



Decision not to continue to undertake an IC review under s 54W(c) of the *Freedom of Information Act 1982*

IC review applicant	Verity Pane
Respondent	Department of Veterans' Affairs
Decision date	25 October 2023
OAIC reference number	MR22/01958
Agency reference number	LEX 54130

Decision

1. I refer to the application made by Verity Pane (the applicant) for Information Commissioner review (IC review) of a deemed access refusal decision made by the Department of Veterans' Affairs (the Department) on 1 November 2022 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. As a delegate of the Information Commissioner, I am authorised to make decisions under s 54W(c) of the FOI Act.
3. On 12 September 2023, the Department provided a submission under s 55(2)(e)(ii) of the FOI Act, in response to the OAIC's notice under s 54Z of the FOI Act, outlining that the applicant's FOI request in its current terms would amount to a substantial and unreasonable diversion of the resources of the Department from its other operations in accordance with s 24AA(1)(a) of the FOI Act.
4. The Office of the Australian Information Commissioner (OAIC) has not received a response from the applicant to our subsequent correspondence to advise whether they wished to proceed with the IC review. As a delegate of the Information Commissioner, I have decided not to undertake an IC review under s 54W(c) of the FOI Act. My reasons follow.

Background

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

Discretion not to undertake an IC review

6. Under s 54W(c) of the FOI Act, the Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if the IC review applicant fails to comply with a direction of the Information Commissioner.



7. The Direction as to certain procedures to be followed by applicants in Information Commissioner reviews issued by the Australian Information Commissioner under s 55(2)(e)(i), provides:

Applicants who are satisfied with the decision and do not wish to proceed with the IC review must advise the OAIC in writing. Applicants who are not satisfied with the agency or Minister's decision must explain why they disagree with the decision and the basis on which they wish to proceed with the IC review.¹

The OAIC has not received a response from the applicant to our subsequent correspondence to advise whether they wished to proceed with the IC review.

Reasons for decision

I am satisfied that the IC review should be finalised under s 54W(c) of the FOI Act as the OAIC notified the applicant that in the absence of a response from them by 17 October 2023, their IC review would be finalised by a delegate of the Information Commissioner under s 54W(c) of the FOI Act.

8. In deciding whether to exercise the discretion not to undertake a review, I have considered:
- On 3 October 2023, the OAIC emailed the applicant using the email address provided in the IC review application about whether they wished to proceed with the IC review in response to the Department's submission. The OAIC advised the applicant that in the absence of a response by 17 October 2023, that the IC review would be finalised by a delegate of the Information Commissioner under s 54W(c) of the FOI Act.
 - The applicant has not provided any indication to the OAIC that they disagree with the Department's submission or, that they wish to proceed with the IC review.
 - It does not appear that reviewing this matter will promote the objects of the FOI Act.
9. As a delegate of the Information Commissioner, I have decided to exercise my discretion to decide not to undertake an IC review under s 54W(c) of the FOI Act.
10. I confirm that this IC review is now closed. Your review rights are set out below.

¹ [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews | OAIC](#) [1.22] and [1.33]



Australian Government

Office of the Australian Information Commissioner

11. If either party would like to discuss this matter, please contact us by email at FOIDR@oaic.gov.au. In all correspondence, please quote MR22/01958.

Yours sincerely,

Hannah Holswilder

Director

Freedom of information Branch

25 October 2023





ATTACHMENT A

Key procedural steps

Date	Events
1 October 2022	FOI request made to the respondent for access to: “...documents (whether held in electronic or other forms) sent in 2022 to clients about cost recovery of incapacity payments made to them due to the client receiving a ComSuper pension (including backpay of such a pension)”
4 December 2022	IC review application received by the OAIC
5 January 2023	IC review commenced by OAIC
12 September 2023	Submission under s 55(2)(e)(ii) of the FOI Act provided by respondent.
3 October 2023	The OAIC sought the applicant’s advice about whether the applicant wished to proceed with the IC review and if so to provide grounds about the basis on which the applicant wished to proceed. The OAIC also advised the applicant that their IC review will be finalised under s 54W(c) if no response was received by the specified date.



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 this 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/.