



Our reference: s 47E(d)

Agency reference: s 47E(d)

s 22

Decision not to continue to undertake a review under s 54W of the FOI Act

Dear s 22

I refer to your request for Information Commissioner review (IC review) of a decision made by the Department of Veterans' Affairs (DVA) s 47E(d), under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to continue to undertake a review of your IC review application. My reasons follow.

Background

s 47E(d)

s 47E(d) the Department advised the OAIC that it had made a revised decision under s 55G granting you full access to the document you sought. Given it appears the Department has now provided you with access to the document in full, it appears that there is no further

On the same date the OAIC wrote to you requesting that you notify us whether you 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.

47E(d)

s 47E(d)

I also advised you of my intention to finalise your application for IC review under s 54W(a)(i) of the FOI Act on the basis that your IC review is lacking in substance.

I invited you to provide reasons if you disagreed with the proposed finalisation of your IC review s 47E(d).

Based on the information before me, the OAIC has not received a response from you.

Decision

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.

In making my decision, I have had regard to:

- the DVA's decision and reasons for decision 47E(d)
- DVA's revised decision under s 55G 47E(d)
- the document at issue (as released in full by DVA)
- the FOI Act, in particular s 54W
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraph [10.85]
- the parties' submissions.

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.

47E(d) However, as DVA has decided to release the document at issue to you in full and you have gained access to the document you were seeking through the IC review process, it appears there are no further grounds for continuing with the IC review. On this basis, I am satisfied that the matter is lacking in substance.

In deciding whether to exercise the discretion not to continue to undertake a review, I have considered that this IC review application is lacking in substance and continuing with the IC

review in these circumstances would not be an effective or efficient use of the OAIC's resources or be consistent with the objects of the FOI Act.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Justin Lodge', with a stylized flourish at the end.

Justin Lodge
Director
Freedom of Information

11 January 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>.

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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Our reference: s 47E(d)
Agency reference s 47E(d)

s 22

By email to: s 22

Decision not to continue to undertake a review under s 54W of the FOI Act

Dear s 22

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

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to continue to undertake a review of your IC review application. My reasons follow.

Background

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

On s 47E(d), the OAIC review officer responsible for this matter at the time, Carly Warren, wrote to you to advise you of her 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 it is lacking in substance.

Ms Warren invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by s 47E(d).

s 47E(d)

s 47E(d), the case officer now responsible for this matter, Emily Walsh, wrote to you advising that a copy of the document was not able to be released to you on the basis that the Department maintains it is exempt. In any event, Ms Walsh was satisfied upon reviewing the document that it did not fall within the scope of your FOI request. Ms Walsh invited you to make any further submissions in response by s 47E(d). Based on the information before me, the OAIC has not received a response.

Scope of IC review

The issue to be decided in this IC review is whether the Department has taken all reasonable steps to find documents within the scope of the request (s 24A of the FOI Act).

In making a decision about whether to finalise this matter under s 54W(a)(i), I have had regard to the following:

- i. the Department's decision and reasons for decision **47E(d)**
- ii. evidence of searches undertaken by the Department
- iii. the FOI Act, in particular s 24A
- iv. the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act, in particular paragraphs [3.85] – [3.94]
- v. relevant case law, in particular *De Tarle and Australian Securities and Investments Commission (Freedom of information)* [2015] AATA 770, and
- vi. the parties' submissions.

Consideration of whether reasonable steps undertaken

Section 24A requires that an agency or minister take 'all reasonable steps' to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

The FOI Guidelines explain:

The Act is silent on what constitutes 'all reasonable steps'. The meaning of 'reasonable' in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents, and
- the record management systems in place
- the individuals within an agency or minister's office who may be able to assist with the location of documents, and

- the age of the documents.¹

In this context ‘reasonable’ has been understood as taking steps that are ‘not going beyond the limit assigned by reason; not extravagant or excessive; moderate...Of such an amount, size, number, etc., as is judged to be appropriate or suitable to the circumstances or purpose’ (see *De Tarle and Australian Securities and Investments Commission (Freedom of Information)* [2015] AATA 770 at [19]).

The Department’s decision

s 47E(d) [Redacted]

[Redacted]

Parties’ submissions

s 47E(d) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s 47E(d) [Redacted]

[Redacted]

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act (FOI Guidelines)* [3.88] – [3.89].

S 47E (d)

Decision not to continue to undertake a review

I am a delegate of the Information Commissioner.

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.

Having regard to the scope of your request, the parties' submissions and the Department's evidence of searches, I am satisfied that the Department has taken all reasonable steps to find documents within the scope of the request as it was required to do by s 24A and that relevant documents, if they existed, would have been found. On this basis, I am satisfied that the matter is lacking in substance.

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

- Based on the information me, the Department's submissions, and relevant case law, I consider that the Department has discharged its onus of establishing that the decision is justified.
- The OAIC did not receive any response from you to Ms Walsh's email **47E(d)** 
- Continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to continue to undertake a review of your application under s 54W 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 Emily Walsh on (02) 9942 4130 or on Emily.walsh@oaic.gov.au. In all correspondence please quote **s 47E(d)**.

Yours sincerely



Suseela Durvasula
Director
Freedom of Information

23 June 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>.

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**² page on our website.

² www.oaic.gov.au/about-us/access-our-information/.

ATTACHMENT A

Key procedural steps

Date	Events
47E(d)	IC review application received
47E(d)	Department notified under s 54Z
47E(d)	Request for information due
47E(d)	Information received in response to s 54Z notice
47E(d)	Evidence of searches received
47E(d)	Request for further information issued to Department
47E(d)	Department requested extension of time and extension granted
47E(d)	Further information received from Department
47E(d)	Intention to Decline Letter and Submissions provided to the applicant
47E(d)	Further information requested by applicant
47E(d)	Further information provided to applicant. Final submissions requested by 47E(d)
47E(d)	No final submissions received from applicant



Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email: s22

Decision not to continue to undertake a review under s 54W of the FOI Act

Dear s22

I refer to your application for Information Commissioner review (IC review) of a decision made by the Department of Home Affairs (Department) on s47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to continue to undertake a review of your IC review application. My reasons follow.

Background

s47E(d)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

47E(d)

On 47E(d), the OAIC review officer responsible for this matter, Carly Warren, 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.

Ms Warren invited you to provide reasons if you disagreed with the proposed finalisation of your IC review 47E(d)

On 47E(d), Ms Warren followed up by telephone and again by email. Ms Warren requested a response by 47E(d).

47E(d)

Consideration of whether reasonable steps undertaken

Section 24A requires that an agency take ‘all reasonable steps’ to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

The Guidelines issued under s 93A of the FOI Act explain:

The Act is silent on what constitutes ‘all reasonable steps’. The meaning of ‘reasonable’ in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business

s47E(d)

[Redacted]

Parties' submissions

s47E(d)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

² The Department also provided confidential submissions, which the OAIC agreed to accept on the basis that they refer to material the Department contends is exempt.

[Redacted]

s47E(d) [Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

- [Redacted]
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[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

s47E(d) [Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list items]

[Redacted text block]

s47E(d)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Decision not to continue to undertake a review

I am a delegate of the Information Commissioner.

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.

I have had regard to the following:

- i. the Department's internal review decision and reasons for decision of s47E(d) [Redacted]
- ii. evidence of searches undertaken by the Department
- iii. the FOI Act, in particular s 24A
- iv. the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act, in particular paragraphs [3.85] – [3.94]
- v. relevant case law, in particular *De Tarle and Australian Securities and Investments Commission (Freedom of information)* [2015] AATA 770, and
- vi. the parties' submissions.

Having regard to the scope of the applicant's request, the parties' submissions and Department evidence of searches, it appears that the Department has taken all reasonable steps to find documents within the scope of the request as it was required to do by s 24A and that relevant documents, if they existed, would have been found.

For the reasons discussed above, I am satisfied that the matter is lacking in substance.

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

- Based on the information me, including the Department's evidence of searches and the parties' submissions, and relevant case law, I consider that the Department has discharged its onus of establishing that the decision is justified.

- The OAIC did not receive any submissions from you.
- Continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to continue to undertake a review of your application under s 54W 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 Carly Warren on (02) 9284 9802 or at Carly.Warren@oaic.gov.au. In all correspondence please quote s47E(d)

Yours sincerely



Suseela Durvasula
Director

7 February 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>.

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](#)³ page on our website.

³ www.oaic.gov.au/about-us/access-our-information/.



Our reference: s47E(d)
Agency reference: s47E(d)

s22
By email to: s22

Decision not to undertake a review under s 54W(a) of the FOI Act

Dear s22

I refer to your application for Information Commissioner review (IC review) of a decision made by the Office of the Honourable Nola Marino MP, Assistant Minister for Regional Development and Territories (the Minister's Office) on s47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W(a)(i) of the FOI Act, I have decided not to undertake an IC review. My reasons follow.

Background

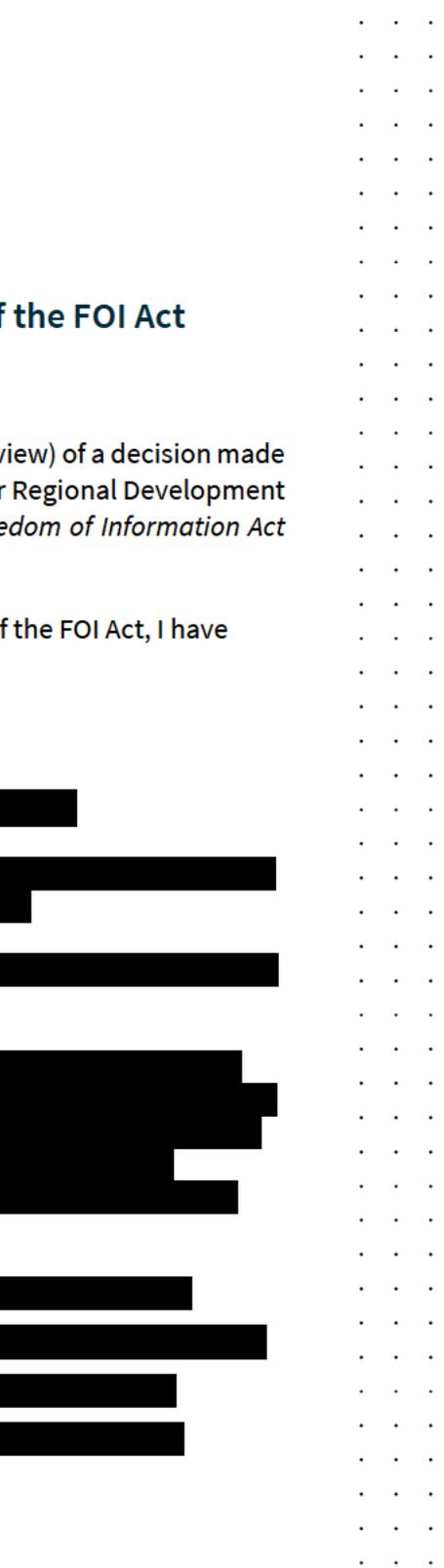
s47E(d)

[Redacted]

[Redacted]

[Redacted]

[Redacted]



47E(d)

47E(d), the Minister's Office was deemed to have refused your request pursuant to s 15AC of the FOI Act, as a decision was not issued to you by the statutory due date.

47E(d) you applied for IC review of this deemed access refusal decision.

47E(d) the OAIC commenced informal inquiries with the Minister's Office.

47E(d)

On 16 March 2021, the OAIC commenced preliminary inquiries with the Department of Infrastructure, Transport, Regional Development and Communications (the Department) on behalf of the Minister's Office.

47E(d)

On 47E(d), you advised the OAIC that you wished to continue with your application for IC review.

On 47E(d), the OAIC review officer responsible for this matter, Fernando Espinosa, 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 the application is lacking in substance.

Mr Espinosa invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by 47E(d).

47E(d)

s47E(d)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Scope of IC review

The issues in this IC review are whether the documents within the scope of your FOI request, if they existed, would be considered official documents of a Minister in accordance with s 4 of the FOI Act.

In making a decision about whether to finalise this matter under s 54W(a)(i), I have had regard to the following:

- the Ministers Office's decision dated 47E(d), and reasons for decision
- the terms of your FOI request dated 47E(d)

- the FOI Act, in particular ss 4 and 11, including the meaning and definition of ‘an official document of a Minister’, as outlined below
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [\[2.45\]](#)-[\[2.54\]](#)
- relevant case law, in particular *Joel Fitzgibbon and Prime Minister of Australia* [\[2016\] ALCmr 85](#) and *Office of the Premier v Herald and Weekly Times* [\[2013\] VSCA 79](#)
- the parties’ submissions.

What is an official document of a Minister?

An ‘official document of a minister’ is a document in a minister’s possession that relates to the affairs of an agency.

Section 4 of the FOI Act defines official document of a Minister as:

official document of a Minister or **official document of the Minister** means a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency or of a Department of State and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his or her possession if he or she is entitled to access to the document and the document is not a document of an agency.

Section 11 of the FOI Act states that:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - ...
 - (b) an official document of a Minister, other than an exempt document.

The FOI Guidelines state that in order for a document to be an official document of a minister, two elements of the definition must be satisfied. First, the document must be in the possession of a Minister in his or her capacity as a Minister. Secondly, the document in the minister’s possession must relate to the affairs of an agency.

The [FOI Guidelines](#) further state at [\[2.49\]](#)-[\[2.50\]](#):

Documents held by a minister that have been found to relate to the affairs of an agency include:

- entries in the Prime Minister’s appointments diary relating to meetings with other political leaders to discuss the legislative program
- a letter to the Prime Minister from a former Prime Minister conveying views on issues of national policy
- a reference written by a minister on official letterhead, and

- a work diary of a ministerial adviser (in a Victorian decision)

Documents held by a minister that do not 'relate to the affairs of an agency' include:

- personal documents of a minister or the minister's staff
- documents of a party political nature, and
- documents held in the minister's capacity as a local member of parliament not dealing with the minister's portfolio responsibility

Decision not to undertake a review

I am a delegate of the Information Commissioner.

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 lacking in substance.

As outlined above, the FOI Guidelines state that in order for a document to be an official document of a minister, two elements of the definition must be satisfied:

- I. The document must be in the possession of a Minister in his or her capacity as a Minister.
- II. The document in the minister's possession must relate to the affairs of an agency.

s47E(d) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I [Redacted]

- s47E(d) [REDACTED]

As such, no right of access applies to the requested documents pursuant to s 11 of the FOI Act.

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

- s47E(d) [REDACTED]
- [REDACTED]
- [REDACTED]
- Undertaking an IC review of this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not 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 us at FOIDR@oaic.gov.au. In all correspondence please quote s47E(d).

Yours sincerely



Sandra Wavamunno
Director

15 February 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/>.

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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>.

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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our reference: s47E(d)
Agency references: s47E(d)

s22

By email: s22

s47E(d)

Dear s22

I refer to previous correspondence in relation to s47E(d) received by the Office of the Australian Information Commissioner (the OAIC) on s47E(d) from the Department of Industry, Science, Energy and Resources (the Department).

Please find attached a decision made by Ms Elizabeth Hampton, Acting Freedom of Information Commissioner.

s47E(d), the following IC reviews made by you have now been closed:

- s47E(d)

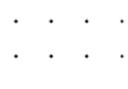
The decision will be published on AustLII over the next few days.

Your review rights are contained in the decision.

Yours sincerely

Irene Nicolaou
Director Investigations and Compliance
FOI Regulatory Group

31 March 2022





Australian Government
Office of the Australian Information Commissioner



Our reference: s47E(d)
Agency references: s47E(d)

s22

By email: s22

s47E(d)

Dear s 22

I refer to previous correspondence in relation to s47E(d) received by the Office of the Australian Information Commissioner (the OAIC) on s47E(d) from the Department of Industry, Science, Energy and Resources (the Department).

Please find attached a decision made by Ms Elizabeth Hampton, Acting Freedom of Information Commissioner.

s47E(d), the following IC reviews made by you have now been closed:

- s47E(d)

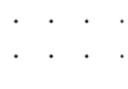
The decision will be published on AustLII over the next few days.

Your review rights are contained in the decision.

Yours sincerely

Irene Nicolaou
Director Investigations and Compliance
FOI Regulatory Group

31 March 2022





Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email to: s22

Decision not to continue to undertake a review under s 54W(a) of the FOI Act

Dear s22

I refer to your application for Information Commissioner review (IC review) of an internal review decision made by the Australian Taxation Office (ATO) on s47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W(a)(i) of the FOI Act, I have decided not to continue to undertake a review of your IC review application. My reasons follow.

Background

s47E(d)

[Redacted]

[Redacted]

[Redacted]

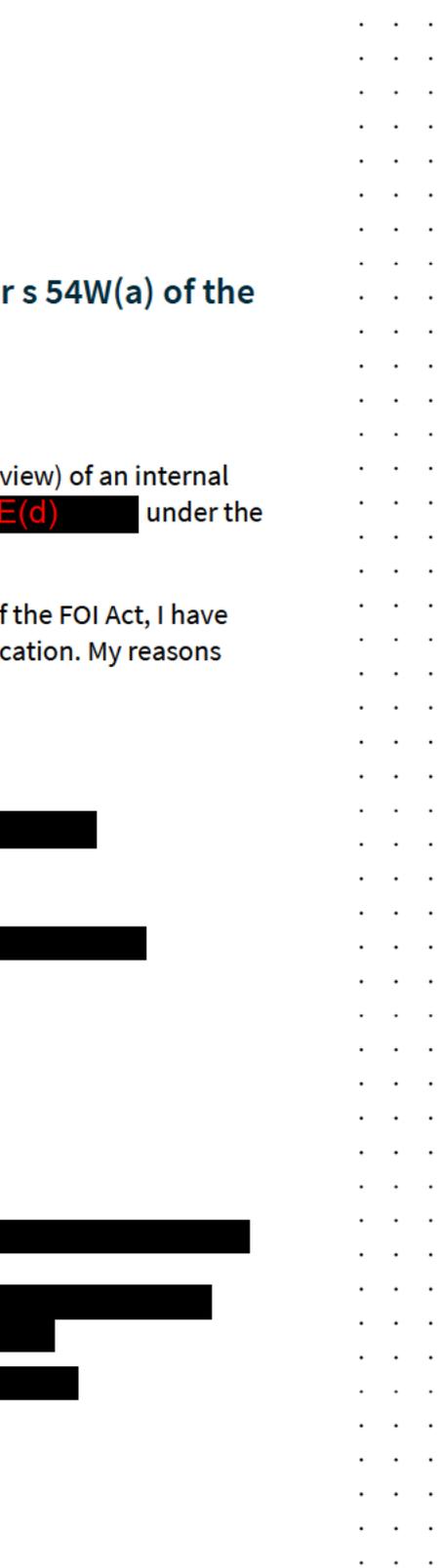
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



47E(d)

On 47E(d), the ATO decided to refuse you access to the requested documents under s 38 of the FOI Act (secrecy provisions exemption).

On 47E(d), you requested an internal review of this decision by the ATO.

On 47E(d), the ATO made an internal review decision to affirm its original decision, refusing access to the requested documents under s 38 of the FOI Act.

On 47E(d), you sought IC review of the ATO's decision under s 54L of the FOI Act.

On 47E(d), the OAIC review officer responsible for this matter, Tania Strathearn, 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 that your IC review application is lacking in substance

Ms Strathearn invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by 47E(d).

47E(d)

Scope of IC review

The issues in this IC review are whether the ATO has discharged its onus of establishing that its decision to refuse you access to documents under s 38 of the FOI Act is justified.

In making my decision, I have had regard to:

- the ATO's original decision dated 47E(d), and reasons for decision

- the ATO's internal review decision of s47E(d) and reasons for decision
- the FOI Act, in particular ss 38, 54W(a)(i) and Schedule 3
- s47E(d)
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [5.118]- [5.125] and [10.85]- [10.86], and
- the parties' submissions.

Relevant legislation

Section 38 of the FOI Act

Section 38(1)(b)(i) of the FOI Act provides that a document is an exempt document, if disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment specified in Schedule 3 of the FOI Act.

s47E(d)

The parties' submissions

s47E(d)

s47E(d) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- s47E(d) [Redacted]

Your submissions

- s47E(d) [Redacted]
- █ [Redacted]

Decision not to continue to undertake a review

I am a delegate of the Information Commissioner.

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.

Based on the information before me, I am satisfied that the ATO has discharged its onus of establishing that the decision is justified, for the following reasons:

- s47E(d) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

For these reasons, I am satisfied that the IC review application is lacking in substance.

s47E(d) [Redacted]

As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide 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 Tania Strathearn on (02) 9942 4165 or on tania.strathearn@oaic.gov.au. In all correspondence please quote s47E(d) [Redacted].

Yours sincerely

Sandra Wavamunno

Director

30 June 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>.

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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our reference: s47E(d)
Agency references: s47E(d)

s22

By email: s22

s47E(d)

Dear [redacted]

I refer to previous correspondence in relation to s47E(d) [redacted] received by the Office of the Australian Information Commissioner (the OAIC) on s47E(d) [redacted] from the Department of Industry, Science, Energy and Resources (the Department).

Please find attached a decision made by Ms Elizabeth Hampton, Acting Freedom of Information Commissioner.

s47E(d) [redacted], the following IC reviews made by you have now been closed:

- s47E(d) [redacted]

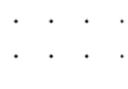
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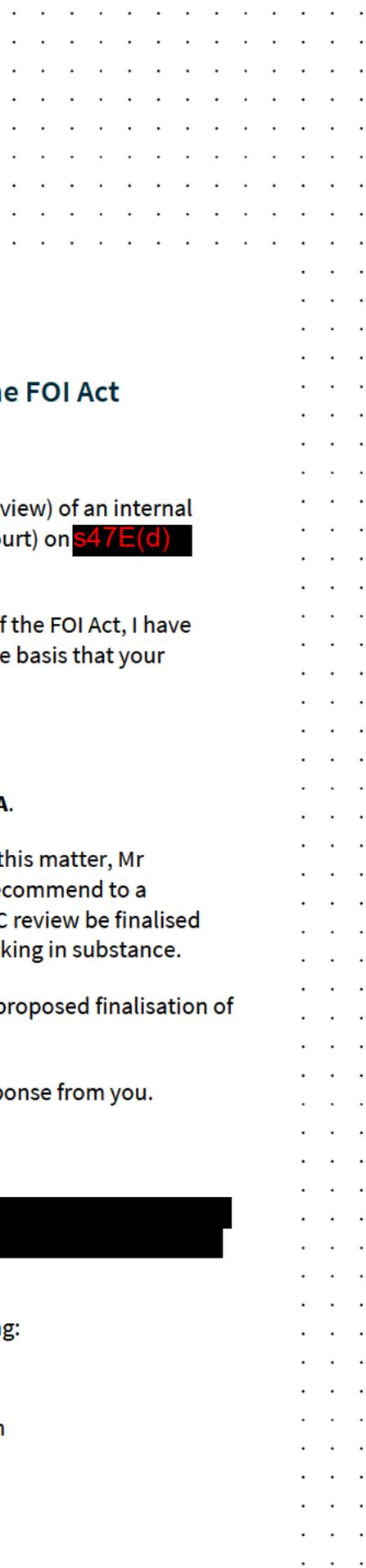
Your review rights are contained in the decision.

Yours sincerely

Irene Nicolaou
Director Investigations and Compliance
FOI Regulatory Group

31 March 2022





Our reference: s47E(d)

s22
Sent by email: s22

Decision not to undertake a review under s 54W of the FOI Act

Dear s22

I refer to your application for Information Commissioner review (IC review) of an internal review decision made by the Federal Circuit Court of Australia (the Court) on s47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W(a)(i) of the FOI Act, I have decided not to undertake a review of your IC review application on the basis that your application is lacking in substance. My reasons follow.

Background

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

Further, on s47E(d), the OAIC review officer responsible for this matter, Mr Fernando Espinosa, wrote to you to advise you of their intention to recommend to a 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 the application is lacking in substance.

Mr Espinosa invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by s47E(d).

Based on the information before me, the OAIC has not received a response from you.

Scope of IC review

s47E(d)

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

- the terms of your FOI request dated s47E(d)
- the Court's internal review decision and reasons for decision
- the FOI Act, in particular s 5



- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [2.8 – 2.10], and
- relevant case law, in particular *Kline v Official Secretary to the Governor General* [2013] HCA 52; (2013) 249 CLR 645.

Application of the FOI Act

s47E(d)



Decision not to undertake a review

I am a delegate of the Information Commissioner.

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.

In making my decision, I have had regard to:

- the terms of your FOI request dated 47E(d)
- the Court's internal review decision and reasons for decision
- the FOI Act, in particular s 5
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [2.8 – 2.10], and
- relevant case law, in particular *Kline v Official Secretary to the Governor General* [2013] HCA 52; (2013) 249 CLR 645.

s47E(d)

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

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

- Based on the information me, including the Court's reasons for decision, and relevant case law, I consider that the Court has discharged its onus of establishing that the decision is justified.
- The OAIC did not receive any submissions or a response from you to our previous letter dated 47E(d), outlining our intention to recommend that this IC review be discontinued, and
- Undertaking an IC review in circumstances where the FOI Act does not apply to the documents sought does not promote the objects of the Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to undertake a review of your application under s 54W(a)(i) of the FOI Act because I am of the view that this IC review application is lacking in substance.

I confirm that this IC review is now closed. Your review rights are set out below.

If you have any questions about this email, please contact Justin Lodge on (02) 8231 4203 or by email justin.lodge@oaic.gov.au. In all correspondence, please include OAIC reference **s47E(d)**.

Yours sincerely

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

Justin Lodge

Freedom of Information

15 February 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>.

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](#)¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.

ATTACHMENT A

Key procedural steps

Date	Events
47E(d)	FOI request for access to: 
	
47E(d)	Internal review application made
47E(d)	Original decision affirmed refusing access to documents
47E(d)	IC review application received



Our reference: s47E(d)

Agency reference: s47E(d)

s22

By email to: s22

Decision not to undertake a review under s 54W(a) of the FOI Act

Dear s22

I refer to your application for Information Commissioner review (IC review) of a decision made by the Australian Federal Police (the AFP) on s47E(d) under the Freedom of Information Act 1982 (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to continue to undertake a review of your IC review application. My reasons follow.

Background

47E(d)

s47E(d) the AFP was deemed to have refused your FOI request under section 15AC of the FOI Act when a decision was not made within the statutory timeframe.

On s47E(d) sought IC review of the AFP's decision under s 54L of the FOI Act.

On s47E(d) the Office of the Australian Information Commissioner (the OAIC) undertook preliminary inquiries with the AFP under s 54V.

On s47E(d) the OAIC issued a 55E notice requiring the AFP to provide an adequate statement of reasons in response to your FOI request.

On s47E(d) the AFP made a practical refusal decision refusing you access to the requested documents under section 24AA of the Act.

On s47E(d), we wrote to you seeking your views on whether you wished to withdraw or proceed with the IC review.

47E(d)

47E(d)

On 47E(d), the OAIC review officer responsible for this matter, Ms Poorvaja Nirmaleswaran, 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 it would not be appropriate to undertake an IC review where you did not disagree with the agency or minister's decision.

Ms Nirmaleswaran invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by 47E(d).

Based on the information before me, the OAIC has not received a response.

Decision not to undertake a review

I am a delegate of the Information Commissioner.

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.

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

- [10.2] of the FOI Guidelines – Specifically, 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). 47E(d) [REDACTED]
- 47E(d) [REDACTED]
- The OAIC did not receive a response to our correspondence of 47E(d) [REDACTED].
- Continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not 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 by email at foidr@oaic.gov.au. In all correspondence, please quote s47E(d) [REDACTED].

Yours sincerely



Sandra Wavamunno

Director

FOI Regulatory Group

Intake and Early Resolution Team

Office of the Australian Information Commissioner

1 March 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>.

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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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our reference: s47E(d)
Agency references: s47E(d)

s22

By email: s22

s47E(d)

Dear s22

I refer to previous correspondence in relation to s47E(d) received by the Office of the Australian Information Commissioner (the OAIC) on s47E(d) from the Department of Industry, Science, Energy and Resources (the Department).

Please find attached a decision made by Ms Elizabeth Hampton, Acting Freedom of Information Commissioner.

s47E(d), the following IC reviews made by you have now been closed:

- s47E(d)

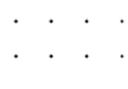
The decision will be published on AustLII over the next few days.

Your review rights are contained in the decision.

Yours sincerely

Irene Nicolaou
Director Investigations and Compliance
FOI Regulatory Group

31 March 2022





Australian Government

Office of the Australian Information Commissioner

Our reference: s47E(d)

Agency reference: s47E(d)

s22

Sent by email: s22

Decision not to continue to undertake a review under s 54W of the FOI Act

Dear s22

I refer to your application for Information Commissioner review (IC review) of a decision made by the Attorney General's Department (the Department) on s47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W(a)(i) of the FOI Act, I have decided not to continue to undertake this IC review. My reasons follow.

Background

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

On s47E(d), the OAIC review officer responsible for this matter, Mr Fernando Espinosa, wrote to you to advise you of their intention to recommend to a 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 the application is lacking in substance.

Mr Espinosa invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by s47E(d)

Based on the information before me, the OAIC has not received a response from you.

Consideration of whether reasonable steps undertaken

The key issue in this IC review is whether the Department has taken all reasonable steps to locate documents within the scope of your FOI request (s 24A of the FOI Act).

Section 24A requires that an agency take 'all reasonable steps' to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

The FOI Guidelines explain:

The Act is silent on what constitutes ‘all reasonable steps’. The meaning of ‘reasonable’ in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s operating environment or the minister’s office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents, and
- the record management systems in place
- the individuals within an agency or minister’s office who may be able to assist with the location of documents, and
- the age of the documents.¹

In this context ‘reasonable’ has been understood as taking steps that are ‘not going beyond the limit assigned by reason; not extravagant or excessive; moderate...Of such an amount, size, number, etc., as is judged to be appropriate or suitable to the circumstances or purpose’ (see *De Tarle and Australian Securities and Investments Commission (Freedom of Information)* [2015] AATA 770 at [19]).

The Department’s decision

s47E(d)



¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act (FOI Guidelines)* [3.88] — [3.89]. For further information, see [3.85] — [3.94]; ‘RD’ and *Comcare (Freedom of information)* [2019] AICmr 61; ‘PK’ and *Department of the Prime Minister and Cabinet (Freedom of information)* [2018] AICmr 65; ‘PI’ and *Department of Human Services (Freedom of information)* [2018] AICmr 62; ‘PF’ and *Department of Human Services (Freedom of information)* [2018] AICmr 59; ‘OP’ and *Department of Home Affairs (Freedom of information)* [2018] AICmr 43; *Josh Taylor and Prime Minister of Australia (Freedom of information)* [2018] AICmr 42

s47E(d) [Redacted]

[Redacted]

The Parties' submissions

s47E(d) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s47E(d) [Redacted]

[Redacted]

s47E(d) [Redacted]

Decision not to continue to undertake a review

I am a delegate of the Information Commissioner.

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.

In making my decision, I have had regard to:

- The Department's decision of **s47E(d)**, and reasons for decision
- evidence of searches undertaken by the Department
- the FOI Act, in particular s 24A
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [3.85] – [3.94]
- relevant case law, in particular *De Tarle and Australian Securities and Investments Commission (Freedom of information)* [2015] AATA 770, and
- the parties' submissions.

s47E(d)

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

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

- The OAIC did not receive any submissions or a response from you to our previous letter dated **s47E(d)**, outlining our intention to decline to continue to undertake this IC review, and
- Continuing to review this matter will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide 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 have any questions about this email, please contact Tania Strathearn by email at FOIDR@oaic.gov.au or on (02) 9284 9744. In all correspondence please quote **s47E(d)**

Yours sincerely



Sandra Wavamunno
Director
Freedom of Information

21 January 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.

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² www.oaic.gov.au/about-us/access-our-information/.

ATTACHMENT A

Key procedural steps

Date	Events
------	--------

47E(d)

47E(d)

FOI decision made

47E(d)

IC review application received

47E(d)

Applicant notified of commencement of IC review

47E(d)

Respondent agency notified under s 54Z including request for information

47E(d)

Agency response to s 54Z received



Australian Government
Office of the Australian Information Commissioner



Our reference: s47E(d)
Agency references: s47E(d)

s22

By email: s22

s47E(d)

Dear s22

I refer to previous correspondence in relation to s47E(d) received by the Office of the Australian Information Commissioner (the OAIC) on s47E(d) from the Department of Industry, Science, Energy and Resources (the Department).

Please find attached a decision made by Ms Elizabeth Hampton, Acting Freedom of Information Commissioner.

s47E(d), the following IC reviews made by you have now been closed:

- s47E(d)

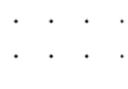
The decision will be published on AustLII over the next few days.

Your review rights are contained in the decision.

Yours sincerely

Irene Nicolaou
Director Investigations and Compliance
FOI Regulatory Group

31 March 2022





Our reference: s47E(d)

Agency reference: s47E(d)

s22

By email to: s22

Decision not to undertake a review under s 54W(a) of the FOI Act

Dear s22

I refer to your application for Information Commissioner review (IC review) of a decision made by the Australian Federal Police's decision on s47E(d) under the Freedom of Information Act 1982 (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W of the FOI Act, I have decided not to undertake a review of your IC review application. My reasons follow.

Background

47E(d)

On 47E(d), Ms Carmela Calandra-Zamecnik of the OAIC wrote to you to advise that a duplicate application has been registered and sought your instructions to withdraw the second IC review.

On the same day you responded that you did not wish to withdraw the further application made on 47E(d).

On 47E(d), Ms Nirmaleswaran of the OAIC wrote to you to advise you of the 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 this IC review application is lacking in substance as the matters you seek review of are already being reviewed under 47E(d).

Ms Nirmaleswaran invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by 47E(d).

47E(d)

Decision not to undertake a review

I am a delegate of the Information Commissioner.

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.

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

- s47E(d)
-

- s47E(d)
- To pursue a further application for the same FOI decision will not promote the objects of the FOI Act.

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to undertake a review of your application under s 54W(a)(i) of the FOI Act on the basis that it is lacking in substance. I confirm that this IC review is now closed. Your review rights are set out below.

s47E(d)

If you would like to discuss this matter, please contact by email at foidr@oaic.gov.au. In all correspondence, please quote s47E(d)

Yours sincerely



Sandra Wavamunno
Director
FOI Regulatory Group
Intake and Early Resolution Team
Office of the Australian Information Commissioner

1 March 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>.

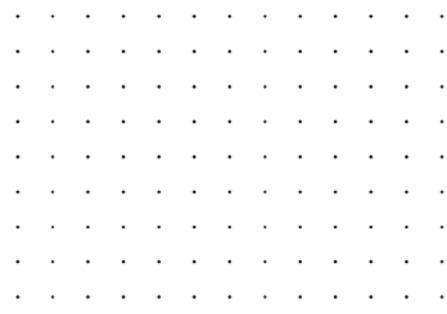
Accessing your information

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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Australian Government
Office of the Australian Information Commissioner



Our reference: s47E(d)
Agency references: s47E(d)

s22

By email: s22

s47E(d)

Dear s22

I refer to previous correspondence in relation to s47E(d) received by the Office of the Australian Information Commissioner (the OAIC) on s47E(d) from the Department of Industry, Science, Energy and Resources (the Department).

Please find attached a decision made by Ms Elizabeth Hampton, Acting Freedom of Information Commissioner.

s47E(d), the following IC reviews made by you have now been closed:

- s47E(d)

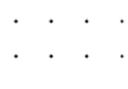
The decision will be published on AustLII over the next few days.

Your review rights are contained in the decision.

Yours sincerely

Irene Nicolaou
Director Investigations and Compliance
FOI Regulatory Group

31 March 2022





Our reference: s47E(d)
Agency reference: s47E(d)

By email to: s22

Decision not to undertake a review under s 54W of the FOI Act

I refer to your application for Information Commissioner review (IC review) of a decision the Department of Foreign Affairs and Trade (the Department) was deemed to have refused on s47E(d) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

I am a delegate of the Information Commissioner. Under s 54W(a)(i) of the FOI Act, I have decided not to undertake an IC review in this matter. My reasons follow.

Background

s47E(d)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



47E(d)

On 47E(d) the OAIC review officer responsible for this matter, Alistair Boyd, 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.

Mr Boyd invited you to provide reasons if you disagreed with the proposed finalisation of your IC review by 47E(d).

Based on the information before me, the OAIC has not received a response from you to date.

Scope of IC review

s47E(d)

Relevant legislation

Requirements for a valid FOI request

Section 15(2) of the FOI Act provides that an FOI request must meet the following requirements:

The request must:

- (c) be in writing; and
- (aa) state that the request is an application for the purposes of this Act; and
- (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
- (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

When a 'Practical Refusal Reason' applies

Relevantly, s 24AA(1)(b) provides that a 'practical refusal reason' applies to a request that does not satisfy the requirement above in paragraph 15(2)(b) of the FOI Act (identification of documents).

Under s 24 of the FOI Act, if an agency or Minister is satisfied that a practical refusal reason exists in relation to the request, the agency or Minister:

- (a) must undertake a 'request consultation process' with the applicant (s 24AB); and
- (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.

The request consultation process involves providing the applicant with a written notification of the practical refusal reason, and providing the applicant with assistance to revise the request so that the practical refusal reason no longer exists (s 24AB).

Decision not to undertake a review

I am a delegate of the Information Commissioner.

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.

In making my decision, I have had regard to:

- the terms of your FOI request to the Department
- s47E(d) [REDACTED]
- the FOI Act, in particular ss 15(2), 24(1), 24AA and 24AB
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular paragraphs [3.47]- [3.56]
- s47E(d) [REDACTED]

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

- s47E(d) [REDACTED]
- s47E(d) [REDACTED]
- s47E(d) [REDACTED]

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

s47E(d) [REDACTED]

For these reasons, as a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not 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 us at s47E(d) [REDACTED], attention of the FOI Regulatory Group. . In all correspondence please quote s47E(d) [REDACTED]

Yours sincerely



Sandra Wavamunno

Director

28 June 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>.

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**¹ page on our website.

¹ www.oaic.gov.au/about-us/access-our-information/.



Our reference: s47E(d)

s22

By email: s22

Your FOI complaint about the Australian Criminal Intelligence Commission

Dear s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) on s47E(d), about an action taken by the Australian Criminal Intelligence Commission (the ACIC) in the performance of functions or the exercise of powers under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Under s 73(e) of the FOI Act, I have decided not to investigate your complaint as I am satisfied that it is frivolous, vexatious, misconceived, lacking in substance or not made in good faith. s47E(d)

My reasons and considerations are set out below.

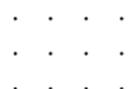
Background

The key procedural events in this FOI complaint are set out at **Attachment A**.

47E(d)

On s47E(d), Ms Dunlop of the OAIC emailed you setting out her intention to recommend that I decline to investigate your complaint under s 73 of the FOI Act.

¹ Mr Grossi email to the OAIC dated 17 April 2021



Ms Dunlop requested a response to her correspondence by **47E(d)**. It appears that the OAIC did not receive a response from you.

Ms Dunlop's correspondence to you is attached to this letter (**Attachment B**).

47E(d)

Decision not to investigate

Under s 73(e) of the FOI Act, I may also decide not to investigate a complaint or not to continue to investigate, if I am satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

In making my decision I have had regard to the following:

- your complaint
- ACIC submissions
- the FOI Act, particularly ss 54L and s 73, and
- the Guidelines issues by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#).

s47E(d)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

In deciding whether to exercise the discretion not to investigate the complaint, I have considered:

- a) s47E(d) [REDACTED]
- b) Ms Dunlop's correspondence to you of 47E(d) [REDACTED]. I have considered and agree with the reasons provided by Ms Dunlop
- c) the OAIC did not receive a response from you in relation to Ms Dunlop's correspondence of 47E(d) [REDACTED]
- d) that investigating this matter will not promote the objects of the FOI Act.

For these reasons, I have decided to exercise my discretion to decide not to investigate your complaint under s 73(e) of the FOI Act. I confirm that this complaint is now finalised.

Information about your review rights is set out below.

If you have any questions, please contact Irene Nicolaou on (02) 9284 9605 or via email at irene.nicolaou@oaic.gov.au. Please use the reference number in s47E(d) [REDACTED] in any correspondence.

Yours sincerely



Elizabeth Hampton
Acting Freedom of Information Commissioner

25 January 2022

Attachment A

Key procedural events

Date	Action
47E(d)	FOI request received by the ACIC 47E(d)
47E(d)	Decision due (Sunday)
47E(d)	ACIC deemed to have refused access pursuant to s 15AC of the FOI Act
47E(d)	OAIC grant an extension of time to 47E(d)
47E(d)	[Redacted]
47E(d)	[Redacted]
47E(d)	Complainant sought an internal review of the decision
47E(d)	[Redacted]
47E(d)	Complainant lodged an FOI complaint with the OAIC under s 70 of the FOI Act. The complainant has not sought IC review of this matter under s 54L of the FOI Act
47E(d)	Complainant provided with correspondence advising of the case officer's intention to recommend that the complaint be declined under s 73 of the FOI Act
47E(d)	Complainant due to provide submissions in response to intention to decline
47E(d)	ACIC provide submissions in response to preliminary inquiries

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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>.

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](#)² page on our website.

² <https://www.oaic.gov.au/about-us/access-our-information/>



Our reference: s47E(d)

s22

By email: s22

Your FOI complaint about the Australian Criminal Intelligence Commission

Dear s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) on s47E(d) about an action taken by the Australian Criminal Intelligence Commission (the ACIC) in the performance of functions, or the exercise of powers under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Under s 73(b) of the *Freedom of Information Act 1982* (Cth) (the FOI Act), the Information Commissioner may decide not to investigate a complaint if the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act, and has not exercised that right when it would be reasonable to do so (s 73(b)).

The purpose of this letter is to advise you of my intention to recommend that the Information Commissioner exercise the discretion to not undertake an investigation of the complaint under s 73(b) of the FOI Act, as the issue you raise in relation to your FOI request s47E(d) is more appropriately addressed by the Information Commissioner review (IC review) function, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

It is also open to you to withdraw your complaint if you agree with my preliminary assessment that your complaint is more appropriately dealt with under the IC review function.

The reasons for my intended recommendation follow.

Your complaint

s47E(d)
[Redacted]
[Redacted]

s47E(d)
[Redacted]

Background

On 47E(d), you applied to the ACIC for access to documents 47E(d)
[Redacted]

On 47E(d) the ACIC was due to provide you with a decision on your FOI request pursuant to s 15(5) of the FOI Act.

On the information before the office at this time, the ACIC was deemed to have refused access pursuant to s 15AC of the FOI Act as it had not provided a decision on your request by 47E(d).

47E(d)
[Redacted]

[Redacted]

[Redacted]

On the same day, you advise that you sought an internal review of the decision.

47E(d)

[Redacted]

s47E(d)

The key procedural events in this FOI complaint are set out in **Attachment A** to this letter.

Consideration

The FOI Guidelines at [11.5] states the following:

Where a person has applied for IC review and made an FOI complaint and the issues raised are more appropriately dealt with in the IC review, it is open to the Information Commissioner to decline to investigate the FOI complaint under s 73(b) of the FOI Act on the basis that the IC review has not had a reasonable opportunity to be conducted. The Information Commissioner may exercise this discretion prior to the commencement of an investigation or during the course of an investigation.

As set out above, in considering whether to investigate a complaint, it is open to the Information Commissioner to decline to investigate the FOI complaint if the issues raised are more appropriately dealt with IC review. The issue you have raised within your complaint regarding the ACIC's actions are more appropriately dealt with through IC review. This is consistent with the Information Commissioner's approach as per [11.5].

Discretion not to investigate

Under s 73(b) of the FOI Act the Information Commissioner may decide not to investigate a complaint if the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act, and has not exercised that right when it would be reasonable to do so (s 73(b)).

s47E(d)

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint
- the FOI Act, particularly ss 54L and s 73(b), and
- the Guidelines issues by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular [11.5].

For the reasons I set out above, and based on the information currently before the OAIC, I intend to recommend to the Information Commissioner that she decide not to investigate this complaint under s 73(b) of the FOI Act on the basis that the issue you raised is more

appropriately dealt with under IC review function, which is consistent with the Information Commissioner's approach in FOI Guidelines [11.5] as discussed above.

Next steps

If you agree with my preliminary assessment as case officer, it is open to you to withdraw your complaint by s47E(d) [REDACTED]

If you disagree with this proposed recommendation, please write to us by s47E(d) [REDACTED] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by s47E(d) [REDACTED] your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

However, the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to investigate your complaint.

In the meantime, if you have any queries regarding this matter, please contact me on (02) 9284 9783 or email rochelle.dunlop@oaic.gov.au. Please use the reference number s47E(d) [REDACTED] in any correspondence.

Yours sincerely



Rochelle Dunlop

Investigation and Review Adviser
FOI Regulatory Group

3 September 2021

s47E(d) s22

Attachment A

Key procedural events

Date	Action
47E(d)	FOI request for documents 47E(d)
47E(d)	ACIC deemed to have refused access pursuant to s 15AC of the FOI Act
47E(d)	[Redacted]
47E(d)	[Redacted]
47E(d)	Complainant sought an internal review of the decision
47E(d)	[Redacted]
47E(d)	Complainant lodged an FOI complaint with the OAIC under s 70 of the FOI Act. The complainant has not sought IC Review of this matter under 54L of the FOI Act.



Our reference: s47E(d)

s22

By email: s22

Your FOI complaint about the Department of Veterans' Affairs

Dear s22

I refer to your complaint about the Department of Veterans' Affairs (the Department) received by the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act) on s47E(d).

Under ss 73(b) and (e) of the FOI Act, I have decided not to investigate your complaint on the basis that the issues you have raised are more appropriately dealt with under the Information Commissioner (IC) review function or are lacking in substance.

My reasons and considerations are set out below.

Your complaint

s47E(d)

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]



The key procedural events in this FOI complaint are set out at **Attachment A**.

Decision not to investigate

Under s 73(b) of the FOI Act, I may decide not to investigate a complaint, or not to continue to investigate, if I am satisfied that the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act, and has not exercised that right when it would be reasonable to do so. Under s 73(e) of the FOI Act, I may decide not to investigate a complaint if it is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

I have had regard to the following:

- your complaint and submissions, [REDACTED]
- the FOI Act, particularly ss 17, 54L, 73(b) and 73(e), and
- the FOI Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), particularly [\[11.5\]](#), [\[11.11\]](#) and [\[11.12\]](#).

s47E(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

s47E(d) [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s47E(d) [Redacted]

[Redacted]

However, on the information before me, I consider this complaint to be lacking in substance.

s47E(d) [Redacted]

In consideration of the above, I am satisfied that it is open to me to decline to investigate your complaint under ss 73(b) and (e) of the FOI Act.

In deciding whether to exercise the discretion not to investigate the complaint, I have considered that:

- a) s47E(d) [Redacted]
- b) s47E(d) [Redacted]
- c) investigating this matter will not promote the objects of the FOI Act.

For these reasons, I have decided to exercise my discretion to decide not to investigate your complaint under ss 73(b) and (e) of the FOI Act. I confirm that this complaint is now finalised.

Information about your review rights is set out below.

If you have any questions, please contact Jasmin Clarke on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. Please quote OAIC reference number in all correspondence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elizabeth Hampton', with a long, sweeping flourish extending to the right.

Elizabeth Hampton
Acting Freedom of Information Commissioner

14 January 2022

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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>.

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](#)¹ page on our website.

¹ <https://www.oaic.gov.au/about-us/access-our-information/>.



Attachment A

Key procedural events

Date	Events
47E(d)	Complainant made FOI complaint
47E(d)	Further submissions provided by complainant
47E(d)	The OAIC wrote to complainant advising of the intention to recommend that the Commissioner decline to investigate the complaint on the basis that the FOI complaint is more appropriately dealt with under the IC review function (Attachment B)
47E(d)	OAIC received complainant's submissions in response to intention to decline correspondence
47E(d)	OAIC requested further particulars of the complaint from complainant
47E(d)	[REDACTED]
47E(d)	Complainant requested extension of time to provide further submissions
47E(d)	OAIC requested final submissions by 47E(d)



Our reference: s47E(d)

s22

By email s22

Your FOI complaint about the Department of Veterans' Affairs

Dear s22

I refer to your complaint to the Information Commissioner on s47E(d) about an action taken by the Department of Veterans' Affairs (the Department) in the performance of its functions, or the exercise of powers under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Under s 73(b) of the *Freedom of Information Act 1982* (Cth) (the FOI Act), the Information Commissioner may decide not to investigate a complaint if the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act, and has not exercised that right when it would be reasonable to do so (s 73(b)).

It is my preliminary assessment as case officer that your complaint regarding the Department raises issues that would be more appropriately dealt with under IC review.

I intend to recommend to the Information Commissioner that your complaint be declined under s 73 of the FOI Act on the basis that your concerns are better dealt with under IC review.

It is open to you to withdraw your complaint if you agree with my preliminary assessment.

The reasons for my intended recommendation follow.

Background

s47E(d)

[Redacted]

47E(d)

On 47E(d), the OAIC acknowledged your FOI complaint and provided you with a reference number 47E(d).

47E(d)

Your complaint

s47E(d)

- s47E(d)
- s47E(d)
- s47E(d)

Consideration

The FOI Guidelines [11.5] states the following:

The Information Commissioner's view is that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.

It is my preliminary assessment as case officer that your FOI complaint about the Department raises issues that would be more appropriately dealt with under IC review. As such, your FOI complaint should be finalised under s 73(b) on the basis that your concerns and the outcome you seek is more appropriately dealt with under the IC review process.

47E(d)

Discretion not to investigate

Under s 73 of the FOI Act, the Information Commissioner may decide not to investigate a complaint, or not to continue to investigate, if the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act (s 73(b)), and has not exercised that right when it would be reasonable to do so (s 73(b)).

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint and submissions
- the FOI Act, particularly ss 54L and 73(b), and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular [\[11.5\]](#).

In consideration of the above, it is my preliminary assessment as case officer that your complaint regarding the Department should be finalised under s 73(b) on the basis that your concerns and the outcome you seek is more appropriately dealt with under IC review.

For these reasons I intend to recommend to the Information Commissioner that she decide not to investigate your complaint under s 73 of the FOI Act as the issues you raise are more appropriately dealt with under IC review.

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

If you agree with this proposed recommendation, it is open to you to withdraw your complaint by [s47E\(d\)](#)

If you disagree with this proposed recommendation, please write to us by s47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by s47E(d) your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

Contact

If you have any questions, please contact me on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. Please quote OAIC reference number at the top of this page in all correspondence.

Yours sincerely



Jasmin Clarke

Assistant Review and Investigation Advisor
Freedom of Information

5 May 2021



Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email: s22

Your FOI complaint about Comcare

Dear s22

I refer to your complaint about Comcare received by the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act) on s47E(d).

Under s 73 of the FOI Act, I have decided not to investigate your complaint as I am satisfied that the FOI complaint is lacking in substance. My reasons are set out below.

Background

On s47E(d), the OAIC received your FOI complaint about the Comcare processing your FOI request.

On s47E(d), the OAIC wrote to you to advise you of the intention to recommend that I decline to investigate your complaint under s 73 of the FOI Act on the basis that the complaint is lacking in substance. You were invited to provide reasons if you disagreed with the proposed finalisation of your complaint by s47E(d).

The OAIC's correspondence to you is attached to this letter (**Attachment A**).

The OAIC has not received a response from you.

Decision not to investigate

Under s 73 of the FOI Act, I may decide not to investigate a complaint, or not to continue to investigate a complaint, if I am satisfied that a complaint about an action made under s 70 of the FOI Act is lacking in substance.

In making my decision I have had regard to the following:

- your complaint received 47E(d)
- Comcare's response to the OAIC's preliminary inquiries
- the FOI Act, particularly s 73(e), and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), particularly Part 11.

47E(d)

I am satisfied that this is consistent with the approach outlined in the FOI Guidelines issued under s 93A of the FOI Act at paragraph [11.5].

In deciding whether to exercise the discretion not to investigate the complaint, I have considered that:

- a) the issues you have raised are lacking in substance
- b) you have not provided any further information in response to the OAIC's correspondence of 47E(d) that alters my view that this matter is lacking in substance, and
- c) investigating this matter will not promote the objects of the FOI Act.

For these reasons I have decided to exercise my discretion to decide not to investigate your complaint under s 73 of the FOI Act. I confirm that this complaint is now finalised. Information about your review rights is set out below.

If you would like to discuss this matter, please contact Summen Sarwar Summen Sarwar on +61 2 9284 9815 or via email to Summen.Sarwar@oaic.gov.au. In all correspondence, please quote OAIC reference s47E(d)

Yours sincerely



Elizabeth Hampton

Acting Freedom of Information Commissioner

25 March 2022

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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>.

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](#)¹ page on our website.

¹ <https://www.oaic.gov.au/about-us/access-our-information/>.



Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email to s22

Your FOI complaint about Comcare

Dear s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) dated s47E(d) about an action taken by Comcare in the performance of functions, or the exercise of powers, 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 Information Commissioner exercise the discretion to decide not to undertake an investigation of the FOI complaint under s 73 of the FOI Act on the basis that the FOI complaint is lacking in substance, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

It is also open to you to withdraw your complaint if you agree with my preliminary assessment.

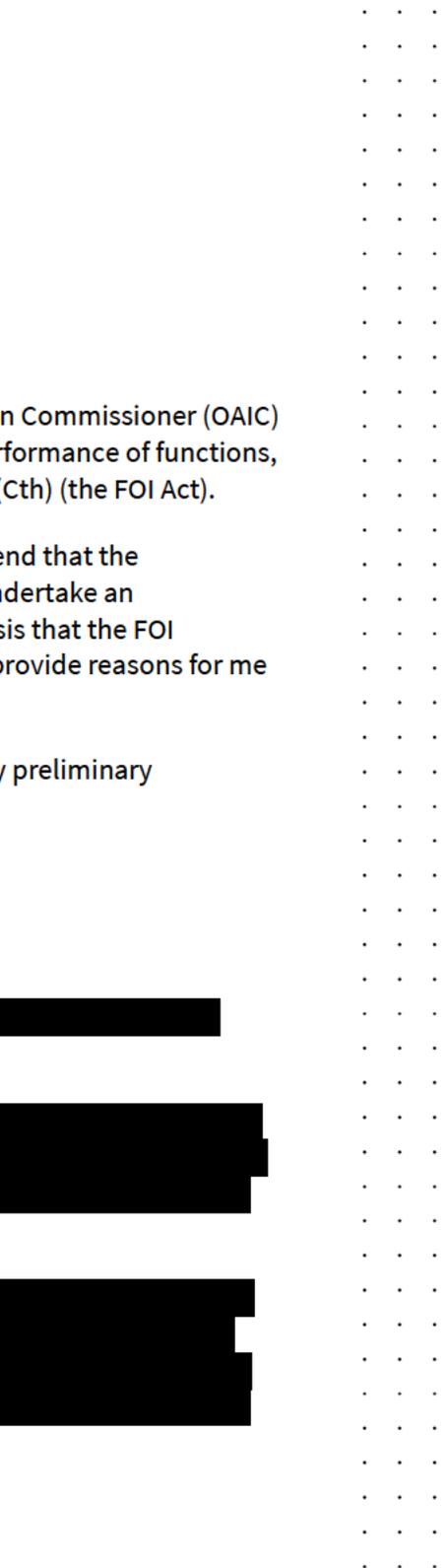
The reasons for my intended recommendation follow.

Background

s47E(d)

[Redacted]

[Redacted]



s47E(d)

Consideration

s47E(d)

Section 15A of the FOI Act provides:

15A Request for access to personnel records

(1) *In this section:*

personnel records, in relation to an employee or former employee of an agency, means those documents containing personal information about him or her that are, or have been, kept by the agency for personnel management purposes.

(2) *Where:*

- (a) there are established procedures in an agency (apart from those provided for by this Act) in accordance with which a request may be made by an employee of the agency for access to his or her personnel records; and
- (b) a person who is or was an employee of the agency wishes to obtain access to his or her personnel records;
the person must not apply under section 15 for access to such records unless the person:
- (c) has made a request for access to the records in accordance with the procedures referred to in paragraph (a); and
- (d) either:
 - (i) is not satisfied with the outcome of the request; or
 - (ii) has not been notified of the outcome within 30 days after the request was made.

The effect of this provision is to require employees or former employees of an agency to first seek personnel records from the relevant team **s47E(d)** before making a request for those documents under the FOI Act.

s47E(d)

[Redacted]

Discretion not to investigate

Under s 73 of the FOI Act, the Information Commissioner may decide not to investigate a complaint, or not to continue to investigate, if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is lacking in substance.

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint
- Comcare’s response to the OAIC’s preliminary inquiries
- the FOI Act, particularly s 73(e), and
- the Guidelines issues by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, Part 11

s47E(d)

Based on the information before the OAIC, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73, because my preliminary assessment is that this complaint is lacking in substance.

Next steps

If you agree with my preliminary assessment as case officer, it is open to you to withdraw your complaint by **s47E(d)**.

If you disagree with this proposed recommendation, please write to us by **s47E(d)** and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by **s47E(d)** your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

However, the Information Commissioner will review all material before the Oaic in deciding whether to exercise the discretion to decide not to investigate in this case.

If you would like to discuss this matter, please contact me on +61 2 9284 9815 or via email Summen.Sarwar@oaic.gov.au. Please quote Oaic reference number at the top of this page in all correspondence.

Yours sincerely



Summen Sarwar
Assistant Review and Investigation Advisor
FOI Regulatory Group

7 March 2022



Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email: s22

Your FOI complaint about the Department of Defence

Dear s22

I refer to your complaint about the Department of Defence (Department) received by the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act) on s47E(d).

Under s 73 of the FOI Act, I have decided not to investigate your complaint as I am satisfied that the FOI complaint is lacking in substance. My reasons are set out below.

Background

On 47E(d), the OAIC received your FOI complaint about the Department processing your FOI request.

On 47E(d), the OAIC wrote to you to advise you of the intention to recommend that I decline to investigate your complaint under s 73 of the FOI Act on the basis that the complaint is lacking in substance. You were invited to provide reasons if you disagreed with the proposed finalisation of your complaint by 47E(d).

The OAIC's correspondence to you is attached to this letter (**Attachment A**).

47E(d)

s47E(d)

[REDACTED]

[REDACTED]

Decision not to investigate

Under s 73 of the FOI Act, I may decide not to investigate a complaint, or not to continue to investigate, if I am satisfied that a complaint about an action made under s 70 of the FOI Act is lacking in substance. In making my decision I have had regard to the following:

- your complaint received 47E(d)
- your submissions 47E(d)
- the FOI Act, particularly 73(e), and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), particularly [\[11.5\]](#).

I am satisfied that the issues you have raised in your complaint are lacking in substance.

I am satisfied that this is consistent with the approach outlined in the FOI Guidelines issued under s 93A of the FOI Act at paragraph [\[11.5\]](#).

In deciding whether to exercise the discretion not to investigate the complaint, I have considered that:

- a) the issues you have raised are lacking in substance
- b) you have not provided any further information in response to the OAIC's correspondence of 47E(d) that alters my view that this matter is lacking in substance, and
- c) investigating this matter will not promote the objects of the FOI Act.

For these reasons I have decided to exercise my discretion to decide not to investigate your complaint under s 73(e) of the FOI Act. I confirm that this complaint is now finalised. Information about your review rights is set out below.

If you would like to discuss this matter, please contact Summen Sarwar Summen Sarwar on +61 2 9284 9815 or via email to Summen.Sarwar@oaic.gov.au. In all correspondence, please quote OAIC reference **s47E(d)**

Yours sincerely



Elizabeth Hampton
Acting Freedom of Information Commissioner

25 March 2022

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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>.

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](#)¹ page on our website.

¹ <https://www.oaic.gov.au/about-us/access-our-information/>.



Australian Government

Office of the Australian Information Commissioner

Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email: s22

Your FOI complaint about the Department of Defence

Dear s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) on s47E(d) about an action taken by the Department of Defence (Department) in the performance of functions, or the exercise of powers 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 Information Commissioner exercise the discretion to decide not to undertake an investigation of the FOI complaint under s 73 of the FOI Act on the basis that the FOI complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

It is also open to you to withdraw your complaint if you agree with my preliminary assessment.

The reasons for my intended recommendation follow.

Background

On s47E(d), you applied to the Department for access to documents.

s47E(d)

On the same date, you wrote to the Department disagreeing with the closure of your FOI request and advised that you sought access to 'all records.'

s47E(d)

[Redacted]

s47E(d) [Redacted]

On **47E(d)**, the OAIC acknowledged your FOI complaint and requested a copy of your original request.

On the same date, you provided the OAIC with copies of the original request and other correspondence between yourself and the Department.

Preliminary inquiries

On **47E(d)**, the OAIC undertook preliminary inquiries with the Department under s 72 of the FOI Act.

On **47E(d)**, the Department provided the OAIC with submissions in response to preliminary inquiries.

Your complaint

s47E(d)
[Redacted text]

[Redacted text]

The Department's submissions

s47E(d)
[Redacted text]

[Redacted text]

[Redacted text]

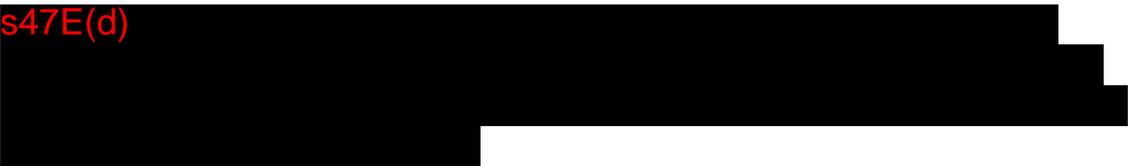
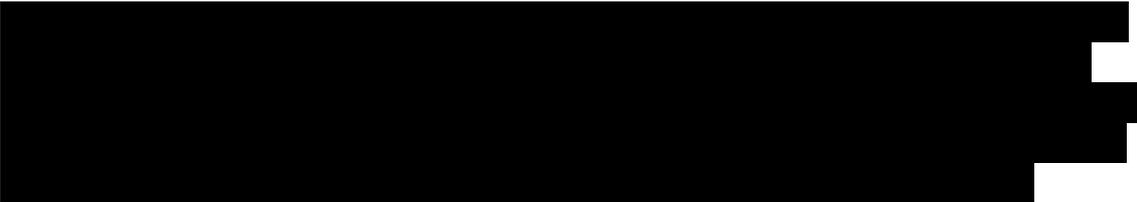
Consideration

Section 20(2) of the FOI Act provides that subject to limited exceptions, an applicant who requests access to a document in a particular form has a right to be given access in that form.

The FOI Guidelines at [\[3.209\]](#) state:

Agencies and ministers are expected to make reasonable use of available technology to facilitate access to documents — for example, by providing copies by electronic transmission, or to provide access in a particular form that is possible only through technology. Access to documents by means that do not require physical inspection in an agency office should generally be preferred.

s47E(d)

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Recommendation not to investigate

Under s 73 of the FOI Act, the Information Commissioner may decide not to investigate a complaint, or not to continue to investigate, if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint
- the Department's response to the OAIC's preliminary enquiries dated **47E(d)**
- the FOI Act, particularly s 73(e), and
- the Guidelines issued by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, Parts [3](#) and [11](#)

s47E(d)

Based on the information before the OAIC, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73(e), because my preliminary assessment is that this complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

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

Next steps

If you agree with my preliminary assessment as case officer, it is open to you to withdraw your complaint by s47E(d)

If you disagree with this proposed recommendation, please write to us by s47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by s47E(d) your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

However, the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to investigate your complaint.

If you have any questions, please contact me on +61 2 9284 9815 or via email to Summen.Sarwar@oaic.gov.au. In all correspondence, please quote OAIC reference number at the top of this letter.

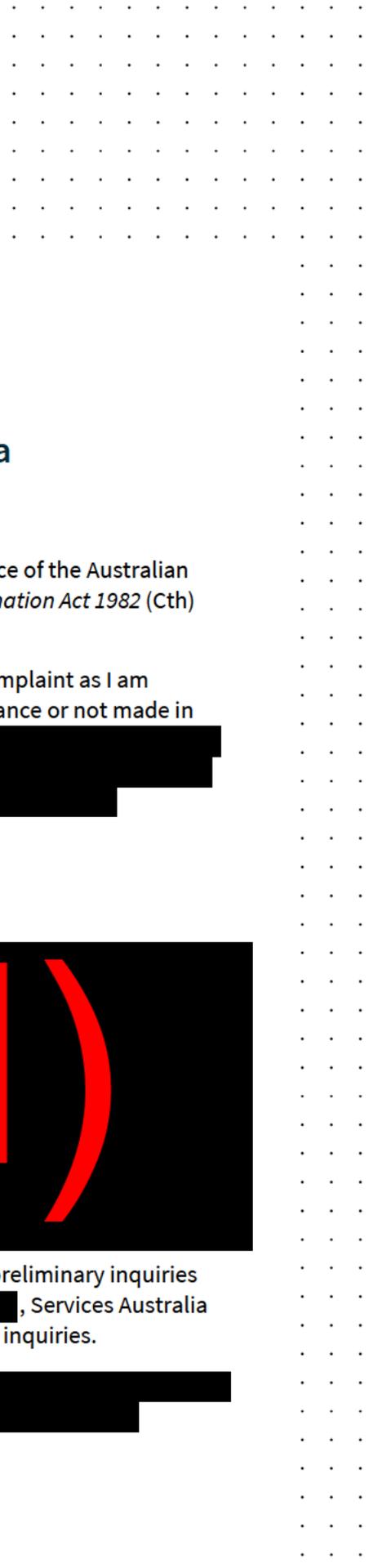
Yours sincerely



Summen Sarwar

Assistant Review and Investigation Advisor
FOI Regulatory Group

9 March 2022



Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email to: s22

Your FOI complaint about Services Australia

Dear s22

I refer to your complaint about Services Australia received by the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act) on s47E(d)

Under s 73(e) of the FOI Act, I have decided not to investigate your complaint as I am satisfied that it is frivolous, vexatious, misconceived, lacking in substance or not made in good faith. s47E(d)

[Redacted]

My reasons and considerations are set out below.

Background

47E(d)

On 47E(d), the OAIC advised you that it was undertaking preliminary inquiries with Services Australia under s 72 of the FOI Act. On 47E(d), Services Australia provided the OAIC with submissions in response to those preliminary inquiries.

47E(d)

On **47E(d)**, Ms Jasmin Clarke of the OAIC provided correspondence to you setting out her intention to recommend that I decline to investigate your complaint on the basis that your complaint is lacking in substance. Ms Clarke's correspondence to you is at **Attachment A**.

Ms Clarke requested a response to her correspondence by **47E(d)**. However, it appears a response has not been received.

Decision not to investigate

Under s 73 of the FOI Act, I may decide not to investigate a complaint or not to continue to investigate, if I am satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

I have had regard to the following:

- your complaint of **47E(d)**,
- Services Australia's submissions of **47E(d)**,
- Ms Clarke's correspondence to you of **47E(d)**,
- the FOI Act, particularly ss 54L and s 73, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#).

s47E(d)
[Redacted]

[Redacted]

[Redacted]

| [Redacted]

| [Redacted]

- s47E(d)

In deciding whether to exercise the discretion not to investigate the complaint, I have considered that:

47E(d)

- the submissions in your complaint of 47E(d) do not alter my view that this matter is lacking in substance, frivolous, vexatious, misconceived, lacking in substance or not made in good faith.
- it appears a response was not received from you in relation to Ms Clarke's correspondence of 47E(d), advising you of her intention to recommend that I decline to investigate your FOI complaint.
- investigating this matter will not promote the objects of the FOI Act.

For these reasons I have decided to exercise my discretion to decide not to investigate your complaint under s 73 of the FOI Act on the basis that the FOI complaint is lacking in substance, frivolous, vexatious, misconceived, lacking in substance or not made in good faith. I confirm that this complaint is now finalised.

Information about your review rights is set out below. If you have any questions, please contact Eoin McMahon on (02) 9284 9716 or via email eoin.mcmahon@oaic.gov.au. Please quote OAIC reference: s47E(d) in all correspondence.

Yours sincerely



Elizabeth Hampton
Acting Freedom of Information Commissioner

18 March 2022

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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>.

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](#)¹ page on our website.

¹ <https://www.oaic.gov.au/about-us/access-our-information/>.



Our reference: s47E(d)

Agency reference: s47E(d)

s22

By email to: s22

Your FOI complaint about Services Australia

s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) s47E(d) about an action taken by Services Australia in the performance of functions, or the exercise of powers under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Under s 73(e) of the *Freedom of Information Act 1982* (Cth) (the FOI Act), the Information Commissioner may decide not to investigate a complaint if the complaint is, frivolous, vexatious, misconceived, lacking in substance or not made in good faith (s 73(e)).

The purpose of this letter is to advise you of my intention to recommend that the Information Commissioner exercise the discretion to decide not to undertake an investigation of the FOI complaint under s 73 of the FOI Act on the basis that the FOI complaint is, frivolous, vexatious, misconceived, lacking in substance or not made in good faith, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

s47E(d)

It is also open to you to withdraw your complaint if you agree with my preliminary assessment.

The reasons for my intended recommendation follow.

Background

s47E(d)

s47E(d) [Redacted]

[Redacted]

Your complaint

s47E(d) [Redacted]

Legislation

Compliance with the statutory processing period

The FOI Act provides a statutory processing period of 30 days to process an FOI request (s 15(5)).

The period can be extended by up to 30 days with the applicant's agreement (s 15AA), by 30 days if consultation with a third party is undertaken (s 15(6)), and by 30 days if consultation with a foreign entity is undertaken (s 15(8)).

An agency or minister may apply to the Information Commissioner for extension of the statutory processing period for complex or voluminous requests (s 15AB) or following a deemed access refusal decision (s 15AC).

The statutory processing period does not include:

- the time that an agency may take in a request consultation process to decide if a practical refusal exists (s 24AB(8))
- the time elapsing between an applicant being notified that a charge is payable and
 - either the applicant paying the charge (or a deposit on account of the charge) or the
 - agency varying the decision that a charge is payable (s 31).

The FOI Guidelines [\[3.50\]](#) further explain that:

The nature of the duty to take 'reasonable steps' to assist an applicant to make a request, and to direct the request to the appropriate agency or minister, will depend on the circumstances of each request. For example, where a practical refusal reason exists and the

¹ On 27 October 2020, your related IC review (MR19/00532) was finalised under s 54W of the FOI Act.

applicant responds to a notice under s 24AB(2), the agency or minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists (s 24AB(3)). Reasonable steps in this scenario might include providing a breakdown of the time estimated for each step of the process and suggesting what would be a reasonable request in the circumstances.

Charges

Section 29 of the FOI Act sets out an agency's discretion to apply charges for access to a document, including the requirements for agencies issuing preliminary assessment of charges notices to applicants.

The FOI Guidelines at [\[4.1\]](#) state:

An agency or minister may impose a charge in respect of a request for access to a document or for providing access to a document, under s 29 of the FOI Act. The charge must be assessed in accordance with the *Freedom of Information (Charges) Regulations 2019* (Charges Regulations).

Under s 8 of the Charges Regulations, an agency or minister has a discretion to impose or not impose a charge, or impose a charge that is lower than the applicable charge.² An applicant may also object to the estimated charge and pay the deposit or full estimated charge progress a decision on the FOI request while the charge is disputed.³

Consideration

Requestion consultation Process

It is open to an agency to commence the request consultation process with an applicant when an agency is satisfied that a practical refusal reason exists under s 24AA of the FOI Act.

s47E(d)



² FOI Guidelines [4.8].

³ FOI Guidelines [4.10].

s47E(d)



s47E(d) [Redacted]

Charges

s47E(d) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Conclusion

Accordingly, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73 of the FOI Act s47E(d) [Redacted]

Discretion not to investigate

Under s 73 of the FOI Act, the Information Commissioner may decide not to investigate a complaint, or not to continue to investigate, if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint
- submissions dated s47E(d)
- the FOI Act, particularly s 73(e), and
- the Guidelines issues by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#)

s47E(d)

[Redacted text block]

Based on the information before the Oaic, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73, because my preliminary assessment is that this complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

Next steps

If you agree with my preliminary assessment as case officer, it is open to you to withdraw your complaint by s47E(d)

If you disagree with this proposed recommendation, please write to us by s47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by s47E(d) your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

However, the Information Commissioner will review all material before the Oaic in deciding whether to exercise the discretion to decide not to investigate in this case.

If you have any questions, please contact me on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. Please quote Oaic reference number at the top of this page in all correspondence.

Yours sincerely



Jasmin Clarke
Assistant Review and Investigation Advisor

FOI Regulatory Group

3 March 2022



Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email to: s22

Your FOI complaint about Services Australia

Dear s22

I refer to your complaint about Services Australia received by the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act) on s47E(d)

Under s 73(e) of the FOI Act, I have decided not to investigate your complaint as I am satisfied that it is frivolous, vexatious, misconceived, lacking in substance or not made in good faith. I am satisfied that your complaint is lacking in substance on the basis that it is open to Services Australia to exercise its discretion to apply charges under s 29 of the FOI Act, and it is also open to you as the applicant to dispute those charges using the appropriate review rights.

My reasons and considerations are set out below.

Background



On 47E(d), the OAIC invited you to provide further submissions to particularise your complaint, noting you advised in your email of 47E(d) that you would like to make further submissions following the allocation of a case officer. A response was requested by 47E(d) however a response was not received.



On 25 February 2022, Ms Jasmin Clarke of the OAIC provided correspondence to you setting out her intention to recommend that I decline to investigate your complaint on the basis that your complaint is lacking in substance (**Attachment A**). Ms Clarke advised that, in her view:

- It is open to Services Australia to exercise its discretion to apply charges under s 29 of the FOI Act, and it is also open to the applicant to dispute those charges using the appropriate review rights.
- Your dispute of the FOI charges resulted in Services Australia waiving the charge in full.

Ms Clarke requested a response to her correspondence of 25 February 2022 by 11 March 2022. Your submissions in response to this letter were received by the OAIC on 11 March 2022.

In considering whether or not to investigate this matter I have considered the comments from your complaint of 28 April 2021 and your correspondence of 11 March 2022.

Decision not to investigate

Under s 73 of the FOI Act, I may decide not to investigate a complaint or not to continue to investigate, if I am satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

I have had regard to the following:

- your complaint of **s47E(d)**.
- your submissions of **s47E(d)**.
- the FOI Act, particularly ss 29 and s 73, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#).

s47E(d)

47E(d)

As set out in Ms Clarke's correspondence to you on 47E(d), I am satisfied that your complaint is lacking in substance, frivolous, vexatious, misconceived, or not made in good faith on the basis that:

- It is open to Services Australia to exercise its discretion to apply charges under s 29 of the FOI Act, as it is also open to the applicant to also dispute those charges.
- Your dispute of the FOI charges resulted in Services Australia waiving the charge in full.

In deciding whether to exercise the discretion not to investigate the complaint, I have considered that:

- a) It is open to Services Australia to exercise its discretion to apply charges under s 29 of the FOI Act, as it is also open to the applicant to also dispute those charges.
- b) Your dispute of the FOI charges resulted in Services Australia waiving the charge in full.
- c) The comments from your complaint of 47E(d) and submissions of 47E(d) do not alter my view that this matter is lacking in substance, frivolous, vexatious, misconceived, lacking in substance or not made in good faith.
- d) Investigating this matter will not promote the objects of the FOI Act.

For these reasons I have decided to exercise my discretion to decide not to investigate your complaint under s 73(e) of the FOI Act on the basis that the FOI complaint is lacking in substance, frivolous, vexatious, misconceived, or not made in good faith. I confirm that this complaint is now finalised. Information about your review rights is set out below.

If you have any questions, please contact Eoin McMahon on (02) 9284 9716 or via email Eoin.McMahon@oaic.gov.au. Please quote OAIC reference: s47E(d) in all correspondence.

Yours sincerely



Elizabeth Hampton

Acting Freedom of Information Commissioner

30 March 2022

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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>.

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](#)¹ page on our website.

¹ <https://www.oaic.gov.au/about-us/access-our-information/>.



Our reference: s47E(d)

Agency reference: s47E(d)

s22

By email to: s22

Your FOI complaint about Services Australia

Dear s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) s47E(d) about an action taken by Services Australia in the performance of functions, or the exercise of powers under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Under s 73(e) of the *Freedom of Information Act 1982* (Cth) (the FOI Act), the Information Commissioner may decide not to investigate a complaint if the complaint is, frivolous, vexatious, misconceived, lacking in substance or not made in good faith (s 73(e)).

The purpose of this letter is to advise you of my intention to recommend that the Information Commissioner exercise the discretion to decide not to undertake an investigation of the FOI complaint under s 73 of the FOI Act on the basis that the FOI complaint is, frivolous, vexatious, misconceived, lacking in substance or not made in good faith, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

It is also open to you to withdraw your complaint if you agree with my preliminary assessment.

The reasons for my intended recommendation follow.

Background

s47E(d)

[Redacted content]



s47E(d) [Redacted text block]

Your complaint

Consideration

Section 29 of the FOI Act sets out an agency's discretion to apply charges for access to a document, including the requirements for agencies issuing preliminary assessment of charges notices to applicants.

The FOI Guidelines at [\[4.1\]](#) state:

An agency or minister may impose a charge in respect of a request for access to a document or for providing access to a document, under s 29 of the FOI Act. The charge must be assessed in accordance with the *Freedom of Information (Charges) Regulations 2019* (Charges Regulations).

Under s 8 of the Charges Regulations, an agency or minister has a discretion to impose or not impose a charge, or impose a charge that is lower than the applicable charge.¹ An applicant may also object to the estimated charge and pay the deposit or full estimated charge progress a decision on the FOI request while the charge is disputed.²

Accordingly, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73 of the FOI Act on the basis that it is open to Services Australia to exercise its discretion to apply charges under s 29 of the FOI Act, and it is also open to the applicant to dispute those charges using the appropriate review rights.

Discretion not to investigate

Under s 73 of the FOI Act, the Information Commissioner may decide not to investigate a complaint, or not to continue to investigate, if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint
- the FOI Act, particularly s 73(e), and
- the Guidelines issues by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#)

¹ FOI Guidelines [4.8].

² FOI Guidelines [4.10].

It is my preliminary assessment as case officer that the issues you raised relation to Services Australia issuing 'bogus charges' is lacking in substance. It is open to Services Australia to exercise its discretion to apply charges under s 29 of the FOI Act, as it is also open to the applicant to also dispute those charges. I note you disputed the charge which led to Services Australia waiving the charge in full.

I also note that the OAIC sought further submissions from you in relation to your complaint however you did not respond to those inquiries.

Based on the information before the OAIC, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73, because my preliminary assessment is that this complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

Next steps

If you agree with my preliminary assessment as case officer, it is open to you to withdraw your complaint by s47E(d) [REDACTED]

If you disagree with this proposed recommendation, please write to us by s47E(d) [REDACTED] and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by s47E(d) [REDACTED] your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

However, the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to investigate in this case.

If you have any questions, please contact me on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. Please quote OAIC reference number at the top of this page in all correspondence.

Yours sincerely



Jasmin Clarke

Assistant Review and Investigation Advisor
FOI Regulatory Group

25 February 2022



Our reference: s47E(d)
Agency reference: s47E(d)

s22

By email to: s22

Your FOI complaint about the Commonwealth Ombudsman

Dear s22

I refer to your complaint about the Commonwealth Ombudsman (the Ombudsman) received by the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act) on s47E(d)

Under s 73(e) of the FOI Act, I have decided not to investigate your complaint as I am satisfied that it is frivolous, vexatious, misconceived, lacking in substance or not made in good faith. s47E(d)

[Redacted]

s47E(d)

My reasons and considerations are set out below.

Background

47E(d)

s47E(d), Ms Jasmin Clarke of the OAIC provided correspondence to you setting out her intention to recommend that I decline to investigate your complaint on the basis that your complaint is lacking in substance. 47E(d)

[Redacted]



47E(d)

Ms Clarke requested a response to her correspondence by 47E(d). However, it appears a response has not been received.

Decision not to investigate

Under s 73 of the FOI Act, I may decide not to investigate a complaint or not to continue to investigate, if I am satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

I have had regard to the following:

- your complaint of 47E(d)
- the FOI Act, particularly ss 26 and s 73, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#).

s47E(d)

In deciding whether to exercise the discretion not to investigate the complaint, I have considered that:

- a) 47E(d)
- b) it appears a response was not received from you in relation to Ms Clarke's correspondence of 47E(d) advising you of her intention to recommend that I decline to investigate your FOI complaint, and
- c) investigating this matter will not promote the objects of the FOI Act.

For these reasons, I have decided to exercise my discretion to decide not to investigate your complaint under s 73 of the FOI Act on the basis that the FOI complaint is lacking in substance, frivolous, vexatious, misconceived, lacking in substance or not made in good faith. I confirm that this complaint is now finalised. Information about your review rights is set out below.

If you have any questions, please contact Eoin McMahon on (02) 9284 9716 or via email eoin.mcmahon@oaic.gov.au. Please quote OAIC reference: **S47E(d)** in all correspondence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elizabeth Hampton', with a long horizontal flourish extending to the right.

Elizabeth Hampton
Acting Freedom of Information Commissioner

11 March 2022

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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>.

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](#)¹ page on our website.

¹ <https://www.oaic.gov.au/about-us/access-our-information/>.



Our reference: s47E(d)

Agency reference: s47E(d)

s22

By email to: s22

Your FOI complaint about the Commonwealth Ombudsman

Dear s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) s47E(d) about an action taken by the Commonwealth Ombudsman (the Ombudsman) in the performance of functions, or the exercise of powers 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 Information Commissioner exercise the discretion to decide not to undertake an investigation of the FOI complaint under s 73 of the FOI Act on the basis that the FOI complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

s47E(d)

It is also open to you to withdraw your complaint if you agree with my preliminary assessment.

The reasons for my intended recommendation follow.

Background

s47E(d)

[Redacted background text]

s47E(d) [Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list item]

Your complaint

s47E(d) [Redacted text block]

- [Redacted list item]

Consideration

Section 26 of the FOI Act sets out the requirement for reasons and other particulars of decisions to be given in relation to access request made under the FOI Act. The legislation does not provide for schedules being included as requirement for decision made under the FOI Act.

However, the FOI Guidelines at [\[3.176\]](#) states the following:

There is no specified form for a statement of reasons. A letter to the applicant may be sufficient as long as it contains all the required information. Where the request involves numerous documents or complex issues relating to exemptions, a statement of reasons and a schedule of documents attached to a letter to the applicant may be more appropriate.

The FOI Guidelines further explain that:

The decision needs to identify clearly the documents considered by the decision maker for release (without disclosing exempt material if exemptions are claimed). Preparing a schedule of documents is often helpful in the decision-making process. When the decision is made, the schedule (minus any exempt material considered during the process) can be attached to the statement of reasons.¹

s47E(d)
[Redacted text block]

[Redacted text block]

[Redacted text block]

Discretion not to investigate

Under s 73 of the FOI Act, the Information Commissioner may decide not to investigate a complaint, or not to continue to investigate, if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint
- the FOI Act, particularly s 73(e), and
- the Guidelines issues by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#)

s47E(d)
[Redacted text block]

¹ [3.178] FOI Guidelines

s47E(d)

Based on the information before the OAIC, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73(e), because my preliminary assessment is that this complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

Next steps

If you agree with my preliminary assessment as case officer, it is open to you to withdraw your complaint by s47E(d)

If you disagree with this proposed recommendation, please write to us by s47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by s47E(d) your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

However, the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to investigate in this case.

If you have any questions, please contact me on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. Please quote OAIC reference number at the top of this page in all correspondence.

Yours sincerely



Jasmin Clarke

Assistant Review and Investigation Advisor
FOI Regulatory Group

24 February 2022



Our reference **s47E(d)**
Agency reference: **s47E(d)**

s22

By email to: **s22**

Your FOI complaint about Services Australia

Dear **s22**

I refer to your complaint about Services Australia received by the Office of the Australian Information Commissioner (OAIC) under s 70 of the *Freedom of Information Act 1982* (Cth) (the FOI Act) on **s47E(d)**

Under s 73(e) of the FOI Act, I have decided not to investigate your complaint as I am satisfied that it is frivolous, vexatious, misconceived, lacking in substance or not made in good faith. **s47E(d)**

[Redacted]

[Redacted]

My reasons and considerations are set out below.

Background

47E(d)

On **47E(d)**, Ms Jasmin Clarke of the OAIC provided correspondence to you setting out her intention to recommend that I decline to investigate your complaint on the basis that your complaint is lacking in substance. **47E(d)**

[Redacted]



47E(d)

Ms Clarke requested a response to her correspondence by 47E(d). However, it appears a response has not been received.

Decision not to investigate

Under s 73 of the FOI Act, I may decide not to investigate a complaint or not to continue to investigate, if I am satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

I have had regard to the following:

- your complaint of 47E(d)
- the FOI Act, particularly ss 54L and s 73, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#) and [Part 3 \[3.176\]](#).

s47E(d)

In deciding whether to exercise the discretion not to investigate the complaint, I have considered that:

- a) 47E(d)
- b) it appears a response was not received from you in relation to Ms Clarke's correspondence of 47E(d) advising you of her intention to recommend that I decline to investigate your FOI Complaint, and
- c) investigating this matter will not promote the objects of the FOI Act.

For these reasons I have decided to exercise my discretion to decide not to investigate your complaint under s 73 of the FOI Act on the basis that the FOI complaint is lacking in substance, frivolous, vexatious, misconceived, lacking in substance or not made in good faith. I confirm that this complaint is now finalised. Information about your review rights is set out below.

If you have any questions, please contact Eoin McMahon on (02) 9284 9716 or via email eoin.mcmahon@oaic.gov.au. Please quote OAIC reference: **S47E(d)** in all correspondence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elizabeth Hampton', with a stylized flourish at the end.

Elizabeth Hampton
Acting Freedom of Information Commissioner

17 March 2022

Your 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 investigate, or not to continue to investigate, a complaint 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 receiving the decision. 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

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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>.

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](#)¹ page on our website.

¹ <https://www.oaic.gov.au/about-us/access-our-information/>.



Our reference: s47E(d)

Agency reference: s47E(d)

s22

By email to: s22

Your FOI complaint about Services Australia

Dear s22

I refer to your FOI complaint to the Office of the Australian Information Commissioner (OAIC) s47E(d) about an action taken by Services Australia in the performance of functions, or the exercise of powers 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 Information Commissioner exercise the discretion to decide not to undertake an investigation of the FOI complaint under s 73 of the FOI Act on the basis that the FOI complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith, and to give you an opportunity to provide reasons for me to reconsider making this recommendation.

s47E(d)

It is also open to you to withdraw your complaint if you agree with my preliminary assessment.

The reasons for my intended recommendation follow.

Background

s47E(d)

[Redacted background text]



s47E(d) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Your complaint

s47E(d) [Redacted text block]

- [Redacted list item]

Consideration

Section 26 of the FOI Act sets out the requirement for reasons and other particulars of decisions to be given in relation to access request made under the FOI Act. The legislation does not provide for cross referencing to be included as requirement for a decision made under the FOI Act.

However, the FOI Guidelines at [\[3.176\]](#) states the following:

There is no specified form for a statement of reasons. A letter to the applicant may be sufficient as long as it contains all the required information. Where the request involves

numerous documents or complex issues relating to exemptions, a statement of reasons and a schedule of documents attached to a letter to the applicant may be more appropriate.

The FOI Guidelines further explain that:

The decision needs to identify clearly the documents considered by the decision maker for release (without disclosing exempt material if exemptions are claimed). Preparing a schedule of documents is often helpful in the decision-making process. When the decision is made, the schedule (minus any exempt material considered during the process) can be attached to the statement of reasons.¹

s47E(d) [Redacted]

[Redacted]

[Redacted]

Discretion not to investigate

Under s 73 of the FOI Act, the Information Commissioner may decide not to investigate a complaint, or not to continue to investigate, if the Information Commissioner is satisfied that a complaint about an action made under s 70 of the FOI Act is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

In forming my preliminary assessment as case officer, I have had regard to the following:

- your complaint
- the FOI Act, particularly s 73(e), and
- the Guidelines issues by the Australian Information Commissioner under 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (FOI Guidelines), in particular, [Part 11](#)

s47E(d) [Redacted]

¹ [3.178] FOI Guidelines

s47E(d)

Based on the information before the OAIC, I intend to recommend that the Information Commissioner exercise the discretion to decide not to investigate your complaint under s 73(e), because my preliminary assessment is that this complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.

Next steps

If you agree with my preliminary assessment as case officer, it is open to you to withdraw your complaint by s47E(d)

If you disagree with this proposed recommendation, please write to us by s47E(d) and advise us of your reasons. Your reasons will be taken into account before a decision is made on whether to finalise your complaint under s 73.

If I do not hear from you by s47E(d) your FOI complaint may be finalised under s 73 and you will be notified of your review rights.

However, the Information Commissioner will review all material before the OAIC in deciding whether to exercise the discretion to decide not to investigate in this case.

If you have any questions, please contact me on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. Please quote OAIC reference number at the top of this page in all correspondence.

Yours sincerely



Jasmin Clarke

Assistant Review and Investigation Advisor
FOI Regulatory Group

25 February 2022