



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2014/125

FREEDOM OF INFORMATION ACT 1982

**REQUEST BY: Henare Degan
Right to Know**

**DECISION BY: Neil Williams
Assistant Secretary
Industry and Communications Branch**

FOI request

By email of 12 July 2014 to the Department of the Prime Minister and Cabinet (the Department), the applicant made a request under the *Freedom of Information Act 1982* (FOI Act) in the following terms:

This is an application for all documents, reports and emails etc. since January 1, 2014 regarding the two recent appointments to the Nomination Panel for ABC and SBS Appointments of Dr Janet Albrechtsen and the Hon Neil Brown QC.

Please treat this as a request for administrative access. If for some reason the request cannot be dealt with in this way, please treat it as a formal application under the Freedom of Information Act

A practical refusal consultation notice was sent by the Department on 1 August 2014, and the applicant responded on 4 August as follows:

I wish to limit my request to briefings & ministerials available in the DPMC Slipstream database. I also wish to exclude documents after the appointments were announced.

On 14 August 2014, the Department advised the applicant that I was of the view that the scope of the revised request has been narrowed sufficiently to remove the practical refusal reasons and to allow processing of the revised request to continue.

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.

Searches

The Industry and Communications Branch is the relevant area of the Department that would hold or be able to establish the existence of the documents sought.

Having regard to the terms of the applicant's FOI request, I made enquiries with officers responsible for matters relevant to the applicant's request and ensured that the Department's ministerial database has been searched. As a result of these searches, the Department located two documents relevant to the applicant's request.

Decision

In considering the application of the FOI Act I have had regard to the 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*' (the FOI Guidelines)¹.

I have decided to exempt the documents in full under sections 47C, 47E(d) and 47F of the FOI Act. Reasons for my decision on access to the documents are set out below.

Where I have referred to sections of the FOI Act in my decision, relevant provisions are extracted at Attachment A.

Reasons for decision

Section 47C - Public interest conditional exemptions - deliberative processes

Subsection 47C(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.

The FOI Guidelines must be regarded for the purposes of performing a function, or exercising a power, under the FOI Act. The FOI Guidelines explain that deliberative process involves the exercise of judgement in developing and making a selection from different options and that:

... the deliberative processes involved in the functions of an agency are its thinking processes—the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

The FOI Guidelines also indicate that deliberative processes involved in the functions of an agency or Minister are not restricted to deliberative processes about policy matters and may extend to non-policy decision-making processes required when carrying out agency or ministerial functions.

I have given consideration to what the FOI Guidelines say in respect of the deliberative processes exemption in deciding this matter. In particular I have noted that deliberative matter is content that is in the nature of a consultation or deliberation that has taken place; and that deliberative matter does not include operational information or purely factual material.

The documents sought by the applicant are briefings prepared by the Department for the Secretary and the Prime Minister, containing opinion, advice and/or recommendations from Departmental officers.

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982*, < <http://www.oaic.gov.au/freedom-of-information/applying-the-foi-act/foi-guidelines/>>.

Accordingly, subject to consideration of whether disclosure would be contrary to the public interest, I am satisfied that these documents contain deliberative matter and are conditionally exempt under section 47C of the FOI Act.

Section 47E(d) Public interest conditional exemptions— certain operations of agencies

Section 47E(d) of the FOI Act provides that a document is conditionally exempt 'if its disclosure under [the FOI Act] would, or could reasonably be expected to...(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency'. Access must be provided to a document that is conditionally exempt unless release of the document at that time would on balance be contrary to the public interest (paragraph 11A(5)).

The FOI Guidelines to which regard must be had, state:

Could reasonably be expected to

5.13 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of the documents.

5.14 The use of the word 'could' in this qualification is less stringent than 'would', and so requires no more than a degree of reasonableness being applied to deciding whether disclosure would cause the consequences. Therefore, the reasonable expectation refers to activities that might reasonably be expected to have occurred, be presently occurring, or could occur in the future.

...

Substantial adverse effect

5.16 Several exemptions require the decision maker to assess the impact and scale of an expected effect or event that would follow disclosure of the document. That is, the expected effect needs to be both 'substantial' and 'adverse'.

5.17 The term 'substantial adverse effect' broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'. The word 'substantial', taken in the context of substantial loss or damage, has been interpreted as 'loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal'.

5.18 A decision maker should clearly describe the expected effect and its impact on the usual operations or activity of the agency in the statement of reasons in order to show their deliberations in determining the extent of the expected effect. Of course, it may sometimes be necessary to use general terms to avoid making the Statement of Reasons itself an 'exempt document' (s 26(2)).

I consider that release of these documents would result in the Department being less likely to provide comprehensive, frank advice to Prime Ministers and Secretaries. I also consider that public release of this information would hinder the relationship of trust between the Prime Minister and the Department. The ability of the Department's officers to provide comprehensive candid briefing to a Prime Minister or a Secretary, concerning sensitive appointments, is an essential element in the effective working relationship between the Department's officers, and the Prime Minister and the Secretary. Therefore, I consider that release of the documents could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the Department's operations in advising and supporting the Prime Minister and the Secretary.

Accordingly, subject to consideration of whether disclosure would be contrary to the public interest, I am satisfied that these documents are conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

A document is conditionally exempt under section 47F of the FOI Act if its disclosure would involve the unreasonable disclosure of personal information about any person.

Do the documents contain personal information?

Personal information is defined pursuant to section 4 of the FOI Act as “information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not”.

As the documents contain personal information of people outside of the Department, I am satisfied the documents contain personal information within the meaning of section 4 of the FOI Act.

Would disclosing the information be unreasonable?

In determining whether disclosing the personal information would be unreasonable, I have had regard to the factors identified in section 47F(2) of the FOI Act, including:

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be or to have been associated with the matters dealt with in the documents;
- the availability of the information from publicly accessible sources; and
- any other factors the Department considers relevant.

I am satisfied the personal information contained in the documents is not well known. I am also satisfied that particular personal information in the documents is not available from publicly accessible sources. Having regard to these matters, I consider it would be unreasonable to disclose the personal information.

Accordingly, as the documents contain personal information, the disclosure of which would be unreasonable, I have decided that the documents are conditionally exempt in part under section 47F of the FOI Act.

The public interest test—subsection 11A(5)

Subsection 11A(5) of the FOI Act states that an agency or Minister must give access to a document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

In working out whether access to the conditionally exempt documents, as identified above would on balance be contrary to the public interest, I have had regard to the public interest factors set out in section 11B of the FOI Act and to the FOI Guidelines.

I consider that there are a number of public interest factors tending to favour release of the material, namely that release would:

- promote the objects of the FOI Act (including all the matters set out in sections 3 and 3A); and
- inform debate on matters of public importance; and
- enhance the scrutiny of government decision making.

In balancing competing public interests, it is necessary for me to balance the benefits to the public which might result from disclosure against any adverse effects of disclosure. The FOI Act does not specify any factors against disclosure, but the FOI Guidelines include a non-exhaustive list of such factors which include:

- a reasonable expectation of prejudice to the protection of an individual's right to privacy; and
- a reasonable expectation of harm the interests of an individual or group of individuals.

While not listed in the FOI Guidelines, there is a public interest in maintaining confidentiality of the appointment process so as to ensure that as wide a range of people as possible are willing to have their name put forward for consideration.

I also consider a strong public interest factor favouring non-disclosure arises because disclosing personal information could reasonably be expected to prejudice the protection of an individual's right to privacy and/or confidentiality. I am satisfied that disclosing personal information contained in the documents would involve a substantial entry into the privacy of the relevant individuals and inhibit future communications. I consider this type of information to be sensitive and the public interest factor favouring non-disclosure should be attributed significant weight.

In terms of deliberations, there is also a reasonable expectation that the Prime Minister and the Secretary need to be able to receive full and frank briefing. I also consider a further fundamental public interest factor favouring non-disclosure is that disclosure could reasonably be expected to impede and inhibit the ability of the Department to brief the Secretary and the Prime Minister in the future on matters. Disclosure is also likely to restrict the nature of the briefing provided in the future.

Also relevant to this request is that disclosure of the information in the documents could reasonably be expected to inhibit the effectiveness of the decision-making and deliberative processes of the Department. The Department's officers requires an open and working relationship with the Prime Minister and his office, and with the Secretary's office, therefore candid deliberations and advice are fundamental elements to the relationship.

The present case is I consider such an example in which the need to protect candour is one particularly relevant factor in the balance when applying the section 11A(5) public interest test.

Weighing these public interest factors for and against release, I attach less weight to the factors favouring release than to the factors against release. Accordingly, I consider, on balance, that it would be contrary to the public interest to disclose the conditionally exempt material under subsection 11A(5) of the FOI Act. I am therefore satisfied that the documents are exempt in full under sections 47C, 47E(d) and 47F of the FOI Act.

Charges

In a letter dated 20 August 2014, the Department notified the applicant that the estimate of charges for processing the request was \$122.12.

On 13 September 2014, the applicant sought a waiver or reduction of the charges on public interest grounds.

On 13 October 2014, I decided to impose a charge of \$122.12 for the processing of the applicant's FOI request and decline to waive or reduce the charge.

The applicant paid the deposit of \$30.53 on 13 November 2014. Therefore, an outstanding balance of \$91.59 remains.

Review and complaint rights

Information about the applicant's rights of review and complaint is provided together with this decision.

A handwritten signature in black ink, appearing to read 'N Williams', followed by a horizontal line.

Neil Williams
Assistant Secretary
Industry and Communications Branch

15 December 2014

Attachment A

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends 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.

3A Objects—information or documents otherwise accessible

Scope

- (1) This section applies if a Minister, or an officer of an agency, has the power to publish, or give access to, information or a document (including an exempt document) apart from under this Act.

Publication and access powers not limited

- (2) The Parliament does not intend, by this Act, to limit that power, or to prevent or discourage the exercise of that power:
 - (a) in the case of the power to publish the information or document—despite any restriction on the publication of the information or document under this Act; and
 - (b) in the case of the power to give access to the information or document—whether or not access to the information or document has been requested under section 15.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);

- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

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

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

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

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

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of *exempt document* in subsection 4(1).

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth; or
- (d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47E Public interest conditional exemptions—certain operations of agencies

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

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

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

47F Public interest conditional exemptions—personal privacy

General rule

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

(c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

93A Guidelines

(1) The Information Commissioner may, by instrument in writing, issue guidelines for the purposes of this Act.

Note: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) For the purposes of the performance of a function, or the exercise of a power, under this Act, regard must be had to any guidelines issued by the Information Commissioner under this section including, but not limited to, guidelines issued for the purposes of the following provisions:

- (a) paragraph 9A(b) (information publication scheme);
- (b) subsection 11B(5) (public interest factors);
- (c) subsection 15(5A) (decisions on requests).

(3) Guidelines are not legislative instruments.



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.

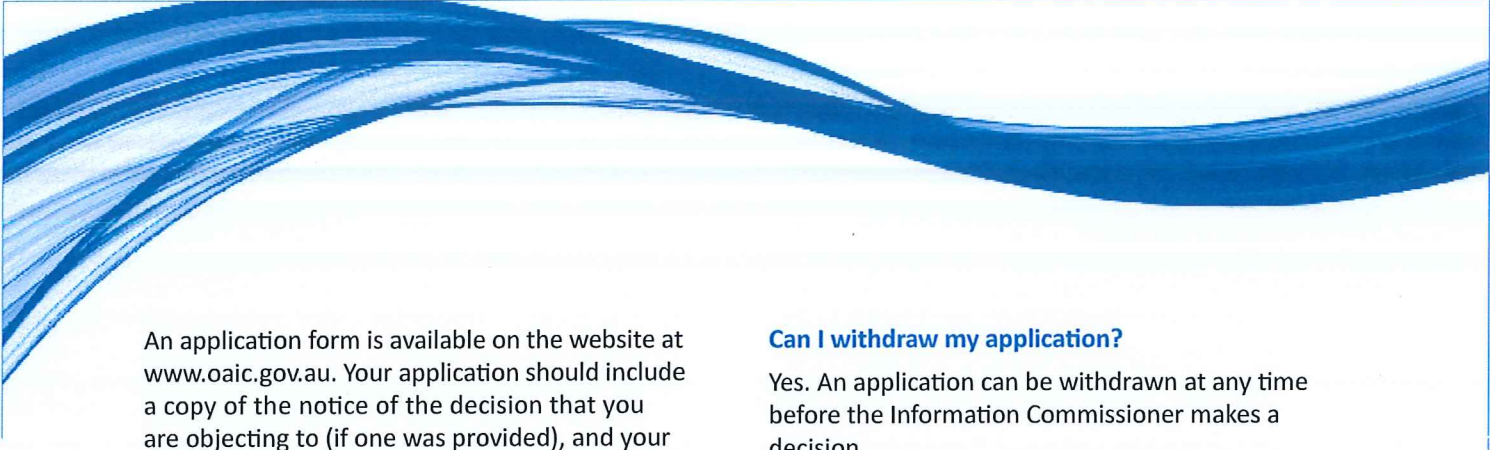
Do I have to pay?

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: www.oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
fax: +61 2 9284 9666
email: enquiries@oaic.gov.au
in person: Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney NSW



An application form is available on the website at 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.

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

write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au



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.

If you need help we can assist you. You can contact us on 1300 363 992 or by email to 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

write: GPO Box 2999, Canberra ACT 2601

or visit our website at

www.oaic.gov.au