



Our reference: FOIREQ22/00322

By email: foi+request-9433-24ba8318@righttoknow.org.au

Your Freedom of Information Request- FOIREQ22/00322

Dear Louise,

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 4 October 2022.

In your request you seek access to the following:

“Under the FOI Act I request access to a document that identifies the number of extant IC review requests (i.e. IC review requests that have not been discontinued or closed or withdrawn or the like, and on which the Commissioner has yet to make a decision) for the:

*2019-2020 financial year;
2020-2021 financial year; and
2021-2022 financial year.*

If the document can be prepared under s 17 of the FOI Act, please prepare the document according to the terms of that section.

Documents can be sent to me by email.”

Through correspondence with us on 5 October 2022, you clarified the scope of your request as follows:

“I am after any documents with the number of open IC review matters as at the date of the FOI request where the IC review request was received by the OAIC in the 2019-20, 2020-21, and 2021-22 financial years.”

Decision

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

I have identified 1 document within scope of your request. I am of the view that access to this document should be granted to you in full.

Material taken into account

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

- All material within the scope of your request on the OAIC's case management system Resolve
- the FOI Act
- relevant case law
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act

Whether reasonable steps were taken to find documents – s 24A

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.

I have considered the search and retrieval efforts in processing your FOI requests. As previously advised to you, this involved

- A search and retrieval request to the relevant line area, who conducted searches and located relevant information within the scope of your request on the OAIC's case management system Resolve
- A further search and retrieval request to the OAIC Data and Reporting Team, who conducted a further search of Resolve using a Power BI tabular model

On the basis of the searches conducted, I am satisfied that under s 24A of the FOI Act that all reasonable steps have been taken by the OAIC to find the documents that fall within the scope of your request. I am also satisfied that no documents exist in which concerns "the number of open IC review matters as at the date of the FOI request where the IC review request was received by the OAIC in the 2019-20, 2020-21, and 2021-22 financial years", as per your FOI request.

Although documents were not found during the search and retrieval efforts which directly address the scope of your FOI request in discrete form, as will be outlined below, information was located which was able to be produced in a written document format.

Requests involving the use of computers – s 17

Under s 17 of the FOI Act, if an FOI request is made for a document that could be produced by using a computer ordinarily available to the agency for retrieving or collating stored information, an agency is required to deal with the request as if it was a request for written documents to which the FOI Act applies.

The FOI Guidelines [at 3.204] explain that section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. The obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a
- ‘computer or other equipment that is ordinarily available’ to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)); and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2)).

If those conditions are met, the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency’s possession.

Regarding your request, you have requested ‘*the number of open IC review matters as at the date of the FOI request where the IC review request was received by the OAIC in the 2019-20, 2020-21, and 2021-22 financial years.*’. This was information that was not available in a discrete form but was able to be produce in a written document through the use of a computer. In light of this, Officers in the Legal Service team created a document under s 17 in response to this section of your request and is included in the schedule of documents attached. I have decided to give you access to that document in full.

Conclusion

Please see the following page for information about your review rights.

Yours sincerely

Alessia Mercuri

Lawyer

3 November 2022

If you disagree with my decision

Internal Review

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

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

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

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

Further Review

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

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

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

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

Applications for IC review can be submitted online at:

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

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

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

Accessing your information

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

Disclosure log

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

I am of the view that the document that I have decided to release to you does not contain personal or business information that would be unreasonable to publish. As a result, the document will be published on our disclosure log once it is released to you.