



Friday, 30 June 2023

Office of the Australian Information Commissioner
GPO Box 5128
SYDNEY NSW 2001
By email only: foidr@oaic.gov.au

Dear Sir or Madam,

Consultation Draft – IC Review Direction – AFP public submissions

Thank you for the opportunity to provide comment on the *Direction as to certain procedures to be followed in IC reviews* (Direction). For completeness, we have also reviewed the *Direction as to certain procedures to be followed by applicants in Information Commissioner reviews* (Applicants' Direction).

The AFP supports the objectives of the Direction and the Applicants' Direction to promote proactive resolution for IC reviews. However, the AFP submits that the proposed changes may significantly affect agencies in requiring more work as a result of the consultation process and the need to document consultation attempts and outcomes. We also address concerns about the effectiveness of consultation.

The AFP makes the following submissions in relation to the Direction:

Requirement for consultation

Paragraphs 4.2 and 4.3 require the AFP to engage or make reasonable attempts to engage with the IC review applicant for the purpose of resolving or narrowing the issues in dispute. The AFP acknowledges this is an attempt to resolve an IC request without the need to make formal written submissions, and hopefully improve processing times. However, the AFP submits the compulsory requirement to engage should not be imposed on agencies as it may have workplace health and safety implications on the FOI practitioners, noting they are not trained mediators.

From a workplace health and safety perspective, compulsory engagement via phone or video conference may place agency staff in situations potentially unsafe for their own wellbeing.

The AFP notes attempts are frequently made at the primary decision or internal review stages to engage meaningfully with applicants to attempt to resolve their concerns, including attempting to narrow searches or explain why documents cannot be found or do not exist. It is not likely the agency will have any more success in reaching a resolution through an attempt at engagement at the IC stage, particularly without the involvement of an independent third party.

General Counsel - Corporate

/ Email: FOI@afp.gov.au

Further, FOI practitioners are generally not trained negotiators. To effect any beneficial outcome from such further compulsory engagement, agencies, will need to upskill FOI practitioners, including undertake additional training which will come at some time and expense to the agency. Alternatively, the agency may be required to engage external (legal) providers to undertake the required consultation.

Providing Evidence to the IC

The AFP also submits the requirement for the evidence to provide to the IC as per paragraph 4.6 places additional reporting and administrative obligations on agencies' FOI teams, which are already required to undertake significant administrative work to process decisions, conduct internal reviews and provide reports and statistics as required. While intended to be part of a solution to streamline and improve the IC review process, the AFP is concerned this requirement will add further pressures to the staff workloads and therefore detrimentally affect FOI processing timeframes.

Applicants' Direction

Paragraph 1.17 identifies the information the applicant must provide when making a request for an IC review. The AFP recommends adding the requirement for an applicant to provide the agency reference number for the FOI decision to be reviewed. The AFP often have applicants with multiple FOI matters at various stages of completion or review. If the applicant does not provide the AFP specific reference number, it can be difficult to establish what matter they are requesting is reviewed.

Paragraph 1.23 states 'agencies are required to contact applicants for IC review shortly after the IC review application is lodged to arrange a suitable time for the engagement process.' If the Direction as currently drafted is implemented, the AFP is concerned this wording creates expectations for the applicant that agencies may not be able to meet, particularly if there is a delay between the IC review application being lodged and the agency being notified under s 54Z. We recommend this wording is amended to reflect that agencies are required to contact applicants shortly after agencies are *notified by the OAIC* that an IC review application is lodged.

We again thank you for the opportunity to provide comment on the Direction and Applicants' Direction.

Please do not hesitate to contact us if we can provide further information or clarification

Yours sincerely,



Emily Caldwell
General Counsel - Corporate

General Counsel - Corporate

/ Email: FOI@afp.gov.au

General Counsel - Corporate
/ Email: FOI@afp.gov.au