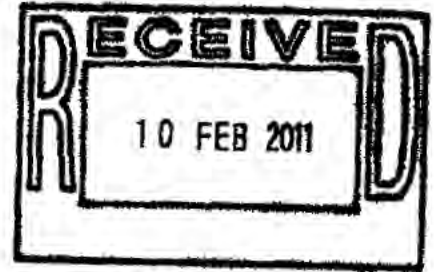


s22

Office of the Australian Information Commissioner
GPO Box 2999
Canberra ACT 2601

9 February 2011



Official Complaint

Dear Sir or Madam

I wish to make two official complaints in relation to the attached email chain involving members of your office. The first is very serious, the second relatively minor.

You will note that the first email I received from your office on 25 January 2011 stated that 'On 6 January 2011 the Australian Federal Police (AFP) requested further time to make a decision on your FOI request of 10 November 2010, which was on behalf of s22'. You will note my replies.

Complaint One

I have a very specific concern over the reference to the AFP which was not resolved by the most recent email. My concern is based on:

1. The application was with the Department of Veterans' Affairs (DVA), not with the AFP;
2. It was made by s22 and my assistance was private, not involving my employer in any way.
3. s22 who are completely unaware I am assisting s22 and there is no reason for them to become aware.
4. I have never informed DVA that s22 in any correspondence.
5. I am not popular with DVA for both assisting s22 and for s22

The s22 was either the most extra-ordinary coincidence or else someone's been given information to which they were not entitled. You can understand that, given the number of Commonwealth Government agencies, which of these options is both the most likely and of the greatest concern.

I ask that:

1. Provide an adequate explanation (well beyond typographical error) as to why there was any s22
2. Provide the source, if any, of the s22
3. If the source was external to the OAIC, provide the agency and the name of the officer and advise of any action that will be taken.

4. If the officer was from DVA, please advise how they obtained the information, the reason for providing it to the OAIC and what action will be taken?
5. If the information was provided by a third party, please explain how an OAIC officer would not consider this a breach of privacy and retain the details? Did the officer warn the provider that the provision of this information was unacceptable? What action do you intend to take against this officer?
6. Would you explain how the responses to the concerns in my emails show any commitment by your staff to the very standards and principals you are trying to uphold in the wider public service?

Complaint Two

DVA contacted me seeking an extension to the time-frame for the FOI requests by s22 [REDACTED] for whom I was acting as representative. I recommended that s22 [REDACTED] agree to the extension and he readily provided that approval. s22 [REDACTED] and I have done everything possible to ensure these FOI requests are actioned by DVA. However, note that:

1. DVA did not even acknowledge these FOI requests for two months.
2. After complaints to the Minister, I was contacted in late October and advised that changes to the legislation meant that if the applications were re-submitted then no charges were applicable. I maintain that under DVA's own policies the first provision of personal information to its clients are free of fees and charges. Never-the-less, the fact it was going to be actioned at all was sufficient reason for s22 [REDACTED] and I to agree to the re-lodgement. Incidentally, under the re-lodgement I was promised a refund of the \$60 application fees. It still hasn't happened.
3. This means that DVA has had an extra eight weeks 'off the clock', but we still agreed to the extension.

It is abundantly clear that the most flexible and reasonable participants in this process are s22 [REDACTED] and myself, even in the face of DVA ignoring its own legislated obligations under FOI. Still, most importantly, DVA continues to portray s22 [REDACTED] as the problem by his being a vexatious client. This is highly unfair.

The concern I raise is that in your advisory email of 25 January 2011 there is no reference to our agreement to DVA's request for an extension. It reads as though the decision was enforced upon both s22 [REDACTED] and myself. This opinion would be shared by any subsequent reader should further disputes arise regarding these FOI requests. I would ask that, as a matter of policy, when persons making an FOI request agree to an extension of time for the agency concerned, that this agreement be formally acknowledged in any correspondence confirming the extension.

An aside

DVA continues to portray me as a disaffected, s22 [REDACTED]. To save time and effort, I am willing to concede both points. It doesn't mean that it can ignore its obligations under legislation and policy, but it continually does so for persons such as s22 [REDACTED]. In assisting s22 [REDACTED], I have really, really annoyed its

executive. I ask that you remember this level of antagonism displayed by DVA in all its dealings involving either **s22** or myself.

Looking forward to your response,

s22

**RE: RE: Extension of time request under s15AB -
OAIC ref s22 [REDACTED] - notification to applicant
[SEC=UNCLASSIFIED]**

From: Emmanuel Coomaraswamy <Emmanuel.Coomaraswamy@oaic.gov.au> | **Date:** 28 January 2011 02:10:10 PM

To: s22

[View message details](#)

Dear s22,

Our correspondence of 25 January 2011 should have been in reference to your FOI application with the Department of Veterans' Affairs (DVA), which you made on behalf of s22. The reference to the Australian Federal Police (AFP) was a typographic error. We acknowledge that you do not have an FOI application with the AFP on behalf of s22.

We also acknowledge that you have agreed to DVA's request for an extension of time. However, when an agency is seeking further time under s15AB of the *Freedom of Information Act 1982* ('the Act') to process complex or voluminous FOI requests, they are required to apply to our office for an extension of time. DVA are not allowed under the Act to extend the period of time under s15AB through agreement with the applicant.

We note that your agreement was one of the factors we considered in granting DVA further time to process your FOI request of 10 November 2010.

Please do not hesitate to contact me on 1300 363 992 if you have any further questions. In all correspondence please include reference number s22.

Regards,

Emmanuel Coomaraswamy
Office of the Australian Information Commissioner

28 January 2011

From: s22

Sent: Friday, 28 January 2011 11:18 AM

To: Enquiries

Subject: Re: RE: Extension of time request under s15AB - OAIC ref s22 - notification to applicant [SEC=UNCLASSIFIED]

Dear Emmanuel

Please re-read my email. You have not answered the first question at all (and, might I add, ignored the main message in my second point - your email should have acknowledged my / s22 agreement to DVA's request).

Please explain why there was any reference to the AFP.

Regards

s22

On 28/01/2011 10:03 AM Enquiries wrote:

Dear s22

Our correspondence of 25 January 2011 should have been in reference to your FOI application with the Department of Veterans' Affairs (DVA), which you made on behalf of s22. We apologise for any confusion our previous correspondence may have caused.

DVA made a request to our office for further time to process your FOI application of 10 November 2010 on the basis the processing period is insufficient to deal adequately with your request, because it is complex or voluminous. We note that when our office grants further time for an agency to process complex or voluminous requests, we are required under s15AB(3) of the *Freedom of Information Act 1982* ('the Act') to notify the applicant of the period for which the extension has been given.

If you would like further information about extensions of time under the Act, please refer to the information on our website at oaic.gov.au. Alternatively, please do not hesitate to contact me on 1300 363 992 or Emmanuel.coomaraswamy@oaic.gov.au if you have any further questions. In all correspondence please include reference number **s 47F**.

Regards,

Emmanuel Coomaraswamy
Office of the Australian Information Commissioner

28 January 2011

From: **s22**
Sent: Tuesday, 25 January 2011 7:19 PM
To: Enquiries; Emmanuel Coomaraswamy
Cc: **s22**
Subject: Re: Extension of time request under s15AB - OAIC ref **s22** - notification to applicant [SEC=UNCLASSIFIED]

Dear Paula / Emmanuel

I do not have an FOI application with the Australian Federal Police (AFP) on behalf of **s22**. Why would you make this reference?

However, I do have an application with the Department of Veterans' Affairs (DVA) on behalf of **s22**. Note that I have already agreed to DVA's request for an extension of time.

Regards

s22

On 25/01/2011 10:06 AM Enquiries wrote:

Dear **s22**

On 6 January 2011 the Australian Federal Police (AFP) requested further time to make a decision on your FOI request of 10 November 2010, which was on behalf of **s22**. This request was on the basis that the processing period is insufficient to deal adequately with your request, because it is complex or voluminous.

Extension of time

Under section 15AB(2) of the *Freedom of Information Act 1982* ('the Act'), the Information Commissioner has decided to grant:

- an extension of time of **30 days to 8 February 2011** for the release of litigation and ministerial briefings; and
- an extension of time of **63 days to 10 March 2011** for the release of material not held on DVA's electronic records management system.

Further Information

If you would like further information on extensions of time under the Act, please refer to the information on our website at oaic.gov.au. Alternatively, please do not hesitate to contact Emmanuel Coomaraswamy on (02) 6239 9193 or Emmanuel.coomaraswamy@oaic.gov.au if you have any further questions. In all correspondence please include reference number **s22**.

Regards

Paula Gonzalez
Director Compliance (FOI)

Director, Compliance
Office of the Australian Information Commissioner

24 January 2011

WARNING: The information contained in this email may be confidential.
If you are not the intended recipient, any use or copying of any part
of this information is unauthorised. If you have received this email
in error, we apologise for any inconvenience and request that you
notify the sender immediately and delete all copies of this email,
together with any attachments.

WARNING: The information contained in this email may be confidential.
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together with any attachments.

FOIREQ22/00120 008

s22

Nicolaou, Irene
09-May-2022 10:19 AM**Title**

s22 | DVA - Department of Veterans' Affairs

Receipt Details

File Type:	FOI	Received Date:	21-Feb-2011 9:38 AM
Case Type:	Decline	Received By:	Pryce, Cheryl
How Received:		Registered Date:	21-Feb-2011 9:38 AM
Owned By:	Bennett, Charine	Registered By:	Bennett, Charine
		Closed Date:	31-Mar-2011 1:24 PM
		Closed By:	Bennett, Charine

Case Details

Stage:	Finalisation
Current File Holder:	Bennett, Charine
How Received:	Post
Validation:	Invalid
Sensitivity:	Not sensitive
File Security:	UNCLASSIFIED
Primary Client Group:	Individual
Parent Case Entity Code:	Complaint
Agency FOI Stage:	Initial request sent
Respondent Client Group:	Agency
Complexity:	Low
Case Primary Person:	s22
Case Respondent:	DVA - Department of Veterans' Affairs
Retention Class:	OAIC RA 61986 (D2)
Destruction Due Date:	31-Mar-2013

Case Parties - 2

Complainant Client:	s22
Respondent Client:	DVA - Department of Veterans' Affairs

Summary

Complainant has submitted two complaints:

- 1) relates to service from OAIC
- 2) relates to complaint re FOI request to DVA made obo s22 and delay in processing of request

Letter of apology and explanation provided.

Issues - 1**Issue Description:** Processing Request**Is Primary Issue:** Yes**Issue Allegation:** failure to acknowledge request**Issue Remedy:** explanation |**Issue Comments:** Complaint about this office's failure to acknowledge that applicant had agreed to s15AA extension of time and typo

FOIREQ22/00120 009

Issue Outcome: s70 - not in jurisdiction**Actions - 3 (All Completed)**

Action	Owner	Due	Completed
Ownership Reassigned	Pryce, Cheryl	21-Feb-2011	21-Feb-2011
Assigned to 'Bennett, Charine' by 'Pryce, Cheryl'			
General Letter	Boag, Annan	03-Mar-2011	02-Mar-2011, Bennett, Charine
Annan - as discussed, grateful if you could draft a letter for my signature. Charine			
Outbound Phone-Call	Bennett, Charine	02-Mar-2011	01-Mar-2011
Call to s22 - 17 February at 5.09pm - was advised that he was not home. I said that I was from OAIC and would follow up the next week. Called 22 February - no answer, no scope to leave message Called 24 February - no answer, no scope to leave message			

Documents - 7

Title	Date Added	By
Scan	21-Feb-2011 9:32 AM	Pryce, Cheryl
s22 - complaint about OAIC.docx	28-Feb-2011 1:44 PM	Boag, Annan
s22 - complaint about OAIC.docx	01-Mar-2011 5:03 PM	Bennett, Charine
RE: Response for review s22 [SEC=UNCLASSIFIED]	01-Mar-2011 4:51 PM	Bennett, Charine
RE: Response for review s22 [SEC=UNCLASSIFIED]	01-Mar-2011 2:28 PM	Bennett, Charine
Complaint response 1 March - Bennett to s22 .pdf	02-Mar-2011 11:20 AM	Bennett, Charine
Attachment to letter of 1 March - records of emails from s22 .pdf	02-Mar-2011 11:21 AM	Bennett, Charine

Cross References - 1

Case	Comments
s22	

Comments - 1

Created	By	Comment
31-Mar-2011 1:24 PM	Bennett, Charine	Case Closed by s 47E(d) on 31-Mar-2011 13:24

From: s22
To: Enquiries
Subject: s22 - LONG-TERM & REPEATED DENIALS OF ACCESS UNDER FOI
Date: Thursday, 12 May 2011 5:15:43 PM
Attachments: Let 23Jun08 in reply to Adviser.Min.doc

From: s22
Sent: Thursday, 12 May 2011 5:16 PM
Subject: LONG-TERM & REPEATED DENIALS OF ACCESS UNDER FOI to key evidence needed to protect & defend myself against wideranging false criminal allegations ILLEGALLY used by federal departments Let 23Jun08 in reply to Adviser.Min

From: s22
Sent: Thursday, 12 May 2011 5:04 PM
To: s 47F; s22 'enquiries@oaic.gov.au'
Cc: s 47F
s22; s22
Subject: LONG-TERM & REPEATED DENIALS OF ACCESS UNDER FOI to key evidence needed to protect & defend myself against wideranging false criminal allegations ILLEGALLY used by federal departments Let 23Jun08 in reply to Adviser.Min

12 May 2011

Office of the Information Commissioner
And
s 47F DVA Information Access Officer

Dear Commissioner and s 47F

Re: Complaint concerning FOI request acknowledged as received by DVA 4 April 2011 and also my unanswered request of 23 June 2008

Your letter of 4 May 2011 acknowledged receipt of my two FOI requests for key evidence to defend and protect myself in wide-ranging departmental abuses as outlined in s22 recent reports which I believe to be included in the External Review now being conducted by s22 of s22.

Your letter craves extension of time on one FOI request only – that for copy of s22 report.

I am yet to receive copy of the brief provided by DVA TO s22 to initiate external review of my case, as confirmed by you in your letter i.e. despite me again fighting for my life and reputation in an enquiry that has been underway since March 2011, I am still unaware of the scope of the review which is being conducted and this would seem to me to be totally unfair and continuation of

DVA's long stand in my case, as outlined in one small part of my case dealt with in s22 report.

I find this to be totally unsatisfactory abhorrent.

s22



This while DVA also has misrepresented my case to various authorities and to even the Prime Minister as recorded by s22.

;I My letter of 23 June 2008 includes a range of yet to be answered FOI requests, despite at one stage DVA advising that my requests were being investigated and/or processed.

When may I anticipate receiving reply please to my FOI request for the brief provided to PM Reviews and also to my 23 June 2008 requests ?

Please also be aware that:

s22



s22

7. These matters concern denials of access to information needed for protect and defend myself in the gravest false criminal allegations made, manufactured and used by DVA and s22 2002 thru 2010 and which are:
- a. the subject of Ministerial and Ministerial Adviser lies, including as identified to:
 - i. Prime Minister Gillard by s22 and
 - ii. as I have also raised with Ms Gillard and which include February and April 2008 lies; also
 - iii. misrepresentation made to my Local Member and former Prime Minister John Howard by DVA; as well as
 - iv. other lies as identified by s22 and myself in complaints #4 & #9 which were made in 2004 yet which complaints remain un-investigated; with

Evidence of DVA hostility toward me in denial of Natural Justice and in breach of its Duty of Care toward a client:

1. In further evidence of DVA's abject and disciplined hostility, unconscionable conduct and contempt for rules in dealing with me and my reasonable requests, arising from false criminal denunciations used by DVA in "fear mongering" and to "frighten me off"; s22
s22
using coercive forces this demand required me to withdraw all allegations against DVA and as I had made to a wide range of Ministers and top level bureaucrats.
2. s22
3. s22
4. s22
5. s22
6. s22

s22

Perhaps this illustrates the depth to which DVA has gone to evade liability and responsibility in hindering progress of my claims and reasonable applications all arising from the s22 false forgery and fraud denunciations, illegally used by DVA against me in my long held claim that DVA found me guilty "in absentia" as is clearly shown in the two reports of s22 which I understand to now be included in the external review by s22.

Observing these outlined matters, when may I anticipate receiving the promised reply to my FOI requests please ?

Yours sincerely

s22

Dear s 47F

Excuse me, if you may, it is my understanding that your "third party consultation" is with s22, author of the report I seek.

The report and its consequences affect me greatly and concerns most disturbing criminality, including follow-on criminality by DVA, which I need to address and, as a result of which, I must once again, as in 2002 thru 2010, set about protecting and defending myself against the might and armour/legal and administration support of the Commonwealth.

Realistically, I must consider this further deliberate obfuscation in a review which I now understand completed, as contained in the Order to s22 31 March 2011.

May I ask what is going on please ?

Sincerely

s22

s22

FOIREQ22/00120 015

s22

Nicolaou, Irene
09-May-2022 10:58 AM**Title**

s22 | DVA - Department of Veterans' Affairs

Receipt Details

File Type:	FOI	Received Date:	12-May-2011 12:00 AM
Case Type:	To be Determined	Received By:	Oliva, John
How Received:		Registered Date:	13-May-2011 10:17 AM
Owned By:	Kirkwood, Ben	Registered By:	Kirkwood, Ben
		Closed Date:	09-Jun-2011 6:08 PM
		Closed By:	Bennett, Charine

Case Details

Stage:	Finalisation
Current File Holder:	Bennett, Charine
How Received:	Email
Validation:	Not validated
Sensitivity:	Not sensitive
File Security:	UNCLASSIFIED
Primary Client Group:	Individual
Parent Case Entity Code:	Complaint
Agency FOI Stage:	Initial decision
Respondent Client Group:	Agency
Complexity:	Low
Case Primary Person:	s22
Case Respondent:	DVA - Department of Veterans' Affairs
Retention Class:	OAIC RA 61986 (D2)
Destruction Due Date:	9-Jun-2013

Case Parties - 3

Complainant Client:	s22
Respondent Client:	DVA - Department of Veterans' Affairs
Respondent Contact:	Elliott, Emily

Summary

Triage Notes: An e-mail from the applicant received on 20 May 2011 states 'Thank you - DVA has now provided all information it will provide and matter is closed' I am attempted to phone the applicant which went straight to voice mail. I e-mailed the applicant seeking confirmation as to whether he wished to withdraw his complaint. Recommendation: Ben to follow up confirmation from applicant regarding intention to withdraw. The applicant has indicated that he wishes to withdraw, but continue with his application for merits review of an external review. I have e-mailed the applicant seeking clarification as I have not been able to identify the application he is referring to. BK

Issues - 1

Issue Description: Processing Request
Is Primary Issue: Yes
Issue Allegation: processing delay

FOIREQ22/00120 016

Issue Outcome: withdrawn**Actions - 9 (All Completed)**

Action	Owner	Due	Completed
Ownership Reassigned Assigned to 'Mail Assessor' by 'Oliva, John'	Oliva, John	13-May-2011	13-May-2011
Acknowledge Complaint	FOI - IC reviews - Assessment	25-May-2011	20-May-2011, Zatschler, Elizabeth
Received Email email recd fwd to Elizabeth in Cbr	FOI - IC reviews - Assessment	23-May-2011	01-Jun-2011, Kirkwood, Ben
Case Note I replied to the applicant's e-mail dated 20 May 2011 seeking confirmation as to whether he wishes to withdraw his complaint.	Kirkwood, Ben	08-Jun-2011	02-Jun-2011
Ownership Reassigned Reassigned from 'Mail Assessor' to 'Unallocated' by 'Kirkwood, Ben'	Kirkwood, Ben	01-Jun-2011	01-Jun-2011
Received Email The applicant has responded to my e-mail and confirmed that he wishes to withdraw his application for review. However, he has indicated that he wished to continue with his merit review application in relation to the scope of an external review. I have replied to the applicant's e-mail seeking clarification.	Kirkwood, Ben	03-Jun-2011	09-Jun-2011, Bennett, Charine
Notify relevant parties of closure Not required - complaint withdrawn	Bennett, Charine	09-Jun-2011	09-Jun-2011
Close Case	Kirkwood, Ben	10-Jun-2011	09-Jun-2011, Bennett, Charine
Ownership Reassigned Reassigned from 'Allocation' to 'Kirkwood, Ben' by 'Bennett, Charine'	Bennett, Charine	09-Jun-2011	09-Jun-2011

Documents - 7

Title	Date Added	By
s22 - part 2 - FW: LONG-TERM & REPEATED DENAILS OF ACCESS UNDER FOI to key evidence needed to protect & defend myself against wideranging false criminal allegations ILLEGALLY used by federal departments Let 23Jun08 in reply to Adviser.Min	13-May-2011 5:53 AM	Oliva, John
s22 - LONG-TERM & REPEATED DENAILS OF ACCESS UNDER FOI	12-May-2011 5:16 PM	Oliva, John
Acknowledgement of Complaint to s22	20-May-2011 1:37 PM	Zatschler, Elizabeth
s22 - EMAIL FROM COMPL - my Freedom of Information complaint about the Department of Veterans' Affairs	20-May-2011 1:48 PM	Oliva, John
FW: s22 - EMAIL FROM COMPL - my Freedom of Information complaint about the Department of Veterans' Affairs	01-Jun-2011 3:55 PM	Kirkwood, Ben

FOIREQ22/00120 017

[SEC=UNCLASSIFIED]

Re: FW: s22 - EMAIL FROM COMPL - my 02-Jun-2011 9:20 AM Kirkwood, Ben
Freedom of Information complaint about the
Department of Veterans' Affairs

RE: FW: s22 - EMAIL FROM COMPL - my 02-Jun-2011 11:35 AM Kirkwood, Ben
Freedom of Information complaint about the
Department of Veterans' Affairs

[SEC=UNCLASSIFIED]

Cross References - 3

Case	Comments
s22	Cases relate to the same applicant and request.
s22	Cases relate to the same applicant and request.
s22	

Comments - 1

Created	By	Comment
09-Jun-2011 6:08 PM	Bennett, Charine	Case Closed by s 47E(d) on 09-Jun-2011 18:08

Approach - s22

Complainant2

Summary

Reference
See DOC-174187

Summary

s22 is seeking a response from DVA concerning his request for information under the Freedom of Information Act made to DVA on 23 June 2008

Action taken to resolve with Agency

Appears to have raised the matter with DVA requesting an update on his FOI request with no response from DVA
DVA have responded to s22 request for confirmation of his FOI request of 4 April 2011 (this matter OOI as requested after 1 November 2010) but have not addressed his FOI request of 23 June 2008

Desired outcome
Response to FOI request

PCT Action
Refer for assessment

Actions

Action	Contact	Assign To	Due Date	Completed By	Completed	Status	Time
Category Changed / from 1 to 2	/	s 47E(d) Claire	23-May-11 11:39 AM	s 47E(d) Claire	20-May-11 11:39 AM		0
Case Ownership / Changed	/	s 47E(d) Claire	20-May-11 11:43 AM	s 47E(d) Claire	20-May-11 11:43 AM		
Assigned to 'Allocation Public Contact' by s 47E(d) Claire'							
Case Ownership / Changed	/	s 47E(d) Linda	21-May-11 9:14 AM	s 47E(d) Linda	21-May-11 9:14 AM		
Reassigned from 'Allocation Public Contact' to 'Allocation Legal' by s 47E(d) Linda'							
Case Ownership / Changed	/	s 47E(d) Gabrielle Legal	24-May-11 9:53 AM	s 47E(d) Gabrielle Legal	24-May-11 9:53 AM		
Reassigned from 'Allocation Legal' to s 47E(d) Greg' by s 47E(d) Gabrielle Legal'							
Briefing /	/	s 47E(d) Greg	25-May-11 9:49 AM	s 47E(d) Greg	15-Jun-11		5

Greg

Can you consider this case and the applicable discretions in s6 of the Omb Act as this matter is more than 12 months old - nb: the complaint appears to relate to an FOI request in 2008. Also the complainant would be in a position to make the same request for documents (at no cost) to the DVA now - which would give the complainant the outcome that he is seeking.

Gabrielle s 47E(d) Director Legal 24 May 2011

Briefing noted. Complaint to be transferred to the Australian Information Commissioner.

Reasons: Response to FOI request submitted in 2008 is delayed. Response to FOI request submitted in April 2011 is delayed.

s 47E(d) 26 May 2011

Gregory s 47E(d)

From: s22
Sent: Wednesday, 18 May 2011 11:38 AM
To: Ombudsman
Subject: RE: Ombudsman Response [SEC=UNCLASSIFIED]

Dear s 47E(d)

Excuse me, my communication was addressed to you, the Information Commissioner and it was NOT a courtesy copy at all -

From: Ombudsman [mailto:s22]
Sent: Wednesday, 18 May 2011 11:26 AM
To: s22
Subject: Ombudsman Response [SEC=UNCLASSIFIED]

Our ref: s22

Dear s22

Thank you for your email of 7 May 2011 about the Department of Veterans' Affairs (DVA).

As you have sent us a courtesy copy of your email to DVA we will not investigate your complaint at present. If you are not able to resolve your concerns, you are welcome to contact us again.

You can view a copy of our Service Charter and our brochure *Making a complaint to the Ombudsman*, which explain the Commonwealth Ombudsman's role in more detail, at <http://www.ombudsman.gov.au/>.

Yours sincerely

Claire s 47E(d)
Public Contact Officer | Public Contact and Records Management Team
COMMONWEALTH OMBUDSMAN
Phone s22 | Fax 02 6276 0123
Email s22
Website www.ombudsman.gov.au
PO Box 442 Canberra City ACT 2601

Assisting the Australian community by resolving complaints and fostering good government administration.

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- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

Gregory **s 47E(d)**

From: **s22**
 Sent: Wednesday, 18 May 2011 11:45 AM
 To: Ombudsman
 Subject: RE: Ombudsman Response [SEC=UNCLASSIFIED]

Dear Ms **s 47E(d)**

I regret that you have deemed that a letter addressed to the Information Commissioner was in fact sent to you as a courtesy copy alone – that is false as you will see in the copy of my letter attached.

Kindly review your determination please ?

Yours sincerely

s22

s22

12 May 2011

Office of the Information Commissioner
 And
s 47E(d) DVA Information Access Officer

Dear Commissioner and **s 47E(d)**

Re: Complaint concerning FOI request acknowledged as received by DVA 4 April 2011 and also my unanswered request of 23 June 2008

Your letter of 4 May 2011 acknowledged receipt of my two FOI requests for key evidence to defend and protect myself in wide-ranging departmental abuses as outlined in **s 22** recent reports which I believe to be included in the External Review now being conducted by **s22** **s22**

Your letter craves extension of time on one FOI request only – that for copy of **s22** report.

I am yet to receive copy of the brief provided by DVA TO **s22** to initiate external review of my case, as confirmed by you in your letter i.e. despite me again fighting for my life and reputation in an enquiry that has been underway since March 2011, I am still unaware of the scope of the review which is being conducted and this would seem to me to be totally unfair and continuation of DVA's long stand in my case, as outlined in one small part of my case dealt with in **s22** report.

I find this to be totally unsatisfactory abhorrent.

s22

s22

This while DVA also has misrepresented my case to various authorities and to even the Prime Minister as recorded by **s22**

;| My letter of 23 June 2008 includes a range of yet to be answered FOI requests, despite at one stage DVA advising that my requests were being investigated and/or processed.

When may I anticipate receiving reply please to my FOI request for the brief provided to **s22** **s22** and also to my 23 June 2008 requests ?

Please also be aware that:

s22

Evidence of DVA hostility toward me in denial of Natural Justice and in breach of its Duty of Care toward a client:

1. In further evidence of DVA's abject and disciplined hostility, unconscionable conduct and contempt for rules in dealing with me and my reasonable requests, arising from false criminal denunciations used by DVA in "fear mongering" and to "frighten me off"; much as in the DVA/AGS demand of 7 December 2009 that in consideration **s22**

s22

s22 using coercive forces this demand required me to withdraw all allegations against DVA and as I had made to a wide range of Ministers and top level bureaucrats.

s22

Perhaps this illustrates the depth to which DVA has gone to evade liability and responsibility in hindering progress of my claims and reasonable applications all arising from the s22 false forgery and fraud denunciations, illegally used by DVA against me in my long held claim that DVA found me guilty "in absentia" as is clearly shown in the two reports of s22 which I understand to now be included in the external review by s22

Observing these outlined matters, when may I anticipate receiving the promised reply to my FOI requests please ?

Yours sincerely

s22

s22

From: Ombudsman [mailto:s22]
Sent: Wednesday, 18 May 2011 11:26 AM
To: s22
Subject: Ombudsman Response [SEC=UNCLASSIFIED]

Our ref: s22

Dear s22

Thank you for your email of 7 May 2011 about the Department of Veterans' Affairs (DVA).

As you have sent us a courtesy copy of your email to DVA we will not investigate your complaint at present. If you are not able to resolve your concerns, you are welcome to contact us again.

You can view a copy of our Service Charter and our brochure *Making a complaint to the Ombudsman*, which explain the Commonwealth Ombudsman's role in more detail, at <http://www.ombudsman.gov.au/>.

Yours sincerely

s 47E(d)

Public Contact Officer | Public Contact and Records Management Team
COMMONWEALTH OMBUDSMAN
Phone s22 | Fax 02 6276 0123
Email s22
Website www.ombudsman.gov.au
PO Box 442 Canberra City ACT 2601

Assisting the Australian community by resolving complaints and fostering good government administration.

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- * about an identifiable individual;
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FOIREQ22/00120 025

s22

Nicolaou, Irene
09-May-2022 11:00 AM**Title**

s22 | DVA - Department of Veterans' Affairs s 22

Receipt Details

File Type:	FOI	Received Date:	15-Jun-2011 1:54 PM
Case Type:	Investigation	Received By:	Oliva, John
How Received:		Registered Date:	15-Jun-2011 1:54 PM
Owned By:	Azevedo, David	Registered By:	Azevedo, David
		Closed Date:	30-Apr-2012 1:56 PM
		Closed By:	Azevedo, David

Case Details

Stage:	Closed
Current File Holder:	Bennett, Charine
How Received:	Email
Validation:	Valid
Sensitivity:	Not sensitive
File Security:	UNCLASSIFIED
Primary Client Group:	Individual
Represented By Client Group:	Individual
Parent Case Entity Code:	Complaint
Agency FOI Stage:	Initial decision
Respondent Client Group:	Agency
Complexity:	Low
Case Primary Person:	s22
Case Respondent:	DVA - Department of Veterans' Affairs
Is Primary Person Aware:	Yes
Retention Class:	OAIC RA 61986 (D2)
Destruction Due Date:	30-Apr-2014

Case Parties - 4

Complainant Client:	s22
Represented By Client:	s22
Respondent Client:	DVA - Department of Veterans' Affairs
Respondent Contact:	Cosson [SES s 55R], Elizabeth

Summary

Withdrawn

Issues - 1

Issue Description: Processing Request
Is Primary Issue: Yes
Issue Allegation: processing delay

FOIREQ22/00120 026

Issue Outcome: withdrawn

Actions - 63 (All Completed)

Action	Owner	Due	Completed
Record case details and attach documents	Oliva, John	16-Jun-2011	15-Jun-2011
Move to Triage basket	Oliva, John	16-Jun-2011	15-Jun-2011
Allocate to Triage Officer (CP)	FOI - Triage	16-Jun-2011	13-Jul-2011, Kirkwood, Ben
Ownership Reassigned Assigned to 'Triage' by 'Oliva, John'	Oliva, John	15-Jun-2011	15-Jun-2011
Ownership Reassigned Assigned to 'Triage' by 'Oliva, John'	Oliva, John	15-Jun-2011	15-Jun-2011
First Check	Kirkwood, Ben	14-Jul-2011	14-Jul-2011
<p>This transfer is potentially a duplication of the complaint that s22 withdrew after receiving the requested access (s22). s22 had indicated that he wished to proceed with the merits review of the scope of an access request (see the documents screen for an e-mail dated 2 June 2011). Only one of the two applications referred to in the transfer documentation from the Ombudsman's office is post 1 November 2011. This application was lodged on 4 April 2011. I recommend writing to applicant indicating that we will be closing the request as it is a duplication unless he provides a copy of the decision he is seeking to have reviewed (unless the decision is deemed). An IC review will need to be raised if he is seeking the review of a decision on 4 April 2011. Please note that EOT's were sought for three other applications lodged by s22; however, none of these was lodge with DVA on 4 April 2011.</p>			
Ownership Reassigned Assigned to 'Kirkwood, Ben' by 'Kirkwood, Ben'	Kirkwood, Ben	13-Jul-2011	13-Jul-2011
Move to Mail Assessor basket	Kirkwood, Ben	15-Jul-2011	15-Jul-2011
Allocate to Mail Assessor User (CP)	FOI - IC reviews - Assessment	18-Jul-2011	18-Jul-2011, Kirkwood, Ben
Ownership Reassigned Assigned to 'Mail Assessor' by 'Kirkwood, Ben'	Kirkwood, Ben	15-Jul-2011	15-Jul-2011
Assess Path (CP)	FOI - IC reviews - Assessment	19-Jul-2011	21-Jul-2011, Bennett, Charine: More Information
<p>Please contact DVA to confirm what FOI requests they have from s22 (do they have the 2008 one and one or more from April) - this is for the purpose of working out whether we have a valid complaint and/or review. We will also need to seek clarification from s22 about the issues from the pre-1 Nov 2011 request he is complaining about and probably need to create new application for review for April 2011 request(s).</p>			
Allocate Complaint	Allocation - FOI Case Management	22-Jul-2011	21-Jul-2011, Bennett, Charine
Ownership Reassigned Assigned to 'Allocation' by 'Bennett, Charine'	Bennett, Charine	21-Jul-2011	21-Jul-2011

FOIREQ22/00120 027

Send Request for More Information (CP MA)	Azevedo, David	04-Nov-2011	04-Nov-2011
Ownership Reassigned	Bennett, Charine	21-Jul-2011	21-Jul-2011

Assigned to 'Kirkwood, Ben' by 'Bennett, Charine'

Ownership Reassigned	Harlock, Raewyn	31-Oct-2011	31-Oct-2011
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Reassigned from 'Kirkwood, Ben' to 'Azevedo, David' by 'Harlock, Raewyn'

Await More Information (CP MA)	Azevedo, David	16-Dec-2011	16-Dec-2011
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Research	Azevedo, David	04-Nov-2011	04-Nov-2011
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In researching this matter to decide on an appropriate email to the client, I put together the following timelines which notes the related matters: 23/6/2008 - Letter from s22 to Veteran Affairs (DVA), includes FOI requests (#1) 10/11/2010 - FOI request to DVA from s22 on behalf of s22 (#2) 13/12/2010 - s22 15AA request re:10/11/2010 FOI request 6/1/2011 - s22 received from DVA re: s22 FOI request received 10/11/2010 21/2/2011 - Complaint from s22, acting on behalf of s22, re: OAIC and DVA (s22) 1/3/2011 - Letter from Charine Bennett (CP) to s22. s22 closed 22/3/2011 - s22 received from DVA re: s22 FOI internal review decision date 21/2/2011 4/4/2011 - FOI request (#3) 12/4/2011 - s22 lodged by s22 20/5/2011 - OAIC letter to s22 advises matter closed, DVA supplied their info 1/6/2011 - s22 to s22. Withdraw complaint? 2/6/2011 - Withdrawn. Merit review of scope of the external review which is current? 2/6/2011 - s22 to s22. No merit review found - confirm when lodged? 3/6/2011 - s22 lodged. Current ly assigned to Peter O'Brien (PO). s22 personal issue. 9/6/2011 - s22 closed 15/6/2011 - COMBO transfer to OAIC - complaint re:2 FOI request (s22) 22/6/2011 - s22 received from DVA re: s22 FOI request 11/5/2011 15AA 22/6/2011 - s22 received from DVA re: s22 FOI request 21/5/2011 15AA 22/6/2011 - s22 received from DVA re: s22 FOI request 26/5/2011 15AA 30/8/2011 - s22 letter to numerous. s 22 re: FOI & Privacy s22 2/9/2011 - Email from s22 to Various (including Enquiries - s22)

Phone call to complainant/applicant	Azevedo, David	14-Nov-2011	14-Nov-2011
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Attempted to call applicant - he asked that I call him again in 45minutes as he is in a meeting.

Phone call to complainant/applicant	Azevedo, David	14-Nov-2011	14-Nov-2011
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Message left for applicant to return my call.

Phone call from complainant	Azevedo, David	15-Nov-2011	15-Nov-2011
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s 22

FOIREQ22/00120 028

s 22

Research Azevedo, David 21-Nov-2011 21-Nov-2011

(Updated in light of recent emails) In researching this matter to decide on an appropriate email to the client, I put together the following timelines which notes the related matters: 23/6/2008 - Letter from s22 to Veteran Affairs (DVA), includes FOI requests (#1) 10/11/2010 - FOI request to DVA from s22 on behalf of s22 (#2) 13/12/2010 - s22 15AA request re:10/11/2010 FOI request 6/1/2011 - s22 received from DVA re: s22 FOI request received 10/11/2010 21/2/2011 - Complaint from s22, acting on behalf of s22, re: OAIC and DVA (s22) 1/3/2011 - Letter from Charine Bennett (CP) to s22. s22 closed 22/3/2011 - s22 received from DVA re: s22 FOI internal review decision date 21/2/2011 4/4/2011 - FOI request (#3) 12/4/2011 - s22 lodged by s22. 20/5/2011 - OAIC letter to s22. s22 advises matter closed, DVA supplied their info 1/6/2011 - BK to s22. Withdraw complaint? 2/6/2011 - Withdrawn. Merit review of scope of the external review which is current? 2/6/2011 - BK to s22. No merit review found - confirm when lodged? 3/6/2011 - s22 lodged. Current ly assigned to Peter O'Brien (PO). s22 personal issue. 9/6/2011 - s22 closed 15/6/2011 - COMBO transfer to OAIC - complaint re:2 FOI request (s22) 22/6/2011 - s22 received from DVA re: s22 FOI request 11/5/2011 15AA 22/6/2011 - s22 received from DVA re: s22 FOI request 21/5/2011 15AA 22/6/2011 - s22 received from DVA re: s22 FOI request 26/5/2011 15AA 30/8/2011 - s22 letter to numerous. s 22 re: FOI & Privacy (s22) 2/9/2011 - Email from s22 to Various (including Enquiries - s22) 8/10/2011 - s22 to s22 by email 15/9/2011 - s22 to OAIC (No resolve record) 8/10/2011 - s22 to OAIC (No resolve record) ??/11/2011 - new complaints from s22 (No resolve record) 14/11/2011 - PO conversation with s22 (s22). Withdrawn. 18/11/2011 - s22 letter to s22 copied in (No resolve record) 20/11/2011 - s22 emails to s22

Await response from respondent Azevedo, David 17-Feb-2012 07-Mar-2012

Response remains outstanding

Phone call from respondent Azevedo, David 24-Nov-2011 24-Nov-2011

s 47E(d) called regarding s22 and questioned the value of the OAIC investigating a matter 3 years old. I explained that the preliminary inquiries we were conducting were to determine if we would investigate, and that the FOI Act didn't limit the age of matters to be investigated. She questioned the matter further and what he was complaining about. I explained that he was complaining about delays and that if DVA were to show that the matter progressed in accordance with the legislation at that time then there would be no cause

FOIREQ22/00120 029

for a full complaint investigation. I explained that if however DVA had delayed the process then an investigation may occur and the potential results could range from the Information Commissioner asking if DVA's current processes had changed since then to making formal recommendations to DVA about its processes. She asked for an additional two weeks to pull the files from archives and prepare a response. I said that was fine.

Phone call from respondent Azevedo, David 06-Dec-2011 06-Dec-2011

Call received from Vincci of the DVA. She wanted to clarify if the question we had asked about complaints received by the dept. were only related to the EOT's. I said that was correct, we were only interested if they had received complaints in regards to delays in the processing of FOI requests, specifically the two mentioned. I said we didn't need to know about unrelated complaints. She also asked about the FOI date of 2008, whether it was correct as she said she had no record of an FOI application of that date. I checked the initial information in the documents field and said it was. I said I would double check it all and then call her back in 5/10 minutes. She said that was fine and gave me her number - s22. I called her back and advised her that the original request was contained in an email dated 12 May 2011 sent to numerous people, including DVA staff. I advised her which staff they were, and told her who the original request was sent to (as on the letterhead). I said I may be able to send her a copy of the email if she could not locate one from her colleagues - she asked if I could. I said I'm would confirm with my supervisor and if I could send it to her. She provided her email - s22

Phone call from respondent Azevedo, David 13-Dec-2011 13-Dec-2011

Call received earlier from s 47E(d) at the DVA. She referred to the contact made last week by Vinci and asked about what information I required. She said they receive contact from s22 frequently, up to 6 times a week. She asked what complaint information I required - I advised only in regards to the two FOI complaints mentioned. I said I didn't require information on unrelated matters. She asked what FOI request information I required, as since 2008 they had received over 50 FOI requests from s22. She said they had released him his full file last year to try and prevent future requests. She asked if the last 12 months worth of requests would suffice. I said that was fine.

Recommend Path Azevedo, David 16-Dec-2011 16-Dec-2011

Allocate to Mail Assessor User (CP) Azevedo, David 16-Dec-2011 16-Dec-2011

Assess Path (CP) Azevedo, David 14-Feb-2012 14-Feb-2012: Valid – Investigation

Preliminary investigation undertaken, decision made to progress to full investigation

Phone call to respondent Azevedo, David 23-Dec-2011 23-Dec-2011

Joanna Marshal from DVA called. She asked for extension for reply until next year. I advised her of the email I sent to the dept. yesterday. She said DVA had advised OAIC to forward all correspondence to one email address, said she would forward me the details. She asked for an extension to the 13 January 2011. I said I couldn't approve that far an extension however would simply request that they provide their response ASAP after the 3/1/2012.

Phone call from respondent Azevedo, David 16-Jan-2012 16-Jan-2012

Joanna Marshall from DVA called and advised that DVA's response was in its final stages of approval and she expected that they would have it to me by the end of this week.

Phone call from respondent Azevedo, David 03-Feb-2012 03-Feb-2012

FOIREQ22/00120 030

Call came through from Amanda, DVA. She queried whether I had sent a further email to DVA regarding this matter. I said I had, and re-forwarded it to her as requested. She indicated that DVA's main email address had changed, and said she would send me notification of this to update our records.

Send Acknowledgement (CP CADM)	Admin Officer	14-Feb-2012	14-Feb-2012, Azevedo, David
Ownership Reassigned	Azevedo, David	14-Feb-2012	14-Feb-2012
Assigned to 'Allocation' by 'Azevedo, David'			
Allocate Complaint	Allocation - FOI Case Management	14-Feb-2012	14-Feb-2012, Azevedo, David
Prepare Plan (CP)	Azevedo, David	14-Feb-2012	14-Feb-2012
Ownership Reassigned	Azevedo, David	14-Feb-2012	14-Feb-2012
Assigned to 'Azevedo, David' by 'Azevedo, David'			
Seek approval of plan (CP)	Harlock, Raewyn	14-Feb-2012	14-Feb-2012, Azevedo, David: Approved
Notify Complainant of Investigation	Azevedo, David	14-Feb-2012	14-Feb-2012
Notify Agency of Investigation (CP)	Azevedo, David	14-Feb-2012	14-Feb-2012
Await Agency Response (CP INV)	Azevedo, David	17-Feb-2012	07-Mar-2012
Response remain outstanding			
Phone call to respondent	Azevedo, David	16-Feb-2012	16-Feb-2012
Rang and spoke with DVA. They asked for an EOT until next Friday. Granted. They asked for a confirmation in writing, I said I would send through. They asked if the questions were in relation to the 2008 complaint. I said they were. They also asked about the last paragraph about privacy, where the letter says child support - I apologised and said that was my typo.			
Phone call to complainant/applicant	Azevedo, David	06-Mar-2012	06-Mar-2012

s 22

FOIREQ22/00120 031

s 22

Phone call to respondent Azevedo, David 06-Mar-2012 06-Mar-2012

Rang to speak with Vinci. I asked her when we could expect a response to our enquiries. She clarified the information I was expecting a response to, which I confirmed was the 25 January email. She said she would need to follow up with the person assigned to respond to that enquiry - she said that FOI gathers the information only and then it is forwarded to the designated person to respond - she said the latter part was still occurring. She asked if she could provide me with an email response tomorrow, I said that was fine. I explained I had sent an email to them regarding this also, and was further questioning if DVA would allow the release of their responses to s22, who had requested to view those.

Conduct Investigation (CP) Azevedo, David 08-Mar-2012 07-Mar-2012: Preliminary View

Prepare s86 letter (CP INV) Azevedo, David 30-Apr-2012 30-Apr-2012

Phone call to complainant/applicant Azevedo, David 07-Mar-2012 07-Mar-2012

s 22

FOIREQ22/00120 032

s 22

Phone call to respondent Azevedo, David 08-Mar-2012 08-Mar-2012

Call placed to Vinci's phone. Answered by another lady, who provided she would only be in mid morning. I left a message asking for a call back, advised I was chasing up an outstanding response regarding s22, and was happy to receive a call from any officer dealing with the matter.

Phone call to respondent Azevedo, David 08-Mar-2012 08-Mar-2012

Rang and spoke with Joanna Marshall, said had been trying to get through to Vinci however she had not returned my calls. Joanna said she was the contact for the matter. Said that the response was with an appropriate officer for signoff. I asked how long it had been with them, she said since Monday. She said would follow up with the officer as to how long it would take them and then get back to me.

Phone call to respondent Azevedo, David 12-Mar-2012 12-Mar-2012

Voicemail left for Joanna Marshall requesting a call on when their response will be received

Phone call from respondent Azevedo, David 13-Mar-2012 13-Mar-2012

Joanna Marshall returned my call. She apologised for not responding sooner - she is s 22. She said the response had been signed off and would be sent through today. I questioned whether it included any comments regarding provision of their responses to s22 - she queried when that was asked. Advised was in the follow up email dated 6/3/12. She located it and confirmed she would follow up on it. She initially said she couldnt see a problem with it but said she would reply in writing when I asked if she wanted to do so. I advised it was part of a formal FOI request. Explained we generally do so regardless at the end of our processes however s22 had made his request earlier.

Phone call to other Azevedo, David 14-Mar-2012 14-Mar-2012

Spoke with s22, he said was unaware of events of the last day as had not checked his email. Gave him a brief rundown, he asked if he could have time to go over it and respond by email. I said that was fine.

FOIREQ22/00120 033

Phone call to Azevedo, David 21-Mar-2012 21-Mar-2012
complainant/applicant

Message left for s22 asking him to return my call. Advised would process FOI application as received.

Phone call to other Azevedo, David 16-Apr-2012 16-Apr-2012

s 22

File Note Azevedo, David 24-Apr-2012 24-Apr-2012

I believe the case is ready for a s 86 complaint letter. However prior to drafting for approval I am trying to talk with the applicant and s22 to ensure they are completely aware such a letter will only deal with matters regarding the two request of 23 June 2008 and 4 April 2011. This is more for s22 benefit than s22. Also need to discuss s22 and other matters. Will contact s22 next week after s 22

Review s86 letter (CP INV)	Harlock, Raewyn	01-May-2012	30-Apr-2012, Azevedo, David
Commissioner approves s86 letter (CP INV)	Azevedo, David	01-May-2012	30-Apr-2012
Send s86 letter (CP INV)	Azevedo, David	18-May-2012	30-Apr-2012
Await Response to s86 letter (CP INV)	Azevedo, David	18-May-2012	30-Apr-2012: No Response
Notify Complainant of Closure (CP INV)	Azevedo, David	01-May-2012	30-Apr-2012
Notify Agency of Closure(CP INV)	Azevedo, David	01-May-2012	30-Apr-2012
Are there Recommendations? (CP)	Azevedo, David	01-May-2012	30-Apr-2012: No
Close Complaint (INV)	Azevedo, David	01-May-2012	30-Apr-2012

Documents - 100

Title	Date Added	By
s22 -Transfer to OAIC under s 6C Ombudsman Act 1976 - s 22	15-Jun-2011 11:56 AM	Oliva, John
20110602 EMail 01.msg	14-Jul-2011 4:38 PM	Kirkwood, Ben
20110602 EMail 02.msg	14-Jul-2011 4:39 PM	Kirkwood, Ben

FOIREQ22/00120 034

s22 & s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	04-Nov-2011 9:27 AM	Azevedo, David
RE: s22 & s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	10-Nov-2011 10:01 AM	Azevedo, David
20111114 EMail 02.msg	14-Nov-2011 9:41 AM	
20111114 EMail 03.msg	14-Nov-2011 9:41 AM	
20111114 EMail 04.msg	14-Nov-2011 9:59 AM	
RE: s22 & s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	15-Nov-2011 9:48 AM	Azevedo, David
RE: s22 & s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	20-Nov-2011 9:42 PM	Azevedo, David
For inclusion in email just sent for completeness	20-Nov-2011 9:58 PM	Azevedo, David
OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	21-Nov-2011 2:46 PM	Azevedo, David
Your email has been received [SEC=UNCLASSIFIED]	21-Nov-2011 2:47 PM	Azevedo, David
s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	21-Nov-2011 3:56 PM	Azevedo, David
RE: s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	21-Nov-2011 5:05 PM	Azevedo, David
FW: LONG-TERM & REPEATED DENIALS OF ACCESS UNDER FOI [SEC=UNCLASSIFIED]	06-Dec-2011 4:28 PM	Azevedo, David
F.up to 2 x 7Dec11 lets on FOI	09-Dec-2011 8:20 AM	Fisher, Kristy
s22 [SEC=UNCLASSIFIED]	09-Dec-2011 2:40 PM	Azevedo, David
RE: s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	13-Dec-2011 2:38 PM	Azevedo, David
Request turned into complaint by OAIC - reference s22 - Minister for Defence	15-Dec-2011 5:25 PM	Azevedo, David
RE: s22 - Your complaint about Department of Veteran Affairs [SEC=UNCLASSIFIED]	16-Dec-2011 12:14 PM	Azevedo, David
FW: Let 21Dec11.decade of unconsidered issues	21-Dec-2011 12:42 PM	Azevedo, David
RE: OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	22-Dec-2011 9:30 AM	Azevedo, David
Contact emails for OAIC complaints [SEC=UNCLASSIFIED]	23-Dec-2011 2:58 PM	Azevedo, David
RE: To IC re CDPP 13Oct11 & review [SEC=UNCLASSIFIED]	03-Jan-2012 10:44 AM	Azevedo, David
RE: THE CASE FOR ROYAL COMMISSION INTO DVA - Emailing: Dynamic Web Template [SEC=UNCLASSIFIED]	09-Jan-2012 12:57 PM	Azevedo, David
20120112 EMail 01.msg	12-Jan-2012 3:44 PM	
20120112 EMail 02.msg	12-Jan-2012 3:44 PM	
Independent call for Royal Commission or alternate independent investigation into DVA and its actions - prolonged DVA FOI & other problems incl. visible FRAUD; also un-investigated complaints about DVA, s22 Let 9Jan12 for RC	10-Jan-2012 5:06 PM	Azevedo, David

FOIREQ22/00120 035

OAIC & other complaint.call for RC or truly independent ADRAry	11-Jan-2012 3:43 AM	Azevedo, David
FW: OAIC & other complaint.call for RC or truly independent ADRA [SEC=UNCLASSIFIED]	12-Jan-2012 10:13 AM	Azevedo, David
Your OAIC matters - s22, PF57:tj, s22, s22, s22 [SEC=UNCLASSIFIED]	13-Jan-2012 1:00 PM	Azevedo, David
FW: OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	16-Jan-2012 9:13 AM	Azevedo, David
s22 - s22 [SEC=UNCLASSIFIED]	17-Jan-2012 2:03 PM	Azevedo, David
Timeline s22 s22 .xlsx	17-Jan-2012 5:08 PM	Azevedo, David
FW: s22; my letter 23Nov11 - My 22Jan12 to Min Def & Sec DVA	22-Jan-2012 3:19 PM	Azevedo, David
RE: s22; my letter 23Nov11 - My 22Jan12 to Min Def & Sec DVA	22-Jan-2012 10:51 PM	Azevedo, David
OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	25-Jan-2012 10:27 AM	Azevedo, David
Your OAIC matters - s22, s22, s22, s22 [SEC=UNCLASSIFIED]	25-Jan-2012 11:24 AM	Azevedo, David
FOI and DVA s4/E(0) conspiracies to pervert justice - My OAIC matters - s22, s22, s22 [SEC=UNCLASSIFIED]	28-Jan-2012 6:48 PM	Azevedo, David
FW: OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	03-Feb-2012 10:10 AM	Azevedo, David
CP Case Plan	14-Feb-2012 11:40 AM	Azevedo, David
Voice Mail Message (30 seconds)	16-Feb-2012 12:29 PM	Azevedo, David
RE: OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	16-Feb-2012 2:10 PM	Azevedo, David
RE: OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	29-Feb-2012 11:13 AM	Azevedo, David
RE: Your OAIC matters - s22, s22, s22 [SEC=UNCLASSIFIED]	05-Mar-2012 3:31 PM	Azevedo, David
RE: OAIC Complaint - s22, reference: s22 [SEC=UNCLASSIFIED]	06-Mar-2012 2:58 PM	Azevedo, David
6Mar12 authority & overall FOI problems [SEC=UNCLASSIFIED]	06-Mar-2012 11:59 PM	Azevedo, David
RE: 6Mar12 authority & overall FOI problems [SEC=UNCLASSIFIED]	07-Mar-2012 8:01 AM	Azevedo, David
FW: Call with Mr Azevedo	07-Mar-2012 1:04 PM	Azevedo, David
s22 case - FOI request made from not yet finalised s22 being delayed by DVA	08-Mar-2012 5:40 PM	Azevedo, David
RE: Your OAIC matters - s22, s22, s22 [SEC=UNCLASSIFIED]	05-Mar-2012 8:21 PM	Azevedo, David
RE: Your OAIC matters - s22, s22, s22 [SEC=UNCLASSIFIED]	06-Mar-2012 7:41 AM	Azevedo, David
RE: 6Mar12 authority & overall FOI problems [SEC=UNCLASSIFIED]	06-Mar-2012 4:04 PM	Azevedo, David
Response to complaint made by s22 ref: s22 [SEC=UNCLASSIFIED]	13-Mar-2012 10:51 AM	Azevedo, David

FOIREQ22/00120 036

RE 6Mar12 authority & overall FOI problems SEC UNCLASSIFIED .msg	13-Mar-2012 4:53 PM	Azevedo, David
RE: 6Mar12 authority & overall FOI problems [SEC=UNCLASSIFIED]	13-Mar-2012 5:47 PM	Azevedo, David
RE: 6Mar12 authority & overall FOI problems [SEC=UNCLASSIFIED]	13-Mar-2012 7:23 PM	Azevedo, David
RE: 6Mar12 authority & overall FOI problems [SEC=UNCLASSIFIED]	14-Mar-2012 8:05 AM	Azevedo, David
dox1.pdf	19-Mar-2012 2:05 PM	Bramley, Pamela
dox2.pdf	19-Mar-2012 2:05 PM	Bramley, Pamela
dox3.pdf	19-Mar-2012 2:06 PM	Bramley, Pamela
dox4.pdf	19-Mar-2012 2:06 PM	Bramley, Pamela
dox5.pdf	19-Mar-2012 2:07 PM	Bramley, Pamela
s22 - Address for mail	22-Mar-2012 4:46 PM	Azevedo, David
2Apr12 let re action on current FOI	02-Apr-2012 7:41 AM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	02-Apr-2012 9:22 AM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	02-Apr-2012 7:36 PM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	03-Apr-2012 8:36 AM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	03-Apr-2012 11:53 AM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	03-Apr-2012 8:27 PM	Azevedo, David
Re FW s22 Your request for a s15AB extension of time to process s22;s FOI request. SECUNCLASSIFIED.msg	04-Apr-2012 8:08 AM	Azevedo, David
4Apr12 let of complaint & rejection of 4Mar12 OI request	04-Apr-2012 11:30 AM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	04-Apr-2012 3:30 PM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	05-Apr-2012 3:44 PM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	05-Apr-2012 4:21 PM	Azevedo, David
FW: 6Apr12 FOI ap on DVA 21Oct03 Minute	06-Apr-2012 1:26 PM	Azevedo, David
10Apr12 response & new request to OAIC	10-Apr-2012 11:35 AM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	12-Apr-2012 11:19 AM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	12-Apr-2012 6:18 PM	Azevedo, David
RE: 2Apr12 let re action on current FOI [SEC=UNCLASSIFIED]	16-Apr-2012 9:43 AM	Azevedo, David
	16-Apr-2012 11:51 AM	Azevedo, David
RE:	16-Apr-2012 5:52 PM	Azevedo, David
	16-Apr-2012 9:47 PM	Azevedo, David
Tele conference Tuiesday 10.00 a.m. 17 April	16-Apr-2012 11:30 PM	Azevedo, David

FOIREQ22/00120 037

RE: Tele conference Tuiesday 10.00 a.m. 17 April [SEC=UNCLASSIFIED]	17-Apr-2012 9:02 AM	Azevedo, David
RE: Tele conference Tuiesday 10.00 a.m. 17 April [SEC=UNCLASSIFIED]	17-Apr-2012 10:00 AM	Azevedo, David
RE: Tele conference Tuiesday 10.00 a.m. 17 April [SEC=UNCLASSIFIED]	17-Apr-2012 9:52 AM	Azevedo, David
7Apr12 official application FOI be held in abeyance; with applications made on my behalf my s22 to be processed without alteration to process or timeline	17-Apr-2012 8:39 PM	Azevedo, David
22Apr let reply 20Apr rejection from DVA	22-Apr-2012 5:52 PM	Azevedo, David
RE: Tele conference Tuiesday 10.00 a.m. 17 April [SEC=UNCLASSIFIED]	23-Apr-2012 9:29 AM	Azevedo, David
RE: Tele conference Tuiesday 10.00 a.m. 17 April [SEC=UNCLASSIFIED]	23-Apr-2012 9:47 AM	Azevedo, David
RE: Tele conference Tuiesday 10.00 a.m. 17 April [SEC=UNCLASSIFIED]	24-Apr-2012 5:07 PM	Azevedo, David
RE: Tele conference Tuiesday 10.00 a.m. 17 April [SEC=UNCLASSIFIED]	24-Apr-2012 5:08 PM	Azevedo, David
23Apr12 teleconference is DURESS	24-Apr-2012 5:48 PM	Azevedo, David
Your OAIC matters [SEC=UNCLASSIFIED]	26-Apr-2012 10:33 AM	Azevedo, David
RE: Your OAIC matters [SEC=UNCLASSIFIED]	26-Apr-2012 11:30 AM	Azevedo, David
Your OAIC matters [SEC=UNCLASSIFIED]	30-Apr-2012 10:18 AM	Azevedo, David
RE: Your OAIC matters [SEC=UNCLASSIFIED]	30-Apr-2012 1:32 PM	Azevedo, David
s22 - IC Review and complaint - s22 and s22 [SEC=UNCLASSIFIED]	30-Apr-2012 1:45 PM	Azevedo, David

Cross References - 5

Case	Comments
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s22

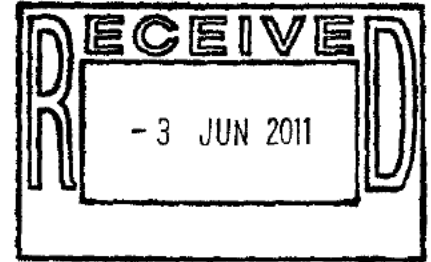
Comments - 1

Created	By	Comment
30-Apr-2012 1:56 PM	Azevedo, David	Case Closed by s 47E(d) on 30-Apr-2012 13:56

s22

Office of the Australian Information Commissioner
GPO Box 2999
CANBERRA ACT 2601

31 May 2011



Official Complaint

Dear Sir / Madam

Thank you for your interesting letter advising that you were extending DVA's time allowed to complete my requested Section 54 review. I have now also been involved with your office on several occasions as s22 representative and I have raised one serious issue regarding a 'typo' made by your staff. However, I would now like to lodge a complaint regarding the behaviour of the Department of Veterans' Affairs (DVA) over their handling of Freedom of Information (FOI) requests for my personal issues.

Background

On 18 February 2011 I requested s22. This was the last chapter in a three year saga that was attempting to obtain same. What is interesting is that there was a change of personnel in the FOI area and I finally had someone stop and say this isn't right. So the review was bounced out of DVA's Legal Services Group and became the responsibility of s 47F who is DVA's s 47F. She was to find that up until that time DVA's administration of my requests was so flawed that she had no choice but to refer it to s22 for external advice. Your office became involved when DVA sought an extension of time for the report's preparation. I have no idea what the report says, it was never provided, but it clearly recommended that I was entitled to the documents. Several documents were subsequently released. I dispute that all documents were provided as requested over the preceding years but, hey, like I am ever going to get them.

Complaint

It has taken two-and-a-half years to get to this point and I admit that DVA has won. It is absolutely clear that I will never get documents that were readily and cheaply available in early 2009. My final involvement is to rehash the extra-ordinary but sad events of this sorry saga.

However, before I begin, I would note that the documentation contains a report stating that my FOI applications were linked to a complaint I made about the behaviour of two DVA officers back in early 2008, one a member of the SES (You should note that point when you reflect about your own career prospects). However, the report states that I agreed that no action be taken regarding my complaint. This is incorrect. I was told by s 47F then s 47F that no investigation would be taken unless I could provide the full proof myself. That is why I commenced this process and why, I would suggest, that DVA has methodically blocked all my attempts since then to obtain this proof.

Hand-on-their-hearts they can state there is no evidence to support my accusations. They just don't bother to tell anybody that they refused to look.

Attachment 1 contains a chronology of my FOI applications, excluding the final December 2010 application of which you are aware.

Attachment 2 is a list of the breaches by **s 47F** who has overseen this mess from the very beginning. Rehashing his behaviour is becoming a habit but I am getting sick and tired of the self-serving arrogance of some DVA staff, especially in their refusal to just perform their duties under legislation and policy.

Over the next few pages I have listed the FOI requests and DVA's responses. That is, when they actually bothered to reply. I have put each one on its own page so that you can put them in any order that you desire. I have started with the most interesting. However, before then.....

Once, a long, long time ago (actually November 2008), I lodged an FOI application with several requests. **s22**

In response, literally just before the Christmas break, I received a box containing several thousand pages of documents. There was no schedule, which I accepted in order to complete the request.

Over the next few days the first thing I did was sort the documents. I returned about half as out-of-scope. The second thing I did was review the remaining documents. I identified a hand-full of emails that were either definitely, or probably, missing segments of an email 'chain', plus periods for which no emails were provided. As a result, in January 2009, I lodged an FOI request to be sourced from a third officer's records (I was cross-checking). I also lodged a minute highlighting the missing documents for both parts and highlighting the missing emails. DVA acknowledged the new FOI request and initiated a review based on my minute that I was told would take three to five weeks. It actually took almost five months and deliberately excluded the core documents.

Now, let the saga begin...

s22

June 2009 FOI request

This was for the emails identified in January and deliberately excluded from the May 2009 review. It's Byzantine twists make it my favourite.

- The cheque for the application fee was cashed in June 2009, but no acknowledgement was ever received. I chased a reply, even the Ombudsman asked about it, then;
- Four months later I received an apology for the request not being actioned. Apparently it was placed on file without s 47F knowledge, though he didn't explain why the other enquiries didn't bring it to his attention.
- In October 2009 s 47F provided two conflicting responses in his initial letter and the one he sent subsequent to my appeal. He stated that as the emails were covered by an internal review I wasn't entitled to have them released (not sure of this reasoning), but also that a new link in an email chain creates an entirely new document. Apparently, for this reason, the missing chains could not be provided. Actually, the later was my reason for the request and I was a little a little stumped that it could be used as a reason for not getting same.
- s 22 [REDACTED]
- s 22 [REDACTED]
- Bugger me if s 47F wasn't the officer undertaking the review. He even wrote and demanded that I identify the emails I was seeking. Note I had provided copies of the email chains with the original FOI request on which I had highlighted where I believed there were missing links. You should also note that s 47F was no longer the director supervising FOI requests. He actually should have had no involvement at all, as I believe he was then the director of the Litigation team.
- I wrote to DVA reminding them that a Section 54 review must be conducted by an officer other than the original decision-maker. There was no response to this letter.
- s 47F subsequently wrote to me and advised that, as I hadn't provided the information demanded by s 47F, she considered the Section 54 review finalised. I thought it interesting that s 47F, acting as the reviewer, did not look at the actual FOI request under review.
- Obviously this was going nowhere fast. So I thought I'd try something different. I lodged a new request for these same emails and the reports that I was told had specifically reviewed these emails.
- At long last this FOI request was dealt with professionally. Another officer took over from s 47F s 47E(d) due to a change in DVA's FOI team. My request was refused on the basis that these emails were the subject of a previous FOI determination. Fair enough. I appealed and that started your involvement and it finally ended in April.

May I say that the recent professional behaviour of the officers involved this year was a blessed relief. If the same commitment to FOI legislation and policy was made in January 2009 I would probably have the email chain (both officers were then still with DVA) and the taxpayer would have saved several thousand dollars.

12 May 2009 FOI request

s 47F went ballistic when I lodged a complaint with the Commonwealth Ombudsman over their failure to action my January 2009 FOI request. Then I heard nothing so, rather cheekily, I lodged an FOI request for any documents resulting from my previous two FOI requests (November 2008 and January 2009), including notations and instructions on document cover sheets.

- DVA never acknowledged the request.
- Instead, **s 47F** returns the \$30 fee. She also provided unannotated copies of my requests and subsequent letters. No emails, file notes, etc. were provided. Essentially **s 47F** declined to process the FOI request. I am not sure on what basis under the Act she used to ignore my request, but that's what happens when you deal with DVA.

8 August 2009 FOI request

I wrote repeated reminders that DVA had never considered, let alone actioned, the outstanding part of the November 2008 FOI request for documents relating to my compensation claim (note that this was under appeal and I needed the documents).

Fed up, in August I then lodged an FOI request specifying the officers and dates for which I was seeking documents.

- The request was never acknowledged.
- In October 2009 s 47F wrote and released some of the requested documents. The bulk, including the General Manager who apparently investigated my claim s 22 were not provided as they were no longer employed by DVA. Interestingly, a fee of over \$4,000 was demanded to cover the cost of recovering documents caused by a change in DVA's IT arrangements. It was expensive to recover documents before the changeover.
- I appealed the cost, pointing out that all of the requested documents were after the IT changeover and therefore not subject to the charge. I also noted that all of the officers were still employed by DVA at the time of the initial request and for some time afterwards. Any additional cost was caused by DVA's lack of action.
- s 47F wrote back and acknowledged my point. He reviewed the fee and somehow it was only reduced by a few cents but, now get this, he then demanded payment in full and up-front! His argument was that if I overpaid then I would be entitled to a refund!
- Beaten completely, I never raised this one again.

5 January 2009 FOI request

- Following no contact at all from DVA regarding this request I lodged a complaint with the Commonwealth Ombudsman. On 19 March 2009 the Ombudsman agreed to investigate my complaint.
- The day after the Ombudsman agreed to investigate, s 47F issued an estimate of \$28,000 for fees and charges¹.
- I appealed in writing and requested an itemised quote. At the AAT hearing DVA denied I'd ever formally requested an appeal.
- In my appeal letter that DVA somehow misplaced, I also noted that DVA had unilaterally changed the scope of the request. As this was a cross-reference I had specified that the email be sourced from the records of one officer (s 47F) only. s 47F's letter specified two entirely different officers. Subsequently this was changed to all three officers. My repeated advice, in writing, that this was wrong was completely ignored.
- DVA provided the itemised quote. Astonishingly, the amount was halved. The quote also highlighted that the fee was only applicable to a small period covered by the request and could be avoided if the scope was slightly reduced. Therefore, I reduced the scope to avoid the fee and pointed out that under the then FOI guidelines DVA had an obligation to assist applicants avoid unnecessary fees. I also again objected to the fee as I believe it remained highly inflated. In a previous conversation with s 47F, albeit one that I can never prove, he stated he had conducted an FOI request that required the reconstruction of numerous mail boxes over several years. He stated it cost \$15,000. This is the same amount that, apparently, I had to pay for less than one month's documents sourced from one mail box.
- October 2009 DVA provide the documents under the reduced scope.

Footnote

The fees quoted by DVA were taken to the AAT. DVA again argued that the AAT had no jurisdiction because I had never appealed the fees. This had me scratching my head as the documents that I did actually receive were clearly provided in response to my appeal. Not so, DVA argued, as the documents provided in October 2009 were in response to a completely different FOI request against which I had never lodged an appeal under Section 54.

My memory is pretty bad, but I was reasonably sure that I hadn't lodged another FOI request. Not true, DVA argued, as the alterations I made to the January 2009 FOI request were so extreme as to make it an entirely new FOI request. They stated the changes were:

1. That I had varied the period covered by the request (true, but to the dates specified by DVA by which I avoided the fees as recommended by the guidelines); and, most spectacularly
2. I had changed the source of the documents from two officers to one, namely s 47F!

I was staggered and a little bit taken off-guard. However, the proceedings stopped at this point as the AAT had recommended a satisfactory agreement that DVA's legal representative was trying to get DVA to accept. After some time they did agree and I never had a chance to raise this deliberate attempt to mislead the AAT at the hearing.

The fees quoted by DVA were the second and final item I appealed under Section 54 following the AAT hearing. However, I also pointed out that DVA had deliberately misled the AAT.

s 47F responded and basically said 'So what?' A decision was reached by the AAT and that was the end of it as far as he was concerned.

¹ As an aside there is a real problem with DVA's IT area. Fees are dramatically over-stated and in the most recent letter I was told that 'a 'block of storage space' within a 'journal' of the SEV could not be located in respect of the period 16 January 2008 to 14 March 2008. Damned careless, to say the least, but there is absolutely no reason to think they were being deliberately obstructionist, is there?

Attachment 1

Calendar of Events

23 November 2008 FOI request for documents from s 47F and s 47F. The response to this FOI request was divided into two streams, one leading to a separate FOI request, the other a Minute on concerns it identified.	
5 January 2009 FOI request for documents from s 47F for the same period as previous request.	5 January 2009 Minute highlighting possible missing documents. Included a reminder that the 23 November 2008 FOI request was incomplete in that documents relating to a s 22 had not been provided.
19 March 2009 Commonwealth Ombudsman agrees to investigate my complaint over DVA's failure to action the above FOI request.	Numerous requests for the outstanding items in the 5 January Minute to be actioned. All ignored.
20 March 2009 response from s 47F stating fees of \$28,000 are applicable. I immediately appealed for a review of this amount and requested an itemised invoice.	
12 May 2009 FOI request was in response to DVA's failure to action the 5 January 2009 FOI request and sought the documents resulting from my previous correspondence, including notations and instructions on document cover sheets, whether in hard copy or on DVA's electronic handling system.	
29 May 2009, DVA declines to process the 12 May 2009 FOI request and returns the \$30 application fee. DVA also provides an itemised quote for the 5 January 2009 FOI request reducing the fee to \$14,700 for the period 1/9/2007 to 21/10/2007	29 May 2009. DVA provides a copy of the scope of the investigation of some of the concerns raised in my 5 January 2009 Minute. The primary documents provided for consideration by the review were deliberately excluded.
On 5 June 2009 the scope of the 5 January 2009 FOI request was reduced to avoid the fees listed in the itemised quote provided on 29 May 2009. DVA fails to action this request for a further five months.	5 June 2009 FOI request for three of the email chains identified amongst the primary documents.
	8 August 2009 FOI request, following a complete failure by DVA to respond to my concerns, for the outstanding documents from the 5 January 2009 FOI request relating to my s22
2 October and 28 October 2009. Documents are released but several tranches withheld pending payment.	
13 September 2010. Appeal to the AAT heard. Agreement brokered that I may request a Section 54 review of any DVA determination regarding any of the above FOI requests. I request reviews of only two items and clarification of advice provided to DVA's counsel for a third.	

**Schedule of Alleged Breaches of the APS Code of Conduct and the AD (JR) Act
by
s 47F of the Department of Veterans' Affairs**

APS Code of Conduct or Section of the ADJR	Date and Item	Breach Actions
When acting in the course of APS employment, comply with all applicable Australian laws	5 January 2009 FOI request	s 47F, as required under FOI Act Section 15 (5) (b), failed to take any step to notify of a decision on the request within thirty days. Even with the intervention of the Commonwealth Ombudsman, total time taken was 270 days.
		s 47F, as required under FOI Act Section 15 (6) (a & b), failed to obtain a determination for an extension by a further period of thirty days and failed to inform the applicant of that decision. s 47F has never fulfilled this requirement.
	5 June 2009 FOI request	s 47F, as required under FOI Act Section 15 (5) (a), failed to notify applicant that the request was received.
		s 47F, as required under FOI Act Section 15 (5) (b), failed to take any step to notify of a decision on the request within thirty days. Even with the intervention of the Commonwealth Ombudsman, total time taken was 119 days.
		s 47F, as required under FOI Act Section 15 (6) (a & b), failed to obtain a determination for an extension by a further period of thirty days and failed to inform the applicant of that decision.
		s 47F, as required under FOI Act Section 54, failed to have an internal review conducted by a person (not being the person who made the decision). He conducted the review of his own decision and note that no fee was requested in his determination when stating my right to a review. At the s 22 DVA's counsel argued that s 47F letter of 28 October 2010 in response to my appeal could not be considered a review as it was written by the original decision maker.

	8 August 2009 FOI request	s 47F did not confirm that a request for documents was received as required under FOI Act Section 15 (5) (a).
		s 47F , as required under FOI Act Section 15 (5) (b), failed to take any step to notify of a decision on the request within thirty days. Even with the intervention of the Commonwealth Ombudsman, total time taken was 55 days.
		s 47F , as required under FOI Act Section 15 (6) (a & b), failed to obtain a determination for an extension by a further period of thirty days and failed to inform the applicant of that decision.
	19 September 2010 request for reviews under Section 54 of the FOI Act as brokered in an agreement following the s 22	s 47F made the determination to not provide documents under my 5 June 2009 FOI request and also to impose the original charge of \$28,000 for my 5 January 2009 FOI request. He was also the officer who made the determinations on 2 October 2009 to reduce this fee to \$15,059.40 should I require the documents covered by the IT charge. As required by Section 54 of the FOI Act and as stated by DVA's counsel at s 22 an officer other than the officer who made the determination must conduct a Section 54 review. s 47F 's decision to conduct this review, especially in light of his statement that DVA's counsel was correctly briefed, can only be seen as a deliberate breach of the legislative requirements of the FOI Act. Note that this opinion is reinforced by the fact my letter of 14 October 2010 to DVA reminding them of the Section 54 requirement was ignored.
Behave with honesty and integrity in the course of APS employment	5 January 2009 FOI request	I lodged a complaint with the Commonwealth Ombudsman following the failure by s 47F to either action this request or even acknowledge its existence. On 19 March 2009 the Ombudsman agreed to investigate this complaint. The very next day, s 47F mailed a letter of demand for \$28,000. Note that the email from DVA's IT suggesting an approximate charge was received on 13 January 2009. In the subsequent 66 days s 47F did not confirm this charge nor seek a firm quote. Yet, the very next day after the Ombudsman's decision to investigate, s 47F sent a letter of demand for \$28,000. His letter of 20 March 2009 can only be viewed as a form of punishment for my daring to avail myself of my right to seek assistance. As such his letter of 20 March 2009 was a clear failure to act with integrity.

8 August 2009 FOI request	<p>In his determination of 2 October 2009, s 47F quoted fees of \$4,785.75 to recover documents for the period 1/9/2007 to 21/10/2007. In response to my advice that this was several months prior to the period covering the requested documents and therefore out of scope of my request and that the fee should not apply, s 47F replied on 28 October 2010 and reaffirmed the quote.</p> <p>Despite his previous quotes being highly inflated, s 47F ignored that the quote was for documents not covered by the request. He also ignored, although I had again pointed it out to him, that the reason why documents prior to and including 21/10/2007 were so expensive was that date saw a major change to DVA's IT practice (journaling). Documents after this date were easily recoverable as shown by the speed with which the IT Security Adviser was able to recover emails without the assistance of any IT consultants. Refer to the IT Security Adviser's email of 13 January 2009.</p> <p>s 47F reaffirmation of his decision to impose these charges can only be viewed as a form of punishment for my daring to continue to press for the release of these documents. As such his letter of 28 October 2009 was a clear failure to act with integrity.</p> <p>Finally, note that these officers were all (with the exception of one) still in DVA's employ at the time of the 5 January 2009 FOI application and for months afterwards. That they had left by the time it was processed was because of the delays imposed by s 47F not because of any delay by myself. Once again, s 47F's decision to impose such extravagant fees because of delays he himself had imposed can only be considered a form of punishment for my daring to continue with the FOI request.</p>
s 22	<p>Provided an incorrect brief to DVA's counsel in which it was alleged that s 47F letters of 2 October 2009 and 28 October 2009 could not be considered a Section 54 response to his 20 March 2009 determination as it was an entirely new application because I had changed the scope of the request by:</p> <ol style="list-style-type: none"> 1. Changing the officers covered by the scope of the request; and 2. Changing the period covered by the request. <p>I did not change the officers covered by the request, DVA (or s 47F) changed them. I wrote regular letters to DVA pointing out their error, the majority of which were ignored. Note that much of the expense resulted from having to reconstruct two mail boxes for two different officers. I only ever sought documents from one. However, in his 28 October 2009 letter s 47F acknowledge the error and noted my concern that the quote "... relates to the records of three people and not just s 47F". The estimate was sought only in relation to s 47F records and it must be noted that it is an estimate." How can he then write on 4 October 2010 in response to my concerns that DVA's counsel</p>

		<p>provided misleading information to the AAT that: 'The legal representative was acting under correct instructions....'</p> <p>I did alter the period of the request to avoid the period covered by the IT charges (1 September 2007 to 21 September 2007). This is within the FOI guidelines that require agencies to negotiate changes to scope to avoid excessive fees.¹ Note that until the Ombudsman intercession and the provision of an itemised quote, I was being told that the fee was for the entire period covered by the request. s 47F made no attempt to advise that virtually all of the fees were avoidable. The end period of the request was increased by four days, I am no longer sure why, but the new dates matches the period that the IT Security Adviser states that documents were easily recoverable. Again, I do not see how these changes to the date represent such a significant change that s 47F could instruct DVA's counsel that I had so altered the scope of my request to the point that I had created a new FOI application.</p>
	19 September 2010 request for reviews under Section 54 of the FOI Act	<p>I requested a review of s 47F determination to not provide documents sought under the 5 June 2009 FOI request as per the agreement negotiated s 22 s 47F had refused to provide those documents on 2 October 2009 and again on 28 October 2009 on the grounds that all the documents were provided. In hi reply to this Section 54 request s 47F refers not to the 5 June 2009 FOI request which specified three email chains, but to documents which even he specifies in his 2009 letters as covered by the other FOI requests. His response is completely irrelevant to the 5 June 2009 FOI request.</p> <p>As for the previous refusal to provide these documents a simple review of the minute to which s 47F s 47E(d) refers to as having fully identified and reviewed the documents would show that the three email chains requested were not covered by the scope of that review. It is why I requested them.</p> <p>The 5 June 2009 FOI request is for a handful of documents amounting to perhaps five or ten pages. It is very specific because of the difficulty I had in having DVA release them. s 47F did not refer to my 5 June 2009 FOI request out of either malice or incompetence, though I note that he specifically states that 'Further action on this review will be suspended pending the receipt of this information.' As I have already pointed out to DVA that the review needs to be conducted by someone other than s 47F I believe any correspondence I will enter into will be</p>

¹ 'Where charges are to be high – such as where there is a high volume of documents within the scope of the request – agencies must consult with applicants about the possibility of reducing charges by reducing the scope of the request, preferably before a formal decision is made, advising them of their liability to pay charges. Agencies are obliged to help applicants focus their request of the documents they really want.'

		ignored once more and that this is just another delaying tactic.
AD (JR) Act Section 6 (2) (d) which prohibits the exercise of a discretionary power in bad faith.	5 January 2009 FOI request	<p>I lodged a complaint with the Commonwealth Ombudsman following the failure by s 47F to either action this request or even acknowledge its existence. On 19 March 2009 the Ombudsman agreed to investigate this complaint. The very next day, s 47F mailed a letter of demand for \$28,000.</p> <p>Note that the email from DVA's IT suggesting an approximate charge was received on 13 January 2009. In the subsequent 66 days s 47F did not confirm this charge nor seek a firm quote. Yet, the very next day after the Ombudsman's decision to investigate, s 47F sent a letter of demand for \$28,000. His letter of 20 March 2009 can only be viewed as a form of punishment for my daring to avail myself of my right to seek assistance. As such his letter of 20 March 2009 was the exercise of a discretionary power in bad faith.</p>
	8 August 2009 FOI request	<p>In his determination of 2 October 2009 s 47F quoted fees of \$4,785.75 to recover documents for the period 1/9/2007 to 21/10/2007. In response to my advice that this was several months out of scope of my request and that the fee should not apply, s 47F replied on 28 October 2010 and reaffirmed the quote.</p> <p>Despite his previous quotes being highly suspect, s 47F ignored that the quote was for documents not covered by the request. He also ignored, although I had again pointed it out to him, that the reason why documents prior to and including 21/10/2007 were so expensive was that date saw a major change to DVA's IT practice (journaling). Documents after this date were easily recoverable as shown by the ease with which the IT Security Adviser was able to recover emails. Refer his email of 13 January 2009,</p> <p>s 47F's reaffirmation of his decision to impose these charges can only be viewed as a form of punishment for my daring to continue to press for the release of these documents. As such his letter of 28 October 2009 was the exercise of a discretionary power in bad faith.</p>
AD (JR) Act Section 6 (2) (j) which prohibits the exercise of a power in a way that constitutes an abuse of power.	19 September 2010 request for reviews under Section 54 of the FOI	s 47F made the determination to not provide documents under my 5 June 2009 FOI request and also to impose the original charge of \$28,000 for my 5 January 2009 FOI request. He was also the officer who made the determinations on 2 October 2009 to reduce this fee to \$15,059.40 should I require the documents covered by the IT charge.

	<p>Act as brokered in an agreement following the 13 September 2010 AAT hearing</p>	<p>As required by Section 54 of the FOI Act and as stated by DVA's counsel at the s 22 [REDACTED] an officer other than the officer who made the determination must conduct a Section 54 review.</p> <p>s 47F [REDACTED] decision to conduct this review, especially in light of his statement that DVA's counsel was correctly briefed, can only be seen as a deliberate breach of the legislative requirements of the FOI Act.</p> <p>Note that this opinion is reinforced by the fact my letter of 14 October 2010 to DVA reminding them of this requirement was ignored.</p> <p>His decision to conduct the review, when he was the original decision maker but, additionally, is no longer head of the section responsible for implementing the FOI request, is a deliberate attempt to avoid scrutiny of his original determinations and prevent the release of the requested documents for reasons only he can explain.</p>
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FOIREQ22/00120 051

s22

Nicolaou, Irene
09-May-2022 10:59 AM**Title**

s22 | DVA - Department of Veterans' Affairs

Receipt Details

File Type:	FOI	Received Date:	03-Jun-2011 12:00 AM
Case Type:	Decline	Received By:	Zatschler, Elizabeth
How Received:		Registered Date:	16-Jun-2011 7:22 AM
Owned By:	O'Brien, Peter	Registered By:	O'Brien, Peter
		Closed Date:	22-Nov-2011 8:28 AM
		Closed By:	O'Brien, Peter

Case Details

Stage:	Closed
Current File Holder:	Bennett, Charine
How Received:	Post
Validation:	Valid
Sensitivity:	Not sensitive
File Security:	UNCLASSIFIED
Primary Client Group:	Individual
Parent Case Entity Code:	Complaint
Agency FOI Stage:	Internal review decision
Respondent Client Group:	Agency
Complexity:	Low
Case Primary Person:	s22
Case Respondent:	DVA - Department of Veterans' Affairs
Retention Class:	OAIC RA 61986 (D2)
Destruction Due Date:	22-Nov-2013

Case Parties - 3

Complainant Client:	s22
Respondent Client:	DVA - Department of Veterans' Affairs
Respondent Contact:	Elliott, Emily

Summary

s22 complains about delay on the part of DVA processing an FOI request. At the beginning of his cover letter he states the delay is in processing a request for internal review filed on 18.2.11 however it appears his complaint relates to the length of time it took the application to get to internal review (2.5 years on his reckoning).

It seems s22 first filed an FOI application in November 2008 and sought internal review in May 2009 at which time he made a new application requesting the same documents (he also filed another FOI application in August 2009). The new application was refused in October 2009 and he appealed to the AAT. DVA argued the AAT had no jurisdiction because there had been no internal review and at the end of in last year it was referred back to DVA for review under s 54.

It is not clear how much of s22 complaint falls within the scope of this office's power - he has attached a 6 page schedule of breaches of the APS Act by a DVA officer - a complaint best filed with DVA. Also it is not

FOIREQ22/00120 052

clear why he waited so long to complain (he did complain to the Commonwealth Ombudsman in March 2009). Given that the internal review has now been processed it is not clear what outcome s22 hopes to achieve from his complaint (I suspect disciplinary action against s 47F).

Issues - 3

Issue Description: Processing Request

Is Primary Issue: Yes

Issue Allegation: inadequate searches

Issue Outcome: withdrawn

Issue Description: Administrative deficiency

Is Primary Issue: No

Issue Allegation: incorrect application of law

Issue Comments: Complaint re processing of internal review - whether done by same person who did initial FOI - appears to have been considered by AAT

Issue Outcome: withdrawn

Issue Description: Processing Request

Is Primary Issue: No

Issue Allegation: unsatisfactory customer service

Issue Comments: Service standard complaints - lack of acknowledgment, delay

Issue Outcome: withdrawn

Actions - 32 (All Completed)

Action	Owner	Due	Completed
Record case details and attach documents	Zatschler, Elizabeth	17-Jun-2011	16-Jun-2011
Move to Triage basket	Zatschler, Elizabeth	17-Jun-2011	16-Jun-2011
Allocate to Triage Officer (CP)	FOI - Triage	17-Jun-2011	11-Jul-2011, Harlock, Raewyn
Ownership Reassigned	Zatschler, Elizabeth	16-Jun-2011	16-Jun-2011
Assigned to 'Triage' by 'Zatschler, Elizabeth'			
Ownership Reassigned	Zatschler, Elizabeth	16-Jun-2011	16-Jun-2011
Assigned to 'Triage' by 'Zatschler, Elizabeth'			
First Check	Harlock, Raewyn	12-Jul-2011	11-Jul-2011

Correctly registered as complaint. Although some of the issues complained of fall outside the scope of this office's power (breaches of the code of conduct on the part of s 47F) his main complaint relates to delay processing an FOI request. However that request has not been finalised so it is now clear what s22 seeks as the outcome of his complaint.

Ownership Reassigned	Harlock, Raewyn	11-Jul-2011	11-Jul-2011
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Assigned to 'Harlock, Raewyn' by 'Harlock, Raewyn'

FOIREQ22/00120 053

Move to Mail Assessor basket	Harlock, Raewyn	12-Jul-2011	11-Jul-2011
Allocate to Mail Assessor User (CP)	FOI - IC reviews - Assessment	12-Jul-2011	11-Jul-2011, Harlock, Raewyn
Ownership Reassigned	Harlock, Raewyn	11-Jul-2011	11-Jul-2011

Assigned to 'Mail Assessor' by 'Harlock, Raewyn'

Assess Path (CP)	O'Brien, Peter	12-Jul-2011	01-Aug-2011, Bennett, Charine: Valid – Preliminary Inquiry
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Further information required to understand which actions of agency s22 is seeking be investigated and what outcomes he is seeking. Contact DVA to advise them that we have received a complaint and check status of s22 current applications, ask for the outcomes of any complaints DVA has dealt with about FOI requests he has made in his personal capacity since 23 November 2008 FOI request.

Ownership Reassigned	O'Brien, Peter	19-Jul-2011	19-Jul-2011
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Reassigned from 'Mail Assessor' to 'O'Brien, Peter' by 'O'Brien, Peter'

Send Acknowledgement (CP CADM)	Bennett, Charine	02-Aug-2011	02-Aug-2011
Ownership Reassigned	Bennett, Charine	01-Aug-2011	01-Aug-2011

Assigned to 'Allocation' by 'Bennett, Charine'

Allocate Complaint	O'Brien, Peter	03-Aug-2011	02-Aug-2011, Bennett, Charine
Prepare Plan (CP)	O'Brien, Peter	03-Aug-2011	22-Nov-2011

Please refer to assessment - contact DVA about this complaint, seek information about extent to which they have dealt with the complaint issues, status of any outstanding complaints

Ownership Reassigned	Bennett, Charine	02-Aug-2011	02-Aug-2011
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Reassigned from 'Allocation' to 'O'Brien, Peter' by 'Bennett, Charine'

Phone call to respondent	O'Brien, Peter	15-Nov-2011	22-Nov-2011
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Call to DVA Contact officer, left message request a return call

Phone call to complainant/applicant	O'Brien, Peter	15-Nov-2011	14-Nov-2011
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Phone call to s22 - left a message should be home within the hour. Returned call - left a message for me and mobile number to ring him on Called s22 and explained that my review of the complaint indicated that his primary concern was the actions of s 47F. I explained given these matters had also been through the Ombudsman and AAT he would need to be clear with us what he wanted investigated and what outcome he would like to achieve. s22 ask so what do you recommend. I explained that in my view his complaint could be better addressed through a code of conduct complaint to DVA. s22 stated that there was no point, it wouldn't be investigated. I explained that if he wanted this office to look at his complaint he would need to identify the actions and outcomes. s22 stated that he want this noted on the file and that he withdraws the complaint. I confirmed that he would like the details for how to make a code of conduct complaint forwarded to him and he stated that he does. confirmed still same postal address.

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Seek approval of plan (CP)	Bennett, Charine	23-Nov-2011	22-Nov-2011, O'Brien, Peter: Approved
Complaint withdrawn			
Conduct Preliminary Inquiries (CP)	O'Brien, Peter	23-Nov-2011	22-Nov-2011
Discussed with complainant - complaint withdrawn			
Analyse Preliminary Inquiries	O'Brien, Peter	23-Nov-2011	22-Nov-2011
Make recommendations to supervisor (CP PI)	O'Brien, Peter	23-Nov-2011	22-Nov-2011
Decide path (CP PI)	Bennett, Charine	23-Nov-2011	22-Nov-2011, O'Brien, Peter: Ready to Close
Allocate Complaint	O'Brien, Peter	23-Nov-2011	22-Nov-2011
Prepare s73 letter for approval (CP DEC)	O'Brien, Peter	23-Nov-2011	22-Nov-2011
Review s73 letter (CP DEC)	Bennett, Charine	23-Nov-2011	22-Nov-2011, O'Brien, Peter
Commissioner approves s73 letter (CP DEC)	O'Brien, Peter	23-Nov-2011	22-Nov-2011
Send s73 letter (CP DEC)	O'Brien, Peter	12-Dec-2011	22-Nov-2011
Await response to s73 letter (CP DEC)	O'Brien, Peter	12-Dec-2011	22-Nov-2011: No change in view
Complaint withdrawn, no s 73, no 2 week wait for response			
Notify relevant parties of closure (CP DEC)	O'Brien, Peter	23-Nov-2011	22-Nov-2011
Close Complaint (CP DEC)	O'Brien, Peter	23-Nov-2011	22-Nov-2011

Documents - 5

Title	Date Added	By
Scan	16-Jun-2011 7:13 AM	Zatschler, Elizabeth
FOI Complaint Acknowledgement to Complainant - s22	01-Aug-2011 8:28 PM	Bennett, Charine
FOI Complaint withdrawal to Complainant- s22 - (1).doc	22-Nov-2011 8:22 AM	O'Brien, Peter
Complaint s22 [SEC=IN-CONFIDENCE]	14-Nov-2011 12:03 PM	O'Brien, Peter
s22 submission 15 Aug 11.pdf	18-Aug-2011 8:23 AM	O'Brien, Peter

Cross References - 2

Case	Comments
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s22
 [REDACTED]

Comments - 1

Created	By	Comment
22-Nov-2011 8:28 AM	O'Brien, Peter	Case Closed by s 47E(d) on 22-Nov-2011 08:28

From: s22
To: [Enquiries](#)
Subject: s22 - FOI complaint
Date: Monday, 20 June 2011 10:21:30 AM
Attachments: [FOI document delay.docx](#)

Office of the Australian Information Commissioner

Dear Sir / Madam,

I would like to lodge a complaint against the Department of Veterans Affairs (DVA) for the length of time they are taking to process an FOI request.

On the 2 May I spoke with Gail and was advised that I was able to lodge this complaint with the OAIC even though it was a part of a complaint lodged with the Commonwealth Ombudsman.

Please see attached.

Thanking you,

Yours sincerely

s22

FOIREQ22/00120 056

s22

Nicolaou, Irene
09-May-2022 11:00 AM**Title**

s22 | DVA - Department of Veterans' Affairs

Receipt Details

File Type:	FOI	Received Date:	20-Jun-2011 10:40 AM
Case Type:	Investigation	Received By:	Oliva, John
How Received:		Registered Date:	20-Jun-2011 10:40 AM
Owned By:	O'Brien, Peter	Registered By:	O'Brien, Peter
		Closed Date:	16-Oct-2012 2:25 PM
		Closed By:	O'Brien, Peter

Case Details

Stage:	Closed
Current File Holder:	Kirkwood, Ben
How Received:	Email
Validation:	Valid
Sensitivity:	Not sensitive
File Security:	UNCLASSIFIED
Primary Client Group:	Individual
Parent Case Entity Code:	Complaint
Agency FOI Stage:	Initial decision
Respondent Client Group:	Agency
Complexity:	Low
Case Primary Person:	s22
Case Respondent:	DVA - Department of Veterans' Affairs
Retention Class:	OAIC RA 61986 (D2)
Destruction Due Date:	16-Oct-2014

Case Parties - 3

Complainant Client:	s22
Respondent Client:	DVA - Department of Veterans' Affairs
Respondent Contact:	Spiers, Carolyn

Summary

s 86 sent 02/10/2012

Initial FOI application lodged pre 1 November 2010. A complaint is the only option open to s22 regarding his FOI application of 25 July 2011 in his dealings with the OAIC. s22 letter of 28 June indicates that the requested documents were received in June 2011.

The complaint refers to two other applications which were lodged on 24 November 2010 and 7 January 2011. A decision on either of these applications does not appear to have been made. There is no evidence of DVA having sought an EOT in relation to any of s22 requests. s22 may be able to seek merits review of a deemed decision in relation to these two post 1 November FOI applications.

Issues - 3**Issue Description:** Processing Request**Is Primary Issue:** Yes

FOIREQ22/00120 057

Issue Allegation: processing delay**Issue Remedy:** explanation | other systemic remedy |**Issue Comments:** Approximately 12 months since the application was lodged. The applicant received partial access on 6 December 2010. s22 application includes a chronological list of events relating to the FOI application subject of this complaint. the Ombudsman's office have been previously involved.**Issue Outcome:** s86 - no recommendations made**Issue Description:** Processing Request**Is Primary Issue:** No**Issue Allegation:** unsatisfactory customer service**Issue Remedy:** explanation | other systemic remedy |**Issue Comments:** s22 alleges DVA misled the Ombudsman's office, and failed to apologise for doing so. s22 asks that the OAIC provide him with the opportunity to respond to any DVA submission it receives.**Issue Outcome:** s86 - no recommendations made**Issue Description:** Processing Request**Is Primary Issue:** No**Issue Allegation:** processing error**Issue Remedy:** explanation | other systemic remedy |**Issue Comments:** s22 has 'concerns about DVA's record keeping, communication, lack of attention to the facts, supplying misleading and incorrect information.'**Issue Outcome:** s86 - no recommendations made**Actions - 110 (All Completed)**

Action	Owner	Due	Completed
Record case details and attach documents	Oliva, John	21-Jun-2011	20-Jun-2011
Move to Triage basket	Oliva, John	21-Jun-2011	20-Jun-2011
Allocate to Triage Officer (CP)	FOI - Triage	21-Jun-2011	14-Jul-2011, Kirkwood, Ben
Ownership Reassigned	Oliva, John	20-Jun-2011	20-Jun-2011
Assigned to 'Triage' by 'Oliva, John'			
Ownership Reassigned	Oliva, John	20-Jun-2011	20-Jun-2011
Assigned to 'Triage' by 'Oliva, John'			
Phone call from complainant	FOI - Triage	28-Jun-2011	12-Jul-2011, Dixon, Phil
C called, advising he had additional information to add to his complaint. Advised C of Ref number and to put it on any additional information he sends in. Advised C that complaint is waiting to be allocated.			
Correspondence from complainant	Kirkwood, Ben	29-Jun-2011	15-Jul-2011
email from Compl			
Case Note	Kirkwood, Ben	29-Jul-2011	15-Jul-2011
Call from C advising that DVA has told him that they don't have certain documents, however, C has found them through other agencies and believes DVA is lying to him. I advised that his case has not been assigned			

FOIREQ22/00120 058

to anyone at this stage, but I would add his comments to his complaint. I advised if there are certain documents that he wants us to consider, he can provide a copy to us via email.

Phone call from complainant	FOI - Triage	13-Jul-2011	12-Jul-2011, Dixon, Phil
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Phone call from C to check progress of case. Advised stage.

First Check	Kirkwood, Ben	15-Jul-2011	15-Jul-2011
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Initial FOI application lodged pre 1 November 2010. A complaint is the only option open to s22 regarding his FOI application of 25 July 2011 in his dealings with the OAIC. s22 letter of 28 June indicates that the requested documents were received in June 2011. The complaint refers to two other applications which were lodged on 24 November 2010 and 7 January 2011. A decision on either of these applications does not appear to have been made. There is no evidence of DVA having sought an EOT in relation to any of s22 requests. s22 may be able to seek merits review of a deemed decision in relation to these two post 1 November FOI applications. Recommend writing to DVA and requesting progress report on all three applications referred to by s22 and any notice's under s 26 that have been issued in relation to the applications.

Ownership Reassigned	Kirkwood, Ben	14-Jul-2011	14-Jul-2011
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Assigned to 'Kirkwood, Ben' by 'Kirkwood, Ben'

Move to Mail Assessor basket	Kirkwood, Ben	18-Jul-2011	15-Jul-2011
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Allocate to Mail Assessor User (CP)	FOI - IC reviews - Assessment	18-Jul-2011	18-Jul-2011, Kirkwood, Ben
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Ownership Reassigned	Kirkwood, Ben	15-Jul-2011	15-Jul-2011
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Assigned to 'Mail Assessor' by 'Kirkwood, Ben'

Assess Path (CP)	FOI - IC reviews - Assessment	19-Jul-2011	21-Jul-2011, Bennett, Charine: More Information
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Please contact Ombudsman to see if they are dealing with the first FOI request in their complaint investigation or a related matter (it appears they may be). Please seek clarification from applicant about whether he has now received the decisions for the post 1 November FOI requests and advise him how he can apply for review of these if he wants to - suggest he provide copies of the requests that have since been deemed to be refused.

Allocate Complaint	Allocation - FOI Case Management	22-Jul-2011	21-Jul-2011, Bennett, Charine
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Ownership Reassigned	Bennett, Charine	21-Jul-2011	21-Jul-2011
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Assigned to 'Allocation' by 'Bennett, Charine'

Send Request for More Information (CP MA)	Kirkwood, Ben	22-Jul-2011	01-Sep-2011
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Draft prepared and the Ombudsman's office contacted.

Ownership Reassigned	Bennett, Charine	21-Jul-2011	21-Jul-2011
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Assigned to 'Kirkwood, Ben' by 'Bennett, Charine'

FOIREQ22/00120 059

Received Phone Call Kirkwood, Ben 18-Aug-2011 17-Aug-2011

s22 phoned regarding developments in his case. He referred to the DVA having mislead him in its attempt to have him finalise an earlier FOI application and lodge a new one. I asked him to provide copies of the correspondence he had received regarding any access request that had not been finalised and any recent correspondence he'd had with the Ombudsman's Office. s22 agreed to do so.

Phone call to other Kirkwood, Ben 01-Sep-2011 31-Aug-2011

I phoned Mr Gregory s 47E(d) from the Ombudsman's Office to ascertain if the s22 had a matter on foot with them in regards to his FOI request of 28 July 2011. s 47E(d) asked that I e-mail this enquiry to s22

Phone call to complainant/applicant Kirkwood, Ben 02-Sep-2011 01-Sep-2011

I phoned s22 as agreed. I advised him that I had considered his correspondence and intended sending him a letter via e-mail by tomorrow morning at the latest requesting additional information. I indicated I would first be consulting my supervisor to confirm this was the appropriate course of action and if it was decided a different path was appropriate I would let him know today either by phone or by e-mail. I informed s22 that I had contacted the Ombudsman's office, but was unsure whether they would be able to provide me with a response. s22 said he has a matter currently on foot with the Ombudsman and he needs to provide a response to them sometime in September. s22 indicated the only acknowledgement of an FOI application he has received from DVA was dated 6 October 2011 in relation to his request of 28 July 2011. s22 indicated he believes DVA informed the Ombudsman's office there is a new request so the delay in processing the request does not appear to be so great.

Await More Information (CP MA) Kirkwood, Ben 15-Sep-2011 12-Sep-2011

Request for further information e-mailed to s22 Response due 15 September 2011

Phone call from other Kirkwood, Ben 02-Sep-2011 01-Sep-2011

Luke s 47E(d) from the Ombudsman's Office phoned (contact details: s22 and s22). He advised the Ombudsman's investigation of the FOI application of 28 July 2010 was closed in November 2010. The Ombudsman's Office commenced a further investigation a couple of months ago. There was confusion regarding the term 'supplementary' in DVA's correspondence with DVA. However, based on the information provided by s22 and DVA, the Ombudsman's Office formed the view that although related, a new request had been made in December 2010 (the request was a different one in that its scope was different). s 47E(d) advised that he had written to s22 advising him of the Office's intention of closing his complaint on the grounds that the matter is more appropriately being investigated by the OAIC. He has been allowed until sometime in September to comment. s 47E(d) advises this position may need to be reassessed if the OAIC declines to investigate.

Case Note Kirkwood, Ben 29-Sep-2011 10-Oct-2011

Email received from Mat s 47E(d) of Cth Ombudsman advising that they had received an FOI request from s22 and that one of the documents falling within scope was an email from Ben Kirkwood of 31 August 2011. Responded via email advising that OAIC had no objections to the full release of the document, however it did not appear that it was in scope - s22 request was received on 17/08/11 and BK's email was generated on 31/08/11. Copies of email corro added to documents tab.

Received Phone Call Kirkwood, Ben 13-Sep-2011 12-Sep-2011

I received a phone message from s22 left at 10:58am on 9 September 2011. The first day I arrived back in the office I phoned s22 He indicated he couldn't take my call, but would call back in approximately 30 minutes.

FOIREQ22/00120 060

Phone call from Kirkwood, Ben 13-Sep-2011 12-Sep-2011
complainant

s22 phoned. He was concerned that some of the information in the form of e-mails between himself and DVA may cause confusion. I indicated that if he was concerned I was happy for him to not to include this information in his response, but that I may need to request this information from him after considering the other documentation he provided. s22 indicated that he had not received one document. I asked him to note this when he provides his response.

Recommend Path Kirkwood, Ben 30-Sep-2011 13-Feb-2012
S 73 discussed with Peter 13/2/2012

Phone call from Kirkwood, Ben 21-Sep-2011 10-Oct-2011
complainant

s22 rang for update on progress. I advised BK would contact him.

Received Phone Call Kirkwood, Ben 11-Oct-2011 10-Oct-2011

s22 phoned regarding the progress of his case. I offered my apologies but advised that I had been unable to process his request any further since our last conversation. s22 expressed his disappointment.

Phone call to Kirkwood, Ben 19-Oct-2011 18-Oct-2011
complainant/applicant

I phoned s22 as agreed to discuss the impact of the Ombudsman's decision not to investigate his complaint. s22 indicated he was on the phone to someone about computer problems. I invited s22 to phone me back when it was convenient.

Phone call to Kirkwood, Ben 19-Oct-2011 18-Oct-2011
complainant/applicant

I had a telephone conversation with s22. I noted the 4 October 2011 decision of the Office of the Ombudsman not to investigate his complaint and its finding that a decision had been made on his request of 25 July 2010 on 2 December 2011. I indicated that I would be discussing my recommendation with respect to the progress of this complaint this afternoon. I indicated my view on the information before me is that it was inappropriate for this Office to look at a matter that the Ombudsman had already investigated (investigation ceased on 16 November 2010); however, the delay in processing the requests that were made subsequently are matters that can be investigated by the Freedom of Information Commissioner, if they choose to exercise that discretion. I noted that if he wanted the IC to look into the decisions made or deemed to have been made by DVA this was something that could be done through IC review. If he had received a decision or the decision had been deemed to have been made for any request lodged post 1 November 2010 he had the option of seeking internal review and/or IC review. I noted the time frames for lodging an application for either had long since expired. He could apply to the OAIC but would need to lodge an EOT. I said my view was that it would be faster for him to make a fresh application with DVA. He would then be able to seek internal review if he was unhappy with the decision or apply directly to the OAIC in the event of another deemed decision. His complaint into the processing of his FOI requests would continue. s22 indicated he was clearer on the distinction between the complaint and IC review process. I e-mailed s22 OAIC fact sheets 12 & 13 for more information regarding IC review and complaints.

Phone call to Kirkwood, Ben 19-Oct-2011 18-Oct-2011
complainant/applicant

I phoned s22 after meeting with Raewyn and indicated that I would writing to DVA seeking further information. I asked if he was happy to hold off making a fresh FOI request until I'd received a response from the Department to avoid confusion. s22 was happy to do so.

FOIREQ22/00120 061

Await response from Kirkwood, Ben 01-Dec-2011 30-Nov-2011
respondent

Await Agency response to s 72 preliminary inquiry letter. due 4 November 2011. Agreed to extend the due date for DVA's response until 18 November 2011. DVA has indicated it will be able to provide a response by 28 November 2011. E-mail sent to DVA on 25 November 2011 enquiring whether a response will be made by 28 November 2011. Contact from the Department: Response will now be provided by Thursday 1 December 2011 (see case notes).

Phone call from Kirkwood, Ben 25-Oct-2011 24-Oct-2011
respondent

Ms Emily Elliot from DVA phoned indicating they needed until 18 November 2011 to respond to the OAIC's letter. I agreed to this timeframe.

Phone call to Kirkwood, Ben 16-Nov-2011 15-Nov-2011
respondent

I phoned Ms Amanda Gilmartin in response to her advice that the Department will be able to provide a response by 28 November 2011. Ms Martin indicated that she had tried to recall her e-mail as a decision had been made to escalate this request to a more senior officer. I noted that s22 complaint related to processing delays and indicated that the OAIC would need at least a partial response or a submission detailing the work that had been undertaken if the Department found that it was unable to meet the 28 November 2011 deadline.

Phone call to Kirkwood, Ben 16-Nov-2011 15-Nov-2011
complainant/applicant

I phoned s22 and advised him that DVA have indicated they will be able to respond to the OAIC letter by 28 November 2011. I informed s22 that I have spoken with DVA and requested at least a partial response, or the details of the work that has already been undertaken and what work remains outstanding, should DVA prove unable to provide a complete response in that time. s22 wanted to know who would be responding to the OAIC's letter I indicated I did not know (s 47F e-mail names a legal advisor; however, s 47F attempted to recall the e-mail because a more senior person will be responding). s22 was concerned that because s22 have a history with the DVA a response could be quite coloured. I indicated I would note his concerns, but indicated I thought it advisable not to try and second guess what DVA's response will be. I informed s22 I would contact him when a response was received.

Phone call to Kirkwood, Ben 30-Nov-2011 29-Nov-2011
respondent

I phoned DVA's Amanda Gilmartin to find out if the response to the OAIC's s72 letter has been sent. I left a message with another officer for her to return my call.

Phone call from Kirkwood, Ben 30-Nov-2011 29-Nov-2011
respondent

Ms Joanna Marshall from DVA phoned (s22). Ms Marshall advised there had been a delay in providing the response as DVA has undertaken an extensive second search of their records as they have been unable to locate s22 request dated 10 December 2011. Ms Marshall indicated that it is possible this request was not received. Ms Marshall stated that the response would be sent to me by Thursday at the latest. I phoned s22 and informed him of these developments and advised that I would be in contact with him on Friday if I did not receive a response of Wednesday as I will not be in the office on Thursday.

Correspondence from Kirkwood, Ben 01-Dec-2011 30-Nov-2011
respondent

Phone call to Kirkwood, Ben 05-Dec-2011 05-Dec-2011
respondent

FOIREQ22/00120 062

After discussing DVA's response of 30 November with Raewyn, I phoned Ms Joanna Marshall from DVA to ask for more detail in relation to their response to question 5; specifically how many current matter are outstanding and what their dates are. I left message on Ms Marshall's answering service.

Phone call to
complainant/applicant

Kirkwood, Ben 05-Dec-2011 05-Dec-2011

I tried to contact s22 on his mobile and landlines and was unsuccessful. I sent him an e-mail stating I would try him again on Monday.

Phone call to
complainant/applicant

Kirkwood, Ben 06-Dec-2011 05-Dec-2011

I tried to phone Ms Carolyn Spiers in relation to the Department's response dated 30 November 2011. I was informed Ms Spiers s 47F and was put through to Ms Marshall. I referred to the response to question 5 which indicated that a number of concurrent matters were outstanding. I was advised that only outstanding matters were the 10 December 2010 request which DVA has indicated they have not been able to locate (or have not received) and a request dated 21 October 2011. I asked for more information about the external review; however, Ms Marshall indicated that she was not familiar with the details other than one was underway.

Phone call to
complainant/applicant

Kirkwood, Ben 06-Dec-2011 05-Dec-2011

I phoned s22 and advised him that his FOI request dated 10 December 2011 had not been located by DVA. I indicate that he could make a s 54T EOT request, but the fasted means of obtaining this information (if he still requires it) would be to lodge a new FOI request. I reminded s22 of the requirements for a decision to be made within 30 days subject to various EOTs available under the Act, s22 was also advised of his internal and IC review rights. s22 appeared to accept my recommendation. With respect to s22 complaint I indicated I would be seeking guidance from a Deputy Director regarding processing the complaint. I advised s22 that s 47F s22 asked to see the DVA's response. I indicated I would clear this with my supervisor and either provide the document or contact him to advise why the document would not be provided.

Phone message
received

Kirkwood, Ben 07-Dec-2011 06-Dec-2011

s22 left a message for me to return his call this morning as he wanted to ask some questions.

Write to
applicant/complainant

Kirkwood, Ben 07-Dec-2011 06-Dec-2011

s22 has been provided with a copy of the Department's submission dated 30 November 2011

Phone call to
complainant/applicant

Kirkwood, Ben 07-Dec-2011 06-Dec-2011

I returned s22 call. s22 had a number of questions regarding FOI processes. I drew s22 attention to the requirements for an FOI request under s 15(2) of the Act and the requirement for a s 26 decision record. I advised that it is my understanding that unless the FOI applicant has sought review or lodged a fresh FOI application a subsequent decision by an agency to provided further information is a decision outside the Act. s22 advised that along with a decision record and schedule of documents he had received documents marked totally exempt and which were not included in the schedule. s22 wanted to know whether this means he was provided access to these totally exempt documents. s22 was concerned about whether he could use this information in his dealings with the Department. I indicated that my initial reaction would be that access had been granted; however, he should seek advice if he was concerned. I indicated that I would check to see if the Act or this Office had a position on this. After discussing this question with Raewyn I phoned s22 and advised that the advice I had received was

FOIREQ22/00120 063

that if documentation had been released, which was not referred to in the decision record or schedule of documents, then it would appear to have been accidentally released outside the Act. s22 indicated asked about the privacy implication of a such a release if the documents related to third parties. I indicated he may wish to contact the Department and if a complaint was received alleging breach of privacy this would be assessed by the OAIC's privacy section of the Compliance Branch.

Await response from respondent	Kirkwood, Ben	23-Dec-2011	11-Jan-2012
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DVA to advise when an external report regarding their interaction with the applicant will be completed and whether they will provide a copy of this report to the OAIC

Allocate to Mail Assessor User (CP)	Kirkwood, Ben	14-Feb-2012	13-Feb-2012
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Assess Path (CP)	Kirkwood, Ben	14-Feb-2012	23-Mar-2012: Valid – Investigation
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The agency appears to be trying to resolve this complaint.

Allocate Complaint	Allocation - FOI Case Management	14-Feb-2012	13-Feb-2012, Kirkwood, Ben
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Ownership Reassigned	Kirkwood, Ben	13-Feb-2012	13-Feb-2012
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Assigned to 'Allocation' by 'Kirkwood, Ben'

Prepare s73 letter for approval (CP DEC)	Kirkwood, Ben	14-Feb-2012	15-Feb-2012
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Ownership Reassigned	Kirkwood, Ben	13-Feb-2012	13-Feb-2012
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Assigned to 'Kirkwood, Ben' by 'Kirkwood, Ben'

Correspondence from complainant	Kirkwood, Ben	22-Feb-2012	21-Feb-2012
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Request for an update

Phone call to complainant/applicant	Kirkwood, Ben	22-Feb-2012	21-Feb-2012
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I phoned s22 after receiving an email from him asking for an update on his matter. I noted one of our prior conversations where he had advised that he had reached an agreement with DVA in which they would process his requests for documents outside the Act and he would not to lodge further FOI requests. I noted the DVA response to the OAIC indicated that his request of 10 December 2010 had not been received but they would process the request if s22 wished them to and that DVA were undertaking an external review which included it's handling of his FOI requests. I indicated as the agency was taking steps to address the matter I would recommend that the FOI Commissioner exercise his discretion not to continue to investigate his complaint and close his matter. While expressing a hope that the outcome of the external review would be satisfactory to both parties, I noted that any fresh application to the OAIC would be cross referenced with this complaint. s22 indicated that the DVA were processing his requests outside the Act; however, aside from not being bound by the Act's time frames the decisions on release were being made using the exemptions set out in the Act. He indicated that such a request had been made in October 2011. He had been advised that the scope of the request included an 800 page document and that he was yet to receive a decision on this request. I noted that requests outside the Act were not subject to the timeframes and review rights contained in the Act. I noted that s22 could lodge an FOI request for this information. s22 also expressed concern that he may not be provided with a copy of the external report as it included details regarding a third party. I noted that he could request this document under FOI, he still may not receive it, but he would receive a decision record telling him why and have potentially review options at the internal review, IC review and AAT stages if he was not happy. In any future FOI applications I urged s22 to utilise

FOIREQ22/00120 064

his review rights if he was unhappy with a decision or a deemed decision. I indicated that I was happy discuss the application of time frames under the Act and rights to review if he had any questions.

Correspondence from complainant	Kirkwood, Ben	29-Feb-2012	28-Feb-2012
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Phone call to complainant/applicant	Kirkwood, Ben	29-Feb-2012	29-Feb-2012
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I phoned s22 regarding the copy of the correspondence to DVA dated 28 February 2011 he emailed me today. I indicated his matter had been raised with one of the OAIC's Directors. I indicated that the OIAC was no longer considering closing the matter and apologised for the advice I had provided to this effect on 21 February 2012. I noted that because s22 complaint stems from delay, consideration was being given to whether that there may be scope to investigate delays in processing his requests outside of the Act as either a complaint or potentially IC reviews. This would require further investigation. In the conversation I reiterated that the IC's powers to investigate are limited to action arising under the Act. I noted that the schedule of information in his letter to DVA dated 28 February 2012 appears to be largely about actions under DVA's complaints process. s22 had indicated he was aware of this, but the information provided in the schedule was for context. I noted the OAIC was aware of the application and decision dates, including processing times, for the following FOI requests: · 28 July 2010 - 2 December 2010 (approximately 4 months) · 24 November 2010 - 21 January 2011 (approximately 2 months) · 10 December 2010 - DVA no record of receipt · 14 December 2010 - 14 June 2011 (approximately 6 months) · 7 January 2011 - 21 February 2011 (approximately 1.5 months) I then asked about processing of his request after this time. s22 indicated that since the Minister had directed the DVA to process his complaints in a timely fashion (in the first quarter of 2011?) he had lodged FOI applications on three or four occasions and these had been processed within the statutory timeframes. s22 stated that he had only lodged one request outside the Act on 21 October 2011. He has only received half of the approximately 800 documents covered by the scope of the request. This request includes s22 which has been missing for 6 months. s22 has lodged an FOI request for this outstanding information. s22 undertook to e-mail me copies of the request made outside the Act on 21 October 2011 and the subsequent FOI request. I indicated that I had emailed the DVA regarding the progress of the external report. I also indicated we be conducting further investigation and will be in contact with DVA. s22 subsequently emailed the requested information. s22 phoned me a short while afterwards he indicated that he had made an FOI on 9 December 2011 (if no stop clock provisions or extensions of time were applied a decision would have been due on 9 January 2012). s22 was advised that he would receive a decision by 13 January 2012. I asked s22 to send me the details of the request if he was unhappy with the timeliness of the response, noting that we would not investigate any matter where he was satisfied. s22 asked what the OAIC's position would be if there was a delay in the finalisation of the external report commissioned by the DVA. He also expressed concern about whether the reviewer had the necessary expertise in FOI matters. I stated that I would keep him informed of any delays. I also stated that I would be seeking direction regarding the findings made in relation to FOI including any delays leading up to the finalisation of the review. However, I would not attempt to pre-empt what course of action the OAIC would take.

Correspondence from complainant	Kirkwood, Ben	01-Mar-2012	29-Feb-2012
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Copy of the commissioning of an external review.

Correspondence from respondent	Kirkwood, Ben	05-Mar-2012	07-Mar-2012, Harlock, Raewyn
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Advice from DVA that the outstanding review is due at the end of April 2012.

Correspondence from complainant	Kirkwood, Ben	23-Mar-2012	22-Mar-2012
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Phone call to complainant/applicant	Kirkwood, Ben	23-Mar-2012	22-Mar-2012
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FOIREQ22/00120 065

I phoned s22 in relation to his email of 21 March 2012. s22 has received two decision records dated 7 March 2012 and 14 March 2012 releasing two different lots of documents relating to a single FOI request, but not all the requested documentation. s22 is concerned about what his review rights will be if no decision is made on the remainder of the documents covered by the scope of his request. I indicated that he could contact DVA to discuss and they could enter into a s 15AA agreement if s22 was willing to provide the agency with additional time. I indicated that if he did not receive all the documents relating to his request he could seek internal review and or IC review. I indicated that if he was not able to clarify the matter with DVA I was happy to look at any FOI decisions he wished to scan and send to me. In response to his concerns about the FOI & Privacy qualifications of the external reviewer DVA has engaged, I stated I would be seeking to complete our investigations prior to the external report is concluded. I indicated that I would advise s22 if there were further developments or changes.

Phone call to complainant/applicant	Kirkwood, Ben	26-Mar-2012	23-Mar-2012
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I called s22 in response to his email. I indicated that based on the information he had provided the last day for making a decision on his request of 22 February 2012 is today. I explained the requirements of s 15AA and provided general information about internal review and IC review. I reminded s22 of the Fact sheet 12 and indicated he was welcome to contact me if he had any further questions.

Phone message received	Kirkwood, Ben	26-Mar-2012	23-Mar-2012
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s22 left a phone message in which he said that his request of 22 February 2012 was deemed to have been refused yesterday. I phoned s22 and indicated that I calculated the 30 days to conclude today.

Send Acknowledgement (CP CADM)	Admin Officer	26-Mar-2012	23-Mar-2012, Kirkwood, Ben
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Ownership Reassigned	Kirkwood, Ben	23-Mar-2012	23-Mar-2012
Assigned to 'Allocation' by 'Kirkwood, Ben'			

Allocate Complaint	Allocation - FOI Case Management	26-Mar-2012	23-Mar-2012, Kirkwood, Ben
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Prepare Plan (CP)	Kirkwood, Ben	26-Mar-2012	23-Mar-2012
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Ownership Reassigned	Kirkwood, Ben	23-Mar-2012	23-Mar-2012
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Assigned to 'Kirkwood, Ben' by 'Kirkwood, Ben'

Seek approval of plan (CP)	Harlock, Raewyn	26-Mar-2012	23-Mar-2012, Kirkwood, Ben: Approved
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Notify Complainant of Investigation	Kirkwood, Ben	20-Mar-2012	20-Jul-2012
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Notify Agency of Investigation (CP)	Kirkwood, Ben	26-Mar-2012	23-Mar-2012
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Await Agency Response (CP INV)	Kirkwood, Ben	30-Apr-2012	13-Jul-2012
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The external review referenced in s 47F letter is scheduled to be completed on 28 February 2012. DVA has undertaken to provide the OAIC with a copy of the report. Request for an update e-mailed on 28 February 2012. Email received on Monday 5 March 2012 from DVA states that the external reviewer has requested more time. The review is scheduled to be completed by 30 April 2012. No response received.

Phone call to complainant/applicant	Kirkwood, Ben	28-Mar-2012	27-Mar-2012
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FOIREQ22/00120 066

I had a look at the decision that s22 forwarded. I advised that if he was confused about to which documents particular exemptions applied he should read the decision in conjunction with the schedule of documents. I he thought the decision was contradictory or incorrect then he could exercise his rights to internal review. I also explained the reference to 14 day consultation period with respect to the a potential practical refusal.

Phone call from complainant	Kirkwood, Ben	02-May-2012	01-May-2012
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s22 phoned. Discussed his FOI request. Amenable to a withdrawing this request if I'm able to get a copy of the s 15AA agreement from DVA. s22 went into detail regarding DVA and s22 and matters of consent and implied consent in relation to sensitive documents. It was not clear to me whether this related to an FOI, Privacy or internal complaints process and conveyed to s22 that I was unable to advise him on the information I had. I indicated he was welcome to lodge a fresh complaint application and a determination would be made as to whether this is an action under the Act. If it is not we may be able point him in the most appropriate direction.

Phone call from respondent	Kirkwood, Ben	02-May-2012	13-Jul-2012
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Ms Joanna Marshal from DVA phoned. I confirmed the requirements of notice under s 15AA and Ms Marshal agreed to send me email acknowledgement. I phoned s22 and indicated DVA would be providing notice and that I would provide him a copy. I was then up to him to decide if he wished to proceed to a formal FOI decision or withdraw.

Conduct Investigation (CP)	O'Brien, Peter	16-Jul-2012	02-Oct-2012: Preliminary View
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File Note	Kirkwood, Ben	16-Jul-2012	17-Jul-2012
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Draft s 75 notice prepared in accordance with the case discussion with Paul and Raewyn on 12 July 2012.

File Note	Kirkwood, Ben	18-Jul-2012	20-Jul-2012
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second draft of s 75 letter sent to Raewyn for consideration

Await response from respondent	O'Brien, Peter	10-Aug-2012	13-Aug-2012, Kirkwood, Ben
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Response to questions in s 75 letter required by 3 August 2012. DVA requested an extension of two weeks. On 2 August 2012 the DVA provided the reasons they are seeking an extension via email. They are now seeking a three week extension until 24 August 2012. Toni has request a response by 10 August 2012

Received Phone Call	Kirkwood, Ben	23-Jul-2012	31-Jul-2012
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s22 phoned in response to the s 75 letter. We discussed a subsequent complaint he had lodged today and the EOT provisions of s 15AA and S15AB

Phone message received	Kirkwood, Ben	01-Aug-2012	31-Jul-2012
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Mr Anthony Ryan (s22) from DVA phoned and left a message asking that I return his call regarding the Department's response to the investigation notice. I did so but the call went to his answering service. I indicated I would phone him back tomorrow.

Phone message received	Kirkwood, Ben	02-Aug-2012	01-Aug-2012
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Phone message received from Anthony Ryan from DVA at 09:38am. Mr Ryan indicated that he was in meetings this morning and if he would try and call me either at another point today. He also stated he would send a email about the approach DVA wished to take.

FOIREQ22/00120 067

Correspondence from Kirkwood, Ben 02-Aug-2012 01-Aug-2012
respondent

Email received from Anthony Ryan of DVA.

Write to respondent Kirkwood, Ben 02-Aug-2012 02-Aug-2012

I emailed Mr Ryan from DVA asking for reasons for the requested extension and details of the work that had been undertaken and work that remains to be done.

Phone call from Kirkwood, Ben 02-Aug-2012 01-Aug-2012
respondent

Mr Ryan from DVA phoned and indicated that they expected the s 22 to be completed very, soon possibly this Friday. DVA is asking for a 14 days to respond in a complete way to the OAIC rather than drip feeding information. The partial responses may also change as a result of the recommendations from the external report. Mr Ryan indicated that he would put DVA's reasons for seeking an extension into a further email.

Correspondence from Kirkwood, Ben 03-Aug-2012 02-Aug-2012
respondent

DVA has requested a three week extension via email.

File Note Kirkwood, Ben 03-Aug-2012 03-Aug-2012

DVA's request for an extension of time escalated to Paul.

Phone message Kirkwood, Ben 06-Aug-2012 03-Aug-2012
received

Mr Ryan from DVA left a phone message asking whether a decision had been made regarding an extension.

Phone call to Kirkwood, Ben 06-Aug-2012 03-Aug-2012
respondent

After discussing the matter with Paul I phoned Mr Ryan back and left a message on his answering service. I stated that I would respond to him via email.

Phone call to Pirani, Toni 08-Aug-2012 07-Aug-2012
respondent

Called Carolyn Spiers (s22) 3 August and left message. Voicemail response received 3 August. Called Carolyn Spiers again on 7 August and left message for her to return call.

Phone call to Kirkwood, Ben 13-Aug-2012 10-Aug-2012
complainant/applicant

I phoned s22 mobile number and reached his answering service. I left a message for him to return my call.

Phone call from Kirkwood, Ben 13-Aug-2012 10-Aug-2012
complainant

s22 returned my call and I advised him of the current status of the request. s22 indicated that if the Department responded saying they have implemented changes, they aren't working as evidenced by his other complaint to the OAIC. We discussed FOI processes for a period before the call was concluded. I undertook to keep s22 informed on the progress of the investigation.

Phone message O'Brien, Peter 16-Aug-2012 15-Aug-2012, Kirkwood, Ben
received

FOIREQ22/00120 068

s22 phoned and left a message asking for a call regarding DVA's response.

Phone call to complainant/applicant	O'Brien, Peter	16-Aug-2012	15-Aug-2012, Kirkwood, Ben
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I had a lengthy conversation with s22 where I informed him that a Deputy Director was currently considering whether his complaint should be dealt with concurrently or one at a time. s22 expressed concern that DVA's reference to his 26 FOI requests was part of an attempt to have him declared vexatious. I referred s22 to our website for more information, but indicated that there was no such request currently before the OAIC and noting there is a high bar for having a person declared vexatious for the purposes of the Act. s22 says the Department does not take responsibility for ensuring their staff are appropriately trained and brushes over their mistakes. We discussed various matters and I indicated that he could provide any material he felt appropriate (although he should attempt to resolve issues with DVA in the first instance) or seek review if his concern relates to a decision. I indicated that the OAIC would be looking to finalise the complaint(s) expeditiously and invited s22 to make any further comments or submissions regarding DVA's response as soon as possible. s22 will respond; however, the response will probably be relevant to both reviews. I indicated I would attach his response to both his complaint records.

Phone message received	O'Brien, Peter	20-Aug-2012	27-Aug-2012, Kirkwood, Ben
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s22 phoned and left a message asking whether s22 should respond to the Departments statements about the external review in their response of 10 August 2012

Correspondence from complainant	O'Brien, Peter	27-Aug-2012	27-Aug-2012, Kirkwood, Ben
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s22 provided comments on DVA's submission of 10 August 2012

Phone message received	O'Brien, Peter	28-Aug-2012	27-Aug-2012, Kirkwood, Ben
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phone messages received from s22 from 13:11 on 21 August 2012 and 16:24 on 23 August 2012. s22 wished to confirm whether his comments on DVA's response of 10 August 2012 had been received. s22 also wished to know if he should provide further information.

Phone call from respondent	O'Brien, Peter	12-Sep-2012	02-Oct-2012
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Ms Marshall phoned. She has been through the Departmental files and they do not appear to have received the 10 December 2010 request. Ms Marshall said that it does appear to be similar (if not exact wording) to the request received on 7 January 2011. Ms Marshall will put this in writing and include copies of the 7 January 2011 request and associated decision for clarity.

Phone call to respondent	O'Brien, Peter	01-Oct-2012	02-Oct-2012
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Discussed the transfer of the complaint to the Ombudsman, s22 understood explanation see docs s22 report of FOI - received by Dept questioned whether s22 - re s22 might be relevant to OAIC? it has been indicated that DVA response to the s22 review may be influenced by the s22 review - s22 has not seen either report. Explained we will make inquiries and if it is made relevant by the Dept we may considered (explained that this seemed unlikely)

Prepare s86 letter (CP INV)	O'Brien, Peter	03-Oct-2012	02-Oct-2012
Review s86 letter (CP	Gonzalez, Paula	03-Oct-2012	02-Oct-2012, O'Brien, Peter

FOIREQ22/00120 069

INV)

Commissioner approves s86 letter (CP INV)	O'Brien, Peter	03-Oct-2012	02-Oct-2012
Send s86 letter (CP INV)	O'Brien, Peter	22-Oct-2012	02-Oct-2012
Await Response to s86 letter (CP INV)	O'Brien, Peter	22-Oct-2012	16-Oct-2012: Agree
Correspondence from respondent	O'Brien, Peter	17-Oct-2012	16-Oct-2012
Ltr from DVA rec 15/10/12			
Notify Complainant of Closure (CP INV)	O'Brien, Peter	17-Oct-2012	16-Oct-2012
Notify Agency of Closure(CP INV)	O'Brien, Peter	17-Oct-2012	16-Oct-2012
Are there Recommendations? (CP)	O'Brien, Peter	17-Oct-2012	16-Oct-2012: No
Close Complaint (INV)	O'Brien, Peter	17-Oct-2012	16-Oct-2012

Documents - 106

Title	Date Added	By
s22 - FOI complaint	20-Jun-2011 10:21 AM	Oliva, John
s22 - EMAIL FROM COMPL	28-Jun-2011 2:22 PM	Oliva, John
s22	17-Aug-2011 2:58 PM	Kirkwood, Ben
RE: s22 [SEC=UNCLASSIFIED]	17-Aug-2011 3:02 PM	Kirkwood, Ben
FOI Complaint - Request for more information - to Complainant - s22	31-Aug-2011 10:18 AM	Kirkwood, Ben
Re: s22 [SEC=UNCLASSIFIED]	30-Aug-2011 3:55 PM	Kirkwood, Ben
Ombudsman reference: s22 - s22	31-Aug-2011 2:56 PM	Kirkwood, Ben
and the Department of Veterans Affairs - OAIC reference: s22 [SEC=UNCLASSIFIED]		
FOI Complaint - Request for more information - Case Number: s22 [SEC=UNCLASSIFIED]	01-Sep-2011 9:57 AM	Kirkwood, Ben
FW: Ommbudsman FOI - request for transfer [SEC=UNCLASSIFIED]	01-Sep-2011 4:14 PM	McConville, Ryan
RE: Ommbudsman FOI - request for transfer [SEC=UNCLASSIFIED]	01-Sep-2011 4:28 PM	McConville, Ryan
Additional information	12-Sep-2011 10:40 AM	Kirkwood, Ben
RE: Additional information [SEC=UNCLASSIFIED]	12-Sep-2011 10:49 AM	Kirkwood, Ben
Additional information s22	14-Oct-2011 10:45 AM	Kirkwood, Ben
Additional information s22	14-Oct-2011 10:45 AM	Kirkwood, Ben
RE: Additional information s22 [SEC=UNCLASSIFIED]	14-Oct-2011 11:13 AM	Kirkwood, Ben
Two fact sheets. [SEC=UNCLASSIFIED]	18-Oct-2011 12:46 PM	Kirkwood, Ben
Re: Two fact sheets. [SEC=UNCLASSIFIED]	18-Oct-2011 2:41 PM	Kirkwood, Ben
Preliminary Inquiry Notification to Respondent - s 47F	19-Oct-2011 10:23 AM	Kirkwood, Ben
Case Number: s22 [SEC=UNCLASSIFIED]	19-Oct-2011 3:52 PM	Kirkwood, Ben
Recall: Request for further extension s22	15-Nov-2011 10:30 AM	Kirkwood, Ben

FOIREQ22/00120 070

[SEC=UNCLASSIFIED]		
Request for further extension s22	15-Nov-2011 10:20 AM	Kirkwood, Ben
[SEC=UNCLASSIFIED]		
Re: Two fact sheets. [SEC=UNCLASSIFIED]	17-Nov-2011 10:23 AM	Kirkwood, Ben
Fm s22 - s22	23-Nov-2011 2:27 PM	Kirkwood, Ben
RE: Fm s22 - s22	23-Nov-2011 2:37 PM	Kirkwood, Ben
[SEC=UNCLASSIFIED]		
Re: Fm s22 - s22	23-Nov-2011 2:55 PM	Kirkwood, Ben
[SEC=UNCLASSIFIED]		
RE: Request for further extension s22	25-Nov-2011 11:42 AM	Kirkwood, Ben
[SEC=UNCLASSIFIED]		
Reply to Correspondence - OAIC - s22 - FoI Request	30-Nov-2011 2:54 PM	Kirkwood, Ben
Re: Fm s22 - s22	02-Dec-2011 1:20 PM	Kirkwood, Ben
[SEC=UNCLASSIFIED]		
RE: Fm s22 - s22	02-Dec-2011 4:55 PM	Kirkwood, Ben
[SEC=UNCLASSIFIED]		
s22 - DVA's response to the OAIC dated 30 November 2011 [SEC=UNCLASSIFIED]	06-Dec-2011 10:48 AM	Kirkwood, Ben
Re: s22 - DVA's response to the OAIC dated 30 November 2011 [SEC=UNCLASSIFIED]	06-Dec-2011 12:00 PM	Kirkwood, Ben
RE: Reply to Correspondence - OAIC - s22 - FoI Request [SEC=UNCLASSIFIED]	08-Dec-2011 6:14 PM	Kirkwood, Ben
RE: Reply to Correspondence - OAIC - s22 - FoI Request [SEC=UNCLASSIFIED]	11-Jan-2012 11:34 AM	Kirkwood, Ben
Complaint Intent to Close - Complainant - Decline s73a - s22	13-Feb-2012 4:31 PM	Kirkwood, Ben
Re: s22 - DVA's response to the OAIC dated 30 November 2011 [SEC=UNCLASSIFIED]	21-Feb-2012 10:26 AM	Kirkwood, Ben
RE: s22 - DVA's response to the OAIC dated 30 November 2011 [SEC=UNCLASSIFIED]	21-Feb-2012 10:28 AM	Kirkwood, Ben
Re: s22 - DVA's response to the OAIC dated 30 November 2011 [SEC=UNCLASSIFIED]	21-Feb-2012 11:19 AM	Kirkwood, Ben
Fm s22	28-Feb-2012 12:43 PM	Kirkwood, Ben
RE: Fm s22	28-Feb-2012 12:45 PM	Kirkwood, Ben
[SEC=UNCLASSIFIED]		
RE: Reply to Correspondence - OAIC - s22 - FoI Request [SEC=UNCLASSIFIED]	28-Feb-2012 3:21 PM	Kirkwood, Ben
fm s22	28-Feb-2012 4:32 PM	Kirkwood, Ben
RE: fm s22 [SEC=UNCLASSIFIED]	28-Feb-2012 4:35 PM	Kirkwood, Ben
fm s22	29-Feb-2012 10:36 AM	Kirkwood, Ben
RE: Reply to Correspondence - OAIC - s22 - FoI Request [SEC=UNCLASSIFIED]	05-Mar-2012 10:19 AM	Kirkwood, Ben
Fm s22 s22	21-Mar-2012 12:20 PM	Kirkwood, Ben
Re: Fm s22 [SEC=UNCLASSIFIED]	23-Mar-2012 10:34 AM	Kirkwood, Ben
Notify of Investigation - Letter to Respondent - s 47F	23-Mar-2012 4:22 PM	Kirkwood, Ben
Re: fm s22 [SEC=UNCLASSIFIED]	27-Mar-2012 4:35 PM	Kirkwood, Ben
fm s22	27-Mar-2012 4:26 PM	Kirkwood, Ben

FOIREQ22/00120 071

RE: fm s22 [SEC=UNCLASSIFIED]	27-Mar-2012 4:29 PM	Kirkwood, Ben
fm s22 s22	17-Apr-2012 3:38 PM	Kirkwood, Ben
S 15AA agreement - s22 [SEC=UNCLASSIFIED]	01-May-2012 4:09 PM	Kirkwood, Ben
Fm s22	29-May-2012 3:14 PM	Kirkwood, Ben
RE: Fm s22 [SEC=UNCLASSIFIED]	29-May-2012 3:45 PM	Kirkwood, Ben
Fm s22	06-Jun-2012 11:23 AM	Kirkwood, Ben
RE: Fm s22 [SEC=UNCLASSIFIED]	07-Jun-2012 10:19 AM	Kirkwood, Ben
Fm s22	29-May-2012 3:14 PM	Kirkwood, Ben
s22 - Notice of investigation under s 75 of the Act in relation to the freedom of information complaint by s22 [SEC=UNCLASSIFIED]	20-Jul-2012 3:06 PM	Kirkwood, Ben
Notifcation of Investigation - Letter to Complainant - s22	20-Jul-2012 4:03 PM	Kirkwood, Ben
s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	20-Jul-2012 4:12 PM	Kirkwood, Ben
Re: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	20-Jul-2012 5:12 PM	Kirkwood, Ben
RE: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	24-Jul-2012 10:12 AM	Kirkwood, Ben
s22 - Notice of investigation under s 75 of the Act in relation to the freedom of information complaint by s22 [SEC=UNCLASSIFIED]	01-Aug-2012 9:54 AM	Kirkwood, Ben
RE: s22 Notice of investigation under s 75 of the Act in relation to the freedom of information complaint by s22 [SEC=UNCLASSIFIED]	01-Aug-2012 10:41 AM	Kirkwood, Ben
RE: s22 - Notice of investigation under s 75 of the Act in relation to the freedom of information complaint by s22 [SEC=UNCLASSIFIED]	03-Aug-2012 3:01 PM	Kirkwood, Ben
Voice Mail Message (52 seconds)	03-Aug-2012 5:20 PM	Pirani, Toni
s22 [SEC=UNCLASSIFIED]	07-Aug-2012 1:50 PM	Pirani, Toni
RE: s22 - Notice of investigation under s 75 of the Act in relation to the freedom of information complaint by s22 [SEC=UNCLASSIFIED]	07-Aug-2012 2:18 PM	Kirkwood, Ben
Re: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	08-Aug-2012 10:15 AM	Kirkwood, Ben
RE: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	09-Aug-2012 10:13 AM	Kirkwood, Ben
s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	09-Aug-2012 11:44 AM	Kirkwood, Ben
RE: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	10-Aug-2012 12:05 PM	Kirkwood, Ben

FOIREQ22/00120 072

FW: s22 Investigation into complaint made by s22 [SEC=UNCLASSIFIED]	13-Aug-2012 9:05 AM	Hansen, Paul
s22 Investigation into complaint made by s22 [SEC=UNCLASSIFIED]	10-Aug-2012 4:56 PM	Kirkwood, Ben
RE: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	14-Aug-2012 1:34 PM	Kirkwood, Ben
Re: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	14-Aug-2012 2:38 PM	Kirkwood, Ben
RE: s22 Investigation into complaint made by s22 [SEC=UNCLASSIFIED]	14-Aug-2012 3:42 PM	Kirkwood, Ben
RE: s22 Investigation into complaint made by s22 [SEC=UNCLASSIFIED]	14-Aug-2012 4:46 PM	Kirkwood, Ben
RE: s22 - Freedom of Information complaint about Department of Veterans' Affairs [SEC=UNCLASSIFIED]	14-Aug-2012 8:43 PM	Kirkwood, Ben
s22 [SEC=UNCLASSIFIED]	17-Aug-2012 11:37 AM	Kirkwood, Ben
s22 [SEC=UNCLASSIFIED]	17-Aug-2012 4:09 PM	Kirkwood, Ben
Re: s22 [SEC=UNCLASSIFIED]	17-Aug-2012 5:29 PM	Kirkwood, Ben
Fm s22	20-Aug-2012 10:57 AM	Kirkwood, Ben
RE: Fm s22 [SEC=UNCLASSIFIED]	27-Aug-2012 1:16 PM	Kirkwood, Ben
RE: s22 Investigation into complaint made by s22 [SEC=UNCLASSIFIED]	10-Sep-2012 3:27 PM	Kirkwood, Ben
RE: s22 Investigation into complaint made by s22 [SEC=UNCLASSIFIED]	11-Sep-2012 1:57 PM	Kirkwood, Ben
RE: s22 Investigation into complaint made by s22 [SEC=UNCLASSIFIED]	11-Sep-2012 2:24 PM	Kirkwood, Ben
s22 Completion letter to agency .docx	24-Sep-2012 12:29 PM	O'Brien, Peter
s22 s86.docx	26-Sep-2012 2:43 PM	Gonzalez, Paula
RE: s22 - COMPLAINT - s22 and DVA [SEC=UNCLASSIFIED]	28-Sep-2012 3:12 PM	O'Brien, Peter
Re: s22 - COMPLAINT - s22 and DVA [SEC=UNCLASSIFIED]	24-Sep-2012 4:48 PM	O'Brien, Peter
Re: s22 - COMPLAINT - s22 and DVA [SEC=UNCLASSIFIED]	24-Sep-2012 9:24 AM	O'Brien, Peter
s22 - s22 and DVA [SEC=UNCLASSIFIED]	27-Sep-2012 1:20 PM	O'Brien, Peter
RE: s22 - COMPLAINT - s22 and DVA [SEC=UNCLASSIFIED]	28-Sep-2012 3:12 PM	O'Brien, Peter
s22 s 86 s22 .pdf	02-Oct-2012 8:45 AM	O'Brien, Peter
s22 & DVA - Outcome letter (s22) [SEC=UNCLASSIFIED]	02-Oct-2012 8:45 AM	O'Brien, Peter
FW: s22 & DVA - Outcome letter (s22) [SEC=UNCLASSIFIED]	02-Oct-2012 8:49 AM	O'Brien, Peter
Complaint by s22 - finalisation of investigation [SEC=UNCLASSIFIED]	04-Oct-2012 1:55 PM	Gonzalez, Paula
FW: s22 & DVA - Outcome letter (s22)	04-Oct-2012 1:57 PM	Gonzalez, Paula

FOIREQ22/00120 073

[SEC=UNCLASSIFIED]

FW: s22 [REDACTED]	Response to your investigation re: [DLM=For-Official-Use-Only]	15-Oct-2012 4:28 PM	O'Brien, Peter
FW: s22 [REDACTED]	Response to your investigation re: [DLM=For-Official-Use-Only]	15-Oct-2012 4:27 PM	O'Brien, Peter
Scan [SEC=UNCLASSIFIED]		16-Oct-2012 6:28 AM	Zatschler, Elizabeth
Complaint Closure to Respondent - s 47F [REDACTED] - post PV		16-Oct-2012 11:27 AM	O'Brien, Peter
Complaint Closure Notification to Complainant - s22 [REDACTED] - post PV		16-Oct-2012 11:35 AM	O'Brien, Peter
Complaint closure s22 [REDACTED]		16-Oct-2012 2:22 PM	O'Brien, Peter
[SEC=UNCLASSIFIED]			
Complaint closure letter [SEC=UNCLASSIFIED]		16-Oct-2012 2:19 PM	O'Brien, Peter

Cross References - 5

Case	Comments
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s22 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]**Comments - 1**

Created	By	Comment
16-Oct-2012 2:25 PM	O'Brien, Peter	Case Closed by s 47E(d) [REDACTED] on 16-Oct-2012 14:25

From: s22
 To: Ken Menz
 Subject: Re: FW: s22 : Your request for a s15AB extension of time to process Mr Paul Evan's FOI request. [SEC=UNCLASSIFIED]
 Date: Friday, 23 March 2012 11:23:47 AM

Mr Menz

Thank you for your email and phone calls. I received your letter today. I apologise for not getting back to you sooner, though I admit it would have helped if my son passed on your first message. 'Tis life.

I would like, for the record, to make a few points about the issues you have raised. I ask that you consider it a complaint over DVA's handling of this request, but I presume it is of little point as DVA is compliant with your current directions. In the first instance I believe that DVA is now regularly using the OAIC as a gateway to delay actioning FOI requests. There is not much that can be done about that but, as discussed below, you should be aware that I am seriously concerned over DVA's advice that there are 25 paper files relevant to this request.

However, before I start, I should like to make you aware that the vast bulk of any documents were covered by a FOI request in November 2010 (it was actually earlier, but DVA initially refused to even acknowledge it and I relodged it, from memory at s 47F's suggestion, under the new FOI regime). There was also an independent review into these matters by a s22. DVA undertook that it had provided both myself and s22 with all relevant documents, which should have included these 25 folders, for him to make his conclusions.

Based on that fact you should note:

1. DVA's statements to you are misleading

On 01 March 2012 DVA requested an extension because of delays in dealing with this request. I agreed, but have never seen any confirmation in writing of the reasons for the delay, nor offering an apology. I believe this three week delay was because the request was considered by DVA management before any action was allowed. I would question why the FOI officer was not simply able to proceed with the request and make a decision, under FOI alone, of the merits or cost of actioning it.

DVA never contacted me again regarding this request.

I emphasise that, despite DVA's advice to you, DVA has never contacted me to discuss altering the scope of this request. DVA has deliberately misled you on this subject.

For the record, if additional time was required to physically process this request then I would have agreed to it. However, I do not see why an extension should be granted if, as you note, that on 19 March DVA advised they would probably refuse the request. I have seen this kind of thing before. I believe that, if you asked DVA for a copy of the request and the reply from the IT provider, you will be surprised by the dates. I have no proof, but it would be interesting for you to see a copy of the written request to the IT area.

2. The 25 folders of information

I am seriously concerned that DVA states there are 25 paper files relevant to this request. I believe the previous FOI officer, s 47F, did outstanding work in FOI simply because she was willing to apply the act appropriately. If these files were covered by the earlier FOI request then obviously there is no need to review them again. However if they were not provided to the s 22 for actioning, why not? Note that s 47F provided the collated files from my FOI request to s22 for consideration in s22 report. Is DVA now saying s22 also did not receive all the relevant

files? Alternatively, I can only presume that they may be fraud files relating to the earlier work noted by s22 to 'identify the number of denunciations made by s22 ...' but, if this assumption is correct, they still should have been provided to s22 for review. After-all, one of the central factors indicating a malicious denunciation of s22 was the accusation that s22 had done the same to other veterans. I am very alarmed that this comment by DVA seems to suggest there are 25 paper files on denunciations made on other veterans by this one man. If so, DVA is not going to look into this matter, it has to come out under FOI.

3. DVA is overstating the numbers of emails involved in this request

DVA has advised you that there may 'potentially be tens of thousands' of emails that are relevant to this request. You could also say that the OAIC itself potentially holds tens of thousands of emails relating to this request. Just saying it doesn't mean the statement is correct. Quite simply, the figure is absurd. Consider these facts:

- a. The first part covers emails for a period of 16 months, or approximately 340 working days. However, the request relates to the mailbox of only three officers: s22 and the other two junior members of his department, so the number for sections (2) and (3) would be quite small.
- b. Sections (1) and (4) are for electronic records relating specifically to s22. As you are aware, once the mail boxes are reconstructed it is a simple matter to electronically sort them to only emails relating to s22.

I would be astonished if, after (a) and (b) above are completed, there are ten thousand emails for the FOI officer to process. It would mean that these two junior officers were emailing the Deputy President, or discussing s22, an average of thirty times each and every day. Similarly, DVA's statement that there might even be 'tens of thousands' is utter [insert your own descriptor]. What the hell else were these men doing if this is correct? Am I the only person alarmed that DVA thinks this might be true and, if it is, isn't the extra-ordinary focus on s22 for this period another strong reason to suggest that the FOI request should be processed rather than denied.

4. The second part of the request is for a relatively small number of documents

The second part of the request relates to s22. The topic is specific and only relates to correspondence from s22.

Section (7) requested any documents related to the first letter for a period of three months after its receipt. As this letter suggested s22

, I would expect that these documents are all centrally located. If they are not stored properly then I should not be penalised for poor document control by DVA. Does the OAIC allow poor record keeping as an excuse for refusing documents under FOI?

Section (8) specifies a period of one year for the second letter. The reason a year was given as a scope is that I believe that this letter triggered a review by DVA's internal auditors over the issue. I do not know the date of this audit. I am willing to revise the scope of this item to the period immediately after the letter plus correspondence to and from the auditor on the review.

Why I have set a long period after each email is because these officers were always slow to act on this matter, as can be seen that the auditor's review may have been undertaken about a year after the complaint was made. However, again if I was approached, I would reduce the scope of the documents required for section (8) to only

those recorded on the paper file or in TRIM. However, the s22 are unlikely to be recorded in any relevant file. s22

The only way to investigate this issue further is through FOI.

5. It is immaterial to an FOI request should a document indicate a breach of the APS Code of Conduct

With regards the need to be careful because of allegations against DVA staff, may I point out to you that the s22 determined that s 47F acted inappropriately and that there was a breach of privacy committed by another officer. That's already out there. However, what I don't understand is the relevance of any potential breach of the Code of Conduct by an officer to the initial processing of an FOI application. I am after documents, not seeking answers to questions. Does the FOI Act allow a document to be excluded should it indicate a potential breach of the APS Code of Conduct?

6. DVA will only respond to FOI requests – this is why I keep lodging them

Immediately after the s22 DVA reaffirmed a non-reply directive on answering inquiries from s22. They did so even as they wrote to him asking to lodge a response to the s22. I know that because I obtained the correspondence under FOI. The reality is that we need to lodge FOI requests because DVA simply refuses to act appropriately with either myself or s22. Let me give you an example. s22

DVA even refused to send me a copy of the report until they had to release one under FOI. s22

That is the reality of dealing with DVA.

Conclusion

It took ten years before DVA actually properly investigated s22 concerns. They only did so because of an FOI request they could not refuse. The terms of reference of the s22, its scope, even its conduct, was only revealed because of FOI. The only reason we know that DVA has had the s22 report for over 200 days is because of FOI. We only know that DVA and the Minister agreed to ignore any correspondence over s22 findings because of FOI. We also now know that DVA has had an independent legal opinion on the s22 report for over 50 days because of FOI. DVA is now refusing to reveal the actual legal opinion or even just advise s22 of the result, or even when s22 can expect to be told.

Incidentally, we also now know that DVA did not even seek legal advice until it had to respond to a question from a Member of Parliament. It advised the MP in a letter dated 30 November 2011, but did not actually ask for legal advice until 02 December 2011. This was 60 days after they received s22 response. How do we know? Well, it wasn't because DVA told us voluntarily. Incidentally, this information came from an FOI request for two documents: DVA's request for legal opinion and the reply. DVA ignored the request for thirty days. At my urging, s22 lodged a request for an internal review based on a deemed refusal. DVA did not action the review until the day before it would also be deemed refused. Naturally, both documents were refused under legal privilege, but the schedule listed their dates. DVA refused to volunteer this information when asked, but they also dragged it out for the full sixty days before they were forced to reveal this information under FOI.

You must understand that what has been achieved by us over the last 500 days is purely because of FOI. DVA's behaviour is entirely antagonistic. Despite all that has been uncovered and confirmed by s22, they still have to be forced to act. The only way we can do it is through FOI.

I am still digging because I believe there were flaws in the s22 report. Whatever the reason, the fact is that s22 refused to investigate whether s 47F were acting under direction. s22 simply stated that the two year investigation was highly flawed. s22 believed that it should probably never have even been undertaken. This, s22 stated, was completely the fault of s 47F. I don't believe such a finding should have been made without considering all the evidence. That is the reason for this request. If the evidence shows that these men were acting under direction then this means that current senior departmental officers accepted the conclusion of the s22 report while knowing them to be false. This scenario also means that the institutionalised bias against s22 remains as these senior officers have never expressed remorse over their actions nor accepted they were based on a false premise. I believe this is why DVA is opposed to further investigation.

To the OAIC s22 and myself are probably just a pain in the butt, but the purpose of FOI is to enable open government so Australians can understand the decisions that can have a major impact on their lives. The problem is that DVA has, for most of this decade, refused to act appropriately. The sheer number of FOI requests is because of this refusal by DVA to engage in any meaningful manner, not because I even want to do them. s 22

Incidentally, the evidence regarding an SES officer was not referred to in any way in s22 report. Any guesses as to how I uncovered it?

Regards

s22

On 20/03/2012 2:53 PM Ken Menz wrote:

Dear s22

s22: Extension of time of Department of Veteran's Affairs to process your FOI request

Please see below our response to the Department of Veteran's Affairs request for an extension of time to process your FOI request of 12 November 2011.

I have sent a copy of my decision to your postal address as well.

Your review rights

You may seek review of our decision making process under the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act). An appeal under the ADJR Act must be made to the Federal Court within 28 days of the date of our final decision. Before making an appeal please contact the Federal Court registry in your State or visit www.fedcourt.gov.au/contacts/contacts.html.

If you are unhappy with the way we have handled this matter, you may complain to the Commonwealth Ombudsman. This service is free, and you can contact the office on 1300 362 072 or visit www.ombudsman.gov.au.

Further Information

If you have any further questions in regards to this email, please do not hesitate to contact me on (02) 6239 9180 or via email at ken.menz@oaic.gov.au. In all correspondence on this matter, please quote the reference number s22 [REDACTED]

Yours sincerely

Mr Ken Menz | Assistant Merits Review/Investigations Officer | Compliance

Office of the Australian Information Commissioner

Level 3, 25 National Circuit, CANBERRA
GPO Box 2999 CANBERRA ACT 2601 | www.oaic.gov.au
Phone: +61 2 6239 9180
Email: ken.menz@oaic.gov.au

Protecting information rights – advancing information policy

From: Ken Menz

Sent: Tuesday, 20 March 2012 2:02 PM

To: s22 [REDACTED]

Subject: s22 [REDACTED] Your request for a s15AB extension of time to process s22 [REDACTED] FOI request. [SEC=UNCLASSIFIED]

Dear Ms Chan,

s22 [REDACTED] Your request for a s15AB extension of time to process s22 [REDACTED] FOI request.

Thank you for your correspondence of 13 March 2012 seeking an extension of time under the *Freedom of Information Act 1982* (the FOI Act) to respond to s22 [REDACTED] FOI request. s22 [REDACTED] requested documents under the FOI Act from the Department of Veterans' Affairs (the Department) on 12 January 2012. On 1 February 2012, s22 [REDACTED] agreed to a 30 day extension of time with the Department under s 15AA of the FOI Act to process his request by 14 March 2012.

You have sought an extension of time of 60 days on the basis that the current processing

period is insufficient to deal adequately with s22 request, because it is complex or voluminous under s 15AB of the FOI Act. On 19 March 2012, you advised that the Department was intending to now make a practical refusal decision under s 24 of the FOI Act, due to advice from the Department's external IT provider that obtaining all documents may now be so complex as to be impractical.

Decision

I am writing to advise you of my decision to grant you an extension of time under s 15AB of the FOI Act of **14 days** to **28 March 2012**. In reaching this decision, I took into account the following factors:

- **Complex nature of the request:** The documents requested are of a sensitive nature and careful consideration will be needed, as they concern allegations towards current and former staff of the Department. Furthermore, the documents requested date back to 2003, which will require extensive searches for hardcopy and electronic documents.
- **The request is voluminous:** The Department advised that 25 paper files relevant to s22 request have been identified so far, however they do not contain all documents requested. The Department advised that it is required assistance from its external IT provider to access all electronic documentation relating to the staff members the subject of the FOI request. The Department estimates that there may potentially be tens of thousands of emails will need to be processed to identify the documents relevant to s22 request. Further, the external IT provider has advised the Department that accessing the documents from 2003 will be significantly more difficult than anticipated.

You have advised that the Department intends to consult with the applicant to narrow the scope of his request, and that if this is not possible, the Department may decide not to process the request under s 24. In these circumstances, I do not believe that 60 days is required to make a decision on s22 request. I believe that 14 days is sufficient time for the Department to decide whether to finalise the request under s 24.

If the Department does chose to make a practical refusal decision, they must undergo the request consultation process under s 24AB of the FOI Act, which pauses the decision time period. If the Department does decide to make a decision on s22 request, it is open for the Department to apply for a further s 15AB extension of time.

I will provide a copy of this decision to the FOI requestor including their review rights.

If you have any questions about this email, please contact me on (02) 6239 9180 or via email at xxx.xxxx@xxx.xxx.xx. In all correspondence please include the reference number s22

Yours sincerely

Mr Ken Menz | Assistant Merits Review/Investigations Officer | Compliance

Office of the Australian Information Commissioner

Level 3, 25 National Circuit, CANBERRA

GPO Box 2999 CANBERRA ACT 2601 | www.oaic.gov.au

Phone: +61 2 6239 9180

Email: xxx.xxxx@xxxx.xxx.xx

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