



**Office of the Victorian
Information Commissioner**



Information Access Series

*Working with OVIC -
demystifying our processes
and procedures*

22 May 2019

Registry and Case Support Team

First and last point of contact

OVIC receives over 17,500 enquires each year

- 8000+ phone calls (65% public, 35% agencies)
 - 9000+ mail, emails and facsimiles
 - 1200 applications
- Respond to phone and email enquires
 - Assess and create applications
 - Send out final correspondence

How the team can assist you

- Provide general advice on the FOI Act and PDP Act
- Assist you with the processing of an FOI request
- Assist you with FOI Review and Complaint process
- Need additional time to respond
- What you need to consider when claiming an exemption under the FOI Act
- FOI Access charges

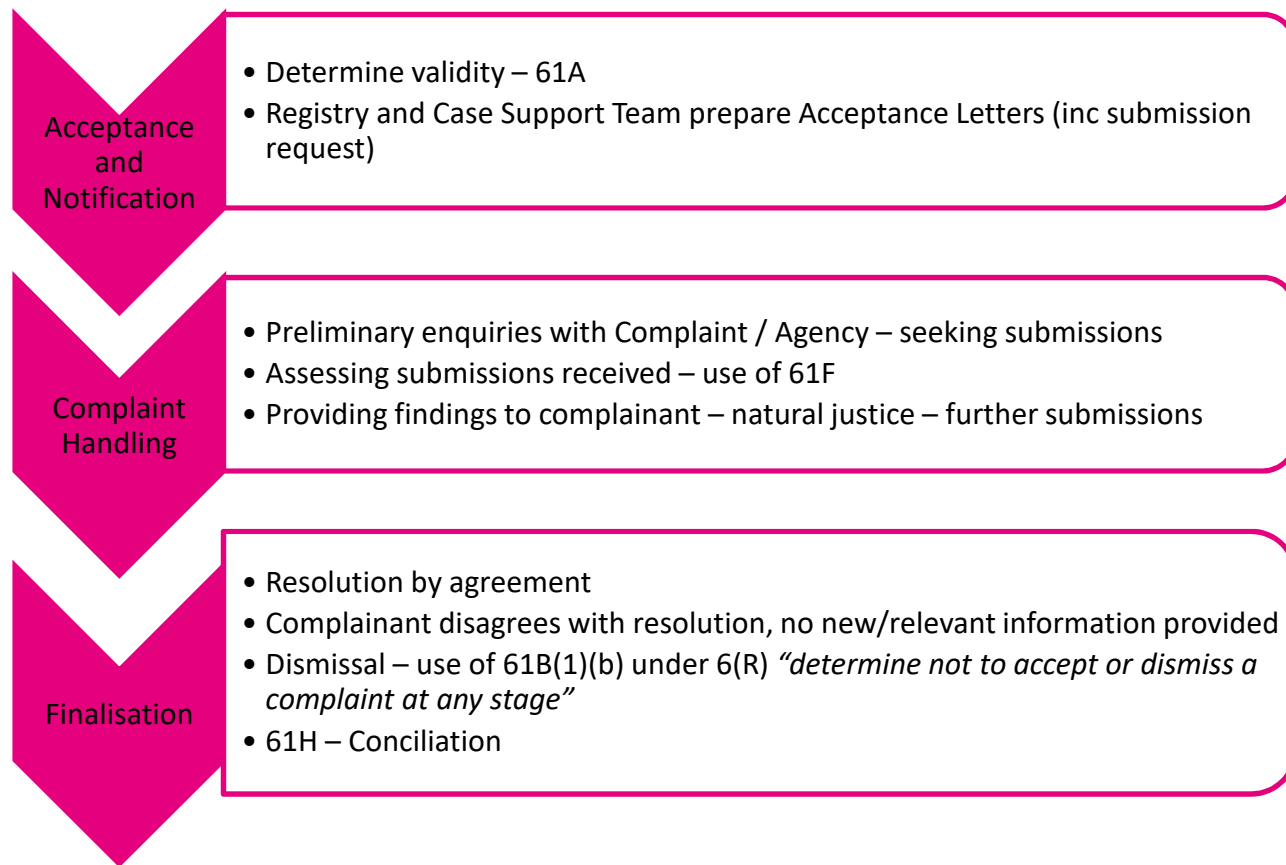
How you can assist us

- Respond to our requests promptly
- Provide documentation in the format requested
- If your matter is complex, we will request that you put your query to this office in writing
- Email copy of FOI decision to Applicant or send by registered post

Complaints

- Overview of handling process
 - Submissions
 - Informal Resolution
 - Dismissal
 - Trends

Complaints Process



Complaint Acceptance

- Section 61A(2) – a complaint must –
 1. Be in writing
 2. Set out the nature of the complaint
 3. Identify the agency, principal officer or Minister concerned.

- *“I am not happy with the agency’s search”*
- *“The agency should have found more/certain documents”*
- *“The agency is not helping me get access to documents”*
- *“The agency is trying to stop me accessing documents”*

Complaints - Submissions

- Further information required from Agency? Complainant?
- Can be intertwined with review submissions
- Will usually address the handling of the request - search/delay/s17/s18/s19/s24/s25A(6)
- Can be simple (delay) or complex (search)
- Can be confidential/sensitive
- Can include additional information from complainant
- Better quality decision letter = less detailed submission or in some cases, nil
- Are responses to specific questions asked by OVIC

Complaints – Informal Resolution

- At a point during the complaint, OVIC will seek a complainants agreement to close “*on the basis of*”
- New or relevant information provided by complainant = new submission requests made to Agency
- Complainant agrees to close = resolution letters prepared
- Complaint disagrees but no new or relevant information provided = possible dismissal

Complaints – Dismissal

- s61B(2)(g), s61B(2)(h), s61B(3)
- s61B(2) – without limiting subsection (1)(b)
- Is a delegated decision making power
- “following inquiries made with the Agency and you in relation to your complaint, OVIC is satisfied the complaint has been pursued to the fullest extent and there is no basis for the making of further inquiries or taking further action under Part VIA of the *Freedom of Information Act 1982 (Vic)* (**FOI Act**).
- Can occur at any stage

Complaints – Dismissal (cont)

- Section 61B(4) – dismissal decision includes full history
- Initial FOI request, complaint acceptance grounds under s61A, findings by OVIC and reason for dismissal, provided to complainant only
- Agency is notified of the dismissal and which section of FOI Act
- No recourse for complainant, cannot appeal at VCAT
- Complaints/Notifications about OVIC can be made to relevant bodies

Complaints – Summary

- OVIC always seeks to resolve complaints informally
- Most complaints are resolved with 1-2 submissions
- Quality of decision letter can determine the information OVIC will seek
- Content in submission requests can vary
- Unsure – make contact

Trends

- Delay complaints – importance of providing a response to the OVIC complaint notification, which includes request for submission
- The completion of an FOI request will not always resolve a delay complaint
- Where possible, engage in post-decision correspondence, even when complaint rights have been provided
- s17/s25A(6) – offer alternate means of communication where possible, eg: telephone with email follow-up
- Don't be afraid to apologise, “acknowledging” may have the opposite effect

Public Access Reviews

- FOI reviews and complaints managed across three teams:
 - Registry
 - Early Resolution and Complaints
 - Formal Reviews
- Early Resolution – where a review application is resolved without the Information Commissioner making a formal decision
- Early Resolution – manage incoming files, how we determine whether to allocate to the Early Resolution team, and what you can expect from us

Managing incoming reviews

- Allocated from Registry to 'new file triage'
- Weekly managers meeting to decide whether to allocate to Early Resolution or Formal Reviews team

What matters are suitable for early resolution?

Early Resolution	Formal Reviews
<p>Are the documents subject to the review actually what the applicant is seeking?</p> <p>On our initial assessment, we have a clear view of the likely outcome</p> <p>Exemptions applied by the Agency</p>	<p>Highly complex</p> <p>Less common or multiple exemptions</p> <p>Entrenched positions</p>

Early resolution – from an Agency’s perspective

- Speak with you
- We may discuss recent decision made in relation to similar documents of your agency
- Requesting more information – targeted questions relating to specific documents or exemptions, or background information
- The preliminary view process

Preliminary views

- A more formal process for providing our assessment and likely outcome of a review to an Applicant or an Agency
- Case managers must consult with Information Commissioner or Public Access Deputy Commissioner prior to providing a preliminary view
- Regular ‘open door’ meetings
- The preliminary view is in writing
- May result in an Applicant withdrawing a request, or an Agency making a fresh decision

Making a Fresh Decision

- An agency can reconsider its decision at any time during the review
- An agency can only make one Fresh Decision during a review
- OVIC may invite an agency to reconsider its decision – we encourage agencies to consider the preliminary view and the making of a fresh decision that would be satisfactory to the Applicant

Formal Reviews

Further enquires

- Case Manager contact with Applicant and Agency
- Request for further information or written submissions

Document assessment

- In-depth assessment of all documents
- Inspection of documents claimed exempt under s 31

Recommendation and Decision

- Case Manager recommendation to the Decision Maker
- Formal decision by Decision Maker

Reviews – Practical tips

- a) Documents
- b) Schedule of Documents
- c) Written Submissions
- d) After OVIC's Decision

Documents

What to give us?

- Documents released in part or denied in full (marked up)
- Documents released in full
- Consultation material – e.g. objections from third parties
- **Our preference:** electronic documents in PDF format

Marking Up Documents

Remember to:

- Mark exempt information clearly
- Mark up in **colour**
- Ensure exempt information is readable
- Be specific – mark which exemption/s apply to which information

Schedule of Documents

Must Have's

- Detailed and specific descriptions of documents
- Itemise attachments and indicate exemptions applied to each
- **Highly Recommended:** Arrange the documents systematically – e.g. in date order or group similar documents together
- **Best Practice:** Include a Schedule of Documents with your FOI decision letter

Written submissions

FOI Act s49H(2) - Commissioner is required to give the Applicant and the Agency an opportunity to make submissions in writing.

...But what is a written submission supposed to contain??

>> Background and rationale for Agency's decision

Written submissions

YES ✓	NO ✗
<p>Detailed, specific information about the FOI request and the documents</p> <p>Comprehensive answers to OVIC questions</p> <p>Clear and concise</p> <p>s49H(1) – as little formality and technicality as possible</p>	<p>Merely quoting legislation</p> <p>Repeating decision letter</p> <p>Long and legalistic</p>

Written submissions

If necessary...

Confidential Submissions: For highly sensitive information that shouldn't be shared with the Applicant

Updating Your Submissions: When circumstances change or new information arises

OVIC's Decision

Notice of Decision:

- Reasons for decision
- Schedule of Documents
- Directions for releasing or deleting information
- Information on appeal rights and third party notices

Post-Notice of Decision

What Next?

- Forward third party notices
- Prepare documents for release
- 14 days for Agency to decide whether to appeal to VCAT (FOI Act ss 50(3D), 52(9))
- Wait 60 days to release documents if third parties have been notified (s 52(3) and (6))
- **Recommended:** If there are no third parties to be notified, release the documents ASAP

Post-Notice of Decision

The Commissioner's decision becomes the Agency's decision (s49(2)).

Contact OVIC:

- To clarify directions for editing documents
- Notify us if your Agency appeals to VCAT (required under s50(3F))

Publishing of de-identified decisions

- As of 1 July 2019, OVIC will be publishing de-identified notices of decisions for all review applications received on or after 1 January 2019.
- Personal information will be removed in the de-identified decision. Agency and OVIC reference numbers will also be removed.
- Decisions will be published on the OVIC website and the Australasian Legal Information Institute (AustLII) website.
- Decisions will not be published earlier than **five (5) business days** after the decision has been provided to parties.

Upcoming Information Access Series events

- **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
- **Monday 29 July 2019:** Section 34(1) and 34(4) of the FOI Act
- Please register via our website: www.ovic.vic.gov.au

Contact us

OVIC contact details

T: 1300 006 842

E: enquiries@ovic.vic.gov.au

reviews@ovic.vic.gov.au

www.ovic.vic.gov.au

