutory one and should not be misleadingly classified as anything else (as otherwise the argument is acting beyond your jurisdiction, *ultra vires*).

Similarly s 27A(6) (I think you mean s 27A(3) here because there has been no consideration yet of any submission) is the final step in the statutory process for deferring access under this provision - it is not enlivened until ss 27A(1) & 27A(2) have been lawfully and validly satisfied (they are preconditions to the exercise of s 27A(3)).

The controversy here is that, from my review, you have not demonstrated any consideration of the mandatory factors of s 27A(2) to enliven s 27A(3), nor does it appear from the very little you have given that you had the requisite state of reasonable satisfaction for s 27A(1).

Similarly, you appear to have misunderstood s 53B (Item 3) as it is only an **access grant decision if it is a decision of an agency... to give the applicant access to the document (or an edited copy of the document) because:**

(a) the document is not [not is] conditionally exempt under s 47F (personal privacy); or

(b) access to the document would not [not is], on balance, be contrary to the public interest for the purposes of subsection 11A(5)

What s 53B states is that where a conditional exemption has arisen, it is only an access grant decision if access is given. No such access having been given, s 53B does not apply.

Similarly there is no evidence for your claim that s 53A(b) relates to “search and retrieval processes not being completed properly” - that is not the words of that section, nor its meaning from construction of the provision. I will consider any evidence you can provide to support that basis. AAT Deputy President Forgie considered the meaning, via footnote, of s 53A(b) in XLTK and Secretary, Department of Home Affairs [2019] AATA 194 and her construction of s 53A(b) does not support your view either (that it has something to do with what occurs before an FOI decision is made, not the decision itself).

Before proceeding to making applications, I must give you a fair opportunity to put before me any reasons or evidence why this views you have expressed are reasonable and lawful - because the next steps should not be taken without providing such an opportunity. I will provide you two weeks within which to do so.

Your claim that review is limited to a s 70 complaint to the Information Commissioner or the Ombudsman shows you have misunderstood s 70 of the FOI Act. As the Guide to Part VIIB [s 68] makes clear:

The Information Commissioner may investigate an action taken by an agency in the performance of functions or the exercise of powers under this Act on a complaint from a person, or on the Information Commissioner’s initiative.

If a person disputes the merits of an access refusal decision or an access grant decision, this Act provides elsewhere for the review of that decision (see Parts VI, VII and VIIA).

This is an access refusal decision that you have made under ss 53A(b) because you have only given access to some documents, with the others conditionally exempted by you (which is still a refusal, even if not necessarily a permanent one).

Similarly, s 70 of the FOI Act gives no powers of review to the Ombudsman as you

suggest, nor is s 70 intended for the Information Commissioner to review her own FOI decisions (or even her own acts, which would be highly inappropriate).

Your claims effectively question the law you derive your jurisdiction from, and have seen you exceed it. I find it concerning that someone at your level can misconstrue the Act so badly, such as to claim s 53B (which only applies if documents are released) changes a decision to refuse (or potentially defer to be more accurate) access to one that (untenably, given the factual circumstances) grants access that it does not give!

Ciao

Julie

On Thu, Oct 10, 2019 at 9:31 am, Amanda Nowland <amanda.nowland@oaic.gov.au> wrote:

Our Ref: FOIREQ19/00196

Dear Julie

I refer to your email dated 2 October 2019 relating to the FOI decision issued to you in relation to your Freedom of Information request.

In this instance the decision is an **access grant decision** and not an access refusal decision. Under s 53B(3) of the *Freedom of Information Act 1982 (Cth)* (FOI Act) a decision is an access grant decision if, in relation to a request for access to a document section 27A applies in relation to personal information in the document about a living person the access grant decision is a decision of an agency to give the applicant access to the document (or an edited copy of the document).

An internal review of an access grant decision can only be applied for by the relevant third party (s 54A(1)).

In relation to whether the decision is an **access refusal decision** ss 53A(b) and 53A(c) state that:

An access refusal decision is any of the following decisions:

...

(b) a decision giving access to a document but not giving, in accordance with the request, access to all documents to which the request relates;

(c) a decision purporting to give, in accordance with a request, access to all documents to which the request relates, but not actually giving that access;

...

I have issued a decision to you that gives access to the documents in full. I have not provided you with all of the documents at this time because the third party I consulted with has review rights. This does not enliven s 53A(c) of the FOI Act. Under s 27A(6) of the FOI Act, an agency **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. Therefore, it cannot be said that I have not provided access to the documents I have purported to give access to, as the OAIC is required by the legislation to delay access until review rights have expired.

I note that s 53A(b) of the FOI Act refers to the search and retrieval process not being completed properly and may be reviewed if the FOI applicant does not consider that adequate searches were performed.

Section 70 Complaint

The decision to consult under s 27A is part of the administrative process in dealing with an FOI request. If you wish to lodge a complaint about this administrative process you may lodge a complaint to the Ombudsman under the Ombudsman Act 1976 (Cth), or to the Information Commissioner under s 70 of the FOI Act.

I will provide you with the remaining documents that are relevant to your FOI request once the review rights of the third party have run their course.

Regards,

Amanda



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----- Forwarded message -----

From: Julie A.

Date: On Wed, Oct 2, 2019 at 5:43 pm

Subject: Fwd: RE: FOIREQ19/00196 Your Freedom of Information request [SEC=OFFICIAL]

To: Amanda Nowland <amanda.nowland@oaic.gov.au>

Cc:

Dear Amanda,

Having conferred with a colleague, with respect to your claim that review cannot be had, your decision is reviewable as an access refusal decision under s 53A(b) and there is nothing in the Act that excludes review of your third party call under that provision, given your reason for only giving part access was your discretion to declare third party consultation. You are certainly entitled to rely on the Act, but that does not extend to you inserting words that are not part of the Act or deleting those that are there.

Perhaps you should consider the criticism Jarrett J directed to your colleague Irene Nicolaou in *Powell v Information Commissioner* [2019] FCCA 39 this year about OAIC decision makers rather high-handedly misdirecting themselves as to the extent of their jurisdiction, contrary to the words of the Act, causing them to incorrectly apply the law, take irrelevant considerations into account, and give unlawful statements about the breadth of their freedom to do or no do things.

Doesn't seem like the OAIC has learnt much from that judgment - unfortunately.

Ciao,

Julie

----- Forwarded message -----

From: Julie A.

Date: On Wed, Oct 2, 2019 at 4:35 pm

Subject: Fwd: RE: FOIREQ19/00196 Your Freedom of Information request [SEC=OFFICIAL]

To: Amanda Nowland <amanda.nowland@oaic.gov.au>

Cc:

Dear Amanda,

Firstly, your claim:

I am unable to provide any further details of the documents than the detail provided in the schedule.

How are you "unable" - what you mean is unwilling - in that you can but don't wish to, which is quite a different thing altogether. There is no statutory or policy bar preventing you, just your own choice (which is not a discretion under the Act).

Secondly, your claim:

The decision to consult with a third party is not a decision that is reviewable under the FOI Act.

This is incorrect - it is reviewable as a s 70 complaint, at a minimum.

Ciao

Julie

On Wed, Oct 2, 2019 at 4:27 pm, Amanda Nowland <amanda.nowland@oaic.gov.au> wrote:

Dear s 22

I refer to your email below and my FOI decision provided to you.

The schedule of documents provided to you with my FOI decision sets out the documents, and the page numbers for each of those documents. There are 55 pages in total that are within the scope of your request. I have provided 22 pages to you, and 33 pages will be provided once third party review rights have ended. I am unable to provide any further details of the documents than the detail provided in the schedule.

The decision to consult with a third party is not a decision that is reviewable under the FOI Act. The decision to consult a third party was communicated to you as soon as possible after I was advised of the need to consult with the third party. The third party has 30 days to request an internal review or IC Review of my decision. If a review has not been requested by 1st November 2019, the remaining documents will be provided to you in full.

Regards,

Amanda



Amanda Nowland | Senior Lawyer

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From: Julie A.

Sent: Wednesday, 2 October 2019 3:57 PM

To: Amanda Nowland <amanda.nowland@oaic.gov.au>

Subject: Re: FOIREQ19/00196 Your Freedom of Information request [SEC=OFFICIAL]

Dear Amanda,

This is the approach that should have been taken on 25 September 2019, as your own binding (to OAIC staff) guidelines require.

It is clear from the schedule that the documents involve relate only to records on interaction between Commonwealth officials acting in their official capacity and therefore have no 'personal privacy' component (it seems that this concerns incidental information such of the names of public servants, their official email addresses and official telephone numbers and similar that was captured by those records which is not 'personal information' under the Act).

I note you have not answered the relevant questions asked either.

I therefore request you to advise:

* the total number of pages of documents you have identified as being in scope; and

* of those, the number of pages of those documents that contain material you reasonably believe could be an unreasonable invasion of the privacy of a third party; and

* to provide an estimate of the percentage of the content of those pages that has material that you reasonably believe could be an unreasonable invasion of the privacy of a third party; and

* whether that material is irrelevant or incidental to the MR19/00030 (for example, personal greetings and exchanges between staff, discussions about an IC Review of another person mixed with MR19/00030, material that would otherwise be exempted for release anyway, etc).

In short, this appears to be a blatant abuse of process made in bad faith, for the sole purpose of delaying the completion of this FOI, particularly as instead of addressing relevant questions, you promote another 30 day review on your decision instead of answering reasonable questions to justify the exercise of this discretion (so the delay you intend results regardless)

So be it, I seek internal review of your decision to create a third party consultation, on the grounds that it is clear there is no private individual's details in these records, just interaction of Commonwealth officials acting in their official capacity in relation to this IC Review, that may contain irrelevant information that I have already given consent to redact - nothing enlivening s 26A.

I find this bad faith behaviour of yours puzzling and very very unnecessary.

s 22

On Wed, Oct 2, 2019 at 3:09 pm, Amanda Nowland
<amanda.nowland@oaic.gov.au> wrote:

Our Ref: FOIREQ19/00196

Dear Julie

Your Freedom of Information request

I refer to your request for access to documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act), received by the Office of the Australian Information Commissioner (OAIC) on 26 August 2019.

In your email you seek access to the following:

an electronic copy of all documents, created (or received) on or before 8 August 2019, held by the OAIC relating to MR19/00030 (but excluding copy of any email sent by me to the OAIC, which I already have record of; and any draft document).

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 11 documents (55 pages) within the scope of your request. A schedule describing the documents is attached to this email.

I have decided to grant you access in full to the relevant documents.

Release of the documents

A third party was consulted in the making of this decision and objected to the release of some of the material in the documents. Therefore, I am required, under ss 27(6) and 27A(6) of the FOI Act, to advise them of my decision and provide them with an opportunity to seek:

- internal review of my decision, or
- review of my decision by the Information Commissioner.

The third party has 30 days from the date they are notified of my decision in which to seek review. As a result, some of the documents cannot be released to you until this time has expired, or any internal review or appeal has been completed and my decision to release the document is upheld or confirmed. The remaining documents are attached.

Your review rights follow my signature below.

Regards,



Amanda Nowland | Senior Lawyer

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Office of the Australian Information Commissioner

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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 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. 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 contain personal information that would be unreasonable to publish. As a result, the documents will not be published on our disclosure log.

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From: Julie A.
Date: On Wed, Oct 2, 2019 at 2:59 pm
Subject: Fwd: Re: FOIREQ10/00196- Your freedom of information request [SEC=OFFICIAL]
To: FOIDR <foidr@oaic.gov.au>, Amanda Nowland <amanda.nowland@oaic.gov.au>

Cc:

I am still awaiting a response to this from the OAIC, and it is a matter that deserves a response, as it seems apparent that this third party delay is tainted by bad faith. If no response is received within the next few days, to object to this claim, then it accepted that the OAIC do not dispute that fact.

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From: Julie A.

Date: On Tue, Sep 24, 2019 at 2:03 pm

Subject: Fwd: Re: FOIREQ10/00196- Your freedom of information request

[SEC=OFFICIAL]

To: Amanda Nowland <amanda.nowland@oaic.gov.au>, foi@oaic.gov.au

<foi@oaic.gov.au>

Cc:

Hi Amanda,

This FOI is for records held by the OAIC that relate to MR19/00030 (including the RESOLVE report, but with consent to redact any entries after 8 August 2018) created or received up to and including 8 August 2018 (excluding emails already sent or received by me, and any draft documents), which captures records of internal official communication between OAIC staff performing their official duties, and between the Respondent agency staff, also performing their official duties.

As you would be aware, thirty party consultation extensions can only occur where a document caught by the scope of the FOI request

I accept your apology for the delay in this notification, but note as “Agencies and ministers are encouraged to build into their FOI process an early and quick assessment of whether an extension may be required” OAIC staff should heed their own guidance as issued in the Commissioner’s own FOI Guidelines.

I also note the Commissioner’s own FOI Guidelines state that “Where a third party has review rights in relation to only some of the documents” that an agency or minister should provide the applicant with access to those documents not containing any s 26A (documents affecting Commonwealth-State relations), s 27 (documents affecting business information) or s 27A (documents affecting personal privacy) at the earliest opportunity.

Similarly the Commissioner’s own FOI Guidelines state that where an FOI captures documents that may “also reveal personal information about another individual” and that information can be separated (for example, the person information is irrelevant or incidental to the scope, and therefore can be redacted instead under s 47F in this instance), then that is what should occur.

As you have stated “personal information” it is presumably s 27A you are relying on now (even though you fail to give the required notice as to which section of the enactment you are relying on to exercise this statutory power). As the Commissioner’s own FOI Guidelines state, s 27A is only to be used where there is a ‘reasonably held’ opinion that the document contains material, that if released, could reasonably pose an unreasonable invasion of that third party’s privacy, that disclosure of which would be contrary to the public interest.

What constitutes ‘unreasonable invasion’ requires “a consideration of all circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance” to the FOI scope, to be weighed against the positive duty to disclose under the Act (unless no public purpose would be achieved through release).

Another relevant factor is the weight of any detriment that disclosure may cause to the person to whom the information relates.

But the overwhelming test is that if the alleged disclosure is one that would constitute an unreasonable invasion of personal privacy, but “were of no demonstrable relevance to the affairs of government” then s 47F redaction is to be used in lieu of s 27A third party consultation.

Similarly, the Commissioner's own FOI Guidelines states that "information about agency employees included in documents because of their usual duties or responsibilities" (such as their name, email addresses, titles, decisions or opinions, etc) is not personal information.

Given the nature of the documents within scope, it is very unlikely that a person or persons that the OAIC seeks to consult under s 27A is someone other than a public servant or Minister.

As, in order to engage the s 27A power, you were required to review the documents the OAIC otherwise intended to make an access grant decision on (as if the agency intends to refuse, there is no grounds on which to seek if a third party intends to object to a release), you will be aware of how many documents in scope are being consulted on, and the extent of the material on the pages of those documents that may be an 'unreasonable disclosure' of personal information.

In my view it is highly likely that the documents on which such a 'reasonable view' could be formed would be low, and that such material would be incidental/irrelevant to the scope, such that the proper course would be to consent to its redaction rather than have the OAIC cause unreasonable delay to the decision/release as a whole for a few lines of irrelevant material.

I therefore request you to advise:

- * the total number of pages of documents you have identified as being in scope; and
- * of those, the number of pages of those documents that contain material you reasonably believe could be an unreasonable invasion of the privacy of a third party; and
- * to provide an estimate of the percentage of the content of those pages that has material that you reasonably believe could be an unreasonable invasion of the privacy of a third party; and
- * whether that material is irrelevant or incidental to the MR19/00030 (for example, personal greetings and exchanges between staff, discussions about an IC Review of another person mixed with MR19/00030, material that would otherwise be exempted for release anyway, etc).

As these are matters you would have already been required to review before being able to lawfully engage s 27A, this is a simple process of restatement.

Ciao,

Julie

On Tue, Sep 24, 2019 at 12:11 pm, Amanda Nowland
<amanda.nowland@oaic.gov.au> wrote:

Our reference: **FOIREQ19/00196**

Dear Julie

I refer to your request made under the Freedom of Information Act 1982 (Cth) (FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 26 August 2019.

Because your request covers documents which contain information concerning personal information, the OAIC is required to consult the individuals under s 27A of the FOI Act before making a decision on release of the documents. For this reason, the period for processing your request has been extended by 30 days to allow time to consult (see s 15(6) of the FOI Act). The processing period

for your request will now end on 25 October 2019.

The need to consult with third parties has just been brought to my attention, and I apologise for the late notice of this consultation.

We will take into account any comments we receive but the final decision about whether to grant you access to the documents you requested rests with the office of the OAIC.

Kind Regards,

Amanda



Amanda Nowland | Senior Lawyer

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From: Amanda Nowland
Sent: Thursday, 29 August 2019 4:01 PM
To: Julie A.
Subject: FOIREQ10/00196- Your freedom of information request
[SEC=OFFICIAL]

Our reference: **FOIREQ19/00196**

Dear Julie

Freedom of Information request

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 26 August 2019.

Scope of your request

In your email you seek access to the following:

an electronic copy of all documents, created (or received) on or before 8 August 2019, held by the OAIC relating to MR19/00030 (but excluding copy of any email sent by me to the OAIC, which I already have record of; and any draft document).

In order to process your request as efficiently as possible, I will exclude duplicates and early parts of email streams that are captured in later email streams from the scope of this request, unless you advise me otherwise.

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your request no later than 30 days after the day we receive it. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third

parties about certain information, such as business documents or documents affecting their personal privacy.

As we received your request on 26 August 2019, we must process your request by 25 September 2019.

Disclosure Log

Documents released under the FOI Act may be published online on our disclosure log, unless they contain personal or business information that would be unreasonable to publish.

If you would like to discuss this matter please contact me on my contact details set out below.

Regards

Amanda



Amanda Nowland | Senior Lawyer

Legal Services

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From: [Amanda Nowland](#)
To: s 22
Subject: Your FOI Request [SEC=OFFICIAL]
Date: Wednesday, 6 November 2019 10:07:00 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[FOIREQ1900196 Documents subject to third party consultation.pdf](#)

FOIREQ19/00196

Dear Julie,

Please find attached the remaining documents in relation to your FOI request. The opportunity to seek review for the consulted third party has now expired.

Regards,
Amanda



Amanda Nowland | Senior Lawyer
Legal Services
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9646 | xxxxxx.xxxxxxx@xxxx.xxx.xx

[f](#) | [in](#) | [t](#) | [✉](#) [Subscribe to OAICnet newsletter](#)

From: [FOI](#)
To: [FOIDR](#)
Cc: [FOI](#)
Subject: RE: REQ-0002393 - Acknowledgement of IC review - further information request MR19-00030 - Julie [SEC=OFFICIAL]
Date: Thursday, 11 July 2019 2:41:26 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[REQ-0002393_Agency Response Letter to OAIC MR19-00030 - Julie - Request for further information.pdf](#)

OFFICIAL

OAIC reference: MR19-00030

Agency reference: FOI- 1811002 – REQ-0002393

Dear Mr English

Good afternoon. Please find attached the Agency's official response to the IC Review – further information request.

Please let me know if you need anything else.

Thanks

Therese Mullan

Acting Director, Information Office, Strategic Service Design and Delivery
 Infrastructure Operations

Australian Digital Health Agency
 Scarborough House, Level 6, 1 Atlantic Street, Woden ACT 2606
 Phone [+61 2 6151 8684](tel:+61261518684)
 Email xxxxxx.xxxxxx@xxxxxxxxxxxxx.xxx.xx
 Web www.digitalhealth.gov.au

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From: FOI
Sent: Friday, 5 July 2019 12:05 PM
To: FOIDR <xxxxx@xxxx.xxx.xx>; FOI <xxx@xxxxxxxxxxxxx.xxx.xx>
Subject: RE: REQ-0002393 - Acknowledgement of IC review - further information request MR19-00030 - Julie [SEC=OFFICIAL]

OFFICIAL

OAIC reference: MR19-00030

Agency reference: FOI- 1811002 – REQ-0002393

Dear Carl,

This email acknowledges receipt of your IC review – further information request.

The Agency will endeavour to respond by **19 July 2019**.

Regards

Isabella Hill-Sotomayor

FOI Team

Information Office

Strategic Service Design and Delivery

Australian Digital Health Agency

Email xxx@xxxxxxxxxxxxx.xxx.xx

Web www.digitalhealth.gov.au

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From: FOIDR <xxxxx@xxxx.xxx.xx>

Sent: Friday, 5 July 2019 10:51 AM

To: FOI <xxx@xxxxxxxxxxxxx.xxx.x>

Subject: RE: Australian Digital Health Agency Response to OAIC MR19-00030 - Julie
[SEC=OFFICIAL]

Our reference: MR19/00030

Agency reference: FOI-1811002

Ms Bettina McMahon

Australian Digital Health Agency

Sent by email: xxx@xxxxxxxxxxxxx.xxx.xx

IC review – further information requested

Dear Ms McMahon

I write to you in relation to an Information Commissioner review (IC review) application made by Julie of a Charges FOI decision made by the Australian Digital Health Agency (ADHA).

I refer to your submission dated 27 February 2019, which included copies of the case officer's calculations.

I note that the applicant stated in her IC review application that:

The Chief Operating Officer of the Australian Digital Health Agency did not directly address the contentions made that the charges had been incorrectly calculated, but rather stated that "As you have not stated any financial hardship grounds or public interest grounds" it would not withdraw or vary its charges estimate (despite that these two grounds are not the sole grounds for the variation or withdrawal of charges estimates/decisions).

...

These estimates exceed the threshold the Information Commissioner typically allows for such activities to be estimated as taking (being 30 seconds per page to read, to a upper maximum of 5 minutes for particularly complex and technical documents), which is especially applicable here given these documents in question are produced for maximum readability and rapid comprehension, given they are essentially talking points and reference notes used to rapidly provide responses to questions from the Senate Estimates committee.

Based on my review of Attachment B to your submissions, the calculations relating to decision making time appear to have been assessed on the basis that 5 minutes per page would be required to process the request. You state in your submission that:

The charges notice was formulated using the AGS calculator which is a standard Commonwealth practice in FOI matters across the Commonwealth. The Agency FOI officer, relied on information given to her to formulate those charges

The Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines) provide the following advice at paragraphs [4.57] to [4.59] in relation to the charges calculator:

A charges calculator cannot produce an accurate estimate without accurate inputs and caution is required in adopting such a resource. Some documents may contain complex material, which might justify longer processing times, while others may be quite straight-forward, and would require significantly less time to review.

A common parameter that is included in the charges calculator is that the examination of relevant pages for decision making would take five minutes per page, and for exempt material, an additional five minutes per page. Unless the document at issue is particularly complex, it may be difficult for an agency or minister to adequately justify an estimate that it would take 10 minutes to process each page of the relevant documents.

Where a decision is made to utilise the charges calculator to estimate a charge, the agency or minister should examine a sample of the relevant documents and adjust the parameters of the charges calculator accordingly. ...

In previous IC review decisions in relation to practical refusal matters, it has generally been considered that between 30 seconds per page to 5 minutes per page^[1] is a reasonable estimate of the time required for an agency to assess and edit documents, except where the documents contain a substantial amount of sensitive information.

I also draw your attention to paragraphs [4.60] to [4.62] of the FOI Guidelines, which states:

Generally, where a large number of documents have been identified as being within the scope of the request and the agency or minister decides that it is appropriate to impose a charge, there is an expectation that the agency or minister will obtain an accurate estimate by sampling a reasonable selection of the relevant documents.

A representative sample of at least 10% of the documents is considered as an appropriate sample size to assess the processing time. This provides the agency or minister with an indication of the time that may be required for the decision-making process.

Agencies and ministers should assess the amount of time it would take to search and retrieve the documents held in the representative sample, as well as the amount of time it would take to examine, consider any exemptions that may apply and prepare a decision for those documents. The figures derived from the representative sample should then be used to calculate the total processing time for the documents falling within the scope of the applicant's request. ...

I would appreciate if you could advise if the 5 minutes per page calculation for decision making time for all documents falling within the scope of the request, and 10 minutes per page for pages containing exempt material, used in both the original charges decision and the reassessment provided with the ADHA's submissions, is based on a representative sample of the documents identified as falling within the scope of the FOI request or reflects the actual time taken by the officers performing the required decision making tasks.

If the calculation is not based on either the actual time taken or a representative sample, I would appreciate if the ADHA could examine a representative sample of 10% of the identified documents

and advise the OAIC if the time relied on by the AHDA in its decision and submissions to perform decision making tasks is an accurate reflection of the time required..

I would appreciate a response by **19 July 2019**.

Please do not hesitate to contact me if you wish to discuss this email. I can be contacted on 02 9284 9745.

Kind regards



Carl English | Acting Review Adviser (Legal)
Freedom of Information Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9745 | carl.english@oaic.gov.au



From: Cecilia Pattison-Levi <Cecilia.Pattison-Levi@digitalhealth.gov.au>
Sent: Wednesday, 27 February 2019 9:33 AM
To: Carl English <carl.english@oaic.gov.au>; FOIDR <foidr@oaic.gov.au>
Cc: FOI <foi@digitalhealth.gov.au>
Subject: Australian Digital Health Agency Response to OAIC MR19-00030 - Julie

Dear Carl,

Good morning. Please see the Australian Digital Health Agency response to MR19-00030 – Julie.

Regards,

Cecilia

Cecilia Pattison-Levi

FOI Officer, Information Office
Strategic Service Design and Delivery

Australian Digital Health Agency
Scarborough House, Level 6, 1 Atlantic Street, Woden ACT 2606

Phone [+61 2 6223 0750](tel:+61262230750)

Email cecilia.pattison-levi@digitalhealth.gov.au

Web www.digitalhealth.gov.au

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[\[1\]](#) See, 'FF' and Australian Taxation Office [\[2015\] AICmr 25](#) [23].

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11 July 2019

Our reference: 1811002 (REQ-0002393)
OAIC reference: MR19/00030

Mr Carl English
Acting Review Advisor (Legal)
Freedom of Information Dispute Resolution
By email: foidr@oaic.gov.au

Agency response to FOI Matter 1811002: IC Review – further information requested

Dear Mr English,

I refer to your letter of 5 July 2019 requesting the Australian Digital Health Agency (the Agency) provide further information in relation to the IC review of a charges decision under section 54Z of the *Freedom of Information Act 1982* (the FOI Act) by the applicant Julie via the right to know website.

Information requested

I would appreciate if you could advise if the 5 minutes per page calculation for decision making time for all documents falling within the scope of the request, and 10 minutes per page for pages containing exempt material, used in both the original charges decision and the reassessment provided with the ADHA's submissions, is based on a representative sample of the documents identified as falling within the scope of the FOI request or reflects the actual time taken by the officers performing the required decision making tasks.

If the calculation is not based on either the actual time taken or a representative sample, I would appreciate if the ADHA could examine a representative sample of 10% of the identified documents and advise the OAIC if the time relied on by the ADHA in its decision and submissions to perform decision making tasks is an accurate reflection of the time required.

Response:

I believe the original and revised calculation of charges for the FOI request for decision making time was based on a representative sample of documents identified as falling within the scope of the FOI request.

The FOI officer involved in both requests has since left the Agency and I am relying on the documentation and charges calculations kept on these matters.

The current FOI Officer has revisited the documents and determined the following:

Description	No. of pages
Full pages	111
Blank pages	25
½ pages or less complex	40
Total pages	176

A more conservative charge estimate is provided at Attachment A. This is based on the original estimate but using the actual number of pages and a more conservative calculation of 3 minutes per page and 6 minutes per pages containing exempt material. This estimate is still more than the original but less than what the Agency believes would be the actual cost to the Agency for processing this FOI request.

A sample of 10% of pages (15) indicates a word count of between 211 and 304 words per page which averages out to approximately 256 words.

As previously advised the Agency there are exemptions that need to be applied to each page under sections 47B, 47C, 47F, 47G and possibly 22. The Agency would also need to consult with third parties. Each of the documents requires some form of redaction to be made to account for Commonwealth and State relations, deliberative information, personal and business privacy considerations and irrelevant material.

We are happy to discuss this response as necessary.

Yours sincerely



Bettina McMahon
Authorised Decision Maker

Attachment A

Document estimate	
Number of relevant documents	1
Number of relevant pages (or other size descriptor)	151

PROCESSING CHARGES		
Search and retrieval		
Task	Time (hours)	Cost @ \$15/hr
Search and retrieval of relevant electronic and registry files	0.17	\$2.50
Search and retrieval of relevant pages in file	0.75	\$11.25
Preparation of schedule of documents	0	\$0
A. Search and retrieval subtotal	0.92	\$13.75
Decision making		
Task	Time (hours)	Cost @ \$20/hr
Examination of documents (3 minutes per page)	7.55	\$151.00
Consultation with third parties	0	\$0
Preparation of documents for release (3 minutes per page)	0.40	\$8.00
Preparation of notice of access decision	5.42	\$108.32
Decision making subtotal (before deduction of 5 hours)	13.37	\$267.32
B. Decision making subtotal (after deduction of first 5 hours free)	8.37	\$167.32

ACCESS AND DELIVERY CHARGES		
	No. of pages	Cost
Transcription (\$4.40/page)	0	\$0
Photocopy (\$0.10/page)	0	\$0
Other copies (\$4.40/page)	0	\$0
		Cost
Electronic production (actual cost)	0	\$0

Replay [replaying of sound or film] (actual cost)	0	\$0
Delivery (actual cost)	0	\$0
	Time	Cost
Inspection (@ \$6.25 per half hour)	0	\$0
<i>C. Access and delivery charges subtotal</i>	<i>0</i>	<i>\$0</i>

ESTIMATED TOTALS AND DEPOSIT	
ESTIMATED TOTAL (total of A, B and C)	\$181.07
REQUIRED DEPOSIT	\$45.27

From: [Hannah Kreiselmaier](#)
To: [Carl English](#)
Subject: REQ-0002393 - Acknowledgement of IC review - further information request MR19-00030 - Julie [SEC=UNOFFICIAL]
Date: Thursday, 11 July 2019 2:47:00 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[REQ-0002393 Agency Response Letter to OAIC MR19-00030 - Julie - Request for further information.pdf](#)

Hi Carl

Just flagging that ADHA has responded to your RFI ([attached](#)) in MR19/00030. I have saved the email on the resolve case file.

Thanks

Hannah

From: FOI <xxx@xxxxxxxxxxxxxxx.xxx.xx>
Sent: Thursday, 11 July 2019 2:41 PM
To: FOIDR <xxxxx@xxxx.xxx.xx>
Cc: FOI <xxx@xxxxxxxxxxxxxxx.xxx.xx>
Subject: RE: REQ-0002393 - Acknowledgement of IC review - further information request MR19-00030 - Julie [SEC=OFFICIAL]

OFFICIAL

OAIC reference: MR19-00030

Agency reference: FOI- 1811002 – REQ-0002393

Dear Mr English

Good afternoon. Please find attached the Agency's official response to the IC Review – further information request.

Please let me know if you need anything else.

Thanks

Therese Mullan

Acting Director, Information Office, Strategic Service Design and Delivery
Infrastructure Operations

Australian Digital Health Agency
 Scarborough House, Level 6, 1 Atlantic Street, Woden ACT 2606
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 Email xxxxxxx.xxxxxx@xxxxxxxxxxxxxxx.xxx.xx
 Web www.digitalhealth.gov.au

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From: FOI

Sent: Friday, 5 July 2019 12:05 PM

To: FOIDR <xxxxx@xxxx.xxx.xx>; FOI <xxx@xxxxxxxxxxxxxxxx.xxx.x>

Subject: RE: REQ-0002393 - Acknowledgement of IC review - further information request MR19-00030 - Julie [SEC=OFFICIAL]

OFFICIAL

OAIC reference: MR19-00030

Agency reference: FOI- 1811002 – REQ-0002393

Dear Carl,

This email acknowledges receipt of your IC review – further information request.

The Agency will endeavour to respond by **19 July 2019**.

Regards

Isabella Hill-Sotomayor

FOI Team

Information Office

Strategic Service Design and Delivery

Australian Digital Health Agency

Email xxx@xxxxxxxxxxxxxxxx.xxx.xx

Web www.digitalhealth.gov.au

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From: FOIDR <xxxxx@xxxx.xxx.xx>

Sent: Friday, 5 July 2019 10:51 AM

To: FOI <xxx@xxxxxxxxxxxxxxxx.xxx.x>

Subject: RE: Australian Digital Health Agency Response to OAIC MR19-00030 - Julie [SEC=OFFICIAL]

Our reference: MR19/00030

Agency reference: FOI-1811002

Ms Bettina McMahon

Australian Digital Health Agency

Sent by email: xxx@xxxxxxxxxxxxxxxx.xxx.xx

IC review – further information requested

Dear Ms McMahon

I write to you in relation to an Information Commissioner review (IC review) application made by Julie of a Charges FOI decision made by the Australian Digital Health Agency (ADHA).

I refer to your submission dated 27 February 2019, which included copies of the case officer's calculations.

I note that the applicant stated in her IC review application that:

The Chief Operating Officer of the Australian Digital Health Agency did not directly address the contentions made that the charges had been incorrectly calculated, but rather stated that "As you have not stated any financial hardship grounds or public interest grounds" it would not withdraw or vary its charges estimate (despite that these two grounds are not the sole grounds for the variation or withdrawal of charges estimates/decisions).

...

These estimates exceed the threshold the Information Commissioner typically allows for such activities to be estimated as taking (being 30 seconds per page to read, to a upper maximum of 5 minutes for particularly complex and technical documents), which is especially applicable here given these documents in question are produced for maximum readability and rapid comprehension, given they are essentially talking points and reference notes used to rapidly provide responses to questions from the Senate Estimates committee.

Based on my review of Attachment B to your submissions, the calculations relating to decision making time appear to have been assessed on the basis that 5 minutes per page would be required to process the request. You state in your submission that:

The charges notice was formulated using the AGS calculator which is a standard Commonwealth practice in FOI matters across the Commonwealth. The Agency FOI officer, relied on information given to her to formulate those charges

The [Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act](#) (the FOI Guidelines) provide the following advice at paragraphs [4.57] to [4.59] in relation to the charges calculator:

A charges calculator cannot produce an accurate estimate without accurate inputs and caution is required in adopting such a resource. Some documents may contain complex material, which might justify longer processing times, while others may be quite straight-forward, and would require significantly less time to review.

A common parameter that is included in the charges calculator is that the examination of relevant pages for decision making would take five minutes per page, and for exempt material, an additional five minutes per page. Unless the document at issue is particularly complex, it may be difficult for an agency or minister to adequately justify an estimate that it would take 10 minutes to process each page of the relevant documents.

Where a decision is made to utilise the charges calculator to estimate a charge, the agency or minister should examine a sample of the relevant documents and adjust the parameters of the charges calculator accordingly. ...

In previous IC review decisions in relation to practical refusal matters, it has generally been considered that between 30 seconds per page to 5 minutes per page^[1] is a reasonable estimate of the time required for an agency to assess and edit documents, except where the documents contain a substantial amount of sensitive information.

I also draw your attention to paragraphs [4.60] to [4.62] of the FOI Guidelines, which states:

Generally, where a large number of documents have been identified as being within the scope of the request and the agency or minister decides that it is appropriate to impose a charge, there is an expectation that the agency or minister will obtain an accurate estimate by sampling a reasonable

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I would appreciate a response by **19 July 2019**.

Please do not hesitate to contact me if you wish to discuss this email. I can be contacted on 02 9284 9745.

Kind regards



Carl English | Acting Review Adviser (Legal)
Freedom of Information Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9745 | carl.english@oaic.gov.au



From: Cecilia Pattison-Levi <Cecilia.Pattison-Levi@digitalhealth.gov.au>
Sent: Wednesday, 27 February 2019 9:33 AM
To: Carl English <carl.english@oaic.gov.au>; FOIDR <foidr@oaic.gov.au>
Cc: FOI <foi@digitalhealth.gov.au>
Subject: Australian Digital Health Agency Response to OAIC MR19-00030 - Julie

Dear Carl,


Good morning. Please see the Australian Digital Health Agency response to MR19-00030 – Julie.

Regards,

Cecilia

Cecilia Pattison-Levi

FOI Officer, Information Office
Strategic Service Design and Delivery


Australian Digital Health Agency
Scarborough House, Level 6, 1 Atlantic Street, Woden ACT 2606
Phone [+61 2 6223 0750](tel:+61262230750)
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^[1] See, 'FF' and Australian Taxation Office [\[2015\] AICmr 25](#) [23].

From: [FOIDR](#)
To: "FOI"
Subject: RE: REQ-0002393 - Acknowledgement of IC review - further information request MR19-00030 - Julie [SEC=OFFICIAL]
Date: Friday, 12 July 2019 2:27:00 PM
Attachments: [image002.jpg](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.jpg](#)

Dear Ms Mullan

Thank you for your response.

I will consider the agency's response and contact you to advise the next steps shortly.

Kind regards



Carl English | Acting Review Adviser (Legal)
 Freedom of Information Dispute Resolution
 Office of the Australian Information Commissioner
 GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
 +61 2 9284 9745 | carl.english@oaic.gov.au



From: FOI <xxx@xxxxxxxxxxxxxx.xxx.xx>
Sent: Thursday, 11 July 2019 2:41 PM
To: FOIDR <xxxxx@xxxx.xxx.xx>
Cc: FOI <xxx@xxxxxxxxxxxxxx.xxx.xx>
Subject: RE: REQ-0002393 - Acknowledgement of IC review - further information request MR19-00030 - Julie [SEC=OFFICIAL]

OFFICIAL

OAIC reference: MR19-00030

Agency reference: FOI- 1811002 – REQ-0002393

Dear Mr English

Good afternoon. Please find attached the Agency's official response to the IC Review – further information request.

Please let me know if you need anything else.

Thanks

Therese Mullan

Acting Director, Information Office, Strategic Service Design and Delivery

Infrastructure Operations

Australian Digital Health Agency

Scarborough House, Level 6, 1 Atlantic Street, Woden ACT 2606

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OFFICIAL

OAIC reference: MR19-00030

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Regards

Isabella Hill-Sotomayor

FOI Team

Information Office

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Australian Digital Health Agency

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From: FOIDR <xxxxxx@xxxx.xxx.xx>

Sent: Friday, 5 July 2019 10:51 AM

To: FOI <xxx@xxxxxxxxxxxxx.xxx.x>

Subject: RE: Australian Digital Health Agency Response to OAIC MR19-00030 - Julie [SEC=OFFICIAL]

Our reference: MR19/00030

Agency reference: FOI-1811002

Ms Bettina McMahon

Australian Digital Health Agency

Sent by email: xxx@xxxxxxxxxxxxxx.xxx.xx

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In previous IC review decisions in relation to practical refusal matters, it has generally been considered that between 30 seconds per page to 5 minutes per page^[1] is a reasonable estimate of

the time required for an agency to assess and edit documents, except where the documents contain a substantial amount of sensitive information.

I also draw your attention to paragraphs [4.60] to [4.62] of the FOI Guidelines, which states:

Generally, where a large number of documents have been identified as being within the scope of the request and the agency or minister decides that it is appropriate to impose a charge, there is an expectation that the agency or minister will obtain an accurate estimate by sampling a reasonable selection of the relevant documents.

A representative sample of at least 10% of the documents is considered as an appropriate sample size to assess the processing time. This provides the agency or minister with an indication of the time that may be required for the decision-making process.

Agencies and ministers should assess the amount of time it would take to search and retrieve the documents held in the representative sample, as well as the amount of time it would take to examine, consider any exemptions that may apply and prepare a decision for those documents. The figures derived from the representative sample should then be used to calculate the total processing time for the documents falling within the scope of the applicant's request. ...

I would appreciate if you could advise if the 5 minutes per page calculation for decision making time for all documents falling within the scope of the request, and 10 minutes per page for pages containing exempt material, used in both the original charges decision and the reassessment provided with the ADHA's submissions, is based on a representative sample of the documents identified as falling within the scope of the FOI request or reflects the actual time taken by the officers performing the required decision making tasks.

If the calculation is not based on either the actual time taken or a representative sample, I would appreciate if the ADHA could examine a representative sample of 10% of the identified documents and advise the OAIC if the time relied on by the ADHA in its decision and submissions to perform decision making tasks is an accurate reflection of the time required..

I would appreciate a response by **19 July 2019**.

Please do not hesitate to contact me if you wish to discuss this email. I can be contacted on 02 9284 9745.

Kind regards



Carl English | Acting Review Adviser (Legal)
Freedom of Information Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9745 | carl.english@oaic.gov.au



From: Cecilia Pattison-Levi <Cecilia.Pattison-Levi@digitalhealth.gov.au>
Sent: Wednesday, 27 February 2019 9:33 AM
To: Carl English <carl.english@oaic.gov.au>; FOIDR <foidr@oaic.gov.au>
Cc: FOI <foi@digitalhealth.gov.au>
Subject: Australian Digital Health Agency Response to OAIC MR19-00030 - Julie

Dear Carl,


Good morning. Please see the Australian Digital Health Agency response to MR19-00030 – Julie.

Regards,

Cecilia

Cecilia Pattison-Levi

FOI Officer, Information Office
Strategic Service Design and Delivery


Australian Digital Health Agency
Scarborough House, Level 6, 1 Atlantic Street, Woden ACT 2606
Phone [+61 2 6223 0750](tel:+61262230750)
Email xxxxxx.xxxxxxxxxxxxxx@xxxxxxxxxxxxx.xxx.xx
Web www.digitalhealth.gov.au

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[1] See, 'FF' and Australian Taxation Office [\[2015\] AICmr 25](#) [23].

From: [FOIDR](#)
To: "FOI"
Subject: MR19/00030 - IC review application [SEC=OFFICIAL]
Date: Thursday, 25 July 2019 2:18:00 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[MR19-00030 - Notification of IC review.pdf](#)

Our reference: MR19/00030
Your reference: FOI-1811002

Dear Ms Mullan

Thank you for your telephone call earlier today.

As discussed, the OAIC has considered the revised estimates you provided regarding the processing time in relation to Julie's (the applicant) FOI request. I note that the ADHA now estimates the charges at \$181.07. The ADHA initially assessed that the applicant was liable to pay \$138.07 to process the request.

On 6 February 2019, the OAIC notified the ADHA that the Information Commissioner would review the ADHA's charges decision and provided a preliminary view that it did not appear that the ADHA has discharged its onus to justify its decision that a charge of \$138.07 should be imposed in relation to the applicant's request. A copy of the notification is attached for your reference.

We noted that in exercising the discretion to impose a charge, an agency should take into account the 'lowest reasonable cost objective' in s 3(4) of the FOI Act, which provides that 'functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost'.

We also referred to the FOI guidelines which discuss at [\[4.4\]](#) that:

Agencies and ministers should interpret the 'lowest reasonable cost' objective broadly in imposing any charges under the FOI Act. That is, an agency or minister should have regard to the lowest reasonable cost to the applicant, to the agency or minister, and the Commonwealth as a whole. Where the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate not to impose a charge.

In *Australian Associated Press Pty Ltd and Department of Immigration and Border Protection* [\[2015\] AICmr 65](#) [31], the former Information Commissioner stated:

I note that in this case, there is a danger that the cost of calculating and collecting a charge might exceed the cost to the agency of processing the request, which would militate in favour of the waiver of the charge.

I note that the updated assessment is only \$43 dollars more than the initial assessment. Consequently the ADHA may wish to consider making revised decision under s 55G, waiving the charge.

I would appreciate if you could advise if the ADHA is willing to make a revised decision, or provide further submissions by **8 August 2019**.

Kind regards

Carl English | Acting Review Adviser (Legal)
Freedom of Information Dispute Resolution
Office of the Australian Information Commissioner



GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9745 | carl.english@oaic.gov.au



From: FOIDR
To: "FOI"
Subject: RE: MR19/00030 - IC review application [SEC=OFFICIAL]
Date: Tuesday, 6 August 2019 4:09:00 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Dear Ms Mullen

Thank you for your email and your assistance in this matter.

The ADHA should provide a copy of the attached agreement, once it is signed, to both the applicant and the OAIC. Once a copy has been received by the OAIC, we will contact the applicant to discuss the next steps.

I acknowledge your advice that the statutory timeframe will likely be extended under s 15(6) of the FOI Act.

If you have any questions in about this email or the next steps in this matter, please feel free to contact me on 02 9284 9745.

Kind regards



Carl English | Acting Review Adviser (Legal)
 Freedom of Information Dispute Resolution
 Office of the Australian Information Commissioner
 GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
 +61 2 9284 9745 | carl.english@oaic.gov.au



From: FOI <xxx@xxxxxxxxxxxxxxx.xxx.xx>
Sent: Tuesday, 6 August 2019 3:16 PM
To: FOIDR <xxxxx@xxxx.xxx.xx>
Cc: FOI <xxx@xxxxxxxxxxxxxxx.xxx.xx>
Subject: FW: MR19/00030 - IC review application [SEC=OFFICIAL]
Importance: High

OFFICIAL

Our reference: 1811002/REQ-0002688

OAIC reference: 19/00030

Dear Carl,

Thank you for your email.

The Agency would like to submit the following in response to the OAIC. The Agency is willing to

make a revised decision, or provide further submissions by **8 August 2019**.

1. The Agency confirms agreement to waive the charges applied to the applicant's request for information and making a revised decision under s55G of the FOI Act to this effect. We note the Agency underestimated the charges on this occasion, and accordingly accept that the charges amount advised to the applicant will be waived on this occasion.
2. The Agency will proceed with processing the FOI request. There are five days remaining in the legislative timeframe from the date of the charges letter. The Agency wishes to add 30 days due to the need to consult third parties to undertake the following:
 - As previously advised by the Agency there are exemptions that need to be applied to each page under sections 47B, 47C, 47F, 47G and possibly s22 of the FOI Act.
 - Each of the documents requires consideration and likely some form of redaction to be made to account for Commonwealth and State relations, deliberative information, personal and business privacy considerations and irrelevant material.
 - Consult with a number of affected third parties, such as Datacom and Accenture.

Attached is a draft notice the Agency is intending on sending the applicant. I would appreciate it if you could advise if the notice is appropriate given the circumstances or whether the IC handle all correspondence to the applicant.

Thanks

Therese Mullan

FOI Team

Information Office

Strategic Service Design and Delivery

Australian Digital Health Agency

Email xxx@xxxxxxxxxxxxx.xxx.xx

Web www.digitalhealth.gov.au

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From: FOIDR <xxxxx@xxxx.xxx.xx>

Sent: Wednesday, 31 July 2019 1:15 PM

To: FOI <xxx@xxxxxxxxxxxxx.xxx.xx>

Subject: RE: MR19/00030 - IC review application [SEC=OFFICIAL]

Dear Therese

Thank you for your email. I attempted to call you and left a message.

The OAIC would prefer that the revised decision be finalised by 8 August 2019, if possible.

However, I note that this IC review only relates to the decision to apply charges. The statutory timeframe in relation to the decision in relation to whether to grant the applicant access to the documents was suspended at the time the ADHA notified that applicant of their liability to pay a charge (s 31 of the FOI Act). Consequently, the ADHA may have further time left in the statutory

timeframe to consider the access decision.

If you wish to discuss this information, please feel free to call me on 02 9284 9745.

Kind regards



Carl English | Acting Review Adviser (Legal)
Freedom of Information Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9745 | carl.english@oaic.gov.au



From: FOI <foi@digitalhealth.gov.au>
Sent: Wednesday, 31 July 2019 10:41 AM
To: FOIDR <foidr@oaic.gov.au>
Cc: FOI <foi@digitalhealth.gov.au>
Subject: RE: MR19/00030 - IC review application [SEC=OFFICIAL]

OFFICIAL

Good morning Carl,

Can I please check something with you?

With reference to:

'I would appreciate if you could advise if the ADHA is willing to make a revised decision, or provide further submissions by **8 August 2019**.

Are you asking for us to just confirm we will make a revised decision or do you expect the revised decision letter and documents to be provided by 8 August 2019?

If it's the latter, how much time do we have to process the request?

Thanks

Therese Mullan

Team Lead, Information Office, Strategic Service Design and Delivery
Infrastructure Operations

Australian Digital Health Agency
Scarborough House, Level 6, 1 Atlantic Street, Woden ACT 2606
Phone [+61 2 6151 8684](tel:+61261518684)
Email therese.mullan@digitalhealth.gov.au
Web www.digitalhealth.gov.au

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From: FOI
Sent: Friday, 26 July 2019 10:25 AM
To: FOIDR <xxxxx@xxxx.xxx.xx>
Cc: FOI <xxx@xxxxxxxxxxxxxxxxxxx.x>
Subject: RE: MR19/00030 - IC review application [SEC=OFFICIAL]

OFFICIAL

OAIC reference: MR19-00030
Agency reference: FOI- 1811002 – REQ-0002393

Dear Carl,

This email acknowledges receipt of your request to the Agency to make a revised decision, or provide further submissions in relation to this case.

The Agency will endeavour to respond by **8 August 2019**.

Regards

Therese Mullan
FOI Team

Information Office
Strategic Service Design and Delivery

Australian Digital Health Agency
Email xxx@xxxxxxxxxxxxxxxxxxx.xx
Web www.digitalhealth.gov.au

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From: FOIDR <xxxxx@xxxx.xxx.xx>
Sent: Thursday, 25 July 2019 2:18 PM
To: FOI <xxx@xxxxxxxxxxxxxxxxxxx.x>
Subject: MR19/00030 - IC review application [SEC=OFFICIAL]

Our reference: MR19/00030
Your reference: FOI-1811002

Dear Ms Mullan

Thank you for your telephone call earlier today.

As discussed, the OAIC has considered the revised estimates you provided regarding the processing time in relation to Julie's (the applicant) FOI request. I note that the ADHA now estimates the charges at \$181.07. The ADHA initially assessed that the applicant was liable to pay \$138.07 to process the request.

On 6 February 2019, the OAIC notified the ADHA that the Information Commissioner would review the ADHA’s charges decision and provided a preliminary view that it did not appear that the ADHA has discharged its onus to justify its decision that a charge of \$138.07 should be imposed in relation to the applicant’s request. A copy of the notification is attached for you reference.

We noted that in exercising the discretion to impose a charge, an agency should take into account the ‘lowest reasonable cost objective’ in s 3(4) of the FOI Act, which provides that ‘functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost’.

We also referred to the FOI guidelines which discuss at [4.4] that:

Agencies and ministers should interpret the ‘lowest reasonable cost’ objective broadly in imposing any charges under the FOI Act. That is, an agency or minister should have regard to the lowest reasonable cost to the applicant, to the agency or minister, and the Commonwealth as a whole. Where the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate not to impose a charge.

In *Australian Associated Press Pty Ltd and Department of Immigration and Border Protection* [2015] AICmr 65 [31], the former Information Commissioner stated:

I note that in this case, there is a danger that the cost of calculating and collecting a charge might exceed the cost to the agency of processing the request, which would militate in favour of the waiver of the charge.

I note that the updated assessment is only \$43 dollars more than the initial assessment. Consequently the ADHA may wish to consider making revised decision under s 55G, waiving the charge.

I would appreciate if you could advise if the ADHA is willing to make a revised decision, or provide further submissions by **8 August 2019**.

Kind regards



Carl English | Acting Review Adviser (Legal)
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From: FOIDR
To: "Therese Mullan"
Subject: RE: FOI request 1811002 - REQ-0002688 - Revised decision letter [SEC=OFFICIAL]
Date: Thursday, 8 August 2019 11:50:00 AM
Attachments: [image002.jpg](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.jpg](#)

Dear Ms Mullen

Thank you for copying the OAIC into your email below.

As previously advised, we will contact the applicant to discuss the next steps.

Yours sincerely



Carl English | Acting Review Adviser (Legal)
Freedom of Information Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9745 | foidr@oaic.gov.au



From: Therese Mullan <xxxxxxx.xxxxxx@xxxxxxxxxxxxxxx.xxx.xx>
Sent: Thursday, 8 August 2019 11:42 AM
To: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxxxx.xxx.xx
Cc: FOIDR <xxxxx@xxxx.xxx.xx>; FOI <xxx@xxxxxxxxxxxxxxx.xxx.xx>
Subject: FOI request 1811002 - REQ-0002688 - Revised decision letter [SEC=OFFICIAL]

OFFICIAL

Dear Julie

Good morning. Please see attached letter from the Australian Digital Health Agency. I believe a representative from the Office of the Australian Information Commissioner will be in contact with you to discuss next steps.

Regards

FOI Team

Information Office
Strategic Service Design and Delivery

Australian Digital Health Agency
Email xxx@xxxxxxxxxxxxxxx.xxx.xx
Web www.digitalhealth.gov.au

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From: [FOIDR](#)
To: ["Therese Mullan"](#)
Subject: RE: FOI request 1811002 - REQ-0002688 - Revised decision letter [SEC=OFFICIAL]
Date: Monday, 12 August 2019 10:24:00 AM

Dear Therese

We received the below attempt to recall the email containing the revised decision to Julie. It does not appear that the recall was successful. Can you confirm if we can proceed on the basis of the revised decision made on 8 August 2019?

Kind regards

Carl English | Acting Review Adviser (Legal)

Freedom of Information Dispute Resolution

Office of the Australian Information Commissioner

GPO Box 5218 Sydney NSW 2001 | oaic.gov.au

+61 2 9284 9745 | carl.english@oaic.gov.au

-----Original Message-----

From: Therese Mullan <~~x@xxx~~>

Sent: Thursday, 8 August 2019 11:50 AM

To: ~~x@xxx~~

Cc: FOIDR <~~x@xxx~~>; FOI <~~x@xxx~~>

Subject: Recall: FOI request 1811002 - REQ-0002688 - Revised decision letter [SEC=OFFICIAL]

Therese Mullan would like to recall the message, "FOI request 1811002 - REQ-0002688 - Revised decision letter [SEC=OFFICIAL]".

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Julie | ADHA - Australian Digital Health Agency - MR19/00030

Actions - 27 (3 Open, 24 Completed)

Action	Owner	Due	Completed
Record case details and attach docs (MR REG)	Yue, Vivian	08-Jan-2019	04-Jan-2019
Send Acknowledgement Letter (MR REG)	Yue, Vivian	08-Jan-2019	04-Jan-2019
Move to Triage basket (MR REG)	Yue, Vivian	07-Jan-2019	04-Jan-2019
Allocate to Triage Officer (MR TR)	Triage - FOI	07-Jan-2019	04-Jan-2019, Yue, Vivian
Conduct Triage (MR TR)	Yue, Vivian	07-Jan-2019	04-Jan-2019: Mail Assessment
Decide Path (MR MA)	Mail Assessor - FOI	07-Jan-2019	16-Jan-2019, Ago, Rocelle: 54Z - Conduct Review

Summary A requested Senate Estimate Briefs prepared for ADHA's appears on 24 Oct 2018. Charges decision for \$138.07 dated 11 December 2018 Applicant seeks review of charges Assessment: Post-triage notes Commence review, send custom s 54Z: - Opening letter to A: Confirm scope of review - Opening letter to R: Request processing documentation; seek confirmation as to whether R will continue with charge, inviting s 55G citing relevant case law. 16/1/2019

Move to Allocation – Review (MR MA)	Mail Assessor - FOI	17-Jan-2019	16-Jan-2019, Ago, Rocelle
Allocate Review (MR RF)	English, Carl	17-Jan-2019	
Prepare Review Notifications (MR-045)	Allocation - Post Triage	17-Jan-2019	05-Feb-2019, English, Carl
Await Clearance – Review Notifications (MR-045)	Wavamunno, Sandra	07-Feb-2019	05-Feb-2019: Approved with changes

Hi Sandra I've drafted a 54Z/PV in this matter. For clearance Carl Please see the proposed changes and progress. SW

Send Review Notifications (MR-045)	English, Carl	06-Feb-2019	06-Feb-2019
------------------------------------	---------------	-------------	-------------

Please send Notice. SW

Await Response – Review Notifications (MR - 045)	Allocation - IC Reviews Early Res	05-Mar-2019	27-Feb-2019, English, Carl
File Note	English, Carl	28-Feb-2019	03-Jul-2019

Hi Carl please review the charges subs and organise a telephone conference with R to discuss "lowest reasonable cost" to the commonwealth:- part 4.4 of guidelines. I am happy to assist with the telephone conference and I am available next week. SW

File Note	English, Carl	04-Jul-2019	12-Aug-2019
-----------	---------------	-------------	-------------

Lowest reasonable cost: FOI guidelines [4.4] Australian Associated Press Pty Ltd and Department of Immigration and Border Protection [2015] AICmr 65 [31]. \$265.00 Factors: small cost, small number of documents v subject matter in public interest Rita Lahoud and Department of Education and Training [2016] AICmr 5 (22 January 2016) at [33] lengthy, (Prac refusal, IC review) As attempts to revise request.

FOIREQ19/00238 048

_____ calculation of decision making components on the basis of 5 mins per page (?). Also I can only get to \$450 (increasing all time calculations on the basis that the previous assessment was only 43%) Is updated assessment miscalculated. Tager and Department of the Environment [2014] AICmr 59 (13 June 2014) 10% sample _____ Sample undertaken New conservative estimate 181.07 (original estimate 138.07)

Prepare Letter (Ad-Hoc)	English, Carl	08-Jul-2019	04-Jul-2019
Await Manager Approval (Corro Ad Hoc)	English, Carl	06-Jul-2019	05-Jul-2019: Approved

Thanks Carl. I agree with the approach you have taken given that the ADHA has applied five minutes to all 76 documents and ten minutes to the eight pages identified as containing exempt material, and that is the applicant's reason for seeking review. They seem to suggest that because an error was made in the original calculation, the applicant is getting a bargain. Not sure how that argument will go.... If we can be satisfied that they calculated appropriately, then we can ITD the applicant or seek her views on waiver based on PI or financial hardship. Thanks, Allan (5/7) ----- Hi Allan - this is just RFI to R in relation to the assessment of the time required. I wouldn't mind getting your view on whether this is the right approach. We previously discussed this on the basis that it was uneconomical to collect. I also understand that most IC reviews turn on public interest (including generally the cases that comment that it is also uneconomical to collect). However it appears to me we will be unable to progress this, either by 55K or 54W without addressing As assessment contentions, and it does appear the agency has relied heavily on the charges calculator. In my view they have not clearly articulated a response to A's contentions. Although they do address exemptions and consultation in passing. Happy to discuss. Carl

Send Letter	English, Carl	10-Jul-2019	05-Jul-2019
Correspondence from respondent	English, Carl	09-Jul-2019	08-Jul-2019

Hi Carl R's ack email of your RFI rec'd 05/07/19 and saved in Documents tab. Kind regards Adie

Phone message - Respondent or Rep	English, Carl	18-Jul-2019	12-Aug-2019
-----------------------------------	---------------	-------------	-------------

left message for R (therese) to return call.

Phone call - Respondent or Rep	English, Carl	26-Jul-2019	12-Aug-2019
--------------------------------	---------------	-------------	-------------

R called (Therese) in relation to another matter. Asked if they would consider a revised decision considering that revised figures following PV are closed to original decision that OAIC considered uneconomical to collect. R suggested they may be willing. I said I would write to them and suggest s 55G.

Correspondence from respondent	English, Carl	07-Aug-2019	06-Aug-2019
--------------------------------	---------------	-------------	-------------

Hi Carl ADHA have provided a response to your RFI. Email dated 06/08/19 is saved in Documents tab. Kind regards Adie (06/08/19)

Phone message - Respondent or Rep	English, Carl	12-Aug-2019	12-Aug-2019
-----------------------------------	---------------	-------------	-------------

left message with Therese for a return call. Advised in message that revised decision had been received, but was immediately followed by attempt to recall. I asked for confirmation that we should proceed with that revised decision

Correspondence from applicant	English, Carl	15-Aug-2019	15-Aug-2019
-------------------------------	---------------	-------------	-------------

Hi Carl Email from A rec'd by FOIDR on 14/08/19 has been saved the the Documents tab. Thanks Adie (14/08/19)

File Note	English, Carl	15-Aug-2019	15-Aug-2019
Hi Carl AT has responded to your enquiry. AT's email rec'd by FOIDR on 14/08/19 is saved in the Documents tab. Kind regards Adie (14/08/19)			
MR-039 - 54W(a)(i) Decline Advice Letter to Applicant	English, Carl	27-Aug-2019	
Await Clearance - Director	Teves, Allan	03-Sep-2019	
Hi Allan, I've drafted an ITD in this matter. I note A has also made an FOI request for the documents associated with this IC review. Happy to discuss. Carl			
Correspondence from applicant	English, Carl	30-Aug-2019	29-Aug-2019
Hi Carl Two emails from A rec'd on 26/08/19 by FOIDR mailbox saved in Documents tab. A provided further submissions. Thanks Adie (29/08/19)			