

From: [Verity](#)
To: [OAIC - FOI DR](#)
Subject: [WARNING: ATTACHMENT UNSCANNED]Re: MR18/00860 - Your application for IC review [SEC=OFFICIAL]
Date: Tuesday, 12 July 2022 12:56:36 PM
Attachments: [image002.png](#)
[image003.png](#)
[image001.jpg](#)
[image004.png](#)
[image005.png](#)

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My response to delegate Carl English's fraudulent characterisation that there is nothing to review in MR18/00860 is that this is patently untrue.

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- The ICR application was made on 2 November 2018, after DVA again imposed an inflated untenable charge in a sustained practice of using such charges to artificially delay and deny access

- The ICR application was a mixed s 70 complaint and review of decision application

- The OAIC, seeking to avoid making an ICR decision, warned DVA on 10 May 2019 that if it did not review its charges decision it would proceed to making an adverse public decision - DVA revised but did not withdraw its charges

- The OAIC again foreshadowed to DVA in early 2022 that if the charges were not withdrawn, a public adverse decision may be published, leading to the withdrawal of charges on 23 February 2022—more than 3 years after the FOI was made

- DVA did not provide copy of their decision or release any documents to me at my address for notices, instead only to the OAIC

- I had to chase the OAIC to get a copy, which was not provided until 18 March 2022—3 years 5 months 19 days after my FOI was made

- As the ICG clearly states that were an ICR consists of both a merits review and a complaint about actions taken or not taken by an agency under the FOI Act, then the Commissioner's view is that the complaint about actions directly related to the access refusal review will be dealt with as part of that ICR

- The withdrawal of untenable charges after creating over 3 years of intentional delay by DVA does not make, as Carl English had fraudulently claimed, that there is nothing to review anymore

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untenable) is a reviewable matter by the IC given it was part of the ICR

Verity

On Mon, Jul 11, 2022 at 4:29 pm, ENGLISH, Carl <xxxx.xxxxxxx@xxxx.xxx> wrote:

Our reference: MR18/00860

Agency reference: LEX 44871

Ms Verity Pane

By email: **s22(1)(a)(ii)**

Your application for Information Commissioner review of the Department of Veterans' Affairs

Dear Ms Pane

I write to you in relation to your IC review application of a charges decision made by the Department of Veteran's Affairs on 2 November 2018. I apologise for the delay writing to you about this matter.

Please find correspondence about your IC review application attached.

Kind regards



Carl English | Review Adviser (Legal)

Reviews

Freedom of Information Regulatory Group

Office of the Australian Information Commissioner

GPO Box 5218 Sydney NSW 2001 | oaic.gov.au

+61 2 9942 4169 | xxxx.xxxxxxx@xxxx.xxx



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Our reference: MR18/00860
Agency reference: FOI 24762

Ms Verity Pane

Sent by email: s22(1)(a)(ii)

Finalisation of IC review application under s 54W(a)(i)

Dear Ms Pane

I refer to your request for Information Commissioner review (IC review) of a decision made by the Department of Veterans' Affairs (the Department) on 2 November 2018 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. I have decided to finalise this IC review under s 54W(a)(i) of the FOI Act. My reasons follow.

Background

On 27 September 2018, you made a request to the Department for a summary document on the Department's global external legal services expenditure.

On 24 October 2018, the Department issued you with a preliminary assessment of charges totalling \$413.47 under s 29(1) of the FOI Act (the charges notice).

On 25 October 2018, you responded to the Department's charges notice, opposing the charges imposed.

On 2 November 2018, the Department advised you of its decision to impose a reduced charge of \$217.41.

That same date you sought IC review of the Department's decision under s 54L of the FOI Act.

On 10 May 2019, the Office of the Australian Information Commissioner (the OAIC) provided the Department with its preliminary view that the decision to impose a charge of \$217.41 was not justified and invited the Department to make a revised decision, waiving the charge.

On 31 May 2019, the Department notified you that it had made a revised decision to impose a reduced charge of \$103.99.

On that same date, you advised that you wish to proceed with the IC review.

On 23 February 2022, the Department notified the OAIIC that it had made a further revised decision to waive the charge.

On 18 March 2022, the OAIIC provided you with a copy of the decision.

On 11 July 2022, the OAIIC review adviser with carriage of this matter, Mr Carl English, wrote to you to advise you of their intention to recommend to the delegate of the Information Commissioner that your application for IC review be finalised under s 54W(a)(i) of the FOI Act on the basis that your IC review application is lacking in substance and invited you to provide reasons if you disagreed with the proposed finalisation of your IC review.

On 12 July 2022, you responded to Mr English's advice and provided submissions.

Scope of IC review

The issue in this IC review is whether the Department should have exercised its discretion to impose a charge under s 29 of the FOI Act.

In forming my view as review adviser, I have had regard to the following:

- the Department's charges notice dated 24 October 2018
- the Department's charges decision and reasons for decision dated 2 November 2018
- the Department's revised decision and reasons for decision dated 31 May 2019
- the Department's revised decision and reasons for decision dated 13 February 2022 waiving the charge in full (the decision under review)
- the FOI Act, in particular ss 29, 53A, 55G and 54W
- your submissions.

IC reviewable decision

Section 53A of the FOI Act defines an 'access refusal decision' to include:

...

(e) a decision under section 29 relating to imposition of a charge or the amount of a charge;

...

Section 55G of the FOI Act states:

Procedure in IC review--revocation or variation of access refusal decision

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the original decision) in relation to a request or an application under section 48 at any time

during an IC review of the access refusal decision if the variation or substitution (the revised decision) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

...

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

Your submissions

In your submissions, you said:

My response to delegate Carl English's fraudulent characterisation that there is nothing to review in MR18/00860 is that this is patently untrue.

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Consideration of the issues

The Department's charges decision of 2 November 2018 is an access refusal decision for the purposes of the FOI Act and you were able to apply for IC review (under s 54L of the FOI Act).

On 13 February 2022, the Department made a revised decision to waive the charge in full under s 55G(1)(b) of the FOI Act.

By operation of s 55G(2)(b) of the FOI Act, your IC review application becomes an application for review of the Department's revised decision of 13 February 2022 to waive the charge.

The issue under consideration in this IC review was whether the Department, having decided to impose a charge under s 29(1) of the FOI Act, should exercise its discretion to reduce or impose the charge under s 29(4) of the FOI Act. That issue has been resolved as the Department made a revised decision on 13 February 2022 to relieve you from liability to pay a charge (s 55G(1)(b) of the FOI Act).

Discretion not to continue to undertake an IC review

I am a delegate of the Information Commissioner.

Under s 54W(a) 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.

I have had regard to:

- the Department's charges notice dated 24 October 2018
- the Department's charges decision and reasons for decision dated 2 November 2018
- the Department's revised decision and reasons for decision dated 31 May 2019

- the Department's revised decision and reasons for decision dated 13 February 2022 waiving the charge in full (the decision under review)
- the FOI Act, in particular ss 29, 53A, 55G and 54W
- your submissions.

In deciding whether to exercise the discretion not to continue to undertake a review, I have considered:

- Based on the information before me, including the Department's revised decision dated 13 February 2022, the legislative framework and guidelines and your submissions, I am satisfied that the issue under consideration in this IC review has been resolved
- Continuing to review this matter will not promote the objects of the FOI Act or be an efficient or effective use of the OAIC's resources.

Based on the information before me, I am satisfied that the issue under consideration in this IC review was whether the Department, having decided to impose a charge under s 29(1) of the FOI Act, should exercise its discretion to reduce or impose the charge under s 29(4) of the FOI Act. That issue has been resolved as the Department made a revised decision on 13 February 2022 to relieve you from liability to pay a charge (s 55G(1)(b) of the FOI Act).

On this basis, I am satisfied that the matter is lacking in substance.

For these reasons, as a delegate of the Information Commissioner, I have decided not to continue to undertake a review of your application under s 54W(a)(i) of the FOI Act. I confirm that this IC review is now closed. Your review rights are set out below.

If you would like to discuss this matter, please contact Carl English on (02) 9942 4169 or on carl.english@oaic.gov.au. In all correspondence please quote MR18/00860.

Yours sincerely



Justin Lodge
Director
Freedom of Information

29 July 2022

Review rights

Judicial review

You can apply to the Federal Court of Australia or the Federal Circuit Court for a review of a decision of the Information Commissioner if you think that a decision by the Information Commissioner not to review or not to continue to undertake review of your IC review application under the *Freedom of Information Act 1982* (the FOI Act) is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.