The freedom of information complaints process
A guide for complainants

The Information Commissioner can investigate complaints about certain actions (or inaction) by an agency or Minister under the Freedom of Information Act 1982 (Vic) (FOI Act).

This guide provides an overview of how we will deal with a complaint made in relation to an agency or Minister’s handling of an FOI request.

The process is kept as informal as possible. The agency or Minister you are complaining about will receive a copy of your complaint, and they must co-operate in the complaints process.

Making a complaint about an agency or Minister

Who can make a complaint?

You can make a complaint if:

- you made a request under the FOI Act to an agency or Minister, and your complaint relates to that request;
- a decision was made to give someone else access to personal information about you or about someone who is deceased, if you are their next of kin; or
- a decision was made to give someone else access to information about your business, commercial or financial affairs.

What matters can I complain about?

You can complain about an action taken, or failed to be taken, by an agency when performing its functions or meeting its obligations under the FOI Act.

This may include:

- a delay in handling your request;
- a decision that a requested document does not exist or cannot be found;
- a failure to comply with the requirement to publish a statement setting out certain information about the agency and documents it holds, including details of policies, procedures and categories of documents it maintains; or
- a failure by a principal officer or any other officer of an agency to comply with Professional Standards (not yet published or in force) in performing functions under the FOI Act.

You can also complain about certain actions taken or failed to be taken by a Minister in relation to a request. This may include:

- a delay in handling your request;
- a decision that a requested document does not exist or cannot be found;
- a decision to defer giving access to documents; or
- a decision to release personal or business information.

How can I make a valid complaint?

In order for your complaint to be valid, it must:

- be made within 60 days of the conduct you are complaining about, unless the delay was due to an action of the agency or Minister;
- be in writing;
- identify the relevant agency or Minister; and
- describe the nature of your complaint – you should provide all relevant details and supporting information or documents.

Is every complaint accepted?
We may decide not to accept a complaint, or may dismiss a complaint at any time. We may decide to do so if:
- your complaint is not appropriate in the circumstances;
- your complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;
- the actions you are complaining about were not actions taken under, or do not involve the FOI Act;
- you have the right to complain to another person or body and you have not done so (note that we can also refer your complaint to another more appropriate person or complaint body);
- you fail to cooperate with us in dealing with your complaint; and
- we are unable to contact you after reasonable attempts.

A complaint must also be dismissed if the issues raised in the complaint should be dealt with as a review of the agency’s or Minister’s decision under the FOI Act instead (see The FOI review process – a guide for applicants).

If your complaint is dismissed, we will send you a letter explaining why. A copy of this letter will also be provided to the agency or Minister that you made a complaint about.

How we can try to resolve your complaint
Our approach to resolving complaints is with as little formality and technicality as possible. This means that the use of a legal representative is not required when making a complaint.
We will contact you in writing to advise you if your complaint has been accepted, or if we need any further documents or information.
We ask that you respond to our requests for information as promptly as possible. We are committed to assisting you in resolving your complaint.
We also ask that you treat our complaints officers with courtesy and respect at all times.

Once your complaint has been accepted, we:
- must notify the relevant agency or Minister and provide them a copy of your complaint;
- may notify any third party if we think their rights or interests may be affected by your complaint;
- may make preliminary inquiries or consult with you and the agency or Minister to determine the facts and issues of your complaint or to ascertain whether the complaint can be resolved informally; and
- must investigate your complaint in private, which means that information relating to the complaint will be kept confidential, unless disclosure is necessary for the purposes of the investigation.

How long will it take to resolve my complaint?
While there is no time limit for the resolution of a complaint, we will try to deal with and, if possible, resolve your complaint as efficiently as possible.

Informal resolution of complaints
If we determine that a complaint can be resolved informally, we must take reasonable steps to resolve the complaint. An example of an informal resolution may involve an agency providing you with an apology or acknowledgement of its action or inaction, or a more detailed explanation for an action taken or not taken.
If you are satisfied with the agency’s response to your complaint, we will request your written consent to withdraw the complaint, or your agreement that it has been resolved.

If you are not satisfied with the agency’s response we may ask you to provide a further explanation as to what you are seeking, or if we believe it to be relevant, to provide additional information or documentation to assist us to resolve your complaint.

If we consider an agency’s response to your complaint to be reasonable in the circumstances, and we do not consider it appropriate to take your complaint any further, we may, at any time, dismiss your complaint.

Affording procedural fairness

We must ensure you and the agency or Minister are offered procedural fairness when handling your complaint.

This requires us to give you and the agency or Minister an opportunity to respond before making an adverse decision or comment that may affect your rights or interests, or those of the agency or Minister.

Procedural fairness also requires us to be impartial in the handling of your complaints and in its dealing with you and the agency or Minister.

Conciliation process for complaints

If your complaint cannot be resolved informally, and it is not dismissed, we must try to conciliate the complaint between you and the agency or Minister, with the aim of reaching an agreement to resolve the complaint.

If your complaint is successfully resolved, the conciliation outcome will be recorded in a written agreement and a copy provided to you and the agency or Minister.

If conciliation is not successful

If your complaint is not resolved through conciliation, you and the agency or Minister will be given a reasonable opportunity to make a written submission about the complaint.

After considering all relevant documents and information, the Information Commissioner or their delegate will decide the outcome of your complaint and send you written notice of our decision to do one or more of the following:

- dismiss your complaint;
- determine that it is not possible to deal with the complaint informally and, if further information is required, the Information Commissioner may require the agency or Minister to produce documents or attend before the Commissioner to answer questions;
- make recommendations to the agency or Minister in relation to the complaint, including recommendations for improvements to policies, procedures and systems for compliance with the FOI Act; or
- refer your complaint to another person or body if we consider the complaint would be more appropriately dealt with by that person or body (you may also have the right to complain to another person or complaint body if you have not done so).

Further Information

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