



## Australian Government

### Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT  
BARTON

FOI/2013/025

#### *FREEDOM OF INFORMATION ACT 1982*

**REQUEST BY:** Jason Wilson

**DECISION BY:** Myra Croke  
Assistant Secretary  
Ministerial Liaison, Communications and  
Governance Branch

#### **FOI request**

In an email dated 14 February 2013 to the Department of the Prime Minister and Cabinet (the Department), the applicant made a request under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:

I would like information as the total volume of email received by ministerial offices between 1999-2000 and 2011-2012.

I would like email figures on an annual basis.

I would like separate figures on internal email traffic and external or Internet traffic.

If it is possible to differentiate further - for example to give separate figures for different ministerial offices, I would also like those figures.

#### **Revised request following request consultation process**

In a letter dated 18 March 2013, the Department notified the applicant of its intention to refuse the request for a practical refusal reason.

In an email of 28 March 2013, the applicant made a revised request, as follows:

1. I would now like to receive records or reports on the number of emails received from members of the public at the Prime Minister's address for all years between 2007 and 2012.
  - November 2007 to June 2010 - emails received at Prime Minister Kevin Rudd's address.
  - November 2010 to December 2012 - emails received at Prime Minister Julia Gillard's address.
2. I would like to receive records or reports on the number of replies to public electronic correspondence sent from the Prime Minister's office between 2007 and 2012.

#### **Authorised decision-maker**

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

## **Decision**

In relation to part 1 of the applicant's revised request, I have decided to release one document full, created in accordance with section 17 of the FOI Act. The document produced for part 1 of the applicant's revised request is at Attachment A.

In relation to part 2 of the applicant's revised request, I am satisfied that following the request consultation process a practical refusal reason still exists and therefore I have decided to refuse that part of the request under section 24(1) of the FOI Act.

My reasons for decision appear below and extracts of relevant provisions from the FOI Act are at Attachment B.

### **Reasons for decision—part 1**

Section 17(1) of the Act provides that where in relation to a request it appears that the applicant's desire is for information that is not available in discrete form in written documents of an agency and it does not appear that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded, and the agency can produce a written document containing the information in discrete form by the use of a computer or other equipment, then the agency shall deal with the request as if it were a request for access to written document so produced. Section 17(2) of the FOI Act provides that an agency is not required to comply with section 17 if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

As at the date the Department received the applicant's FOI request, there was no written document containing the information specified in part 1 of the applicant's revised request. Further, the Department does not have information on the number of emails sent to the Prime Minister other than through a facility on the Prime Minister's web site called 'contact your PM'. Through an analysis of the email account that corresponds to the 'contact your PM' facility, it has been possible to produce information corresponding to part 1 of the applicant's revised request. Producing the document would not substantially and unreasonably divert the Department's resources from its other operations.

Therefore, in accordance with section 17(1) of the FOI Act, I have decided to deal with part 1 of the applicant's request as if it were a request for the document that has been produced to meet that part of the request.

### **Reasons for decision—part 2**

The Department does not keep information on the number of replies sent to public electronic correspondence sent from the Prime Minister's office for any period of time, including for the specific time period requested by the applicant.

I have considered whether it would be possible to create a document meeting the terms of the applicant's request in accordance with section 17 of the FOI Act. There are approximately 700,000 records in the Department's ministerial correspondence database for the period specified in part 2 of the applicant's revised request. To analyse the records for the purpose of producing a document meeting the terms of the applicant's request would take many hundreds of hours of work. Producing a document meeting part 2 of the applicant's revised

request would be a substantial and unreasonable diversion of the Department's resources from its other operations.

In considering whether the request should be processed, I have had regard to the public interest in access to information held by the Department and I consider the public interest in access in this case is outweighed by the competing public interest in the ability of the Department to undertake its ordinary functions without substantial impairment.

Further, I acknowledge that the processing of requests for access to documents is a legitimate part of each agency's functions, and that FOI requests may require reallocation of resources within an agency. I also acknowledge that the applicant has attempted to narrow the scope of his request in order to remove the practical refusal reason. However, I do not consider that the Department could reasonably divert resources to assist in processing the request.

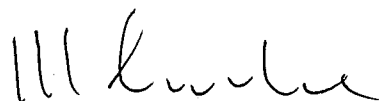
However, I am not satisfied that the practical refusal reason notified in the Department's letter of 18 March 2013 has been removed, and therefore refuse part 2 of the applicant's request under section 24(1) of the FOI Act on the grounds that processing would substantially and unreasonably divert the Department's resources from its other operations.

#### **Processing and access charges**

As the Department was able to produce the document meeting part 1 of the applicant's revised request easily and at marginal cost, I have decided to not impose processing charges in respect of the request.

#### **Review and complaint rights**

In accordance with the requirements of the FOI Act, I enclose a statement setting out the applicant's rights of complaint and review.



Myra Croke  
Assistant Secretary  
Ministerial Liaison, Communications and Governance Branch

23 May 2013

## ATTACHMENT A

### Number of emails received through the 'Contact your PM' facility on the Prime Minister's website

Prime Minister	Time Period	Number of emails
The Hon Kevin Rudd MP	22 November 2007 – 29 June 2010	182,087
The Hon Julia Gillard MP	1 November 2010 – 11 December 2012	181,257

**17 Requests involving use of computers etc.**

(1) Where:

(a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

(ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

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

(i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

(ii) the making of a transcript from a sound recording held in the agency;

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

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

**24 Power to refuse request—diversion of resources etc.**

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
  - (a) must undertake a request consultation process (see section 24AB); and
  - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
  - (a) the requests relate to the same document or documents; or
  - (b) the requests relate to documents, the subject matter of which is substantially the same.

**24AA When does a practical refusal reason exist?**

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:
  - (a) the work involved in processing the request:
    - (i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or
    - (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;
  - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
  - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
  - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
    - (i) examining the document; or
    - (ii) consulting with any person or body in relation to the request;
  - (c) making a copy, or an edited copy, of the document;
  - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
  - (a) any reasons that the applicant gives for requesting access; or
  - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or

(c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

#### **24AB What is a request consultation process?**

##### *Scope*

- (1) This section sets out what is a request consultation process for the purposes of section 24.

##### *Requirement to notify*

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
  - (b) the practical refusal reason;
  - (c) the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;
  - (d) details of how the applicant may contact the contact person;
  - (e) that the period (the consultation period) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

##### *Assistance to revise request*

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), reasonable steps includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
  - (b) providing the applicant with any information that would assist the applicant to revise the request.

##### *Extension of consultation period*

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

##### *Outcome of request consultation process*

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
- (a) withdraw the request;
  - (b) make a revised request;
  - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or



## Freedom of information – How to make a complaint

October 2010

You may complain to the Australian Information Commissioner if you have concerns about how an Australian Government agency handled a request for documents under the *Freedom of Information Act 1982* (the FOI Act) or took any other action under that Act. If you are unhappy with the agency's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process.

### Disagree with an FOI decision?

If you disagree with an agency's or minister's decision on your request under the FOI Act, you have the right to have the decision reviewed. You can ask an agency to review its decision internally. You also have the right to ask the Information Commissioner to review an agency's or minister's decision. See **FOI Fact Sheet 12 Freedom of information – Your review rights** for more information about the review process.

If you are concerned about the way an agency has handled your matter, you can complain to the Information Commissioner.

### What are the powers of the Information Commissioner?

The Information Commissioner can investigate a complaint about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The Information Commissioner cannot investigate a complaint about a minister.

In conducting the investigation the Information Commissioner has the power to:

- make inquiries of an agency
- obtain information from any person
- take possession of, or inspect, any relevant documents.

If the Information Commissioner decides to investigate your complaint, the agency you have complained about will be notified in writing of the complaint. The Information Commissioner conducts investigations of complaints in private.

### Who can make a complaint?

Any person can make a complaint about the actions of an agency in relation to an FOI activity. You do not need to have requested documents under the FOI Act.

### When should I make a complaint?

You can complain to the Information Commissioner at any time. If your complaint relates to an FOI request you can make the complaint at any stage of the process.

Before making a complaint to the Information Commissioner, you should contact the agency directly to try to resolve your concerns. The Information Commissioner may decide not to investigate your complaint if you have not raised your concerns first with the agency or you have not given the agency a reasonable opportunity to deal with your complaint.



## How do I make a complaint?

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to us using the details at the end of this fact sheet. A complaint form is also available on our website at [www.oaic.gov.au](http://www.oaic.gov.au).

If you need help we can assist you. You can contact us on 1300 363 992 or by email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).

### *What information do I need to put in the complaint?*

To help the Information Commissioner give the best consideration to your complaint, please provide as much relevant information as possible. Be clear about the issues in your complaint and what action or outcome you would like to see as a result.

### *Is there a fee for making a complaint?*

No. There are no costs involved in making a complaint to the Information Commissioner.

## What will happen to my complaint?

An officer of the Information Commissioner will contact you to discuss your complaint and you will be kept informed of the progress of your complaint along the way.

Before deciding whether to investigate your complaint the Information Commissioner may make preliminary inquiries of the agency you have complained about.

If the Information Commissioner decides to investigate your complaint, the Commissioner will write to the agency and request information to assist with the investigation.

### *Can the Information Commissioner decide not to investigate my complaint?*

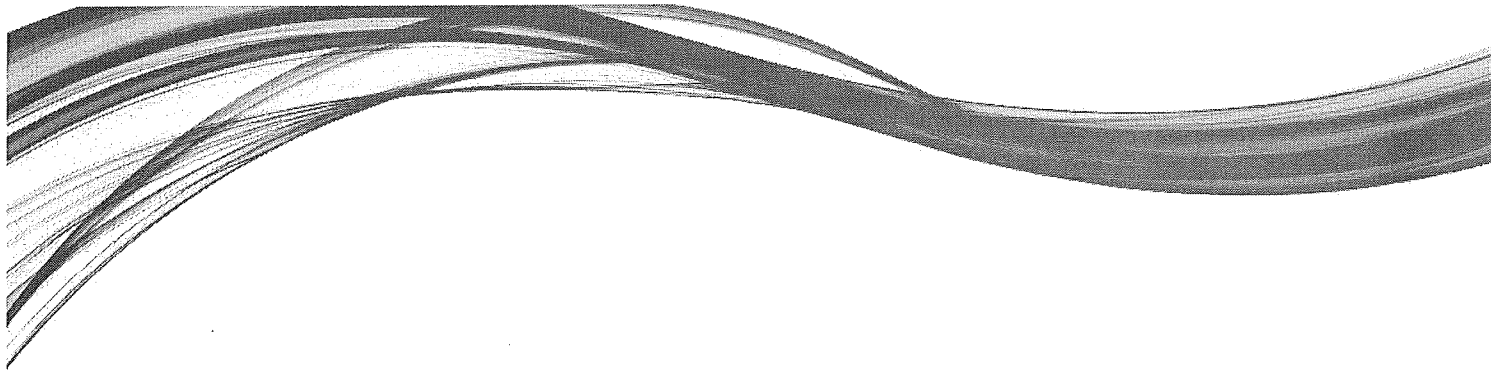
Yes. The Information Commissioner may decide not to investigate, or may discontinue an investigation, if:

- your complaint does not concern an agency's action under the FOI Act
- it is more appropriate for you to complain to another body (such as the agency or the Commonwealth Ombudsman)
- it is more appropriate for you to ask for the decision to be reviewed
- the agency you complained about has dealt with your complaint, or is in the process of dealing with it
- your complaint is frivolous, lacking in substance or not made in good faith
- you do not have sufficient interest in the matter.

If the Information Commissioner decides not to investigate or discontinues an investigation, the Commissioner will notify you and the agency of the reasons for this in writing.

## How will my complaint be resolved?

In some cases the Information Commissioner's investigation and intervention may result in the agency addressing the issues that you have complained about. In other cases the Information Commissioner may make suggestions or recommendations that the agency should implement. You and the agency will be notified in writing of the outcome of the investigation.



If an agency fails to take adequate and appropriate action to implement any recommendations, the Information Commissioner may issue a formal implementation notice. This notice requires the agency to explain what action it will take to implement the recommendations. The Information Commissioner may also provide a written report to the minister responsible for the agency, and the report will be tabled in Parliament.

Your name will not be included in the report unless there is a special reason and you were first consulted.

### **Investigation by the Ombudsman**

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint and all relevant documents must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

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

### **For further information**

**telephone:** 1300 363 992

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

**write:** GPO Box 2999, Canberra ACT 2601

or visit our website at

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



## 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 FOI fact sheet 13 – *Freedom of information: How to make a 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.

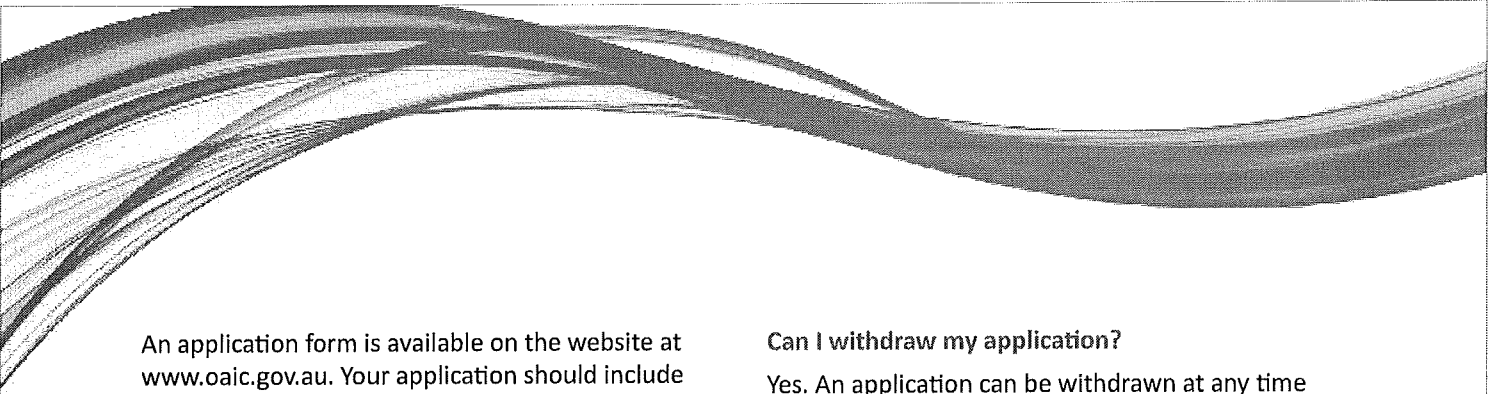
#### Do I have to pay?

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:	<a href="http://www.oaic.gov.au">www.oaic.gov.au</a>
post:	GPO Box 2999, Canberra ACT 2601
fax:	+61 2 9284 9666
email:	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>
in person:	Level 8, Piccadilly Tower 133 Castlereagh Street Sydney NSW



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?**

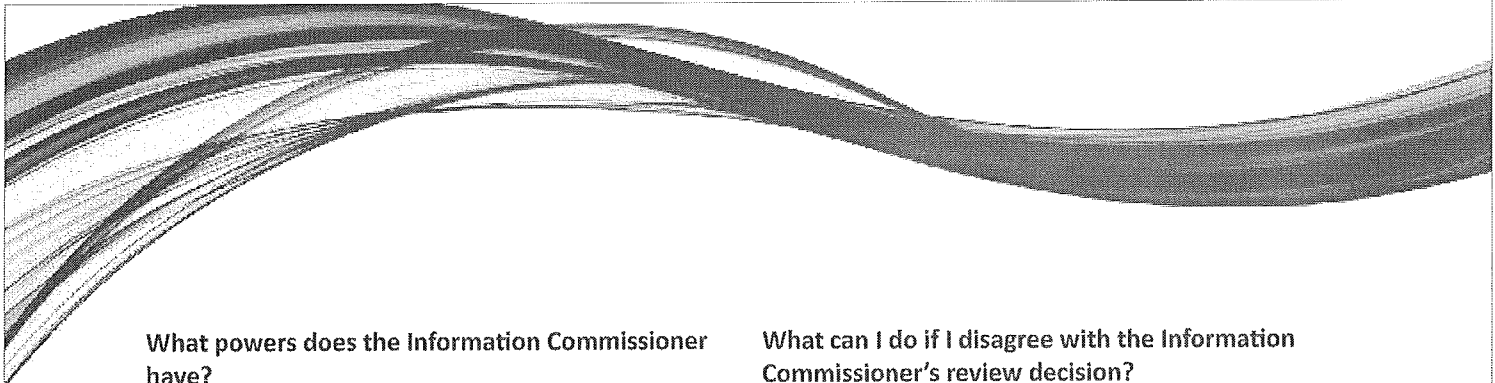
There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

**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. For further information see [www.aat.gov.au/FormsAndFees/Fees.htm](http://www.aat.gov.au/FormsAndFees/Fees.htm).

### **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.

#### **For further information**

**telephone:** 1300 363 992

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

**write:** GPO Box 2999, Canberra ACT 2601  
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