

## Enquiries

### Received

Types	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
FOI	2,062	1,931	2,881	2,297	1,824	916
% changed compared prior year		-6%	49%	-20%	-21%	21%
Privacy & Other	16,793	19,407	17,445	14,842	11,647	5367
% changed compared prior year		16%	-10%	-15%	-22%	5%
<b>Total</b>	<b>18,855</b>	<b>21,338</b>	<b>20,326</b>	<b>17,139</b>	<b>13,471</b>	<b>6283</b>

- Enquiries received data includes all matters incoming to OAIC by telephone, written and in person channel.
- YTD FY2021/22 the data includes figures as at 31 December.
- The FY2021/22 percentage measures variance between FY2020/21 (From 1 July to 31 December).

### FOI written enquiries closed within 10 days – Target 90%

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% Enquiries closed in less than 10 days	88%	88%	94%	85%	76%	84%
Number enquiries closed in less than 10 days	509	517	776	654	559	354
% Enquiries closed in more than 10 days	12%	12%	6%	15%	24%	16%
Number enquiries closed in more than 10 days	90	67	49	124	175	69
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### Privacy & other written enquiries closed within 10 days – Target 90%

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% Enquiries closed in less than 10 days	78%	74%	92%	76%	63%	85%
Number enquiries closed in less than 10 days	2,712	3,294	3,703	2,841	3,207	1665
% Enquiries closed in more than 10 days	22%	26%	8%	24%	37%	15%
Number enquiries closed in more than 10 days	766	1,158	341	917	1,885	284
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Top 10 issues - Enquiries**

Fiscal Year	2021-2022	
Issue Level 1	Total	% of Total
APP 3 - Collection	906	21%
Privacy Generally	582	14%
APP 6 - Use or Disclosure	486	11%
APP 12 - Access to Personal Information	472	11%
Exemptions	393	9%
APP 11 - Security of Personal Information	337	8%
APP 5 - Notification of Collection	235	6%
general advice	126	3%
making an FOI application	99	2%
Sec 94H mentioned but does not apply	96	2%

## Privacy complaints

Types	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
On Hand	917	1,082	1,465	785	1,101	1,345
Average Handling Time Months	4.7	3.7	4.4	5.1	4.4	5.7
Received	2,494	2,947	3,306	2,673	2,474	1,404
% changed compared to last year Received	17%	18%	12%	-19%	-7%	10%
Closed	2,485	2,766	2,920	3,366	2,151	1,159
% changed compared to last year Closed	22%	11%	6%	15%	-36%	9%

- YTD FY2021/22 the data includes figures as at 31 December.
- Data includes figures as at 30 June for FY2017-18 to FY2020/21.
- The FY2021/22 percentage measures variance between FY2020/21 (From 1 July to 31 December)

### Privacy complaints closed within 12 months Target 80%

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% closed in less than 365 days	95%	97%	95%	87%	94%	91%
Number of cases closed in less than 365	2,361	2,683	2,774	2,928	2,015	1,053
% closed in more than 365 days	5%	3%	5%	13%	6%	9%
Number of cases closed in more than 365 days	124	83	146	438	136	106
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Privacy complaints on hand	2017-18		2018-19		2019-20		2020-21		2021-22	
	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	678	63%	718	49%	500	64%	532	48%	641	48%
Between 4 months and 6 months	150	14%	198	14%	72	9%	195	18%	202	15%
Between 6 and 9 months	121	11%	229	16%	39	5%	185	17%	248	18%
Between 9 and 12 months	63	6%	157	10%	38	5%	55	5%	135	10%
Over 12 months	70	6%	163	11%	136	17%	137	12%	119	9%
<b>Total</b>	<b>1,082</b>	<b>100%</b>	<b>1,465</b>	<b>100%</b>	<b>785</b>	<b>100%</b>	<b>1,101</b>	<b>100%</b>	<b>1,345</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2017-18 to FY2020/21.
- YTD FY2021/22 the data includes figures as at 31 December.

## Privacy complaints on hand

Cumulative	2017-18		2018-19		2019-20		2020-21		2021-22	
Age	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	678	63%	718	49%	500	64%	532	48%	641	48%
< 6 months	828	77%	916	63%	572	73%	727	66%	843	63%
< 9 months	949	88%	1,145	78%	611	78%	909	83%	1,091	81%
< 12 months	1,012	94%	1,302	89%	649	83%	964	88%	1,226	91%
Over 12 months	70	6%	163	11%	136	17%	137	12%	119	9%
<b>Total</b>	<b>1,082</b>	<b>100%</b>	<b>1,465</b>	<b>100%</b>	<b>785</b>	<b>100%</b>	<b>1,101</b>	<b>100%</b>	<b>1,345</b>	<b>100%</b>

## Top 10 issues - Complaints

Fiscal Year	2021-2022	
Issue Level 1	Total	% of Total
APP 11 - Security of Personal Information CP	347	29%
APP 6 - Use or Disclosure CP	293	24%
APP 3 - Collection CP	160	13%
APP 12 - Access to Personal Information	157	13%
APP 10 - Quality of Personal Information CP	117	10%
APP 13 - Correction CP	43	4%
APP 5 - Notification of Collection CP	36	3%
APP 7 - Direct Marketing CP	31	2%
APP 4 - Unsolicited Personal Information CP	3	0%
APP 2 - Anonymity and Pseudonymity CP	2	0%

## Top 10 sectors – Privacy Complaints

Fiscal Year	2019-2020			2020-2021			2021-2022 July-Sep		
Sector	Total	% of Total	Ranking	Total	% of Total	Ranking	Total	% of Total	Ranking
Health service providers	300	11%	3	301	12%	2	189	19%	1
Australian Government	319	12%	1	310	13%	3	151	16%	2
Finance (incl. superannuation)	305	11%	2	327	13%	1	144	15%	3
Retail	159	6%	4	177	7%	4	103	11%	4
Online services	132	5%	6	152	6%	5	86	9%	5
CRBs	108	4%	9	109	4%	6	75	8%	6
Travel & Hospitality industry	71	3%		71	3%	11	53	5%	7
Personal services (incl. employment, child care, vets)	94	4%	10	97	4%	8	43	5%	8
Telecommunications	149	6%	5	93	4%	9	43	4%	9
Real estate agents	126	5%	7	95	4%	7	41	4%	10

## Privacy Enquiries My Health Record

	2018-2019	2019-2020	2020-2021	2021-2022
Average Handling Time Days	271	9	1	5
Received	145	7	11	9
Percentage changed compared to last year Received	741%	-95%	60%	350%
Closed	143	5	2	9
Percentage changed compared to last year Closed	741%	-97%	-60%	350%

## Privacy Complaints My Health Record

	2018-2019	2019-2020	2020-2021	2021-2022
Average Handling Time Days	4.85	9.22	6.63	310
Received	57	10	7	3
Percentage changed compared to last year Received	775%	-82%	-30%	-25%
Closed	41	28	7	6
Percentage changed compared to last year Closed	860%	-31%	-75%	200%

- YTD FY2021/22 the data includes figures as at 31 December.
- Data includes figures as at 30 June for FY2017-18 to FY2020/21.
- The FY2021/22 percentage measures variance between FY2020/21 (From 1 July to 31 December)

## Notifiable Data Breaches

### Privacy NDBs

	2017-18	2018-19	2019-20	2020-21	2021-22
On Hand	151	139	236	168	120
Average Handling Time Months	0.5	2.5	2.9	2.1	2.8
Received	305	950	1050	975	464
% changed compared to last year Received	n/a	211%	11%	-7%	-14%
Closed	200	911	973	987	518
% changed compared to last year Closed	n/a	356%	7%	1%	-8%

- Data includes figures as at 30 June for FY2016/17 to FY2020/21.
- YTD FY2021/22 the data includes figures as at 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020
- n/a has been attributed due to data capture for NDB, having commenced from FY 2017-18 prior data was not recorded.

### KPI cases close within 2 months - Target 80%

Time taken to close (Days)	2017-18	2018-19	2019-20	2020-21	2021-22
% closed in less than 60 days	97%	79%	62%	80%	76%
Number of cases closed in less than 60 days	194	720	603	790	394
% closed in more than 60 days	3%	21%	38%	20%	24%
Number of cases closed in more than 60 days	6	191	370	197	124
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### Cases Open - Privacy NDB

Age	2018-19		2019-20		2020-21		2021-22	
	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	126	91%	121	51%	80	48%	100	83%
Between 4 months and 6 months	6	4%	18	8%	17	10%	4	3%
Between 6 and 9 months	5	4%	51	22%	18	11%	5	4%
Between 9 and 12 months	2	1%	29	12%	16	10%	3	3%
Over 12 months	-	0%	17	7%	37	22%	8	7%
<b>Total</b>	<b>139</b>	<b>100%</b>	<b>236</b>	<b>100%</b>	<b>168</b>	<b>100%</b>	<b>120</b>	<b>100%</b>

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

**Cases Open - Privacy NDB**

<b>Cumulative</b>	<b>2018-19</b>		<b>2019-20</b>		<b>2020-21</b>		<b>2021-22</b>	
<b>Age</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>
< 4 months	126	91%	121	51%	80	48%	100	83%
< 6 months	132	95%	139	59%	97	58%	104	87%
< 9 months	137	99%	190	81%	115	68%	109	91%
< 12 months	139	100%	219	93%	131	78%	112	93%
Over 12 months	-	0%	17	7%	37	22%	8	7%
<b>Total</b>	<b>139</b>	<b>100%</b>	<b>236</b>	<b>100%</b>	<b>168</b>	<b>100%</b>	<b>226</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

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**NDB My Health Record**

	2017-18	2018-19	2019-20	2020-21	2021-22
Average Handling Time Months	1.2	1.2	1.8	2.3	0
Received	28	35	1	3	1
Percentage changed compared to last year Received	-20%	25%	-97%	200%	0%
Closed	29	33	7	2	0
Percentage changed compared to last year Closed	-17%	14%	-79%	-71%	-100%

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures to 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020

**NDB MHR - KPI cases closed within 2 months - target 80%**

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% MHR NDBs closed in less than 60 days	49%	100%	77%	57%	50%	0%
Number MHR NDB cases closed <= 60	17	29	25	4	1	0
% MHR NDB closed in more than 60 days	52%	0%	23%	43%	50%	0%
Number of MHR NDB cases closed in more than 60 days	18	-	8	3	1	0
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Voluntary notifications of breaches****Privacy DBN Voluntary**

	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
On Hand	3	22	32	42	69	27
Average Handling Time Months	1.0	0.8	2.0	3.4	4.6	4.5
Received	114	174	175	125	178	125
% changed compared to last year Received	7%	53%	5%	-29%	42%	30%
Closed	119	158	168	129	177	170
% changed compared to last year Closed	9%	33%	6%	-23%	37%	183%

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures to 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020



**KPI cases close within 2 months - Target 80%**

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% Closed in less than 60 days	92%	97%	66%	47%	51%	56%
Number cases closed in less than 60 days	109	153	111	61	91	95
% Closed in more than 60 days	9%	3%	34%	53%	49%	44%
Number of cases closed in more than 60 days	10	5	57	68	86	75
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures to 31 December.

**Cases Open - Privacy Voluntary**

	2017-18		2018-19		2019-20		2020-21		2021-22	
Age	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	22	100%	24	75%	17	40%	24	35%	21	78%
Between 4 months and 6 months	-	0%	-	0%	11	26%	9	13%	1	7%
Between 6 and 9 months	-	0%	5	16%	7	17%	13	19%	1	4%
Between 9 and 12 months	-	0%	2	6%	5	12%	9	13%	1	4%
Over 12 months	-	0%	1	3%	2	5%	14	20%	3	11%
<b>Total</b>	<b>22</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>42</b>	<b>100%</b>	<b>59</b>	<b>100%</b>	<b>27</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

**Cases Open - Privacy Voluntary**

Cumulative	2017-18		2018-19		2019-20		2020-21		2021-22	
Age	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	22	100%	24	75%	17	40%	24	35%	21	78%
< 6 months	22	100%	24	75%	28	67%	33	48%	22	81%
< 9 months	22	100%	29	91%	35	83%	46	67%	23	85%
< 12 months	22	100%	31	97%	40	95%	55	80%	24	89%
Over 12 months	-	0%	1	3%	2	5%	14	20%	3	11%
<b>Total</b>	<b>22</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>42</b>	<b>100%</b>	<b>59</b>	<b>100%</b>	<b>27</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

## Privacy CII

### Privacy CII

	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
On Hand	13	14	23	24	8	9
Average Handling Time Months	4.3	5.5	4.0	10.0	23.4	18.9
Received	29	21	15	19	4	1
Percentage changed compared to last year Received	71%	-28%	-29%	25%	-79%	-50%
Closed	26	18	7	21	10	4
Percentage changed compared to last year Closed	100%	-31%	-61%	200%	-52%	33%

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures to 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020

### KPI cases close within 8 months - Target 80%

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% Closed in less than 8 months	88%	72%	86%	38%	20%	25%
Number cases closed in less than 8 months	23	13	6	8	2	1
% Closed in more than 8 months	12%	28%	14%	62%	80%	75%
Number of cases closed in more than 8 months	3	5	1	13	8	3
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### Cases Open - Privacy CII

Age	2017-18		2018-19		2019-20		2020-21		2021-22	
	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	8	57%	3	13%	5	21%	1	12%	0	0%
Between 4 months and 6 months	1	7%	3	13%	3	13%	1	12%	1	11%
Between 6 and 9 months	3	21%	1	4%	1	4%	0	0%	5	56%
Between 9 and 12 months	1	7%	3	13%	3	13%	1	12%	2	22%
Over 12 months	1	7%	13	57%	12	50%	5	64%	1	11%
<b>Total</b>	<b>14</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>9</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

**Cases Open - Privacy CII**

<b>Cumulative</b>	<b>2017-18</b>		<b>2018-19</b>		<b>2019-20</b>		<b>2020-21</b>		<b>2021-22</b>	
<b>Age</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>
< 4 months	8	57%	3	13%	5	21%	1	12%	0	0%
< 6 months	9	64%	6	26%	8	33%	2	12%	1	11%
< 9 months	12	86%	7	30%	9	38%	2	12%	6	67%
< 12 months	13	93%	10	43%	12	50%	3	12%	8	89%
Over 12 months	1	7%	13	57%	12	50%	5	64%	1	11%
<b>Total</b>	<b>14</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>13</b>	<b>100%</b>	<b>9</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

# Freedom of Information

## IC Reviews

### FOI IC Reviews

	2016-17	2017-18	2018-19	2019-20	2020-21	
On Hand	390	581	850	1,088	1,295	1,485
Average Handling Time Months	3.4	6.7	7.8	8.1	8.3	7.1
Received	632	801	928	1066	1,224	882
% changed compared to last year Received	24%	27%	16%	15%	15%	38%
Closed	515	610	659	829	1018	694
% changed compared to last year Closed	13%	18%	8%	26%	23%	37%

- Data includes figures to 30 June for FY2016-17 to FY2020/21.
- YTD FY2021/22 the data includes figures to 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020

### FOI IC reviews closed within 12 months - target 80%

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% IC reviews closed less than 365 days	86%	84%	73%	72%	73%	81%
Number of IC reviews closed in less than 365 days	445	513	481	597	740	563
% IC reviews closed in more than 365 days	14%	16%	27%	28%	27%	19%
Number of IC reviews closed in more than 365 days	70	97	178	232	278	131
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### Cases Open - FOI IC Reviews

	2017-18		2018-19		2019-20		2020-21		2021-22	
Age	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	228	39%	190	22%	270	25%	264	20%	346	23%
Between 4 months and 6 months	94	16%	106	12%	108	10%	85	7%	102	7%
Between 6 and 9 months	122	21%	147	17%	142	13%	144	11%	128	9%
Between 9 and 12 months	56	10%	157	18%	108	10%	135	10%	130	9%
Between 12 and 18 months	59	10%	166	20%	168	15%	226	17%	207	14%
Between 18 and 24 months	17	3%	68	8%	175	16%	180	14%	210	14%
Over 24 months	5	1%	16	2%	117	11%	261	20%	362	24%
<b>Over 12 months</b>	<b>81</b>	<b>14%</b>	<b>250</b>	<b>30%</b>	<b>460</b>	<b>42%</b>	<b>667</b>	<b>52%</b>	<b>779</b>	<b>52%</b>
<b>Total</b>	<b>581</b>	<b>96%</b>	<b>850</b>	<b>100%</b>	<b>1,088</b>	<b>100%</b>	<b>1,291</b>	<b>100%</b>	<b>1,485</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

**Cases Open - FOI IC Reviews**

<b>Cumulative</b>	<b>2017-18</b>		<b>2018-19</b>		<b>2019-20</b>		<b>2020-21</b>		<b>2021-22</b>	
<b>Age</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>
< 4 months	228	39%	190	22%	270	25%	264	20%	346	23%
< 6 months	322	55%	296	35%	378	35%	349	29%	448	30%
< 9 months	444	76%	443	52%	520	48%	493	40%	576	39%
< 12 months	500	86%	600	71%	628	58%	628	50%	706	48%
<18 months	559	96%	766	90%	796	73%	854	68%	913	61%
<24 months	576	99%	834	98%	971	89%	1,034	80%	1,123	76%
Over 24 months	5	1%	16	2%	117	11%	261	20%	362	24%
<b>Total</b>	<b>581</b>	<b>100%</b>	<b>850</b>	<b>100%</b>	<b>1,088</b>	<b>100%</b>	<b>1,295</b>	<b>100%</b>	<b>1,485</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

**IC Reviews open by category**

<b>Category Filter</b>	<b># Cases</b>	<b>% Open</b>
[Cat1]	149	10%
[Cat2]	316	21%
[Cat3]	268	18%
[Cat4]	50	3%
[Cat5.1]	18	1%
[Cat5.2]	127	9%
[Cat5.3]	223	15%
[Cat5.4]	27	2%
No Cat	307	21%
<b>Total</b>	<b>1,485</b>	<b>100%</b>

**IC Reviews closed by outcome**

<b>Outcome of closed cases</b>	<b>FY 2021-22 YTD</b>
Declined to review	134
Finalised by agreement	3
IC Decision	55
Invalid/no jurisdiction	150
Withdrawn IC reviews	352
<b>Total</b>	<b>694</b>

**IC Reviews closed by age**  
**1st of July 2021 to 31st December 2021**

Category Filter	# Cases	% total
within 120 days	483	70%
Within 6 months	22	3%
Within 9 months	22	3%
Within 12 months	34	5%
Over 12 months	133	19%
<b>Total</b>	<b>694</b>	<b>100%</b>

**IC Reviews closed by outcome**  
**1st of July 2021 to 31st December 2021**

Decision	Closed
s54N - out of jurisdiction	150
s54R – withdrawn	341
s54R - withdrawn/conciliated	11
s54W(a)(i) - frivolous, vexatious, misconcieved, lacking in substance, not in good faith	34
s54W(a)(ii) - failure to cooperate	53
s54W(a)(iii) - lost contact	5
s54W(b) - refer AAT	42
s55F - varied by agreement	3
s55K - affirmed by IC	30
s55K - set aside by IC	19
s55K - varied by IC	6
<b>Total</b>	<b>693</b>

**IC Reviews closed by outcome**

Category Filter	# Cases	%
With 55k	55	8%
Without 55k	639	92%
<b>Total</b>	<b>694</b>	<b>100%</b>

## FOI Complaints

### FOI Complaints

	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
On Hand	19	52	91	129	108	110
Average Handling Time Months	3.0	5.8	7.2	11.2	6.8	14.1
Received	36	62	61	109	151	99
% changed compared to last year Received	*n/a	72%	-2%	79%	39%	36%
Closed	18	29	22	71	174	97
% changed compared to last year Closed	*n/a	61%	-24%	223%	145%	17%

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures to 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020
- \*n/a has been attributed to comparative variance for FY 2016-17 - data for FY 2015-16 was not available due to OAIC FOI function being transferred to Commonwealth Ombudsman

### KPI cases close within 12 months - target 80%

Time taken to close (Days)	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
% Closed in less than 365 days	100%	83%	82%	52%	82%	60%
Number of closed in less than 365 days	18	24	18	37	142	58
% Closed in more than 365 days	0%	17%	18%	48%	18%	40%
Number of closed in more than 365 days	-	5	4	34	32	39
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### Cases Open - FOI Complaints

	2017-18		2018-19		2019-20		2020-21		2021-22	
Age	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	25	48%	12	13%	16	12%	26	24%	43	39%
Between 4 months and 6 months	13	25%	8	9%	18	14%	4	4%	16	15%
Between 6 and 9 months	6	12%	17	19%	26	20%	5	5%	8	7%
Between 9 and 12 months	4	8%	18	20%	17	13%	4	4%	5	5%
Over 12 months	4	8%	36	40%	52	40%	69	64%	38	35%
<b>Total</b>	<b>52</b>	<b>100%</b>	<b>91</b>	<b>100%</b>	<b>129</b>	<b>100%</b>	<b>108</b>	<b>100%</b>	<b>110</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.



**Cases Open - FOI Complaints**

<b>Cumulative</b>	<b>2017-18</b>		<b>2018-19</b>		<b>2019-20</b>		<b>2020-21 YTD</b>		<b>2021-22</b>	
<b>Age</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>
< 4 months	25	48%	12	13%	16	12%	26	24%	43	39%
< 6 months	38	73%	20	22%	34	26%	30	28%	59	54%
< 9 months	44	85%	37	41%	60	47%	35	32%	67	61%
< 12 months	48	92%	55	60%	77	60%	39	36%	72	65%
Over 12 months	4	8%	36	40%	52	40%	69	64%	38	35%
<b>Total</b>	<b>52</b>	<b>100%</b>	<b>91</b>	<b>100%</b>	<b>129</b>	<b>100%</b>	<b>119</b>	<b>100%</b>	<b>110</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December.

**FOI Complaints closed by outcome**

<b>Issue Outcome</b>	<b>Total</b>
Referred	0
s70 - not in jurisdiction	14
s73(b) - merits review	9
s73(e) - frivolous, vexatious, lacking in substance	13
S74 – referred Ombudsman	5
Withdrawn	18
withdrawn/conciliated	16
s86 – no recommendations made	4
s86 – recommendations made	29
<b>Total</b>	<b>108</b>

**FOI Complaints Open by Agency**

<b>Agency</b>	<b>Open</b>
DHS	9
DHA	15
AFP	4

**FOI Complaints Received by Agency**

<b>Agency</b>	<b>DHS</b>	<b>DHA</b>	<b>AFP</b>
01/07/21	1	10	2
01/08/21	1	3	
01/09/21	2	6	1
01/10/21	5	6	1
01/11/21			
01/12/21	2	6	
<b>Total</b>	<b>31</b>	<b>31</b>	<b>4</b>



## FOI Vexatious

### FOI Vexatious s89k & s89M

	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-22
On Hand	2	3	1	4	2	2
Received	7	11	16	4	2	3
Closed	11	10	18	1	4	2

- Data includes figures as of 30th June for FY 2016-17 to FY2019-20; FY 2020-21 (includes 1 July 2020 - 31 December 2021).

## FOI Extension of time

### FOI EOT

	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
On Hand	14	44	49	490	56	84
Average Handling Time Months	0.03	0.07	0.12	0.15	0.3	0.12
Received	4412	3367	3784	4244	3,692	2,569
% changed compared to last year	-21%	-24%	12%	12%	-13%	27%
Received						
Closed	4420	3333	3779	3844	4,102	2,541
% changed compared to last year	-21%	-25%	13%	2%	7%	6%
Closed						

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures to 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020
- The FOI EOT data includes all EOTs

### FOI EOT - Closed by outcome

Decision	# Cases	Average Handling Time
s15AB - complex or voluminous	425	7.48
s15AC – deemed refusal	323	5.90
s51DA-amendment - deemed refusal	1	6.00
s54D – deemed affirmation	57	5.51
<b>Total</b>	<b>806</b>	<b>6.71</b>

- The FOI EOT data includes only EOTs –s15AB, s15AC, s51DA, s54D

### FOI EOT - Closed by outcome

Decision	2018-2019	2019-2020	2020-2021	2021-2022
s15AA - by agreement	2,959	2,393	3,029	1,648
		-19%	27%	-14%
s15AB - complex or voluminous	562	786	507	425

		40%	-35%	79%
s15AC – deemed refusal	178	492	405	323
		176%	-18%	78%
s51DA-amendment - deemed refusal	1	5	2	1
		400%	-60%	0%
s54B - internal review	1			
s54D – deemed affirmation	37	80	57	57
		116%	-29%	138%
s54T-to lodge an IC review	41	88	102	87
		115%	16%	61%
<b>Grand Total</b>	<b>3,779</b>	<b>3,844</b>	<b>4,102</b>	<b>2,541</b>

- Data includes figures to 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures to 31 December.
- The variance (percentage figure) for FY2021/22 is compared with FY2020/21 for the period 1 July 2020 - 31 December 2020

#### FOI EOT - Closed in 5 working days

Decision	<=7	>7	Grand Total
s15AB - complex or voluminous	55%	45%	100%
s15AC – deemed refusal	72%	28%	100%
s51DA-amendment - deemed refusal	100%		100%
s54D – deemed affirmation	72%	26%	100%
<b>Total</b>	<b>63%</b>	<b>37%</b>	<b>100%</b>

- The FOI EOT data includes only EOTs –s15AB, s15AC, s51DA, s54D

#### FOI EOT - Closed by outcome

Decision	Granted	Granted varied	Invalid	Not granted	Notified	Withdrawn	Grand Total
s15AB - complex or voluminous	304	57	4	24	1	35	425
s15AC – deemed refusal	267	16	9	20	2	9	323
s51DA-amendment - deemed refusal	1						1
s54D – deemed affirmation	50	5	2				57
<b>Grand Total</b>	<b>622</b>	<b>78</b>	<b>15</b>	<b>44</b>	<b>3</b>	<b>44</b>	<b>806</b>

- The FOI EOT data includes only EOTs –s15AB, s15AC, s51DA, s54D

#### FOI EOT – Received by month

Type	July	August	September	October	November	December	Grand Total
s15AA - by agreement	243	316	382	234	166	344	1685
s15AB - complex or voluminous	31	80	108	81	61	83	444
s15AC – deemed refusal	48	51	64	50	65	40	318
s51DA-amendment - deemed refusal			1				1

s54D – deemed affirmation	14	10	12	8	8	4	56
s54T-to lodge an IC review	6	15	4	20	9	11	65
<b>Grand Total</b>	<b>342</b>	<b>472</b>	<b>571</b>	<b>393</b>	<b>309</b>	<b>482</b>	<b>2569</b>

**NDIS FOI EOT – Received by month**

Type	July	August	September	October	November	December	Grand Total
s15AA - by agreement	22	10	4	11	7	31	85
s15AB - complex or voluminous	6	30	9	13	4	17	79
s15AC – deemed refusal	3	6	8	3	4	2	26
<b>Grand Total</b>	<b>31</b>	<b>46</b>	<b>21</b>	<b>27</b>	<b>15</b>	<b>50</b>	<b>190</b>

**DFAT FOI EOT – Received by month**

Type	July	August	September	October	November	December	Grand Total
s15AA - by agreement	6	6	18	13	9	10	62
s15AB - complex or voluminous	5	6	6	13	17	11	58
s15AC – deemed refusal		3	4	5	3		15
s54D – deemed affirmation	2		1	2			5
s54T-to lodge an IC review	3				1		4
<b>Grand Total</b>	<b>16</b>	<b>15</b>	<b>29</b>	<b>33</b>	<b>30</b>	<b>21</b>	<b>144</b>

**DHS FOI EOT– Received by month**

Type	July	August	September	October	November	December	Grand Total
s15AA - by agreement	72	138	56	4		29	299
s15AB - complex or voluminous	5	7	5	2	1	1	21
s15AC – deemed refusal	5	10	24	17	7	18	81
s54T-to lodge an IC review				1		1	2
<b>Grand Total</b>	<b>82</b>	<b>155</b>	<b>85</b>	<b>24</b>	<b>8</b>	<b>49</b>	<b>403</b>

**DHA FOI EOT– Received by month**

Type	July	August	September	October	November	December	Grand Total
s15AA - by agreement	22	26	10	9	29	41	137
s15AB - complex or voluminous						2	2
s15AC – deemed refusal	7	5	3	4		2	21
s54D – deemed affirmation	8	6	7	2	2	1	26
s54T-to lodge an IC review	2	10	3	17	6	9	47
<b>Grand Total</b>	<b>39</b>	<b>47</b>	<b>23</b>	<b>32</b>	<b>37</b>	<b>55</b>	<b>233</b>

**Table 2: Top 5 exemptions (and percentages) 2020-21**

Exemption	Percentage of FOI requests in which exemption applied
Personal privacy (s 47F)	38%
Certain operations of agencies (s 47E)	21%
Deliberative processes (s 47C)	10%
Documents affecting law enforcement (s 37)	8%
Secrecy provisions (s 38)	6%

The type of exemptions applied are generally consistent from year-to-year.

- The personal privacy conditional exemption (s 47F) of the FOI Act has been the most used exemption every year since 2011–12:
  - o In 2011–12, applied in **48%** of all FOI requests in which exemptions were applied
  - o In 2015–16, applied in **48%** of all FOI requests in which exemptions were applied
  - o In 2019–20, applied in **38%** of all FOI requests in which exemptions were applied
  - o In 2020–21, applied in **38%** of all FOI requests in which exemptions were applied.
- The use of the certain operations of agencies conditional exemption in s 47E has increased since 2011–12:
  - o In 2011–12, applied in **8%** of all FOI requests in which exemptions were applied (the 3<sup>rd</sup> most used exemption behind ss 47F and 37)
  - o In 2014–15, applied in **14%** of all FOI requests in which exemptions were applied (2<sup>nd</sup> most used)
  - o In 2019–20, applied in **21%** of all FOI requests in which exemptions were applied (2<sup>nd</sup> most used).
  - o In 2020–21, applied in **21%** of all FOI requests in which exemptions were applied (2<sup>nd</sup> most used).
- The documents affecting enforcement of law and protection of public safety exemption (s 37) has decreased, however it remains one of the most used exemptions:
  - o In 2011–12, applied in **12%** of all exemptions in which exemptions were applied (2<sup>nd</sup> most used)
  - o In 2014–15, applied in **12%** of all FOI requests in which exemptions were applied (3<sup>rd</sup> most used)
  - o In 2019–20, applied in **10%** of all FOI requests in which exemptions were applied (3<sup>rd</sup>)
  - o In 2020–21, applied in **8%** of all FOI requests in which exemptions were applied (4<sup>th</sup>).

- The documents to which secrecy provisions of enactments apply exemption (s 38) was applied:
  - o In 2011-12, applied in **6%** of all FOI requests in which exemptions were applied (the 4<sup>th</sup> most used)
  - o In 2014-15, applied in **5%** of all FOI requests in which exemptions were applied
  - o In 2018-19, applied in **7%** of all FOI requests in which exemptions were applied
  - o In 2019-20, applied in **7%** of all FOI requests in which exemptions were applied (5<sup>th</sup> most used)
  - o In 2020-21, applied in **6%** of all FOI requests in which exemptions were applied (5<sup>th</sup> most used).
- The deliberative processes conditional exemption (**s 47C**) was applied:
  - o In 2011-12, applied in **4%** of all FOI requests in which an exemption was applied (the 6<sup>th</sup> most used)
  - o In 2014-15, applied in **5%** of all FOI requests in which an exemption was applied (5<sup>th</sup> most used)
  - o In 2019-20, applied in **8%** of all FOI requests in which an exemption was applied (4<sup>th</sup> most used)
  - o In 2020-21, applied in **10%** of all FOI requests in which exemptions were applied (3<sup>rd</sup> most used).
- The documents affecting national security, defence or international relations exemption (s 33):
  - o In 2011-12, applied in **2%** of all FOI requests in which exemptions were applied (10<sup>th</sup> most used)
  - o In 2014-15, applied in **5%** of all FOI requests in which exemptions were applied (6<sup>th</sup> most used)
  - o In 2019-20, applied in **4%** of all FOI requests in which exemptions were applied (6<sup>th</sup> most used)
  - o In 2020-21, applied in **4%** of all FOI requests in which exemptions were applied (6<sup>th</sup> most used).
- The least used exemptions, consistent from year-to-year, are:
  - o ss 45A (Parliamentary budget office documents)
  - o 47A (electoral rolls)
  - o 47H (research)
  - o 47J (the economy)

Each of the above comprise less than 0.2% of all exemptions applied. Exemptions applied by agencies may change on review (data collected is for primary decisions on access).

**Total number of FOI requests**

	2018-19			2019-20			2020-21			2021-22		
	Personal	Other	Total	Personal	Other	Total	Personal	Other	Total	Personal	Other	Total
<b>Total number of FOI requests</b>	150	94	244	142	90	232	122	71	193	79	83	162
<b>Total number of internal reviews</b>	10	10	20	7	6	13	12	5	17	10	4	14
<b>Period total</b>	264			245			210			176		

- Data includes figures to 30 June for FY2018-19 to FY2020/21.
- For FY2021/22 the data includes figures to 31 December.

## **COVID-19**

### **COVIDSafe App enquiries and complaints statistics from 16 May 2020 to 10 January 2022**

\* The below figures are included in the total number of enquiries and privacy complaints received above. Below provides a breakdown of enquiries and complaints we have received about the pandemic specifically.

<b>CovidSafe App &amp; Part VIIIA of the Privacy Act (types of Issues) cases Received</b>	<b>16 May 2020 to 10 January 2022</b>
Enquiries	42
Complaints	0

### **CovidSafe App enquiries, complaints, and assessment data from 16 May 2020 to 31 December 2021**

<b>Covid Safe App</b>	<b>Number</b>	<b>Outcome</b>	<b>Context</b>
<b>Enquiries</b>	<b>42</b>	<b>42 closed</b>	<b>most from Individuals</b>
Request to download or use COVIDSafe	15	15 Closed	12 individual, 1business
Request to download or use (Sec 94H applies)	1	1	
General enquiry or concern about COVIDSafe	26	26 Closed	16 individuals
<b>Assessments</b>	<b>5</b>	<b>4 commenced.</b> <b>2 completed, 2 remain open.</b> <b>1 TBA</b>	<ul style="list-style-type: none"> <li>• <b>Assessment 1:</b> 30 June 2020 OAIC commenced assessment of the access controls applied to the National COVIDSafe Data Store by the Data Store Administrator. The targets of this assessment are the Department of Health and the Digital Transformation Agency. <b>Assessment finalised. Report published on 25 June 2021.</b></li> <li>• <b>Assessment 2:</b> 7 October 2020 the OAIC commenced assessment of access controls applied to the use of COVID app data by State/Territory health authorities. The targets of this assessment are all State and Territory health authorities.</li> <li>• <b>Assessment 3</b> – 12 November 2020 the OAIC commenced assessment. App functionality vs privacy policy. <b>Assessment finalised and report published on 26 October 2021.</b></li> </ul>

			<ul style="list-style-type: none"> <li>• <b>Assessment 4</b> - 13 November 2020 the OAIC commenced assessment. Periodic COVID app data deletion</li> <li>• <b>Assessment 5</b> - End of pandemic COVID app data deletion</li> </ul>
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## CDR for period 1 July 21 – 31 December 21

### CDR Enquiries managed by the OAIC

Type	2020-21	2021-22
Open CDR Enquiries	0	0
Closed CDR Enquiries	16	19
<b>Total CDR Enquiries</b>	<b>16</b>	<b>19</b>

- CDR Enquiries received data includes all matters found to be related to CDR, received by telephone, written and in person channels, including from the CDR online complaint tool (cdr.gov.au)

### CDR enquiries closed within 10 days – Target 90%

Time taken to close (Days)	2020-21	2021-22
% Enquiries closed within 10 days	56%	74%
Number enquiries closed within 10 days	9	14
% Enquiries closed in more than 10 days	44%	26%
Number enquiries closed in more than 10 days	7	5

### CDR Complaints managed by the OAIC

Type	Number received	Issue	Outcome	Average time taken
Alleged CDR Complaints	6	2 - Not CDR Data 2 - Respondent not CDR participant 2 - Complaints Open at 31 Dec 21	Not CDR Complaints	28.3 days
Complaints with no CDR relevance	10	10 - Not related to CDR	Referred to privacy case management (PCM)	See PCM stats

### CDR Contacts received via the CDR Online Complaint Tool

Type	2020-21	2021-22
Enquiry	42	37
Report	3	3
Complaint	17	16
<b>Total</b>	<b>62</b>	<b>56</b>



**CDR contacts received via the online complaint tool and referred to ACCC**

Type	2020-21	2021-22
Enquiry	35	24
Report	3	0
Complaint	0	0
<b>Total</b>	<b>38</b>	<b>24</b>

- Complaints are not within ACCC remit – all are triaged to OAIC
- CDR contacts received via the online complaint tool and referred to ACCC are not entered into the OAIC's Resolve database.

**Total CDR contacts received via the online complaint tool and referred to OAIC**

Type	2020-21	2021-22
Enquiry	8	15
Report	0	3
Complaint	17	16
<b>Total</b>	<b>25</b>	<b>34</b>

- Reports - Of the three reports submitted through the online complaint tool, none had CDR relevance. Two were found to be privacy enquiries and one was a privacy complaint.
- Complaints – where the CDR team assesses a complaint may have privacy relevance it is passed to the privacy team for investigation or closure, otherwise will be closed.
- \* Of the total 16 complaints received, no complaints have been assessed as relating to the CDR.

# Commissioner brief: Alinta Energy

## Key messages

- On 3 March 2020, we commenced preliminary inquiries with Alinta in response to media reports regarding Alinta's privacy compliance. The matter remains open, however the OAIC does not report on matters under current inquiry or investigation and rarely reports where a matter is escalated to investigation.
- The APPs do not generally prevent an organisation from sending personal information overseas. However, organisations need to carefully consider steps that may need to be taken to comply with the APPs when doing so.
  - However certain types of personal information are subject to data localisation requirements. For example, part IIIA of the Privacy Act, restricts sending information held in the Australian credit reporting system overseas.

## Critical facts

- On 2 March 2020, the media reported a whistle blower raising issues regarding Alinta's privacy compliance. In particular, the reports referred to an internal audit by Ernst & Young into Alinta's privacy compliance.
- On 3 March 2020 we commenced preliminary inquiries with Alinta. The inquiries related to APP 8 – Cross-border disclosure of personal information. s 47E(d)
- The OAIC has made other telephone inquiries with Treasury and FIRB
- The Senate Economic References Committee inquiry into foreign investment proposals has considered Alinta, and the Commissioner appeared on 15 May 2020.

s 47E(d)

## Possible questions

***How do Privacy Act requirements interact with FIRB conditions?***

- The requirements are separate. However, the APPs require reasonable steps to be taken to ensure protection of personal information and to ensure an overseas recipient does not breach the APPs, and these requirements may apply at the same time as FIRB conditions in some instances. FIRB may consult the OAIC in relation to privacy impacts of foreign investment proposals.

***Is there a higher risk of identity theft when personal information is held offshore?***

- APP 11 requires that organisations must take reasonable steps to protect personal information they hold from misuse, interference and loss, as well as unauthorised access, modification or disclosure. Organisations need to ensure that the controls around the information —the access controls, the physical security and the governance—meet that 'reasonable steps' test. The location of the data is one aspect that any organisation will need to consider in their risk assessment before sending personal information overseas.

***What are the information handling obligations on vendors when selling a business?***

- Disclosures of personal information are permitted if they are related to the reason the information was collected and within the reasonable expectations of the individuals concerned.
- How the APPs apply on completion of the sale depends on whether there will be a change in the legal entity holding the personal information and whether the purchaser contemplates operating a similar business.
- Where personal information is sold and will be used by the purchaser to deliver a service which is essentially the same to that offered by the original owner, such a disclosure is likely to be consistent with either the primary purpose of collection, or with what customers might reasonably expect, and be permitted under APP 6.

***What are the information handling obligations on purchasers when buying a business?***

- A purchaser has obligations under APP 3 and APP 5 when collecting information from the vendor at completion and then under APP 6 when using or disclosing that information. It also has obligations under APP 10 to ensure the quality of the information. APP 7 obligations may arise if information is used for direct marketing.
- At the point at which the purchaser of a business considers any significant changes regarding how it uses or discloses the customer information received, it would need to consider its obligations under APP 6. This would likely include considering:
  - whether or not the individuals consented to the proposed new use or disclosure

- whether or not the new use or disclosure would be reasonably expected by the individuals, having regard to matters including the circumstances in which the information was originally provided by the customers.

## Other background

### Information in the public domain regarding this matter

- **On 3 March 2020**, the OAIC announced it was making preliminary inquiries into Alinta's handling of Australians' personal information.
- **On 15 May 2020**, the Commissioner advised the Senate Economic References Committee inquiry into foreign investment proposals that the OAIC:
  - had been contacted by third parties with an interest in the matter
  - wrote to Alinta directly (a copy of this initial correspondence was provided in confidence to the Committee)
  - had received information back from Alinta
  - have had telephone contact with the FIRB
  - had not written to Electricity Monster or any other entities.

## Document history

Updated by	Reason	Approved by	Date
Michael Foot	Senate Estimates February 2022		

## Commissioner brief: International regulatory developments

### Key messages

- Globally interoperable data protection laws are increasingly important to protect individuals online and reduce regulatory friction for business - particularly noting increased cross-border data flows. This was an important aspect of OAIC submission to the Privacy Act Review.
- The OAIC actively engages with a range of international privacy and data protection networks. Since October 2018, I have been a member of the Executive Committee of the Global Privacy Assembly. The Global Privacy Assembly is the leading global forum of data protection and privacy authorities with over 130 members across all continents.
- International engagement ensures the OAIC learns from others' experiences, identifies areas of synergy and facilitates international collaboration, including on enforcement. The OAIC has MOUs with the Data Protection Commissioner of Ireland (April 2014), the UK Information Commissioner's Office (January 2020) and the Singaporean Personal Data Protection Commission (March 2020). The OAIC is currently in discussions with the UK ICO and the Singaporean Personal Data Protection Commission to continue with the MOUs, given the benefits of these relationships. For example, under our MOU with the ICO we undertook a joint investigation into the information handling practices of Clearview AI.
- We work closely with Australian government agencies on initiatives that facilitate cross-border transfers of data while protecting privacy, such as working with the Attorney-General's Department to implement the APEC Cross-Border Privacy Rules (CBPRs) in Australia, and providing advice to the Department of Foreign Affairs and Trade in relation to Australia's Free Trade Agreements.
- In January 2021, the Australian Government elevated the bilateral relationship with Malaysia to a Comprehensive Strategic Partnership (CSP). As part of this, areas for data protection cooperation with the Malaysian Department of Personal Data Protection (JPDP) will be explored.
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- We monitor international privacy developments, particularly in Europe, the UK, Canada and the USA, to inform both the advice we provide to Australian Government and our own regulatory action. For example, we have closely been monitoring the UK's
- children's code and the introduction of the Californian Consumer Privacy Act in light of the Government's proposed online privacy code.

<b>Critical facts</b>
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**1. Global Privacy Assembly**

- ExCo position:
  - Angelene Falk is a member of the Executive Committee, and chairs the Strategic Direction Sub Committee of the Executive Committee (SDSC). Angelene Falk undertakes both these roles as Privacy Commissioner.
  - In October 2020, the OAIC was re-elected to the GPA Executive Committee for a further two years until October 2022.
  - This will be the last year Angelene Falk will be a member of the Executive Committee, and chair the Strategic Direction Sub Committee of the Executive Committee (SDSC).
  - The previous GPA Chair and UK Information Commissioner, Elizabeth Denham, requested the Australian Information Commissioner to stand for re-election to the Executive Committee. The re-election occurred at the virtual closed session on 15 October 2020.
- Virtual Engagement: Global Privacy Assembly's Closed Session, 2021:
  - Due to the COVID-19 pandemic, the Global Privacy Assembly's (GPA) Annual Conference was virtually from 18-21 October 2021. Angelene Falk, Elizabeth Hampton, David Stevens and Melanie Drayton attended the conference.
- COVID-19 related activities:
  - In 2020, the GPA's Executive Committee has established a GPA COVID-19 Taskforce for one year to consolidate data protection authorities and stakeholders' efforts, maximise the voice of the GPA, gather expertise, and assist GPA members and observers in addressing emerging privacy issues posed by COVID-19. In 2021, this group was given a further mandate in acknowledgement of the need to continue and broaden its work. The group is now known as the Working Group on data sharing for the public good. Its mandate has evolved to focus on data protection and privacy issues and concerns related to sharing of personal data as the global pandemic response shifts towards economic recovery.
  - In March 2021, the GPA's Executive Committee published a joint statement which stressed the importance of privacy by design in the sharing of health data for domestic or international travel requirements.
  - In March 2020, the GPA Executive Committee released a statement on COVID-19. The statement recognised that data protection requirements will not stop the critical sharing of information to support efforts to respond to the pandemic.
- OAIC engagement on GPA Working Groups:
  - The OAIC engages in the following working Groups of the GPA:
    - Digital Citizen and Consumer Working Group (DCCWG)
    - International Enforcement Cooperation Working Group
    - GPA COVID-19 Working Group
    - Ethics and Data Protection in Artificial Intelligence Working Group

- Policy Strategy Working Group 1 (Global frameworks and standards)
- The OAIC is co-chair of the DCCWG with OPC Canada. The OAIC supported Canada in organising a GPA Conference side webinar which was held on 3 November 2021. Melanie Drayton attended and chair the event.

## 2. Asia Pacific Privacy Authorities (APPA) Forum

- The OAIC participated in virtual meetings of the Asia Pacific Privacy Authorities forum in December 2021 (56<sup>th</sup> APPA) and June 2021 (55<sup>th</sup> APPA). These meetings provide the OAIC with an opportunity to learn from the experiences of our counterparts in the Asia Pacific region.
- During the most recent Forum, OAIC Executive discussed with Privacy Commissioners and professionals from the Asia Pacific region topical issues in privacy regulation, privacy challenges and issues raised by COVID-19, investigations and enforcement, awareness and outreach, and law reform. The OAIC presented on the Australian experience in relation to facial recognition technologies, and investigations into 7-eleven and Clearview. The OAIC also moderated a panel on guidance and enforcement.
- The OAIC will attend the 57<sup>th</sup> APPA forum in June 2022.

## 3. GPEN Sweep

- The Global Privacy Enforcement Network (GPEN) was established in 2010 upon recommendation by the Organisation for Economic Co-operation and Development.
- In 2020, the OAIC participated in the 2020-21 GPEN Sweep.
- The aim of this sweep was to better understand, at the practical level, if and how privacy considerations have been taken into account by the organizations responsible for various COVID-19 solutions and initiatives and what level of engagement DPAs have had with those organizations in their jurisdiction (whether via assessments of contact tracing apps or any other public or private sector initiative).
- The GPEN sweep report was published on 6 October 2021.

## 4. Recent collaboration with international regulators

Country/Authority	Form of collaboration	Collaboration activities
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S 47E(d)

S 47E(d)

S 47E(d)

#### Possible questions

- ***Does Australia need to obtain EU adequacy? What are the barriers, if any?***

This is a matter for the Attorney-General's Department.

In the OAIC's December 2021 submission to the Privacy Act Discussion paper, the OAIC submitted that removing the small business exemption would bring Australia in line with comparable international privacy regimes. The small business exemption has proved to be one of the major issues for Australia in seeking adequacy under the GDPR. An adequacy decision would require the European Commission (EU Commission) to decide that Australia ensures an adequate level of protection to personal data. Adequacy would allow entities subject to the GDPR to transfer personal data to entities in Australia without any specific authorisation or further steps. The adequacy of Australia's privacy regime was considered by the EU in 2001, but the Article 29 Data Protection Working Party found that further safeguards were needed. One of their key concerns was the small business exemption, as any data transfers to Australian businesses could be to a small business operator that is not subject to the Privacy Act.<sup>1</sup>

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<sup>1</sup> [https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2001/wp40\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2001/wp40_en.pdf)



Transferring data to Australia on a basis other than adequacy faces additional hurdles under the GDPR that may discourage information flows.<sup>2</sup>

Following the Schrems II decision, an Adequacy decision might mitigate any regulatory uncertainty for Australian businesses which are currently subject to the other data transfer mechanisms under the GDPR, most likely to be Standard Contractual Clauses. However, adequacy must be constantly monitored to ensure the receiving country's framework remains adequate.

The European Commission has so far recognised Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland, the UK under the GDPR and the LED ([the Law Enforcement Directive](#)), and Uruguay as providing adequate protection.

- ***Does Australia need to obtain UK adequacy?***

This is a matter for the Attorney-General's Department. A UK Adequacy decision might mitigate any regulatory uncertainty for Australian businesses dealing with the UK, following its exit from the EU. In August 2021, the UK DCMS published a Mission Statement with respect to international data transfers. Under this Mission Statement the UK indicated that:

- now the UK has left the EU, they are able to independently strike data adequacy decisions with our international partners.
- data 'adequacy' is a status granted by the UK to countries which provide high standards of protection for personal data. An 'adequacy' determination means that personal data can be transferred from the UK to that country freely, in accordance with the terms of the relevant adequacy decision.
- The UK has identified Australia as one of the priority destinations for adequacy (along with Brazil, Colombia, Dubai, India, Indonesia, Kenya, the US, South Korea and Singapore)

Given the scale and scope of international developments in privacy frameworks, the current review of the Privacy Act may be necessary to ensure that Australia's framework provides a high standard of protection of personal data to obtain UK Adequacy.

- ***Does the GDPR (or other international instrument) show that the Privacy Act requires amendments?***

There have been many international developments to privacy frameworks – over the last few years Europe, Canada, America, New Zealand and Singapore, to name a few, have all moved to update their frameworks to reflect the technological advancements brought by the digital economy. The Australian Government is undertaking a review of

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<sup>2</sup> See Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council [2021] OJ L 199/31 [18]–[22].

the Australian Privacy Act. Given the scale and scope of environmental change, the current review of the Privacy Act is necessary to ensure that this framework is proportionate, sustainable and responsive to emerging privacy risks into the future. It also presents an opportunity to ensure Australia's framework remains global interoperable by connecting with other frameworks to ensure Australian's data is protected wherever it flows. As part of this review, the OAIC is committed to scrutinising other frameworks.

My Office has made recommendations regarding ensuring that any requirements that are adopted fit within the Australian context, whilst ensuring that Australia's privacy framework is interoperable with other frameworks around the world.

While the GDPR tends to be more prescriptive than the principles-based Australian Privacy Principles (APPs), many GDPR requirements would be expected of entities in their complying with relevant APPs or other Privacy Act obligations.

In the OAIC's December 2021 submission to the Privacy Act Discussion paper, the OAIC has put forward recommendations which would bring the Privacy Act more in line with the GDPR, including for example:

- to replace the word 'about' with 'relates to' in the definition of personal information (recommendation 2),
- removing the small business exemption (recommendation 17),
- strengthening notice requirements (recommendations 26-32),
- requiring collection of personal information to be fair and reasonable (recommendations 33-40),
- introducing a right to erasure (recommendation 55).

- ***Will Australian businesses be impacted by the Schrems II decision?***

The influence of this decision on international data transfers more generally is likely to be significant and we will be monitoring developments in this area and its impact for Australian businesses. The Court of Justice of the European Union (CJEU) decision found that EU and US companies could no longer use the EU-US Privacy Shield as a valid transfer mechanism due to the ability of US law enforcement and national security to access the transferred data.

It also called into question the use of Standard Contractual Clauses as a transfer mechanism, calling on companies to undertake a case-by-case assessment of the surrounding environment to determine whether the data is adequately protected from acquisition by public authorities. Companies would need to assess the surrounding environment and legal frameworks and adopt supplementary measures to ensure its protection.

This part of the decision has potential implications beyond the EU-US Transatlantic border transfers, and may have implications for Australian businesses. In June 2021, the European Commission adopted two sets of standard contractual clauses, one for use between controllers and processors and one for the transfer of personal data to third countries to take account of the Schrems II judgement.

## Regulatory developments

### International regulatory developments related to surveillance

- In all jurisdictions (Europe, United Kingdom, United States, Canada, New Zealand) the use of surveillance devices is likely to collect personal information (or personal data) and is covered by privacy legislation and regulations.
- Generally, in each jurisdiction there are exceptions relating to the use of surveillance for the purposes of law enforcement and national security.
- The use of surveillance for law enforcement and national security purposes is in some instances regulated by standalone legislative frameworks. For example, the UK has a standalone Surveillance Camera Commissioner to encourage compliance with the Surveillance Camera Code of Practice which applies to local authorities and the police operating surveillance camera systems.

### Singapore's Privacy Law reform

- On 2 November 2020, Singapore passed a bill that reformed Singapore's privacy laws ([Personal Data Protection \(Amendment\) Act 2020](#)). Changes to the Act include a mandatory data breach notification regime, an expanded consent-based framework, increased financial penalties for breaches of the PDPA, and a new right of data portability for individuals. Certain key amendments came into force on 1 February 2021, including new criminal offences for individual, mandatory data breach notification regime, consent exceptions.

### New Zealand's Privacy Law reform of 2020

- In June 2020, New Zealand passed a bill that reformed New Zealand's privacy laws. The amendments include enhanced powers for the New Zealand Privacy Commissioner, stronger protections for cross-border data transfers, and new mechanisms that promote early intervention and risk management by entities, rather than relying on data subjects' complaints. The amendments took effect on 1 December 2020.

### UK Children's Code (previously known as Age Appropriate Design Code)

- UK's Children's Code (previously known as Age Appropriate Design Code) contains 15 standards that online services need to follow. This ensures they are complying with their obligations under data protection law to protect children's data online.

- As of 1 September 2021, all online businesses that are likely to be accessed by children under 18 must comply with the UK's Children's Code.

## Developments in the EU

- On 6 December 2021, the European Commissioner published a summary report on the public consultation on the Data Act. According to the report, the Data Act aims to ensure fairness in the allocation of data value among actors in the data economy and to foster access to and use of data. The Data Act will not alter data protection legislation and will seek to preserve incentives in data generation.
- On 21 April 2021, the European Commission introduced a Proposal for the regulation on artificial intelligence (AI) to address the risks of AI, such as live facial scanning. The draft regulation includes fines of up to 6% of a company's annual revenue for non-compliance (fines that are higher than those levied under the GDPR), and a prohibition in principle on 'remote biometric identification', such as the use of live FRT for law enforcement purposes, with a narrow exception for some law enforcement purposes such as searching for a missing child or thwarting a terror attack. The EDPS has [supported](#) the European Commission's proposal, however, once again reiterated a call for a temporary ban on the use of remote biometric identification systems in public areas.
- As part of the implementation of the EDPB 2021-2023 strategy, the EDPB has agreed on the newly established Support Pool of Experts (SPE) project plan. The SPE aims to provide support to EDPB Members through their expertise useful for investigations and enforcement activities and to enhance cooperation and solidarity between EDPB Members by sharing, reinforcing and complementing strengths, and addressing operational needs.
- On 14 December 2021, the EDPB adopted its contribution to the European Commission's evaluation of the Data Protection Directive with Respect to Law Enforcement (Directive (EU) 2016/680) (LED) under Article 62 of the GDPR.
- On 14 December 2021, following public consultation, the EDPB adopted a final version of the Guidelines on examples regarding data breach notifications. These guidelines complement the Article 29 Working Party guidance on data breach notification by introducing more practice orientated guidance and recommendations. They aim to help data controllers in deciding how to handle data breaches and what factors to consider during risk assessment.

## US State based privacy developments

- The Californian Consumer Privacy Act (CCPA) came into effect on 1 January 2020, with enforcement taking effect on 1 July 2020.
- On 2 March 2021, the Virginia Consumer Data Protection Act was signed into law, making it the second state to pass comprehensive privacy legislation.
- On 8 July 2021, Colorado became the third US state to pass comprehensive privacy legislation (the Protect Personal Data Privacy Act).

- There are currently [active privacy bills in Alaska, Florida, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania and Washington.](#)

### APEC CBPRs

- The APEC Joint Oversight Panel endorsed Australia's application to participate in the Cross-Border Privacy Rules (CBPRs) system in November 2018.
- The CBPRs were developed by participating APEC economies with the aim of building consumer, business and regulator trust in cross border flows of personal information.
- They require participating businesses to develop and implement data privacy policies consistent with the APEC Privacy Framework. These are assessed against the minimum program requirements of the APEC CBPR system by an Accountability Agent, an independent APEC recognised private sector entity.
- It is intended that the OAIC will have oversight responsibilities once the system is implemented in Australia.
- The Attorney-General's Department will work with the OAIC and stakeholders to implement the system in Australia.
- Currently the 9 participating economies are USA, Mexico, Japan, Canada, Singapore, the Republic of Korea, Australia, Chinese Taipei, and the Philippines.
- APEC is currently undertaking a study to review the APEC CBPR system. As part of this study, APEC officials interviewed Australia as a CBPR economy. AGD attended the interview on behalf of Australia, and the OAIC provided input into this interview process, and attended the interview as an observer. The APEC Policy Support Unit has provided an interim report into the APEC CBPR system, but is still considering the interviews with CBPR economies, with a view to incorporating them into a final report.

### Document history

Updated by	Reason	Approved by	Date
	Estimates February 2022		

## Commissioner brief: FOI IC reviews

### IC review applications **RECEIVED**

The increase in **IC review applications received** from 2015-16 to 2020-21 was **140%**

When extrapolated from the first 6 months, the number of applications expected for 2021-22 is **1764**. That is a **246% increase** on 2015-16.

2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22 (to 31/12/21)
510	632	801	928	1066	1224	882 38% increase on same period 2020-21

### IC review applications **FINALISED**

The increase in **IC review applications finalised** from 2015-16 to 2020-21 was **124%**

When extrapolated from the first 6 months, the number of finalisations expected for 2021-22 is **1388**. That is a **206% increase** on 2015-16.

2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22 (to 31/12/21)
454	515	610	659	829	1018	694 37% increase on same period 2020-21

The **average time to finalise** IC reviews has steadily increased:

2016-17	2017-18	2018-19	2019-20	2020-21	2021-22 (to 31/12/21)
190 days (6.3 months)	204 days (6.8 months)	237 days (7.8 months)	246 days (8.1 months)	252 days (8.3 months)	216 days (7.1 months)

Number **finalised in less than 12 months**:

2018-19	2019-20	2020-21	2021-22 (to 31/12/21)
481	597 (24.1% increase on 18-19)	740 (24% increase on 19-20)	562 (extrapolated to <b>1124 for full year</b> ) (52% increase on 20-21) (134% increase on 18-19)

- In 2020-21 we finalised 73% of IC reviews within 12 months (740).
  - 57% of IC reviews (580) finalised within 120 days, compared to 48% (395) for 2019-2020.
- In the first 6 months of 2021-22 (to 31 December 2021) we are meeting our target of finalising 80% of IC reviews within 12 months.
  - 81% of IC reviews within 12 months (562).
  - A significant number of these matters (150) were closed under s 54N as invalid (out of jurisdiction, misdirected, out of time, copy of decision not provided, or not an IC reviewable decision).
    - In 2019-20, 19% (161) were closed as invalid under s 54N.
    - This increased during 2020-21, when 28% of all IC reviews were closed as invalid under s 54N (285).
  - 70% of IC reviews (483) were finalised within 120 days during that period.

### IC review applications **ON HAND**

The **number** of IC reviews on hand has steadily increased:

<i>As at 30/6/19</i>	<i>As at 30/6/20</i>	<i>As at 31/12/20</i>	<i>As at 30/4/21</i>	<i>As at 30/6/21</i>	<i>As at 31/12/21</i>
850	1088	1218	1291	1295	1,485

The **age** of IC reviews on hand has steadily increased:

Age	2017-18		2018-19		2019-20		2020-21		2021-22	
	# Cases	%	# Cases	%	# Cases	%	# Cases	%	# Cases	%
< 4 months	228	39%	190	22%	270	25%	264	20%	346	23%
Between 4 months and 6 months	94	16%	106	12%	108	10%	85	7%	102	7%
Between 6 and 9 months	122	21%	147	17%	142	13%	144	11%	128	9%
Between 9 and 12 months	56	10%	157	18%	108	10%	135	10%	130	9%
Between 12 and 18 months	59	10%	166	20%	168	15%	226	17%	207	14%
Between 18 and 24 months	17	3%	68	8%	175	16%	180	14%	210	14%
Over 24 months	5	1%	16	2%	117	11%	261	20%	362	24%
<b>Over 12 months</b>	81	14%	250	30%	460	42%	667	52%	779	52%
<b>Total</b>	<b>581</b>	<b>96%</b>	<b>850</b>	<b>100%</b>	<b>1,088</b>	<b>100%</b>	<b>1,291</b>	<b>100%</b>	<b>1,485</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December 2021.



**Cases Open - FOI IC Reviews**

<b>Cumulative</b>	<b>2017-18</b>		<b>2018-19</b>		<b>2019-20</b>		<b>2020-21</b>		<b>2021-22</b>	
<b>Age</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>	<b># Cases</b>	<b>%</b>
< 4 months	228	39%	190	22%	270	25%	264	20%	346	23%
< 6 months	322	55%	296	35%	378	35%	349	29%	448	30%
< 9 months	444	76%	443	52%	520	48%	493	40%	576	39%
< 12 months	500	86%	600	71%	628	58%	628	50%	706	48%
<18 months	559	96%	766	90%	796	73%	854	68%	913	61%
<24 months	576	99%	834	98%	971	89%	1,034	80%	1,123	76%
Over 24 months	5	1%	16	2%	117	11%	261	20%	362	24%
<b>Total</b>	<b>581</b>	<b>100%</b>	<b>850</b>	<b>100%</b>	<b>1,088</b>	<b>100%</b>	<b>1,295</b>	<b>100%</b>	<b>1,485</b>	<b>100%</b>

- Data includes figures as at 30 June for FY2016-17 to FY2020/21. For FY2021/22 the data includes figures as at 31 December 2021.
- In accordance with the scheme envisaged by the FOI Act, the OAIC seeks to resolve IC reviews informally using alternate dispute resolution in appropriate cases (without them progressing to a formal decision by the Information Commissioner), including:
  - providing an appraisal or preliminary view
  - trying to reach agreement between the parties
  - In 2020-21 we finalised:
    - 964 IC reviews without a formal decision being made (95%) - an increase compared with 94% in 2019-20.
    - 409 IC reviews where the applicant withdrew their application (40%).
    - 14 IC reviews by written agreement between the parties under s 55F of the FOI Act.
    - 54 decisions of the Commissioner under s 55K of the FOI Act.
  - In 2021-22, as of 31 December 2021, we finalised:
    - 639 IC reviews without a formal decision being made (92%) - a decrease compared with 95% in 2020-21.
    - 352 IC reviews where the applicant withdrew their application (51%).
    - 3 IC reviews by written agreement between the parties under s 55F of the FOI Act.
    - 55 decisions of the Commissioner under s 55K of the FOI Act.
- IC reviews are assessed for complexity.
  - Case categories assist with efficient case management and developing strategies to address the increasing numbers of IC review applications on hand.
  - On 31 December 2021, of the 1,485 IC reviews on hand, 568 were categorised as complex (38%), which involves review of multiple exemptions, affected third parties and a large volume of material (categories 3, 4, 5.3, 5.4).



<b>Processing efficiency</b>
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- Structure enhances early resolution processes:
  - All matters are triaged on the day they are received. Invalid applications finalised on the same day as receipt.
- External-facing initiatives:
  - Website project – currently developing a wizard tool to triage applications made via the OAIC’s website. The wizard tool will minimise the number of invalid applications.
  - Developed ‘smartforms’ for agencies to lodge EOT applications – collects all necessary information; integrates directly into case management system.
  - The publication of a procedure direction for applicants – this clarifies the OAIC’s procedures for applicants and provides guidance about what the OAIC may require during an IC review. The Direction took effect on 1 September 2021.
- Internal initiatives:
  - Batching like cases for efficiency
  - Case categorisation – identifying complexity and an appropriate review path, as well as ensuring cases are appropriately allocated to case officers.
  - Improving case management database workflows to assist case officers more efficiently progress IC reviews, FOI complaints and EOT applications.
  - Searches cohort project – to progress a large cohort of IC reviews which related to the adequacy of searches - maximise efficiency from batching issues
  - Deemed matters:
    - preliminary inquiries under s 54V made quickly and response required within 7 days
    - if delays, s 55E notice issued requiring a statement of reasons within 14 days
    - where there will be delay by the agency, direction issued under s 54Z, notifying the commencement of the IC review; statement of reasons under s 55E; compelling production of documents under s55T

Possible questions
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- ***Why does the Australian Information Commissioner take so long to make IC review decisions - other jurisdictions have a 30 day time limit?***

There is no statutory timeframe in the FOI Act.

To afford procedural fairness, the OAIC ensures parties have an adequate opportunity to consider all information (including the submissions of other parties) and to make their own submissions.

The OAIC encourages informal resolution of reviews, which includes the ability of the agency to make a revised decision under s 55G of the FOI Act giving more access. Sometimes informal resolution does not result in the matter settling and a formal decision is required.

- ***What proportion of FOI decisions do you set aside on review?***

The Commissioner has the power to affirm, vary or set aside a decision after the Commissioner has undertaken a review.<sup>1</sup>

Since 2015 the proportion of FOI decisions:

- set aside on review
  - *increased* from 27.5% (2015-16) to 41% (2020-21)
- affirmed on review
  - *decreased* from 48.75% (2015-16) to 46% (2020-21)
- varied on review
  - *decreased* from 23.75% (2015-16) to 13% (2020-21).

The proportion of FOI decisions varied on review fluctuated between:

- 23.75% in 2015-16
- 7% in 2018-19
- 13% in 2020-21.

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<sup>1</sup> After an application is made to the Information Commissioner for IC review, an agency or minister may (at any time during the IC review) revoke or vary an access refusal decision to favour the applicant by giving access to a document in accordance with the request (s 55G(1)(a)), relieving the IC review applicant from liability to pay a charge (s 55G(1)(b)), or requiring record of personal information to be amended or annotated in accordance with the application (s 55G(1)(c)). The revised decision will be the decision under review (s 55G(2)(b)).

	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-21	2021-22 (to 31/12/21)
<b>Affirmed by IC without s 55G</b>	28 (35%)	48 (46.15%)	59 (48%)	16 (26%)	16 (32%)	20 (37%)	23 (42%)
<b>s 55K – affirmed by IC after s 55G</b>	11 (13.75%)	17 (16.35%)	9 (7%)	3 (5%)	8 (16%)	5 (9%)	7 (13%)
<b>Vary</b>	19 (23.75%)	16 (15.38%)	10 (8%)	4 (7%)	7 (14%)	7 (13%)	6 (11%)
<b>Set Aside</b>	22 (27.5%)	23 (22.12%)	45 (37%)	37 (62%)	19 (38%)	22 (41%)	19 (34%)
<b>Total:</b>	80	104	123	60	50	54	55

In comparison:

- over the last 4 years the percentage of reviews by the NSW Information Commissioner that recommended that the agency make a new decision has remained reasonably stable at around 50%.<sup>2</sup>
- agencies reported to the Office of the Victorian Information Commissioner (OVIC) that of 32 reviews decided by the Victorian Civil and Administrative Tribunal (VCAT) in 2020-21, agency decisions were affirmed in full in 26 cases. It was also reported that VCAT varied agency decisions in 5 cases and overturned agency decisions in 1 case.<sup>3</sup>

Caution should be exercised in making a direct comparison with these jurisdictions, as different jurisdictions have different legislative frameworks: for example, Victoria does not have an Information Publication Scheme, nor does it have a framework that provides for exemptions that are subject to a public interest.

94% of the 829 IC reviews closed in 2019-20, were finalised other than by the Commissioner making a formal decision under s 55K of the FOI Act.

95% of the 1018 IC reviews closed in 2020-21, were finalised other than by the Commissioner making a formal decision under s 55K of the FOI Act.

<sup>2</sup> [https://www.ipc.nsw.gov.au/sites/default/files/2021-09/NSW Information Commissioner%27s 10-Year GIPA Data Analysis Overview 2010-2020 September 2021.pdf](https://www.ipc.nsw.gov.au/sites/default/files/2021-09/NSW%20Information%20Commissioner%27s%2010-Year%20GIPA%20Data%20Analysis%20Overview%202010-2020%20September%202021.pdf)

<sup>3</sup> <https://ovic.vic.gov.au/wp-content/uploads/2021/10/OVIC-Annual-Report-2020-21-Digital.pdf>

- ***How many matters are being declined to allow the applicant to go directly to the AAT? Please provide an example of when this has happened.***

Under s 54W(b) of the FOI Act, the Information Commissioner may decline to undertake an IC review where the Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

- In 2019-20, 83 declined under s 54W(b) (10% of the 829 reviews finalised).
- In 2020-21, 139 declined under s 54W(b) (14% of the 1018 reviews finalised).
- In 2021-22 (to 31 December 2021), 42 reviews declined under s 54W(b) (6% of the 694 reviews finalised).

In February 2021, FOI Guidelines were updated (at [10.88] - [10.89]) as follows:

The Information Commissioner may decline to undertake a review if satisfied 'that the interests of the administration of the [FOI] Act make it desirable' that the AAT consider the IC reviewable decision (s 54W(b)). It is intended that the Information Commissioner will resolve most applications. Circumstances in which the Information Commissioner may decide that it is desirable for the AAT to consider the IC reviewable decision instead of the Commissioner continuing with the IC review include:

- where the IC review is linked to ongoing proceedings before the AAT or a court
- where there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- where, should the application progress to an IC review decision, the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
- where the FOI request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:
  - the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
  - the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
  - the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
  - where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

#### Example – National Cabinet:

- In the period 1 July 2020 to 10 January 2022, the OAIC received 18 IC review applications for matters involving documents of National Cabinet. Of those matters, 11 remain open and 7 were closed under s 54W(b) of the FOI Act to permit the applicant to apply to the AAT.

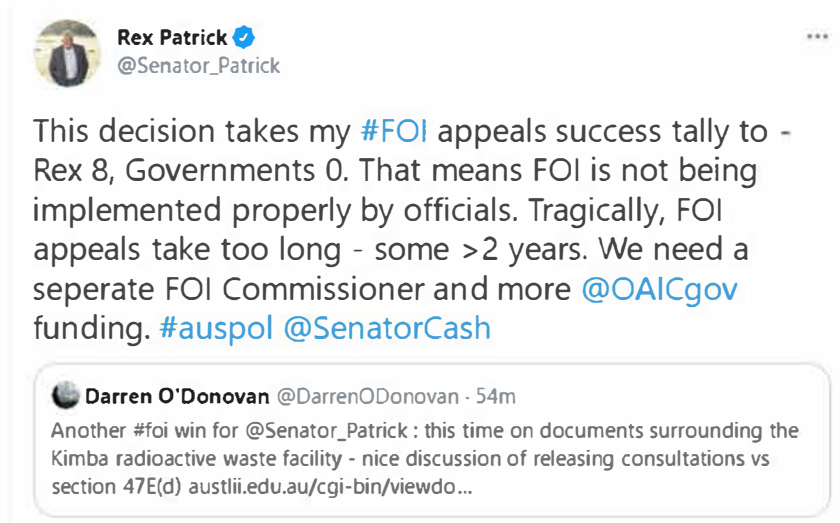
- In the period 1 July 2020 to 10 January 2022, the OAIC also received 5 IC review applications for matters involving documents of a Committee of National Cabinet. Of those matters, 3 remain open and 2 were closed under s 54W(b) of the FOI Act to permit the applicant to apply to the AAT.
- In matters finalised under s 54W(b) prior to August 2021, my office considered it was in the best interests of the administration of the Act that the matters be considered by the AAT because:
  - The subject matter is complex. The Information Commissioner had not previously considered whether National Cabinet could be considered a committee of Cabinet for the purposes of the FOI Act and there was no available precedent on this issue.
  - The IC review process, which is intended to be informal, and consistent with the objects of the FOI Act, is designed to provide prompt and cost effective access to information, would be unsuitable in this instance due to the likely need for factual evidence from the Cabinet office or the Prime Minister and may be more appropriately handled by the processes of the AAT.
- The Administrative Appeals Tribunal (AAT) considered matters relating to ‘National Cabinet’ in *Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information)* [2021] AATA 2719 (5 August 2021). His Honour, Justice White ordered that Senator Patrick be granted access to documents he requested.
- Since Justice White’s AAT decision, the OAIC has not declined any National Cabinet related matters to the AAT under s 54W(b) of the FOI Act **solely** because of that complexity – that is, matters are referred where there are additional complexities involved.
  - The OAIC has only declined one National Cabinet matter under s 54W(b) of the FOI Act since Justice White’s AAT decision (MR21/00935).
  - The review was referred because:
    - the applicant asked to have the matter referred to the AAT
    - public accessibility to documents that fell within the scope of the FOI request, as relevant to the National Cabinet, was highly contested, and the subject was of significant public and media interest, and
    - there was a distinct possibility that should the IC review have continued, it would have been appealed by either party to the AAT. It was therefore desirable for the efficient administration of the FOI Act that decision was reviewed by the AAT at first instance.

- **Summary of recent litigation commenced by Senator Rex Patrick**

On 29 April 2021, Senator Rex Patrick tweeted:



On 19 April 2021, Senator Rex Patrick tweeted:



s 47E(d)

Senator Patrick lodged Federal Court proceedings on 9 September 2021 alleging unreasonable delays in conducting reviews of his IC review applications.

The Federal Court held a case management and interlocutory hearing on 26 November 2021. The parties lodged an agreed set of orders on 8 November 2021. In accordance with the agreed set of orders, Senator Patrick lodged an amended concise statement with the Federal Court on 10 December 2021, limiting the legal question referred to the Federal Court to 9 of the 23 applications listed.

The Federal Court has set a hearing date for 25 March 2022 to determine the interlocutory application as to costs.

- ***On 2 February 2021, the Canberra Times reported on the large and increasing number of contractors and labour hire staff working in and with Australian Government agencies. What impact does this have on the public's right to access government held information?***

The public have a legally enforceable right to access documents held by Australian Government agencies. This means that the right of access is not affected by the use of labour hire contractors. Labour hire contractors undertake the agency's work and as a result the documents they create are 'documents of an agency' and subject to the FOI Act.

Section 6C of the FOI Act contains a requirement for Commonwealth contracts for the provision of services to include a term that requires the contracted service provider to provide documents to the agency if the agency receives a request under the FOI Act. This means that agencies cannot avoid their legal obligations under the FOI Act by contracting a service provider to perform the agency's functions or exercise the agency's powers.

- ***On 15 January 2021, the Guardian reported findings of an audit of FOI outcomes by the Australian Conservation Foundation dated 15 January 2021 which concluded that Australia's FOI system was dysfunctional and that an independent investigation of the way the Prime Minister and ministers treat request for access to government documents was needed. What do you say to these findings?***

The ACF audit was conducted in relation to 'environment-related' FOI requests made to federal and state departments and agencies over a five year period. The data reported is not for all Australian Government agencies and does not include the three agencies that together account for 70% of all FOI requests made to Australian Governments (Department of Home Affairs, Services Australia and the Department of Veterans' Affairs).

It also appears that the ACF report also only considers or focusses primarily on non-personal FOI requests, which comprised 19% of all FOI requests in 2019-20.

The report recommends that my office investigate the actions of ministers and the prime minister's office. My power to investigate complaints about action taken under the FOI Act is in relation to agencies only; I have no power under Part VIIB of the

FOI Act or s 8 of the *Australian Information Commissioner Act 2010* to investigate the actions of ministers.

- ***Grata Fund report – see separate brief.***

**Attachment A:** IC review statistics - FOI closures 2011-12 to 2020-21, IC review time to finalisation, IC review outcomes

**Attachment B:** Explanation of IC review outcomes

**Attachment C:** Summary of issues arising in *Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of information)* [\[2020\] AATA 4964](#) (9 December 2020)

**Attachment D:** Breakdown of Commissioner decisions 2011-2021

#### Document history

Updated by	Reason	Approved by	Date
Justin Lodge	February 2022 Senate Estimates		



## Attachment A

FOI closure breakdown 2011-12 to 2020-21

Table 1: Overview of IC review applications received and finalised

Type	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22 To 31/12/21
IC reviews received	456	507	524	373	510	632	801	928	1066	1,224	882
IC reviews finalised	253	419	646	482	454	515	610	659	829	1018	694
IC reviews with s 55K decision	25	89	98	128	80	104	123	60	50	54	55
IC reviews without s 55K decision	238 (90.5%)	330 (78.8%)	548 (84.8%)	354 (73.4%)	374 (82.4%)	411 (79.8%)	487 (79.84%)	599 (90.90%)	779 (94%)	964 (95%)	639 (92%)

Table 2: Overview of IC review finalisation times

Note: The first four rows are cumulative.

Finalised	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22 To 31/12/21
120 days	100 (39%)	124 (30%)	191 (30%)	165 (34%)	196 (43%)	198 (38%)	235 (39%)	266 (40%)	395 (48%)	578 (57%)	483 (70%)
within 6 months	145 (57%)	167 (40%)	270 (42%)	247 (51%)	274 (60%)	291 (57%)	285 (47%)	336 (51%)	452 (55%)	627 (62%)	505 (73%)
within 9 months	203 (80%)	242 (58%)	359 (56%)	301 (62%)	347 (76%)	392 (76%)	418 (69%)	409 (62%)	527 (64%)	686 (67%)	527 (76%)
within 12 months	232 (92%)	289 (69%)	462 (72%)	343 (71%)	395 (87%)	445 (86%)	513 (84%)	482 (73%)	592 (71%)	737 (73%)	561 (81%)
over 12 months	21 (8%)	130 (31%)	184 (28%)	139 (29%)	59 (13%)	70 (14%)	97 (16%)	177 (27%)	237 (29%)	281 (28%)	133 (19%)
Total	253	419	646	482	454	515	610	659	829	1018	284

**Table 3: Overview of IC review outcomes**

IC Review Decisions	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22 To 31/12/21	
s 54N – out of jurisdiction or invalid	40	66	59	37	44	34	81	103	161	285	150	
s 54R – withdrawn	108	95	111	59	81	115	131	199	180	266	341	
s 54R – withdrawn / conciliated	-	13	71	51	78	93	64	76	154	143	11	
s 54W(a) – deemed accept PV / appraisal	-	2	27	26	7	0	0	-	-	-	-	
s 54W(a)(i) – lacking in substance etc	42	86	170	87	94	66	79	126	90	61	34	
s 54W(a)(ii) – failure to cooperate	5	33	62	19	7	57	59	34	76	51	53	
s 54W(a)(iii) – lost contact	9	9	0	5	5	3	10	5	6	5	5	
s 54W(b) – refer AAT	22	17	41	61	32	15	16	31	83	139	42	
s 54(c) – failure to comply	-	2	0	0	0	0	0	-	-	-	-	
s 55F – set aside by agreement	-	0	1	0	2	7	15	13	12	1	-	
s 55F – varied by agreement	2	0	1	2	7	5	27	12	17	13	3	
s 55F – affirmed by agreement	-	0	1	2	1	1	0	-	-	-	-	
s 55G – substituted	-	7	6	5	16	15	5	-	-	-	-	
<b>Subtotal without s55K</b>	<b>238</b>	<b>330</b>	<b>548</b>	<b>354</b>	<b>374</b>	<b>411</b>	<b>487</b>	<b>599</b>	<b>779</b>	<b>964</b>	<b>639</b>	<b>Total 15/16 - 21/22</b>
s 55K – affirmed by IC without s55G	17	58	32	48	28	48	59	16	16	20	23	210
s 55K – affirmed by IC after s55G	-	-	8	5	11	17	9	3	8	5	7	60
s 55K – set aside by IC	8	28	53	52	22	23	45	37	19	22	19	187
s 55K – varied by IC	0	3	5	23	19	16	10	4	7	7	6	69
<b>Subtotal with s55K</b>	<b>25</b>	<b>89</b>	<b>98</b>	<b>128</b>	<b>80</b>	<b>104</b>	<b>123</b>	<b>60</b>	<b>50</b>	<b>54</b>	<b>55</b>	<b>526</b>
<b>Total</b>	<b>253</b>	<b>419</b>	<b>646</b>	<b>482</b>	<b>454</b>	<b>515</b>	<b>610</b>	<b>659</b>	<b>829</b>	<b>1018</b>	<b>694</b>	<b>4,778</b>

**Table 4: Age of IC review cases open in particular periods**

Fiscal Year	Open less than 12 Months	Open between 12 and 18 Months	Open Between 18 and 24 Months	Open Between 24 and 36 Months	Open more than 36 Months	Total Open	Received	Closed	Oldest case date received
2014-2015	182	10	11	7	6	216	373	482	15/09/11
2015-2016	258	14				272	510	454	21/01/15
2016-2017	372	17	1			390	633	515	4/01/16
2017-2018	501	59	17	5		582	801	610	4/01/2016
2018-2019	601	166	68	16		851	928	659	10/01/2017
2019-2020	630	166	175	112	6	1089	1066	829	10/01/2017
2020-2021	630	224	180	200	61	1295	1224	1018	27/03/2017
2021-2022Q1 & Q2	706	207	210	266	96	1485	881	694	31/03/2017 (next is 5/5/17)

**Table 5: Number of IC reviews finalised in particular periods**

Row Labels	Less than 1 month	Within 2 months	Within 3 months	Within 4 months	Within 6 months	Within 9 months	Within 12 months	Over 12 Months	Grand Total
2014-2015	57	90	112	165	242	297	340	142	482
2015-2016	45	100	148	196	267	345	394	60	454
2016-2017	57	94	149	198	291	388	444	71	515
2017-2018	80	148	207	235	284	412	507	103	610
2018-2019	113	175	239	266	332	407	482	177	659
2019-2020	199	284	354	395	452	527	592	237	829
2020-2021	265	135	59	24	22	22	34	133	694

## Explanation of IC review outcomes

IC review outcome	Explanation of provision	Example of IC review finalised under this provision
<b>s 54N – out of jurisdiction</b>	Section 54N of the FOI Act sets out the formal requirements for an IC review application.	An application is made for IC review of a decision made by a NSW agency. The FOI Act only applies to Australian Government agencies; not State government bodies.
<b>s 54R – withdrawn</b>	Section 54R permits the IC review applicant to withdraw their application in writing at any time before the Information Commissioner makes a decision under s 55K.	The individual no longer seeks access to the documents they initially requested for their own reasons.
<b>s 54R – withdrawn/conciliated</b>	This review outcome is used when the withdrawal of the IC review application follows conciliation of the review application by OAIC staff.	Where OAIC staff clarify the circumstances in which a particular exemption applies so that the IC review applicant understands that the reviewable decision is consistent with the FOI Act and existing case law and is unlikely to be set aside on review.
<b>s 54W(a) – deemed acceptance of preliminary view/appraisal</b>	This review outcome is no longer used by the OAIC.	
<b>s 54W(a)(i) – lacking in substance, misconceived etc</b>	Section 54W(a)(i) gives the Information Commissioner discretion not to undertake an IC review, or not to continue to undertake an IC review, if the review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.	An agency refuses access to a document because it cannot be found and records indicate the document has been destroyed in accordance with the relevant Records Disposal Authority. In this circumstance because the document has been destroyed, conducting a review will confer no practical benefit to the applicant and therefore the review application is taken to be lacking in substance.
<b>s 54W(a)(ii) – failure to cooperate</b>	Section 54W(a)(ii) gives the Information Commissioner discretion not to undertake an IC review, or not to continue to undertake a review, if the IC review applicant has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse.	If a person applies for IC review of a deemed refusal decision (that is, when an agency has failed to make a decision within the statutory period and is deemed to have refused the request) and the agency subsequently makes a decision, the OAIC will ask the applicant to confirm whether they want to continue with the review and if so, to identify the aspects of the decision they disagree with. Following various attempts to contact the applicant, if the applicant does not provide a response indicating whether they wish to continue with the review, the application may be finalised under this ground.

IC review outcome	Explanation of provision	Example of IC review finalised under this provision
<b>s 54W(a)(iii) – lost contact</b>	Section 54W(a)(iii) gives the Information Commissioner a discretion not to undertake an IC review, or not to continue to undertake a review, if the IC cannot contact the IC review applicant after making reasonable attempts.	OAIC staff will try to contact IC review applicants several times using all contact details provided in the applicant's IC review application before this discretion is exercised.
<b>s 54W(b) – refer to AAT</b>	Section 54W(b) gives the Information Commissioner a discretion not to undertake an IC review, or continue to undertake a review if satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the Administrative Appeals Tribunal.	In deciding to exercise this power the Information Commissioner may consider a range of factors including one or more of the following: <ul style="list-style-type: none"> <li>the IC review is linked to ongoing proceedings before the AAT or a court</li> <li>there is an apparent inconsistency between earlier IC review decisions and AAT decisions</li> <li>the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact, or</li> <li>the FOI request under review is complex or voluminous and the matter could more appropriately be handled through the procedures of the AAT.</li> </ul>
<b>s 54W(c) - failure to comply</b>	Section 55(2)(e) empowers the Information Commissioner to give written directions as to the procedure to be following in relation to IC reviews generally or a particular IC review. Section 54W(c) allows the Commissioner to finalise a review if the IC review applicant fails to comply with a direction issued under s 55(2)(e).	For example, the Commissioner may issue a direction to compel an IC review applicant to identify the exemptions that they contend have been wrongly applied in the reviewable decision. Should the applicant fail to do this, the matter may be finalised under this provision.
<b>s 55F – set aside by agreement</b>	Under s 55F, the review parties can reach agreement about the terms of a decision on the review. This can dispose of all or part of the IC review application.	The review parties may agree to narrow the scope of the original request to exclude certain documents and the agency may then agree to process the request within a specific timeframe.
<b>s 55F – varied by agreement</b>		
<b>s 55F – affirmed by agreement</b>		
<b>s 55G - substituted</b>	Section 55G allows an agency to vary, or set aside and substitute an access refusal decision to favour the applicant at any time during an IC review. The Information Commissioner must then deal with the IC review application as if it were	An agency may decide that certain documents are no longer exempt due to the passage of time and vary the reviewable decision to provide access to those documents. The revised decision will then be the IC reviewable decision.

IC review outcome	Explanation of provision	Example of IC review finalised under this provision
	an application for review of the varied or substituted decision.	
<b>s 55K – affirmed by the Information Commissioner</b>	Section 55K requires the Information Commissioner, after undertaking an IC review, to make a decision in writing affirming, varying or setting aside the IC reviewable decision. This finalises the IC review.	All s 55K decisions are published on the Australasian Legal Information Institute (AustLII) website - <a href="http://www7.austlii.edu.au/cgi-bin/viewdb/au/cases/cth/AICmr/">http://www7.austlii.edu.au/cgi-bin/viewdb/au/cases/cth/AICmr/</a> .
<b>s 55K - affirmed by Information Commissioner following revised decision</b>		
<b>s 55K – set aside by Information Commissioner</b>		
<b>s 55K – varied by Information Commissioner</b>		

## Estimates 23 March 2021

[21:24]

**Senator PATRICK:** Ms Falk, going back to my questions on notice from the last estimates—and thank you for your answers—there were some statistics given in relation to journalists and some of their late requests. Some journalists were waiting between one and two years for responses to IC reviews, 55 of them, and more than two years, 31. I know you can't give priority to journalists because the FOI Act treats everyone equally, including me as a senator, and that's proper, but can you understand how that sort of time frame is extremely unhelpful for journalists who are trying to report? They have a very important function in a democracy to report on issues not historically but currently.

**Ms Falk:** I appreciate the issue that you are raising. It's to do with the timeliness of the IC review function of my office. If I can, I will make a couple of points. You're aware that many of our matters are handled in a timely way. We strive to have 80 per cent of the IC reviews handled within 12 months of receipt. Last year we didn't reach that target; it was 72 per cent. This year we've increase our target a little, to 73 per cent year to date, but we're still falling short of it. We have put in place a number of different pilot programs—conferencing programs—to try to be as efficient as possible, and I can see from our statistics that we're on track to finalising even more matters than we had the previous year. But, notwithstanding that, there is a considerable number of matters that are over one year old and, indeed, over two years old, and a number of those are, I appreciate, from journalists or politicians who consider they have public interest matters that they wish to put before me.

**Senator PATRICK:** I saw the numbers on politicians. Eleven are for one to two years and I think six are for more than two years. That tells me I'm the only politician doing FOIs, I think!

**Senator SCARR:** That was a joke!

**Ms Falk:** I did smile. It was late, but I did smile.

**Senator PATRICK:** Well, it might not have been a joke, but it might have been humorous. Perhaps more disturbingly, you gave some answers on your capacity to deal with reviews and you said that last year it was 829 and that you expected a similar number this year, next year and the year after. But you then showed projections on the number of requests that you're likely to deal with. Last year you had 1,066 reviews but only 829 were completed. This year, you're expecting 1,226, with only 829 as a capacity. It just keeps going up: 1,410, with the same capacity; 1,622 for 2022-23 with capacity to conduct only 829. So you're just going to be in a situation where you have twice the number of applications that you can actually handle. I think I might have characterised it—

**CHAIR:** Do you have a question, Senator Patrick?

**Senator PATRICK:** I think I might have characterised it as a train smash. What are we going to do here? It's getting out of control.

**Ms Falk:** Your question is: what are we to do? From my statutory office's perspective, we seek to deal with each and every matter as efficiently and effectively as possible, of course also paying regard to proper administrative law-making and taking the time that's needed on each matter. I've mentioned a number of the strategies that we've put in place. We have seen those work. I have only projected finalising 829 in the out years in that question on notice; however, I can see that we are already on track to finalising more than that this financial year. So we continue to do better; however, I do hold the view that, without some additional resources, it will be difficult for the office. We'll continue to be challenged in terms of having that backlog and having those older matters, despite our best efforts.

**Senator PATRICK:** It's an important function. Minister, I just wonder whether you could comment on the huge difference between the number of applications and the resources available?

**Senator Stoker:** Look, it's something I'm prepared to work with you on some more, because I know you are very passionate about this, Senator Patrick. There is a tension between the policy work of the commission and the review work. There's always a tension between the amount of resources one wants and the limits that exist for us in the real world. I can see that the commissioner is working very hard to get that balance right. The government is giving her as much support as we can to do that important role.

**Senator PATRICK:** Were you offering to have a conversation with me about FOI?

**Senator Stoker:** Yes, absolutely.

**Senator PATRICK:** Alright. I will take you up on that. You may regret that, minister!

**Senator Stoker:** That's alright.



**Senator PATRICK:** I can talk about it a lot. But thank you very much.

**Senator Stoker:** If that's the only regret I live with, I'm doing okay.

**Senator PATRICK:** Thank you very much, Minister, Commissioner and Chair.

**CHAIR:** Commissioner, that brings to an end the inquiry into the office of the Australian Information Commissioner. Thank you very much for your time and for your evidence this evening.

**Ms Falk:** Thank you.

## Previous Estimates

**Senator PATRICK:** What's the average time it takes to get from an application to a case officer being assigned?

**Ms Falk:** I'll have to take that on notice. It changes, depending on the circumstances. And can I just be clear that we're talking along the same terms. When the matter arrives at the OAIC, it will be assessed and contact will be made. It will be triaged. There might be initial information sought, so there are time periods for that. And there will be also attempts at early resolution. If the matter is more complex and early resolution doesn't seem viable in the situation then what we're experiencing at present is a delay in allocating to a case officer for that. Perhaps I would call it more complex work that needs to be handled on the case.

**Senator PATRICK:** That's my own personal experience, and it seems to be quite a long time before you get assigned a case officer. Is it three months?

**Ms Falk:** That period of time has increased.

**Senator PATRICK:** Can you provide that on notice? The 120 days, in my view, is probably mostly taken up just even getting to a case officer—which I find totally unacceptable, I might point out.

**Ms Falk:** In the 120 days, as I said, there is active work done on the matters as soon as they're received. In the early resolution process, where we're experiencing the greatest delays are those matters that then need to go to more formal submissions. I can come back to you on notice with time periods there.

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

The time to progress each IC review and the time it is formally allocated to a case officer varies from case to case depending on the complexity of the matters involved and the outcome sought by the IC review applicant.

The OAIC generally acknowledges receipt and triages an IC review application within three days of receipt, makes preliminary inquiries within two weeks and commences an IC review between three to eight weeks of receipt.

The process and timeframe for each review varies depending on the circumstance. For example, where an FOI decision is not made within the statutory timeframes, a decision to refuse access to a document is 'deemed' to have been made by the agency or minister. The IC review process for 'deemed' decisions is separate to the process followed where an applicant seeks IC review of an FOI decision where a statement of reasons has been provided by an agency or minister. In IC review applications involving 'deemed' decisions, the OAIC will conduct preliminary inquiries and may also issue a notice to the agency or minister to produce a statement of reasons and key documents within a specified timeframe.

Where an applicant seeks IC review of an FOI decision where a statement of reasons has been provided by an agency or minister, various case management events will generally occur early in the process, including case assessment by a senior officer, preliminary inquiries with an agency or minister, or issuing a notice to the agency or minister that an IC review has been commenced and requesting submissions and key documents to be considered during the IC review. These events will generally have occurred prior to formal allocation to a review officer.

Once allocated, opportunities to facilitate further informal resolution will be explored. This may include inviting the agency or minister to finalise a matter by agreement with the applicant or to make a revised decision in the applicant's favour.



In the 2017-18 year, 39% of IC review applications finalised were closed within 120 days of receipt and a further 30% were closed within 9 months of receipt.

At 31 October 2018, the time from receipt to formal allocation for those matters not resolved in the early stages was approximately eight and a half months, noting, as set out above, there are many case management activities undertaken prior to formal allocation and the timeframe between the last case management event to allocation to a case officer can vary considerably from a few weeks to a number of months.

**Attachment C****Summary - Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of information) [2020] AATA 4964 (9 December 2020)**

On 9 December 2020, Deputy President Britten-Jones set aside a decision by the Department of the Prime Minister and Cabinet (the Department) to refuse access to documents requested by Senator Patrick, finding that the document was not exempt under ss 33(a)(ii), 47C, 47D or 47G1(a) of the FOI Act.

**Background**

- On 6 September 2018, the Auditor-General completed an audit report on the acquisition by the Department of Defence of a fleet of vehicles described as ‘protected mobility vehicles – light’ (aka ‘Hawkei’). The report was not released publicly, but was provided to the Prime Minister under s 37(5)(b) of the *Auditor-General Act 1997* because the Attorney-General had issued a certificate under s 37(1)(b) of the AG Act on the basis that disclosure would be contrary to the public interest.
- Senator Patrick made his FOI request directly to the Department and therefore no issue arises with respect to transfer of the request under s 16(2) of the FOI Act (documents originating with the Auditor-General).
- The Department refused access on 7 December 2018, on the basis that the Department is exempt from the operation of the FOI Act under s 7. In the alternative, the Department said the document was created by an exempt body and the Department was not required to give access.
- Senator Patrick sought IC review of the decision and the IC review was finalised under s 54W(b) on 21 May 2019. Senator Patrick subsequently applied to the AAT.

**Issues**

- Although the access refusal reason was initially under s 7, this is not referenced in the decision. It appears this claim was abandoned as parts of the report were made public, after which material was claimed to be exempt under ss 33(a)(ii), 47C, 47D and 47G1(a).
- On 30 June 2020, with the consent of the parties, the Tribunal amended the Department’s access refusal decision of 7 December 2018 under s 26(1)(b) of the AAT Act and the applicant was granted access to further parts of the report.
- The scope of the Tribunal's review was confined to the paragraphs which the Secretary claimed to be exempt under ss 33(a)(ii), 47C, 47D and 47G1(a).
- Evidence was sought from the IGIS. The IGIS advised that he was not appropriately qualified to give evidence on the issue of what harm, if any, may be caused by disclosure of the material at issue.

**Whether document exempt under s 33(a)(ii) (defence of the Commonwealth)**

- The Tribunal found that document was not exempt under s 33 as disclosure would not, or could not reasonably be expected to, cause damage to the export prospects of the Hawkei, or, by extension, defence of the Commonwealth. The Tribunal reached this conclusion because much of the disputed material was already

publicly available. It noted that some of the material had originally been sourced from the public domain, that on numerous occasions it repeats information that is publicly available elsewhere, and that the disputed material is not materially different to publicly available information.

**Whether document conditionally exempt under s 47G(1)(a) (business information)**

- The Tribunal found that the documents were not exempt under this section for the reasons given above – disclosure of the disputed material would not, or could not be expected to, have an adverse impact on Thales, given the amount of material already in the public domain.

**Whether document conditionally exempt under s 47D (financial or property interests of the Commonwealth)**

- The Tribunal found that documents were not exempt under s 47D for the same reasons discussed above – disclosure would not, or could not be expected to, have a substantial adverse impact, or any impact, on the financial interests of the Commonwealth, given the amount of material already in the public domain.

**Whether documents conditionally exempt under s 47C (deliberative processes)**

- The Tribunal considered the report did not involve the weighing up or evaluation of competing arguments or the exercise of a judgment in developing and making a selection from different options, so did not involve a deliberative process. Rather the Tribunal concluded the report to be ‘a statement of factual findings and assessment of the effectiveness and value for money of a procurement project. It was a final statement of the Auditor-General exercising his statutory function to provide information to Parliament. Rather than disclosing a deliberative process, the Redacted Report discloses a final conclusion based on an analysis of factual findings’.

**Attachment D**

Break down of Commissioner IC Review decisions 2011-2021

**2011 Decisions**

<b>Name</b>	<b>Jan-11</b>	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>	<b>May-11</b>	<b>Jun-11</b>	<b>Jul-11</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>	<b>Decisions total 2011</b>
<i>James Popple</i>	1		1	1		1	1	1	1		1	1	9
<i>John McMillan</i>												2	2
Monthly total	1		1	1		1	1	1	1		1	3	<b>11</b>

**2012 Decisions**

<b>Name</b>	<b>Jan-12</b>	<b>Feb-12</b>	<b>Mar-12</b>	<b>Apr-12</b>	<b>May-12</b>	<b>Jun-12</b>	<b>Jul-12</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Decisions total 2012</b>
<i>James Popple</i>	4	2	4	2	2	3	1	3	2	2	2	2	29
<i>John McMillan</i>											1	1	2
<i>Timothy Pilgrim</i>				1							3		4
Monthly total	4	2	4	3	2	3	1	3	2	2	6	3	<b>35</b>

## 2013 Decisions

Name	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Decisions total 2013
<i>James Popple</i>	5	1	3		3	2	1	4	1	2	1	3	26
<i>John McMillan</i>		2 (*1 x 2 apps <sup>4</sup> )						4	1				7
<i>Timothy Pilgrim</i>		3	3 (*1 x 4 apps <sup>5</sup> )						3	2 (*1 x 2 apps <sup>6</sup> )	4	5	20
<i>Toni Pirani</i>		4	13 (*1 x 2 apps <sup>7</sup> )	19 (*1 x 2 apps <sup>8</sup> , *1 x 8 apps <sup>9</sup> )									36
Monthly total	5	10	19	19	3	2	1	8	5	4	5	8	<b>89</b>

<sup>4</sup> *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10 (22 February 2013): MR11/00046, MR11/00072

<sup>5</sup> *'H' and Attorney-General's Department* [2013] AICmr 17 (1 March 2013): MR11/00198, MR11/00199, MR11/00200, MR11/00201

<sup>6</sup> *'AO' and Department of Veterans' Affairs* [2013] AICmr 77 (21 October 2013): MR11/00339, MR12/00227

<sup>7</sup> *'O' and Department of Immigration and Citizenship* [2013] AICmr 27 (15 March 2013): MR11/00282, MR11/00283

<sup>8</sup> *'AB' and Australian Securities and Investments Commission* [2013] AICmr 48 (22 April 2013): MR12/00128, MR12/00217

<sup>9</sup> *Philip Morris Ltd and Department of Health and Ageing* [2013] AICmr 49 (22 April 2013)

MR11/00445, MR11/00446, MR11/00447, MR11/00448, MR11/00449, MR11/00450, MR11/00451, MR11/00452

## 2014 Decisions

Name	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Decisions total 2014
<i>John McMillan</i>	1		-	1	-	-	2 (*1 x 2 apps <sup>10</sup> )	-	-	1	-	-	5
<i>James Popple</i>	2	3	3	3	3	6	1 (9 apps <sup>11</sup> )	-	-	1 (3 apps <sup>12</sup> )	2	5	29
<i>Timothy Pilgrim</i>	7	10 (*1 x 3 apps <sup>13</sup> )	2 (*1 x 2 apps <sup>14</sup> )	2	10	12	5	6	1	6	19	5	84
<i>Karen Toohey</i>	-	-	-	-	-	-	-	3	17	4	-		24
Monthly total	10	13	5	6	13	18	8	9	18	12	21	11	143

<sup>10</sup> *Parnell & Dreyfus and Attorney-General's Department* [2014] AICmr 71 (30 July 2014): MR13/00486 and MR14/00242

<sup>11</sup> *Farrell and Department of Immigration and Border Protection* [2014] AICmr 74 (31 July 2014): MR13/00325, MR13/00326, MR13/00327, MR13/00328, MR13/00329, MR13/00330, MR13/00334, MR13/00338, MR13/00339

<sup>12</sup> *'DI' and Department of Agriculture* [2014] AICmr 116 (28 October 2014): MR12/00520, MR12/00521, MR13/00026

<sup>13</sup> *'BE' and Ors and Australian Taxation Office* [2014] AICmr 16 (12 February 2014): MR11/00441, MR11/00453, MR11/00458

<sup>14</sup> *Leda Manorstead Pty Ltd and Department of the Environment* [2014] AICmr 26 (4 March 2014): MR12/00112, MR12/00517

## 2015 Decisions

Name	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Decisions total 2015
<i>John McMillan</i>	1	1 (*1 x 2 apps <sup>15</sup> )	-	7	1	1	3	-	-	-	-	-	14
<i>Timothy Pilgrim</i>	9	8	3	1	3	6	4	6	6	5	4	*1 x 2 apps <sup>16</sup> )	56
Monthly total	10	9	3	8	4	7	7	6	6	5	4	1	70

## 2016 Decisions

Name	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Decisions total 2016
<i>Timothy Pilgrim</i>	5	3	10	6	7	5	5	6	11	5	6	12	81
Monthly total	5	3	10	6	7	5	5	6	11	5	6	12	81

<sup>15</sup> *Wright & Parnell and Department of the Prime Minister and Cabinet* [2015] AICmr 13 (3 February 2015): MR13/00461 and MR13/00485

<sup>16</sup> MR14/00366 and MR14/00363

## 2017 Decisions

Name	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Decisions total 2017
<i>Timothy Pilgrim</i>	10	8	9	10	12	10	7	7	10	20	15	10	128
Monthly total	10	8	9	10	12	10	7	7	10	20	15	10	128

## 2018 Decisions

Name	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Decisions total 2018
<i>Angelene Falk</i>	-	-	-	-	4	2	2	3	2	2	4	2	21
<i>Timothy Pilgrim</i>	14	13	21	-	-	-	-	-	-	-	-	-	48
Monthly total	14	13	21	-	4	2	2	3	2	2	4	2	69



## 2019 Decisions

Name	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Decisions total 2019
<i>Angelene Falk</i>	4	3	5	1	2	29 (1 x2 apps <sup>17</sup> )	2	6	1	5	3	3	64
<i>Elizabeth Hampton</i>	-	-	-	-	-	-	4	-	-	-	-	-	4
Monthly total	4	3	5	1	2	29	6	6	1	5	3	3	68

## 2020 Decisions

Name	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Decisions total 2020
<i>Angelene Falk</i>	4	5	-	3	3	11	2	12	-	1	5	-	46
<i>Elizabeth Hampton</i>	-	-	-	-	-	-	-	-	4	-	-	7	11
Monthly total	4	5	-	3	3	11	2	12	4	1	5	7	57

<sup>17</sup> Macquarie Group Limited and Australian Securities and Investments Commission (Freedom of information) [2019] AICmr 39 (12 June 2019); MR17/00356 and MR17/00357

## 2021 Decisions

<b>Name</b>	<b>Jan-21</b>	<b>Feb-21</b>	<b>Mar-21</b>	<b>Apr-21</b>	<b>May-21</b>	<b>Jun-21</b>	<b>Jul-21</b>	<b>Aug-21</b>	<b>Sep-21</b>	<b>Oct-21</b>	<b>Nov-21</b>	<b>Dec-21</b>	<b>Decisions total 2021</b>
<i>Angelene Falk</i>	-	3	2	3	-	9	2	-	-	-	1	1	19
<i>Elizabeth Hampton</i>	-	-	-	-	-	7	-	3	5	4	17	17	53
Monthly total	-	3	2	3	-	16	2	3	5	4	18	18	74

## 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
<b>PMC</b>	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)
<b>PMO</b>	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
<b>DFAT</b>	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)
<b>AAT</b>	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)
<b>DHA</b>	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  <b>Attachment A</b>	<ul style="list-style-type: none"> <li>- 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).</li> <li>- Recruitment is underway for a permanent full-time FOI Coordinator. Previously this role was 3 days/ week. Appointment is expected early 2022.</li> <li>- Upon review of intranet page, the ABC have determined to supplement existing information with guidance in the form of FAQs.</li> <li>- 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.</li> <li>- General Counsel will receive quarterly reports from the FOI team to understand trends and oversee compliance on an ongoing basis.</li> </ul>
Australian Electoral Commission	19 November 2021  <b>Attachment B</b>	<ul style="list-style-type: none"> <li>- 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.</li> <li>- The AEC confirms that for each quarter, for the FOI processing time reported, the AEC had a statutory extension.</li> <li>- The AEC has altered their methodology for reporting to the OAIC.</li> </ul>
Norfolk Island Regional Council	19 November 2021  <b>Attachment C</b>	<ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- Council has engaged contracting organisation King and Co to assist with the processing of FOI requests to ensure statutory timeframes are met.</li> </ul>

Agency	Date of response	Plan/steps it intends to take to address non-compliance
		<ul style="list-style-type: none"> <li>- The current FOI Officer is working with King and Co to develop a series of templates and standards for the processing of FOI requests.</li> <li>- 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.</li> <li>- 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.</li> </ul>
Commonwealth Director of Public Prosecutions	16 November 2021  <b>Attachment D</b>	<ul style="list-style-type: none"> <li>- The CDPP has identified errors in quarterly reports for the 2020-2021 period and informed the OAIC of this.</li> <li>- The CDPP understands how to correctly record finalised decisions as made within the applicable statutory timeframe when an extension of time has been granted.</li> <li>- 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.</li> </ul>

**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](mailto:elizabeth.hampton@oaic.gov.au)  
Copy to: [summen.sarwar@oaic.gov.au](mailto: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?<sup>22</sup> 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](mailto:Silver.Ingrid@abc.net.au)

<b>Attachment B: Australian Electoral Commission</b>
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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](mailto: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



<b>Attachment C: Norfolk Island Regional Council</b>
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19 November 2021

Elizabeth Hampton  
Acting Freedom of Information Commissioner

**By email:** [foidr@oaic.gov.au](mailto: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](http://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*

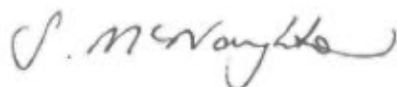
The CDPP continues to take steps to improve processes and procedures to comply with statutory timeframes and now understands that an extension under the FOI Act should be included within the applicable statutory timeframe for reporting purposes. The CDPP will continue to update its PGI and internal FOI 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