Vexatious applicant declaration application: Checklist and sample structure

Under s 89K of the *Freedom of Information Act 1982* (the FOI Act), the Information Commissioner may, by written instrument, declare a person to be a vexatious applicant.

Exercising the power in s 89K imposes a serious restriction on a person's rights under the FOI Act.

Section 89K(3) makes clear that the onus to establish that such a declaration should be made rests with the agency or minister that applied for the declaration. It is a matter for the agency or minister to persuade the Information Commissioner that such a declaration is warranted in all the circumstances.

An overview of the different stages of the Office of the Australian Information Commissioner's process for managing applications is set out in Table 1 of the FOI Guidelines at [12.47].

This checklist sets out the following:

- Steps an agency or minister should undertake prior to making an application
- the information to be included in the application and
- how to make an application

The agency or minister should provide the OAIC with a copy of the completed checklist when making its application. The OAIC may have regard to the checklist in deciding whether the agency or minister needs to provide further information in support of its application.

Steps to be taken prior to making an application	
☐	Review Part 12 of the FOI Guidelines
☐	Engage with the individual about moderating their access actions and give them an opportunity to do so.
☐	Use other provisions under the FOI Act to manage the impact of the access actions as discussed at [12.20] and [12.43] of the FOI Guidelines
☐	Write to the individual advising the agency or minister is considering applying for a declaration, and give a further opportunity to moderate their access actions.
☐	Consider whether to continue to process existing access actions or seek an extension of time from the Information Commissioner.

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Information to be included in the application	
☐	**Grounds for application** (see [12.12] – [12.48] of the FOI Guidelines)
☐	**Number and nature of access actions in the relevant period** (see [12.33] and [12.43] of the FOI Guidelines)
☐	**Schedule of documents supporting application** [see **Attachment A** in Annexure A]
☐	**Schedule of access actions summarising each access action** [see **Attachment B** in Annexure A]
☐	**Copies of access actions and evidence:** [see **Attachment C** (Zip file containing copies of the access actions and evidence) in Annexure A]
☐	**Particulars of interference with operations** (as relevant) (see [12.42] – [12.44] of the FOI Guidelines)
☐	Details and evidence of the agency or minister's **use of other provisions under the FOI Act** to lessen the impact of the access actions on its operations (as relevant) (see [12.20] and [12.43] of the FOI Guidelines)
☐	**Particulars and evidence of engagement with the individual about moderating their access actions:** This includes but is not limited to prior notice of the intended declaration application [see **Attachment D** (Correspondence with individual) in Annexure A] (see [12.43] and [12.66] of the FOI Guidelines)
☐	**Particulars and evidence regarding whether access actions moderated** (see [12.43] and [12.66] of the FOI Guidelines)
☐	**Particulars regarding similarity to previous declarations** (if applicable) (see [12.43] and [12.66] of the FOI Guidelines)
☐	**Particulars regarding impact of access actions** (see [12.43] of the FOI Guidelines)
☐	**Particulars/evidence of harassment or volume of correspondence** [see **Attachment E** (Evidence of harassment) in Annexure A] (see [12.43] of the FOI Guidelines)
☐	**Relationship with IC reviews or complaints** [see **Attachment F** (list of related IC reviews and FOI complaints) in Annexure A] (see [12.85] and [12.89] of the FOI Guidelines)

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☐	**Details of previous declaration applications** including whether a declaration was made, a copy of the declaration, the expiry date, the number and nature of access actions made after the declaration ended and the intended impact of the new declaration and terms/period (see [12.81] of the FOI Guidelines)
☐	**Particulars and evidence regarding pseudonymous applicants** (see [12.27], [12.92] – [12.93] of the FOI Guidelines)
☐	**Particulars and evidence regarding access actions made by an agent** (see [12.28] – [12.31], [12.94] – [12.96] of the FOI Guidelines)
☐	**Proposed declaration and terms sought,** including by specifying the access actions covered, and the proposed period (see [12.83] – [12.87] of the FOI Guidelines)
Making the application	
☐	The application and attachments are sent to the individual who is the subject of the application at the same time as it is sent to the OAIC via the sd@oaic.gov.au mailbox.

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Annexure A: s 89K application – Sample structure

[Insert standard wording for application for Information Commissioner to declare [name] vexatious under s 89K of the FOI Act]

Part A: Summary

Summary of (as relevant in the circumstances):

- the grounds on which the application is made
- number and nature of access actions within the relevant period
- how the individual's access action/s have unreasonably interfered with their operations, referencing **Attachment A** (schedule of documents)**, Attachment B** (schedule of access actions) and **Attachment C** (Zip file containing copies of the access actions and evidence)
- how the agency or minister has used other provisions under the FOI Act to lessen the impact of the access actions on its operations
- how the agency or minister engaged with the individual about moderating their access actions, prior to advising them that they may apply for a declaration, and provides evidence in the form of correspondence and/or file notes (as relevant)
- interaction with the individual concerned noting an intent to apply for a declaration, and (as relevant) interference with their operations, harassment, any request to moderate action and response/s from the individual concerned, referencing **Attachment D** (Correspondence with individual)
- why the agency or minister considers the number and/or nature of access actions is of a similar volume/nature to previous declarations
- the impact of the person's access actions on other work of the agency or minister, and in particular, whether specialist or senior staff have to be redeployed from other tasks to deal with FOI requests, or whether the requests have caused distress to staff or raised security concerns that required separate action
- sufficient evidence/particulars linking harassment and/or the volume of correspondence to specific access actions, referencing **Attachment E** (Evidence of harassment)
- whether the agency or minister intends to process existing access actions
- whether it is related to any existing IC reviews or complaints the agency or minister is aware of, referencing **Attachment F** (list of related IC reviews and FOI complaints)
- whether the agency or minister has previously sought a declaration in relation to the person, and if so, whether a declaration was made, a copy of the declaration, and any other relevant details, including the expiry date, the number and nature

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of access actions made after the declaration ended and the intended impact of the new declaration and terms

- if the agency claims the person made access actions under a pseudonym, the application includes sufficient details and evidence to demonstrate that the pseudonymous applicant is, in fact, the subject of the application
- if the agency or minister that is applying for a declaration wishes the Information Commissioner to take into account access actions made via an agent, the application includes evidence to demonstrate the existence of an agency relationship in the circumstances
- declaration and terms sought, including the access actions covered, and the proposed period.

Part B: Submissions and evidence

Expansion of above points, referencing **Attachments**

Refer to **Attachment A** (schedule of documents)

Refer to **Attachment B** (includes each access action, including the request, the date on which it was made, and the date of the decision and the outcome of the request/application)

Refer to **Attachment C** (Zip file containing copies of the access actions and evidence of relevant correspondence with the individual related to their access actions: [insert naming convention for each file])

Refer to **Attachment D** (Correspondence with individual)

Refer to **Attachment E** (Evidence of harassment) [as relevant]

Part C: Declaration sought

Insert terms sought – refer to recent declarations

Part D: Impact on existing actions

- in the event there are deemed decisions, whether the agency or minister intends to process existing access actions

- whether it is related to any existing IC reviews or complaints the agency or minister is aware of referencing **Attachment F** (list of related IC reviews and FOI complaints)

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Sample schedule of documents [Attachment A]

Document no.	Page no.	Date	No. of pages	Description

Sample list of access actions [Attachment B]

Date of access action	Type of access action	Reference number	Scope (including any revisions to scope and date of the revision)	Decision and date of decision

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