



Direction as to certain procedures to be followed by agencies and ministers in IC reviews

This direction is given under s 55(2)(e)(i) of the *Freedom of Information Act 1982*.

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Part 1: About this Direction

Application

- 1.1 This Direction applies to applications to the Information Commissioner for a review of a decision under the *Freedom of Information Act 1982 (Cth)* (FOI Act).
- 1.2 This Direction has effect from 1 July 2024.
- 1.3 This Direction is arranged in Parts. The applications to which a Part applies, and the extent to which the Part applies to those applications, is stated at the commencement of the Part.
- 1.4 This Direction applies to the extent that it is not inconsistent with a provision of the FOI Act, another enactment or a specific direction made in a particular application to the Information Commissioner (IC) for a review of a decision under the FOI Act (IC review).¹
- 1.5 Further information relating to the IC review process is published on the OAIC's website. In particular, Part 10 (Reviews by the Information Commissioner) of the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines) describes the principles that inform the IC's approach to IC reviews. Agencies and ministers must have regard to the FOI Guidelines when performing a function or exercising a power under the FOI Act.
- 1.6 This Direction is not a legislative instrument.²

Interpretation

- 1.7 In this Direction:

Application means an application to the Information Commissioner for a review of a decision under the FOI Act.

IC review means Information Commissioner review.

Part 2: Matters applying to all applications

- 2.1 This Part applies to all IC review applications.

General principles

- 2.2 Part VII of the FOI Act sets out the system for IC review.
- 2.3 In relation to each IC review, the IC must:

¹ Section 55(2)(e)(ii) of the FOI Act.

² Section 55(3) of the FOI Act.

- conduct the IC review with as little formality and technicality as is possible,
- ensure that each party is given a reasonable opportunity to present their case, and
- conduct the IC review in as timely a manner as possible.³

2.4 The IC review procedure is designed to be an informal, cost-effective, timely, responsive and proportionate procedure for conducting external merits review of decisions by agencies and ministers.⁴

2.5 The IC may conduct a review as they consider appropriate.⁵ In general, IC reviews will be conducted on the papers unless there are unusual circumstances to warrant a hearing.⁶ The IC may:

- make a direction in a particular IC review that may depart from the processes and timeframes set out in this Direction
- expedite and finalise an application or cohorts of applications, ahead of existing applications on hand.

Onus on agencies and ministers: review of access refusal decisions

2.6 In an IC review involving the review of an access refusal decision, the agency or minister has the onus of establishing that the decision is justified or that the IC should give a decision adverse to the IC review applicant (s 55D(1)). The agency or minister must also use their best endeavours to assist the IC to make his or her decision in relation to the IC review.⁷

2.7 The agency or minister must provide the IC and the IC review applicant with documents and information within the timeframes specified in this Direction. Failure to provide relevant documents and information may result in a decision being made that is adverse to an agency or minister. The OAIC expects that applicants and agencies will engage with the IC review process, with respect and courtesy.

Timely provision of information to IC and IC review applicant

2.8 Documents and information relevant to the IC review must be:

- identified as early as possible in the IC review process
- provided to the IC and to the IC review applicant in accordance with this Direction and, in circumstances of a specific direction with the direction made in that IC review.

2.9 The documents and information provided in response to the IC's direction or request through preliminary inquiries (s 54V), notice of an IC review (s 54Z) or through formal information gathering powers (Division 8 of the FOI Act), will assist the IC to determine whether to

³ Section 55(4) of the FOI Act.

⁴ See *FOI Guidelines* at [10.15] and [10.25].

⁵ Section 55 of the FOI Act.

⁶ See *FOI Guidelines* at [10.20] and [10.63].

⁷ Section 55DA of the FOI Act.

conduct a review, continue to conduct a review or proceed to an IC review decision under s 55K of the FOI Act based on the evidence before them.

- 2.10 Agencies and ministers must provide their response within the timeframe set out in the notice, unless an extension of time has been sought and granted. The IC considers that it will only be in extenuating circumstances that any further extension to time will be granted. If an agency or minister requires an extension of time to respond to a notice of IC review, the agency or minister must make a request in writing to the IC with supporting evidence of the exceptional circumstances that should be considered prior to the due date.
- 2.11 Where an agency or minister no longer contends that material is exempt, the IC requests that an agency or minister:
- make a revised decision under s 55G which facilitates the prompt release of further material to the applicant where all material will be released in full within 15 business days, or
 - advise the OAIC that it no longer contends that the material exempt in part within 15 business days and the IC review will proceed to a decision under s 55K of the FOI Act.

Part 3: General procedure for IC review of access refusal and access grant decisions

- 3.1 This Part applies to all IC review applications, other than applications for IC review of the decisions set out in Part 4 of this Direction.

Preliminary inquiries

- 3.2 Before commencing an IC review, the IC may make inquiries for the purpose of determining whether or not to undertake a review (s 54V).
- 3.3 An agency or minister will be provided with **5 business days** to respond to preliminary inquiries.

Notification of IC review

- 3.4 The IC will notify the agency or minister of the commencement of an IC review under s 54Z of the FOI Act (s 54Z notice).

Request for information

- 3.5 In general, the s 54Z notification will include the following:
- a copy of the IC review application
 - a request to engage, or make reasonable attempts to engage with, the IC review applicant during the IC review, for the purpose of genuinely attempting to resolve or narrow the issues in dispute and to provide information that demonstrates the engagement or reasonable attempts at engagement (see paragraphs [3.8]– [3.10])

- an informal request to provide documents and information (s 55(2)(d)) as set out in paragraph [3.16], to the IC and the FOI applicant, which includes:
 - a copy of the FOI request
 - communication between the applicant and the agency or minister that modifies the original request
 - the documents at issue, or sufficient details of the document to identify the nature of those documents where relevant
 - submissions in response to the issues raised in the IC review application (see paragraphs [3.23] – [3.25]).

3.6 An agency or minister will generally be provided with **30 business days** to respond to a request for information issued under s 54Z .

Statement of reasons

3.7 The agency or minister’s statement of reasons must be adequate.⁸ Where the IC believes that the statement of reasons is inadequate, or has not been provided, the IC may require the decision maker to provide to the IC review applicant and the IC an adequate statement of reasons conforming with the requirement under s 26(1).

Engagement between parties

3.8 The s 54Z notice will also require the agency or minister to provide information regarding engagement, and/or reasonable attempts to engage with, the IC review applicant to resolve or narrow the issues in dispute in the IC review.

Method of engagement

3.9 Engagement with IC review applicants may comprise a telephone or video conference between the applicant and the agency or minister. The agency or minister will be responsible for contacting the applicant and making the necessary arrangements for the engagement process. The OAIC will not be involved in making such arrangements or in attending the telephone or video conference.

3.10 IC review applicants may express a preference to engage with the agency or minister by means other than telephone or video conference. In these cases, the engagement process may be undertaken by other means, such as in writing to the applicant, to attempt to resolve the issue between the parties or narrow the issues in dispute.

Demonstration of engagement or attempts to engage

3.11 Agencies and ministers must provide the IC with information to demonstrate the action(s) they have taken to engage with the IC review applicant to resolve or narrow the issues in dispute in the IC review, which may include:

⁸ Section 55E of the FOI Act.

- that the agency or minister has taken genuine and reasonable steps to contact the IC review applicant, including any written correspondence issued to the applicant and any file notes of telephone calls made to the applicant
- that the applicant has expressed a preference for the engagement to be undertaken other than by video or telephone conference (where applicable)
- communications and any correspondence with the IC review applicant that demonstrates the attempts made by the parties to resolve the issues in dispute, including any proposals made by the agency or minister to resolve the IC review informally, and any response from the applicant
- the outcome of the engagement between the agency or minister and the IC review applicant, including if the applicant has notified the agency or minister in writing that their IC review application is withdrawn as a result of the agency or minister's contact with the applicant.

3.12 The IC has published a checklist to assist agencies and ministers provide relevant information relating to the agency or minister's engagement with the applicant during the IC review: see [Information Commissioner Reviews](#).

3.13 The IC will advise the agency or minister if they consider that the agency or minister should undertake further engagement with the applicant during the IC review.

Documents and information to be provided by agency or minister

3.14 The IC will generally request particular documents and information to address issues specific to the scope of an IC review as set out in the **Table A**.

Table A: Information to be provided the agency or minister in relation to the scope of the IC review

Scope of IC review	Information to be provided by agency or minister
Access refusal - Exemptions (Part IV Divisions 2 and 3, except ss 33, 34, 45A)	<ul style="list-style-type: none"> • The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request • Copies of correspondence including file notes of relevant telephone conversations between the respondent and anyone consulted • A marked up, unredacted copy of the documents at issue where material claimed to be exempt is highlighted with reference to the exemptions applied • Submissions in support of the exemptions claimed, including the application of s 11B of the FOI Act in relation to conditional exemptions, in the form prescribed by the Information Commissioner: see Information Commissioner Reviews • If any third parties are notified of the IC review, a copy of the written notifications under s 54P

Scope of IC review	Information to be provided by agency or minister
Access refusal – Exemptions (Part IV Division 2, ss 33, 34, 45A)	<ul style="list-style-type: none"> • The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request • Copies of correspondence including file notes of relevant telephone conversations between the respondent and anyone consulted • Evidence, on affidavit or otherwise, including by way of submissions, that documents are exempt under ss 33, 34, or 45A • If the IC commenced review on or after 12 August 2023, and Australian Federal Police or Australian Criminal Intelligence Commission are the respondent agency, if relevant, submissions that the document(s) subject to IC review relate directly or indirectly to their intelligence functions and which intelligence function or functions the document relates (as identified in s 3(1) of the <i>Inspector-General of Intelligence and Security Act 1986</i>) • If any third parties are notified of the IC review, a copy of the written notifications under s 54P • A statement identifying whether the document(s) subject to IC review and which are claimed to be exempt under s 33 relate directly or indirectly to the intelligence functions of the ACIC and the AFP. The statement should provide information as to which intelligence function or functions the document relates (as identified in s 3(1) of the <i>Inspector-General of Intelligence and Security Act 1986</i>)
Access refusal –FOI request does not fall within FOI Act: Part I and ss 4, 5,6, 6A, 7, 12, 20 and Schedules to the FOI Act	<ul style="list-style-type: none"> • The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request • Information about the nature of the document in question • The respondent’s response to the FOI applicant • Any submissions in support of the respondent’s decision that the FOI request does not fall within the FOI Act: see Information Commissioner Reviews
Access grant (Part IV Divisions 2 and 3 ss 47, 47F and 47G)	<ul style="list-style-type: none"> • The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request • Copies of correspondence with the third party • The documents in dispute • The reasons for the decision to release the documents despite the third party’s objections
Access refusal – Charges (Part III, s 29)	<ul style="list-style-type: none"> • The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request • A copy of the preliminary estimate of charge notice sent to the FOI applicant and the FOI applicant’s response • A copy of the charges notice sent to the FOI applicant • Explanation as to why the charge was imposed or how it was calculated, including any documentary evidence which supports the respondent’s calculation of the charge • Submissions in support of the respondent’s decision to impose a charge or in the alternative, a revised decision under s 55G of the FOI Act waiving the charge in full: Information Commissioner Reviews
Access refusal – Refusal to amend or annotate a record of personal information (Part IV)	<ul style="list-style-type: none"> • A copy of the documents that were given to the FOI applicant • The reasons why the respondent considers that no amendment should be made under s 50, or the reasons why the requested annotation of records was not made under s 51 • Submissions in support of the respondent’s decision to refuse to amend or annotate a record of personal information: see Information Commissioner Reviews

Scope of IC review	Information to be provided by agency or minister
Access refusal – Practical refusal (Part III, s 24)	<ul style="list-style-type: none"> • The original FOI request and any correspondence with the FOI applicant that modifies the scope of the FOI request • Copies of any correspondence including file notes of telephone conversations relating to the respondent’s request consultation process, including a copy of the letter sent to the FOI applicant and the FOI applicant’s response (if any) • Records that demonstrate the number of documents and/or pages encompassed by the FOI request, including but not limited to notes of any searches conducted and consultations with relevant staff members • An estimate of the number of hours of processing time involved and a breakdown of this time to demonstrate how the time was estimated • Evidence of document sampling if undertaken • The names and contact details of anyone who was consulted by the respondent, formally under ss 15(7), 26A or 27A, or informally (including consultation with other Australian Government agencies) • Submissions in support of the respondent’s decision in the form prescribed by the OAI: see Information Commissioner Reviews
Access refusal – information as to existence of certain documents (Part III s 25)	<ul style="list-style-type: none"> • Submissions in support of the respondent’s decision to refuse access under s 25 (relevant documents will not be requested in the first instance): see Information Commissioner Reviews.

Format of documents at issue

3.15 In providing the IC with a marked up, un-redacted version of the documents at issue, agencies or ministers must provide electronic documents that identify the parts of the document claimed to be exempt, but allows the OAI to view the exempt matter. Agencies and ministers must ensure that all redactions pursuant to an exemption, or deletions on the basis of relevance pursuant to s 22(1)(a)(ii) of the FOI Act, are clearly marked with reference to the relevant provisions of the FOI Act that the redactions or deletions are made under. A schedule of marked up documents must also be included.

Production of documents at issue

3.16 The IC’s request for documents and information may initially be informal (s 55(2)(d)).

Requesting documents under specific provisions

3.17 The IC may also require the production of documents and information under specific provisions of the FOI Act:

- Section 55U(3) of the FOI Act provides that, if the IC is not satisfied by evidence on affidavit or otherwise that a document is an exempt document under sections 33, 34 or 45A of the FOI Act, the IC may require the document to be produced for examination.
- Section 55T(2) of the FOI Act provides that, for the purposes of deciding that a document is an exempt document, the IC may require the document to be produced.

- Section 55R(3) of the FOI Act provides that the IC can issue a notice requiring a person to produce information and documents if the IC reasonably believes it is relevant to an IC review.

3.18 Where an agency or minister fails to provide information and documents, including the documents at issue, within the initial or extended timeframe, or requests another extension, the IC may proceed to require the provision of information and the production of documents pursuant to s 55R of the FOI Act. The IC will generally provide **10 business days** for agencies and ministers to respond to these notices. Failure to comply with a notice to produce is an offence punishable by six months imprisonment (s 55R(5)).

Requests for inspection

3.19 Inspection of the documents at issue by the IC in response to a request for production will only be considered in very limited situations where the agency or minister can demonstrate that the circumstances warrant inspection rather than the direct production of copies of the marked up documents. What constitutes these very limited circumstances is not prescriptive and will be determined on a case-by-case basis. The onus is on the requesting agency or minister to justify that circumstances exist that warrant inspection.

3.20 The IC considers that inspection will not be warranted where the documents at issue are subject to conditional exemptions. The IC considers that inspection may be appropriate in some circumstances where the documents at issue are subject to a national security, Cabinet or Parliamentary Budget Office exemption claim (ss 33, 34 and 45A of the FOI Act). However, the requesting agency or minister must satisfy the IC that the circumstances warrant inspection.⁹

3.21 If the IC agrees to an agency's or minister's request for inspection, the agency or minister will be required to undertake all necessary arrangements to facilitate the inspection. Unless otherwise agreed, this will occur at the IC's office.

3.22 If an agency or minister is of the view that there are circumstances that justify inspection, the IC will require the agency or minister to provide a written request for inspection together with supporting reasons prior to the due date in the s 54Z notice of IC review.

Submissions

Provision of submissions to the applicant

3.23 In seeking submissions from agencies and ministers in support of the IC reviewable decision, the IC will require the agency or minister to send their submissions to the applicant at the same time as they are sent to the IC. The applicant will then have the opportunity to make submissions in response. The applicant will be required to send their submissions to the agency or minister at the same time as they are sent to the IC.

3.24 Agencies and ministers should be aware that if they do not make submissions when an opportunity to do so has been provided, the review may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions.

⁹ The OAIC is able to receive secure electronic transmission of documents. For more information contact the OAIC.

3.25 Agencies and ministers should not expect the opportunity for further submissions. Any request for extensions of time should only be made where exceptional circumstances can be demonstrated. This is because extensions of time will only be granted in exceptional circumstances.

Requests to make submissions in confidence

3.26 The IC will not accept submissions in confidence without a prior request. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue.

3.27 Where the IC accepts a submission in confidence, agencies and ministers must also provide a version of the submission to the applicant and a copy to the OAIC. The OAIC acts under a duty to provide procedural fairness. Therefore the version of the in confidence submissions provided to the applicant and the OAIC must clearly identify the issues relevant to the IC review and enable the IC review applicant to respond.¹⁰

Immunity

3.28 Section 55Z of the FOI Act provides immunity to a person from civil proceedings and penalties if the person gives information, produces a document or answers a question in good faith for the purposes of an IC review.

Review of information provided in response to s 54Z

3.29 The IC will generally proceed with the IC review on the basis of the evidence provided in response to the s 54Z notice, and submissions. Agencies and ministers should therefore provide all of the information they consider relevant in response to the notice and procedural directions issued in each specific case.

3.30 The IC will contact the parties after receipt of submissions if procedural fairness requirements are identified or where a preliminary view can be provided to an agency that may result in an agency or minister making a revised decision under s 55G of the FOI Act.

Third party consultation

3.31 In some IC reviews, there will be third parties, such as an affected third party who is required to be notified of an IC review application under s 54P (refer to the above table at paragraph 3.14), and a person who is joined by the IC to the IC review as a person whose interests are affected by the IC reviewable decision.

3.32 The agency or minister may undertake consultation with third parties during the IC review in order to support their submissions. In some cases, the IC may request or require that the agency or minister undertake such consultation with third parties during the IC review. In those cases, the IC may provide the agency or minister with 20 business days to make their submissions.

¹⁰ See *FOI Guidelines* at [10.103].

Decisions made under s 55K of the FOI Act

Content of decisions

- 3.33 Where the IC makes a decision on IC review pursuant to s 55K of the FOI Act, the IC will quote or summarise an agency's or minister's non-confidential submissions in the published decision.
- 3.34 Where a confidential submission is relied on by the IC in making a decision on the IC review, reference to the submission will be made without revealing the confidential material.

Notification of implementation

- 3.35 Where a decision under s 55K sets aside the decision under review, the IC may request the agency or minister to advise, **within 28 days**, whether it has fully implemented the decision or whether it will be seeking review of the decision by the Administrative Appeals Tribunal (AAT).

Part 4: Procedures for IC review of specific types of decisions

- 4.1 This Part applies to IC review applications of specific types of decisions as set out in Annexure A.
- 4.2 The IC may choose to expedite a particular application or cohort of applications. Annexure A sets out the procedure for the following applications:

Annexure	Procedure	Application
A.1	Procedures in relation to IC review of deemed access refusal decisions	Preliminary inquiries, notification of review (s 54Z notice) and request for information
A.2	Procedures in relation to IC reviews of decisions to refuse access to documents on the basis that they cannot be found or do not exist (s 24A)	IC review process

Part 5: Non-compliance with this Direction

- 5.1 This Part applies to all IC review applications.
- 5.2 Because the model litigant obligation under the *Legal Services Directions 2017* extends to Commonwealth entities involved in merits review proceedings, failure to adhere to the requirements of this Direction may amount to non-compliance with the model litigant obligation.¹¹
- 5.3 The IC may report non-compliance with this Direction in the OAIC's Annual Report.

¹¹ See paragraph 3 of Appendix B to the *Legal Services Directions 2017*.

- 5.4 The IC may also report non-compliance with this Direction to the Office of Legal Services Coordination in the Attorney-General's Department.
- 5.5 The IC may also consider non-compliance within this Direction as part of investigations they conduct under Part VIIB of the FOI Act.

Elizabeth Tydd
Freedom of Information Commissioner

26 June 2024

Annexure A.1 – Procedures in relation to IC review of deemed access refusal decisions

1. Application

- 1.1 The procedure set out below applies to an application for IC review made in relation to an FOI request that is deemed to have been refused under ss 15AC(3), 51DA(2) or 54D(2) of the FOI Act. The procedure specifically sets out the process for the conduct of preliminary inquiries and commencement of review of deemed access refusal decisions. For the procedure for the remainder of the conduct of the IC review [3.15] to [3.33] apply.

2. Preliminary inquiries

- 2.1 The IC may undertake preliminary inquiries under s 54V of the FOI Act. In doing so, the IC will require the agency or minister to confirm that the relevant FOI request is deemed to have been refused.
- 2.2 Agencies and ministers will have **5 business days** to respond to the IC's preliminary inquiries.
- 2.3 If the agency or minister confirms that the request subject to the IC review application is deemed to have been refused, the agency or minister should ensure it is in a position to make a revised decision or provide submissions within 15 business days of the commencement of the review process, as set out in paragraph [3.3] of this Annexure A.1.

3 Commencement of review

- 3.1 If the agency or minister confirms that the relevant FOI request is deemed to have been refused, or fails to respond to the IC's preliminary inquiries, a s 54Z notice will be issued notifying of the commencement of an IC review.
- 3.2 The s 54Z notice will be accompanied by a direction under s 55(2) of the FOI Act, requiring the agency or minister to either:
 - a) make a revised decision under s 55G if the decision the agency or minister intends to make will result in the giving of access to the requested documents in full and to provide the relevant decision to the applicant and to the IC; or
 - b) make a revised decision under s 55G if the decision the agency or minister intends to make will result in the giving of access to some of the requested documents, and to provide the relevant decision

and non-exempt documents to the applicant, and to provide all relevant processing documents and the documents remaining at issue to the IC; or

- c) make submissions in support of the access refusal if the agency or minister intends refusing access to the requested documents and to send those submissions to both the IC and the applicant. The agency or minister must also provide the following information and exempt documents to the IC under s 55T of the FOI Act:
- the FOI request and any correspondence that modifies its scope
 - the original decision (if the decision appealed is a deemed affirmation of the original decision)
 - submissions in support of the access refusal
 - the names and contact details of anyone who was consulted formally under ss 15(7), 26A or 27A, or informally (including consultations with other Australian Government agencies)
 - if any third parties have been notified of the IC review, a copy of the written notifications
 - copies of any correspondence between the respondent and anyone who was consulted, including file notes of any relevant telephone conversations
 - if the IC review involves exempt matter, a marked up, un-redacted copy of all documents identified within scope of the FOI request that is subject of IC review in an electronic format.

3.3 Agencies and ministers will have **15 business days** to respond to the IC's written direction.

Annexure A.2 – Procedures in relation to IC review of decision to refuse access to documents only on the basis that they cannot be found or do not exist (s 24A)

1 Application

1.1 This Part applies to an application for IC review of a decision to refuse access to documents only on the basis that the documents cannot be found or do not exist (s 24A).

2 Preliminary inquiries

2.1 Where an application for IC review is made in relation to an FOI request, that refuses access to information because documents cannot be found, do not exist or have not been received the IC may undertake preliminary inquiries under s 54V of the FOI Act.

2.2 Agencies and ministers will have **5 business days** to respond to the IC's preliminary inquiries.

2.3 In considering their response to the IC's preliminary inquiries, the agency or minister should ensure it is in a position to provide the relevant information, including a statement of reasons, within 15 business days of the commencement of the review process, as set out in paragraph [4.3] of this Annexure A.2.

3 Decline to review

3.1 Where the statement of reasons adequately sets out the reasons for refusing access on the basis that the documents cannot be found or do not exist, the application may be declined under s 54W(a)(i).

4. Commencement of review

4.1 Where the statement of reasons does not adequately set out the reasons for refusing access on the basis that the documents cannot be found or do not exist, the IC will commence review and notify the agency or minister of the commencement of review under s 54Z of the FOI Act and request the following information:

- the FOI request, and any correspondence that modifies its scope
 - a copy of any document that records searches conducted during the request process, including if applicable:
 - Notes kept by individuals conducting searches
 - Correspondence between the FOI decision maker and individuals who conducted searches
 - Any other records of searches or recorded consideration of where to search
 - a copy of any document that records the searches conducted following the IC's request to undertake searches under s 55V as set out below [see paragraph 4.2]
 - a statement of reasons that demonstrate the searches undertaken following the IC's request to provide an adequate statement of reasons under s 55E [see paragraph 4.2].
- 4.2 The IC can require an agency or minister to give reasons for their decision if the IC believes the reasons given were inadequate or if no reasons were provided (s 55E(1)(c)). The IC may order an agency or minister to undertake further searches for documents, including where access to a document has been granted but not actually given (s 55V(2)).
- 4.3 Agencies and ministers will have 15 business days to respond to the IC's written direction and request for information including provision of an adequate statement of reasons.

5. Review

- 5.1 Where the IC is satisfied that reasonable steps have been undertaken to find documents within the scope of the applicant's FOI request, the IC review application may be declined under s 54W(a)(i).
- 5.2 Where the IC is not satisfied that reasonable steps have been undertaken to find documents within the scope of the applicant's FOI request, the application may proceed to a decision under s 55K of the FOI Act.