

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
				d. There are inadequate policies and procedures in place to support compliance with the requirements of section 6C of the FOI Act.			
Department of Defence	Collection of charges amounts	Non-personal	17 December 2020	The Department's process that required an invoice to be raised before allowing a FOI applicant to make a payment in order to recommence the processing period is inefficient and does not facilitate and promote public access to information, promptly and at the lowest reasonable cost.	<ol style="list-style-type: none"> 1. Update its guidance to ensure that, where there has been an overpayment of a charges amount, the FOI applicant is to receive a refund in accordance with regulation 10(4)(a) of the FOI Charges Regulations. 2. The Department adjust the way it administers charges to: <ol style="list-style-type: none"> I. Provide payment options at the time of issuing a preliminary charges notice and II. Accept payment of the charge as notification in writing by the applicant of 	Accepted and suggestions implemented.	No further action to be taken.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					acceptance of the charge. ¹⁰		
Department of Defence	The Department's consultation process conducted during the processing of an FOI request.	Personal information	17 February 2021	The Department's FOI manual sets out the procedure for conducting consultations with third parties. The Department did not consult with the complainant where it was 'possible to consult' and 'reasonably practicable' to do so.	1. Issue a statement to staff engaged in processing FOI requests highlighting the Department's obligations under the FOI Act to consider whether a person might reasonably wish to make a contention that the document is conditionally exempt under s 47F of the FOI Act (s27A(1)(b)). The statement should highlight the importance of following the Department's processes and procedures when processing and making decisions on FOI requests where third party information is contained within documents that fall within the scope of an FOI request.	Accepted and implemented.	No further action to be taken.
Services Australia	Compliance with Information Publication Scheme (IPS). Imposition of charges for documents held on the IPS requested under the FOI Act.	Non-personal	8 September 2021	At the time of the complaint, Services Australia did not meet its obligation to publish operational information as required by s 8(2)(j). Services Australia failed to have adequate systems and processes in place to confirm that	1. Develop and implement a system to ensure that: a. decisions taken by business areas in relation to the publication of operational information are consistent with Part II of the FOI Act, and b. where a decision is taken not to publish an OBP –	Accepted; to implement.	

¹⁰ Suggestions made pursuant to s 87(d) of the FOI Act.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
				business areas were appropriately considering their IPS obligations at the time that Operational Blueprints (OPBs) were created or to ensure that documents appropriately categorised under s 8C were regularly reviewed to consider whether s 8C continued to apply. Services Australia did not deliberately withhold documents that were required to be published under the IPS for the purpose of improperly imposing a charge in relation to access requests for those documents, as alleged in the complaint.	either because it does not comprise operational information or is exempt under s 8C of the FOI Act – that decision is recorded c. decisions taken by business areas not to publish particular OBPs are periodically reviewed to determine whether the reasons for non-publication continue to apply to the OBP. 2. Services Australia staff adheres to current internal policies to consider the potential administrative release of OBPs in response to access requests before considering whether a charge should be applied under s 29 of the FOI Act for access to those materials.		
Department of Foreign Affairs and Trade	Impartiality of the Internal Review decision maker	Non-personal	17 September 2021	No evidence before the Commissioner which supported the complainant's contentions.	No recommendations made	Accepted.	Not applicable

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
Services Australia	Compliance with Information Publication Scheme (IPS). Where Services Australia has decided not to publish the document – the reason why it is considered exempt should be published.	Non-personal	17 September 2021	Services Australia was not required to list the applicable FOI Act exemption against the title of an unpublished document. Services Australia complied with the Act when it listed titles of operational documents on its IPS. However, the agency's reliance on requests from the public to reconsider earlier decisions not to publish those documents, in the absence of a more systematic process, is not consistent with the ongoing obligations under Part II of the FOI Act.	1. Develop and implement a system to ensure that: a. decisions taken by business areas in relation to the publication of operational information are consistent with Part II of the FOI Act, and b. decisions taken by business areas not to publish particular OBPs are periodically reviewed to determine whether the reasons for non-publication continue to apply to the OBP.	Accepted; to implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
Australian Building and Construction Commission	Extending the statutory processing period to conduct third party consultation and related communication with the FOI applicant. Transfer of FOI requests under s 16 of the FOI Act	Non-personal	22 September 2021	<p>It was open to the ABCC to extend the processing timeframe for the FOI request to conduct consultation with third parties under s 27A of the FOI Act, even in circumstances where the subsequent consideration of the documents resulted in a conclusion that consultation was not necessary because the documents initially considered in scope were found to be outside the scope of the request. However, it was not open to the ABCC to extend the timeframe in circumstances where the documents had not been identified or considered against the requirements of s 27A.</p> <p>The consent of the FOI applicant is not required for the transfer of a request under s 16 of the FOI Act.</p>	<p>1. The ABCC should provide guidance to FOI officers to ensure that, prior to extending the processing periods as permitted by s 15 of the FOI Act, proper consideration is given to the statutory prerequisites to the exercise of that power.</p> <p>2. That the ABCC review its correspondence with FOI applicants to ensure that it is clear, accurate and not misleading.</p> <p>3. That the ABCC implement systems and processes to ensure that the ABCC understands and adheres to FOI processing timeframes.</p>	Accepted; to implement.	
Department of Veterans' Affairs	Compliance with statutory timeframes for processing FOI requests.	Non-personal	24 September 2021	The Department did not comply with the statutory processing timeframes in relation to three FOI requests.	1. The Department develops and makes available to staff an operational manual for processing FOI requests that should include, at a	Accepted; to implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
	Compliance with s 29 of the FOI Act			The Department did not comply with s 29(6) in relation to one FOI request	<p>minimum, the steps that will be taken to ensure compliance with statutory processing requirements, including in relation to:</p> <ul style="list-style-type: none"> a. meeting processing timeframes under the FOI Act b. the steps to be taken when notifying an applicant of the imposition of a charge, including the obligation to provide a decision in accordance with s 29(6). 		
Department of the Prime Minister and Cabinet	Compliance with statutory timeframes for processing an FOI request.	Non-personal	5 October 2021	The Department did not comply with the statutory processing timeframe.	<ol style="list-style-type: none"> 1. The Department appoint an Information Champion. The Information Champion may be supported by an information governance board to provide leadership, oversight and accountability necessary to promote and operationalise the Department's compliance with the FOI Act. 2. The Department provide training to FOI Section staff and relevant Senior Executives about the obligations under the FOI Act to comply with statutory processing periods. 	Accepted findings. Response received.	Undergoing assessment

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
Services Australia	Compliance with Information Publication Scheme (IPS). Imposition of charges for documents held on the IPS requested under the FOI Act.	Non-personal	7 October 2021	Services Australia complied with the Act when it listed titles of operational documents on its IPS. However, Services Australia's process of requiring individuals to lodge an FOI request for access to documents is only appropriate where the agency has a robust and reliable process to routinely consider whether the reasons for not publishing the documents continue to apply.	<p>1. Develop and implement a system to ensure that:</p> <ul style="list-style-type: none"> a. decisions taken by business areas in relation to the publication of operational information are consistent with Part II of the FOI Act, and b. decisions taken by business areas not to publish particular OBPs are periodically reviewed to determine whether the reasons for non-publication continue to apply to the OBP. <p>2. Develop and implement systems and processes to ensure that, where Services Australia exercises its discretion to impose a charge under s 29, that decision is consistent with both the relevant statutory provisions, the FOI Guidelines and its obligations under Part II of the FOI Act.</p>	Accepted. Response received.	Undergoing assessment
Department of Veterans' Affairs	Compliance with statutory timeframes for processing FOI request	Personal	12 October 2021	The Department did not comply with the statutory processing period due to an internal administrative error identifying the FOI	Given the steps that the Department took upon becoming aware of the FOI request, including engaging with and providing an explanation to the	Accepted.	No further Action

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
				request where the FOI request had delay in providing it to the FOI team.	complainant, processing the request and apologising to the complainant, no recommendations were made.		
Department of Veterans' Affairs	Compliance with statutory timeframes for processing FOI request	Personal	19 October 2021	The Department complied with the statutory processing timeframes.	No recommendations made	Accepted.	Not applicable
Australian Federal Police	Compliance with statutory timeframes for processing FOI request	Personal	27 October 2021	<p>The AFP did not comply with the statutory processing timeframe which is attributable to:</p> <ul style="list-style-type: none"> the failure of business areas to provide documents at issue to the FOI section and/or the time taken in the subsequent processing by the FOI section. the AFP's late consideration of whether an extension of time is required in relation to the processing of FOI requests. 	<p>1. The AFP should develop and implement a compliance action plan and provide a copy of that plan to the OAIC. The compliance action plan should include an explanation and assessment of the reasons for non-compliance with the statutory processing period for the 2019-20 and 2020-21 financial years and proposals to improve compliance, including in relation to:</p> <ul style="list-style-type: none"> a) adequacy of resources b) training c) operational improvements and d) proposals for how the AFP will comply with the statutory processing period in relation to any backlog of 	Accepted; to implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					outstanding FOI requests as well as new requests.		
					2. The AFP should provide an implementation report to the OAIC, providing statistical evidence and analysis to demonstrate the effectiveness of the implementation of the compliance action plan in recommendation 1 and whether the reasons for non-compliance identified in the compliance action plan have been rectified.		
Department of Foreign Affairs	Compliance with statutory processing periods. Administrative access arrangements. Exercising a discretion to impose a charge. Incorrect refund form provided.	Non-personal	11 November 2021	The Department did not comply with the statutory processing period. No adverse findings or recommendations made in relation to remaining issues.	1. The Department appoint an Information Champion. The Information Champion may be supported by an information governance board to provide leadership, oversight and accountability necessary to promote and operationalise the Department's compliance with the FOI Act. 2. The Department should develop and implement a compliance action plan include an explanation and assessment of the reasons for non-compliance with the statutory processing period for the 2019-20 and	Accepted; Recommendation 1 implemented; Recommendations 2 & 3 to implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					<p>2020-21 financial years and proposals to improve compliance, including in relation to:</p> <ul style="list-style-type: none"> a. adequacy of resources b. training c. operational improvements and d. proposals for how the Department will comply with the statutory processing period in relation to any backlog of outstanding FOI requests as well as new requests. <p>3. The Department should provide an implementation report, including statistical evidence and analysis to demonstrate the effectiveness of the implementation of the compliance action plan in recommendation 2 and whether the reasons for non-compliance identified in the compliance action plan have been rectified.</p>		
Department of Home Affairs (17 matters)	Compliance with statutory timeframes for processing FOI request	Personal	25 November 2021	The Department did not comply with the statutory processing period.	1. The Department prepare and implement an operational manual for processing FOI requests for personal information to be approved by the	Noted by Department.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					<p>Information Champion.</p> <p>The operational manual is to include, at a minimum, the steps that will be taken to ensure compliance with statutory processing requirements. Consistent with the requirements of the Information Publication Scheme, the operational manual should be made publicly available by the Department on its website.</p> <p>2. The Department ascertain the additional resources (human or otherwise) anticipated to be required in order to meet statutory timeframes (taking account of the improvements through implementing recommendation 1) and provide an action plan to meet those requirements.</p> <p>3. The Department:</p> <ul style="list-style-type: none"> a. undertake and complete training on the operational manual for FOI Section staff and other staff (both decision makers and other staff who assist decision makers). b. ensure that online training in processing FOI requests for 		

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					<p>personal information is available to all staff of the Department, and</p> <p>c. ensure that new staff joining the FOI Section are trained in relation to the operational manual within 2 weeks of commencing in the FOI Section.</p> <p>4. The Department undertake an audit of the processing of FOI requests for personal information to assess whether Recommendations 1, 2 and 3 have been implemented and operationalised and whether those actions have been sufficient to address the issues identified in these complaints. The audit is to be undertaken by either the Department's internal auditors or by an external auditor, as determined by the Department. A copy of the audit report should be provided to the OAIC.</p>		
Australian Digital Health Agency	Acknowledgment of FOI requests in accordance with statutory timeframes.	Non-personal	2 December 2021	<ul style="list-style-type: none"> The ADHA failed to acknowledge one FOI request within the period required 	1. The ADHA review its internal policies, procedures and practices to clarify that the processing	To implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
	Extending the processing under s 15(6) of the FOI Act to conduct third party consultation. Delay in responding to FOI request.			<p>by s 15(5)(a) of the FOI Act.</p> <ul style="list-style-type: none"> The ADHA reasonably formed the view that consultation with a third party was required and notified the complainant of the extension of the processing period for this purpose as required by the FOI Act. The ADHA attempted to delay the processing of the FOI request, when it corresponded with the complainant to advise them that they must submit a new FOI request to a different email address in order for the request to be valid, when the original request was validly made. 	<p>periods for valid FOI requests commence from the day the request is received by the agency, even if the request is not sent to the FOI team until a later day, and that FOI request are not invalid only because they were not sent to the email address specified pursuant to s 15(2A).</p> <ol style="list-style-type: none"> The ADHA review its processes and procedures to ensure that FOI requests are acknowledged within 14 days of receipt and that decisions are provided within the relevant statutory processing period. The Chief Executive Officer issue a statement to all staff, highlighting the ADHA's obligations under the FOI Act and pro-disclosure emphasis of the Act, this statement should encourage and support staff in meeting their obligations under the 		

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					FOI Act, to facilitate and promote public access to information, promptly and at the lowest reasonable cost. 4. The ADHA appoint a member of the Executive to be the agency's Information Champion, to foster and promote compliance with the objectives and requirements of the FOI Act.		
Attorney-General's Department	Acceptance of transfers under s 16 of the FOI Act.	Non-personal	13 December 2021	The Department did not correctly apply the statutory test in s 16(1) of the FOI Act when it agreed to accept the transfer of an FOI request from the Attorney-General.	1. The Department update its <i>AGD FOI Procedures Manual: Standard procedures for processing FOI requests to the Attorney-General's Department</i> in relation to the matters required to be considered in accepting the transfer of FOI requests, including but not limited to: <ul style="list-style-type: none"> whether the transferring agency demonstrated that it took 	Accepted; to implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					<p>reasonable steps to search for documents that are the subject of the FOI request and the Department is reasonably satisfied that either:</p> <ul style="list-style-type: none"> ○ the transferring agency is not in possession of the documents within the scope of the request (s 16(1)(a)) or ○ the transferring agency or minister has indicated why, and the Department agrees, that the subject matter is more closely connected to the functions of the Department (s 16(1)(b)) • where the Department accepts a transfer under s 16(1), it should record the reasons why it has accepted the 		

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					<p>transfer, including (where relevant) how the agency demonstrated it is not in possession of the documents or why it considers the subject matter to be more closely connected to the functions of the Department</p> <ul style="list-style-type: none"> the option of transferring or accepting the transfer of part of an FOI request in accordance with s 16(3A) of the FOI Act. <p>2. The Department provide a report to the Office of the Australian Information Commissioner (OAIC) on the implementation of the amended procedures relevant to accepting the transfer of FOI requests under s 16 of the FOI Act. This may take the form of a report following a review of matters transferred to the</p>		

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					Department to ensure that the amended procedures have been implemented.		

Note: the statistics contained within this brief were calculated prior to the 14 February 2022 Budget Estimates. Due to some system changes and case registration adjustments, the statistics contained in this brief may have subsequently changed

Attachment B: October 2021 Senate Estimates Questions on Notice**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS****ATTORNEY-GENERAL'S PORTFOLIO****SUPPLEMENTARY BUDGET ESTIMATES 2021 - 2022****PA-Office of the Australian Information Commissioner****LCC-SBE21-023 - Correspondence to departments and agencies regarding improving compliance****Senator Larissa Waters asked the following question on 26 October 2021:**

Senator WATERS: Will the new FOI commissioner, whether it is the interim person or the permanent person, have a role in improving departmental compliance?

Ms Falk: Thank you for that question. One of the roles of both the Information Commissioner and the FOI commissioner is to undertake education and also monitoring and to ensure that agencies are enabled to comply with statutory time frames. We have been doing work on this on two fronts. One is, as you mentioned, complaints that are made to the OAIC. Delay and timeliness is the key area of complaint. I have undertaken a number of investigations where I have made recommendations that seek to address the cause of those delays, and they are published on our website. The second is that we have analysed the agency statistics, and we have corresponded with agencies where we think there is a need for improvement in their timeliness and asked them to consider the causes and to put in place a rectification plan. So I consider that this kind of work is already in train and that it will be built upon by the FOI commissioner.

Senator WATERS: Could you let me know which agencies you have written to seeking improvement in their response statistics?

Ms Falk: Yes, Senator. I can take that on notice.

The response to the honourable senator's question is as follows:

The Acting Freedom of Information Commissioner wrote to the following agencies regarding their compliance with the statutory processing period:

- Department of Foreign Affairs and Trade¹¹
- Australian Broadcasting Corporation¹²
- Australian Electoral Commission¹³
- Norfolk Island Regional Council¹⁴
- Commonwealth Department of Public Prosecutions¹⁵.

¹¹ No response received.

¹² On 18 November 2021, the ABC advises that there was a reporting error. The ABC also advise that it is: currently undertaking recruitment to backfill the FOI co-ordinator position, developing an online training module and will update its website with FAQs.

¹³ On 19 November 2021, the AEC advised that there was a reporting error and that AEC is altering the way that they report its statistics.

¹⁴ On 19 November 2021, the NIRC has advised there was a reporting error. The NIRC also advise that it is engaging a third party to assist with processing FOI requests. The NIRC also advises that its website is under review and the types of information that is available.

¹⁵ On 16 November 2021, the CDPP advised that there was reporting errors. The CDPP will take steps to correctly report statistics. CDPP will also update its webpage to address issues highlighted by the OAIC.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

ATTORNEY-GENERAL'S PORTFOLIO

BUDGET ESTIMATES 2020-21

PA-Office of the Australian Information Commissioner

LCC-BE21-106 - Complaints upheld in 2020-21

Senator Kim Carr asked the following question on 27 May 2021:

Senator KIM CARR: I'll come to Home Affairs in a moment. I just want to be clear: in terms of the current financial year, 2020-21, how many complaints have you had so far?

Ms Falk: The figure I have in mind is 117, but I'm just going to check that. We currently have on hand 119 complaints and 122 received year-to-date, this financial year.

Senator KIM CARR: How many of those have you decided to investigate?

Ms Falk: Under the act, I have a legislative obligation to look into all complaints unless I decline to do so on specific grounds, such as they lack substance.

Senator KIM CARR: Have you found that any lack substance?

Ms Falk: Yes, we have found that some lack substance, but I would need to take on notice if you would like that breakdown.

Senator KIM CARR: Yes, thank you. In terms of this current financial year, how many have you upheld?

Ms Falk: Again, I would need to take that on notice. But, Senator, if it assists the committee, I could refer you to the OAIC's website where I publish the outcomes of complaint investigations. Under the act, I can make recommendations to agencies to address the issues in complaints. Those recommendations are public, and they also serve as an educative tool for other agencies.

The response to the honourable senator's question is as follows:

From 1 July 2020 to 27 May 2021, the OAIC received 136 FOI complaints.

As at 27 May 2021, the OAIC had 116 complaints on hand. At that time, the OAIC had commenced investigations into 26 complaints.

Of the FOI complaints made between 1 July 2020 and 27 May 2021, 1 was finalised on the basis that it was frivolous, vexatious, misconceived, lacking in substance or not made in good faith under subsection 73(e) of the *Freedom of Information Act 1982* (the FOI Act).

Between 1 July 2020 and 27 May 2021 the Information Commissioner finalised 3 complaints by way of an investigation notice under s 86 of the FOI Act.

Outcomes and recommendations from FOI complaints investigations conducted between 1 July 2019 and 15 April 2021 are published at <https://www.oaic.gov.au/freedom-of-information/information-commissioner-decisions/freedom-of-information-investigation-outcomes/>.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO
BUDGET ESTIMATES 2020-21

PA-Office of the Australian Information Commissioner
LCC-BE21-105 - Complaints in relation to AGD in 2019-20

Senator Kim Carr asked the following question on 27 May 2021:

Senator KIM CARR: How many complaints did you have in relation to the A-G's Department in 2019-20?

Ms Falk: I'd have to take that on notice.

Senator KIM CARR: While you are there, can you tell me how many complaints you decided to investigate?

Ms Falk: In relation to that department?

Senator KIM CARR: Yes.

Ms Falk: I can take that on notice.

Senator KIM CARR: And how many complaints in 2019-20 in relation to the A-G's Department did you uphold?

Ms Falk: There are none that come to mind in relation to these questions, but I will go back and check the statistics. The complaints that are made under section 70 of the FOI Act primarily relate to the two government agencies that receive the most applications for FOI—that is, the Department of Home Affairs and Services Australia.

The response to the honourable senator's question is as follows:

The Office of the Australian Information Commissioner (OAIC) received six complaints under s 70 of the *Freedom of Information Act 1982* (Cth) (FOI Act) about the Attorney-General's Department in the 2019-20 financial year.

Five of those complaints were finalised by way of transfer to the Commonwealth Ombudsman pursuant to s 74 of the FOI Act. The OAIC commenced an investigation under s 75 of the FOI Act in relation to one complaint. The investigation remains ongoing.

OAIC NOTE as at 7 February 2022:

On 13 December 2021, the Australian Information Commissioner finalised this investigation, issuing a Notice on Completion under s 86 of the FOI Act and making 2 recommendations. The Commissioner concluded that the Attorney-General's Department did not correctly apply the statutory test in s 16(1) of the FOI Act when it agreed to accept the transfer of the second request. The Department could not be reasonably satisfied that the requirements of s 16(1) were met at the time transfer was requested and should have not agreed to accept transfer of the request on that basis. The Department has advised that the recommendations 'will be implemented in full', with implementation updated to be provided by 18 February and 30 July 2022.

Attachment C: Department of Home Affairs response to s 86 Notice in personal cohort



Australian Government
Department of Home Affairs

SECRETARY

OFFICIAL

EC21-007555

Ms Angeline Falk
Australian Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Dear Ms Falk

Thank you for your investigation notice, *Freedom of information complaint investigations – Notice on completion*. The Department of Home Affairs notes your recommendations and will implement the actions below in response.

Notice recommendations

Recommendation: the Department prepare and implement an operational manual for processing FOI requests for personal information to be approved by the Information Champion

The Department will finalise development of its Procedural Instruction for processing FOI requests for personal information. The procedural instruction will constitute the 'operational manual'.

Recommendation: the Department ascertain the additional resources (human or otherwise) anticipated to be required to meet statutory timeframes and provide an action plan to meet those requirements

The Department will continue to complement the FOI Section's capacity where it is not detrimental to the Department's other functions to do so. Current strategies include the use of overtime, graduate placements and the redeployment of staff who are temporarily unable to complete their normal duties.

Recommendation: the Department: a) undertake and complete training on the operational manual for FOI section staff and other staff; b) ensure that online training in processing FOI requests for personal information is available to all staff of the Department; and c) ensure that new staff joining the FOI Section are trained in relation to the operational manual within 2 weeks of commencing in the FOI Section.

The Department will provide the necessary training to FOI section staff and other staff. The Department will update its current online learning to include material related to requests for personal information. The online training for FOI requests for personal information will be made mandatory for those staff who join the FOI Section and who process requests for personal information.

Recommendation: the Department undertake an audit of the processing of FOI requests for personal information to assess whether recommendations 1, 2 and 3 have been implemented and operationalised and whether those actions have been sufficient to address the issues identified in the complaints.

The Department will finalise its audit on the processing of FOI requests for *non-personal* information. Any recommendations that would apply equally to personal requests as they do to non-personal requests will be taken to apply to personal requests. The Department will refer the decision on the need for a further audit on the processing of personal requests to its Audit Committee for consideration.

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OFFICIAL**Improvements underway**

The Department remains committed to improving its Freedom of Information (FOI) administrative and governance processes to enable it to more effectively manage the significant volume of FOI requests it receives every year. In the period over which these complaints were received, the Department finalised over 40,000 FOI requests.

The Department advised the Office of the Australian Information Commissioner of the measures already underway to improve statutory compliance in June, August and September 2021. Amongst other things, in 2021 the Department:

- Appointed an Information Champion.
- Implemented the Procedural Instruction: Processing non-personal Freedom of Information requests.
- Delivered a range of training and reference materials on the FOI Act.
- Improved management visibility of the caseload through the delivery of frequent data reports.
- Improved guidance to officers of the use of extension of time and practical refusal notices.
- Rebalanced FOI resources to better meet the demand for non-personal requests.

As a result of these actions, the Department finalised 2180 requests for non-personal information in 2020-21, which is 22 per cent more than for 2019-20 (1789) and 2.5 times that of 2018-19 (870). In 2020-21, the Department finalised 69 per cent of the 2180 requests within statutory timeframes, which is 22 and 29 percentage points more than in 2018-19 (47 per cent) and 2019-20 (40 per cent), respectively.

The Department accepts that your Notice does not contain matters of the kind mentioned in s 89C(2) of the FOI Act and that your Notice and this response will be published on your website.

Thank you again for your investigation notice and for the recommendations to improve the Department's compliance with statutory timeframes for requests for personal information under the FOI Act. We will work closely with your team as we implement these improvements.

Yours sincerely



Michael Pezzullo AO
Secretary

14 December 2021

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Commissioner brief: FOI Regulatory functions

Key messages

- The OAIC is an independent statutory agency established under the *Australian Information Commissioner Act 2010* (AIC Act). The AIC Act confers the Information Commissioner with power to perform FOI regulatory functions, including:
 - review of FOI decisions of agencies and ministers
 - investigating FOI complaints
 - issuing FOI guidelines
 - monitoring agencies' compliance with the FOI Act
 - making decisions on extension of time requests and vexatious applicant declarations and
 - compiling FOI data and access trends.
- **IC reviews:** the numbers of IC reviews on hand has increased each year for the past four years.
 - In 2020-21 we received 1,224 applications for IC review.
 - The overall increase in IC review applications from 2015-16 to 2020-21 (up to 30 June 2021) was 140%.
 - As at 31 December 2021, the OAIC had 1,485 IC review applications on hand. While the office continues to look for and implement opportunities to increase productivity in relation to its freedom of information functions, it remains the case that although significant efficiencies have been found and applied the function has not kept pace with incoming reviews.
 - The IC review jurisdiction is complex and many documents subject to IC review are sensitive (including cabinet documents, national security, defence and international relations, legally privileged document, documents affected law enforcement, and confidential documents) and often affect third parties. A high proportion of matters involve consideration of various (more than one) exemptions and hundreds of folios of material that agencies and ministers contend is exempt under the FOI Act.
 - In the absence of supplementary FOI funding, the ability of the OAIC to keep pace with increases to the review caseload will continue to be challenged. (For further information, see Commissioner Briefs - *FOI IC reviews* ([D2022/000231](#)) and FOI process review [D2021/002427](#)).
 - On 21 September 2021 the OAIC published a new Direction as to certain procedures to be followed by applicants in Information Commissioner reviews under s 55(2)(e)(i) of the FOI Act. The Direction aims to clarify the procedure for applicants in the IC review process, and is intended as a

companion piece to the Direction as to certain procedures to be followed in IC reviews which applies to agencies or ministers.

- Along with the Applicant Procedure Direction we published minor updates to Part 10 of the FOI Guidelines (Review by the Information Commissioner) and released a 'Quick guide' summary to help applicants navigate and comply with the Direction.
- **FOI complaints:** as at 31 December 2021, the OAIC had 110 open complaints.
 - The most complained about issue is delay.
 - The OAIC has also received FOI complaints about compliance log obligations, agencies' conduct during the request consultation process and poor customer service.
 - During Q1 and Q2 of 2021-22, myself and the Acting Freedom of Information Commissioner made recommendations under s 88 of the FOI Act, in 29 FOI complaint matters.
 - I have finalised a Commissioner Initiated Investigation into the Department of Home Affairs' non-compliance with statutory timeframes for processing non-personal FOI requests. The CII report, available on the OAIC website, includes my findings and recommendations. I encourage agencies consider whether the implementation of such recommendations within their own organisation will improve their compliance with statutory processing timeframes. For further information, see Commissioner Briefs FOI *Complaint issues* ([D2022/000233](#)) and *Department of Home Affairs CII* ([D2022/000235](#)).
- **Extension of time applications:** Agencies and ministers may apply to the Information Commissioner for an extension of time (EOT) during the processing of FOI requests.
 - During Q1 and Q2 of 2021-22, the OAIC received 2,454 EOT applications. (For further information, see Commissioner Brief FOI *Extension of time applications* ([D2022/000238](#)).
 - In 2019-20 the OAIC received 4,243 EOT applications, a 12% increase on the previous year. Most of these (1,357) were received in the third quarter; 44% more than during the same time the previous year.
 - In 2020-21 the OAIC had received 3,587 EOT applications. (For further information, see Commissioner Brief FOI *Extension of time applications* ([D2022/000238](#)).
- **FOI Guidelines:** During 2020-21 and the first quarter of 2021-22, the OAIC worked on updates to several parts of the FOI Guidelines.
 - We have reissued updates of Part 3 (Processing and deciding requests for access), Part 4 (Charges for providing access), Part 10 (Review by the Information

Commissioner) and Part 11 (Investigations and complaints) and Part 12 (Vexatious applicant declarations). (For further information, see Commissioner Brief and FOI OAIC engagement and Guidelines update ([D2022/000236](#))).

- We are currently working on updates to Part 5 (Exemptions), Part 13 (Information Publication Scheme), Part 14 (Disclosure Log).
- In September 2021 the OAIC consulted with agencies on revised Part 14 of the FOI Guidelines which incorporate the findings of the Disclosure Log Desktop Review. The consultation period closed on 15 October 2021 and we are currently reviewing comments and updating Part 14 in response.

- ***Vexatious applicant declaration:*** To date, no Information Commissioner has made a decision to declare a person a vexatious applicant on their own initiative. There would need to be compelling circumstances for me to consider exercising this discretion. A declaration has the practical effect of preventing a person from exercising an important legal right conferred by the FOI Act. For that reason, a declaration will not be lightly made, and an agency that applies for a declaration must establish a clear and convincing need for a declaration. A declaration by the Information Commissioner can be reviewed by the Administrative Appeals Tribunal.
 - During Q1 and Q2 this financial year, the Information Commissioner has received 3 vexatious applicant declaration applications.
 - 2 vexatious applicant declarations were made in 2020-21. (For further information, see Commissioner brief *Vexatious applicant declarations* ([D2021/002164](#))).

Compliance with disclosure log obligations: My office has completed a review of agency compliance with the disclosure log obligations in the FOI Act. The review examined practices across 38 government agencies, looking at whether agencies and ministers were complying with obligations and the extent to which documents were made available for download from websites. The review found that while most agencies are largely compliant with their obligations, some agencies require people to contact them for access to the documents listed on their disclosure log. We published a report which outlines a number of recommendations for agencies and ministers. Several agencies have accepted the Review's recommendations, and have implemented them or are in the process of implementing them.

- (For further information, see Commissioner Briefs FOI OAIC Engagement and Guidelines ([D2021/004529](#))).
- ***FOI request data and trends:*** Data collected from Australian government agencies has been reported in the 2020-21 OAIC annual report.
 - The number of FOI requests made to Australian Government agencies in 2020–21 decreased by 16% over the previous year.

- 41% of all FOI requests were granted in full in 2020–21.
- 77% of all FOI requests received were for documents containing personal information. (For further information, see Commissioner brief - *Trends in use of FOI Act exemptions* ([D2022/000232](#)).
- **Domestic and international engagement on FOI issues:** We engage with
 - Information Commissioners and Ombudsmen from other Australian jurisdictions and internationally, Association of Information Access Commissioners (AIAC) (bi-annually)
 - The International Conference of Information Commissioners (ICIC) (annually). This year, the conference was held virtually in June 2021. My Office led the adoption of a resolution which called for the proactive publication of information relating to the COVID-19 pandemic and was adopted unanimously. A joint statement on proactive publication was also published on the ICIC's website.
 - My office holds twice yearly information sessions for FOI practitioners through our Information Contact Officers Network (ICON) and engages with other Australian government agencies and civil society in relation to the Open Government Partnership (OGP). (For further information, see Commissioner briefs *FOI OAIC engagement and Guidelines update* [D2022/000236](#)).
- **Freedom of the press report:** The Senate – Environment and Communications Reference Committee undertook an inquiry into freedom of the press and issued its final report on 19 May 2021.
 - Recommendation 2 of the report states 'that the Australian Government work with the Office of the Australian Information Commissioner to identify opportunities to promote a culture of transparency consistent with the objectives of the *Freedom of Information Act 1982* among Ministers, Senior Executive Service and other Freedom of Information decision-makers' (see Commissioner brief [D2022/000236](#) – *FOI OAIC engagement and Guidelines*).
 - Some media commentary has focused on the OAIC's limited resources to effectively promote a culture of transparency and that intelligence and national security agencies are not currently covered by the FOI Act (see <https://theconversation.com/its-time-for-the-government-to-walk-the-talk-on-media-freedom-in-australia-161342>).
 - The OAIC will continue to identify opportunities to promote a culture of transparency and the right to access government held information by providing guidance and engaging with agencies and ministers.
 - The OAIC's continued engagement is consistent with Recommendation 16 of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) inquiry into 'the impact of the exercise of law enforcement and intelligence powers on freedom of the press' which recommended that the Attorney-General's

Department identify additional opportunities to promote training material prepared by the OAIC and associated training opportunities across its department (for further information see [D2021/000970](#) – *Commissioner Brief PJCIS Freedom Report Recommendations*).

- **COAG Legislation Amendment Bill 2021**

- In *Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information)* [2021] AATA 2719 (5 August 2021), Justice White discussed the principles of collective responsibility and cabinet solidarity and concluded that based on the evidence, National Cabinet did not act in accordance with those principles.
- On 2 September 2021, the COAG Legislation Amendment Bill 2021 (the Bill) was introduced into the Parliament. The Bill proposes to expand the definition of ‘Cabinet’ in s 4 of the FOI Act to include the committee known as the National Cabinet and a committee (however described) of the National Cabinet, and to amend s 34 of the FOI Act.
- The Bill was referred to the Senate Finance and Public Administration Committee for inquiry and report.
- The OAIC made a submission and the Australian Information Commissioner gave evidence at the public hearing held on 27 September 2021 (for further information see [D2022/000243](#)– Commissioner Brief – *National Cabinet*).
- The Committee published its report on 14 October 2021, with a majority of Senators recommending that the Bill be passed.
- The Bill’s current status is ‘before the House of Representatives’.

- **Other issues: For further information see** FOI official ministerial documents ([D2022/000223](#)) and FOI Act Reforms ([D2022/000245](#))

Document history			
Updated by	Reason	Approved by	Date
Suseela Durvasula, 01.02.22 Irene Nicolaou, 21.01.22	February 2022 Senate Estimates	Rocelle Ago	

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Suseela Durvasula, 01.02.22 Irene Nicolaou, 21.01.22	February 2022 Senate Estimates	Rocelle Ago	

Commissioner brief: FOI OAIC engagement and Guidelines update

Key messages

- The OAIC engages widely with Information Access practitioners across Australia and overseas. The breadth of our regulatory engagement is consistent with our strategic priority to advance domestic and international access to information laws. The key areas of focus include:
 - facilitating and encouraging practices that are ‘open by design’
 - ensuring proactive publication of government held information, particular during the Covid-19 pandemic
 - producing a wide range of resources and guidance that is designed to assist FOI applicants and government agencies to engage positively with the FOI Act.
- ***Open Government Partnership (OGP)***
 The OAIC continues to engage with Australian government agencies and civil society in relation to the OGP. The OAIC contributed to the development of Australia’s **third National Action Plan**, including by helping design a commitment in relation to access to government information. Further information regarding the OGP is at **Attachment A** .
- ***The Association of Information Access Commissioner (AIAC)***
 The Australian Information Commissioner continues to engage with Information Commissioners and Ombudsmen from other Australian jurisdictions through the AIAC. On 24 September 2021, Australian Information Access Commissioners published a [statement](#) to promote the proactive release of information. Further information regarding the AIAC is at **Attachment B**.
- ***International Conference of Information Commissioners (ICIC)***
 The Australian Information Commissioner also engages with Information Commissioners globally through international forums such as the ICIC. Key milestones include:
 - In April 2020, May 2020 and September 2020, the ICIC **issued statements** on the right of access to information in the context of the global pandemic, the duty to document decisions and reaffirming the importance of access to information laws in building greater public trust in government. In June 2021, the Australian Information Commissioner attended the **12th annual ICIC conference** and updated members on developments in access to information laws across other jurisdictions in Australia.
 - The OAIC also put forward a **resolution** calling for the proactive publication of information relating to the COVID-19 pandemic. The Resolution was adopted unanimously by all members of the ICIC through a joint statement issued on the ICIC website.
 - Further information regarding the ICIC is at **Attachment C**.

- ***International Access to Information Day (IAID)***

The OAIC promoted IAID (27 September 2021) through a dedicated website containing resources such as a campaign video; a Commissioner; message tips for FOI applicants and FOI decision makers; and IAID events and promotional materials.

- ***Information Contact Officers Network (ICON)***

The OAIC holds twice yearly information sessions for FOI practitioners. The most recent **ICON information session** was delivered via webinar on 27 September 2021 to mark IAID. The session looked at current information access trends and proactive publication experiences in New Zealand and at the Federal Court of Australia. In 2022, we are planning to hold two officer level ICON information sessions on specific topics and one Commissioner led session in September 2022. All sessions will be held virtually. Further information regarding the ICON is at **Attachment E**.

- ***Consultations and guidance***

The OAIC has continued to develop guidance for agencies and FOI applicants. The OAIC has also consulted with international non-government organisations including UNESCO to advance access to information laws around the world. Examples include:

- On 1 September 2021, the OAIC published a '[Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#)'. A '[Quick Guide](#)' was also uploaded onto the OAIC website to assist FOI applicants navigate the direction.
- In September 2021, the OAIC published the [Disclosure Log Desktop Review](#) and revised Part 14 of the FOI Guidelines for consultation. The purpose of the review was to identify whether agencies and ministers are complying with their disclosure log obligations, and the extent to which they make documents available for download from their websites. The report made findings and recommendations to assist agencies identify areas where improvements can be made to their disclosure log practices to facilitate greater public access to government held information.
- Further information regarding the Disclosure Log Desktop Review is at **Attachment G** and general guidance updates at **Attachment F**.
- In April 2021, the OAIC responded to the 2021 **UNESCO Survey on Public Access to Information**. Further information regarding the UNESCO survey is at **Attachment D**.

- ***Senate Inquiries***

The OAIC has participated in the following senate enquiries.

- On 13 August 2019, the Australian Information Commissioner appeared as a witness at a **Senate inquiry into 'the impact of the exercise of law enforcement and intelligence powers on freedom of the press'**, accompanied by Ms Elizabeth Hampton and Ms Rocelle Ago.
- On 26 August 2020, the **Parliamentary Joint Committee on Intelligence and Security (PJICIS)** published its 'Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press'.

- Recommendation 16 recommends ‘that the Australian Government review and prioritise the promotion and training of a uniform Freedom of Information culture across departments, to ensure that application of the processing requirements and exemptions allowed under the *Freedom of Information Act 1982* are consistently applied.’
- Further information regarding the Press Freedom Report is at **Attachment I**.
- In September 2021, the OAIC made a submission to the **Senate inquiry into the COAG Legislation Amendment Bill 2021**, which would extend provisions protecting Cabinet deliberations and decisions from disclosure to the National Cabinet.
- In October 2021, the Senate Inquiry recommended the draft bill be passed. A copy of the COAG Amendment Bill Report handed down by the Senate Inquiry can be found here: [D2021/018115](#)
- On 19 October 2021, the Committee published its [report](#). The Committee made only 1 recommendation: that the Bill be passed (at 3.89 of the report). Labor Senators, Australian Greens and Senator Patrick provided dissenting reports all opposing the inclusion of Schedule 3 of the Bill among other things.
- Further information regarding the COAG amendment bill, and the **National Cabinet** generally, can be found in Senate Estimates Brief 44: [D2021/015532](#).

Possible questions

- ***How have the Disclosure Log Desktop Review results been used by the OAIC?***
- The OAIC has used the findings of the review to prepare a draft update to Part 14 of the FOI Guidelines, which we shared for consultation through our website. The consultation period concluded on 15 October 2021 and the OAIC is currently considering the feedback received.
- ***What is the OAIC doing to promote the Open Government Partnership?***

The OAIC is an active participant in the OGP.

The Acting FOI Commissioner is a member of the Open Government Forum and OAIC staff have also attended Forum meetings as observers.

Staff from my office participated in working groups to develop concepts and commitments for inclusion in the third National Action Plan, with a particular focus on the concept ‘Open by Design (Right to know)’.

I meet with Australian Information Commissioners and Ombudsmen bi-annually. At our last meeting in September we developed a uniform set of principles to support proactive disclosure of government-held information in light with the Open by Design commitment under Australia’s Third Open Government National Action Plan 2021-2022.

On 24 September 2021, the Australian Information Access Commissioners published an authoritative statement to promote the proactive release of information. The [Open by](#)

[Design Principles](#) were released ahead of [International Access to Information Day](#) on 28 September.

- ***Have your virtual ICON information sessions held in 2020 and September 2021 been successful? Do you plan to continue holding these information sessions virtually?***

We held our first virtual ICON webinar on 4 November 2020, which enabled participation by 67 FOI practitioners from locations around Australia. Our session held on 22 April 2021 had more than 100 staff from government agencies in attendance. Our most recent ICON session held on 27 September 2021 had 75 participants. We consider this format is suitable as it allows us to reach more participants across Australia. The shift to holding ICON information sessions virtually has ensured that information contact officers remain well informed and connected to the OAIC during the pandemic. It also allows for contact officers across Australia to have equal access to these presentations which were previously usually held in Canberra.

The feedback we have received from ICON members following these virtual sessions has been positive, and we will continue to look for ways to meaningfully engage with this network.

- ***How has COVID-19 affected OAIC engagement with stakeholders?***

The COVID-19 pandemic has not affected the OAIC's ability to effectively engage with our stakeholders, whether they are our agency contacts or members of the public. We have been able to harness technology to continue regular meetings with agencies and continue to hold conferences with IC review applicants to discuss issues arising in the conduct of IC reviews and to explore ways of resolving the issues in dispute.

- ***What assistance does the OAIC provide to support agencies discharge their functions and powers under the FOI Act?***

The OAIC publishes a range of resources to assist agencies discharge their functions and powers under the FOI Act. These include:

- agency resources, FAQs and the FOI Guidelines
- regular e-newsletters for FOI practitioners which provide practical guidance and processing tips
- the publication of IC review decisions provides guidance to agencies in the use of FOI Act provisions and the OAIC holds twice yearly information sessions for FOI practitioners (although our ability to do this has been impacted by COVID-19 restrictions)
- the OAIC also operates an enquiry line that agencies can call for advice and guidance.

- ***How will the OAIC respond to Recommendation 2 of The Senate – Environment and Communications Reference Committee – Freedom of the press inquiry?***

Recommendation 2, made on 19 May 2021 states:

The committee recommends that the Australian Government work with the Office of the Australian Information Commissioner to identify opportunities to promote a

culture of transparency consistent with the objectives of the *Freedom of Information Act 1982* among Ministers, Senior Executive Service and other Freedom of Information decision-makers.

The OAIC will continue to provide guidance and advice to FOI practitioners through new and updated FOI Guidelines. The Guidelines are promoted through our Information Contact Officers Network (ICON) and e-newsletters. We have also recently developed an 'FOI Essentials toolkit for Australian Government agencies and ministers' for FOI practitioners. This resource steps FOI practitioners through the key elements of the FOI Act, and provides 'tips and tools', (including links to more detailed guidance, relevant forms, common mistakes, checklists etc) for managing FOI requests. The OAIC has also issued guidance in relation to the Information Publication Scheme for Senior Executive Staff.

As required, the OAIC will consider issuing additional guidance and undertaking further engagement to promote a culture of transparency and the right to access government held information.

Attachments

- Attachment A:** Open Government Partnership
- Attachment B:** Association of Information Access Commissioners
- Attachment C:** International Conference of Information Commissioners
- Attachment D:** UNESCO Survey on Public Access to Information
- Attachment E:** Information Contact Officers Network
- Attachment F:** Guidance updates
- Attachment G:** Disclosure Log Desktop Review
- Attachment H:** Senate Inquiry - Freedom of the Press Report
- Attachment I:** Establishment of the Commonwealth Integrity Commissioner
- Attachment J:** Overview of FOI matters raised in the Richardson Review

Document history

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Suseela Durvasula 11.01.22	Senate Estimates February 2022		

Open Government Partnership

The OAIC participated in the development of Australia's **third National Action Plan**, including by helping design a commitment in relation to access to government information. Relevantly, the proposed commitments include:

- Open by Design (Right to Know): To improve the accessibility of information held by government, or under government contractual or outsourcing arrangements, by developing key features for a nationally consistent approach to the proactive release of information commonly sought by members of the Australian community or which they identify as valuable and/or necessary for open and accountable government.
- Building trust in data sharing: The Office of the National Data Commissioner will promote good practice in government data sharing by implementing the Data Availability and Transparency legislation and by publishing guidance on sharing data safely and a data sharing agreement to help protect data.
- Improving transparency and trust related to the use of emergency and crisis powers: Involves developing a centralised online 'landing page' on Australia.gov.au which may include information such as legislation, regulatory and policy documents, advice about the introduction of new legislation and its timing, the amount and allocation of funding to facilitate the crisis response and information about oversight mechanisms.
- Best practice in dealing with FOI requests: will identify differences in the way Australian Government departments and agencies process and respond to FOI requests to identify how to ensure consistency in how applicants experience the FOI system.

The OAIC has also worked closely with Information Commissioners and Ombudsmen across Australia to develop a statement of [principles](#) in line with the Open by Design commitment under Australia's Third Open Government National Action Plan 2021-2022.

Association of Information Access Commissioners (AIAC)

On 24 September 2021, Australian Information Access Commissioners published an authoritative statement to promote the proactive release of information. The [Open by Design Principles](#) were released ahead of [International Access to Information Day](#) on 28 September, and should be used by government agencies to encourage and authorise the proactive release of information and promote open government.

The principles recognise that:

- information held by government and public institutions is a public resource
- a culture of transparency within government is everyone's responsibility
- appropriate, prompt and proactive disclosure of government-held information:
 - informs community
 - increases participation and enhances decision-making
 - builds trust and confidence
 - improves service delivery
 - is required or permitted by law
 - improves efficiency.

International Conference of Information Commissioners (ICIC)

The OAIC is an accredited member of the ICIC.

In April and May 2020, the OAIC joined with international and domestic counterparts to issue joint statements on the right of access to information in the context of the global pandemic and the duty to document (does not cease in a pandemic, it becomes more essential).

On 28 September 2020, the OAIC joined our international colleagues in reaffirming the importance of access to information laws in building greater public trust in government.

In June 2021, the OAIC led the adoption of a resolution at the ICIC 12th annual conference hosted by the Brazilian Office of the Comptroller General. The resolution called for the proactive publication of information relating to the COVID-19 pandemic and was adopted unanimously.

A copy of the adopted Resolution can be found on the ICIC website: [D2021/015852](#)

2021 UNESCO Survey on Public Access to Information (SDG Indicator 16.10.2)

UNESCO conducts the survey on public access to information in line with its role as the UN custodian agency for Sustainable Development Goals (SDG) Indicator 16.10.2 that tracks progress on the adoption and implementation of “constitutional, statutory and/or policy guarantees for public access to information”.

In April 2021, the OAIC completed the 2021 survey on behalf of Australia, as the central oversight body responsible for access to information laws in Australia.

The findings of the survey will be reported to UNESCO Member States via the IPDC Council and will be included in other important reporting exercises at the international level, including the annual UN Secretary-General SDG Progress Report.

On 6 December 2021, UNESCO published an executive summary and some key findings from the 2021 Survey on their website. UNESCO have indicated that a full report will be released shortly.

A copy of the executive summary can be found [here](#), and the key findings [here](#).

Information Contact Officers Network (ICON)

The OAIC holds regular ICON virtual information sessions to share information about our activities and areas of interest such as FOI processing, Information Commissioner reviews and the Information Publication Scheme. The webinars are also a chance for members to network and share knowledge with information professionals from other government agencies.

These sessions were previously held in person but are now held virtually. Our first virtual ICON webinar was held on 4 November 2020. We have since hosted two virtual ICON sessions on 22 April 2021 and 27 September 2021. The webinar featured New Zealand Parliamentary Deputy Ombudsman Bridget Hewson and General Counsel of the Federal Court of Australia. The discussion focused on proactive publication and information access through times of heightened activity and significant public scrutiny.

- **Webinar statistics**

September webinar

The September 2021 ICON webinar had 100 eligible registrations from almost 40 Australian Government agencies

Live attendance was 75% (75/100)

The average duration of attendees was 56 minutes for a 60-minute webinar

An additional 8 ICON members have accessed the webinar recording – this was the first time we have used an on-demand function.

Previous webinars – for context/background

The April 2021 webinar saw 163 registrations and peaked at 105 attendees – 63% attendance rate. Duration average data is not available

The Nov 2020 webinar saw 109 registrations and a peak of 67 attendees – 57% attendance rate. Duration average data is not available

For comparison, an in-person ICON session in September 2019 saw just over 50 attendees.

The shift to holding ICON information sessions virtually has ensured that information contact officers remain well informed and connected to the OAIC during the pandemic.

It also allows for contact officers across Australia to have equal access to these presentations which were previously usually held in Canberra.

The feedback we have received from ICON members following these virtual sessions has been incredibly positive, and we will continue to look for ways to meaningfully engage with this network.

- **Guideline Updates**

The OAIC will shortly be updating Parts 5 (Exemptions) and 6 (Conditional exemptions) of the FOI Guidelines.

The OAIC is currently working with the Attorney-General's Department on an IPS reform project which aims to improve participation in the IPS amongst Commonwealth agencies and support agencies to develop a culture of proactive publication. The OAIC is reviewing Part 13 (Information publication scheme) as a result.

In September 2021 the OAIC consulted with agencies on revised Part 14 of the FOI Guidelines which incorporate the findings of the Disclosure Log Desktop Review. The consultation period closed on 15 October 2021, and we are currently reviewing comments and updating the Guidelines in response.

In 2021, the OAIC also revised and published updated versions of:

- Part 4 (Charges for providing access)
- Parts 3 (Processing and deciding requests for access)
- Part 10 (Review by the Information Commissioner) to incorporate the 'Direction as to the certain procedures to be followed by applicants in IC reviews' and clarify the practice around hearings in IC reviews.
- Part 11 (Investigations and complaints)
- Part 12 (Vexatious applicant declarations).

- **Disclosure of public servants' personal information (names and contact details)**

On 1 July 2019, the OAIC published a discussion paper on disclosure of public servants' personal information (names and contract details) in response to FOI requests. (See Commissioner brief – Public servants' names and contact details - [D2019/010070](#).) On 20 August 2020, I issued a position paper outlining my approach to this issue.

The OAIC will shortly be revising Part 3 (Processing and deciding requests for access) and Part 6 (Conditional exemptions) of the FOI Guidelines to give effect to the approach outlined in the position paper and to take account of recent IC review and AAT decisions.

- **FOI Essentials**

The OAIC has developed a resource to assist FOI practitioners develop processes and procedures to respond to FOI requests in a timely and cost-effective way. Key components include:

- coordination of all OAIC practitioner resources in a central location, using easy to find headings

- new resources for agencies and ministers outlining how they can 'take all reasonable steps' to find a document
- a checklist that identifies the key steps in making a decision about an FOI request.

The OAIC also published information for members of the public explaining how to access Australian Government information and FAQs for applicants during the COVID-19 pandemic.

- **Direction as to certain procedures to be followed by applicants in Information Commissioner reviews**

On 1 September 2021, the OAIC published a '[Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#)'. A '[Quick Guide](#)' was also uploaded onto the OAIC website to assist FOI applicants navigate the direction.

Disclosure Log Desktop Review:

In September 2021, the OAIC published our **Disclosure Log Desktop Review Report** and **consultation draft of Part 14 of the FOI Guidelines**.

The desktop review is a regulatory activity aimed at providing guidance to agencies and Ministers and to promote public awareness around the proactive release of government held information.

In October 2019 and March 2021, the OAIC completed a desktop review of agency disclosure logs which examined 38 government agencies to assess compliance and practices. The purpose of the review was to identify whether agencies and ministers are complying with their disclosure log obligations, and the extent to which they make documents available for download from their websites.

The report made key findings and recommendations to assist agencies identify areas where improvements can be made to their disclosure log practices.

The OAIC has also used the findings of the review to prepare a draft update to Part 14 of the FOI Guidelines. Consultation closed on 15 October 2021 and we are currently reviewing comments and updating Part 14 in response. Several agencies have accepted the Review's recommendations, and have implemented them or are in the process of implementing them.

Senate Inquiry - Freedom of the Press Report

On 19 May 2021, the Senate Environment and Communications Reference Committee recommended 'that the Australian Government work with the Office of the Australian Information Commissioner to identify opportunities to promote a culture of transparency consistent with the objectives of the *Freedom of Information Act 1982* among Ministers, Senior Executive Service and other Freedom of Information decision-makers' (Recommendation 2 at [2.87]).

The OAIC will continue to identify opportunities to promote a culture of transparency and the right to access government held information. This includes working with agencies to further their proactive publication strategy, exploring opportunities to engage with Ministers' offices and SES officers, providing guidance to agencies and ministers regarding arrangements for FOI processing, developing an e-learning package for agencies. This is consistent with Recommendation 16 of the **Parliamentary Joint Committee on Intelligence and Security (PJCIS) 'Inquiry into the impact of the exercise of law enforcement and intelligence powers on freedom of the press'** which recommended that the Attorney-General's Department identify additional opportunities to promote training material prepared by the OAIC and associated training opportunities across its department.

Establishment of the Commonwealth Integrity Commission (CIC)

The OAIC supports the objectives of the CIC to prevent and investigate corruption in the Australian government. These objectives align with the OAIC's strong commitment to public sector integrity in its oversight of Australian Government agencies under the FOI and Privacy Acts.

On 22 February 2021, the Information Commissioner made a submission on the draft CIC Bill that included comments and recommendations in the OAIC's capacity as regulator of the FOI Act and the Privacy Act, and as a Commonwealth integrity agency under the draft legislation.

Overview of FOI matters raised in the Comprehensive Review of the Legal Framework of the National Intelligence Community (the Richardson Review)

On 4 December 2020, the government released the unclassified version of the Comprehensive Review of the Legal Framework of the National Intelligence Community (the Richardson Review), along with the Government's response to the review.

The Richardson Review recommends that the Australian Secret Intelligence Service (ASIS), Australian Security Intelligence Organisation (ASIO), Australian Signals Directorate (ASD), Defence Intelligence Organisation (DIO) and the Office of National Intelligence (ONI) should continue to be exempt from the operation of the FOI Act (Recommendation 184). It recommends that Home Affairs, including the Intelligence Division, should remain subject to FOI Act (Recommendation 185).

Additionally, the Report recommends that the Australian Criminal Intelligence Commission (ACIC) should remain subject to the FOI Act (Recommendation 187). The government disagreed with this recommendation.

In response, the government has drafted the *Australian Crime Commission Amendment Bill 2021* to make a minister or agency exempt from the operation of FOI Act in relation to documents that have originated with, or have been received from, the ACIC. The Bill would also make the ACIC an entirely exempt agency. The OAIC provided comments on the draft Bill in November 2021, stating the FOI Act should continue to apply to ACIC's non-intelligence functions and that agencies should only be excluded from the operation of the FOI Act in exceptional circumstances. We understand the Bill has not yet been introduced to Parliament.

The review recommends several amendments to the FOI Act. It recommends amending the Act so that it applies in relation to the Australian Geospatial-Intelligence Organisation (AGO)'s non-intelligence documents, specifically in relation to documents that used to be held by the Australian Hydrographic Office (Recommendation 186). It recommends that consistent protections should be afforded to Suspicious Matter Reports and Suspicious Transaction Reports produced by the Australian Transaction Reports and Analysis Centre (AUSTRAC) (Recommendation 188).

The review also recommends that the FOI Act be amended so the Inspector-General of Intelligence and Security (IGIS) is only required to provide evidence to the Information Commissioner under s 55ZB of the FOI Act where the review involves one or more of the agencies that the IGIS oversees (Recommendation 192). The government agreed with all these recommendations.

The Government has agreed to implement 186 of the 190 unclassified recommendations. This will involve developing a modern legislative framework to govern electronic surveillance activities. The new framework will replace the parts of a number of existing acts that govern electronic surveillance powers, including the Telecommunications (Interception and Access) Act, the Surveillance Devices Act and the Australian Security Intelligence Organisation Act. The Government's

response to the Richardson Review does not identify whether the proposals for change to the FOI Act will follow the development of the new legislative framework (as above) or will proceed separately.

The Attorney-General's Department (AGD) has advised that the Department of Home Affairs is currently undertaking a significant electronic surveillance reform process consistent with the Richardson Review recommendations. Further information is available at [Electronic Surveillance Reform](#). AGD expects the reform process will include FOI Act considerations but development is currently in the early stages.

- Overview of the report

On 4 December 2020, the government released the unclassified version of the Comprehensive Review of the Legal Framework of the National Intelligence Community (the Richardson Review), along with the Government's response to the review. The review was undertaken by Mr Dennis Richardson AC and resulted in a published report of 1,300 pages across four volumes.

The Terms of Reference were extensive and included consideration of:

the legislation relating to the six Australian Intelligence Community (AIC) agencies, as well as the Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC), Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Department of Home Affairs to the extent their legislative provisions relate to the intelligence activities of these four agencies.

The Terms of Reference did not specifically mention the FOI Act.

In July 2018, the review team met with and wrote to stakeholders including the OAIC inviting submissions against the Terms of Reference. The review team circulated a discussion paper in July 2019, setting out a range of proposals. The discussion paper was circulated to stakeholders including the OAIC. The OAIC provided a submission to the review in January 2019. The submission focused on privacy but noted in relation to FOI that the OAIC agrees in principle that it may be beneficial to change the requirements about when the IGIS must be consulted. The OAIC also participated in a workshop on Oversight, Transparency and National Security on 1 April 2019.

- Further information regarding the FOI issues in the Richardson Review can be found here: [D2021/016878](#)

Commissioner brief: FOI Extension of time applications

Key messages

- An agency or minister must make a decision on an FOI request within 30 days, unless the timeframe has been extended.
- Where an agency or minister is unable to process an FOI request within the processing period, they may request an extension of time (EOT):
 - from the FOI applicant (by agreement under s 15AA)
 - from the Information Commissioner under:
 - s 15AB (complex or voluminous)
 - s 15AC (where the agency or minister has been **unable to process the request within the statutory timeframe**)
 - s 51DA (where the agency or minister has been unable to process the request for **amendment or annotation**)
 - s 54D (where the agency or minister has been unable to process an **internal review application** within the statutory timeframe).
- Part 3 of the FOI Guidelines encourage agencies to seek agreement with the FOI applicant prior to lodging an extension of time request with the OAIC.
- EOT applications must include reasons why the request could not be processed within the statutory processing period and provide a plan on how the further time (if granted) will be utilised by the agency or minister.
- It is important for agencies and ministers to consider early in the process whether an extension of time is required, as an application for an extension of time is not an automatic grant and each application is considered on its individual merits.

Critical facts

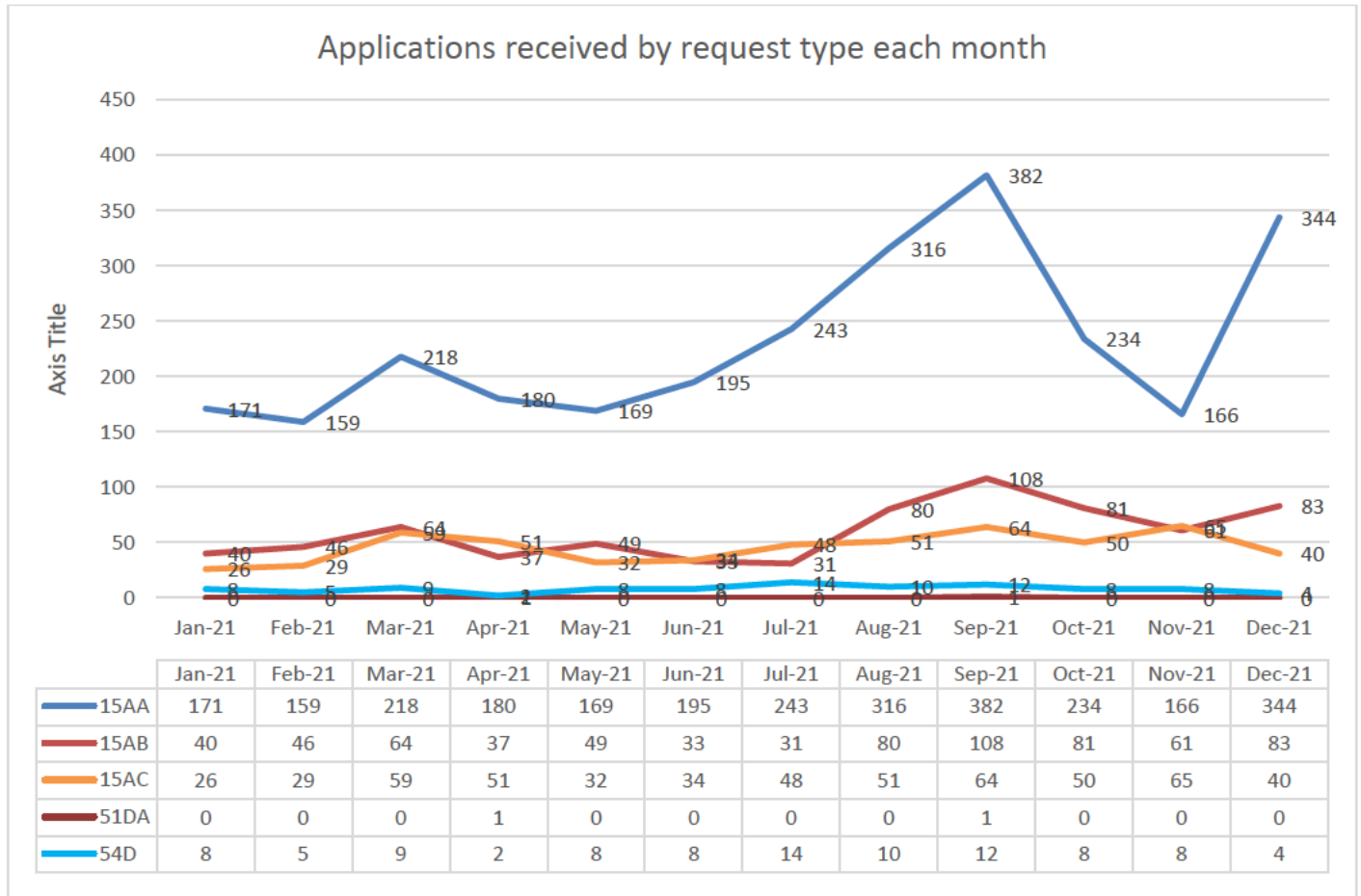
- During the past 3 financial years, and Q1 and Q2 of this financial year, the OAIC finalised:

Request Type	2018-19	2019-20	2020-21	2021-22 (Q 1 & 2)
Section 15AA (agreement between agency and applicant)	2,959	2,393	3,029 (27%)	1,648
Section 15AB (extension based on complexity or voluminous)	562	786	507 (-35%)	425
Section 15AC (deemed access refusal decision made)	178	492	405 (-18%)	323
Section 51DA (extension to deal with an amendment or annotation request)	1	5	2 (-60%)	1
Section 54D (deemed affirmation of primary decision)	41	80	57 (-29%)	57
Total	3,741	3,756	4,000	2,454

(2021-22 statistics from 1 July 2021 to 31 December 2021)

EOT Applications received by request type

- The following graph sets out the number of extension of time applications received by the OAIC from 1 September 2020 to 31 December 2021.



- During July to December 2021, many of the 806 extension of time requests made by agencies and requiring a decision by the OAIC referred to COVID-19 related reasons:
 - with the 'stay at home orders' in NSW and ACT there have been further reference to COVID related reasons given in recent applications.
 - During the January 2022 Omicron outbreak, the OAIC received extension of time applications requesting extensions on the basis that the FOI team had personally been impacted by COVID and this has resulted in agencies' ability to process FOI requests.
 - Agencies referred to a reduction in staffing due to reassignment of FOI processing officers to other areas of the agency as the main reason for seeking the extension. Other reasons included a lack of available decision makers or subject matter experts to retrieve and advise of the documents within the scope of a FOI request.
 - There was a sharp increase in s 15AA notifications from July to December 2021, with an average of 280 notification being received each month.
 - Of the 1,685 s 15AA notifications received in Q1 and Q2 2021-2022, 335 were received from the Department of Health.
 -

Possible questions

- ***What was the effect of COVID on extension of time applications received by the OAIC?***

In the beginning of the pandemic, in March 2020 the OAIC experienced a significant increase of extension of time applications and notifications (489 total). Between March and June 2020, the OAIC received 1,889 extension of time applications and notifications (ss 15AA, 15AB, 15AC, 51DA and 54D), that is an increase of 55% for the same period in 2019 (with 1,219 received in 2019).

From July 2020 – December 2020, we saw a significant reduction in the number of agencies applying for extensions of time with COVID-19 being provided as a reason for seeking that extension. However, from January 2021 there was a slight increase in extensions of time where COVID-19 is being provided as a reason for seeking an extension, particularly with reference to the various short, state and city-based lockdowns which have occurred more recently.

The more recent lockdowns in NSW and the ACT in 2021, have caused a further increase in extension of time applications requiring a decision. Some agencies remain impacted by COVID-19, particularly those agencies who currently remain in a lockdown geographical area and those currently involved in the roll-out of COVID-19 vaccinations.

During the January 2022 Omicron outbreak, the OAIC received extension of time applications requesting extensions on the basis that the FOI team had personally been impacted by COVID and this has impacted agencies' ability to process FOI requests.

Since 4 January 2022, the OAIC has received a number of extension of time applications where reasoning includes staffing levels being affected by COVID-19 infections with either officers themselves being infected and requiring leave from work, and/or family members being diagnosed with COVID-19 and officers requiring leave in a carer capacity. Between 4 – 18 January 2022, the OAIC received approximately 28 extension of time applications citing COVID-19 as a reason for delay. The vast majority of extensions of time received that refer to COVID-19 in the reasoning are being sought under s 15AB of the FOI Act, that is that the request is complex and/or voluminous.

- ***What action is the OAIC proposing to take to address poor compliance with statutory timeframes?***

The OAIC continues to monitor agency compliance with statutory timeframes and works directly with some agencies to address this issue. We are pleased to see overall improvements in timeliness since 2016-17 (where 58% of requests were processed within the statutory timeframe). For 2020-21 77% were processed within the statutory timeframe. Work undertaken by the OAIC in promoting compliance with statutory timeframes includes:

- conducting an assessment of agencies' compliance with the statutory processing period, and writing to agencies which are consistently not complying with the Act
- conducting FOI complaint investigations with a focus on making recommendations that assist agencies to comply with statutory timeframes and highlights FOI as a whole-of-agency responsibility
- publication of the outcomes and recommendations of FOI complaint and the CII investigation on the OAIC website for the benefit of agencies and the public
- making decisions on extension of time applications
- using our formal powers to require provision of a statement of reasons when a person seeks review of a deemed refusal
- providing assistance through our enquiries phone line
- publishing regular e-newsletters for FOI practitioners
- publishing resources on our website, including checklists to streamline the FOI request process
- the OAIC's Information Contact Officer Network webinar in April 2021 focused on EOTs. The event was attended by over 100 FOI practitioners. The practical guidance provided during that session went towards improving the quality of EOT applications and assisting agencies when processing FOI requests to comply with statutory processing timeframes.

Extension of time applications remains a standing agenda item for external stakeholder meetings to provide an opportunity for added guidance to agencies on applications for extensions of time.

- ***What factors does the OAIC take into consideration when considering an extension of time application?*** Factors considered include:
 - whether the FOI request is complex and/or voluminous
 - the length of time that has been requested by the agency or minister
 - whether other extension provisions have been applied
 - whether adequate explanatory information has been provided to support the application for an extension
 - what work has already been undertaken to process the FOI request, and
 - what work will be undertaken if the extension of time is granted.

The factors considered by a decision maker is determined by the provision under which the extension of time is sought. Extensions of time sought under s 15AB of the FOI Act must address the complexity and/or volume of the FOI request.

In some circumstances, the OAIC may consult with the FOI applicant. Any comments the FOI applicant makes will be taken into consideration.

- ***How long can the OAIC grant an extension of time for?***

The Information Commissioner may grant an extension of time for 30 days, or such other period as the delegate of the Information Commissioner considers appropriate. The time period requested by the agency or minister is based on the facts and circumstances of each application.

- ***How many extensions of time applications were received from agencies and Ministers to date this financial year and last financial year?***

For ***Q1 and Q2 of this financial year***, the OAIC received 806 ss 15AB, 15AC, 51DA and 54D applications from agencies and Ministers.

The OAIC was also notified by agencies and ministers of 1,685 s 15AA agreements.

- For the same period 2020-21, the OAIC received 456 ss 15AB, 15AC, 51DA and 54D applications from agencies and Ministers. The OAIC was also notified by agencies and ministers of 1,503 s 15AA agreements.

In the ***2020-21 financial year*** the OAIC received 992 ss 15AB, 15AC, 51DA and 54D applications from agencies and Ministers.

The OAIC was also notified by agencies and ministers of a further 2,595 s 15AA agreements.

- ***Do you always grant an extension of time?***

No. We will decide any application for an extension of time to process an FOI request on a case-by-case basis. Our assessment will take into account factors which may make it challenging for agencies to meet the statutory timeframe, such as the availability of subject matter experts, decision makers or line area staff. FOI applicants may be consulted for their comments on the application, and those comments will be considered by the decision maker. The agency must justify why an extension is appropriate. The OAIC may extend the processing period by an amount of time suitable to the circumstances, that may be 30 days or a longer or shorter period as appropriate.

- ***How many extension of time applications does the OAIC grant?***

For ***Q1 and Q2 of this financial year***, the OAIC granted 77% of all extension of time applications received that require an Information Commissioner decision. The OAIC 'varied' 10% and refused 5%. 5% of the applications received by the OAIC were subsequently withdrawn.

In ***2020-21***, the OAIC granted 77% of all extension of time applications received that require an Information Commissioner decision. The OAIC 'granted varied' 10% and refused 6%. 5% of the applications received by the OAIC were subsequently withdrawn.

- ***Have you issued any guidance about what FOI applicants can do if they have not received a decision within time?***

The OAIC has published information about an individual's review rights and the availability of Information Commissioner review where a decision has not been made within time.¹ If an agency or minister does not make a decision on the FOI request within the required time, the FOI request is taken to have been refused. Any charge the agency or minister asked to pay is no longer due, and any deposit must be refunded. In these circumstances, the FOI applicant has the right to ask for Information Commissioner review of this decision (internal review does not apply to this kind of decision).

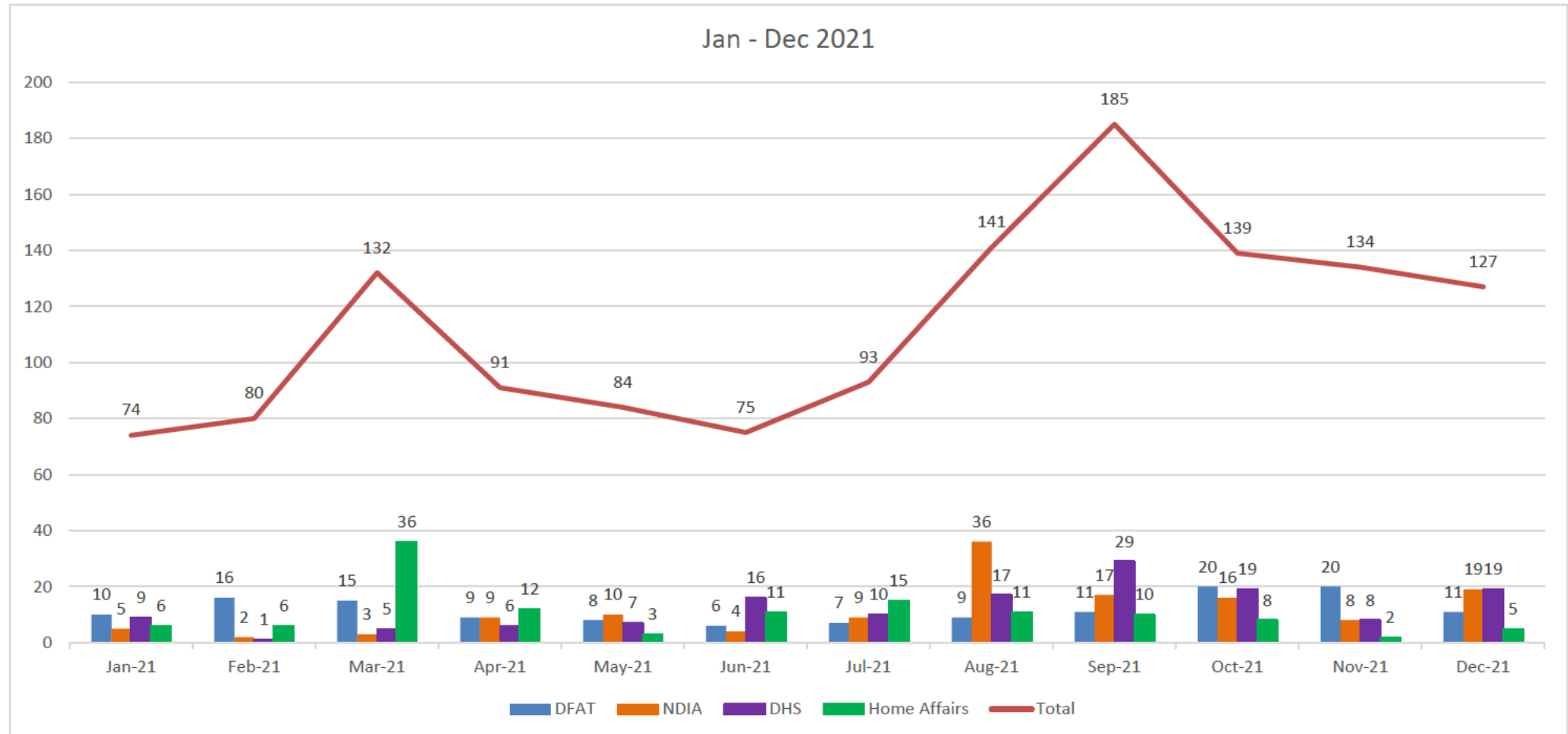
Document history

Written by	Reason	Approved by	Date
Shelley Napper	February 2022 Senate estimates		

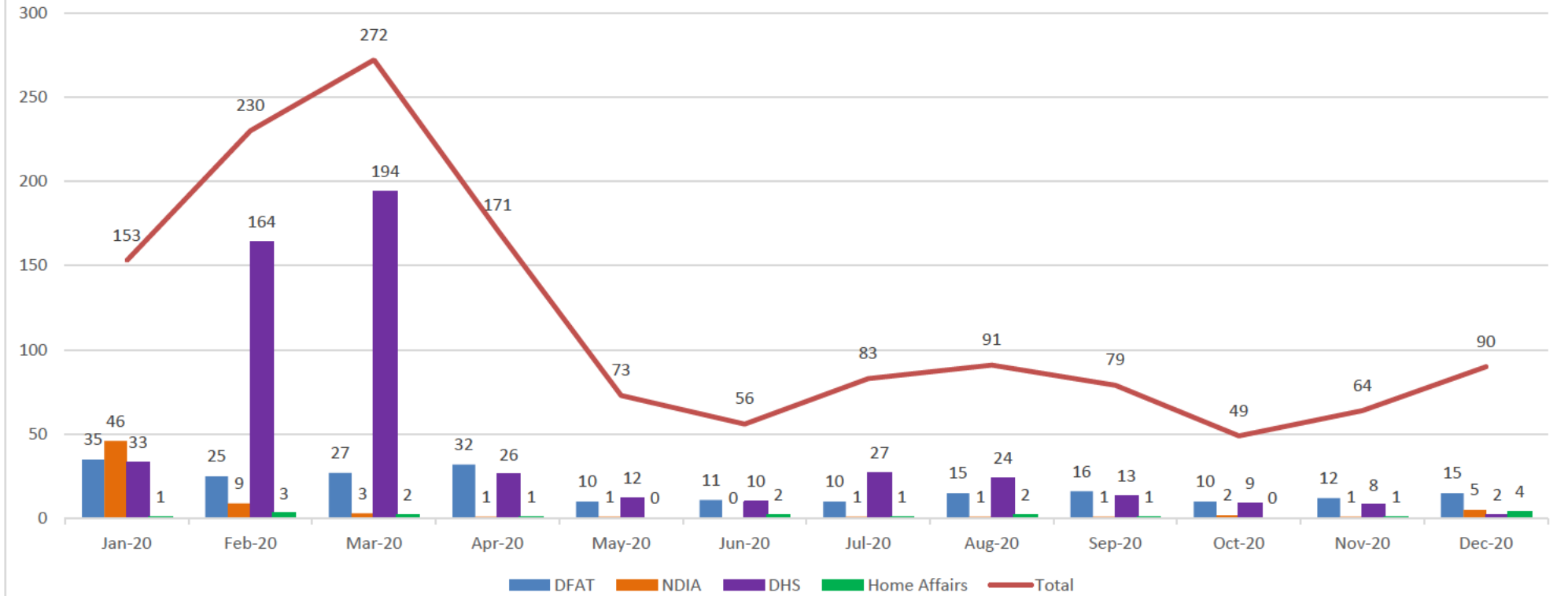
¹ OAIC website: <https://www.oaic.gov.au/freedom-of-information/how-to-make-an-foi-request/when-to-expect-a-decision/> and <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Extension of time application received under ss 15AB, 15AC, 51DA and 54D

For the period 1 January to 31 December 2021, the OAIC received a decrease of 4% in extension of time applications for the same period 1 January to 31 December 2020.



Jan - Dec 2020



Commissioner brief: FOI funding and workload

Item/Year	2013-14	2019-20	2020-21	2021-22
Staffing	<ul style="list-style-type: none"> 13 May 2014 x 25 staff headcount (budget night) 7 October 2014 x 13 staff headcount Excludes Executive Excludes areas that contribute to FOI 	30 June 2020: <ul style="list-style-type: none"> 17 x staff headcount Excludes Executive Excludes areas that contribute to FOI 	30 June 2021: <ul style="list-style-type: none"> 21 x staff headcount Excludes Executive Excludes areas that contribute to FOI 	As at 31 December 2021: <ul style="list-style-type: none"> 21 x staff headcount Excludes Executive Excludes areas that contribute to FOI A/g FOI Commissioner appointed Aug 21 Assistant Commissioner FOI appointed Nov 21
Funding	Internal budget for 2014-15 not located. The 2014-15 financial statements show \$9.365million spent on staffing. Total headcount at 30 June 2014 was 91. Therefore, approximate cost of 25x FOI staff was \$2,573,000.	FOI appropriation funding not traced. However, internally allocated budget is: <ul style="list-style-type: none"> FOI division: \$2,430,000 Areas contributing to FOI: \$570,000 Total FOI allocation: \$3,000,000 The above figures exclude FOI overhead costs, such as rent and shared services. D2020/010201	FOI appropriation funding not traced. However, internally allocated budget is: <ul style="list-style-type: none"> FOI division: \$2,566,000 Areas contributing to FOI: \$605,000 Total FOI allocation: \$3,171,000. The above figures exclude FOI overhead costs, such as rent and shared services. D2021/013198	FOI appropriation funding not traced. However, internally allocated budget is: <ul style="list-style-type: none"> FOI division: \$2,884,000 Areas contributing to FOI: \$933,525 Total FOI allocation: 3,818,000 The above figures exclude FOI overhead costs, such as rent and shared services. D2021/021260
IC reviews	30 June 2014: <ul style="list-style-type: none"> 525 received 646 finalised 	30 June 2020: <ul style="list-style-type: none"> 1,066 received 829 finalised Comparison to 30 June 2014: <ul style="list-style-type: none"> Received 103% more Finalised 28% more 32% fewer staff. 	30 June 2021: <ul style="list-style-type: none"> 1,224 received 1,018 finalised YTD comparison to 30 June 2014: <ul style="list-style-type: none"> Received 133% more Finalised 58% more 16% fewer staff. D2021/016546	31 December 2021: <ul style="list-style-type: none"> 882 received 698 finalised Forecast to 30 June 2022 <ul style="list-style-type: none"> Forecast based on average YTD rate of receipt and finalisation. 1,764 received 1,396 finalised 5% more staff.
FOI Complaints	30 June 2014: <ul style="list-style-type: none"> 77 received 119 finalised 	30 June 2020: <ul style="list-style-type: none"> 109 received 71 finalised Comparison to 30 June 2014: <ul style="list-style-type: none"> Received 42% more Finalised 40% fewer 32% fewer staff. 	30 June 2021: <ul style="list-style-type: none"> 151 received 174 finalised Comparison to 30 June 2014: <ul style="list-style-type: none"> Received 96% more Finalised 46% more 16% fewer staff. 	31 December 2021: <ul style="list-style-type: none"> 99 received 97 finalised Forecast to 30 June 2022 <ul style="list-style-type: none"> Forecast based on average YTD rate of receipt and finalisation. 198 received 194 finalised 5% more staff.

Extension of time (decision required)	30 June 2014: <ul style="list-style-type: none"> 525 finalised 	30 June 2020: <ul style="list-style-type: none"> 1363 finalised Comparison to 30 June 2014: <ul style="list-style-type: none"> Finalised 160% more 32% fewer staff. 	30 June 2021: <ul style="list-style-type: none"> 1363 finalised Comparison to 30 June 2014: <ul style="list-style-type: none"> Finalised 160 more 16% fewer staff. 	31 December 2021: <ul style="list-style-type: none"> 2,541 finalised <u>Forecast</u> to 30 June 2022 <ul style="list-style-type: none"> Forecast based on average YTD rate of receipt and finalisation. 5,082 finalised 5% more staff.
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Document history

Updated by	Reason	Approved by	Date
Brenton Attard	February 2022 Senate Estimates		

Data calculations: [D2021/016546](#)

Commissioner brief: FOI Act Reforms

Key messages

- The FOI Act provides a sound basis for providing access to government held information to the Australian public through formal FOI requests, the disclosure log and the Information Publication Scheme. However there is room for improvement. Possible areas for review include:
 - Examining the language of the Act, particularly in the context of the digital environment (including the use of word 'document' rather than 'information')
 - Examining the operation of other domestic and international legislation which could further promote more timely and more proactive publication of documents that are routinely requested under the FOI Act, for example, Question Time Briefs, ministerial and senior official diaries
 - Reviewing the recommendations made by the Hawke Review undertaken in 2013, including the recommendation to review the agencies listed in Part 1 of Sch 2 of the FOI Act
 - Reviewing the current structure of the Australian Information Commissioner Act 2010, particularly in relation to the power to delegate decision making
 - Reviewing Part VII of the FOI Act relating to the Review by the Information Commissioner to assist in further increasing efficiencies in the process.
- On 18 March 2021 the *Archives and Other Legislation Amendment Bill 2021* was introduced to Parliament and read before the Senate:
 - The Bill amends the *Freedom of Information Act 1982* to exclude a right of access to documents provided to, or created by, the Independent Review into the workplaces of Parliamentarians and their staff conducted under the Australian Human Rights Commission Act 1986 by the Sex Discrimination Commissioner; and Archives Act 1983 to provide that these documents would not come into the open access period until 99 years after the year the documents came into existence.
 - On 25 March 2021, during the second reading before the House of Representatives, Ms Zali Steggall OAIM, MP, Member for Warringah New South Wales proposed an amendment to the bill regarding the exclusion of material handed to the inquiry from ministers' offices and departments, so that the bill does *not* affect existing FOI rights. (Schedule 1, item 7, page 4)
 - On 11 May 2021, Senate agreed to the House of Representative amendment above and the Amendment Bill passed both Houses on the same day.
- The 2013 Hawke Report into the FOI Act, identified a number of areas in which changes could be made to the FOI Act which will increase its ability to delivery transparency and accountability for the Australian public.

- The review of charges under the FOI Act was published in 2012.

Critical facts

- **Charges review:** On 7 October 2011, the Minister for Privacy and Freedom of Information, the Hon Brendon O'Connor, issued terms of reference for a review of charges under the FOI Act. The Australian Information Commissioner issued a discussion paper on 31 October 2011, and received 23 submissions from agencies and applicants. The review report was published in February 2012. The review made 10 recommendations for a new charges framework. These recommendations include encouraging administrative access; introducing discretionary FOI application fees to encourage people to use an administrative access scheme before resorting to the FOI Act; no FOI processing charge for first five hours and a flat \$50 fee for work between five and 10 hours; 40 hour ceiling on processing time (including for personal requests which are not subject to charges); specific access charges for activities such as supervising inspection; a reduction in charges for delayed processing; introduction of an IC review fee if the applicant does not first seek internal review, and indexation of all FOI fees and charges to the CPI.
- **Hawke review:** On 29 October 2012, the Attorney-General issued terms of reference for a review of the operation of the FOI and AIC Acts under s 93B of the FOI Act and s 33 of the AIC Act. On 1 July 2013, after considering 81 submissions, Dr Hawke finalised his 'Review of the *Freedom of Information Act 1982* and *Australian Information Commissioner Act 2010*'.

The Hawke Report concluded that the FOI reforms of 2010 were operating as intended and were generally well received, however many of the concerns raised in submissions were not directly addressed in the reform packages. The Hawke Report made 40 recommendations against 7 broad themes; the FOI Act framework, the OAIC's structure and processes, the two-tier system of merits review, exemptions, FOI Act coverage, charges, regulatory and administrative burden. Dr Hawke also published a 'FOI Better Practice Guide' for Australian government agencies and practitioners.
- **Belcher Red Tape Review:** The 'Independent Review of Whole-of-Government Internal Regulation' (the Belcher Red Tape Review) was published in August 2015. This recommended that entities examine their FOI practices to ensure they impose the least burdensome mechanisms for responding to FOI requests and consider more active publication of information to decrease FOI requests. It also recommended that AGD consider whether the IPS could be consolidated with other government initiatives for enhancing public accessibility of government information, such as the digital transformation agenda.

To reduce the administrative burden on entities, AGD should reduce the frequency of reporting FOI matters from quarterly to annually and seek the Government's agreement to prioritise implementation of the Hawke report to reduce the regulatory burden and improve the operation of the FOI Act and consider issues raised about exemptions and the scope of access to information under the FOI Act to enhance its operation.

- **ANAO Review:** On 19 September 2017, the Australian National Audit Office published a report on *Administration of the Freedom of Information Act 1982*. This report reviewed the role of the OAIC and recommended that we develop an approach to verifying the quality of data input and develop and publish a statement of our regulatory approach. The audit also looked at how three entities (the Department of Veterans' Affairs, the Department of Social Services and the Attorney-General's Department) processed FOI requests. The report investigated the assistance provided to applicants, whether agencies conducted reasonable searches for documents, timeliness of decision making, the application of exemptions and whether internal reviews were conducted appropriately.
- **Thodey Review of the APS:** In May 2018 the government commissioned an independent panel to review the Australian Public Service. The committee received more than 700 submissions. On 19 March 2019, a draft report, 'APS Review: Priorities for change', was published. One key priority identified was, 'an open APS, accountable for sharing information and engaging widely' which draws on Australia's Open Government National Action plan and refers to New Zealand's decision to proactively release some traditionally confidential material.

On 13 December 2019, the *Independent Review of the Australian Public Service* was published. Relevantly, the review made the following recommendation:

Government to commission a review of privacy, FOI and record-keeping arrangements to ensure that they are fit for the digital age, by:

- supporting greater transparency and disclosure, simpler administration and faster decisions, while protecting personal data and other information, and
- exempting material prepared to inform deliberative processes of government from release under FOI.

The government did not agree to implement this recommendation; which it noted, saying the government's principal focus is to ensure agencies effectively implement current requirements, addressing practical problems where required and that further reform would be considered separately to the Government's response to the APS Review.

- **FOI Amendment Bill :** On 22 August 2018, Senator Rex Patrick introduced the *Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018* into the Senate. It was referred to a Senate Committee. On 30 November 2018, the Senate Committee recommend that the Senate not pass the Bill. The Bill proposed the following amendments to the FOI Act:
 - require government to fill all three offices of the Australian Information Commissioner, the Privacy Commissioner and the Freedom of Information Commissioner.
 - add a new category of decision that may be appealed to the AAT and allow applicants to apply to the AAT for review of any IC reviewable decision without first

going through the Information Commissioner review process. An applicant taking this option would pay the usual AAT application fee.

- require the Information Commissioner to notify an IC review applicant if it is likely that more than 120 days will elapse before a decision under s 55K will be made, or that 120 days has elapsed since the IC review application was made. The Information Commissioner's notice must state that an application to transfer the IC review application to the AAT may be made to the OAIC.
- require the consistent application of exemptions by decision makers in the context during IC review.
- require the Information Commissioner and Privacy Commissioner to hold legal qualifications if making IC review decisions.
- require publication of documents on a disclosure log between 10 and 14 working days after access is given.
- require publication of all external legal expenses incurred in relation to FOI matters.
- Senators and Members of the House of Representatives are not subject to FOI charges unless the work generated by an access application involves charges totalling more than \$1000.

There was a brief second reading debate of the bill on 31 August 2020, during which both Liberal and Labour Senators spoke against it. The Bill's current status remains as 'Before Senate'. Further information is contained in Commissioner brief FOI Bill [D2022/000244](#).

- **Domestic and internal enforcement mechanisms:** A domestic and international comparison reveals the following legislative measures to address non-compliance by agencies following the exercise of enforcement powers by the regulator in reviewing FOI decisions:
 - reports to the Prime Minister/House of Representatives (New Zealand)
 - judicial review proceedings (New Zealand)
 - contempt of court proceedings (United Kingdom), and
 - summary offence proceedings with a maximum penalty of a \$1,000 fine (Canada).
- **Archives and Other Legislation Amendment Bill 2021:** Amends the *Freedom of Information Act 1982* to exclude a right of access to documents provided to, or created by, the Independent Review into the workplaces of Parliamentarians and their staff conducted under the *Australian Human Rights Commission Act 1986* by the Sex Discrimination Commissioner; and *Archives Act 1983* to provide that these documents would not come into the open access period until 99 years after the year the documents came into existence. The bill was introduced and read before Senate on 18 March 2021 and included a clause that would also exclude anything handed to the inquiry from ministers' offices and departments from being made publicly available via FOIs.

On 25 March 2021, during the second reading before the House of Representatives, Ms Zali Steggall OAIM, MP, Member for Warringah New South Wales proposed an

amendment to the bill regarding the exclusion of material handed to the inquiry from ministers' offices and departments.

On 11 May 2021, Senate agreed to the House of Representative amendment of the following:

- (1) Schedule 1, item 7, page 4 (after line 29), after subsection 7(2DA), insert:
- (2DB) A Minister and an agency other than the Australian Human Rights Commission are not exempt under subsection (2DA)(a) from the operation of this Act in relation to documents created for purposes other than the Independent Review to which a right of access otherwise exists or existed under the Act.

[Bill does not affect existing FOI rights]

The Amendment Bill passed both Houses on the same day.

- **COAG Legislation Amendment Bill 2021:** Introduced on 2 September 2021. The Bill proposes to expand the definition of 'Cabinet' in s 4 of the FOI Act to include the committee known as the National Cabinet and a committee (however described) of the National Cabinet.¹ The Bill also proposes to amend s 34 of the FOI Act. The Explanatory Memorandum states that the Bill 'make clear that where Commonwealth legislation makes provisions to protect from disclosure the deliberations and decisions of the Cabinet and its committees, these provisions apply to the deliberations and decisions of the committee of cabinet known as the National Cabinet'.

The Bill was referred to the Senate Finance and Public Administration Committee. The Committee tabled its [report](#) on 19 October 2021. A majority of Committee members recommended that the Bill be passed, with Labor, Australian Greens and Senator Rex Patrick dissenting. The Bill's current status is 'before the House of Representatives'. For further information - see Commissioner brief: National Cabinet [D2022/000243](#).

Possible questions

- ***Is the FOI Act working to achieve transparency and accountability in government?***

The FOI Act provides a sound basis for providing access to government held information to the Australian public, through formal FOI requests, the disclosure log and the Information Publication Scheme. However, there is further room for improvement.

- ***What are your suggestions for improvement to the FOI Act?***
 - Examining the language of the Act, particularly in the context of the digital environment (including the use of word 'document' rather than 'information')
 - Examining the operation of other domestic and international legislation which could further promote timelier and more proactive publication of documents that are

¹ The National Cabinet has established five National Cabinet Reform Committees (NCRCs), corresponding to the priority areas of Health, Energy, Infrastructure and Transport, Skills and Rural and Regional. These committees have been tasked by the National Cabinet to progress job creation. See: <https://federation.gov.au/national-cabinet/national-cabinet-reform-committees>

routinely requested under the FOI Act, for example, Question Time Briefs, ministerial and senior official diaries

- Reviewing the recommendations made by the Hawke Review undertaken in 2013, including the recommendation to review the agencies listed in Part 1 of Sch 2 of the FOI Act
- Reviewing the current structure of the Australian Information Commissioner Act 2010, particularly in relation to the power to delegate decision making.
- Reviewing Part VII of the FOI Act relating to the Review by the Information Commissioner to assist in further increasing efficiencies in the process.
- ***The media has reported that the Australian government is becoming more secretive. What are you doing to improve transparency and accountability in government?***
 - I continue to make IC review decisions which provide guidance to Australian Government agencies. We continue to update the FOI Guidelines. We are reviewing agency compliance with their disclosure log obligations. We completed a review of agency compliance with their IPS obligations in June 2019.
- ***What are your thoughts on the recommendation made by the Thodey review of the APS that material prepared to inform the deliberative processes of government should be exempt from release under the FOI Act?***

The deliberative processes conditional exemption in s 47C of the FOI Act protects information which relates to the opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberations that have taken place for the deliberative processes of an agency or a minister or the government. It does not apply to 'purely factual material'. In my view this exemption, which is subject to a public interest test, adequately protects the ability of government officials to develop policy, debate issues, and to brief ministers and government where appropriate.

The rights and interests of the Australian public would be significantly impacted if the deliberative processes of government are not subject to an overriding public interest test. It could undermine the objects of the FOI Act, which include that Australia's representative democracy is enhanced by increasing public participation in government processes with a view to promoting better informed decision making and increasing scrutiny, discussion, comment and review of the government's activities.

- ***Do you consider the FOI Act needs to be amended so that the FOI Act continues to apply when a Minister changes?***

The FOI Act gives a right of access to an 'official document of a minister'. Unless documents are required to be retained as National Archives, General Records Authority No. 38 provides they can be destroyed when the exiting Minister ceases to hold a ministerial post. If the documents are retained as National Archives, they will not be able to be accessed through a request to NAA for 20 years - until the open access period

commences. In some circumstances, the new Minister may be able to access documents transferred to the NAA by their predecessor under GRA 38.

Key dates

- February 2012 – Australian Information Commissioner issues report into charges under the FOI Act.
- 22 May 2013 – Australia announces decision to join the Open Government Partnership.
- 1 July 2013 – Hawke Report into the operation of the FOI Act.
- August 2015 – Belcher red tape review published.
- 19 September 2017 – Australian National Audit Office publishes report '*Administration of the Freedom of Information Act 1982*'.
- 22 August 2018 – Senator Rex Patrick introduced *Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018* into the Senate.
- 13 December 2019 – Thodey review of Public Service and the government's response published.
- 31 August 2020 – Second reading debate of *Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018*, during which both Liberal and Labour Senators spoke against it.
- 11 May 2021 – Senate agreement to House of Representatives proposed amendment to the *Archives and Other Legislation Amendment Bill 2021*, so that the Bill does not affect existing FOI rights. The Bill passed both Houses on the same day.
- 2 September 2021- *COAG Legislation Amendment Bill 2021* introduced to expand the definition of 'Cabinet' in s 4 of the FOI Act to include the National Cabinet and a committee (however described) of the National Cabinet and to amend s 34.

Document history

Updated by	Reason	Approved by	Date
Suseela Durvasula 11.01.21	Senate Estimates February 2022		

Commissioner brief: Monitoring agency and ministers' compliance with the FOI Act

Key messages

The table below sets out key statistics related to the compliance of particular agencies and Ministers with the FOI Act.

Agency	2020-21 FOI requests received	2020-21 FOI requests finalised	2021-22 FOI requests received to 31/12/21	2020-21 Decisions made out of time	2020-21 Complain ts received	Complain ts on hand (as at 9/2/22)	2020-21 IC reviews received	2021-22 IC reviews received (to 31/12/21)	IC reviews on hand	2020-21 IC reviews - % deemed	2021-22 IC reviews - % deemed to 31/12/21	2020-21 EOT applicati ons received requiring IC decision
PMC	181 (down 47% on 19-20)	151 (down 34% on 19-20)	164 (328 p.a)	5	2 (4 in 21- 22)	5	28	16	49	18% (5/28)	6% (1/16)	24 (up 118% on 19-20)
PMO	61 (down 40% on 19-20)	36 (down 46% on 19-20)	42 (84 p.a)	22	N/A	N/A	12	4	18	67% (8/12)	100% (4/4)	7 (up 250% on 19-20)

Agency	2020-21 FOI requests received	2020-21 FOI requests finalised	2021-22 FOI requests received to 31/12/21	2020-21 Decisions made out of time	2020-21 Complain ts received	Complain ts on hand (as at 9/2/22)	2020-21 IC reviews received	2021-22 IC reviews received (to 31/12/21)	IC reviews on hand	2020-21 IC reviews - % deemed	2021-22 IC reviews - % deemed to 31/12/21	2020-21 EOT applicati ons received requiring IC decision
DFAT	277 (up 42% on 19- 20)	168 (up 24% on 19- 20)	180 (360 p.a)	53	2 (0 in 21- 22)	0	39	26	62	67% (26/39)	42% (11/26)	142 (down 39% on 19-20)
AAT	1,600 (up 2% on 19- 20)	1,244 (up 8% on 19- 20)	782 (1564 p.a)	23	0 (5 in 21- 22)	5	9	9	5	0	11% (1/9)	6 (down 45% on 19-20)
DHA	15,825 (down 10% on 19-20)	13,858 (down 6% on 19-20)	7,532 (15,064 p.a)	5,319	48 (48 in 21- 22)	31	437	435	387	72% (315/437)	85% (369/435)	81 (up 350% on 19-20)

Agency	2020-21 FOI requests received	2020-21 FOI requests finalised	2021-22 FOI requests received to 31/12/21	2020-21 Decisions made out of time	2020-21 Complain ts received	Complain ts on hand (as at 9/2/22)	2020-21 IC reviews received	2021-22 IC reviews received (to 31/12/21)	IC reviews on hand	2020-21 IC reviews - % deemed	2021-22 IC reviews - % deemed to 31/12/21	2020-21 EOT applicati ons received requiring IC decision
AFP	754 (down 9% on 19-20)	620 (down 20% on 19-20)	235 (470 p.a)	288	3 (4 in 21- 22)	5	75	28	74	27% (20/75)	18% (5/28)	84 (down 6% on 19-20)

Monitoring agencies compliance with statutory processing periods project

On 19 and 22 October 2021, the Acting Freedom of Information Commissioner wrote to the following agencies in relation to their compliance with the statutory processing period when processing FOI requests.

The table below sets out the agencies' responses to the Acting Freedom of Information Commissioner's correspondence. See also Question on Notice No LCC-SBE21-023: Correspondence to departments and agencies regarding improving compliance. [D2021/019080](#)

Agency	Date of response	Plan/steps it intends to take to address non-compliance
Department of Foreign Affairs and Trade	No response received	No response received

Agency	Date of response	Plan/steps it intends to take to address non-compliance
Australian Broadcasting Corporation	18 November 2021 Attachment A	<ul style="list-style-type: none"> - The ABC reviewed its records to correct error appearing on OAIC portal in relation to number of files on hand, which dilute the ABC's statutory compliance statistics. (OAIC portal shows larger number of files on hand than ABC's records). - Recruitment is underway for a permanent full-time FOI Coordinator. Previously this role was 3 days/ week. Appointment is expected early 2022. - Upon review of intranet page, the ABC have determined to supplement existing information with guidance in the form of FAQs. - An online interactive training module is in development and is expected to launch in March 2022. Training will be required for all staff and mandatory for new starters on commencement at the ABC. - General Counsel will receive quarterly reports from the FOI team to understand trends and oversee compliance on an ongoing basis.
Australian Electoral Commission	19 November 2021 Attachment B	<ul style="list-style-type: none"> - The AEC notes that their reporting of matters in FY2020-21 Category B 'Up to 30 days over the applicable statutory time period' has been done regardless of whether any extensions have been agreed to by the applicant, resulting in over-inflated statistics regarding processing times. - The AEC confirms that for each quarter, for the FOI processing time reported, the AEC had a statutory extension. - The AEC has altered their methodology for reporting to the OAIC.
Norfolk Island Regional Council	19 November 2021 Attachment C	<ul style="list-style-type: none"> - The Council notes that the information contained in the OAIC database about the number of applications did not correspond to the information in their system. - A new FOI Officer was appointed and has communicated with OAIC officers in relation to the number of outstanding requests inherited and how to best report the requests in the FY2020-2021 statistics. - Council has engaged contracting organisation King and Co to assist with the processing of FOI requests to ensure statutory timeframes are met.

Agency	Date of response	Plan/steps it intends to take to address non-compliance
		<ul style="list-style-type: none"> - The current FOI Officer is working with King and Co to develop a series of templates and standards for the processing of FOI requests. - The Council acknowledges that should a high volume of requests continue to be received; additional resources may be required to assist the FOI officer on an ongoing basis. In the short term, the FOI Officer will continue to work with contracted organisation King and Co to ensure the council meets its obligations under the legislation. - The Council's website is in the process of undergoing a review with a third party. The review will address information currently available as well as functionality of the site, particularly in relation to the ease of finding information.
Commonwealth Director of Public Prosecutions	16 November 2021 Attachment D	<ul style="list-style-type: none"> - The CDPP has identified errors in quarterly reports for the 2020-2021 period and informed the OAIC of this. - The CDPP understands how to correctly record finalised decisions as made within the applicable statutory timeframe when an extension of time has been granted. - The CDPP will continue to update its PGI and internal FOI webpage to address issues highlighted by the OAIC and any updates to the legislation and the FOI Guidelines.

Attachment A: Australian Broadcasting Corporation

17 November 2021

Ms Elizabeth Hampton
Acting Freedom of Information Commissioner
Office of the Australian Information Commissioner
By email: elizabeth.hampton@oaic.gov.au
Copy to: summen.sarwar@oaic.gov.au

Dear Ms Hampton,

Subject: Freedom of Information – Compliance with statutory timeframes

I refer to your letter to the ABC Managing Director, Mr David Anderson dated 22 October 2021. I have consulted with Mr Anderson who has asked me to reply on his behalf.

The ABC is committed to meeting its obligations under the FOI Act. We have closely considered the matters raised by your letter and put several actions in place. I am pleased to say that we are already achieving better compliance with statutory deadlines than that referred to in your letter. In the first quarter of this financial year we achieved 66.67% compliance, and in the reporting period 1 October to 12 November we achieved 75% compliance.

In the course of reviewing the issues raised by your letter, we have reviewed the ABC statistics showing on the OAIC portal and have noted that the number of files 'on hand' is greater than our records. For example, the OAIC portal shows 25 files on hand as at 1 October 2021, whereas our records show 15 files on hand. This will be diluting our statistics in relation to statutory compliance. I understand that this number auto-populates when quarterly statistics are entered and cannot be overridden. We are in the process of reviewing our records to identify where the error occurred and will contact your team to correct it.

Notwithstanding the above, we have considered issues that impacted our capacity to achieve less than full compliance with FOI statutory processing timetables during FY 2020-21. Key reasons were:

- staff departures (FOI Advisor and FOI Coordinator) which resulted in 10-week vacancies in these positions while we recruited for replacements

- working from home arrangements during COVID-19 which limited access to physical documents and archived files and made review of large quantities of documents more challenging. A notification regarding potential delays due to the pandemic was provided on the Freedom of Information area of the ABC website [Freedom of information | About the ABC](#).

The ABC has also experienced a significant uplift in the number of FOI applications received. Over financial years 2016-18 we received approximately 40 requests per year. The number of requests has increased in subsequent years. We received 40 requests in the first quarter of this financial year alone (July – September 2021). Many of the requests are complex.

In light of the uplift in FOI applications and guided by your letter, we have responded to your request for information and identified actions to improve the ABC's capacity to comply with statutory guidelines.

- 1. Governance:** Does ABC have senior support for ensuring it is committed to high standards of professionalism in handling its FOI workload? For example, does the ABC have an Information Champion?

Senior support

- The ABC's FOI staff report to the General Counsel via the Head Corporate Governance. Both are FOI Decision Makers under delegation from the Managing Director and are highly experienced legal practitioners.
- Divisional Directors, who are members of the ABC Executive Leadership Team (ELT), are kept informed of FOI matters relating to their division and each has designated a contact point in their division to assist with document searching, retrieval and clarifications from FOI staff.

Staff capacity

- A new FOI Advisor joined the ABC in August 2021. She is a senior lawyer and experienced FOI practitioner. The role is now focused solely on FOI. It previously spanned other Corporate Governance responsibilities.

ACTION

- i. Recruitment is underway for a permanent full time FOI Coordinator. Previously this role was 3 days/week. We expect to make an appointment early in the new year.

External advice

- The ABC seeks external advice as needed, principally from the Australian Government Solicitor. Our key contact, a Senior Executive Lawyer with FOI expertise, has worked with the ABC for more than five years.

2. Operational Manual: Does ABC have an operational manual to guide staff in processing FOI requests, in particular, in relation to the steps needed to ensure compliance with statutory processing requirements? If yes:

- has it been approved by senior staff or the Information Champion, and
- is it published on ABC's Information Publication Scheme?
- The ABC's FOI staff maintain a FOI Handbook which is regularly updated and reviewed by the Head Corporate Governance. It is a substantive document that summarises the FOI Act principles, timeframes and guidelines, steps out the FOI process and provides correspondence and decision templates.
- The Handbook is not published on the ABC's Information Publication Scheme as it is a living document which incorporates privileged legal advice to assist FOI staff in decision-making.
- There is information regarding FOI obligations and processes available to staff on our intranet page.

ACTION

- ii. Upon review of our intranet page, we have determined to supplement existing information with guidance in the form of frequently asked questions and answers.

3. Training: What training does ABC provide for its staff in the FOI section (both decision makers and other staff who assist decision makers)? What training is available to new staff entering the FOI section?

- Over the past 12 months FOI training has been provided to the ELT and to the Legal and Public Affairs teams. This training will be repeated on an annual basis. The most recent FOI training session for the ELT occurred on 30 September 2021.

ACTION

- iii. Since our new FOI Advisor joined in August 2021, we have been developing an online interactive training module which we plan to launch in March 2022. It will be required training for all staff and mandatory for new starters on commencement at the ABC.

- iv. Training is planned for Division contact points, who we will designate 'FOI champions', before the end of February 2022. The training will be designed to equip champions to streamline and provide support for the FOI process.
- v. Training will be incorporated in the FOI Advisor's Job Plan as a key KPI.

4. Operational Plan: Has ABC analysed the reasons for non-compliance with statutory processing timeframes and implemented an operational action plan to address its compliance rates? If yes, please provide the OAI with a copy of the action plan. If there is no current action plan, please advise when a plan will be developed and implemented in order to ensure compliance.

- Our analysis and actions for improving compliance with statutory processing timelines is outlined above.
- With the FOI Coordinator role becoming five days a week instead of three, and the FOI Advisor role now focusing solely on FOI matters, the ABC's capacity to respond to FOI requests is increased by an estimated 3 days a week. This should have a significant impact on the ABC's capacity to meet statutory timeframes.

5. Proactive publication: Has ABC analysed the FOI applications received to identify trends?²² If so, has ABC taken steps to address those trends, including by proactively publishing information of public interest and value to decrease the need for FOI applications?

- We are reviewing trends over recent years more closely, however in 2021 FOI applications made to the ABC were specific in nature, generally arising from ABC program material, reporting on ABC matters, or matters relating to a particular interest of the applicant. In FY 20-21, 40% of FOI requests were received from journalists, public interest advocacy organisations, members of parliament and local government. Only very few requests per year related to the applicant's personal information.
- Where a matter has wide public interest, the ABC releases media statements as appropriate. For example, independent review of the ABC complaints handling process commissioned by the ABC Board was announced by media release on 18 October.
- The ABC also publishes on its website: editorial reviews into ABC programming; details of complaints about ABC programs that have been upheld or resolved; quarterly statistical reports providing summary information about the nature of complaints dealt with, their outcomes and timeliness.
- The FOI Disclosure Log is kept up to date.
- The ABC also provides extensive reporting on our operations and plans through the Annual Report, Corporate Plan and Five-Year Plan that are all available on the ABC website.

ACTION

- vi. As General Counsel, I will receive quarterly reports from the FOI team to understand trends and oversee compliance on an ongoing basis.

Please contact me with any questions.

Yours sincerely

s 47F

Ingrid Silver
General Counsel
ABC Legal
E: Silver.Ingrid@abc.net.au

Attachment B: Australian Electoral Commission
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Our ref: LEX811

Elizabeth Hampton
Acting Freedom of Information Commissioner
Office of the Australian Information Commissioner

By email at: foidr@oaic.gov.au

Dear Ms Hampton

Freedom of Information – Compliance with statutory timeframes

I refer to your letter dated 22 October 2021, in which you note that the data provided by the Australian Electoral Commission (AEC) for the 2020-21 financial year indicated that there was 70% compliance with the statutory timeframes when processing requests made under the *Freedom of Information Act 1982* (FOI Act). Your letter noted the AEC's low level of compliance with statutory timeframes and requested further information about FOI governance, operation manual, training, operational plan and proactive publication.

Incorrect methodology

The Legal and Procurement Branch has reviewed the methodology the AEC used for reporting FOI statistics to the OAIC, as well as spoke to Irene Nicolau, Director of Investigations and Complaints. We have found that our methodology has resulted in apparently high levels of non-compliance with FOI timeframes according to your system. As discussed with the Irene Nicolau, we have set out our methodology, reasoning and FOI processing statistics below.

Applicable statutory time period

In Part 6 of the Quarterly FOI Statistics returns, there are five options given for FOI processing times. Category A is titled '*Applicable statutory time period met*' and Category B states '*Up to 30 days over the applicable statutory time period*'. The AEC has been reporting, for the 2020-21 financial year, any FOI matter which takes longer than 30 days as being in Category B. This has been done regardless of whether any extensions have been agreed to by the applicant (s 15AA FOI Act), or whether any other statutory exemptions apply (third party consultation).

This appears to have resulted in an over-inflated statistics regarding our processing times.

FOI processing times 2020-21 financial year

The AEC can confirm that for each of the quarters, for the FOI processing time reported, the AEC had a statutory extension, as indicated in **Attachment A**.

The AEC has consistently complied with statutory timeframes for processing FOI requests. In our review we found only one instance of an FOI request exceeding the statutory timeframe for processing requests. The remainder of the FOI requests that were originally reported as exceeding the timeframes had valid statutory extensions under the FOI Act, including third party consultation



processes (s 27), agreement with an applicant (s 15AA), or where a request consultation process was undertaken (s 24AB). Using a corrected methodology, our compliance with statutory timeframe processing is around 95%, with only one matter out of the 20 received during the 2020-21 financial year exceeding the statutory processing period.

Remedial action taken

In order to avoid any such confusion around our compliance with statutory timeframes, we have altered our methodology for reporting to the OAIC.

We trust that this addresses the issues in your letter of 22 October 2021. However, if you require the further information outlined in your letter, please do not hesitate to contact us and we will provide you with the additional information.

Your sincerely

s 47F

Andrew Johnson

Chief Legal Officer/Privacy Officer

Attachment C: Norfolk Island Regional Council



19 November 2021

Elizabeth Hampton
Acting Freedom of Information Commissioner

By email: foidr@oaic.gov.au

Dear Acting Commissioner

RE: Freedom of Information – Compliance with Statutory Timeframes

I refer to your email in relation to Councils statistics in relation to the processing of FOI requests.

By way of background -

There were a large number of inherited FOI requests outstanding from the previous Freedom of Information Officer (Mr. Geoffrey Atkinson). It has taken considerable resource to search and retrieve information in relation to the compliance with the statutory timeframes. Additionally, the information contained in the OAIC database about the number of applications did not correspond to the information about FOI requests that we had in our system. Where no outcome could be found, it was assumed that the request was not processed within the statutory timeframes. The majority of applications not processed within the statutory timeframes were those carried over from 2019-2020 and the previous FOI Officer.

To ensure compliance with the legislation a new FOI Officer was appointed (Ms. Leanne Webb). Ms. Webb has communicated with OAIC officers in relation to the number of outstanding requests inherited and how best to report on these in the 2020-2021 statistics given the shortage of information available. This resulted in a large number of requests being listed as not processed within the timeframes within the 2020-2021 period.

Since Ms. Webb's appointment in 2020 Council has proactively taken the following steps to ensure compliance with the legislation –

1. Governance

Council has engaged King and Co to assist with the processing of FOI requests to ensure that statutory timeframes are met. Councils Q1 FOI statistical report for 2021-2022 shows that all applications were processed within the allowed timeframes.

2. Operational Manuals

The current FOI Officer is working with engaged contractors King and Co to develop a series of templates and standards for the processing of FOI requests.

3. Training

Council has ensured that the new FOI Officer has undergone formal training in this area.

4. Operational Plan

Council acknowledges that the appointed FOI Officer also performs a large number of other critical roles within the organisation and, the high volume of requests currently being received; in Q1 of 2021-2022 42 requests were received. Council is aware that should this high volume of requests continue to be received then additional resources may be required to assist the FOI Officer on an ongoing basis. In the short term the FOI Officer will continue to work with contracted organisation King and Co to ensure that Council meets its obligations under the legislation, and that systems and processes are implemented which are complaint.

5. Proactive Publication

Council has been proactive in the publication of a large amount of information on its website, including historical information from the previous government. Unfortunately, there are a large number of applications being received which require a significant amount of consultation to ascertain the scope of the request and, the specific documents being requested. Councils website is also in the process of undergoing a review with a third party. Part of this review will address the information currently available as well as the functionality of the site, particularly in relation to the ease of finding information.

Council are committed to meeting its obligations under the legislation and are working to continuously improve its processes around the processing of FOI applications.

Yours sincerely



Andrew Roach
General Manager

Attachment D: Commonwealth Director of Public Prosecutions



CDPP

Australia's Federal Prosecution Service

Sarah McNaughton SC
Director

Commonwealth Director
of Public Prosecutions

Level 11, 175 Liverpool Street
Sydney NSW 2000

Telephone 02 6206 5666
www.cdpp.gov.au

15 November 2021

Ms Elizabeth Hampton
Acting Freedom of Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Dear Ms Hampton,

Freedom of Information – Compliance with statutory timeframes

I refer to your letter of 22 October 2021 advising that the Commonwealth Director of Public Prosecutions (CDPP) achieved 88.5% compliance with the statutory timeframes when processing Freedom of Information (FOI) requests during the 2020-2021 financial year.

In respect of the 2020-2021 financial year the CDPP reported that in three of its 26 FOI decisions, applicants were notified outside the applicable statutory timeframe, equating to an 88.5% compliance rate.

Upon review, the CDPP has now identified that there were errors in the CDPP's quarterly reports for 2020-2021 period and your office has been informed of this.

In the 1 October – 31 December 2020 quarter, a reporting officer ticked in error the '30 days over the applicable timeframe' box when his decision was in fact made within 30 days of receipt of the request. The request was received on 29 October 2020 and the decision notice was provided to the applicant on 26 November 2020.

In the 1 January – 31 March 2021 quarter, the CDPP reported that of the eight FOI decisions finalised in that quarter, two of the decisions were made outside the applicable statutory timeframe. The reporting officer was under the mistaken belief that even where an extension of time was obtained the matter should be recorded as being decided outside of the applicable statutory time period.

Following a telephone conversation between the FOI officer and Ms Irene Nicolaou of your Office, the CDPP now understands that where an extension of time has been obtained under the FOI Act, the decision should be recorded as having been made within the applicable statutory timeframe if the decision was made within the applicable extended timeframe.

In respect of the first incorrectly reported matter for that quarter, the request was made and received on 27 November 2020 by the Refugee and Immigration Legal Centre, acting on behalf of a former defendant, seeking documents relating to his prosecution. On 21 December 2020 the decision maker notified the applicant that it was necessary to consult with third parties (witnesses who had made statements) about the potential release of their personal information and therefore the timeframe was extended by 30 days under section 27A of the FOI Act (the decision being due on 27 January 2021).

Due to the size of the request and other commitments the FOI officer was unable to complete it in that time and sought the applicant's consent under s15AA of the FOI Act for a 14-day extension of time. The applicant agreed to the extension on 27 January 2021 and the FOI officer notified the OAIC of the extension on the same day. The decision was sent to the applicant on 10 February 2021 within the agreed 14-day extension. The request was a lengthy request, involving 36.75 hours of the FOI officer's time and 3 hours of administrative time, a large brief of evidence and correspondence file to review, consultation with a number of third parties, and redaction of a number of documents to delete material covered by a suppression order.

In respect of the second incorrectly reported matter for that quarter, the request was made on 20 January 2021 by the Public Interest Advocacy Centre on behalf of a former defendant. On 3 February 2021 the FOI officer sought the applicant's consent for a 30-day extension under section 15AA of the FOI Act. The decision maker had to retrieve the file from archives and at that stage Western Australia, where the matter was based, was in a COVID-19 related lockdown. The applicant refused to grant an extension. The decision maker then requested an extension of time pursuant to section 15AB of the FOI Act by the OAIC on 10 February 2021. On 16 February 2021 the OAIC granted an extension to 21 March 2021. The decision maker provided the notice of decision on 17 March 2021. The request was broad and related to two different sets of charges with different classes of material, involving three volumes of hardcopy material requiring review. The request required the CDPP to consult with external agencies. The decision maker spent 25 hours addressing this FOI request.

Information about the CDPP's FOI operations is provided below.

Governance

The International Assistance and Specialist Agencies (IASA) Practice group is responsible for managing the CDPP FOI Practice. The IASA Practice Group Leader is assisted by an FOI Coordinator and FOI officers in each of the Sydney, Melbourne, Brisbane, Adelaide, Perth and Canberra offices. The IASA Practice Group Leader reports to the CDPP Executive Leadership Group about the CDPP's FOI work on a quarterly basis. The IASA Practice Group leader annually reports to the CDPP Audit and Risk team on the Practice Groups' legislative compliance, including on FOI matters.

Operational Manual

In 2015 the CDPP issued a Practice Group Instruction (PGI) setting out the arrangements for meeting our obligations under the FOI Act and this is updated as necessary.

In addition to the FOI PGI, the CDPP publishes FOI resources on its internal FOI webpage, including information on statutory timeframes, links to relevant FOI resources such as the OAIC's FOI Guidelines and FOI Essentials Toolkit, and relevant case law.

Training

The CDPP provides external FOI training to our FOI officers through the Australian Government Solicitor. Staff also attend AGS FOI and Privacy Practitioners forums and OAIC sessions for member of the Information Contact Officers Network (ICON). In addition, the FOI Coordinator provides internal training to non-FOI officers aimed at raising awareness of FOI within the CDPP.

Operational Plan

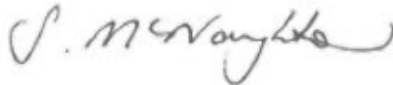
The CDPP continues to take steps to improve processes and procedures to comply with statutory timeframes and now understands that an extension under the FOI Act should be included within the applicable statutory timeframe for reporting purposes. The CDPP will continue to update its PGI and internal FOI webpage to address issues highlighted by the OAIC and any updates to the legislation and the FOI Guidelines.

Proactive publication

The CDPP website provides information to the public about prosecution processes, crimes prosecuted, case reports and prosecutions statistics. Information is provided about making FOI requests, the Information Publication Scheme, the disclosure log and a link to the website of the office of the Australian Information Commissioner is provided. Mention is made that given the legal nature of the work that the CDPP performs, applicants should bear in mind that often, many of the documents generated during a prosecution will be subject to legal professional privilege which may significantly reduce the number of documents able to be released.

Thank you for the assistance your Office has provided in resolving the CDPP's compliance with statutory timeframes this year.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'S. McNaughton', written in a cursive style.

Sarah McNaughton SC
Commonwealth Director of Public Prosecutions