

Department of Home Affairs' compliance with the statutory processing requirements under the *Freedom of Information Act 1982* in relation to requests for non-personal information

Commissioner-initiated investigation report



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Part 1: Executive summary

Commissioner initiated investigations and reasons for undertaking this investigation

- 1.1 The objects of the Freedom of Information Act 1982 (**FOI Act**) are to give the Australian community access to information held by the Government. It requires agencies to publish information and provides a right of access to documents. The Parliament intends by these objects to promote Australia's representative democracy by contributing towards increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities.
- 1.2 The FOI Act also expressly states that Parliament intends that functions and powers given by the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost. Timely provision of public access to government information is a central enabler to fulfil the objects of the FOI Act.
- 1.3 As set out in section 10 of the *Australian Information Commissioner Act 2010* (Cth), the Information Commissioner has the FOI functions, which under section 8 includes monitoring, investigating and reporting on compliance by agencies with the FOI Act. Under section 69(2) of the FOI Act I may investigate an agency's actions in performing its functions, or exercising its powers, under the FOI Act on my own initiative. I must also generally investigate a complaint made by a person under section 70 about an action taken by an agency in the performance of functions or the exercise of powers under the FOI Act.
- 1.4 In determining whether to commence this investigation in relation to the Department of Home Affairs (**Department**)¹ under section 69(2) of the FOI Act, I considered the compliance by the Department with the statutory processing requirements of the FOI Act for requests (**FOI requests**) for non-personal information. This was prompted by receiving 13 complaints (**Initial Complaints**) which I was required to investigate, raising concerns about delay in the processing of requests for non-personal information. In the case of each of the FOI requests that were the subject of the Initial Complaints (**Initial FOI Requests**), the Department exceeded the statutory processing time by between 5 and 256 days. I also took into consideration other material which was before the Office of the Australian Information Commissioner (**OAIC**) at the time, including:
 - a. FOI statistics for the financial years 2016-17, 2017-18 and 2018-19 and the period 1 July 2019 to 30 September 2019, as reported by the Department, including the number of requests received and the number of requests finalised within the statutory timeframes, and
 - b. the number of Information Commissioner review (**IC review**) applications then current in relation to the Department, particularly in relation to the number of IC review

¹ Including its predecessor agency, the Department of Immigration and Border Protection.

applications where the Department was deemed to have made an access refusal decision where it did not meet the processing timeframes.

- 1.5 I have taken into consideration investigations conducted by former Information Commissioners on similar issues.² Amongst other matters, I may take into account the objects of the FOI Act and the risks and impacts of non-compliance by an agency with the FOI Act.
- 1.6 The Initial Complaints which I was required to investigate related to the Initial FOI Requests. Two of the applicants were journalists and one was an individual. The applicants made FOI requests for information that related to matters of public interest relevant to the core functions of the Department and, in some cases, related to matters in which there had been significant media interest. The Initial FOI Requests included, for example, information regarding medical treatment provided to asylum seekers and refugees, disclosures of interests under section 19 of the *Australian Border Force Act 2015* (Cth) and the treatment of detainees in detention facilities. Many of the requests were complex and involved large numbers of documents.
- 1.7 By way of further background, data submitted to the Oaic by the Department over the past four financial years shows:³
 - a. for each of the financial years, in excess of 50% of the FOI requests for non-personal information were processed outside of the statutory processing period and in the final year, 63% of those FOI requests were processed outside of that period,
 - b. assessed on a quarterly basis, there has been a significant increase in the percentage of non-personal FOI requests not processed within the statutory processing period over the financial years 2018-19 and 2019-20⁴, and
 - c. over the four financial years, the number of IC review applications received by the Oaic in relation to the Department's processing of FOI requests for non-personal information has increased, including an increasing trend in the number of IC review applications for deemed access refusal decisions.
- 1.8 Given the factors outlined in paragraphs 1.4 to 1.6, and in light of the underlying principles and objects of the FOI Act, I determined to undertake this investigation under section 69(2) of the

²On 26 September 2012, the former Information Commissioner Prof. John McMillan completed an Own Motion Investigation into processing of non-routine FOI requests by the then Department of Immigration and Citizenship: <https://www.oaic.gov.au/freedom-of-information/foi-reports/processing-of-non-routine-foi-requests-by-the-department-of-immigration-and-citizenship/> On 22 September 2012, the Department advised the Oaic that in response to the announcement of Prof. McMillan's Own Motion Investigation, the Department had commissioned a review by Mr Robert Cornall of the Department's FOI procedures. That review made a number of recommendations: <https://www.oaic.gov.au/freedom-of-information/foi-reports/diac-response-to-omi-report-on-processing-of-non-routine-foi-requests/> On 8 December 2017, the former Information Commissioner Mr Timothy Pilgrim investigated a complaint relating to the processing of non-personal FOI requests.

³ Part 2 of this report sets out these statistics in detail.

⁴ When assessing these statistics on a quarter by quarter basis across the two years, in only one quarter was there an increase in the percentage of non-personal FOI requests processed within time over that two year period.

FOI Act to consider the Department's compliance with the statutory processing timeframes set out in the FOI Act. My investigation has been limited to FOI requests for non-personal information. However, there would be benefit in the Department considering the broader application of my findings and recommendations, as summarised in Table 1, in relation to all FOI requests that are received by the Department, that is, for both personal and non-personal information.⁵

- 1.9 As required by the FOI Act, this report sets out the results of my investigation, as well as my formal recommendations. I have also set out the reasons for why I have made my findings and recommendations. The Department's response to this report is attached as **Attachment C**.

Previous investigations

- 1.10 It is apparent that issues of delay have persisted in the Department over a number of years and have been the subject of numerous previous reviews.⁶ The OAIC also notes that many of the findings and recommendations in this investigation have been the subject of previous reports, indicating a serious need for issues of delay to be rectified and sustained. For example, the 2012 own motion investigation of the then Department of Immigration recommended that the Department should consider and address inadequate internal governance arrangements for controlling delays in processing non-routine FOI requests and for ensuring senior executive supervision of those requests as well as failures to consider applying to the OAIC for extensions of time to process requests under section 15AB or 15AC of the FOI Act. My findings from this CII indicate that these issues remain.

Findings of investigation

- 1.11 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.⁷
- 1.12 The other key findings from my investigation may be summarised as follows:
- 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.⁸
 - b. With regard to the Department's FOI Section:

⁵ For example, in 2019-20, the Department processed 69% of requests for personal information within the statutory timeframes. Further detail on the processing of FOI requests for personal information is set out in Table 3.

⁶ As referred to in paragraph 1.5.

⁷ As described in paragraphs 4.12 to 4.16.

⁸ As described in paragraphs 4.12 to 4.16.

- 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.⁹
 - 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.¹⁰
 - 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.¹¹
- c. With regard to the business areas of the Department:
- 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.¹²
 - 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.¹³
- d. There are inadequate policies and procedures in place to support compliance with the requirements of section 6C of the FOI Act.¹⁴

Recommendations

1.13 The formal recommendations that I have made under section 86(2)(b) of the FOI Act in this report address improving the policies, systems of governance and accountability, procedures and training of the Department that are appropriate to ensure that the Department is able to meet the statutory processing periods specified under the FOI Act. I have also recommended that implementation of the recommendations is audited and a report provided to the OAIC. A

⁹ As described in paragraphs 4.20 to 4.23.

¹⁰ As described in paragraphs 4.24 to 4.26.

¹¹ As described in paragraphs 4.27 to 4.31.

¹² As described in paragraphs 4.34 to 4.40.

¹³ As described in paragraph 4.41.

¹⁴ As described in paragraphs 4.46 to 4.51.

summary of my recommendations from this CII is set out in Table 1. The detailed recommendations are set out in Part 5 of this report.

Table 1: Summary of recommendations:

No	Summary of recommendation	Timing for implementation
1.	<p>Appoint an Information Champion¹⁵</p> <p>I recommend that 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 compliance by the Department with the FOI Act.</p>	1 month from the date that comments on this report are due
2.	<p>Operational Processes and Procedures¹⁶</p> <p>I recommend that 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> <ul style="list-style-type: none"> (a) specify the steps that will be taken to ensure compliance with statutory processing requirements (as set out in more detail in Part 5), (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 (c) include a short form guidance note to assist business areas in processing FOI requests for non-personal information. <p>Consistent with the requirements of the Information Publication Scheme, I recommend that the operational manual should be made publicly available by the Department on its website.</p> <p>I recommend that 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</p>	3 months from the date that comments on this report are due

¹⁵ Required in light of the findings in paragraphs 4.12 to 4.16.

¹⁶ Required in light of the findings in paragraphs 4.16 to 4.19; 4.24 to 4.31; 4.40 to 4.51.

No	Summary of recommendation	Timing for implementation
	contractual requirements for procurement by the Department.	
3.	<p>Training¹⁷</p> <p>I recommend that the Department:</p> <p>(a) undertake and complete training for FOI Section staff and other staff (both decision makers and other staff who assist decision makers), and</p> <p>(b) ensure that online training in processing FOI requests for non-personal information is available to all staff of the Department.</p> <p>I recommend that new staff joining the FOI Section should be trained within 2 weeks of commencing in the FOI Section.</p>	<p>(a) Not later than 3 months after the completion of the Operational Manual referred to in Recommendation 2.</p> <p>(b) Not later than 6 months after the completion of the Operational Manual referred to in Recommendation 2.</p>
4.	<p>Audit of Compliance¹⁸</p> <p>I recommend that 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 OAIC.</p>	<p>Within 3 months of completion of Recommendation 3.</p>

1.14 As this CII has focussed on a consideration of the Department's compliance with the statutory timeframes set out in the FOI Act in relation to processing FOI requests for non-personal information, **Recommendations 2 to 4**, as set out in Table 1 and described in more detail in Part 4 of this report, are also limited in their scope to FOI requests for non-personal information. Taking a pragmatic approach to compliance, there would be benefit in the

¹⁷ Required in light of the findings in paragraphs 4.20 to 4.23 and 4.34 to 4.39.

¹⁸ Required in light of the comments in paragraphs 5.1 to 5.5.

Department considering the broader application of each of the **Recommendations** in relation to all FOI requests that are received by the Department, that is, for both personal and non-personal information.¹⁹ For example, although **Recommendation 3** relates to training for the processing of FOI requests for non-personal information, in implementing **Recommendation 3**, the Department should give consideration to whether the training of staff across the Department who are involved, in whatever capacity, in the processing of FOI requests for personal information is also up-to-date and whether additional training may be required for that type of FOI request.

Ongoing assessment of the Department's compliance

- 1.15 The OAIC will continue to work with the Department to ensure not only that the **Recommendations** are implemented and operationalised but also to ensure that its policies and procedures evolve over time to continue to enable the Department to meet its obligations under the FOI Act, including to meet statutory timeframes. The OAIC will monitor compliance through quarterly agency statistics submitted by the Department, complaints and IC reviews, including deemed access refusals.

Part 2: Decision to commence this Commissioner initiated investigation

Circumstances in which a Commissioner initiated investigation may be commenced

- 2.1 Under section 69(2) of the FOI Act I may investigate an agency's actions in performing its functions, or exercising its powers, under the FOI Act on my own initiative. These investigations, known as Commissioner initiated investigations (**CII**s), may look at a single agency decision or action, an agency's practices and processes in handling FOI matters or issues that are common across a number of agencies.
- 2.2 As set out in the OAIC's Freedom of Information Regulatory Action Policy,²⁰ in deciding whether or not to undertake a CII I may take into account (amongst other factors):
 - a. the objects of the FOI Act, and
 - b. the risks and impact of non-compliance by agencies with the FOI Act.
- 2.3 Section 3(1) of the FOI Act provides that the objects of the FOI Act are to give the Australian community access to information held by the Government by requiring agencies to publish the

¹⁹ In 2019-20, the Department processed 69% of requests for personal information within the statutory timeframes.

²⁰ This is set out in paragraph 28 of the Policy, available here: <https://www.oaic.gov.au/about-us/our-regulatory-approach/freedom-of-information-regulatory-action-policy/>

information and by providing for a right of access to documents. As stated in section 3(2), Parliament intends by these objects to promote Australia's representative democracy by contributing towards increasing public participation in Government processes with a view to promoting better-informed decision making and increasing scrutiny, discussion, comment and review of the Government's activities. Section 3(4) of the FOI Act provides that Parliament intends that functions and powers given by the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

- 2.4 Systemic failures by any agency to comply with the requirements of the FOI Act put at risk the achievement of the objects of the FOI Act and therefore have a negative impact on the achievement of the outcomes referred to in section 3(2) of the FOI Act. In addition, systemic failures by one agency which are observed by other agencies may have a negative impact on future compliance by such other agencies.

Statutory timeframes for processing FOI requests

- 2.5 Australian Government agencies have a statutory obligation to process FOI requests within the statutory processing period, which is 30 days unless it is extended as permitted under the FOI Act. As stated at paragraph 3.139 of the OAIC's Guidelines under s 93A of the FOI Act (**FOI Guidelines**)²¹:

An agency or minister must, as soon as practicable, and no later than 30 days after receiving a request, take all reasonable steps to enable the applicant to be notified of a decision on the request (s 15(5)(b)).

- 2.6 Extensions of the time to process an FOI request are available in particular circumstances. Meeting the statutory processing period for an FOI request is a key requirement of the FOI Act. Agencies are expected to have in place all of the necessary policies and procedures to ensure that they are able to meet this requirement. The OAIC has made available numerous resources to assist agencies in putting in place these policies and procedures.²²

²¹ Available here: <https://www.oaic.gov.au/assets/freedom-of-information/guidance-and-advice/foi-guidelines/foi-guidelines-combined-june-2020.pdf>

²² For example, the OAIC has published guidance on the steps to be taken to locate documents, which is available here: <https://www.oaic.gov.au/assets/freedom-of-information/guidance-and-advice/processing-foi-requests-reasonable-steps-checklist.pdf> and the steps to be taken to ensure that agencies are able to obtain necessary documents from contractors, which is available here: <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/documents-held-by-government-contractors/>

Statistical evidence related to the timeframes for processing FOI requests for non-personal information

- 2.7 To assist in determining whether to undertake this CII, the OAIC assessed statistical evidence related to the processing of FOI requests for non-personal information by the Department.
- 2.8 The Department of Home Affairs receives more FOI requests than any other Australian Government agency. However, most of these – in the past four financial years consistently at approximately 90 per cent or more – are personal information requests. This CII has generally not considered FOI requests for personal information.

Overall statistical trends in the Department’s processing of FOI requests for non-personal information

- 2.9 In the four financial years from 2016-17, as shown in Table 2 below, the Department consistently reported a significant number of FOI requests for non-personal information were processed outside of the statutory processing period.²³ As can be seen, in each of these financial years, in excess of 50% of FOI requests for non-personal information were processed outside of the statutory processing period.

Table 2: Number of FOI requests received and the number of FOI requests finalised in the statutory processing period:

	2016-17	2017-18	2018-19	2019-20
Total number of FOI requests received	18,218	14,177	17,725	17,561
Total number of requests for non-personal information	516	620	897	1,895
Percentage of requests for non-personal information not processed in the statutory processing period	61.28%	53.38%	56.4%%	63%

- 2.10 The significant increase of 44.68% in the number of FOI requests for non-personal information received by the Department between 2017-18 and 2018-19 may have reflected the increased

²³ As set out at para [1.4], the first quarter of 2019-20 statistics were before the OAIC when deciding to commence this investigation. The full 2019-20 statistics are referenced in this part for completeness.

number of functions for which the Department first became responsible during the 2017-18²⁴ financial year as a result of changes to the Administrative Arrangements Order during that year.

2.11 Set out in Table 3 below are the statistics for the Department for the processing of FOI requests during the 2018-19 and 2019-20 financial years, compared on a quarter by quarter basis. Table 3 demonstrates that during this investigation, there has been an increase in the percentage of non-personal FOI requests that were not processed in the statutory processing period over the two year period, when considered on a quarter by quarter basis.²⁵ This has occurred notwithstanding that, over that period, the number of FOI requests for personal information has reduced, meaning that the aggregate number of FOI requests processed by the Department in fact reduced over the 2 year period. I note the Department has dealt with a backlog of matters during this period which is discussed further in para [3.20] below.

Table 3: Department processing of FOI requests for 2018-19 and 2019-20 (Quarterly comparison)²⁶

	Decided			Decided in time			% in time		
	Personal	Other	Total	Personal	Other	Total	Personal	Other	Total
Q 1 2018- 19	4005	127	4132	3744	46	3790	94.2%	36.2%	91.7%
Q1 2019- 20	3782	204	3986	3197	110	3307	84.5%	53.9%	83%
Q2 2018- 19	3377	196	3573	2597	82	2679	76.9%	41.8%	75%
Q2 2019- 20	3671	365	4036	2743	92	2835	74.7%	25.2%	70.2%

²⁴ The Department of Home Affairs was formally established on 20 December 2017.

²⁵ When assessing these statistics on a quarter by quarter basis across the two years, in only one quarter was there an increase in the percentage of non-personal FOI requests processed within time over that two year period (Q1).

²⁶ In its letter to the Oaic dated 22 September 2020 the Department provided statistics showing the number of FOI requests for non-personal information finalised within these periods, however those statistics did not distinguish between such FOI requests that were finalised within the statutory processing period and those that were not.

	Decided			Decided in time			% in time		
	Personal	Other	Total	Personal	Other	Total	Personal	Other	Total
Q3 2018- 19	3347	176	3523	2013	80	2093	60.1%	45.5%	59.4%
Q3 2019- 20	2943	396	3339	1709	136	1845	58.1%	34.3%	55.3%
Q4 2018- 19	4215	235	4450	2953	112	3065	70.1%	47.7%	68.9%
Q4 2019- 20	2862	553	3415	1554	220	1774	54.3%	39.9%	51.9%

2.12 Table 3 also demonstrates that there are a significant percentage of FOI requests for personal information that are not processed within statutory timeframes.

Statistical evidence relating to IC reviews, including in respect of deemed access refusals

2.13 An applicant who is dissatisfied with the decision of an agency in relation to a FOI request may seek an internal review of that decision or an IC review. Table 4 provides a breakdown of the number of IC review applications received by the OAIC over the four financial years commencing from 2016-17. Over each of the 4 years, the OAIC received the most number of IC review applications in relation to the Department. This is not unexpected, given that the Department is the agency that received the most number of FOI requests over that four year period.

Table 4: Number of IC review applications received by the OAIC

	2016-17	2017-18	2018-19	2019-20
Total number of Information Commissioner review applications	632	801	928	1067
Number of Information Commissioner review applications relating to the Department	140 (22.15%)	154 (19.23%)	198 (21.34%)	283 (26.52%)

- 2.14 If a decision is not made on an FOI request within the statutory processing period (including any extension period) then section 15AC of the FOI Act provides that a decision refusing access is deemed to have been made. These deemed decisions are deemed access refusals. I may review deemed access refusals. Agencies have an obligation to continue to process deemed access refusals. The alternative position would be that, once the statutory processing period has passed, the decision maker should cease processing the FOI request on the basis that he or she is considered to have made a decision and therefore lacks the ability to re-examine the issue. Adopting this approach would have the consequence that an applicant's rights of access under the FOI Act would be impeded through delay on an agency's part and the deemed access refusal could then only be considered further if an application for an IC review was made by the applicant. Such a result would be contrary to the objectives and requirements of the FOI Act.²⁷
- 2.15 During the course of this investigation in the 2019-20 financial year the OAIC received 197 applications for review of deemed access refusals relating to the Department. This represented 55% of the total number of requests received by the OAIC for an IC review of deemed access refusals in that year. The number of review applications for deemed access refusals received by the OAIC over the past four financial years, and the proportion of those that relate to the Department are set out in Table 5 below. As can be seen, there is an increasing trend. In 2016-17, the number of IC review applications for deemed access refusals received that related to the Department was just over a quarter of the total number received but this had increased to just over half of the total number received by the OAIC in 2019-20.

²⁷ This is set out at paragraph 3.155 of Part 3 of the FOI Guidelines.

Table 5: Number of IC review applications for deemed access refusals received by the OAIC

	2016-17	2017-18	2018-19	2019-20
Total number of Information Commissioner review applications for deemed access refusals	123	156	210	360
Number of Information Commissioner review applications for deemed access refusals relating to the Department	34 (27.6%)	41 (26.2%)	83 (39.5%)	197 (55%)

2.16 Tables 4 and 5 show that, when considered as a percentage of the total number of applications, the overall number of applications for IC review received by the OAIC relating to the Department has increased between the first and final years of the three year period in which the CII commenced. During the investigation of this CII the number of IC review applications related to deemed refusal applications by the Department has increased with more than half of those IC reviews in 2019-20 attributable to the Department (up from approximately a quarter in 2016-17). This trend has continued during the period 1 July to 31 October 2020.

Conclusions from statistical information

2.17 The statistical information set out above demonstrates, in summary:

- a. in each of the past four financial years, in excess of 50% of FOI requests for non-personal information received by the Department were processed outside of the statutory processing period;
- b. there has been an increase in the percentage of non-personal FOI requests that were not processed by the Department in the statutory processing period over the financial years 2018-19 and during this investigation in 2019-20. This has occurred notwithstanding that, the number of requests for personal information reduced by 1,162 in 2019-20 (representing a 6.9% reduction in requests). There was an increase in requests for non-personal information of 998 in 2019-20 (representing an 111% increase in requests)²⁸; and
- c. over the past four financial years, the OAIC has received an increasing number of requests for IC reviews of the Department's processing of FOI requests. There has also

²⁸ See the OAIC's Annual Report for 2019-20 available at: <https://www.oaic.gov.au/about-us/our-corporate-information/annual-reports/oaic-annual-reports/annual-report-2019-20/>.

been a sharp increase in the number of requests received for IC reviews of deemed refusal decisions over that four year period.

- 2.18 These overall conclusions suggested that the Department may not have in place the policies and procedures, including in relation to promoting training and awareness, that are necessary to enable compliance with statutory timeframes for processing FOI requests under the FOI Act.

Investigations undertaken by former Information Commissioners on similar issues

- 2.19 I have also considered investigations undertaken by former Information Commissioners on similar issues.
- 2.20 On 26 September 2012, the former Information Commissioner Professor John McMillan completed an Own Motion Investigation into processing of non-routine FOI requests by the then Department of Immigration and Citizenship.²⁹ That investigation made four key findings:
- a. the Department failed to make a decision within the statutory timeframe in each of the 27 FOI requests examined in the investigation,
 - b. the Department was inefficient in its management of the FOI requests, including as a result of poor record keeping practices,
 - c. the communication with FOI applicants about delays in processing their requests by the Department was inadequate, and
 - d. the engagement by the Department with the OAIC in resolving complaints and IC reviews concerning deemed access refusal decisions was considered to be poor.
- 2.21 On 22 September 2012, the Department advised the OAIC that, in response to the announcement of Professor McMillan's Own Motion Investigation, the Department had commissioned a review by Mr Robert Cornall of the Department's FOI procedures.³⁰ The terms of reference for that review included the requirement to identify comparative best FOI practices in other agencies which could be adopted by the FOI team in the Department's National Office as well as to consider the appropriate levels of decision makers in the Department. That review made a number of recommendations. These focused on a greater profile for FOI, the need for a Secretary's instruction to all Department staff highlighting the whole-of-department responsibility for responding to FOI requests, improved escalation procedures to minimise delays and strategies to increase staff awareness of their FOI obligations.

²⁹ <https://www.oaic.gov.au/freedom-of-information/foi-reports/processing-of-non-routine-foi-requests-by-the-department-of-immigration-and-citizenship/>

³⁰ <https://www.oaic.gov.au/freedom-of-information/foi-reports/diac-response-to-omi-report-on-processing-of-non-routine-foi-requests/>

- 2.22 On 8 December 2017, the former Information Commissioner Mr Timothy Pilgrim investigated a complaint about the processing of non-personal FOI requests.
- 2.23 These investigations, considered together, indicate that over a period of time the Department has not had in place the policies and procedures that are necessary to enable compliance with statutory timeframes for processing FOI requests under the FOI Act and that necessary steps to resolve these issues have not been appropriately implemented over the longer term.

Complaints to the Information Commissioner about delays in the Department's processing of FOI requests for non-personal information

- 2.24 The Initial Complaints related to the Department's failure to meet statutory processing times in relation to FOI requests for non-personal information for the Initial FOI Requests. Section 70(1) of the FOI Act permits individuals to make a complaint about an action taken by an agency in the performance of functions, or the exercise of powers, under the FOI Act. I am required to investigate a complaint made under section 70 unless I am satisfied that one of the circumstances outlined in section 73 exists. In the case of the Initial Complaints, no circumstances outlined in section 73 existed and therefore I investigated each of those complaints.
- 2.25 Two of the applicants under the Initial Complaints were journalists and one was an individual. The Initial FOI Requests were for information about matters of public interest relevant to the core functions of the Department and, in some cases, related to matters in which there had been significant media interest. The Initial FOI Requests included, for example, information regarding medical treatment provided to asylum seekers and refugees, disclosures of interests under section 19 of the *Australian Border Force Act 2015* (Cth) and the treatment of detainees in detention facilities. Many of the requests were complex and involved large numbers of documents.
- 2.26 Compliance by the Department with the statutory processing requirements of the FOI Act for the Initial FOI Requests was a factor in my decision to undertake a CII. I determined that it was appropriate to consider the Initial Complaints in the context of my broader CII to allow a wider examination of the facts and circumstances leading to the delays in processing these FOI requests.

Determination to undertake this Commissioner initiated investigation

- 2.27 In light of the conclusions reached from my review of the statistical evidence, my consideration of investigations by former Information Commissioners, my consideration of the Department's compliance with statutory processing times in connection with the Initial Complaints, and having regard to the objects of the FOI Act and the significant negative consequences that may

arise from the Department's non-compliance with the FOI Act given the Department consistently receives more FOI requests for non-personal information than any other agency, I determined that I should undertake this CII.

- 2.28 The object of this CII has been to consider the Department's FOI policies and procedures for processing FOI requests for non-personal information and to make recommendations to ensure that the Department is well placed to comply with the statutory timeframes for processing FOI requests.

Part 3: Conduct of this Commissioner initiated investigation

Investigation process under the FOI Act

- 3.1 Before commencing an investigation, whether that investigation is of a complaint made in accordance with section 70 of the FOI Act or a CII, I am required to notify the agency or agencies the subject of the investigation (each a respondent agency) under section 75(1) of the FOI Act.
- 3.2 I am able to conduct investigations in such manner as I see fit, provided these are kept private (see section 76(1) of the FOI Act). I may obtain information from any officer of an agency, and make any inquiry that I think is relevant to the investigation (see section 76(2) of the FOI Act). I have the power to require agencies, and other persons, to provide information or produce documents for the purposes of a CII (see section 79(3) of the FOI Act).

Commencement of investigation of Initial Complaints and CII

- 3.3 On 25 October 2019, I notified the Department that I had decided to undertake a CII in respect of the Department's compliance with the statutory processing periods set out under the FOI Act for requests relating to non-personal information.
- 3.4 In the same notice, I notified the Department that I would, under section 69(1) of the FOI Act, investigate the Initial Complaints made under section 70 of the FOI Act in respect of the Department's compliance with the statutory processing periods for FOI requests relating to non-personal information.
- 3.5 In responding to my notice of 25 October 2019, the Department advised³¹ that during the 2018-19 financial year, the OAIC received 198 IC review applications in relation to requests handled by the Department, which was 1.1% of the Department's total FOI requests and represented the lowest review application rate of the agencies listed in the OAIC's 2018-19 Annual Report as the "top 20" by review application. The Department also noted that, in that Annual Report, it is stated to have the fourth highest rate of decisions to grant access to information in full.

³¹ As set out in the letter from the Department to the OAIC dated 17 November 2019.

- 3.6 Compliance with the FOI Act is not determined by comparison with the performance of other agencies. The Department's compliance must be objectively considered by reference to the requirements of the FOI Act. In addition, the statistics provided by the Department, as referred to in the previous paragraph, relate to all FOI requests received by the Department, that is, for both personal and non-personal information. If only the FOI requests for non-personal information are considered the Department's performance is shown to be less positive (including when compared to the performance of other agencies):
- a. 42 of the requests for IC review of the Department's decisions received by the OAIC in 2018-19 related to FOI requests for non-personal information. This was 21% of the total number of requests for IC review of the Department's decisions, notwithstanding that FOI requests for non-personal information were only approximately 5% of the number of FOI requests received by the Department during that financial year.
 - b. In the case of FOI requests for non-personal information determined by the Department in 2018-19, 309 or 42.10% were granted in full, 233 were granted in part (comprising 31.74%) and 192 (comprising 26.16%) were refused. The percentage of FOI requests for non-personal information granted in full was therefore below the overall percentage of requests granted in full when considered across all agencies, which was 51.83%.³²
- 3.7 Analysing the 2018-19 statistics based only on a consideration of FOI requests for non-personal information therefore reflects my concerns as outlined in Part 2.
- 3.8 In my notice to the Department of 25 October 2019, I recommended to the Department that, based on the information provided to the OAIC as at that time, the following remedial action should be taken to immediately reduce any further delays in processing FOI requests for non-personal information and to ensure the Department is taking steps, in accordance with the objects of the FOI Act, to facilitate and promote public access to information:
- a. A statement should be issued to all staff highlighting the Department's obligations under the FOI Act and encouraging and supporting staff in meeting their obligations under the FOI Act, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
 - b. A statement or other guidance should be issued to all staff reminding them to ensure all relevant contracts include a clause required by section 6C of the FOI Act and that third party contractors understand and fulfil their obligations under the FOI Act, as well as reminding staff of the importance of good record keeping.
 - c. That applicants are advised by the Department of the relevant statutory processing timeframes and their right to seek IC review where a decision is not provided within the statutory timeframes.

³² This is set out on page 172 in the OAIC's annual report available here: <https://www.oaic.gov.au/assets/about-us/our-corporate-information/annual-reports/oaic-annual-reports/annual-report-2018-19/oaic-annual-report-2018-19.pdf>

3.9 In response to my recommendations,³³ the Department:

- a. Advised that regular FOI awareness communications are provided to staff, including most recently on 26 July 2019. The Department also noted that it presented regular half day FOI information awareness sessions for staff, engaged the Australian Government Solicitor (**AGS**) to present FOI Decision Maker information sessions and that the FOI Section conducted regular outreach to subject-matter business areas who are required to process voluminous FOI requests.
- b. Noted that the Department's Contract Management Policy Framework provided extensive guidance on the administration of agreements, including record keeping obligations, a number of records management awareness messages had been issued to staff and that the Department's records management team had engaged with every division in the Department about record keeping practices.
- c. Advised that it had reviewed its templates for FOI requests and made minor amendments to align with my recommendations.

Evidence considered for investigation of Initial Complaints and CII

3.10 This CII considered 41 FOI Requests for non-personal information as set out below.

3.11 Each Initial FOI Request has been considered as a case study in this CII (and these are referred to as **Case Studies A1 to A17**). As set out in Part 2, the Initial Complaints informed my decision to undertake this CII and I determined that it was appropriate to consider the Initial FOI Requests as part of this CII.

3.12 In my notice of 25 October 2019, I requested that the Department provide certain information to me to undertake both this CII and the investigation of the Initial Complaints (**Initial Information Requests**).

3.13 The information requested in the Initial Information Requests was primarily provided by the Department under cover of a letter dated 25 November 2019.

Outcome of investigation of Initial Complaints

3.14 As required by section 86 of the FOI Act, the Department and the complainants were notified of the results of my investigation of the Initial Complaints by letters dated 19 December 2019. In the case of each of the Initial Complaints, I found that the Department did not comply with section 15(5)(b) of the FOI Act as the Department did not provide the complainant with a decision within the relevant statutory processing timeframe. Although I made those findings,

³³ This is set out in the letter dated 17 November 2019 from the Department to the OAIC.

given that the CII was ongoing at that time, I deferred making any recommendations in relation to those findings.

- 3.15 Under section 86(3) of the FOI Act, the Department was entitled to provide comments on my notices of the results of my investigations of the Initial Complaints. The Department advised by letter dated 8 January 2020 that it did not wish to provide any comments on those notices.

Additional evidence considered for CII

- 3.16 During the course of this CII investigation, information was provided to the OAIC in relation to a number of additional FOI requests for non-personal information received by the Department as further evidence of non-compliance with statutory timeframes. Section 76(1) of the FOI Act provides that “For the purposes of an investigation, the Information Commissioner may obtain information from any officer of an agency, and make any inquiry, that he or she thinks is relevant to the investigation.” I determined this information was relevant to this CII and would enable me to develop a more detailed understanding of the Department’s processing of FOI requests for non-personal information.
- 3.17 I issued a notice to produce certain additional documents and information to the Department under section 79(3) of the FOI Act in connection with this CII on 21 August 2020 (**Notice to Produce**). The Notice to Produce requested information in relation to the Initial FOI Requests and, on the basis of the additional information referred to in the paragraph immediately above, in relation an additional 24 FOI requests submitted to the Department during the period March 2017 to November 2019 (**Additional FOI Requests**). Each Additional FOI Request has been considered as a case study in this CII (and these are referred to as **Case Studies B1 to B24**).
- 3.18 The Notice to Produce required that the Department provide the documents and information in 2 separate tranches, the first on 4 September 2020 and the second on 18 September 2020. Documents and information responding to the Notice to Produce were provided on 7, 18 and 25 September 2020.
- 3.19 In my letter provided with the Notice to Produce, I made a number of observations as to preliminary conclusions that I had reached from my investigation of the Initial Complaints and invited the Department to provide comments on those observations.
- 3.20 The Department responded to my observations³⁴ by advising that:
- a. The Department has improved its productivity in processing FOI requests for non-personal information between 2017-18 and 2019-20. In 2017-18, it finalised 619 FOI requests for non-personal information and in 2019-20 it finalised 1,789 FOI requests for non-personal information, almost 3 times the number processed in 2017-18.

³⁴ As set out in the letter from the Department to the OAIC dated 22 September 2020.

- b. Although the Department had increased its productivity between 2017-18 and 2019-20, the Department has not been able to process the increased number of FOI requests for non-personal information received by the Department. As a result, the backlog of requests that the Department has received has continued to grow. As the Department's practice is to finalise all FOI requests, including those that are not processed in the statutory timeframes, this has meant that a growing number of requests are processed outside the statutory processing timeframes.
- c. In 2020 improvements in productivity, together with a 16% decline in the volume of FOI requests received for personal information which the Department has advised is likely to be related to the COVID-19 pandemic, have resulted in the Department significantly reducing the backlog of FOI requests for non-personal information. This has meant that, as at the end of August 2020, the number of FOI requests for non-personal information outside statutory timeframes is 67, a reduction of 72 per cent since the end of March 2020.

3.21 I acknowledge the improvement by the Department in reducing the backlog of FOI requests for non-personal information during 2020 calendar year. However, even though there was an improvement, in the 2019-20 financial year the period in which this investigation took place only approximately 37% of the FOI requests for non-personal information were processed by the Department in the statutory processing period. In addition, as the 2020 improvements notified by the Department resulted from a significant 16% reduction in the number of FOI requests for personal information received during the calendar year, and as the Department expects that this reduction was caused by the COVID-19 pandemic, it is not possible to reach the conclusion that this positive trend will be sustained without further proactive steps being taken on the part of the Department.

3.22 **Attachment B** sets out a full list of the material provided by the Department which I have considered in the course of this CII.

Report on completion of investigation

3.23 Under section 86 of the FOI Act, I am required, on completion of a CII, to notify the respondent agency of the results of my investigation, as well as my formal recommendations. I must also state the reasons for why I have made my findings and recommendations. My investigation results are the matters I have investigated, the opinions I have formed in relation to those matters, my conclusions regarding those matters, suggestions for the respondent agency to improve its processes and any other relevant information. This report sets out all of these matters for this CII.

3.24 Section 86(3) of the FOI Act provides that the Department may provide me with any comments about this report as the Department wishes to make. **Attachment C** sets out the Department's response.

Part 4: Findings of Commissioner initiated investigation

Summary of findings

- 4.1 I have analysed the primary reasons for the delays by the Department in assessing the Initial FOI Requests and the Additional FOI Requests. At **Attachment A** I have summarised the primary reasons for the delays. There are a number of distinct themes that are apparent from this analysis, as discussed below.

Senior support within the Department

- 4.2 FOI is a whole of organisation responsibility. Expectations from leadership that FOI Act timeframes must be complied with, facilitates appropriate resource allocation in processing and business areas and ensures the expectation is operationalised through processes, procedures and accountabilities. As is apparent from the findings that I have made, Senior Executive support is required within the Department to assist with ensuring that all staff within the Department are committed to meeting the Department's obligations under the FOI Act.
- 4.3 The "*Better Practice Guide for Commonwealth agencies administering the Freedom of Information Act 1982*", which was issued by Dr Allan Hawke in 2013 as an appendix to the "*Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010*"³⁵ (**Better Practice Guide**) recommended that a senior officer within each agency performs the role of ensuring that the agency is committed to high standards of professionalism in handling its FOI workload. As stated in the Better Practice Guide, although this is not a requirement under the FOI Act:

Agency FOI performance improves where a senior figure in the agency has a role as an FOI champion. They may or may not have formal decision-making responsibilities, but it is their role to ensure that the agency is committed to high standards of professionalism in handling its FOI workload. They can also be a focal point for managing issues and developing strategic plans for FOI management within the agency.³⁶

- 4.4 The Case Studies demonstrate that there is not a Departmental Senior Executive Service officer or officers, as contemplated by the Better Practice Guide, who have been able to drive, within the Department as a whole, the adoption and implementation of appropriate policies and procedures, including in relation to training and awareness raising, to ensure compliance with the obligations of the Department to process FOI requests for non-personal information within the applicable statutory processing periods.

³⁵ Available here: <https://www.ag.gov.au/rights-and-protections/consultations/review-freedom-information-laws>

³⁶ Better Practice Guide, at page 3.

FOI Section and FOI Processes

- 4.5 For many Case Studies, the delays in processing arose from timing delays in the FOI Section taking necessary steps, including:
- a. preparing redactions of documents within scope of the FOI request,
 - b. responding on questions from business areas, or
 - c. preparing draft decisions.
- 4.6 A lack of a formalised escalation process for the FOI Section meant that delays arose in processing in some Case Studies as a result of inaction on the part of business areas of the Department or external third parties with whom consultation was being undertaken which were not proactively addressed.
- 4.7 In many of the Case Studies the FOI Section did not seek to use any of the extension of time provisions of the FOI Act, even though these may have been available.

Delays contributed to by other areas of the Department

- 4.8 Where the Department staff required to assist in processing an FOI request had limited knowledge of the FOI Act and its requirements, this contributed significantly to the delays in processing that request.³⁷ The limited knowledge of the FOI Act requirements by the staff in business areas also meant, in many Case Studies, it was not possible for the FOI Section to comply with the processes for processing such FOI requests set out in the document entitled “Freedom of Information 30-day timeline for significant/sensitive FOI requests” (undated) (**FOI Timeline**).³⁸
- 4.9 The Department’s processes for consulting with Senior Executives and Ministerial staff, as well as interacting with the Department’s Media Operations and facilitating the preparation of talking points, in each case which are provided for in the FOI Timeline, contributed to delays in finalising FOI requests in many of the Case Studies.

Contracted Service Providers

- 4.10 Although not many of the Case Studies involved contracted service providers (as defined in the FOI Act) information provided by the Department indicated a lack of policies and procedures in place to ensure compliance with the requirements of section 6C of the FOI Act in relation to contracted service providers.

³⁷ This is discussed in detail in paragraphs 4.39 and 4.40.

³⁸ This sets out the roles and responsibilities of the Department’s FOI Section, the business area and the decision maker for FOI requests that are considered to be significant or sensitive, which is defined as FOI requests made by journalists, Members of Parliament or requests which are sensitive by virtue of the subject matter.

4.11 Each of these themes is discussed in more detail in the remaining paragraphs of this Part 4.

Senior support within the Department

4.12 I have made a general finding that the Department does not have a senior officer, or a committee of senior officers, responsible for promoting a culture of compliance with the FOI Act or provide senior support across all areas of the Department for the adoption and implementation of efficient and effective policies and procedures (including in relation to ensuring the availability of resources the provision of training and the promotion of awareness of the Department's FOI Act obligations) to ensure that the Department has in place best practice governance arrangements in handling its FOI workload.

4.13 Given the size of the Department and also the volume of requests received, it may be appropriate for the Department to appoint an Information Champion as supported by an information governance board. The roles could encompass ensuring that statutory processing timeframes are met, provide a focal point for managing issues, developing strategic plans for FOI management within the Department to ensure that adequate resources are provided for this purpose and that compliance remains a focus of the Department. Although this is not a requirement of the FOI Act, examples of where delays have been caused as a result of such arrangements not being in place are included in subsequent sections of this Part 4 and the following are provided as additional examples:

- a. For Case Study A5, a period of 21 days passed between the date the decision was signed (and notified under the FOI Alert process) and the date it was released to the applicant, as a result of a request for delay in release, on the basis of consideration of the process for managing potential media inquiries. It appears from the correspondence file that no changes were made to the decision in that 21 day period.
- b. For Case Study A12, it took 120 days for the business area to provide documents within scope of the FOI request to the FOI Section following the date the business area was requested by the FOI Section to assist in processing the FOI request. There is no indication from the correspondence file for Case Study A12 that the reason for this delay was caused by searching for relevant documents but appears instead to have been caused by a delay in commencing the process of searching for documents within scope.
- c. For Case Study B5, the staff member in the business area tasked with assisting in processing the FOI request emailed the FOI Section one day before the end of the statutory processing period for the FOI request, advising that documents within scope of the FOI request could not be located and stating in part "I do not have the capacity at present to assist any further on the matter", without offering any assistance from any other member of the business area or suggesting any other solution to identify the documents within scope of the FOI request.

- 4.14 The Better Practice Guide issued in 2013 by Dr Allan Hawke was developed to assist agency staff and Ministerial advisers manage FOI requests efficiently and effectively within their own context.³⁹
- 4.15 The Better Practice Guide recommends that if a business area fails to comply with requests for access to documents or to provide other assistance within the required time frames it should be escalated to other appropriate senior officers.⁴⁰
- 4.16 As suggested by the quote from the Better Practice Guide set out above, the support of the Department's senior management would improve the Department's performance in ensuring compliance with the Department's obligations under the FOI Act, and in my view would have a significant positive impact on the development, and implementation, of appropriate policies and procedures by the Department. Senior Department support, in the form of an Information Champion as supported by an information access governance board, could also assist in resolving delays encountered from business areas in responding to information and other requests from the FOI Section and also potentially assist in resolving the delays which currently arise through the FOI Alert process. It would also be beneficial for the Information Champion to have a separate escalation point for serious non-compliance issues, such as to the Secretary.

FOI Section and FOI Processes

Policies and procedures

- 4.17 The Department was requested to provide to the OAIC all of the following:
- a. The Department's policies and procedures which set out how the Department processes requests for non-personal information under the FOI Act.
 - b. The Department's policies and procedures relating to the utilisation of extension of time provisions under the FOI Act.
 - c. The Department's policies and procedures relating to:
 - i. Processing requests for documents involving third party contractors
 - ii. Clearance processes for FOI decision making
 - iii. Obtaining documents or responses from line areas.
- 4.18 In response to this request, the Department has advised⁴¹ that it relies on the "FOI Documents" (as described in the Glossary in **Attachment D**), which have been prepared by the Department itself, together with the FOI Guidelines and the Guidelines issued by the Department of the

³⁹ Better Practice Guide, at page 3.

⁴⁰ Better Practice Guide, at page 39.

⁴¹ This is set out on page 1 of the letter dated 25 November 2019 the Department to the OAIC

Prime Minister and Cabinet in relation to the application of certain exemptions under the FOI Act.⁴²

- 4.19 The FOI Documents are not detailed workflow documents that the staff of the FOI Section could apply in processing an FOI request, whether for personal or for non-personal information. In addition, the FOI Documents do not include policies and procedures relating to the utilisation of extension of time provisions under the FOI Act, meaning the only guidance provided to the FOI Section as to when to seek an extension of time is that set out in the FOI Guidelines. The FOI Documents do not incorporate any procedures for escalation to senior executives of the Department in the event that delays in business areas involved in the processing of an FOI request, or third parties occur. Given the high volume of FOI requests received by the Department, a more detailed operational manual which addressed these issues would assist in ensuring faster processing of those FOI requests.
- 4.20 Further comments are made in relation to particular aspects of the FOI Documents later in this Part 4.

Availability of appropriately trained FOI Section staff

- 4.21 The following Case Studies provide examples of delays which occurred in the processing of FOI requests that arose from the FOI Section:
- a. For Case Study A5, there was a period of 44 days where no action was taken by the FOI Section in processing the FOI request even though, at that point, such action was required.
 - b. For Case Study A7, 23 days passed from the date the business area provided the documents within scope of the FOI request to the FOI Section before the FOI Section responded to the business area regarding those documents and ultimately it was 28 days before the FOI Section provided the business area with suggestions as to the parts of the relevant documents that might be subject to claims for exemptions from disclosure under the FOI Act. As the business area provided the documents to the FOI Section within one day of being requested to provide those documents and ultimately it took only 10 days for the decision to be issued to the applicant after the FOI Section provided the business area with suggestions for redactions, a more timely consideration of the documents provided by the business area by the FOI Section would have enabled the Department to process the FOI request within the statutory processing period.
 - c. Case Study A9 involved the transfer of an FOI request to the Department. A period of 22 days passed after the request was first transferred to the Department before the FOI Section first contacted the decision makers to advise that the transfer had occurred. The correspondence file for Case Study A9 indicates that it was at this point that the substantive processing of the FOI request commenced. There were another 2 periods of

⁴² Available here: <https://www.ag.gov.au/rights-and-protections/freedom-information/freedom-information-guidance-notes>

66 days and 26 days where no actions were taken by the FOI Section notwithstanding that action by the FOI Section was required in order to progress processing. Cumulatively, this amounted to a period of 114 days where action was not taken by the FOI Section to progress processing of the FOI request.

- 4.22 Although this is not stated in the correspondence files for the Case Studies, the delays identified above, and similar delays which arose in other Case Studies, may have arisen because FOI Section staff with the training and capacity to process FOI requests for non-personal information were not available to assist in processing these FOI requests. The Department did not make any submission to the OAIC as to the reasons for such delays. The Department also did not make any submissions regarding how the FOI Section staff were allocated to processing FOI requests for non-personal information.
- 4.23 The Department's FOI Section comprises approximately 75 full-time equivalent employees.⁴³ Notwithstanding this, 34 of the 40 Case Studies that involved primary FOI request decisions were predominantly processed by one specific staff member of the FOI Section.⁴⁴ The Synergy Report also noted that, of the FOI requests it considered, these were not allocated evenly across the FOI section, creating bottlenecks and that there was a significant concentration of FOI requests amongst a small number of staff of the FOI Section.
- 4.24 The three paragraphs immediately above indicate that there may be not be a sufficient number of staff in the FOI Section who have been trained in the processing of FOI requests for non-personal information who would be available to assist in processing these within the statutory processing periods at times when there are a high number of requests. It is therefore reasonable to conclude that if additional members of the FOI Section were trained to provide this assistance, this would have a positive impact on processing times for such FOI requests.

Escalation processes

- 4.25 As noted earlier in this report, the FOI Documents do not provide for a formal escalation process that the FOI Section should use where either a business area within the Department or a third party outside the Department has not responded to the FOI Section within the time requested as necessary to ensure compliance with statutory processing times. The FOI Documents also do not set out procedures that would empower the FOI Section to issue

⁴³ This is set out on page 5 of letter dated 22 September 2020 from the Department to the OAIC.

⁴⁴ Case Study B1 has been excluded from this figure, as the primary FOI request decision was not made by the Department.

decisions where other business areas of the Department, or third parties, have failed to provide responses in a timely manner.

- 4.26 The Case Studies demonstrate that the FOI Section took significant periods of time to escalate matters, which were often quickly resolved when escalation did occur. Example of failures to escalate, or delays in escalating issues, include the following Case Studies:
- a. For Case Study A4, the FOI Section commenced consultation with an external party who did not respond within the requested time frame. It took 27 days before the FOI Section escalated this delay within the Department. Once the escalation had occurred it took only 5 days for the external party to respond.
 - b. For Case Study A12, the business area required to assist in processing the FOI request did not acknowledge to the FOI Section that it was considering the request until 58 days after it has been requested to assist. Only 2 follow up emails were sent by the FOI Section to the business area in that period. No escalation action was taken by the FOI Section during that period notwithstanding the lack of response from the business area meant that no progress was made in processing the FOI request during the statutory processing period.
 - c. For Case Study A15, it took 129 days for the relevant business area to nominate a decision maker after it was first requested by the FOI Section to do so. Escalation of resolution of this issue did not occur until 128 days after the first request to nominate a decision maker was made, with the issue then resolved in one day.
- 4.27 In each of these Case Studies there is limited indication that the FOI Section considered finalising decisions even though responses had not been provided. These Case Studies indicate that a formal escalation process, and a process to be implemented to finalise decisions if responses are not received, are likely to have assisted earlier processing of the relevant FOI requests. Guidance as to when the FOI Section may move forward to finalise decisions where no responses are provided by other internal or external parties, as applicable, would also have assisted in enabling quicker processing.

Guidance for seeking extensions of time under the FOI Act

- 4.28 As noted earlier, the FOI Documents do not set out any internal guidance for the Department as to when it should seek to rely on any extensions of time for processing FOI requests which are available under the FOI Act, in particular, under sections 15(6), 15(7), 15AA, 15AB, 15AC or 54D. The Case Studies demonstrate that extensions are not often sought under these sections of the FOI Act.
- 4.29 Up to 50 per cent of FOI requests for non-personal information received by the Department require consultation with third parties.⁴⁵ Where consultation with a third party or parties is required, an extension of 30 days is permitted under section 15(6) or, depending on the identity

⁴⁵ This is set out on page 2 of letter dated 22 September 2020 from the Department to the Oaic.

of the third party, 15(7) of the FOI Act. In the case of 2 of the 17 Initial FOI Requests, an extension of time would have been available under section 15(6), if the consultation had commenced within the initial decision making period.⁴⁶ However, in each case, section 15(6) could not be used because the consultation did not commence in that initial period.

- 4.30 Section 15AA of the FOI Act provides for an extension of the processing period by up to 30 days by agreement with the applicant. Notwithstanding that decisions were made in 16 of the 17 Initial FOI Requests outside of the statutory processing period, only 6 requests to extend the statutory processing period were made under section 15AA for the Initial FOI Requests (though not all of these were granted). For Case Study A14, for which such an extension was granted, this enabled the Department to process the FOI request within the statutory processing period.
- 4.31 Section 15AB of the FOI Act enables an agency (or Minister) to seek my agreement to an extension of time to process an FOI request where the request is complex or voluminous. Although not all of the Initial FOI Requests would be considered to be complex or voluminous requests, no extension of time was sought under section 15AB of the FOI Act in relation to any Initial FOI Request.
- 4.32 Section 15AC(4) provides that where a deemed refusal decision has been made, an agency may apply to me to extend the processing time. Notwithstanding that 16 of the 17 Initial FOI Requests were not decided within the statutory processing period, the Department sought an extension of time under section 15AC for only 2 of the Initial FOI Requests, and one of those requests was approved.

Delays contributed to by other areas of the Department

Involvement of business areas in FOI processing

- 4.33 The authority to make decisions under the FOI Act has been delegated by the Secretary of the Department to all Senior Executive Service officers, Executive Level 2 officers and all the staff within the FOI Section of the Department. In managing FOI requests for non-personal information, the Department has established a process under which the business area or areas to which the FOI request most closely relates have a degree of responsibility in working with the FOI Section to collate the material that is responsive to the FOI request, consulting internally and also working with the decision maker to determine whether particular material may be exempt from disclosure.⁴⁷ The decision maker for requests for non-personal information is typically an officer in the relevant business area.
- 4.34 Examination of the correspondence files provided for the Initial FOI Requests and the Additional FOI Requests indicates the level of involvement of business areas differs on a case by case basis. Nonetheless the general approach adopted by the Department means that it is important decision makers within the Department have appropriate FOI training, which is

⁴⁶ This is set out on paragraph 6.207 of the FOI Guidelines.

⁴⁷ Which is evidenced by the processes followed for the Case Studies and also in the FOI Documents.

repeated at appropriate intervals, to ensure that those staff are able to consider FOI requests received and to respond to those within the statutory timeframes. Those staff should also have access to short form guidance material regarding the requirements of the FOI Act which is tailored to the Department's requirements to assist in processing.

Guidance and training provided to staff in business areas

- 4.35 An examination of the correspondence files for the Case Studies indicates that, when documents are first sought from a business area, typically the business area or areas are directed to consider a document entitled "Checklist for FOI – Seeking documents" (or similar).⁴⁸ The business area(s) are also directed to consider the FOI Guidelines. My view is that this does not provide a sufficient level of guidance for staff inexperienced in dealing with the FOI Act and FOI requests. The Search/Retrieval Checklist is used by decision makers in the business areas of the Department (and by the staff who support those decision makers). It is a high level document that would only be an appropriate checklist for decision makers who are experienced in dealing with the FOI Act. On the other hand, the FOI Guidelines is a very detailed document – it is 325 pages long and depending on the frequency with which decisions are made involving a business area, it may be unreasonable to expect business area staff (both decision makers and staff who assist the decision maker) to be fully familiar with this document for the purposes of processing an FOI request.
- 4.36 Information provided by the Department⁴⁹ indicates that the Department makes available 2 FOI training courses for the staff of the Department outside the FOI Section. These are:
- a. An "FOI Awareness" course, which is a half-day course that provides an overview of the FOI Act and FOI Guidelines and instructs participants as to their FOI obligations, the FOI process and the importance of strong record keeping practices.
 - b. An "FOI Decision Maker" course which is a full day formal training course targeted at Senior Executive Service officers and Executive Level 2 staff and above in the Department and Australian Border Force. It is presented by the Australian Government Solicitor and examines the FOI Act and FOI Guidelines in detail, including the exemptions and the application of the "public interest test" in the FOI Act.
- 4.37 In addition, in 2019 the FOI Section introduced a program to present information sessions on the requirements of the FOI Act to individual business areas where the need is identified.⁵⁰
- 4.38 In relation to the Initial FOI Decisions, the Department advised,⁵¹ based on the records of the Department, that:

⁴⁸ This document is substantially the same as the Search/Retrieval Checklist, notwithstanding the different name.

⁴⁹ This is set out on pages 2 and 3 of the letter dated 25 November 2019 from the Department to the OAIC.

⁵⁰ This is set out on page 3 of the letter dated 25 November 2019 from the Department to the OAIC.

⁵¹ This is set out on page 7 of letter dated 4 September 2020 from the Department to the OAIC.

- a. In the case of nine of the 17 decision makers for the Initial FOI Requests, of which eight were staff in the relevant business area, the Department has no records that indicate whether those decision makers had received any FOI training, either whilst at the Department or any other Australian Government agency.
- b. In respect of the remaining decision makers for the Initial FOI Requests, of which seven were staff in the relevant business area, none of those decision makers has received any FOI training since 31 August 2018.

4.39 In relation to the Additional FOI Decisions, the Department advised,⁵² based on the records of the Department, that:

- a. In the case of 12 of 23⁵³ decision makers for the Additional FOI Requests, all of whom were staff in the relevant business area, the Department has no records that indicate whether those decision makers have received any FOI training, either whilst at the Department or any other Australian Government agency.
- b. In the case of the remaining 11 decision makers, of whom seven were staff in the relevant business area, only one received training during financial year 2019-20, with the rest receiving training in earlier periods, including four who had not received any FOI training since 2015.

Evidence that lack of experience and available guidance material contributed to delays

4.40 The lack of training of decision makers contributed to the delays in the processing of the Initial FOI Requests. For example:

- a. For Case Study A16, where the decision was notified to the applicant 98 days after the statutory processing period, the business area notified the Department FOI staff member dealing with that FOI request that “none of us” have “had training in FOI”. A further email later in the same Case Study refers to the business area’s “limited understanding” of FOI processes. This lack of understanding contributed to significant delays in the commencement of the third party consultation that was required to occur for this FOI request. This was because the business area requested that “we’d like to work with you as the experts to understand how we might manage the complexities, sensitivities, best approach and possible exemptions for this request *prior to consultation*” (emphasis added). As a result of the lack of knowledge of the business area, the consultation process was not commenced until after the expiry of the statutory processing period for the FOI request had expired (which also meant that an extension of time could not be sought under section 15(6) of the FOI Act).
- b. In the case of a number of the Initial FOI Requests (including the Case Study referred to in the subparagraph immediately above), the FOI Section was required to provide

⁵² This is set out on page 7 of letter dated 18 September 2020 from the Department to the OAIC.

⁵³ No information was provided in relation to Case Study B1, which was an IC review.

significant guidance to the business areas as to which exemptions to disclosure under the FOI Act were applicable. In addition, in a number of Case Studies business areas sought to claim exemptions from disclosure on grounds that have no basis in the FOI Act. For example, in Case Study A15, the staff in the business area claimed that exemptions should be sought on the basis that certain statements in a document were incorrect and encouraged consideration by another business area of the Department of whether other statements in the relevant document were incorrect (in which case presumably suggesting that an exemption should be claimed in relation to those other statements). There is no basis in the FOI Act to claim an exemption from disclosure solely on the basis that statements are incorrect.

4.41 The Case Studies also show that there are inconsistencies between the processes set out in the FOI Documents and the manner in which FOI requests for non-personal information are processed by the Department in practice. For example, the FOI Timeline provides that the business area is to mark up the documents to redact exempt material (see Day 11-17) though typically the FOI Section will prepare the first version of the mark up.⁵⁴ Also, the FOI Document states that the business area will identify exemptions (see Day 11-17) however the business area(s) are often simply asked to identify whether there is any “further sensitivities” or whether release would cause “harm” and the FOI Section will then identify exemptions.⁵⁵ A final example is that the decision maker is stated to have responsibility, with the business area, to consult “internally” as required. However, this is typically only done by the business area within its own business area – if more than one area within the Department is involved then the FOI Section typically takes responsibility for consulting with other business areas.⁵⁶

Delays caused by final consultation

4.42 The FOI Documents provide for a final “FOI Alert” process where Senior Executive Service officers and Ministers’ offices are notified of the documents to be released and are provided with copies of the documents. (**FOI Alert process**) The Case Studies demonstrate that this delays the release of decisions to applicants for periods of time that are often significantly longer than the 3 to 4 day period contemplated by the FOI Timeline.⁵⁷ Given the standard statutory processing period is 30 days, the delay caused by the FOI Alert process has a negative impact on the ability of the Department to meet the statutory processing period in many cases.

Records management

⁵⁴ As occurred for Case Study B21.

⁵⁵ This is often included in the standard email sent by the FOI Section seeking assistance from business areas once documents are identified. See for example Case Studies A5, A14 and B18. Also the standard email which was typically sent to business areas for the Case Studies seeking initial assistance always provided that the FOI Section would consider the exemptions.

⁵⁶ This occurred in, for example, Case Studies A2, A5 and A13.

⁵⁷ This was a contributing cause of the delay in meeting the statutory processing periods for Case Studies A3, A4, A5, A10, A15 and A16.

- 4.43 The Department’s information handling policies were provided to the OAIC on 25 November 2019 and comprise the “Records Management Policy Statement” (**Records Management Policy Statement**) and “Correct Use of the Department’s Information Storage Systems and Network Drives” (**ICT Policy Statement**).⁵⁸ Those two policies apply to both Department staff and contractors and consultants.
- 4.44 The Department’s Record Management Policy Statement provides that TRIM RM8 is the Department’s primary approved electronic document and records management system (**EDRMS**) for managing documents up to specified classifications (excluding Cabinet documents).⁵⁹ The Records Management Policy Statement also identifies other systems, such as for human resources, that collect particular types of data. The Department has advised⁶⁰ that when an FOI request for non-personal information is received the primary records repositories that need to be search are the Department’s hundreds of business systems, including its main email system, TRIM and its physical storage facilities.
- 4.45 The Department has acknowledged that one of the two stages for processing FOI requests that takes the longest time is search and retrieval of documents.⁶¹ None of the FOI Timeline, Search/Retrieval Checklist nor the Decision Maker Checklist, which are the primary Department policies available to the staff of the Department who are not in the FOI Section (though typically only the Search/Retrieval Checklist is specifically provided to business areas at the time a request is made to consider an FOI request for non-personal information), provide any guidance as to how to determine what records repositories and/or business systems are required to be checked. None of the remaining FOI Documents provide guidance to the FOI Section on this issue.
- 4.46 Case Study A10 provides an example of where difficulties in locating relevant documents contributed to the delay in finalising the decision, with the decision not made until 59 days after the end of the statutory processing period. Another example is Case Study B10, where delays in identifying relevant documents within the scope of the FOI request contributed to the delay in finalising the decision. That decision was not released to the applicant until 67 days after the expiry of the statutory processing period.

⁵⁸ In the letter dated 25 November 2019 from the Department to the OAIC the Department stated that “record keeping and information handling obligations are detailed in various operational policies and procedures” (at page 2) though no copies of such documents were provided.

⁵⁹ This is set out in section 4.2.1 of that document.

⁶⁰ This is set out on page 2 of letter dated 22 September 2020 from the Department to the OAIC.

⁶¹ This is set out on page 2 of letter dated 22 September 2020 from the Department to the OAIC. The other stage that the Department identified is decision making.

Contracted service providers

Requirements of the FOI Act

4.47 The FOI Act applies to documents held by contracted service providers and subcontractors relating to the performance of “Commonwealth contracts”. A Commonwealth contract is a contract for the provision of services to the public on behalf of the Commonwealth. Under section 6C of the FOI Act agencies are required to implement contractual measures to ensure that, if the agency receives a request for a document that relates to the performance of the contract and that document is created by or in the possession of a contracted service provider or subcontractor, the agency receives the document. If an agency receives a request for access to such a document, the agency is to take action to obtain a copy of the document from the contractor or subcontractor in accordance with the terms of the contract, and then decide whether access is to be given to that document under the FOI Act.

Department policies

4.48 The FOI Documents (that is, the Department’s internally prepared documents) do not contain policies and procedures relating to processing requests for documents involving third party contractors. The FOI Guidelines, which the FOI Section also use in processing FOI requests, also do not provide policies and procedures that could be implemented by the FOI Section to address matters involving contracted service providers.

4.49 In my letter dated 25 October 2019, I requested that the Department provide the OAIC with copies of the Department’s policies and procedures regarding the storage of documents received from contractors during the life of a contract and once the contract has ended. In response, the Department advised⁶² that it uses the Department of Finance’s Commonwealth Contracting Suite templates for procurements of less than \$200,000 and for certain procurements above that amount. Other templates are used for services identified as higher value and risk. All of these templates include standard clauses regarding FOI obligations. Although it is appropriate for the Department to use the templates it has identified, these templates are not policies and procedures regarding the storage of documents received from contractors during the life of a contract or once the contract has ended.

4.50 The Department also advised that if a contract as a “Commonwealth contract” as defined in the FOI Act, the Department complies with its obligations to include relevant contractual provisions as required by section 6C of the FOI Act, though this does not appear to be specifically documented in a policy. Under the Department’s Contract Management Framework, contract managers must ensure contractor’s compliance with administrative requirements of the contract, such as FOI and record keeping. The Department provided copies of its Records Management Policy Statement and ICT Policy Statement.⁶³ As noted by the Department, the Records Management Policy Statement applies to contractors as well as to the Department’s

⁶² This is set out on pages 1 and 2 of the letter dated 25 November 2019 from the Department to the OAIC.

⁶³ These were provided with the letter dated 25 November 2019 from the Department to the OAIC.

staff. The Records Management Policy Statement is a high level policy statement which refers to associated Procedural Instructions (**PIs**) as supporting that policy, however these were not provided. The Records Management Policy Statement refers generally to the need to ensure compliance with the FOI Act but does not set out any detail regarding compliance with section 6C of the FOI Act or how documents received under that section or from contracted services providers should be obtained or stored. The ICT Policy Statement applies to contractors as well as to the Department's staff. It does not set out any detail regarding compliance with the FOI Act.

4.51 The Department has also advised that fewer than 5 per cent of FOI requests for non-personal information require contracted service providers to provide documents.⁶⁴

Department contracts

4.52 Notwithstanding that the Department processes only a small number of FOI requests for non-personal information that require contracted service providers to provide documents, these contracts entered into by the Department are for the provision of services to the public on behalf of the Commonwealth. Therefore it is important that an agency has documented processes in place to ensure compliance with the requirements of section 6C of the FOI Act. The Department provided information to the OAIC in relation to a number of contracts that it has in place with third parties,⁶⁵ however only one of those contracts would actually fall within the definition of "Commonwealth contract" for the purposes of the FOI Act. That contract contained the model clause proposed by the OAIC for compliance with section 6C of the FOI Act.⁶⁶ Even though that was the case, the primary Case Study involving this contract⁶⁷ demonstrates that there were delays in the required information being provided by the contractor and a subcontractor sought to impose a condition on providing access to material which was inconsistent with the requirements of the FOI Act. The correspondence file for the Case Study does not show that the Department sought to place reliance on the model clause contained in the relevant contract to expedite receipt of the relevant material.

Part 5: Recommendations

5.1 In determining my recommendations for steps which should be taken to improve processing of FOI requests for non-personal information, I have considered the actions the Department has taken over the last 4 years to adopt improvements to the processing of such FOI requests. During this period, the Department engaged Synergy to undertake an analysis of 30 FOI requests for non-personal information and to make recommendations for improvements (**Synergy Review**). This has been the only review of FOI processing (whether internal or

⁶⁴ This is set out on page 2 of the letter dated 22 September 2020 from the Department to the OAIC.

⁶⁵ As set out in the letters dated 4, 18 and 25 September 2020 from the Department to the OAIC.

⁶⁶ Refer to model clause for section 6C compliance available here: <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/documents-held-by-government-contractors/>

⁶⁷ Case Study A11.

external) undertaken by the Department during the period from 1 July 2016.⁶⁸ The actions which the Department has taken to improve its compliance with the statutory processing periods for FOI requests (for both personal and non-personal information) since 1 July 2016, as notified to the OAIC, include:⁶⁹

- a. From 2016, the Department has implemented administrative release of information to address high volume FOI requests for personal information.
- b. In 2017, the Department launched an online form to assist applicants. This was recommended by the Synergy Review.
- c. In 2018, the Department commenced use of HotDocs software for decision letters and other correspondence. This was recommended by the Synergy Review.
- d. The Department has become primarily digital, eliminating the creation of paper records and has been in the process of digitising incoming mail and existing paper records.
- e. In March 2020, the Department published statistics on the General Skilled Migration program which reduced the frequency of FOI requests for this information.
- f. In April 2020, the Department provided remote access to use Adobe Pro software to members of the FOI Section.
- g. In April 2020, the Department introduced FOI management dashboards to provide information on the status of FOI caseloads and individual requests.
- h. In May 2020, the Department provided temporary additional resourcing to process FOI requests for personal information.

5.2 In addition, the Department has also taken the actions set out in Part 3 to clear the backlog of FOI requests for non-personal information.

5.3 The Synergy Review made a number of recommendations in addition to the ones identified in subparagraphs 5.1b. and 5.1c. The Department has provided no information to the OAIC that indicates any of those other recommendations were implemented and accordingly I have assumed that none were implemented.

5.4 I have also taken into consideration the recommendations from previous reviews, as referred to earlier in this report. The Own Motion Investigation into processing of non-routine FOI requests by the then Department of Immigration and Citizenship undertaken by the former Information Commissioner Professor John McMillan in September 2012 included a recommendation that

⁶⁸ The report of the Synergy Review was provided by the Department to the OAIC on 7 September 2020 in response to the Notice to Produce, which required that the Department provide “(t)he terms of reference for, and the outcome of, any reviews (either external or internal) undertaken with respect to FOI processing within the Department since 1 July 2016.”

⁶⁹ This is set out on page 5 of letter dated 22 September 2020 from the Department to the OAIC. There are other examples provided in that letter however my view is that the examples listed here are likely to have been the most impactful.

the Department should consider the following matters (amongst others) and provide a report to the Information Commissioner within three months of the date of publication of the Information Commissioner's report dealing with each of the following:

- a. inadequate resources allocated to processing non-routine FOI requests in the Department's Central Office team,
- b. delay in allocating non-routine FOI requests to the Department's decision makers,
- c. delay in initiating and concluding internal consultation on non-routine FOI requests,
- d. inadequate internal governance arrangements for controlling delays in processing non-routine FOI requests and for ensuring senior executive supervision of those requests,
- e. unclear internal clearance procedures for access grant decisions,
- f. delay in obtaining documents from the Department's contractors when required for FOI processing,
- g. delay in initiating or concluding third party consultations,
- h. failure to consider applying to the OAIC for extensions of time to process requests under section 15AB or section 15AC of the FOI Act, and
- i. FOI processing being impeded by poor record keeping.

5.5 The findings that I have made indicate that, while changes may have been made by the Department to address these issues in the short term following the 2012 investigation, over the longer term, these issues have re-emerged.

Recommendation 1: Appoint an Information Champion⁷⁰

Senior support, in the form of a senior Information Champion who is a member of the Department's Executive with sufficient seniority, such as the Chief Operating Officer, who may be supported by an information governance board, will play a key role in promoting FOI Act compliance within the Department.

Recommendation 1: I recommend that the Department, within one month of the date that comments on this report are due, appoint a Senior Executive Service officer, such as the Chief Operating Officer, to be an Information Champion of the Department. In the same timeframe, the Information Champion may be supported by an information governance board comprised of appropriate Senior Executive Service officers. The role of the Information Champion and any board would encompass:

- providing leadership on compliance by the Department with the FOI Act, to ensure that the Department is committed to high standards of professionalism in handling its FOI workload
- ensuring the Department has in place best practice governance arrangements, and provides adequate resources, to meet the objects of the FOI Act and to comply with all of its obligations under the FOI Act, including meeting the statutory timeframes for the processing of FOI requests
- taking proactive steps to encourage the development, and implementation, of appropriate FOI Act compliance policies and procedures by the Department as part of the standard business practices of the Department
- being a focal point for managing issues and developing strategic plans for FOI management within the Department
- monitoring compliance by the Department with the statutory processing requirements of the FOI Act
- consistent with the objects of the FOI Act and the requirements of the Information Publication Scheme established under Part II of the FOI Act, identifying the Department's information assets and developing criteria to establish what is of value and appropriate for proactive release, such as by monitoring trends in the FOI requests for non-personal information received by the Department to determine if there are any categories of information sought that would be able to be proactively released by the Department (avoiding the need for FOI requests to be made to access such information).

⁷⁰ As a consequence of the findings in paragraphs 4.12 to 4.16.

I recommend that the Information Champion is empowered to set KPIs for staff involved in processing FOI requests and monitor these. The FOI Section should also be required to report statistics related to the processing of FOI requests for non-personal information to the Information Champion to assist in ensuring appropriate accountability and oversight of the Department's FOI functions.

The Information Champion may also perform broader functions in relation to information management within the Department more generally.

Recommendation 2: Operational Processes and Procedures⁷¹

To ensure that the Department has in place the required policies and procedures to meet statutory processing periods for FOI requests, the Department should adopt and implement an up-to-date, clear and easy to follow FOI operational manual for its FOI staff and for all other staff of the Department who may have a role in processing FOI requests.

Recommendation 2: I recommend that within three months of the date that comments on this report are due, the Department prepare and implement an operational manual for processing of FOI requests for non-personal information which must be approved by the Information Champion referred to in **Recommendation 1**. At a minimum that manual should:

- provide for the modification of current processes to ensure compliance with statutory processing periods, including but not limited to a mandated process for the appointment of decision makers,
- set out a policy that is to be applied to determine when it is appropriate to seek extensions of time as permitted under the FOI Act,
- include escalation processes and set out when these are required to be used to resolve processing delays arising either from delays with business areas of the Department or delays caused by third parties,
- establish clear criteria to be applied to determine when the FOI Section may move forward to finalise a decision notwithstanding a delay in responses from either business areas or third parties,
- establish criteria for records management to assist in facilitating responses to FOI requests, and

⁷¹ As a consequence of the findings in paragraphs 4.16 to 4.19; 4.24 to 4.31; 4.40 to 4.51.

- 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

- include a short form guidance note to assist business areas in processing FOI requests for non-personal information. Assistance in preparing this new guidance note is available through use of material available through the OAIC's website.⁷²

In addition, I recommend that the Department document in the operational manual an alternative process to the FOI Alert process to ensure that the FOI Alert process does not delay the release of FOI decisions beyond the statutory processing period. For example, the Department could use its newly introduced FOI dashboards⁷³ to ensure that senior staff are advised of the status of FOI requests and engagement with the Department's Media Operations, and preparation of any required talking points, should occur at an earlier point of the processing of FOI requests for non-personal information.

The OAIC's recently released FOI Essentials toolkit, which contains information that is also available in the FOI Guidelines but in a short form user friendly package, may be used by the Department to assist in the preparation of this manual. Consistent with the requirements of the Information Publication Scheme, the operational manual should be made publicly available by the Department on its website.

The steps that will be taken to ensure compliance with section 6C of the FOI Act, as referred to above, should be replicated in all other policies of the Department which relate to contractual requirements for procurement by the Department.

Recommendation 3: Training⁷⁴

It is important that the Department provides its staff with the necessary training and resources to enable those staff to fully discharge the Department's obligations to process FOI requests within the statutory processing periods under the FOI Act. It is also important that the Department implements a standardised process for the processing of FOI requests that will assist in ensuring that statutory processing periods are complied with.

Recommendation 3: I recommend that within three months after completion of the Operational Manual referred to in **Recommendation 2**, all members of the FOI Section

⁷² For example, the OAIC provides guidance on the reasonable steps required to be taken to locate documents for the purposes of the FOI Act, which is available here: <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/processing-foi-requests-taking-all-reasonable-steps-to-find-documents/>

⁷³ Refer to paragraph 5.1g.

⁷⁴ As a consequence of the findings in paragraphs 4.20 to 4.23 and 4.34 to 4.39.

and other staff of the Department who may process FOI requests for non-personal information (both decision makers and other staff who assist decision makers), are trained in the requirements of the operational manual referred to in **Recommendation 2**. I recommend that new members who join the FOI Section after that time should be provided with the same training within a reasonable period of joining the FOI Section. A reasonable period would ordinarily be within two weeks.

Within six months after completion of the Operational Manual referred to in **Recommendation 2**, I recommend that the Department make available online training for all Senior Executive Service officers and Executive Level 2 officers in the Department that provides an overview of how FOI requests for non-personal information are processed in the Department, tailored for the Department's specific circumstances.

Recommendation 4: Audit of Compliance⁷⁵

Recommendation 4: In light of my conclusion that many of the findings that I have made indicate that, while changes may have been made by the Department to address issues identified in previous reviews of the Department in the short term, over the longer term, issues regarding compliance have re-emerged I also recommend that the Department, within 3 months of completion of **Recommendation 3**, undertake 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. I recommend that the audit is undertaken by either the Department's internal audit committee or by an external auditor, as determined by the Department. A copy of the audit report should be provided to the OAIC.

The OAIC will continue to work with the Department to ensure not only that the **Recommendations** are implemented and operationalised but also to ensure that its policies and procedures evolve over time to continue to enable the Department to meet its obligations under the FOI Act, including to meet statutory timeframes. The OAIC will also monitor compliance through quarterly agency statistics submitted by the Department, complaints and IC reviews, including deemed refusals.

- 5.6 As this CII has focussed on a consideration of the Department's compliance with the statutory timeframes set out in the FOI Act in relation to processing FOI requests for non-personal information, **Recommendations 2 to 4** are also limited in their scope to FOI requests for non-personal information. Taking a pragmatic approach to compliance, there would be benefit in the Department considering the broader application of each of the **Recommendations** in relation to all FOI requests that are received by the Department, that is, for both personal and

⁷⁵ As a consequence of the comments in paragraphs 5.1 to 5.5.

non-personal information.⁷⁶ For example, although **Recommendation 3** relates to training for the processing of FOI requests for non-personal information, in implementing **Recommendation 3**, the Department should give consideration to whether the training of staff across the Department who are involved, in whatever capacity, in the processing of FOI requests for personal information is also up-to-date and whether additional training may be required for that type of FOI request.

⁷⁶ In 2019-20, the Department processed 69% of requests for personal information within the statutory timeframes.

Attachment A: Summary of findings in relation to processing of FOI requests

Primary contributing factors to failure to meet statutory time frames (Initial FOI Requests)

No.	Contributing factor	Number of Case Studies impacted	Case Studies
1.	Delay within FOI team without external contributing reason.	15	<p>Case Study A1:</p> <ul style="list-style-type: none"> Clarification of scope not sought from applicant until 10 days after the date it was determined that clarification was required. <p>Case Study A2: Correct branches to consult not identified for 16 days from date of receipt of request.</p> <p>Case Study A3: [Re revised decision.] 35 days between the date the signed decision was received by FOI team and the date the FOI team provided the decision to the applicant (in part caused by FOI Alert process – 17 days).</p> <p>Case Study A5:</p> <ul style="list-style-type: none"> 15 days taken to respond to clarification question from branch. No action taken for 44 days. Clarification on scope first sought from applicant 68 days after request received. <p>Case Study A6⁷⁷:</p> <ul style="list-style-type: none"> [Re initial decision.] Correct branch to consult not identified for 35 days.

⁷⁷ Note that only initial decision considered for Case Study A6.

No.	Contributing factor	Number of Case Studies impacted	Case Studies
			<ul style="list-style-type: none"> • [Re initial decision.] 8 days between the date the signed decision was received by FOI team and the date the FOI team provided the decision to the applicant. <p>Case Study A7: 28 days taken to prepare documents for release.</p> <p>Case Study A8: 19 days to follow up on request for information (which was then able to be provided within one day).</p> <p>Case Study A9:</p> <ul style="list-style-type: none"> • No action taken to contact decision makers for 22 days following agreement to accept transfer of FOI request. • No action taken for another 2 significant periods during the processing of the request, the first period of 66 days and the second period of 26 days. • 152 days to seek documents that should have been transferred together with the FOI request but which were not received by the Department. <p>Case Study A10:</p> <ul style="list-style-type: none"> • 35 day period in which no action taken. • Additional searches not requested for 77 days. <p>Case Study A11: 29 days period between receipt of relevant material and issue of draft decision.</p> <p>Case Study A12:</p> <ul style="list-style-type: none"> • [Re initial request.] No follow up of relevant area of the Department at all during statutory decision period (only action taken by FOI team in statutory decision period was to acknowledge receipt and to send request to a business area). • [Re initial request.] 35 day period between first follow up of business area and second follow up of business area. 26 day period between second follow up of business area and third follow up. 22 days between third follow up and fourth follow up.

No.	Contributing factor	Number of Case Studies impacted	Case Studies
			<p>Case Study A13.1:</p> <ul style="list-style-type: none"> FOI team took either 26 or 28 days to respond to questions from relevant areas of the Department in relation to internal consultation. 136 day period in which no action was taken to progress finalisation of request. <p>Case Study A13.2: [Re internal review.]</p> <ul style="list-style-type: none"> No action taken in relation to request for internal review for 95 days. Periods of between 12 and 42 days taken for consultation to occur. <p>Case Study A13.4:</p> <ul style="list-style-type: none"> 110 days for one relevant business area to be notified (and may not have been notified by FOI team). 48 days between date of last response to external consultation and decision being prepared. <p>Case Study A13.5: 13 days taken to prepare draft decision.</p>
2.	Delay within business areas of the Department without external contributing reason.	10	<p>Case Study A1: An internal consultation after the decision had been made and was ready to be released took 47 days (without any email follow up from FOI team for 45 days).</p> <p>Case Study A2: Scope of FOI request not read correctly by appropriate branch until 37 days after request received.</p> <p>Case Study A3:</p> <ul style="list-style-type: none"> [Re initial decision.] Potential documents within scope of the FOI request not identified until after the statutory processing period expired (initial documents provided were not correct). [Re revised decision.] Copy of relevant document was not provided to the FOI team for 55 days. 53 days taken from date that document was identified until a draft decision was prepared.

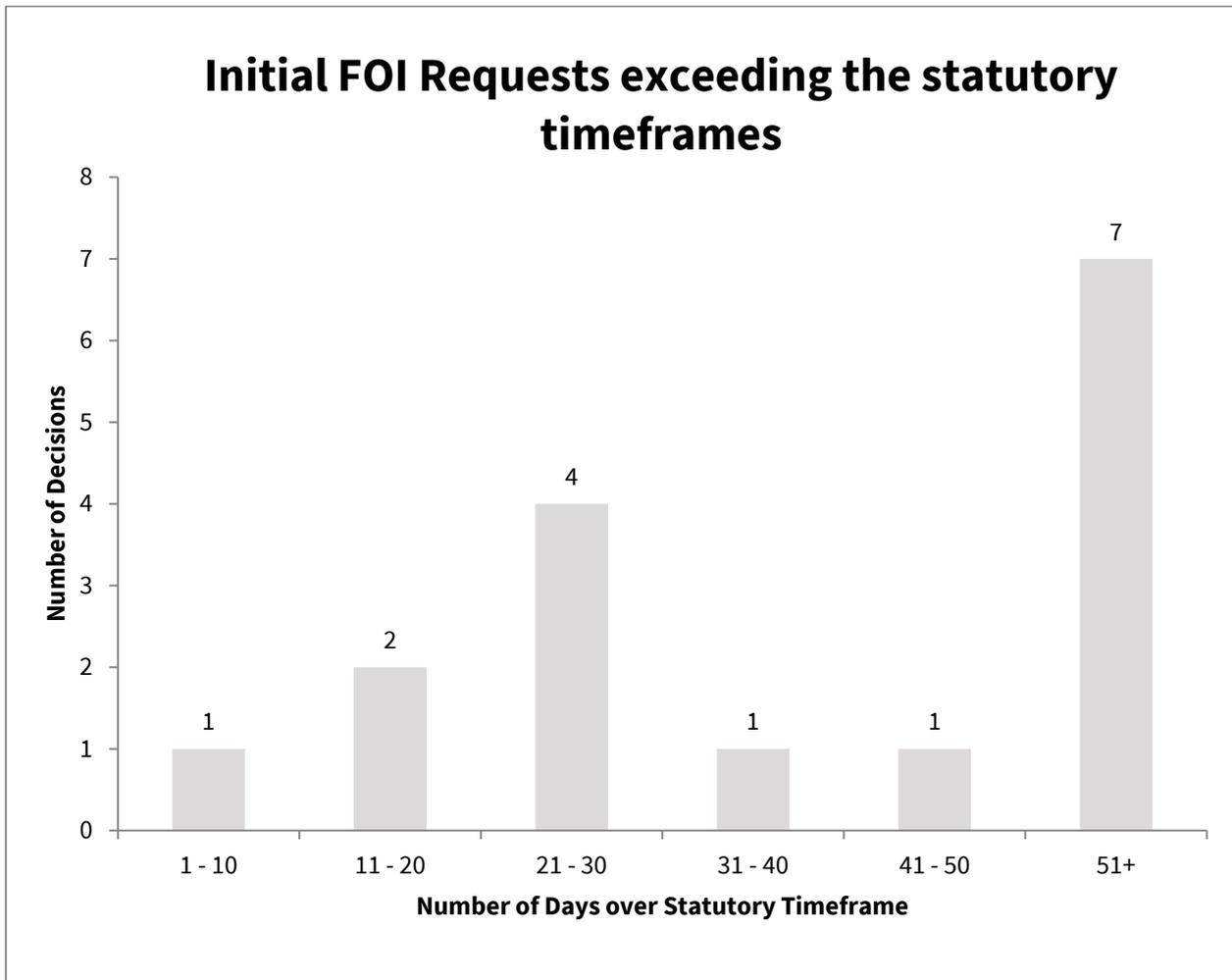
No.	Contributing factor	Number of Case Studies impacted	Case Studies
			<p>Case Study A8: 43 days for information to be provided to FOI team to support identified issue.</p> <p>Case Study A10: An internal consultation took 36 days (without any formal follow up from FOI team).</p> <p>Case Study A12:</p> <ul style="list-style-type: none"> • [Re initial request.] 120 days for documents to be provided following initial request (4 formal follow ups in that period). • [Re internal review.] 19 days taken to identify further documents relevant to request. <p>Case Study A13.1: Delays responding to internal consultation by 5 areas within the Department for between 31 and 44 days (in 3 cases, only one formal follow up and in the final case, 2 follow ups).</p> <p>Case Study A13.3: Some internal Division consultation not commenced until 94 days after receipt of FOI request.</p> <p>Case Study A13.4: Delays arising from relevant business area inexperience (including delays to commencement of external consultation as a result of requests from business area).</p> <p>Case Study A13.5: 20 days to respond to recommendations from FOI team (no follow up by FOI team in that time, notwithstanding that the period included the expiration of the statutory decision period).</p>
3.	Delay in commencement of consultation with external parties (whether other agencies or otherwise).	6	<p>Case Study A4: 13 days taken to contact external party for consultation.</p> <p>Case Study A5: 97 days taken for determination to be made that third party consultation required.</p> <p>Case Study A9:</p> <ul style="list-style-type: none"> • 90 days taken to initiate commencement of third party consultation.

No.	Contributing factor	Number of Case Studies impacted	Case Studies
			<ul style="list-style-type: none"> • 190 days taken to determine that consultation with one third party was required. • Initial consultations with third parties did not, in each case, identify all of the documents in respect of which consultation was required. In addition in some cases consultation occurred when this was not necessary. <p>Case Study A13.1: 43 days taken to commence consultation with third parties after documents received.</p> <p>Case Study A13.3: External consultation not commenced until 116 days after receipt of FOI request.</p> <p>Case Study A13.4: Between 39 and 52 days for consultation to commence with identified third parties.</p>
4.	Delay caused by FOI Alert process.	6	<p>Case Study A3: [Re revised decision.] 17 days taken for FOI Alert process after decision signed.</p> <p>Case Study A4: FOI Alert process resulted in 8 day delay in release of decision to applicant.</p> <p>Case Study A5: Not entirely caused by FOI Alert process but there was significant internal consultation between after the decision was signed and before it was released (24 day delay).</p> <p>Case Study A10: FOI Alert process resulted in 7 day delay in release of decision to applicant.</p> <p>Case Study A13.3: FOI Alert process resulted in 11 day delay in release of decision to applicant.</p> <p>Case Study A13.4: FOI Alert process resulted in 7 day delay in release of decision to applicant.</p>
5.	Excessive time period for appointing final decision maker (where appears to have contributed to	2	<p>Case Study A5: 68 days taken to appoint a decision maker (though not primary cause of delay).</p> <p>Case Study A13.3: Decision maker not finally appointed for 139 days after receipt of FOI request (formal escalation of issue by FOI team did not occur until 138 days after receipt of FOI request).</p>

No.	Contributing factor	Number of Case Studies impacted	Case Studies
	delay in making decision).		
6.	Delay caused by third party not responding to consultation.	2	<p>Case Study A4: 33 days for initial response to be received from third party (no escalation sought by FOI team until 27 days after initial contact made).</p> <p>Case Study A9: 59 days for response to a third party consultation.</p>
7.	Delay caused by confusion as to requirements for compliance with FOI Act.	1	<p>Case Study A5: 72 days taken to determine legal advice required. Second set of legal advice also sought which appears to have contributed to 24 day delay between decision being signed and releasing decision.</p>

Table A1 shows the periods by which the processing of each Initial FOI Request by the Department exceeded the statutory processing periods.

Table A1: Time periods for processing Initial FOI Requests⁷⁸



⁷⁸ Note that 4 Case Studies considered as part of the 13 Initial Complaints were the subject of internal reviews or reconsiderations. In one Case Study, the Initial Complaint related to the review/reconsideration not the initial decision, which was made within the statutory processing period. The table shows the statutory processing periods for only the initial decisions which were not made in time, meaning that it shows 16 decisions in total.

Primary contributing factors to failure to meet statutory time frames (Additional FOI Requests)

No.	Contributing factor	Number of Case Studies impacted	Case Study
1.	Delay within business areas of the Department without external contributing reason.	10	<p>Case Study B2:</p> <ul style="list-style-type: none"> • 19 days between the date the FOI request notified and relevant business area providing a substantive response. • 20 days between first substantive response and date that the FOI Section provided a draft of the decision to the business area. This appears to have resulting from a delay in the business area providing documents within the scope of the FOI request. <p>Case Study B5: 20 days for business area to make a preliminary identification of the documents within the scope of the FOI request (3 follow ups by the FOI Section in that period). Documents not located for 48 days from date of FOI request.</p> <p>Case Study B8: Relevant business areas delays in assisting in searching for documents (including business area in which decision maker located not undertaking searches itself) within scope of the FOI request meant that it took 22 days from the date of the FOI request to locate relevant documents.</p> <p>Case Study B11: First consultation by business area with some relevant teams within the Department did not occur until day 96 (and after a version of the decision was signed). This resulted in additional documents being identified and an additional 6 day delay in the decision being finalised and signed.</p> <p>Case Study B17:</p> <ul style="list-style-type: none"> • 29 days for business area to provide FOI Section with documents within scope and to request redactions. • 50 days taken for all relevant business areas to comment on proposed redactions.

No.	Contributing factor	Number of Case Studies impacted	Case Study
			<p>Case Study B18:</p> <ul style="list-style-type: none"> • 18 days for business area to seek clarification on scope (no follow up by FOI Section in that time). • Documents within scope still being provided to the FOI Section 28, 30 and 42 days after first being requested. • Business area asked for legal advice for the first time 7 days after the expiry of the statutory processing period. <p>Case Study B19: 27 days to consider draft redactions.</p> <p>Case Study B20: 12 days to provide response on documents within scope after scope of FOI request clarified.</p> <p>Case Study B22: 51 days from business areas first being consulted for business areas to determine that the document the subject of the FOI request had already been released in redacted form under an Order of Production of Documents by the Senate. [Note there were other delays in this decision but this was a primary delay.]</p> <p>Case Study B23: Decision maker takes 18 days to respond on request for information from FOI Section (no follow up from FOI Section).</p>
2.	Delay within FOI Section without external contributing reason.	9	<p>Case Study B4:</p> <ul style="list-style-type: none"> • No action taken at all to locate any relevant documents until 63 days after the date of the FOI request. • 35 days between date documents were identified (2 only) and date draft decision was provided to decision maker. <p>Case Study B10: 59 days between date documents provided by business area to FOI Section before FOI Section responds to decision maker with a draft of the decision for review.</p>

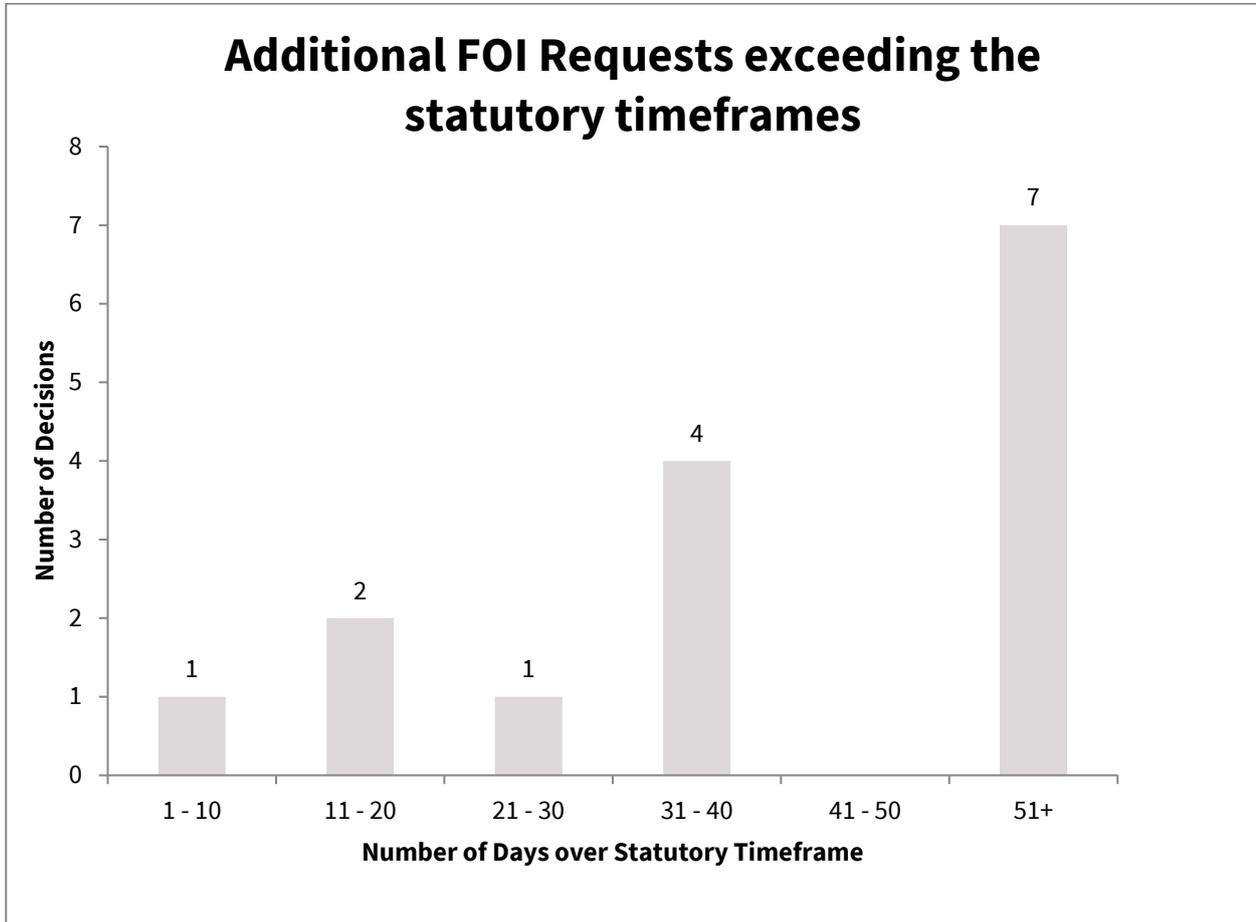
No.	Contributing factor	Number of Case Studies impacted	Case Study
			<p>Case Study B11: 63 days for FOI Section to draft decision following provision of documents by business area.</p> <p>Case Study B14: 21 days taken to locate documents within scope (by FOI Section).</p> <p>Case Study B17: 56 days taken for FOI Section to prepare proposed redactions following receipt of documents within scope of the FOI request from the business area and requests for redactions.</p> <p>Case Study B19:</p> <ul style="list-style-type: none"> • 55 days to provide redacted documents after documents within scope provided by business area. • 81 days to provide draft of decision after documents within scope provided by business area. <p>Case Study B20: 11 days between date applicant provided clarification to the FOI Section and the date the FOI Section notified the business area.</p> <p>Case Study B21: 50 days taken for FOI Section to provide draft decision after document in scope identified. (Includes 26 days for FOI Section to first request a business area to identify issues with release and noting that it took 35 days from date of receipt of request for correct business area to consult with regarding the request.)</p> <p>Case Study B23:</p> <ul style="list-style-type: none"> • 9 days from date of receipt of documents from business area before business area notified that external consultation would be required. • 10 days to draft decision after all consultation completed.
3.	Delay caused by FOI Alert process.	5	<p>Case Study B3: 8 day period for FOI Alert process after decision drafted and input provided by decision maker.</p> <p>Case Study B5: 7 day period to FOI Alert process.</p> <p>Case Study B6: 6 day delay between the date the decision was signed and date that decision released.</p>

No.	Contributing factor	Number of Case Studies impacted	Case Study
			<p>Case Study B9: Delay of 8 days between date decision signed and provision of the decision to the applicant.</p> <p>Case Study B21: Delay of 11 days between date decision signed and provision of the decision to the applicant.</p>
4.	Delay in commencement of consultation with external parties (whether other agencies or otherwise).	2	<p>Case Study B14: 11 days after documents within scope were located to commence consultation.</p> <p>Case Study B24: 34 days taken to commence consultation with third parties after need for that consultation identified.</p>
5.	Excessive time period for appointing final decision maker (where appears to have contributed to delay in making decision).	1	<p>Case Study B11: 36 days taken for business area to appoint a decision maker following request by email (only one follow up by FOI Section).</p>
6.	Delay caused by third party not responding to consultation.	1	<p>Case Study B23: One consultation with third party took 29 days.</p>

Note: Case Studies B1, B3, B7, B12, B13, B15 and B16 are not included in this table. The primary decision for Case Study B1 not made by the Department. Case Study B7 is not included as that request was deemed to have been withdrawn and Case Studies B3, B12, B13, B15 and B16 were made within the statutory processing period. Case Studies B6 and B9 have been included as these demonstrate the time between the decision being made and notification to applicant. The same applies to Table A2.

Table A2 shows the periods by which the processing of each Additional FOI Request exceeded the statutory processing periods.

Table A2: Time periods for Additional FOI Requests



Attachment B: Material provided by the Department

1. Chronologies prepared by the Department in respect of each of the Case Studies for the Initial FOI Requests (numbered A1 to A 17).
2. Letter dated 17 November 2019 from the Department to the OAIC.
3. Letter dated 25 November 2019 from the Department to the OAIC.
4. Department document entitled 'Freedom of Information – Policy Statement' dated 24 October 2018. Document ID (PPN) SM-3357.
5. Department document entitled 'Preparing a document with redactions – Standard Operating Procedure' dated 22 November 2019.
6. Department document entitled 'Registration of National Office FOI requests – Standard Operating Procedure' dated 22 November 2019.
7. Department document entitled 'FOI Help Card – Resolve – Create New FOI Request' (undated).
8. Department document entitled 'Freedom of Information 30-day timeline for significant/sensitive FOI requests' (undated).
9. Document entitled 'Checklist for FOI decision maker' (undated).
10. Department of Immigration and Citizenship document entitled 'Resolve – Extension of Time' (undated).
11. Document entitled 'FOI checklist: search/retrieval of relevant documents' (undated).
12. Department document entitled 'Records Management Policy Statement' dated 10 October 2018. Document ID (PPN) TI-1094.
13. Department document entitled 'Correct use of the Department's Information Storage Systems and Network Drives – Policy Statement' dated 6 February 2019. Document ID (PPN) TI-5981.
14. Letter dated 8 January 2020 from the Department to the OAIC.
15. Letter dated 4 September 2020 from the Department to the OAIC.
16. Department document entitled 'Accountable Authority Instructions: Resource Management Framework 2020-21' dated 21 January 2020.
17. Document entitled 'Freedom of Information (FOI) Sensitive Request Analysis: Final Report' prepared by Synergy Group Australia Pty Ltd for the Department of Immigration and Border Protection dated 26 September 2017.
18. Correspondence folders for Case Studies A1 to A17, as provided on 9 September 2020.
19. Letter dated 18 September 2020 from the Department to the OAIC.
20. Correspondence folders for Case Studies B2 to B24, as provided on 18 September 2020.

21. Chronologies prepared by the Department in respect of each of the Case Studies for the Additional FOI Requests (numbered B2 to B24), as provided on 18 September 2020.
22. Letter dated 22 September 2020 from the Department to the OAIC.
23. Letter dated 24 September 2020 from the Department to the OAIC.
24. Correspondence folders for Case Studies A1 to A17 and B1 to B24, as provided on 25 September 2020.

Attachment C: Department response to investigation findings



Australian Government
Department of Home Affairs

SECRETARY

OSEC EC21-000067

Ms Angelene Falk
Australian Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Dear Ms Falk

Thank you for your Commissioner-initiated investigation (CII) report, *Department of Home Affairs' compliance with the statutory processing requirements under the Freedom of Information Act 1982 in relation to requests for non-personal information*. The Department of Home Affairs accepts, and will implement, all of the recommendations in the report through its continuous improvement program for FOI.

CII recommendations

Recommendation 1: The Department appoint an Information Champion.

The Department will formally appoint First Assistant Secretary, Data Division to be the Department's Information Champion. This position is already supported by the Department's information governance board, the Data Governance Council, and regularly reports to senior executives and the Department's Operations Committee on the Department's performance under the Freedom of Information Act 1982 (FOI Act).

Recommendation 2: The Department prepare and implement an operational manual for processing FOI requests for non-personal information to be approved by the Information Champion.

The Department is reviewing relevant policies, procedural instructions and guidance under its Policy and Procedural Control Framework to better meet its obligations under the FOI Act. It will address the key areas specified in the CII report through the review and will revise and consolidate these documents into a new, easy to use operational manual.

Recommendation 3: The Department undertake and complete training for FOI section staff and other staff, and ensure that online training in processing FOI requests for non-personal information is available to all staff of the Department.

The Department will provide the necessary training to FOI section staff and other staff (both decision-makers and those that assist decision-makers). The Department will also finalise development of its online overview training in processing FOI requests and make it available to all staff through its learning and development platform.

Recommendation 4: 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 in this CII.

The Department will include the audit in its 2021-22 internal audit program.

4 National Circuit Barton ACT 2600
PO Box 25 Belconnen ACT 2616 • Telephone: 02 6264 1111 • www.homeaffairs.gov.au

Improvements underway

As noted in our letter to you dated 22 September 2020, the Department has run a continuous improvement program since October 2019 to increase its productivity in finalising information requests under the FOI Act. The program has included publishing frequently-requested statistics, enhancing internal management reporting to facilitate greater oversight, and other improvements to practice. As a result of these reforms, the Department finalised double the volume of requests for non-personal information in 2019-20 than it did in 2018-19 (1789 compared to 870). So far in 2020-21 (to 30 November 2020) the Department has again doubled the volume of requests for non-personal information it finalised compared to the corresponding period in 2019-20 (995 compared to 492) and the proportion of those finalised within statutory timeframes has risen to 70 per cent. This is 30 percentage points higher than the proportion finalised in statutory timeframes in 2019-20.

The Department remains committed to ongoing improvements in our FOI administrative and governance processes to enable us to effectively manage, within current resourcing levels, a large and growing volume of FOI requests. And we will continue to do so in a way that seeks to balance our obligations under the FOI Act with our responsibilities to deliver our extensive legislated functions, which are critical for the safety and security of the Australian public and the prosperity of Australia.

The Department accepts that your Notice does not contain matters of the kind mentioned in s89C(2) of the FOI Act and that your report and this response will be published on your website.

Thank you again for your thorough CII report and for the recommendations to improve the Department's compliance with statutory timeframes for non-personal information requests under the FOI Act. We will work closely with your team over the coming months as we implement these reforms.

Yours sincerely



Michael Pezzullo AO
Secretary
Department of Home Affairs

 January 2021

Attachment D: Glossary

Terms defined in the FOI Act have the same meaning when used in this report and:

Additional FOI Requests means the 24 FOI requests for non-personal information submitted to the Department during the period March 2017 to November 2019 which, in addition to the Initial FOI Requests, were considered in this CII, also referred to in this report as Case Studies B1 to B24.

Better Practice Guide means the “*Better Practice Guide for Commonwealth agencies administering the Freedom of Information Act 1982*” issued by Dr Allan Hawke in 2013 as an appendix to his “*Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010*”⁷⁹.

Case Study means each individual Initial FOI Request and each individual Additional FOI Request.

CII means a Commissioner initiated investigation carried out under section 69(2) of the FOI Act.

Decision Maker Checklist means the document entitled ‘Checklist for FOI decision maker’ (undated), which is a checklist that is able to be used by decision makers in processing an FOI request.

Department means the Department of Home Affairs.

EDRMS means an electronic document and records management system.

Extension of Time Document means the Department of Immigration and Citizenship document entitled ‘Resolve – Extension of Time’ (undated), which is a procedural document that sets out the administrative processes for inputting extension of time requests in the Department’s workflow tool for processing FOI requests.

FOI Act means the Freedom of Information Act 1982 (Cth).

FOI Alert process means the process of the Department to alert Senior Executive Service officers and Ministers’ offices of documents to be released under the FOI Act, as provided for in the FOI Timeline.

FOI Documents means:

- a. the document entitled “Freedom of Information – Policy Statement” dated 24 October 2018. Document ID (PPN) SM-3357, which sets out high-level guidance and principles, and outlines at a high level the statutory responsibilities of the Department under the FOI Act as well as the accountability and responsibilities of the Department officers;
- b. the document entitled “Preparing a document with redactions – Standard Operating Procedure” dated 22 November 2019, which is a procedural document that sets out the administrative processes for redacting documents to be released under the FOI Act;
- c. the document entitled “Registration of National Office FOI requests – Standard Operating Procedure” dated 22 November 2019, which is a procedural document that sets out the administrative processes for registered FOI requests for non-personal information;

⁷⁹ Available here: <https://www.ag.gov.au/rights-and-protections/consultations/review-freedom-information-laws>

- d. the document entitled “FOI Help Card – Resolve – Create New FOI Request” (undated). This is a procedural document that sets out the administrative processes for setting up a new FOI request in the Department’s Resolve system, which is largely a subset of the information provided in the document referred to in paragraph c. of this definition;
- e. the FOI Timeline;
- f. the Decision Maker Checklist;
- g. the Extension of Time Document; and
- h. the Search/Retrieval Checklist.

FOI Guidelines means the OIAC’s Guidelines issued under section 93A of the FOI Act and available here: <https://www.oaic.gov.au/assets/freedom-of-information/guidance-and-advice/foi-guidelines/foi-guidelines-combined-june-2020.pdf>

FOI request means a request for access made under and in accordance with the FOI Act.

FOI Timeline means the document entitled “Freedom of Information 30-day timeline for significant/sensitive FOI requests” (undated), which sets out the roles and responsibilities of the Department’s FOI Section, the business area and the decision maker for FOI requests that are considered to be significant or sensitive, which is defined as requests made by journalists, Members of Parliament or requests which are sensitive by virtue of the subject matter.

IC review means a review of a decision of an agency or Minister regarding an FOI request undertaken by me under Part VII of the FOI Act.

ICT Policy Statement means the document entitled “Correct Use of the Department’s Information Storage Systems and Network Drives” as provided by the Department to the OIAC on 25 November 2019.

Initial Complaints means the 13 individual complaints made under section 70 of the FOI Act relating to the Department’s compliance with the statutory processing periods for FOI requests relating to non-personal information, investigated in accordance with my notice of 25 October 2019.

Initial FOI Requests means the 17 different FOI requests for non-personal information that were the subject of the Initial Complaints, also referred to in this report as Case Studies A1 to A17.

Initial Information Requests means the requests for information made to the Department made in my notice of 25 October 2019.

Notice to Produce means the notice to produce certain additional documents and information that I issued to the Department under 79(3) of the FOI Act in connection with this CII on 21 August 2020.

OAIC means the Office of the Australian Information Commissioner.

Records Management Policy Statement means the document entitled “Records Management Policy Statement” as provided by the Department to the OIAC on 25 November 2019.

Search/Retrieval Checklist means the Document entitled 'FOI checklist: search/retrieval of relevant documents' (undated), which is a checklist that business areas are able to use to assist in identifying documents that may be within the scope of an FOI request.

Synergy Review means the review of 30 FOI requests undertaken by Synergy at the request of the Department in 2016.