

## Review of freedom of information decisions

### A guide for agencies

Reviews by the Information Commissioner are designed to be a practical and cost efficient method of external review of decisions made under the *Freedom of Information Act 1982* (Vic) (**FOI Act**). The review process is intended to be timely, efficient and fair, and as required by section 49H of the FOI Act, the Information Commissioner will endeavour to finalise a review with as little formality and technicality as possible. Section 49I of the FOI Act requires agencies to assist the Information Commissioner in undertaking the review.

### Assisting our Office

Ways in which you can assist our Office include –

- provide clear and direct responses if we have sought information from you, and give us those responses as soon as possible. We make preliminary inquiries to determine if the matter can be resolved informally or to help in narrowing the matters in dispute;
- participate in our informal resolution processes, and negotiate in good faith in order to attempt to resolve the review informally, before moving to the more formal review process. If required, section 49N of the FOI Act allows for a negotiated agreement to be reached and the terms of such an agreement can cover a wide range of options;
- avoid being overly formal or adversarial in your dealings with our Office. We take an informal approach to dealing with review matters while ensuring that we afford natural justice;

- provide copies of the documents that are subject to review as soon as practicable, and in the preferred format as described below;
- ensure any written submissions you provide are clear, succinct, address relevant issues, and are sent to us as early as possible in the review process;
- avoid introducing new issues or claiming new exemptions that were not considered or claimed in the original decision, unless circumstances have changed or you have new information that was not available earlier. Any new issues or claims should be supported by detailed reasons.

### Providing Documents

Please note the following when providing copies of the documents that are subject to review –

- we prefer to receive copies of the documents, rather than original documents;
- the documents must clearly indicate where material is considered to be exempt, and which exemptions are being claimed in each instance. This is typically done by highlighting or drawing boxes around the exempt material, in such a way that the exempt material is still visible;
- follow the instructions on the Document Transfer Form.

Documents may be sent by email to [reviews@ovic.vic.gov.au](mailto:reviews@ovic.vic.gov.au), or a hardcopy or USB may be sent by post to PO Box 24274, Melbourne Victoria 3001.

## Written Submissions

Agencies and applicants have the right to make a written submission in relation to a review. A written submission can include further information on why your agency applied the exemptions claimed, and why the documents should not be released to the applicant.

The submission should explain the decision in detail, not merely restate the information in your decision letter to the applicant.

If any of the information in your written submission is sensitive or confidential, please indicate it to us clearly.

Your agency's submission should contain the following –

- describe in detail the exempt documents and how each exemption applies;
- indicate whether the exemptions relate to part or the whole of each document;
- include all material facts relied on by your agency to support its view that the documents are exempt;
- the outcome of any third party consultation undertaken;
- if third party consultation was not undertaken as required by the FOI Act, an explanation as to why not;
- any other matter your agency considers relevant.

Written submissions should be provided by email as soon as practicable.

## Time to conduct the Review

How long a review takes to finalise depends on many factors, including the complexity and range of issues, the number of documents involved, any new matters raised during the review process, and the time applicants and agencies take to respond to our requests.

If a review is not completed within 30 days or a

longer period of time agreed by the applicant, the applicant has the right to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision. If an applicant does not apply to VCAT, we will continue with the review until it is resolved or otherwise finalised.

## Information Commissioner's Decision

If the review is not resolved informally, the Information Commissioner will make a formal, fresh decision. The Commissioner may agree with your agency's original decision, or may decide that an applicant is to be granted access to further documents, or parts of documents. The written Notice of Decision will set out directions and the reasons for the Commissioner's decision.

If your agency is not satisfied with the Commissioner's decision, you are entitled to apply to VCAT for review of that decision. Your agency has 14 days to apply to VCAT for a review.

Where the Commissioner decides to grant access to information relating to a third party, that third party is also entitled to appeal the decision to VCAT within 60 days of the decision.

The Commissioner's decision does not take effect until after all the relevant review periods noted above expire.

## Publication of the Decision

The Commissioner will publish a de-identified copy of the notice of decision made in response to a review application on the OVIC website and on the Australasian Legal Information Institute (AustLII) website after the decision is provided to your agency and the applicant.

The published notice of decision will not include any information that will directly identify an individual (such as names), however the name of your agency will be published.

Publication is part of the Commissioner's function to promote understanding and acceptance by agencies and the public of the FOI Act and its

object.

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## Further Information

**t:** 1300 006 842

**e:** [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au)

**w:** [ovic.vic.gov.au](http://ovic.vic.gov.au)

This fact sheet is general in nature and does not constitute legal advice