



Freedom of Information Investigation Outcomes¹

Under Part VII B of the FOI Act, the Information Commissioner can investigate an action taken by an agency in the performance of its functions or the exercise of powers under the FOI Act. This involves investigating complaints (s 69(1)), as well as conducting investigations at the Commissioner’s own initiative (Commissioner initiated investigations (CIIs)) (s 69(2)).

On completing an investigation, the Information Commissioner must provide a ‘notice on completion’ to the agency and to the complainant (if there is one) (s 86). The Information Commissioner’s notice on completion must include the investigation results, the investigation recommendations (if any), and the reasons for those results and any recommendations (s 86(2)). A notice on completion must not include exempt matter or information about the existence or non-existence of a document that would be exempt under ss 33, 37(1) or 45A (ss 89C and 25(1)).

If recommendations have been made (s 88), and the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement a formal recommendation, the Information Commissioner may issue a written ‘implementation notice’ requiring the agency to provide within a specified time particulars of any action the agency will take to implement the Information Commissioner’s recommendations (s 89).

The Information Commissioner may subsequently report to the minister responsible for the agency and the minister responsible for the FOI Act if the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement the recommendations or has not responded to the implementation notice within the specified time (s 89A). The minister responsible for the FOI Act must table the report before each House of the Parliament (s 89A(5)).

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent’s response to recommendations	Further action to be taken
Department of Prime Minister and Cabinet	Compliance with statutory processing timeframes.	Non-personal information.	22 November 2019	The Department did not comply with the statutory processing periods in processing 35.56% of FOI requests in the 2017-18 financial year and 72.65% in the 2018-19 financial year.	Four recommendations were made: <ol style="list-style-type: none"> a statement to be issued to all staff highlighting the Department’s obligations under the FOI Act. FOI requests are processed in accordance with the objects of the FOI Act the development of policies and procedures in relation to administrative access conduct a review and audit of the Department’s FOI processing guidance material and its compliance with statutory timeframes. 	Accepted and implemented.	No further action to be taken.
Australian Federal Police	Compliance with statutory processing timeframes.	Non-personal information.	22 November 2019	The AFP did not comply with the statutory processing periods in processing 34.44% of FOI requests in the 2017-18 financial year and 53.08% in the 2018-19 financial year.	Four recommendations were made: <ol style="list-style-type: none"> a statement to be issued to all staff highlighting the AFP’s obligations under the FOI Act. a review of its guidance relating to early assessment of whether an extension of time or consultation may be required a review and update its guidance material in line with the findings of the investigation. 	Accepted and implemented.	No further action to be taken.
Services Australia ²	Acknowledgment of FOI requests in accordance with statutory timeframes.	Personal and non-personal information	22 November 2019	Delay in acknowledging the FOI requests was due to the complainant sending the FOI request as part of ‘shared’ correspondence addressed to the aged care pension claims	Two recommendations were made: <ol style="list-style-type: none"> to provide general FOI training to the external providers tasked with opening and categorising correspondence to assist in the identification of FOI requests sent to general Departmental post boxes. 	Accepted and implemented.	No further action to be taken

¹ As at 17 November 2021.

² At the time this investigation commenced the responsible department was the Department of Human Services. On 29 May 2019, the Administrative Arrangements Order established Services Australia.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
		made by post.		nominated PO Box rather than addressed to the FOI or central PO Box, and human error in categorising the documents as FOI requests at the mail sorting stage.	2. to review and update its guidance material in line with the findings of the investigation.		
Services Australia ³⁴	<p>Approach to the interpretation of the scope of FOI requests</p> <p>Approach to processing FOI requests relating to the OCI System</p> <p>Compliance with s 24AB of the FOI Act</p> <p>Combining FOI requests under s 24(2) of the FOI Act</p> <p>Imposition of a charge</p> <p>Payment of charges</p> <p>Disclosure Log content</p> <p>Delays in the provision of documents</p>	Non-personal and personal	5 December 2020	<p>Services Australia took a narrow approach to requests for information and did not attribute the plain English meanings to the terms used by applicants when that meaning was ascertainable in satisfaction of paragraph 15(2)(b) of the Act.</p> <p>Services Australia did not comply with the request consultation process under s 24AB.</p> <p>Services Australia did not take into consideration relevant public interest factors when deciding if applying charges is appropriate</p> <p>At the time the decisions were made in the relevant FOI requests, Services Australia's processes for collecting charges imposed under the FOI Act were inconsistent with the objects of the Act</p> <p>Services Australia did not comply with its obligations under s 11C(6) of the FOI Act in relation to the maintenance of its disclosure log.</p> <p>Services Australia did not have clear guidance for its FOI officers on:</p> <p>a) timeliness to respond to request for assistance during consultation process</p> <p>b) consideration of whether it is appropriate to transfer requests</p>	<p>Seven recommendations were made.</p> <ol style="list-style-type: none"> 1. A statement is provided to staff highlighting Services Australia's obligations under the FOI Act and the pro disclosure emphasis in the Act. This statement should encourage and support staff in meeting their obligations under the FOI Act, to facilitate and promote public access to information, promptly and at the lowest reasonable cost. 2. Services Australia take an approach to interpreting the scope of FOI requests in accordance with its obligations under s 15(3) of the FOI Act in a manner that as far as possible, seeks to facilitate and promote public access to information. 3. Services Australia develop a policy that provides that where information that is subject to multiple FOI requests, it is uploaded onto the disclosure log as soon as practicable 4. Services Australia update its FOI manual to include references to recent Information Commissioner decisions and FOI Guidelines on: <ol style="list-style-type: none"> a. the imposition of charges b. the interpretation of scope and s 24AB process. 5. Services Australia update its FOI manual to include guidance about: <ol style="list-style-type: none"> a. consideration of s 16 transfers once the scope has been revised b. the provision of documents as soon as practicable under s 11A c. responding to requests for documents held on the disclosure log which are otherwise not readily available, within five working days. d. where there are multiple requests for the same subject matter, implement a process through which they can identify and utilise work previously undertaken. e. when it is appropriate to combine requests under s 24(2). f. factors to consider whether to impose a charge, including factors set out in the Guidelines issued under s 93A of the Act. 6. Services Australia within six months⁵ of these conclusions conduct audits on the following and report back to the OAIC: <ol style="list-style-type: none"> a. The adherence to the FOI processing manual by FOI officers in relation to matters the subject of recommendations four and five above. 7. Services Australia ensure processes are in place to assist applicants through the s 24AB consultation process. 	Accepted and implemented.	No further action to be taken.

³ At the time this investigation commenced the responsible department was the Department of Human Services. On 29 May 2019, the Administrative Arrangements Order established Services Australia.

⁴ This investigation combined three FOI complaints made under s 70 of the FOI Act. Due to the overlapping issues raised in each FOI complaint the Information Commissioner progressed all three complaints under one investigation.

⁵ On 8 July 2020, the Information Commissioner granted an extension of time to respond to recommendation six until 30 October 2020.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
				under s 16 once a scope has been revised c) appropriate response times for the provision of documents on the disclosure log d) combining of requests under s 24(2) of the FOI Act, and e) making a decision to impose a charge.			
Department of Home Affairs	Compliance with statutory processing periods. ⁶	Non-personal information	19 December 2019	The Department did not comply with s 15(5)(b) of the FOI Act.	The Information Commissioner deferred making any recommendations until the outcome of the Commissioner Initiated Investigation into the Department of Home Affairs' compliance with statutory processing periods for non-personal FOI requests. ⁷	No recommendations made.	No further action to be taken pending the outcome of the CII.
Services Australia ⁸	Consultation process under s 24AB of the FOI Act and internal review process	Personal information	18 February 2020	Consultation process was more appropriately considered in the related IC review process and subsequent decision by the Information Commissioner under s 55K of the FOI Act. Services Australia's internal review process complied with s 54C of the FOI Act.	No recommendations were made.	No recommendations made.	Not applicable.
Airservices Australia	Acknowledgment of FOI requests in accordance with statutory timeframes. Taking reasonable steps to conduct searches for documents within scope of the FOI request. Withholding documents which fell within the scope of the FOI request Compliance with s 26 of the FOI Act.	Personal information	23 April 2020	At the time of the request, Airservices did not have a formalised process by which employees could access their personnel records. Airservices did not comply with ss 15(5)(a) and 26 of the FOI Act. During the processing of the request Airservices did not take reasonable steps to identify documents within the scope of the request. Airservices reduced the scope of the FOI request without agreement from the applicant.	Four recommendations were made. 1. Airservices to issue a statement to all staff reminding them of their obligations under the FOI Act 2. Airservices to establish a general FOI training program for inclusion in its induction process and finalise policies which outline the procedures to follow when processing an FOI request. 3. Airservices to write to each FOI applicant within the past 12 months of which the FOI complaint was made and advise them of their review rights. 4. Airservices to conduct an audit within 6 months to track compliance of: a) Policies and procedures and b) Section 26 Notices	Accepted and implemented.	No further action to be taken

⁶ This investigation combined 11 FOI complaints made under s 70 of the FOI Act. Due to the overlapping issue raised in each FOI complaint the Information Commissioner progressed all 11 complaints together.

⁷ Each FOI request forms a case study in the Commissioner Initiated Investigation into the Department of Home Affairs compliance with statutory processing periods for non-personal requests for information.

⁸ At the time this investigation commenced the responsible department was the Department of Human Services. On 29 May 2019, the Administrative Arrangements Order established Services Australia.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
The Australian National University (the ANU)	Compliance with statutory timeframes. Communication regarding the processing delays	Personal information	14 September 2020	<p>The statutory timeframe was not extended by agreement under s 15AA, or as a result of consultation (ss 15(6), 15(8), 26A, 27, 27A), or under ss 15AB or 15AC.</p> <p>The ANU exceeded the statutory processing period by 26 days without authority.</p> <p>The ANU updated the complainant about the processing of the request and provided reasons for the delay.</p>	<p>The ANU should update its 'Guideline 1.15: Freedom of Information processing checklist' and 'Guideline 1.18: Freedom of Information request processing timeframes' to require staff to conduct an early assessment of whether an extension of time may be required and if so, to seek agreement from the FOI applicant to extend the processing period under s 15AA.</p> <p>2. The ANU should update its 'Guideline 1.15: Freedom of Information request processing checklist' and 'Guideline 1.18: Freedom of Information request processing timeframes', to require staff to consider whether it is appropriate to seek an extension of time pursuant to s 15AB where an applicant has not agreed to extend the statutory processing period under s 15AA, or to seek an extension of time from the Information Commissioner under s 15AC where a decision about an FOI request has not been provided to the applicant within the statutory processing period.</p>	Accepted and implemented.	No further action to be taken
Department of Home Affairs This investigation was an Commissioner Initiated Investigation under s 69(2) of the FOI Act. A copy of the Report is available here .	Compliance with statutory timeframes for processing FOI request for non-personal information	Non-personal	11 December 2020	<p>The information considered in this investigation indicates that the Department does not have adequate governance and systems of accountability in place to ensure compliance with statutory time frames for processing FOI requests for non-personal information.</p> <p>The other key findings from my investigation may be summarised as follows:</p> <p>a. In a general sense, a greater degree of senior level support and leadership for embedding policies, procedures and systems of accountability for compliance with the statutory processing periods in the FOI Act, would assist the Department in meeting the statutory processing period requirements of the FOI Act.</p> <p>b. With regard to the Department's FOI Section:</p> <p>i. There is evidence that not all of the staff within the FOI Section are available to assist in the processing of FOI requests for non-personal information which has contributed to delays in processing these FOI requests.</p>	<p>1. Appoint an Information Champion</p> <p>The Information Champion may be supported by an information governance board to provide leadership, oversight and accountability necessary to promote and operationalise compliance by the Department.</p> <p>2. Operational Processes and Procedures</p> <p>The Department prepare and implement an operational manual for processing FOI requests for non-personal information to be approved by the Information Champion referred to in Recommendation 1 and at a minimum:</p> <p>(a) specify the steps that will be taken to ensure compliance with statutory processing requirements (as set out in more detail in Part 5),</p> <p>(b) specify the steps that will be taken to ensure compliance with section 6C of the FOI Act and the processes to be adopted to request documents from contracted service providers, and</p> <p>(c) include a short form guidance note to assist business areas in processing FOI requests for non-personal information.</p> <p>Consistent with the requirements of the Information Publication Scheme, the operational manual should be made publicly available by the Department on its website.</p> <p>The steps that will be taken to ensure compliance with section 6C of the FOI Act, as referred to in subparagraph (c), should be replicated in all other policies of the Department which relate to contractual requirements for procurement by the Department.</p>	Accepted; to implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
				<p>II. The policies and processes that the Department has in place for the FOI Section do not address the steps required, both in relation to escalation and finalisation of decisions, where delays are contributed to by business areas of the Department or third parties.</p> <p>III. The policies and processes that the Department has in place for FOI requests for non-personal information do not adequately address use of the provisions of the FOI Act which enable an agency to seek an extension of time in processing FOI requests.</p> <p>c. With regard to the business areas of the Department:</p> <p>I. The Department has implemented an approach for processing FOI requests for non-personal information that requires significant engagement by the staff in the business areas to which a relevant FOI request relates. The training and resources made available to those staff does not facilitate processing FOI requests within the FOI Act statutory processing periods.</p> <p>II. The Department's processes for consulting with senior staff, the Department's Media Operations and Minister's Office in relation to FOI requests limits the ability of the Department to meet FOI Act statutory processing periods.</p> <p>d. There are inadequate policies and procedures in place to support compliance with the requirements of section 6C of the FOI Act.</p>	<p>3. Training</p> <p>The Department:</p> <ol style="list-style-type: none"> undertake and complete training for FOI Section staff and other staff (both decision makers and other staff who assist decision makers), and ensure that online training in processing FOI requests for non-personal information is available to all staff of the Department. <p>New staff joining the FOI Section should be trained within 2 weeks of commencing in the FOI Section.</p> <p>4. Audit of Compliance</p> <p>The Department undertakes an audit of the processing of FOI requests for non-personal information to assess whether Recommendations 2 and 3 have been implemented and operationalised and whether those actions have been sufficient to address the issues identified in this CII. The audit should be undertaken either by the Department's internal audit committee or by an external auditor, as determined by the Department. A copy of the audit report is to be provided to the OAI.</p>		

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
Department of Defence	Collection of charges amounts	Non-personal	17 December 2020	The Department's process that required an invoice to be raised before allowing a FOI applicant to make a payment in order to recommence the processing period is inefficient and does not facilitate and promote public access to information, promptly and at the lowest reasonable cost.	<ol style="list-style-type: none"> 1. Update its guidance to ensure that, where there has been an overpayment of a charges amount, the FOI applicant is to receive a refund in accordance with regulation 10(4)(a) of the FOI Charges Regulations. 2. The Department adjust the way it administers charges to: <ol style="list-style-type: none"> I. Provide payment options at the time of issuing a preliminary charges notice and II. Accept payment of the charge as notification in writing by the applicant of acceptance of the charge.⁹ 	Accepted and suggestions implemented.	No further action to be taken.
Department of Defence	The Department's consultation process conducted during the processing of an FOI request.	Personal information	17 February 2021	The Department's FOI manual sets out the procedure for conducting consultations with third parties. The Department did not consult with the complainant where it was 'possible to consult' and 'reasonably practicable' to do so.	<ol style="list-style-type: none"> 1. Issue a statement to staff engaged in processing FOI requests highlighting the Department's obligations under the FOI Act to consider whether a person might reasonably wish to make a contention that the document is conditionally exempt under s 47F of the FOI Act (s27A(1)(b)). The statement should highlight the importance of following the Department's processes and procedures when processing and making decisions on FOI requests where third party information is contained within documents that fall within the scope of an FOI request. 	Accepted and implemented.	No further action to be taken.
Services Australia	<p>Compliance with Information Publication Scheme (IPS).</p> <p>Imposition of charges for documents held on the IPS requested under the FOI Act.</p>	Non-personal	8 September 2021	<p>At the time of the complaint, Services Australia did not meet its obligation to publish operational information as required by s 8(2)(j).</p> <p>Services Australia failed to have adequate systems and processes in place to confirm that business areas were appropriately considering their IPS obligations at the time that Operational Blueprints (OPBs) were created or to ensure that documents appropriately categorised under s 8C were regularly reviewed to consider whether s 8C continued to apply.</p> <p>Services Australia did not deliberately withhold documents that were required to be published under the IPS for the purpose of improperly imposing a charge in relation to access requests for those documents, as alleged in the complaint.</p>	<ol style="list-style-type: none"> 1. Develop and implement a system to ensure that: <ol style="list-style-type: none"> a. decisions taken by business areas in relation to the publication of operational information are consistent with Part II of the FOI Act, and b. where a decision is taken not to publish an OBP – either because it does not comprise operational information or is exempt under s 8C of the FOI Act – that decision is recorded c. decisions taken by business areas not to publish particular OBPs are periodically reviewed to determine whether the reasons for non-publication continue to apply to the OBP. 2. Services Australia staff adheres to current internal policies to consider the potential administrative release of OBPs in response to access requests before considering whether a charge should be applied under s 29 of the FOI Act for access to those materials. 	Accepted; to implement.	

⁹ Suggestions made pursuant to s 87(d) of the FOI Act.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
Department of Foreign Affairs and Trade	Impartiality of the Internal Review decision maker	Non-personal	17 September 2021	No evidence before the Commissioner which supported the complainant's contentions.	No recommendations made	Accepted.	Not applicable
Services Australia	Compliance with Information Publication Scheme (IPS). Where Services Australia has decided not to publish the document – the reason why it is considered exempt should be published.	Non-personal	17 September 2021	Services Australia was not required to list the applicable FOI Act exemption against the title of an unpublished document. Services Australia complied with the Act when it listed titles of operational documents on its IPS. However, the agency's reliance on requests from the public to reconsider earlier decisions not to publish those documents, in the absence of a more systematic process, is not consistent with the ongoing obligations under Part II of the FOI Act.	1. Develop and implement a system to ensure that: a. decisions taken by business areas in relation to the publication of operational information are consistent with Part II of the FOI Act, and b. decisions taken by business areas not to publish particular OBPs are periodically reviewed to determine whether the reasons for non-publication continue to apply to the OBP.	Accepted; to implement.	
Australian Building and Construction Commission	Extending the statutory processing period to conduct third party consultation and related communication with the FOI applicant. Transfer of FOI requests under s 16 of the FOI Act	Non-personal	22 September 2021	It was open to the ABCC to extend the processing timeframe for the FOI request to conduct consultation with third parties under s 27A of the FOI Act, even in circumstances where the subsequent consideration of the documents resulted in a conclusion that consultation was not necessary because the documents initially considered in scope were found to be outside the scope of the request. However, it was not open to the ABCC to extend the timeframe in circumstances where the documents had not been identified or considered against the requirements of s 27A. The consent of the FOI applicant is not required for the transfer of a request under s 16 of the FOI Act.	1. The ABCC should provide guidance to FOI officers to ensure that, prior to extending the processing periods as permitted by s 15 of the FOI Act, proper consideration is given to the statutory prerequisites to the exercise of that power. 2. That the ABCC review its correspondence with FOI applicants to ensure that it is clear, accurate and not misleading. 3. That the ABCC implement systems and processes to ensure that the ABCC understands and adheres to FOI processing timeframes.	Accepted; to implement.	
Department of Veterans' Affairs	Compliance with statutory timeframes for processing FOI requests. Compliance with s 29 of the FOI Act	Non-personal	24 September 2021	The Department did not comply with the statutory processing timeframes in relation to three FOI requests. The Department did not comply with s 29(6) in relation to one FOI request	1. The Department develops and makes available to staff an operational manual for processing FOI requests that should include, at a minimum, the steps that will be taken to ensure compliance with statutory processing requirements, including in relation to: a. meeting processing timeframes under the FOI Act	Accepted; to implement.	

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
					b. the steps to be taken when notifying an applicant of the imposition of a charge, including the obligation to provide a decision in accordance with s 29(6).		
Department of the Prime Minister and Cabinet	Compliance with statutory timeframes for processing an FOI request.	Non-personal	5 October 2021	The Department did not comply with the statutory processing timeframe.	<ol style="list-style-type: none"> The Department appoint an Information Champion. The Information Champion may be supported by an information governance board to provide leadership, oversight and accountability necessary to promote and operationalise the Department's compliance with the FOI Act. The Department provide training to FOI Section staff and relevant Senior Executives about the obligations under the FOI Act to comply with statutory processing periods. 	Accepted findings. Response received.	Undergoing assessment
Services Australia	Compliance with Information Publication Scheme (IPS). Imposition of charges for documents held on the IPS requested under the FOI Act.	Non-personal	7 October 2021	Services Australia complied with the Act when it listed titles of operational documents on its IPS. However, Services Australia's process of requiring individual's to lodge an FOI request for access to documents is only appropriate where the agency has a robust and reliable process to routinely consider whether the reasons for not publishing the documents continue to apply.	<ol style="list-style-type: none"> Develop and implement a system to ensure that: <ol style="list-style-type: none"> decisions taken by business areas in relation to the publication of operational information are consistent with Part II of the FOI Act, and decisions taken by business areas not to publish particular OBPs are periodically reviewed to determine whether the reasons for non-publication continue to apply to the OBP. Develop and implement systems and processes to ensure that, where Services Australia exercises its discretion to impose a charge under s 29, that decision is consistent with both the relevant statutory provisions, the FOI Guidelines and its obligations under Part II of the FOI Act. 	Accepted; to implement.	
Department of Veterans' Affairs	Compliance with statutory timeframes for processing FOI request	Personal	12 October 2021	The Department did not comply with the statutory processing period due to an internal administrative error identifying the FOI request where the FOI request had delay in providing it to the FOI team.	Given the steps that the Department took upon becoming aware of the FOI request, including engaging with and providing an explanation to the complainant, processing the request and apologising to the complainant, no recommendations were made.	Accepted.	No further Action
Department of Veterans' Affairs	Compliance with statutory timeframes for processing FOI request	Personal	19 October 2021	The Department complied with the statutory processing timeframes.	No recommendations made	Accepted.	Not applicable