



**Office of the Victorian  
Information Commissioner**

# Information Access Series

*Working with OVIC -  
demystifying our processes  
and procedures*

*20 November 2019*

# Registry and Case Support Team

## First and last point of contact

OVIC receives over 22,000 enquires each year

- 4000 received phone calls (65% public, 35% agencies)
  - 2300 phone calls made
- 18,000 mail, emails and facsimiles
  - 1200 FOI applications
    - Respond to phone and email enquires
    - Assess and create applications
    - Send out final correspondence

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# 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
- What you need to consider when claiming an exemption under the FOI Act
- Assist you with the FOI Review and Complaint process
- Extensions of time
- FOI Access charges

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## How you can assist us

- If your matter is complex, we will request that you put your query to this office in writing
- Respond to our requests promptly
- Provide documents electronically and in the format requested
- Send a copy of the FOI decision and the Applicant's FOI request

# Public Access Reviews and Complaints

- 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

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# 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>

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# 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 section 31

## Recommendation and Decision

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

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## 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

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# 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>

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# 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

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# 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

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## 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 section 50(3F))

# Publishing of de-identified decisions

- As of 1 July 2019, OVIC commenced publishing de-identified notices of decisions for all review applications received on or after 1 January 2019.
- Personal information is removed in the de-identified decision. Agency and OVIC reference numbers are also be removed.
- Decisions are published on the OVIC website and the Australasian Legal Information Institute (AustLII) website.
- Decisions are not be published earlier than **five (5) business days** after the decision has been provided to parties.
- As at 20 November 2019, we have published 130 decisions.

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# Complaints

- By the numbers..
- Overview of handling process
  - Submissions
  - Informal Resolution
  - Dismissal
  - Trends

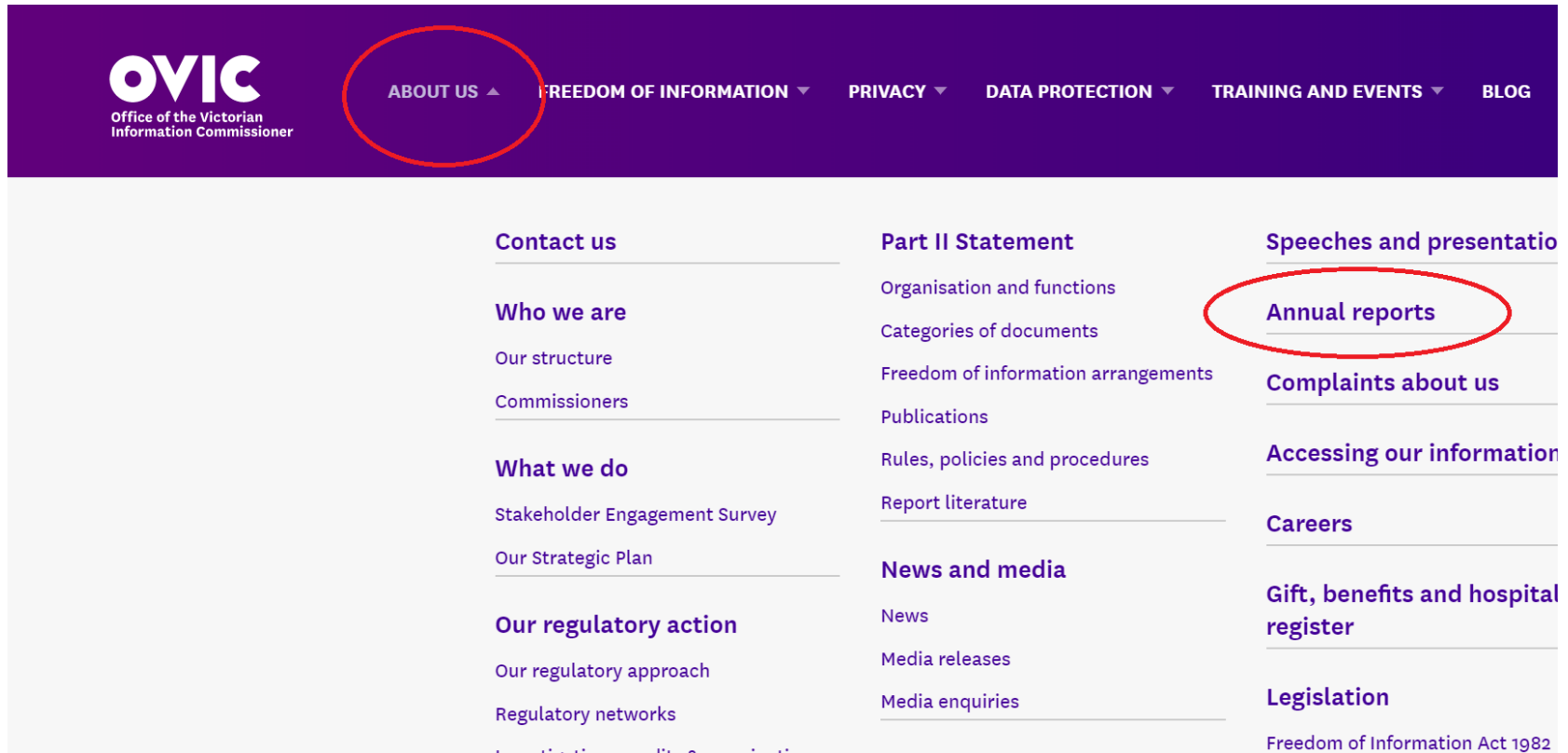
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# Complaints – by the numbers..

- 2018-2019 – in & out
- Who makes complaints?
- Method of resolution
- Complaints as of November 2019
- Timeframes



# Complaints – Accessing OVIC Annual Reports



**OVIC**  
Office of the Victorian  
Information Commissioner

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**Contact us**

**Who we are**

- Our structure
- Commissioners

**What we do**

- Stakeholder Engagement Survey
- Our Strategic Plan

**Our regulatory action**

- Our regulatory approach
- Regulatory networks
- Investigations, audits & examinations

**Part II Statement**

- Organisation and functions
- Categories of documents
- Freedom of information arrangements
- Publications
- Rules, policies and procedures
- Report literature

**News and media**

- News
- Media releases
- Media enquiries

**Speeches and presentations**

- Annual reports**

**Complaints about us**

**Accessing our information**

**Careers**

**Gift, benefits and hospital register**

**Legislation**

- Freedom of Information Act 1982

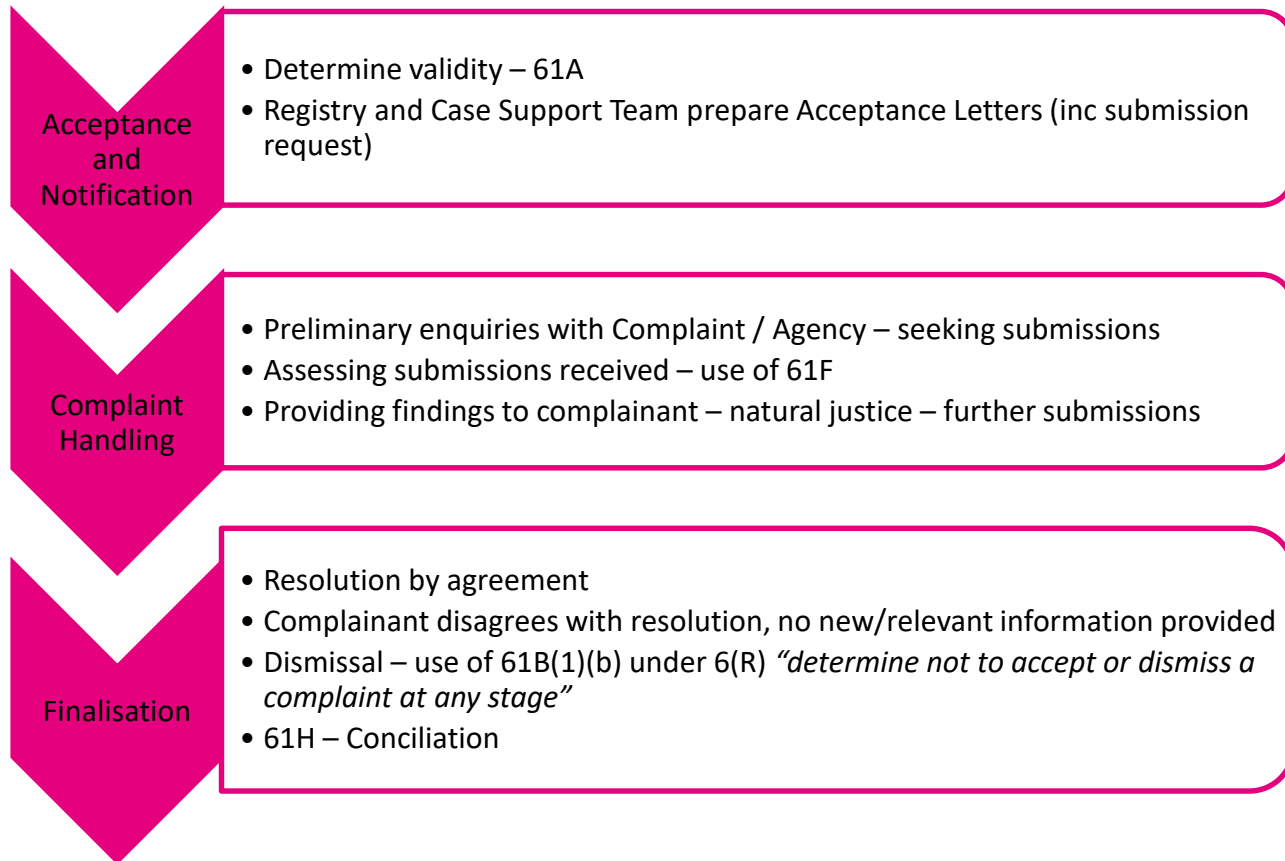
# Complaint Acceptance

- Section 61A(2) – a valid complaint must:
  1. Be in writing, consideration for reasonable adjustments
  2. Set out the nature of the complaint
  3. Identify the agency, principal officer or Minister concerned
  4. Be made within 60 calendar days after the action or conduct occurred

# Complaint Language

- *“I am not happy with the agency’s search”*
- *“The agency should have found more/certain documents”*
- *“The agency is trying to stop me accessing documents”*
- *“I have been waiting 3 months for my FOI request”*
- *“The documents I have received have nothing to do with my FOI request”*
- *“The agency hasn’t responded to my reply for clarification/narrowing”*
- *“The description of my FOI request in the decision letter is different to what I asked for”*

# Complaints Process



# 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 vary in complexity, level of detail
- Can be confidential/sensitive
- Better quality decision letter = less detailed submission or in some cases, nil
- Are responses to specific questions asked by OVIC

# Complaints – 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 request/further enquiries made to Agency
- Complainant agrees to close = resolution letters prepared
- Complaint disagrees but no new or relevant information provided / concerns are unrelated to FOI = 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!

# Complaints - Observations

- Delay complaints – importance of providing a response OVIC within 10 days, which includes request for submission
- The completion of an FOI request is not a delay resolution
- 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

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# Upcoming Information Access Series events

## TBC

- Last event for 2019
- Keep an eye on our website for events in 2020
- Please register via our website: [www.ovic.vic.gov.au](http://www.ovic.vic.gov.au)

# Contact us

OVIC contact details

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@OVIC\_AU

