



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ22/00070

Julie

By email: foi+request-8576-af547fdb@righttoknow.org.au

Your Freedom of Information request FOIREQ22/00070

Dear Julie

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 9 March 2022.

Scope of your request

In your request you seek access to the following:

"I request copy of all s 55G substituted decisions received by the Office of the Australian Information Commissioner since 2018, since a request must be a request for documents.

It may be simpler to provide a table of the date the s 55G decision was received by the Office of the Australian Information Commissioner, the FOI agency it was received from, and the date of the original FOI request (not the decision date) the s 55G substitution relates to (as the s 55G decision states this)."

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your requests no later than 30 days after the day we receive them. 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.

However, this time will be stopped until we have completed this consultation with you regarding the scope of your request.

Notice of intention to refuse your request

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

I am writing to tell you that based on the information before me at this time, I am of the view that the work involved in processing your request in its current form will substantially and unreasonably divert the resources of the OAIC from its other operations due to the substantial number of documents which may fall within the scope of the request (ss 24AA(1)(i) and 24AA(2)(b)(i) its size and scope. This is called a 'practical refusal reason' (under s 24AA of the FOI Act).

On this basis, I intend to refuse access to the documents you have requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under s 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out at the end of this letter.

Why I intend to refuse your request

Calculation of the processing time

Your request involves two parts. The first part of your requests is:

I request copy of all s 55G substituted decisions received by the Office of the Australian Information Commissioner since 2018, since a request must be a request for documents.

I am interpreting the part one of your request to be for:

... a copy of all s 55G decisions within the date range of 1 January 2018 to 9 March 2022 (the date of your FOI request).

Search and retrieval time

Your request was referred the line area to conduct searches based on your request. I have consulted with the Director of the FOI Regulatory Group, the line area, to help identify documents within the scope of your request.

The line area has advised the following:

- The OAIC uses a case management system called Resolve to register and process IC review applications received.
- S 55G decisions issued in IC reviews were not automatically captured in Resolve until December 2019, when an additional data field was added into Resolve for reporting purposes to capture IC reviews where a s 55G decision was made by the agency in the IC review. However, the data captured by this field is only in relation to whether a s 55G decision was made. The date the decision was made was not captured by the data field.
- In light of the above limitations, a search was conducted using the data that is captured by Resolve, for IC review applications received by the OAIC from 1 January 2018 up to the date of your FOI request, for matters where a s 55G decision was made. The search identified 1,352 matters. In some IC reviews, more than one 55G decision was made by the agency.

- However, the line area anticipates there could be more matters in addition to the 1,352 matters identified, but would require a staff member to manually go through IC reviews received by the OAIC prior to 1 January 2018, where a s 55G decision was made in the matter between 1 January 2018 until the date of your FOI request. For example, an IC review application may have been lodged on 1 January 2017, however the s 55G revised decision may have been made on 1 January 2018 during the course of the IC review process.
- For the purposes of calculating time to conduct search and retrieval, the line area examined 10 of the 1,352 matters where at least one 55G decision was made. The line area estimated that it would take at least 3 minutes to identify the s 55G decision, copy the decision and save it in a separate folder, consider whether it contains any exempt material, and provide comments to the Legal Services Area, with a copy of that decision. The line area estimates that it would take a staff member at least 67 hours to complete these tasks for all 1,352 files.

Accordingly, the line area estimates that it would take at least **67 hours** to conduct search and retrieval of the 1,352 IC review matters where Resolve was able to identify that a s 55G decision was made.

Decision making time

In addition to the time required by the line area to conduct search and retrieval of the documents which fall within the scope of your FOI request, additional time is required by the FOI decision maker to examine, assess and edit the documents in scope in order to make the FOI decision.

A staff member in the Legal Services Team conducted a sample of 20 of the 1,352 IC reviews containing a 55G decision that were identified by the line area, to help calculate the time it would take for an FOI Officer to process your FOI request. The sampling is approximately 1.5% of the total identified by the line area.

Based on the sample, the staff member calculated the following:

- It took the staff member approximately 30 seconds per file to locate, open and review various decision records on the file and to determine whether it was one or more s 55G decisions on file. It took approximately 30 seconds to extract the relevant document from the system and to save a pdf file. Using this sample and applying to the total, it is estimated that it would take a staff member 1,352 minutes, or **22.5 hours** to locate, open, review each file and extract the s 55G decisions.
- Each of the 20 files, 21 s 55G decisions were identified, with one file containing two s 55G decisions.
- Of the s 55G decisions in the sample, the decisions ranged from 2 to 22 pages with a range of complexity levels in the decision. Using an average of 7 pages in each decision from the sample, and applying to the total number of s 55G decisions that could be contained in the 1,352 IC review matters identified by the line area, it is

estimated that there will be at least 9,464 pages to be reviewed and processed for 1,352 IC review matters.

- In conducting the sample, the staff member took approximately 3.83 minutes in each IC review matter on average to
 - review each page of the decision,
 - identify personal and business information about third-party entities
 - identify any other relevant exemptions that may be exempt and redacted, and
 - apply the redactions where appropriate.
- Based on the above sample, I estimate that it would take at least **86.20 hours** to review and assess the s 55G decisions in the 1,352 IC review matters.
- I conservatively estimate that it will take the FOI decision maker **5 hours** to prepare a schedule of documents regarding at least the 1,352 s 55G decisions in scope of your FOI request, and another **2 hours** to draft the FOI decision and reasons for decision.

Combined with the line area estimate for conducting search and retrieval, based on the sample conducted, I estimate that it would take a staff member of the OAIC at least **182.7 hours** to process your FOI request.

The process time estimated above do not take into account the additional time required to:

- Collate and prepare documents for third party consultation. All s 55G decision documents contain sensitive and/or confidential personal and business information about third-party entities, as such consultation is required under sections 27 and 27A of the FOI Act. From the sample conducted, I estimate there will be at least 1 external third-party consultation required for each decision as the documents contain individuals' and respondents personal and/or business information, which means conducting consultation with 1,352 applicants and/or respondents
- assess each third-party's response to our consultation, edit and redact the relevant information for release and
- the additional search and retrieval time required to locate all 55G decisions in scope of your FOI request, which due to the limitation of the data captured by Resolve, would require a staff member to manually go through IC reviews received by the OAIC prior to 1 January 2018, where a s 55G decision was made in the matter between 1 January 2018 until the date of your FOI request.

Diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal reason exists. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* identify matters that may be relevant when deciding

whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

- the staffing resources available to the agency for FOI processing
- the impact that processing a request may have on other work in the agency, including FOI processing whether an applicant has cooperated in framing a request to reduce the processing workload
- whether there is a significant public interest in the documents requested
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The OAIC is a small agency, employing approximately 130 (head count) staff. Processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests. This makes it likely that staff will be diverted from their other work in the OAIC, including:

- undertaking regulatory functions in both FOI and privacy
- conducting IC review
- delivering internal legal advice
- improve agencies processes for managing FOI requests.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, as well as excluding information that has previously been published on our disclosure log, we will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice. Therefore, you must respond to this notice by **14 April 2022**.

During this period, you can ask the contact person (see below) for help to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken

to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Ways you can reduce the scope of your request

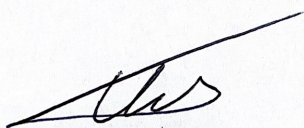
There are a number of ways that you can reduce the scope of your request to enable us to process it without unreasonably diverting our resources from our other operations. These include limiting the scope of your request to:

- s 55G decisions contained in IC review applications received by the OAIC in a smaller date range than the date range currently nominated in your FOI request and exclude any personal information and business information contained in the 55G decisions which does not relate to you, or
- reduce the number of s 55G decisions you seek to access by identifying those from particular government agencies within a smaller date range, and exclude any personal information and business information contained in the s 55G decisions which does not relate to you.

Contact officer

If you would like to revise your request, or have any questions, you can contact me or Ms Angela Wong, lawyer, at legal@oaic.gov.au or on (02) 8231 4207.

Yours sincerely



Toby Shanks

Paralegal

30 March 2022