



**Office of the Victorian  
Information Commissioner**

# Information Access Series

*Update on the publication of  
OVIC notices of decision*

*and*

*Assisting and engaging with  
FOI applicants under section  
17 of the FOI Act*

*30 April 2019*

# Publication of decisions

- Publication on the OVIC website and AustLII website will commence from **1 July 2019**.
- All notices of decision will be published in **de-identified** form, this means that any personal information will be removed before publication.
- Documents associated with decisions will not be published by OVIC, however, most of the decisions will, by necessity, refer to the documents in order to provide clear reasons for the decision.

# Requirements for a valid request – section 17

- In writing
- Sufficient information to identify the document
- Application fee paid or waived

# Assistance requirements

## Section 17(3) –

It is the duty of an agency or Minister, as the case may be, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate agency or Minister, to make a request in a manner that complies with this section or to direct a request to the appropriate agency or Minister.

## Section 17(4) –

Where a request in writing is made to an agency or Minister for access to a document, the agency or Minister, as the case may be, shall not refuse to comply with the request on the ground that the request does not comply with subsection (2), without first giving the applicant a ***reasonable opportunity*** of consultation with the agency with a view to the making of a request in a form that does comply with that subsection.

## Clarity - “reasonably necessary”

- “If the [agency] knows very well what is being sought, and if it can find the material...”
- Requests “need not be expressed with the same eye to detail as a legislative provision or set of pleadings”.
- “It is not the task of the responsible officer to tease out from such a request what the applicant might be getting at.”

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## Clarity - suggestions

- Liaise with the applicant
- Explain how documents are kept at your agency
- Favour a wider interpretation rather than narrower

## Attempts – “reasonable opportunity”

- Relevant factors may include –
  - Applicant’s circumstances
  - Their communication ability or method
- Give an applicant more than one chance where they’re trying to work with you
- That doesn’t mean infinite chances where an applicant is obstructive

## Overlap between 'unclear' and 'too voluminous'

- A request may appear to target a large volume of documents
- *If you can understand it, it's clear*
- If processing the large volume would be a substantial and unreasonable resource diversion, use the process in s. 25A(1)
- This includes consultation under s. 25A(6)



# Fee waivers

- s. 17(2B) allows for waiver
- Waiver is discretionary, but encouraged
- Consider what evidence you will accept as proof that payment would cause hardship
- What proof will your agency accept?

# What aren't requirements under s.17?

- IDENTIFICATION –
  - Request only needs to satisfy three elements discussed earlier
  - There may be valid concerns about identity
  - If you can't be certain who is making the application this may affect application of exemptions

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# Requests not in writing

- Consider those with disabilities
- Reasonable adjustments can be made

## s.17 as a complaint

- s61A(1)(a) – An action taken or failed to be taken by an agency in the performance or purported performance of the agency’s functions and obligations under this Act
- Generally falls on s17(2) and s17(3)
- “Breakdown in communication”

## Effect of non-compliance with s. 17

- Overlap between complaints about s. 17 and delay
- Without the three elements, there is no valid request
- Time limit only starts after a valid request

## s.17 as a complaint (cont.)

- Low threshold of s61A(1)(a), more information required
- OVIC will seek copies of correspondence exchanged between Agency and Complainant
- OVIC will determine the outcome the complainant is seeking
- OVIC will manage complainant expectations
- Focus on clarification letters

## Complaint trends – s.17

- Referencing another Act
- Refusing to engage with an Agency after the first clarification response
- Clarification is a deliberate act to extend duration
- Documents about “me”
- Refusing to give further explanation due to lack of technical knowledge
- *“you know what I mean”*

# Reminders

- Suggested wording - #1 tool
- Referencing an event/circumstance detailed by the complainant back to them (where possible) as a way to clarify
- Explanation of relevant program areas/where searches would be required
- Requests that include fee waiver applications, the clock starts when the waiver is approved – not when application is received



# Contact us

OVIC contact details

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# Upcoming Information Access Series events

- **Wednesday 22 May 2019:** Working with OVIC – demystifying our processes and procedures
- **Wednesday 26 June 2019:** Making fresh decisions under section 49MA of the FOI Act and Handling a request for amendment of records under section 39 of the FOI Act
- Please register via our website: [www.ovic.vic.gov.au](http://www.ovic.vic.gov.au)

