

**From:** s 22  
**To:** s 22  
**Cc:** s 22  
**Subject:** Intention to finalise IC review- s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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Our reference: s 22  
Agency reference: s 22

Dear s 22

I refer to your application on behalf of s 22 for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 47E(d)

On s 47E(d) the Department made a decision to provide you with access to the requested documents under the *Privacy Act 1988*.

As you have not yet responded to advise whether you wish to now proceed with, or withdraw, this IC review, we will proceed to finalise this matter tomorrow under s 54W(a) of the FOI Act. Therefore if you do wish to proceed with the IC review, please respond to me directly by no later than **close of business today** s 47E(d)

If you have any questions about this matter please don't hesitate to contact me.

Kind regards

s 22



s 22 | s 22  
s 22  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)



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On s 47E(d) the Department made a decision to provide you with access to the requested documents s 47E(d)

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d).

### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email s 22. Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

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s 22  
s 22  
By email: s 22

Your IC review application about the s 47E(d)

Dear s 22

I refer to your application on behalf of s 22 for IC review of a decision the s 22 was deemed to have refused on s 47E(d). On s 47E(d) s 47E(d) notified the Office of the Australian Information Commissioner (the OAIC) it had made a substantive decision to give you access to the

documents you requested outside of the FOI Act.

Can you please notify us by **s 47E(d)** once you have received the released documents on CD, if you now wish to:

- Withdraw the IC review application, or
- Proceed with the IC review application, and make a submission about the grounds on which you wish to proceed.

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by **[redacted]** your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

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[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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On s 47E(d) the Department notified the Office of the Australian Information Commissioner (the OAIC) it had made a decision to provide you full access to the documents you requested under s 47E(d). We understand these documents were posted to you on s 47E(d).

Can you please notify us by s 47E(d) if you now wish to:

- Withdraw the IC review application, or
- Proceed with the IC review application, and make a submission about the grounds on which you wish to proceed.

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Our reference: s 22

Agency reference: s 22

s 22

s 47E(d)

By email to: s 47E(d)

s 22 application for Information Commissioner  
review of the s 47E(d) FOI decision

Dear s 22

I refer to an application made by s 22 (the applicant) for Information Commissioner review (IC review) of a decision made by the s 47E(d) (the Department) on s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake an IC review under s 54W(b) of the FOI Act, which would allow the applicant to seek review at the Administrative Appeals Tribunal (AAT).

I am writing to both parties in this review to offer them an opportunity to comment or make submissions on this recommendation.

The reasons for my recommendation follow.

### Background

On s 47E(d) the applicant applied to the Department for access to:

**s 47E(d)**

On s 47E(d) the applicant sought IC review of the Department's s 47E(d)

On s 47E(d) the Office of the Australian Information Commissioner (the OAIC) commenced preliminary inquiries with the Department.

On s 47E(d) the Department notified the OAIC that it had made a substantive decision on the applicant's request. In its decision, the Department identified s 47E(d)

relevant to the request: s 47E(d)

s 47E(d)

s 47E(d)

On s 47E(d) the applicant advised the OAIC that they s 47E(d)

s 47E(d)

### **Discretion not to undertake an IC review**

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the Administrative Appeals Tribunal (AAT).

The effect of such a decision would be to finalise the IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes.

The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which states:

The Information Commissioner can decline to undertake a review if satisfied ‘that the interests of the administration of the [FOI] Act make it desirable’ that the AAT consider the review application (s 54W(b)). It is intended that the Commissioner will resolve most

applications. Circumstances in which the Commissioner may decide that it is desirable for the AAT to consider a matter instead of the Commissioner continuing with the IC review include:

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

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

In this IC review, it is apparent that:

• s 47E(d)

- s 47E(d)

- s 47E(d)

- s 47E(d)

- s 47E(d)

For these reasons, I intend to recommend to a delegate of the Information Commissioner that that they exercise the discretion not to undertake an IC review under s 54W(b) of the FOI Act, because I am of the view that it is in the interests of the administration of the FOI Act

that this review be closed and the applicant be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

### Next steps

If the Department disagrees with this proposed recommendation, please write to us by **s 22** and provide reasons. These reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W(b).

If I do not hear from the Department by this date, this IC review application may be finalised under s 54W(b).

If you would like to discuss this matter, please contact me on **s 22** or on **s 22**. In all correspondence please quote **s 22**.

Yours sincerely

**s 22**

**s 22**

**s 22**

Freedom of information Regulatory Group

**s 47E(d)**

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On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d) The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 22

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If you have any questions regarding this email please contact me on s 22 or via email s 22 Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

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Agency reference: s 22

s 22

By email: s 22

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Can you please notify us by s 47E(d) if you now wish to:

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From: FOIDR

Sent: s 47E(d)  
To: s 22  
Subject: s 22 - Your IC review application about s 47E(d) s 22  
[SEC=OFFICIAL]

Our reference: s 22  
Agency reference: s 22  
s 22  
s 22  
Email to: s 22

Your IC review application about s 47E(d)

Dear s 22

I write to you as the s 22  
I write to you regarding your application for IC review of a decision the s 47E(d)  
s 22 was deemed to have made on s 47E(d)

On s 47E(d) the Department notified the Office of the Australian Information Commissioner (the OAIC) it had made a substantive decision to give you full access to the document you requested.

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If you have any questions regarding this email please contact via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



**Intake and Early Resolution Team**  
Freedom of Information  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)  
1300 363 992 | [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

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On s 47E(d) the Department notified the Office of the Australian Information Commissioner (the OAIC) it had made a substantive decision to give you partial access to documents you requested.

Can you please notify us by s 47E(d) if you now wish to:

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By email: s 22

Dear s 22  
I refer to your application for Information Commissioner review (IC review) of a decision made by the s 47E(d) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d) The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by

#### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or by return email. Please quote OAIC reference number at the top of this email in all correspondence.

Kind regards

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)



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Graphical user interface, application Description automatically generated



---

From: s 22  
Sent: s 47E(d)  
To: s 22  
Subject: IC review- s 47E(d) [SEC=OFFICIAL]

Our reference: s 22  
Agency reference: s 22

s 22

By email: s 22

Your IC review application about the s 47E(d)

Dear s 22

I refer to your application for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 47E(d)

This matter relates to your request for access to:

s 47E(d)

The Department has today notified the Office of the Australian Information Commissioner (the OAIC) it has made a substantive decision to give you partial access to the documents you requested.

Can you please notify us by s 47E(d) you now wish to:

- Withdraw the IC review application, or
- Proceed with the IC review application, and make a submission about the grounds on which you wish to proceed.

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or by return email. Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

s 22  
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**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Our reference s 22  
Agency reference: s 22

s 22

By email: s 22

**Your IC review application about the s 47E(d)**

Dear s 22

I refer to your application for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the Department provided you with full administrative access to the documents you requested.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

**Intention to finalise IC review**

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

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Yours sincerely

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---

From: s 22  
Sent: s 47E(d)  
To: s 22  
Subject: IC review- s 47E(d) s 22 [SEC=OFFICIAL]

Our reference s 22  
Agency reference: s 22

s 22

By email: s 22

Your IC review application about the s 47E(d)

Dear s 22

I refer to your application for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 47E(d)

The Department has today notified the Office of the Australian Information Commissioner (the OAIC) that on s 47E(d) it made a decision to give you full administrative access to the documents you requested.

Can you please notify us by s 47E(d) if you now wish to:

- Withdraw the IC review application, or
- Proceed with the IC review application, and make a submission about the grounds on which you wish to proceed.

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



s 22 [REDACTED]

Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

[REDACTED]



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From: s 22  
To: s 22  
Cc: s 22  
Subject: Intention to finalise IC review- s 22 [SEC=OFFICIAL]  
Date: s 47E(d)  
Attachments: [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Our reference: s 47E(d)

s 22  
s 22

By email to: s 22

Copied to: s 22

Dear s 22

I refer to your application on behalf of s 22 for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the Department made a decision to give you access to the documents you requested under the *Privacy Act 1988*.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email s 22. Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



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From: s 22  
Sent: s 47E(d)  
To: s 22  
Cc: s 22  
Subject: IC review- s 22 [SEC=OFFICIAL]

Our reference: s 22

s 22  
s 22

By email to: s 22

Your IC review application about the s 47E(d)

Dear s 22

I refer to your application on behalf of s 22 for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 22

On s 47E(d) the Department notified the Office of the Australian Information Commissioner (the OAIC) it had made a substantive decision to give you access to the documents you requested under the *Privacy Act 1988*.

Can you please notify us by s 47E(d) if you now wish to:

- Withdraw the IC review application, or
- Proceed with the IC review application, and make a submission about the grounds on which you wish to proceed.

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

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Yours sincerely

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Our reference: s 22

Agency reference: s 22

s 22

By email to: s 22

## Your application for Information Commissioner review of the s 47E(d) FOI decisions

Dear s 22

I refer to your applications for Information Commissioner review (IC review) of the following decisions made by the s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

- Decision on access dated s 47E(d) (OAIC reference s 22)
- Decision on access dated s 47E(d) (OAIC reference s 47E(d))

The purpose of this letter is to advise you of my intention to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake IC reviews of the above decisions under s 54W(b) of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.

The reasons for my recommendation follow.

### Background

The background and the scope of these IC reviews are set out in the attachment to this letter (Attachment A).

### Discretion not to undertake, or not to continue to undertake, an IC review

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise your IC review applications and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the

AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

- where the IC review is linked to ongoing proceedings before the AAT or a court
- where there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- where, should the application progress to an IC review decision, the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
- where the FOI request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:
  - the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
  - the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
  - the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent

---

<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4))

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

In these IC reviews, it is apparent that:

- s 47E(d) [REDACTED]
- s 47E(d) [REDACTED]

s 47E(d) [REDACTED] the former Information Commissioner found in *'Q' and Department of Human Services [2012] AICmr 30* (at [17]) that:

- Access to documents through FOI is not intended to replace the discovery process of courts and tribunals, which supervise the provision of documents to parties in matters before them.

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake these IC reviews under s 54W(b), as I am of the view that it is in the interests of the administration of the FOI Act that these reviews be closed and you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake IC reviews in this case.

## Next steps

If you disagree with this proposed recommendation, please write to us by **s 47E(d)** and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise these matters under s 54W(b).

If I do not hear from you by this date your IC review applications may be finalised under s 54W(b) and you will be notified of your review rights.

If you would like to discuss this matter, please contact me on **s 22** or on [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). In all correspondence, please quote **s 22** and **s 22**

Yours sincerely

**s 22**

**s 22**

**s 22**

Freedom of Information

**s 47E(d)**



Our reference: s 22 [REDACTED]

Agency reference: s 22 [REDACTED]

s 47E(d) [REDACTED]

s 47E(d) [REDACTED]

By email to: s 47E(d) [REDACTED]

**s 22 [REDACTED] applications for Information Commissioner review of the s 47E(d) [REDACTED]**

Dear s 47E(d) [REDACTED]

I refer to applications made by s 22 [REDACTED] (the applicant) for Information Commissioner review (IC review) of the following decisions made by the s 47E(d) [REDACTED] [REDACTED] under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

- s 47E(d) [REDACTED] (OAIC reference s 22 [REDACTED])
- s 47E(d) [REDACTED] (OAIC reference s 22 [REDACTED])

Please find attached copies of s 22 [REDACTED], s 47E(d) [REDACTED] dated [REDACTED] [REDACTED] as relevant to s 22 [REDACTED]

The purpose of this letter is to advise you of my intention to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake IC reviews of the above decisions under s 54W(b) of the FOI Act, which would allow the applicant to seek review at the Administrative Appeals Tribunal (AAT).

s 47E(d) [REDACTED]  
[REDACTED]

The reasons for my recommendation follow.

## Background

The background and the scope of these IC reviews are set out in the attachment to this letter (Attachment A).

## Discretion not to undertake, or not to continue to undertake, an IC review

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the Administrative Appeals Tribunal (AAT).

The effect of such a decision would be to finalise these IC review applications and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes.

The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which states:

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

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

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

In these IC reviews, it is apparent that:

**s 47E (d)**

**s 47E(d)** the former Information Commissioner found in 'Q' and *Department of Human Services [2012] AICmr 30* (at [17]) that:

3. Access to documents through FOI is not intended to replace the discovery process of courts and tribunals, which supervise the provision of documents to parties in matters before them.

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake these IC reviews under s 54W(b), as I am of the view that it is in the interests of the administration of the FOI Act that these reviews be closed and the applicant be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake reviews in this case.

## Next steps

If **s 47E(d)** disagrees with this proposed recommendation, please write to us by **s 47E(d)** and provide reasons. These reasons will be taken into account before a decision is made on whether to finalise these matters under s 54W(b).

If I do not hear from **s 47E(d)** by this date, the IC review applications may be finalised under s 54W(b).

If you would like to discuss this matter, please contact me on **s 22** or on [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). In all correspondence, please quote **s 22**

Yours sincerely

**s 22**

**s 22**

Freedom of Information

**s 47E(d)**

**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

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Our reference: s 22  
Agency reference: s 22

s 22  
By email to: s 22  
Dear s 22

I refer to your application for IC review of a decision the s 47E(d) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the s 47E(d) provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by [redacted]

#### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or by return email. Please quote OAIC reference number at the top of this email in all correspondence.

Kind regards

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)



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**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

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Our reference: s 22  
Agency reference: s 22

s 22  
By email to: s 22  
Dear s 22

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Kind regards

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Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)



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**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) - s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22

By email: s 22

## Your IC review application about s 47E(d)

Dear s 22

I refer to your application for IC review of a decision the s 47E(d) (the Department) was deemed to have made on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the Department provided a decision to you on your FOI request.

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Yours sincerely



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**From:** s 22  
**To:** s 22  
**Cc:** s 22  
**Subject:** Intention to finalise IC review- s 22 - s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22  
s 22  
By email to: s 47E(d)

## Your IC review application about s 47E(d)

Dear s 22

I refer to s 22 application for IC review of a decision s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to s 47E(d)

On s 47E(d) the Department provided a decision to s 22 in response to s 22 FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review, after the Department arranged to s 47E(d)

In that correspondence I requested you respond by s 47E(d) The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22

s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group

**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22  
s 47E(d)

By email: s 22

## IC review application about s 47E(d)

Dear s 22

I refer to s 22 application for IC review of a decision the s 47E(d) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the AFP provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or by return email. Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Our reference: s 22  
Agency reference s 22  
s 22  
Email to: s 22

Dear s 22

I refer to your application s 47E(d) s 22 for IC review of a decision s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d).  
On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d).  
The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d).

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) or on s 22. Please quote OAIC reference number at the top of this email in all correspondence.

Kind regards

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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## Intention to recommend that an IC review not be undertaken under s 54W(b) of the *Freedom of Information Act 1982*

IC review applicant	s 22
Respondent	s 47E(d)
OAIC reference number	s 22
Agency reference number	s 22

### Summary

1. I refer to the application made by s 22 (the applicant) for Information Commissioner review (IC review) of a decision made by the s 47E(d) (respondent) on s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. The purpose of this letter is to advise the parties of my intention to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake an IC review under s 54W(b) of the FOI Act, which would allow the applicant to seek review at the Administrative Appeals Tribunal (AAT).
3. I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.
4. The reasons for my recommendation follow.

### Background

5. In their IC Review application, the Applicant advised the following:

s 47E(d)

# s 47E (d)

## Discretion not to undertake an IC review

6. The effect of such a decision would be to finalise this IC review application and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup>
7. The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.
8. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:
  9. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

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

---

<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

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

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

11. The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.
12. The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
13. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.
14. In this IC review, s 47E(d)

**s 47E(d)**

15. For this reason, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake an IC review under s 54W(b), as I am of the view that it is in the interests of the administration of the FOI Act that this review be closed and that the applicant be provided the opportunity of applying directly to the AAT for review.
16. The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

### Next steps

17. If you disagree with this proposed recommendation, please write to us by [REDACTED] [REDACTED] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W(b).
18. In the absence of a response by this date this IC review application may be finalised under s 54W(b), and the parties will be notified of their review rights.

Yours sincerely

s 22 [REDACTED]

s 22 [REDACTED]

Freedom of information Regulatory Branch

s 47E(d) [REDACTED]

**From:** s 22  
**To:** s 22  
**Subject:** IC review- s 22 - Notice of Intention to Finalise IC Review [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22  
s 47E(d)

By email: s 22

Dear s 22

I refer to your application s 47E(d) s 22 for IC review of a decision s 47E(d) (the Department) was deemed to have refused.

On s 47E(d) the Department notified the Office of the Australian Information Commissioner (the OAIC) it had provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response s 47E(d)

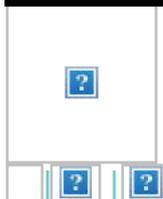
### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



#### Intake and Early Resolution Team

Freedom of Information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)  
1300 363 992 | [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

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Our reference: s 22  
Agency reference: s 22

s 22  
s 22  
s 47E(d)

Sent by email: s 22

**Your application for Information Commissioner review s 47E(d)  
decision**

Dear s 22

I refer to your application for Information Commissioner review (IC review) of a decision made by [redacted] on s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review application under s 54W of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

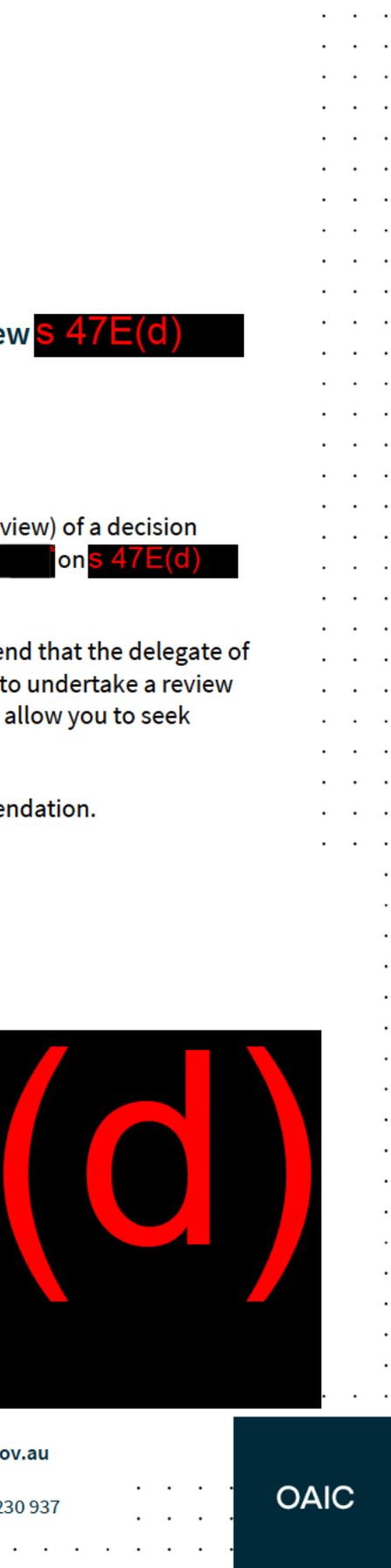
I am writing to offer you an opportunity to comment on this recommendation.

The reasons for my recommendation follow.

**Background**

On s 47E(d) you applied to s 47E(d) seeking access:

**s 47E(d)**



On s 47E(d) s 47E(d) wrote to you asking s 47E(d)

s 47E(d)

s 47E(d)

### Discretion not to undertake an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise your IC review application and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion in s 54W of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

---

<sup>1</sup> See, <http://www.aat.gov.au/applying-for-a-review/fees>.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which states:

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

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

The OAI will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances under which the Information Commissioner may consider it desirable that the AAT consider the review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

s 47E(d)

Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the s 47E(d)

For these reasons, I intend to recommend to the delegate of the Information Commissioner that they exercise the discretion not to undertake a review of your IC review application under s 54W, as I am of the view that it is in the interests of the administration of the FOI Act that this review be closed and you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

### Next steps

If you disagree with this proposed recommendation, please write to us by s 47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review application may be finalised under s 54W and you will be notified of your review rights.

If you have any questions about this email, please contact me on s 22 or by email s 22 In all correspondence, please include OAIC reference s 22

Yours sincerely

s 22

s 22

Freedom of Information

s 47E(d)

**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22

By email: s 22

Dear s 22

I refer to your application s 47E(d) s 22 for IC review of a decision s 47E(d) (the Department) was deemed to have made on s 47E(d), and to my email of s 47E(d)

On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

#### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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Our reference: s 22 [REDACTED]

Agency reference: s 22 [REDACTED]

s 22 [REDACTED]

By email to: s 22 [REDACTED]

## Your application for Information Commissioner review of the s 47E(d) [REDACTED]

Dear s 22 [REDACTED]

I refer to your applications for Information Commissioner review (IC review) of the following decisions made by the s 47E(d) [REDACTED] under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

- Decision on access dated s 47E(d) [REDACTED] (OAIC reference s 22 [REDACTED])
- Decision on access dated s 47E(d) [REDACTED] (OAIC reference s 22 [REDACTED])

The purpose of this letter is to advise you of my intention to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake IC reviews of the above decisions under s 54W(b) of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.

The reasons for my recommendation follow.

### Background

The background and the scope of these IC reviews are set out s 47E(d) [REDACTED]

### Discretion not to undertake, or not to continue to undertake, an IC review

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise your IC review applications and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the

AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

- where the IC review is linked to ongoing proceedings before the AAT or a court
- where there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- where, should the application progress to an IC review decision, the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact
- where the FOI request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:
  - the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
  - the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
  - the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent

---

<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4))

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

In these IC reviews, it is apparent that:



In relation to FOI requests that are linked to related and ongoing court proceedings, the former Information Commissioner found in '*Q' and Department of Human Services [2012] AICmr 30* (at [17]) that:

- Access to documents through FOI is not intended to replace the discovery process of courts and tribunals, which supervise the provision of documents to parties in matters before them.

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake these IC reviews under s 54W(b), as I am of the view that it is in the interests of the administration of the FOI Act that these reviews be closed and you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake IC reviews in this case.

## Next steps

If you disagree with this proposed recommendation, please write to us by **s 47E(d)** and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise these matters under s 54W(b).

If I do not hear from you by this date your IC review applications may be finalised under s 54W(b) and you will be notified of your review rights.

If you would like to discuss this matter, please contact me on **s 22** or on [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). In all correspondence, please quote **s 22**

Yours sincerely

**s 22**

**s 22**

**s 22**

Freedom of Information

**s 47E(d)**

**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) - s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22  
By email to: s 22

Dear s 22

I refer to your application for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d). On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d).

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me by return email or on s 22. Please quote OAIC reference number at the top of this email in all correspondence.

Kind regards

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) s 22 SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
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[image006.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22  
By email to: s 22

Dear s 22

I refer to your application for IC review of a decision s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d) On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d) The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 22

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me by return email or on s 22 Please quote OAIC reference number at the top of this email in all correspondence.

Kind regards

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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Our reference: s 22  
Agency reference: s 22

s 22

By email to: s 22

## Your application for Information Commissioner review of s 47E(d) decision

Dear s 22

I refer to your application for Information Commissioner review (IC review) of a decision made by the s 47E(d) on s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review application under s 54W of the FOI Act on the basis that your IC review application is lacking in substance and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

The reasons for my recommendation follow.

### Background

On s 47E(d) you applied to s 47E(d) for access to:

s 47E(d)

On s 47E(d) s 47E(d) s 47E(d)

On s 47E(d) you sought IC review of s 47E(d) decision s 47E(d)

On s 47E(d) the Office of the Australian Information Commissioner (the OAIC) s 47E(d)

On s 47E(d) s 47E(d)

On s 47E(d) s 47E(d) s 47E(d)

On s 47E(d) we wrote to you seeking your views on whether you wished to withdraw or proceed with the IC review.

On s 47E(d) you responded:

s 47E(d)

s 47E(d)

On s 47E(d) you responded:

s 47E(d)

s 47E(d)

s 47E(d)

s 47E(d)

## Discretion not to undertake an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

Under [10.2] of the FOI Guidelines, a person *who disagrees* with an agency's or minister's decision following a request for access to a document or for amendment or annotation of personal records may apply to the Information Commissioner for review under Part VII (IC review).

On the s 47E(d) s 47E(d)  
Further on the s 47E(d) s 47E(d)

As IC review is not appropriate in these circumstances, I intend to recommend that the Information Commissioner exercises the discretion to decide not to undertake this IC review under s 54W, on the basis that this IC review application is lacking in substance.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

If you disagree with this proposed recommendation, please write to us by s 47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review may be finalised under s 54W, and you will be notified of your review rights.

If you would like to discuss this matter, please contact me foirdr@oaic.gov.au. In all correspondence, please quote s 22

Yours sincerely

s 22

s 22  
s 22

Freedom of information

s 47E(d)



IC review reference: s 22

FOI request reference: s 22

s 22

s 22

Sent by email: s 22

Your applications for Information Commissioner review of s 47E(d)  
s 47E(d)

Dear s 22

I refer to your applications for Information Commissioner review (IC review) of the following decisions made by the s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

**s 47E(d)**

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review applications listed above under s 54W(b) of the FOI Act, on the basis that the interests of the administration of the FOI Act make it desirable for the relevant IC reviewable decisions to be considered by the Administrative Appeals Tribunal (AAT).

The reasons for my recommendation follow.

### Background

The background and the scope of these IC reviews is set out in the attachment to this letter (**Attachment A**).

## Discretion not to undertake or continue to undertake a review

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise the IC review applications and allow you to apply directly to the AAT. You would then have 28 days to lodge applications with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that an IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

- the IC review is linked to ongoing proceedings before the AAT or a court
- there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact, and
- the FOI request under review is complex or voluminous, resolving the IC review matter would require substantial allocation of resources, and the matter could more appropriately be handled through procedures of the AAT.
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:

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<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
- the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
- the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.



Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the decisions made by **s 47E(d)**

[Redacted text block]

**s 47E(d)**  
[Redacted text block]

s 47E(d)

s 47E(d)

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake a review of the IC review applications under s 54W(b), and that you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

### Next steps

If you disagree with this proposed recommendation, please write to us by s 47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise these matters under s 54W(b).

If I do not hear from you by this date, your IC review applications may be finalised under s 54W(b).

If you would like to discuss this matter, please contact me on s 22 or at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). In all correspondence, please quote the OAIC reference numbers referred to above.

Yours sincerely

s 22

s 22

Freedom of Information

s 47E(d)

## Fee information on the AAT's website

### Fees

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#### Do I need to pay an application fee?

Yes.

#### How much do I have to pay?

The standard application fee is \$962.

#### Can I pay a reduced fee?

Yes, a reduced fee of \$100 can be paid if:

- legal aid has been granted for the review
- you hold a health care card, pensioner concession card, Commonwealth seniors health card or other card that certifies entitlement to Commonwealth health concessions
- you are in prison, immigration detention or otherwise detained in a public institution
- you are under 18 years of age
- you receive Youth Allowance, Austudy or ABSTUDY Centrelink payments
- we decide payment of the application fee would cause you financial hardship.

You must give us evidence that you are eligible to pay a reduced fee.

To ask for a fee reduction under financial hardship you must fill in the [Request for fee reduction form](#). You should send us this form when you lodge the application.

#### What if I have more than one application for review?

If the same person (an individual, organisation or other entity) applies for review of more than one decision and we decide that the applications can be dealt with together, we can order that you only have to pay one fee.

You can ask us about paying a single fee when you lodge the applications.

#### When do I pay the fee?

You should pay the fee when you lodge the application. We will not start the review until you pay the fee.

The review might be dismissed if you do not pay the fee within 6 weeks after lodging the application.

#### How do I pay the fee?

- EFTPOS
- credit card (MasterCard and Visa only)
- cheque
- money order
- cash.

Credit card payments can also be made by [phone](#).

#### Can I receive a refund?

We will refund:

- the entire application fee if you were not required to pay it
- the difference between the fee you paid and \$100, if we decide you can pay the reduced fee
- the difference between the fee you paid and \$100, if the review is decided in your favour.

There is no refund if you paid the reduced fee of \$100.



IC review reference: s 22 [redacted]

FOI request reference: s 22 [redacted]

s 22 [redacted]

s 22 [redacted]

Sent by email: s 22 [redacted]

Your applications for Information Commissioner review of s 47E(d)

[redacted]

Dear s 47E(d)

I refer to your applications for Information Commissioner review (IC review) of the following decisions made by the Office of the Australian Information Commissioner (OAIC) under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

**s 47E(d)**

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review applications listed above under s 54W(b) of the FOI Act, on the basis that the interests of the administration of the FOI Act make it desirable for the relevant IC reviewable decisions to be considered by the Administrative Appeals Tribunal (AAT).

The reasons for my recommendation follow.

### Background

The background and the scope of these IC reviews is set out in the attachment to this letter (**Attachment A**).



## Discretion not to undertake or continue to undertake a review

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise the IC review applications and allow you to apply directly to the AAT. You would then have 28 days to lodge applications with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that an IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

- the IC review is linked to ongoing proceedings before the AAT or a court
- there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact, and
- the FOI request under review is complex or voluminous, resolving the IC review matter would require substantial allocation of resources, and the matter could more appropriately be handled through procedures of the AAT.
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:

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<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
- the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
- the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

**s 47E(d)**

Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the

**s 47E(d)**  
[Redacted text]

**s 47E(d)**  
[Redacted text]

s 47E(d)

s 47E(d)

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake a review of the IC review applications under s 54W(b), and that you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

### Next steps

If you disagree with this proposed recommendation, please write to us by **close of business** s 47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise these matters under s 54W(b).

If I do not hear from you by this date, your IC review applications may be finalised under s 54W(b).

If you would like to discuss this matter, please contact me on s 22 or at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). In all correspondence, please quote the OAIC reference numbers referred to above.

Yours sincerely

s 22

s 22

Freedom of Information

s 47E(d)

## Fee information on the AAT's website

### Fees

---

#### Do I need to pay an application fee?

Yes.

#### How much do I have to pay?

The standard application fee is \$962.

#### Can I pay a reduced fee?

Yes, a reduced fee of \$100 can be paid if:

- legal aid has been granted for the review
- you hold a health care card, pensioner concession card, Commonwealth seniors health card or other card that certifies entitlement to Commonwealth health concessions
- you are in prison, immigration detention or otherwise detained in a public institution
- you are under 18 years of age
- you receive Youth Allowance, Austudy or ABSTUDY Centrelink payments
- we decide payment of the application fee would cause you financial hardship.

You must give us evidence that you are eligible to pay a reduced fee.

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You can ask us about paying a single fee when you lodge the applications.

#### When do I pay the fee?

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The review might be dismissed if you do not pay the fee within 6 weeks after lodging the application.

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- credit card (MasterCard and Visa only)
- cheque
- money order
- cash.

Credit card payments can also be made by [phone](#).

#### Can I receive a refund?

We will refund:

- the entire application fee if you were not required to pay it
- the difference between the fee you paid and \$100, if we decide you can pay the reduced fee
- the difference between the fee you paid and \$100, if the review is decided in your favour.

There is no refund if you paid the reduced fee of \$100.

From: s 22  
To: s 22  
Subject: Intention to finalise IC review- s 22 [SEC=OFFICIAL]  
Date: s 47E(d)  
Attachments: [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Our reference: s 22  
Agency reference: s 22

s 22  
s 47E(d)  
By email to: s 22

Dear s 22

I refer to your application on behalf of s 22 for IC review of a decision s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or by return email. Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)



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**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Our reference: s 22  
Your reference: s 22

s 22  
By email to: s 22  
Your IC review application about s 47E(d)

Dear s 22

I refer to your application s 47E(d) s 22 for IC review of a decision s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to our previous email of s 47E(d)

On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) we wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence we requested you respond by s 47E(d). The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application may be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or by return email. Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely  
s 22



s 22  
Intake and Early Resolution Team  
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Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)



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Our reference: s 22  
Agency reference: s 22

s 22  
Sent by email: at s 22

Your application for Information Commissioner review of s 47E(d)

Dear s 22

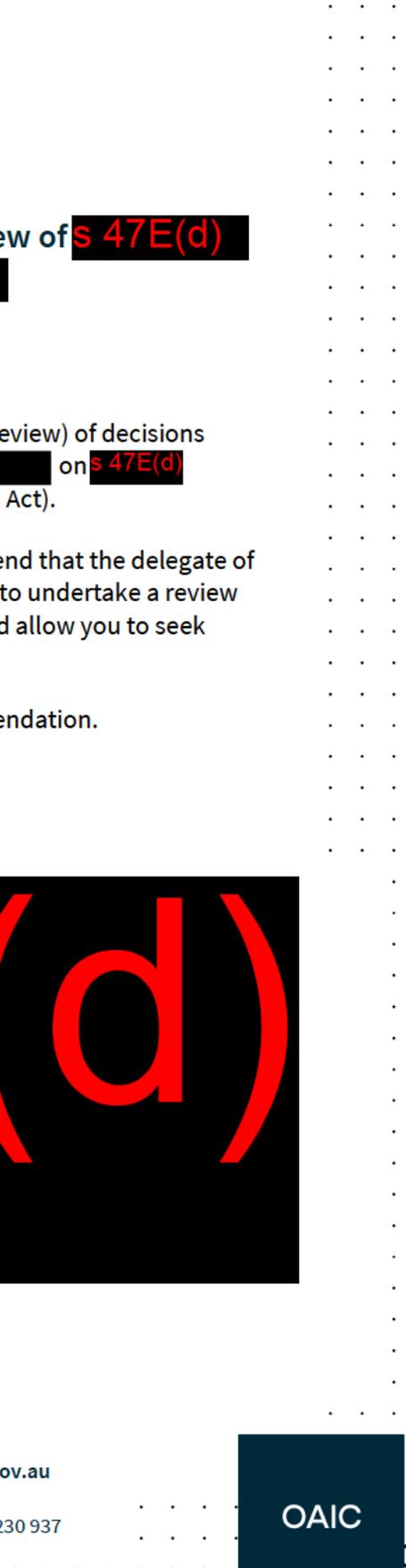
I refer to your applications for Information Commissioner review (IC review) of decisions made by s 47E(d) on s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review applications under s 54W of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

I am writing to offer you an opportunity to comment on this recommendation.

The reasons for my recommendation follow.

Background



S 47E (d)

S 47E (d)

S 47E (d)

# S 47E (d)

## **Discretion not to undertake an IC review**

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise your IC review application and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

---

<sup>1</sup> See, <http://www.aat.gov.au/applying-for-a-review/fees>.

The discretion in s 54W of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which states:

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

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

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances under which the Information Commissioner may consider it desirable that the AAT consider the review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

**s 47E (d)**

Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the decisions made by **s 47E(d)**

For these reasons, I intend to recommend to the delegate of the Information Commissioner that they exercise the discretion not to undertake a review of your IC review applications under s 54W, as I am of the view that it is in the interests of the administration of the FOI Act that this review be closed and you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

## Next steps

If you disagree with this proposed recommendation, please write to us by [REDACTED] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review application may be finalised under s 54W and you will be notified of your review rights.

If you have any questions about this email, please contact me on s 22 [REDACTED] or by email s 22 [REDACTED]. In all correspondence, please include OAIC reference s 22 [REDACTED].

Yours sincerely

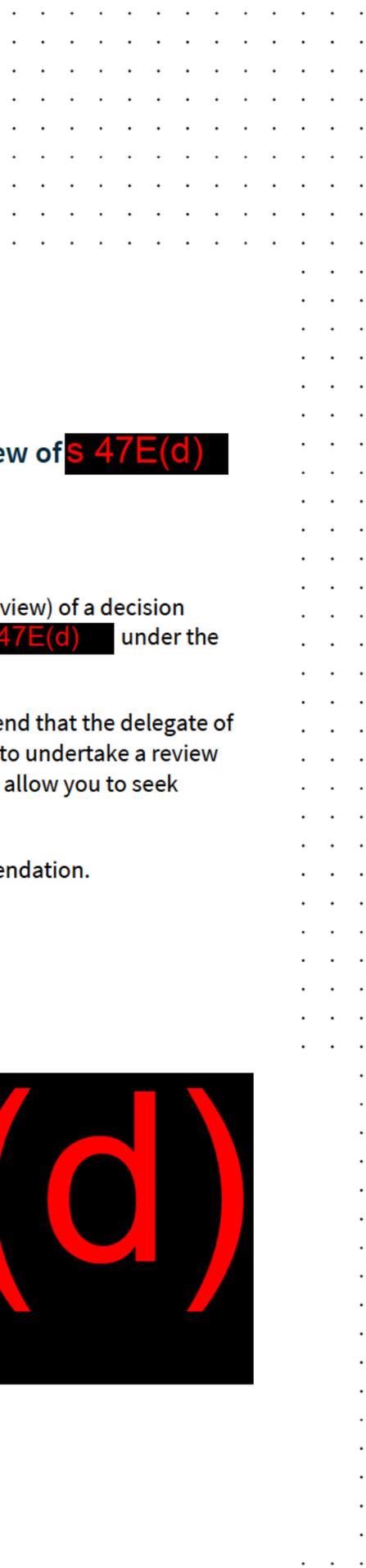
s 22 [REDACTED]

s 22 [REDACTED]

s 22 [REDACTED]

Freedom of Information

s 47E(d) [REDACTED]



Our reference: s 22  
Agency reference: s 22

s 22  
By email to: s 22

Your application for Information Commissioner review of s 47E(d)

Dear s 22

I refer to your application for Information Commissioner review (IC review) of a decision made by the Office of the Information Commissioner (the OAIC) on s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review application under s 54W of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

I am writing to offer you an opportunity to comment on this recommendation.

The reasons for my recommendation follow.

Background

On s 47E(d) you applied to s 47E(d) for access to:

s 47E(d)



s 47E(d)

S 47E(d)

S 47E(d)

## Discretion not to undertake an IC review

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise your IC review application and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> I have attached further information regarding the application process and applicable fees for your reference. Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion of s 54W of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which states:

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

- the IC review is linked to ongoing proceedings before the AAT or a court
- there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact, and
- the FOI request under review is complex or voluminous, resolving the IC review matter would require substantial allocation of resources, and the matter could more appropriately be handled through procedures of the AAT.

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<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:
- the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
- the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
- the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances under which the Information Commissioner may consider it desirable that the AAT consider the review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

**S 47E(d)**

Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the

**S 47E(d)**

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake a review of the IC review applications under s 54W(b), and that you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

### Next steps

If you disagree with this proposed recommendation, please write to us **s 47E(d)** and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review application may be finalised under s 54W and you will be notified of your review rights.

If you would like to discuss this matter, please contact me at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). In all correspondence please quote **s 22**

Yours sincerely

**s 22**

**s 22**  
**s 22**

**s 47E(d)**

## Fee information on the AAT's website

s 47E(d)

Fees | Administrative Appeals Tribunal

### Fees

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#### Do I need to pay an application fee?

An application fee must usually be paid when you apply for a review of a decision under the *Freedom of Information Act 1982*.

However, **no** fee is payable if the decision is about a document relating to a decision that does not attract a fee when a person applies to the AAT for a review of that type of decision. Decisions which do not attract a fee when applying to the AAT include:

- first review of Centrelink and child support decisions
- second review of Centrelink decisions (excluding Paid Parental Leave)
- Commonwealth workers compensation decisions under the *Safety Rehabilitation and Compensation Act 1988* or *Seafarers Rehabilitation and Compensation Act 1992*
- military compensation decisions under the *Military Rehabilitation and Compensation Act 2004*
- NDIS decisions under the *National Disability Insurance Scheme Act 2013*
- veterans' entitlement decisions under the *Veterans' Entitlements Act 1986*.

#### How much do I have to pay?

If you have to pay a fee, the standard application fee is **\$932**.

#### Can I pay a reduced fee?

Yes, a reduced fee of \$100 can be paid if:

- legal aid has been granted for the review
- you hold a health care card, pensioner concession card, Commonwealth seniors health card or other card that certifies entitlement to Commonwealth health concessions
- you are in prison, immigration detention or otherwise detained in a public institution
- you are under 18 years of age
- you receive Youth Allowance, Austudy or ABSTUDY Centrelink payments
- we decide payment of the application fee would cause you financial hardship.

You must give us evidence that you are eligible to pay a reduced fee.

To ask for a fee reduction under financial hardship you must fill in the [Request for fee reduction form](#). You should send us this form when you lodge the application.

#### What if I have more than one application for review?

If you make more than one application and we decide that they can be dealt with together, we can order that you only have to pay one fee.

You can ask us about paying a single fee when you lodge the applications.

#### When do I pay the fee?

You should pay the fee when you lodge the application. We will not start the review until you pay the fee.

The application might be dismissed if you do not pay the fee within 6 weeks after lodging the application.

**How do I pay the fee?**

- EFTPOS
- credit card (MasterCard and Visa only)
- cheque
- money order
- cash.

Credit card payments can also be made by phone.

**Can I receive a refund?**

We will refund:

- the entire application fee if you were not required to pay it
- the difference between the fee you paid and \$100, if we decide you can pay the reduced fee
- the difference between the fee you paid and \$100, if the review is decided in your favour.

There is **no** refund if you paid the reduced fee of \$100.

ABN: 90 680 970 626

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Our reference: s 22  
Agency reference: s 22

s 22

By email to: s 22

Your application for Information Commissioner review of s 47E(d)  
[Redacted]

Dear s 22

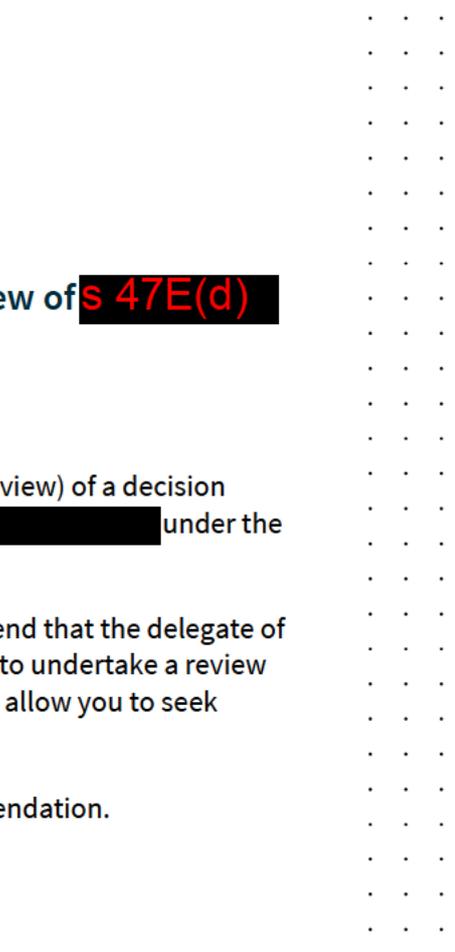
I refer to your application for Information Commissioner review (IC review) of a decision made by s 47E(d) [Redacted] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review application under s 54W of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

I am writing to offer you an opportunity to comment on this recommendation.

The reasons for my recommendation follow.

Background



# s 47E (d)

## **Discretion not to undertake an IC review**

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise your IC review application and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> I have attached further information regarding the application process and applicable fees for your reference. Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion of s 54W of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

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<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which states:

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

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

The OAI will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances under which the Information Commissioner may consider it desirable that the AAT consider the review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

**s 47E(d)**

Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the decisions made by **s 47E(d)**

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake a review of the IC review applications under s 54W(b), and that you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

## Next steps

If you disagree with this proposed recommendation, please write to us **s 47E(d)** and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review application may be finalised under s 54W and you will be notified of your review rights.

If you would like to discuss this matter, please contact me at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). In all correspondence, please quote **s 22**

Yours sincerely

**s 22**

**s 22**

**s 22**

**s 47E(d)**

## Fee information on the AAT's website

s 47E(d)

Fees | Administrative Appeals Tribunal

### Fees

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- military compensation decisions under the *Military Rehabilitation and Compensation Act 2004*
- NDIS decisions under the *National Disability Insurance Scheme Act 2013*
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If you have to pay a fee, the standard application fee is **\$932**.

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- you hold a health care card, pensioner concession card, Commonwealth seniors health card or other card that certifies entitlement to Commonwealth health concessions
- you are in prison, immigration detention or otherwise detained in a public institution
- you are under 18 years of age
- you receive Youth Allowance, Austudy or ABSTUDY Centrelink payments
- we decide payment of the application fee would cause you financial hardship.

You must give us evidence that you are eligible to pay a reduced fee.

To ask for a fee reduction under financial hardship you must fill in the [Request for fee reduction form](#). You should send us this form when you lodge the application.

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- money order
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Credit card payments can also be made by [phone](#).

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We will refund:

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- the difference between the fee you paid and \$100, if we decide you can pay the reduced fee
- the difference between the fee you paid and \$100, if the review is decided in your favour.

There is **no** refund if you paid the reduced fee of \$100.

ABN: 90 680 970 626

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## Intention to recommend that IC reviews not be undertaken under s 54W(b) of the Freedom of Information Act 1982

IC review applicant	s 22
Respondent	s 47E(d)
OAIC reference numbers	s 22
Agency reference numbers	s 22

### Summary

1. I refer to the applications made by s 22 (the applicant) for Information Commissioner review (IC review) of the following decisions made by s 22 under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

s 47E(d)

2. The purpose of this letter is to advise the parties of my intention to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake IC reviews of these decisions under s 54W(b) of the FOI Act, which would allow the applicant to seek reviews at the Administrative Appeals Tribunal (AAT).
3. I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.

4. The reasons for my recommendation follow.

## Background

5. The Key procedural steps in this IC review are set out at **Attachment A**.

## Discretion not to undertake an IC review

6. Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.
7. The effect of such a decision would be to finalise this IC review applications and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge applications with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup>
8. The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.
9. The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

10. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

- where the IC review is linked to ongoing proceedings before the AAT or a court
- where there is an apparent inconsistency between earlier IC review decisions and AAT decisions

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<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

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

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

11. The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.
12. The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
13. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.
14. In this IC review, it is apparent that:

s 47E (d)

s 47E(d)

15. For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake IC reviews under s 54W(b), as I am of the view that s 47E(d)

16. The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake IC reviews in this case.

### Next steps

17. If you disagree with this proposed recommendation, please write to us s 47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W(b).

18. In the absence of a response by this date this IC review application may be finalised under s 54W(b), and the parties will be notified of their review rights.

Yours sincerely

s 22

s 22  
s 22

Freedom of information Regulatory Branch

s 47E(d)

ATTACHMENT A

**S 47E(d)**

S 47E (d)

**S 47E (d)**

**S 47E (d)**



## Intention to recommend that IC reviews not be undertaken under s 54W(b) of the Freedom of Information Act 1982

IC review applicant	s 22
Respondent	s 47E(d)
OAIC reference numbers	s 22
Agency reference numbers	s 22

### Summary

1. I refer to the applications made by s 22 (the applicant) for Information Commissioner review (IC review) of the following decisions made by the s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

s 47E(d)

2. The purpose of this letter is to advise the parties of my intention to recommend that a delegate of the Information Commissioner exercise the discretion to decide not to undertake IC reviews of these decisions under s 54W(b) of the FOI Act, which would allow the applicant to seek reviews at the Administrative Appeals Tribunal (AAT).
3. I am writing to both parties in this IC review to offer you both an opportunity to comment or make submissions on this recommendation.

4. The reasons for my recommendation follow.

## Background

5. The Key procedural steps in this IC review are set out at **Attachment A**.

## Discretion not to undertake an IC review

6. Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.
7. The effect of such a decision would be to finalise this IC review applications and allow the applicant to apply directly to the AAT. The applicant would then have 28 days to lodge applications with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup>
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10. This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

- where the IC review is linked to ongoing proceedings before the AAT or a court
- where there is an apparent inconsistency between earlier IC review decisions and AAT decisions

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<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

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

The OAIIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

11. The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.
12. The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
13. Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.
14. In this IC review, it is apparent that:

s 47E (d)

s 47E(d)

15. For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake IC reviews under s 54W(b), as I am of the view that s 47E(d)

16. The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake IC reviews in this case.

### Next steps

17. If you disagree with this proposed recommendation, please write to us s 47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W(b).

18. In the absence of a response by this date this IC review application may be finalised under s 54W(b), and the parties will be notified of their review rights.

Yours sincerely

s 22

s 22

s 22

Freedom of information Regulatory Branch

s 47E(d)

ATTACHMENT A

**S 47E(d)**

**S 47E (d)**

**S 47E(d)**

S 47E (d)

**From:** s 22  
**To:** s 22  
**Cc:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

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Our reference: s 22  
Agency reference: s 22

s 22  
By email to: s 22  
Copied to: s 22

## Your IC review application about s 47E(d)

Dear s 22

I refer to your application on behalf of s 22 for IC review of a decision s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d). On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d).

### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 22 - s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.jpg](#)

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Our reference: s 22  
Agency reference: s 22

s 22  
s 47E(d)  
By email to: s 22  
Your IC review application about s 47E(d)

Dear s 22

I refer to your application s 22 for IC review of a decision s 47E(d) (the Department) was deemed to have made s 47E(d) and to my email of s 47E(d).  
On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d).  
The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d).

#### Intention to finalise IC review

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



s 22  
Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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Our reference: s 22  
Agency reference: s 22

s 22  
Sent by email: s 22

Your application for Information Commissioner review of s 47E(d)  
[Redacted]

Dear s 22

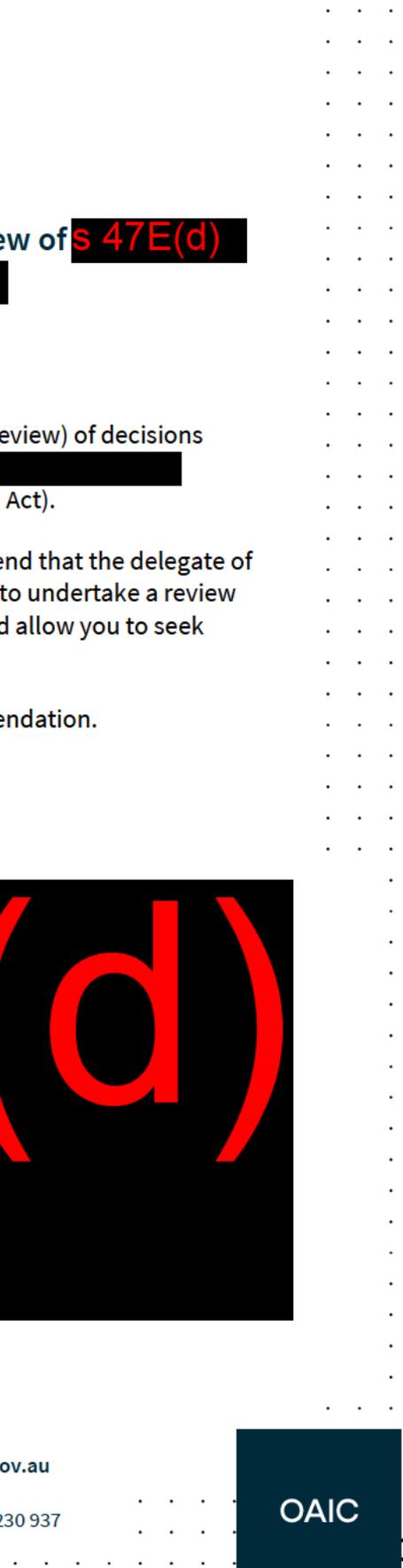
I refer to your applications for Information Commissioner review (IC review) of decisions made by s 47E(d) [Redacted] under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review applications under s 54W of the FOI Act, which would allow you to seek review at the Administrative Appeals Tribunal (AAT).

I am writing to offer you an opportunity to comment on this recommendation.

The reasons for my recommendation follow.

Background



S 47E (d)

S 47E (d)

# S 47E (d)

## **Discretion not to undertake an IC review**

Under s 54W of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise your IC review application and allow you to apply directly to the AAT. You would then have 28 days to lodge an application with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

---

<sup>1</sup> See, <http://www.aat.gov.au/applying-for-a-review/fees>.

The discretion in s 54W of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered directly by the AAT, rather than by the Information Commissioner first.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which states:

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

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

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances under which the Information Commissioner may consider it desirable that the AAT consider the review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

**s 47E (d)**

Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the decisions made by **s 47E(d)**  
[REDACTED]

For these reasons, I intend to recommend to the delegate of the Information Commissioner that they exercise the discretion not to undertake a review of your IC review applications under s 54W, as I am of the view that it is in the interests of the administration of the FOI Act that this review be closed and you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

## Next steps

If you disagree with this proposed recommendation, please write to us by **s 47E(d)** and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review application may be finalised under s 54W and you will be notified of your review rights.

If you have any questions about this email, please contact me on **s 22** or by email **s 22**. In all correspondence, please include OAIC reference **s 22**.

Yours sincerely

**s 22**

**s 22**  
**s 22**

Freedom of Information

**s 47E(d)**

**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 47E(d) - s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.jpg](#)  
[image007.png](#)

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Our reference: s 22  
Agency reference: s 22

s 22  
By email to: s 22

Dear s 22

I refer to your application for IC review of a decision the s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au) or on s 22. Please quote OAIC reference number at the top of this email in all correspondence.

Kind regards

s 22



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Intake and Early Resolution Team  
Freedom of information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.jpg](#)  
[image008.jpg](#)

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Our reference: s 22  
Agency reference: s 22

s 22  
s 47E(d)

By email to: s 22  
Dear s 22

I refer to your applications for Information Commissioner review (IC review) of the deemed access refusal decisions by the s 47E(d) (the Department) in relation to your clients s 22 and to my previous correspondence.

On s 47E(d) and s 47E(d) respectively, the Department provided decisions to you on your FOI requests.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC reviews. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

### Intention to finalise IC reviews

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review applications will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

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Yours sincerely

s 22



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**From:** s 22  
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**Subject:** Intention to finalise IC reviews- s 22 - s 22 [SEC=OFFICIAL]  
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[image007.jpg](#)  
[image008.jpg](#)

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Our reference: s 22  
Agency reference: s 22

s 22  
s 47E(d)

By email to: s 22  
Dear s 22

I refer to your applications for Information Commissioner review (IC review) of the deemed access refusal decisions by s 47E(d) (the Department) in relation to s 22 and to my previous correspondence.

On s 47E(d) s 47E(d) the Department provided decisions to you on your FOI requests.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC reviews. In that correspondence I requested you respond by s 47E(d). The OAIC has not received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

### Intention to finalise IC reviews

Please note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review applications will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 47E(d) or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

s 22



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Intake and Early Resolution Team  
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Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)



IC review reference: s 22 [REDACTED]

FOI request reference: s 22 [REDACTED]

[REDACTED]

s 22 [REDACTED]

Sent by email: s 22 [REDACTED]

## Your applications for Information Commissioner review of s 47E(d)

[REDACTED]

Dear s 22 [REDACTED]

I refer to your applications for Information Commissioner review (IC review) of the following decisions s 47E(d) [REDACTED] under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

**s 47E(d)**

The purpose of this letter is to advise you of my intention to recommend that the delegate of the Information Commissioner exercises the discretion to decide not to undertake a review of your IC review applications listed above under s 54W(b) of the FOI Act, on the basis that the interests of the administration of the FOI Act make it desirable for the relevant IC reviewable decisions to be considered by the Administrative Appeals Tribunal (AAT).

The reasons for my recommendation follow.

### Background

The background and the scope of these IC reviews is set out in the attachment to this letter (**Attachment A**).

## Discretion not to undertake or continue to undertake a review

Under s 54W(b) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

The effect of such a decision would be to finalise the IC review applications and allow you to apply directly to the AAT. You would then have 28 days to lodge applications with the AAT in accordance with ordinary AAT processes. AAT filing fees may apply.<sup>1</sup> Please note that you may not be required to pay an application fee or may be eligible for a reduced application fee of \$100.

The discretion in s 54W(b) of the FOI Act may be exercised where the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that an IC reviewable decision be considered directly by the AAT, rather than initially by the Information Commissioner.

The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 which created s 54W(b) states:

One of the reasons for retaining a right of review to the AAT is that, as an experienced review body, the AAT can properly deal with highly contested applications. This provision enables the Information Commissioner to decline to undertake a review if satisfied it would be more appropriate and efficient for the application to be made directly to the AAT.

This is also referred to in the Guidelines issued by the Australian Information Commissioner under s 93A (FOI Guidelines) at [10.88] – [10.89], which state:

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

- the IC review is linked to ongoing proceedings before the AAT or a court
- there is an apparent inconsistency between earlier IC review decisions and AAT decisions
- the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact, and
- the FOI request under review is complex or voluminous, resolving the IC review matter would require substantial allocation of resources, and the matter could more appropriately be handled through procedures of the AAT.
- where there may be a perceived or actual conflict of interest in the Commissioner undertaking review, including where:

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<sup>1</sup> See, <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees>

- the FOI request under review was made to, or decided by, the Information Commissioner or their delegate
- the FOI request or material at issue relate to specific functions exercised by the Information Commissioner under the Privacy Act
- the applicant has active matters in other forums, including the AAT or Federal Court and the Information Commissioner is the respondent
- where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

The OAIC will consult the parties involved in a matter before making a decision under s 54W(b) to conclude an IC review.

The circumstances in which the Information Commissioner may consider it desirable that the AAT consider the IC review application, as outlined in the FOI Guidelines above, are not exhaustive. There will be circumstances that are not listed where the Information Commissioner may deem it desirable to refer the matter to the AAT.

The objects of the FOI Act provide that functions and powers under the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Further, in accordance with these objects, paragraph [10.18] of the FOI Guidelines provides that IC reviews are intended to be a simple, practical and cost-efficient method of external merits review.

**s 47E(d)**

Based on the information currently before the OAIC, I consider that the interests of the administration of the FOI Act make it desirable that the AAT undertakes a review of the decisions made by **s 47E(d)**

[REDACTED]

[REDACTED]

**s 47E(d)**

s 47E(d)

For these reasons, I intend to recommend to a delegate of the Information Commissioner that they exercise the discretion not to undertake a review of the IC review applications under s 54W(b), and that you be provided the opportunity of applying directly to the AAT for review.

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to undertake a review in this case.

### Next steps

If you disagree with this proposed recommendation, please write to us by s 47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise these matters under s 54W(b).

If I do not hear from you by this date, your IC review applications may be finalised under s 54W(b).

If you would like to discuss this matter, please contact me on s 22 or at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). In all correspondence, please quote the OAIC reference numbers referred to above.

Yours sincerely

s 22

s 22

Freedom of Information

s 47E(d)

## Fee information on the AAT's website

### Fees

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#### Do I need to pay an application fee?

Yes.

#### How much do I have to pay?

The standard application fee is \$962.

#### Can I pay a reduced fee?

Yes, a reduced fee of \$100 can be paid if:

- legal aid has been granted for the review
- you hold a health care card, pensioner concession card, Commonwealth seniors health card or other card that certifies entitlement to Commonwealth health concessions
- you are in prison, immigration detention or otherwise detained in a public institution
- you are under 18 years of age
- you receive Youth Allowance, Austudy or ABSTUDY Centrelink payments
- we decide payment of the application fee would cause you financial hardship.

You must give us evidence that you are eligible to pay a reduced fee.

To ask for a fee reduction under financial hardship you must fill in the [Request for fee reduction form](#). You should send us this form when you lodge the application.

#### What if I have more than one application for review?

If the same person (an individual, organisation or other entity) applies for review of more than one decision and we decide that the applications can be dealt with together, we can order that you only have to pay one fee.

You can ask us about paying a single fee when you lodge the applications.

#### When do I pay the fee?

You should pay the fee when you lodge the application. We will not start the review until you pay the fee.

The review might be dismissed if you do not pay the fee within 6 weeks after lodging the application.

#### How do I pay the fee?

- EFTPOS
- credit card (MasterCard and Visa only)
- cheque
- money order
- cash.

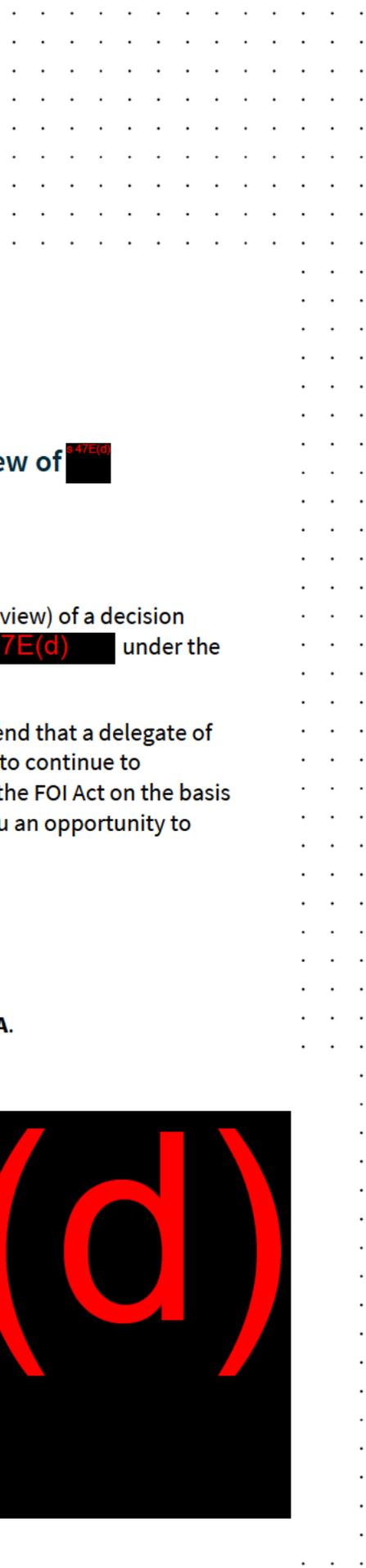
Credit card payments can also be made by [phone](#).

#### Can I receive a refund?

We will refund:

- the entire application fee if you were not required to pay it
- the difference between the fee you paid and \$100, if we decide you can pay the reduced fee
- the difference between the fee you paid and \$100, if the review is decided in your favour.

There is no refund if you paid the reduced fee of \$100.



Our reference: s 22  
Agency reference: s 22

s 22

By email: s 22

Your application for Information Commissioner review of s 47E(d)

[Redacted]

Dear s 22

I refer to your application for Information Commissioner review (IC review) of a decision made by s 47E(d) (the Department) on s 47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The purpose of this letter is to advise you of my intention to recommend that a delegate of the Information Commissioner exercises the discretion to decide not to continue to undertake a review of your IC review application under s 54W(a)(i) of the FOI Act on the basis that s 47E(d) and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

The reasons for my recommendation follow.

Background

The key procedural steps in this IC review are set out at **Attachment A**.

Scope of IC review

s 47E(d)



s 47E(d)

S 47E(d)

s 47E(d)

S 47E(d)

S 47E (d)

S 47E (d)

# s 47E(d)

## Discretion not to continue to undertake an IC review

Under s 54W(a)(i) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the Information Commissioner is satisfied that the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

Having regard to s 47E(d)



For these reasons, I intend to recommend that the Information Commissioner exercises the discretion to decide not to continue to undertake this IC review under s 54W(a)(i), because I am of the view that this IC review application is **s 47E(d)**

The delegate of the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to continue to undertake a review in this case.

If you disagree with this proposed recommendation, please write to us by **s 47E(d)** and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise this matter under s 54W.

If I do not hear from you by this date your IC review may be finalised under s 54W(a)(i) and you will be notified of your review rights.

If you would like to discuss this matter, please contact me on **s 22** or on [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). In all correspondence please quote **s 22**

Yours sincerely

**s 22**

**s 22**

**s 22**

**s 22**

ATTACHMENT A  
Key procedural steps

**S 47E(d)**

S 47E (d)

**From:** s 22  
**To:** s 22  
**Subject:** Intention to finalise IC review- s 22 [SEC=OFFICIAL]  
**Date:** s 47E(d)  
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s 22  
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By email: s 22

Dear s 22

I refer to your application for Information Commissioner review (IC review) of a decision s 47E(d) (the Department) was deemed to have refused on s 47E(d) and to my email of s 47E(d)

On s 47E(d) the Department provided a decision to you on your FOI request.

On s 47E(d) I wrote to you seeking your advice on whether you wished to proceed or withdraw your IC review. In that correspondence I requested you respond by s 47E(d). The OAIC does not appear to have received a response from you.

In light of the above and in order to progress your IC review, can you please advise if you would like to proceed or withdraw your request for IC review? Please provide a response by s 47E(d)

#### Intention to finalise IC review

I note that s 54W(a)(ii) of the FOI Act provides that the Information Commissioner may decide not to undertake an IC review where an applicant fails to cooperate in progressing an IC review application without reasonable excuse. Should we not receive a response from you to this email by s 47E(d) your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(a)(ii).

If you have any questions regarding this email please contact me on s 22 or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). Please quote OAIC reference number at the top of this email in all correspondence.

Kind regards

s 22

  
**Intake and Early Resolution Team**  
Freedom of Information Regulatory Group  
Office of the Australian Information Commissioner  
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)  
1300 363 992 | [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)  
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