



Our reference: FOIREQ22/00141

Julie

By email: [foi+request-8989-046c55f4@righttoknow.org.au](mailto:foi+request-8989-046c55f4@righttoknow.org.au)

## Your Freedom of Information request FOIREQ22/00141

Dear Julie

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 6 June 2022.

### Scope of your request

In your request you seek access to the following:

*"I request copy of all s 55G substituted decisions received by the Office of the Australian Information Commissioner since 1 January 2020, since a request must be a request for documents.*

*Based on an earlier request, the OAIC states that Resolve has recorded and identified s 55G decisions since 'approximately Dec 2019'. It is unclear why the OAIC did not record such decisions in a searchable way beforehand, given the significant potential for abuse with such s 55G decisions.*

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

*While the OAIC may not be obligated to provide such a table in lieu, agencies have produced such tables under s 17 despite some manual intervention involved (see <https://www.righttoknow.org.au/request/6767/response/19110/attach/4/FOI%2038412%20Document%20created%20in%20accordance%20with%20section%202017%20of%20the%20FOI%20Act%20final.pdf> for example), because of the efficiency of not having to assess more information than has been requested.*

*FOI does stand for 'freedom of [official] information', and the object of the Act is to not unnecessarily or unethically take an artificial prescriptive stance contrary to the objects of the Act."*

On 7 June 2022 we acknowledged your request and sought to clarify the scope request:

*Could you please clarify the scope of your request. Would you please kindly advise whether:*

- 1. you are seeking copies of the actual 55G decisions, or*
- 2. a table including the date the decision was received, the FOI agency it was received from and the date of the original FOI request, or*
- 3. both of the above?*

*We would be grateful if you can please kindly let us know by **close of business on Thursday 9 June 2022**. If we do not hear from you by this date we will assume that you would like to access both a copy of the actual 55G decision and a table outlined in your FOI request.*

Because you did not respond to our request for clarification of the scope of your request, we have interpreted your request to be for copies of both the actual s55G decisions and a table including the date the decision was received, the FOI agency it was received from and the date of the original FOI request.

#### Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your requests no later than 30 days after the day we receive them. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third parties about certain information, such as business documents or documents affecting their personal privacy.

With this letter being a notice under section 24AB of the FOI Act, the time to process your request will be stopped until we have completed this consultation with you regarding the scope of your request, as per section 24AB(8) of the FOI Act.

#### Notice of intention to refuse your request

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

I am writing to tell you that based on the information before me at this time, I am of the view that the work involved in processing your request in its current form will

substantially and unreasonably divert the resources of the OAIC from its other operations due to the substantial number of documents which may fall within the scope of the request (ss 24AA(1)(i) and 24AA(2)(b)(i) its size and scope. This is called a 'practical refusal reason' (under s 24AA of the FOI Act).

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

### **Why I intend to refuse your request**

#### *Calculation of the processing time*

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

I request copy of all s 55G substituted decisions received by the Office of the Australian Information Commissioner since 1 January 2020, since a request must be a request for documents.

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

... a copy of all s 55G decisions within the date range of 1 January 2020 to 6 June 2022 (the date of your FOI request).

#### *Search and retrieval*

Your request was referred to the relevant line area to conduct searches based on your request. I have consulted with a Director of the FOI Regulatory Group to help identify documents within the scope of your request. Following this, Legal conducted a search on Resolve to confirm the number of IC reviews where a s55G decision was received in the period specified in your FOI request. This search indicates that there were a total of 1,123 section 55G revised decisions received by the OAIC in the time period 1 January 2020 to 10 June 2022. All of these files would need to be reviewed in order to process your FOI request.

#### *Estimated document identification time*

The line area undertook a sampling exercise of 10 documents from the Resolve files they identified as containing a 55G decision. The line area estimated that it would take at least 3 minutes to identify whether the resolve file contains a s 55G decision, read and consider whether it contains any exempt material, and note the exempt material to advise the decision maker.

Accordingly, using this estimate provided by the line area, I estimate that it would take at least **56.15 hours** to conduct search and retrieval of the 1,123 IC review matters where Resolve was able to identify that a section 55G decision was made.

#### *Decision making time*

I have calculated the time it would the FOI decision maker to examine, assess and edit the documents in scope in order to process and make a decision on your FOI request.

A staff from the Legal team conducted a sample of 20 of the 1,123 IC reviews containing a 55G decision that were identified, to help calculate the time it would take for an FOI Officer to process your FOI request. The sampling is approximately 1.7% of the total review decisions that we have identified.

Based on the sample, I calculate that:

- of the s 55G decisions in the sample, the decisions ranged from 3 to 29 pages with a range of complexity levels in the decision. Using the extrapolated average of 8.95 pages in each decision from the sample and applying this to the total number of s 55G decisions that could be contained in the 1,123 IC review matters identified by the line area, it is estimated that there will be at least 10,050 pages to be reviewed and processed.
- in conducting the sample, I took an average of approximately 3.25 minutes in each IC review matter to:
  - review each page of the decision,
  - identify personal and business information about third-party entities
  - identify any other relevant exemptions that may be exempt and redacted, and
  - apply redactions where appropriate.
- I note that of the 20 IC reviews sampled in undertaking this exercise, two files were at early stages of the process and no section 55G decisions had at that point in time been added to the file. These numbers were included in the calculation of the average number of pages and the amount of time it would take to process the request.
- based on the above sample, I estimate that it would take at least **60.83 hours** to review and assess the s 55G decisions in the 1,123 IC review matters.
- I conservatively estimate that it will take the FOI decision maker **5 hours** to prepare a schedule of documents regarding at least the 1,123 s 55G decisions in scope of your FOI request, and another **2 hours** to draft the FOI decision and reasons for decision.

I therefore estimate the approximate time it would take to process your request as **123.90 hours**, or approximately **3 weeks**. The process time estimated above does not take into account the additional time required to:

- Collate and prepare documents for third party consultation. All s 55G decision documents contain sensitive and/or confidential personal and business information about third-party entities, as such consultation is required under sections 27 and 27A of the FOI Act. From the sample conducted, I estimate there will be at least 1 external third-party consultation required for each decision as the documents contain individuals' and respondents personal and/or business information, which means conducting consultation with 1,123 applicants and/or respondents.
- Assess each third-party's response to our consultation, edit and redact the relevant information for release.

#### Diversion of resources

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

The Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (**the Guidelines**) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

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

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

- undertaking regulatory functions in both FOI and privacy
- conducting IC review

- delivering internal legal advice
- improve agencies processes for managing FOI requests.

### Request consultation process

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

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

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

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

The consultation period runs for 14 days and starts on the day after you receive this notice. Therefore, you must respond to this notice by **Wednesday 13 July 2022**.

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

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

### Ways you can reduce the scope of your request

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

These include limiting the scope of your request to:

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

Contact officer

If you would like to revise your request, or requires assistance in revising the scope of the request, or would like to discuss this matter in general, please contact me on (02) 9942 4145 or at [legal@oaic.gov.au](mailto:legal@oaic.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to be 'Margaret Sui', written in a cursive style.

**Margaret Sui**  
Senior Lawyer

29 June 2022