



Our reference: FOIREQ22/00199

Attention: Julie

By Email: foi+request-9194-5d782e22@righttoknow.org.au

Your Freedom of Information request – FOIREQ22/00199

Dear Julie

I refer to your request for access to documents made under the *Freedom of Information Act 1982 (Cth)* (the FOI Act) received on 27 July 2022.

You seek access to:

I request copy of any currently used document of the OAIC (which the FOI Act states is any document is in the possession of the agency, whether created in the agency or received in the agency) that sets out how any service complaint about the OAIC, any foI complaint about the performance of functions or the exercise of powers under the FOI Act made by the OAIC, any IC review requested on an OAIC FOI decision, and any privacy complaint about any act taken by the OAIC, is to be managed by the OAIC.

Documents related to any such policy or procedure no longer followed by the OAIC are out of scope.

On 2 August 2022, Ms Matilda Grimm, paralegal, wrote to you to confirm receipt of your request.

Decision

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

I have identified four documents within the scope of your request. I have decided to grant access to these documents in full, which are currently publicly available on the OAIC website.¹ If you require us to provide you with a PDF copy of these documents please kindly let us know.

External complaints

The Office of the Australian Information Commissioner (OAIC) publishes an operational policy for the management of external complaints about the behaviour of OAIC employees or contractors.²

Complainants are encouraged to raise concerns about the behaviour of staff members with the staff member concerned. Staff members should attempt to resolve the complaint with the individual directly.

Where the complainant prefers to raise the matter with someone other than the staff member involved, or where the attempt to resolve the matter with the staff member involved has been unsuccessful, the complainant should be provided with the contact details of the staff member's manager.

The complaint must be assessed by the manager of the staff member about whom the complaint is made. The investigator assigned to the complaint will prepare a short, written plan for investigation. All investigations must be quick, confidential and impartial.

Privacy complaints

The OAIC publishes an operational policy for the management of privacy complaints about the OAIC.³ The policy applies to any officer of the OAIC who receives a complaint from an individual alleging that the OAIC has interfered with their privacy.

The policy outlines:

- The process for handling a first instance complaint about an act or practice on the part of the OAIC that may be an interference with the privacy of an individual
- The role of the OAIC's privacy officers
- The process for managing a complaint made under s 36 about an act or practice of the OAIC

¹ <https://www.oaic.gov.au/>

² <https://www.oaic.gov.au/about-us/our-corporate-information/operational-information/external-complaints-about-oaic-employees-or-contractors-overarching-policy>

³ <https://www.oaic.gov.au/about-us/our-corporate-information/operational-information/privacy-complaints-about-the-oaic>

- The legal basis for appointing an external investigator to conduct an investigation under s 40(1) and the role of the external investigator
- The role of Legal Services team and Corporate Services Branch in procuring and appointing the external investigator
- The role of the relevant Assistant Commissioner or Principal Director in progressing the s 36 privacy complaint
- Supporting the officer about whom a privacy complaint is made.

FOI complaints

Part 11 of the FOI Guidelines⁴ outlines how the Information Commissioner can conduct an investigation in response to a complaint made under s 70 of the FOI Act into action taken by any agency in the performance of its powers under the FOI Act.

The investigation procedure is outlined at [11.21] – [11.57]. The powers of the Information Commissioner in respect of complaint investigations are outlined below.

- The Information Commissioner may obtain information from any officer of an agency, and make any inquiry, that he or she thinks is relevant to the investigation (s 76(2)).
- The Information Commissioner has a limited power to enter premises to carry out an investigation or to inspect documents on the premises (s 77(1)).
- The Information Commissioner has certain compulsory powers:
 - to require production of information and documents
 - to require production of exempt documents
 - to require a person to attend to answer questions and to take an oath or affirmation

Information Commissioner (IC) reviews

Part 10 of the FOI Guidelines⁵ covers the broad principles and procedures in the Information Commissioner review process as set out under Part VII of the FOI Act. The general procedure for conducting IC reviews is outlined at [10.52] – [10.60].

The Information Commissioner may conduct an IC review in whatever way the Information Commissioner considers appropriate (s 55(2)(a)) and must use as little formality and technicality as possible (s 55(4)(a)). This may include:

- using alternative dispute resolution methods or any other appropriate technique (s 55(2)(b));
- allowing a person to participate by any means of communication (s 55(2)(c));
- obtaining information from any person and make any inquiries that the Information Commissioner considers appropriate (s 55(2)(d)); and

⁴ <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-11-complaints-and-investigations>

⁵ <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-10-review-by-the-information-commissioner>

- giving written directions about the conduct of the IC review, both generally and in particular IC reviews (s 55(2)(e)).

The steps for conducting an IC review are outlined at [10.100] – [10.115].

Conclusion

Please see the following page for information about your review rights and information about the OAIC's disclosure log.

Yours sincerely



Margaret Sui
Senior Lawyer

26 August 2022

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

<https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR>

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information page](#) on our website.

Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

Since the documents are available on the OAIC website, the documents will not be published on our disclosure log.