Our reference: CP18/01243

Mr Philip Gaetjens

Secretary
Department of the Prime Minister and Cabinet

By email philip.gaetjens@pmc.gov.au

Freedom of Information complaint investigation – notice on completion

Dear Mr Gaetjens

I refer to the complaint made by [redacted] (the complainant) about the Department of the Prime Minister and Cabinet (the Department) under s 70 of the Freedom of Information Act 1982 (Cth) (the FOI Act).

I am writing in accordance with s 86 of the FOI Act, to notify you that I have completed my investigation into this complaint and to advise you of the outcome.

I am required to give you notice of:

- the investigation results
- the investigation recommendations (if any), and
- the reasons for the investigation results and the making of the investigation recommendations.

These matters are set out in Attachment A.

Summary

Pursuant to s 87 of the FOI Act, the investigation results set out the matters investigated and my opinions, conclusions and suggestions about how the processes of the Department might be improved.

In summary, I have found that the Department did not comply with s 15(5)(b) of the FOI Act as the Department did not provide the complainant with a decision in relation to his FOI
request within the statutory timeframe of 30 days and did not seek an extension of time under ss 15AA, 15AB or 15AC of the FOI Act.

Based on the information provided by the Department during the course of this investigation, I acknowledge the steps taken by the Department to implement a variety of strategies to support Department officers to comply with the statutory timeframes under the FOI Act. I further note that these strategies have already had a demonstrated impact on increasing the Department’s ability to meet statutory timeframes for processing FOI requests.

I welcome further engagement with the Department on the implementation of the recommendations I have made and look forward to your response to this notice on completion.

Under s 88 of the FOI Act, I make five recommendations, being formal recommendations to the Department that I believe the Department ought to implement:

1. The Secretary, or relevant Deputy Secretary with responsibility for FOI and information access, issue a statement to all staff highlighting the Department’s obligations under the FOI Act and draw attention to the pro-disclosure emphasis in the Act. This statement should encourage and support staff in meeting their obligations under the FOI Act, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

2. The Department continue to ensure that the objects of the Act are promoted, and the functions and powers performed under the Act are exercised, as far as possible, to facilitate and promote access to information, promptly and at the lowest reasonable cost by conducting general FOI training during the induction process for new employees and refresher training for existing employees at least annually.

3. The Department develop or continue to develop policies and procedures for providing administrative access to information and make those policies and procedures publicly available, in order to demonstrate proactive disclosure through the information publication scheme (Part II of the FOI Act).

4. The Department, within three months:

   a. review and update its FOI processing guidance material to address the findings in this investigation and provide clear guidance, which is consistent with the objects of the Act, on:

      i. search and retrieval timeliness

      ii. steps to be taken by the FOI team where there is a delay in receiving the documents from line areas which includes appropriate escalation
iii. keeping applicants updated on the progress of their requests where delays are being experienced, and
iv. seeking extensions of time.

b. conduct an audit and report to the OAIC on:

i. its compliance with statutory timeframes under the FOI Act
ii. the completion and delivery of its centralised suite of online training modules for SES decision makers.

Further details about this investigation including the background and my findings are outlined in Attachment A.

Next steps

Comments under s 86(3) of the FOI Act

Under s 86(3) of the FOI Act, the Department may provide any comments about the notice on completion that the Department wishes to make. If the Department wishes to give any comments please provide by 6 December 2019. A copy of this notice with the Department’s comments will be provided to the complainant pursuant to s86(4) of the FOI Act. If I do not receive any comment from the Department by 6 December 2019, I will proceed to provide a copy of this notice to the complainant at that time.

Response to recommendations

I have set out a number of recommendations above in relation to the matters investigated, which I consider the Department ought to implement. I seek your confirmation that the Department will take adequate and appropriate action to implement my recommendations. I require the Department to provide a status update to the OAIC on the steps the Department has taken to implement the above recommendations by 24 February 2020.

Under s 89 of the FOI Act, I may issue an implementation notice if I am not satisfied that the Department has taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations.

Further information about complaint investigations can be found in Part 11 of the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

I do not consider that this notice contains matters of the kind mentioned in s 89C(2) of the FOI Act and I will therefore provide a Notice with a copy of this Notice pursuant to s 86(4) of the FOI Act on or after 6 December 2019. I also propose to provide any comments made by the Department.
I propose to publish a copy or a summary of this notice and any comments from the Department on the OAIC’s website within 2 weeks of providing a copy to the complainant.

If your staff would like to discuss this matter, they can contact Shelley Napper on (02) 9284 9721 or email shelley.napper@oaic.gov.au. Please quote OAIC reference CP18/01243 in all correspondence.

Yours sincerely

Angelene Falk
Australian Information Commissioner

22 November 2019
ATTACHMENT A

Notice on completion under s 86 of the FOI Act (CP18/01243) and the Department of the Prime Minister and Cabinet

On 23 April 2018, the Office of the Australian Information Commissioner (OAIC) received a complaint under s 70 of the Freedom of Information Act 1982 (Cth) (the FOI Act) about the Department of the Prime Minister and Cabinet (the Department) in the performance of its functions, and the exercise of its powers, under the FOI Act.

The complainant is.

The complainant alleges the Department fails to provide decisions within the statutory timeframe in response to requests made under the FOI Act for access to documents. In particular, the complainant alleges that a pattern of delay is demonstrated through the processing of FOI requests made through the ‘Right to Know’ website.¹

The FOI request the subject of this FOI complaint was also the subject of an Information Commissioner review (IC review) of the Department’s deemed access refusal decision (MR18/00212).²

As such, I have used the FOI request as a case study during this investigation. A chronology of the Department’s processing of the FOI request, the related IC review matter and this FOI complaint matter can be found at Attachment B.

This notice on completion sets out the issue as identified from the allegation raised by the complainant. The allegation is assessed against the legislative framework and the FOI Guidelines³ which agencies and ministers must have regard to. I also considered the Department’s submissions, the complainant’s submissions and the case study, before making findings about the allegation.

I have set out a number of recommendations in relation to the matters investigated, which I consider the Department ought to implement.

¹ www.righttoknow.org.au.
² MR18/00212 was finalised under s 54R of the FOI Act on 9 May 2018.
³ The Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act (the FOI Guidelines).
Background

On 27 January 2018, the complainant made an FOI request to the Department via the Right to Know website for access to documents relating to allegations and related media articles concerning former Australian Public Service Commissioner, Mr John Lloyd.

On 31 January 2018, the Department wrote to the complainant acknowledging the receipt of the FOI request and advising him that a decision was due by 26 February 2018.

On 13 March 2018, the Department requested that the complainant:

… advise whether you be willing to exclude the following documents from the scope of your FOI request:

- daily media summaries
- where an email is contained in a later email chain, exclude the earlier email as a duplicate.

On 14 March 2018, the complaint responded to the Department’s request, stating:

Where a relevant email is contained in a later email chain, I am willing to exclude the earlier email as a duplicate.

I am not willing to exclude relevant daily media summaries because there is a wide public interest in knowing when the Secretary/head of the APS was put on notice of corrupt conduct engaged in by a senior public servant who is the head of an agency within the portfolio for which the Secretary has oversight.

On 23 March 2018, the complainant sought IC review of the Department’s deemed access refusal decision under s 54L of the FOI Act (OAIC reference: MR18/00212).4

On the same date, the OAIC conducted preliminary inquiries with the Department in relation to the IC review under s 54V of the FOI Act.

On 27 March 2018, the Department provided a response to the OAIC’s preliminary inquiries and advised that a decision in relation to the FOI request was expected by 20 April 2018.

On 20 April 2018, the Department provided the OAIC with an update on its processing of the request and advised that ‘we are now proposing to notify a decision to the applicant by Friday, 27 April 2018’.

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4 The FOI request was received by the Department on 27 January 2018. Therefore, a decision on the request was to be provided no later than 26 February 2018 in accordance with s 15(5)(b) of the FOI Act.
On 23 April 2018, the complainant requested an update from the OAIC in relation to his IC review as he had not yet received a decision from the Department. The complainant also advised that he wished to make a complaint regarding:

… the Department’s repeated and ongoing failure to deal with FOI requests in accordance with its legal obligations.5

On 27 April 2018, the Department issued its decision on the applicant’s FOI request, identifying four documents (totalling 57 pages) within the scope of the request. The Department provided access in full to two documents and refused access in full to the two remaining documents. In making its decision, the Department relied on the documents affecting enforcement of law and protection of public safety exemption (ss 37(1)(a) and 37(2)(a)), the deliberative processes exemption (s 47C), the certain operations of agencies exemption (s 47E(d)) and the personal privacy exemption (s 47F) of the FOI Act.6

On 30 April 2018, the OAIC wrote to the complainant requesting he advise if he wished to withdraw or continue with his FOI complaint in light of the Department providing its decision and relevant documents.

On 9 May 2018, the complainant withdrew his IC review under s 54R of the FOI Act. In relation to his complaint, the complainant also advised as follows:

The Department’s FOI processing function appears to be characterised by a systemic disregard for the law. An assessment of the FOI applications made of the Department by way of the righttoknow website suggests that the Department acts illegally in respect of around 50% of the applications [sic] it receives. And so I’d like to pursue my complaint. Here’s a short sample of FOI requests that haven’t [sic] been dealt with by the Department in accordance with the requirements of the FOI Act (mainly the temporal requirements of s.15(5)(b)): [list of 22 links to FOI requests on the Right to Know website].

The complainant contends there have been further delays experienced by FOI applicants when the Department processes FOI requests through the Right to Know website. Please see Attachment B for further details.

On 31 May 2018, the OAIC notified the Department of the complaint and conducted preliminary inquiries with the Department under s 72 of the FOI Act.

On 15 June 2018, the Department responded to the OAIC’s preliminary inquiries.

On 9 November 2018, the OAIC notified the Department under s 75 of the FOI Act that the Information Commissioner had decided to investigate the complaint and requested that the Department provide the OAIC with submissions in response to the complaint allegations.

5 This complaint is the subject of this matter: OAIC reference CP18/01243.
6 See https://www.righttoknow.org.au/request/pmc_action_against_aps_misconduct. On 9 May 2018, the complainant withdrew his IC review application under s 54R of the FOI Act (MR18/00212).
During the course of the investigation, the Department provided submissions addressing the allegation raised by the complainant and outlining its current FOI processes.

**Investigation findings**

Pursuant to s 87 of the FOI Act, the investigation findings will set out my opinions, conclusions and suggestions about how the processes of the Department might be improved.

I have considered all the material provided by the Department and the complainant in this matter.

**Issue: Compliance with statutory processing periods**

**Allegation**

The complainant alleged that the Department did not comply with the statutory timeframes in s 15(5)(b) of the FOI Act. The complainant further alleged, based on his assessment of FOI requests to the Department through the Right to Know website, that the Department fails to meet the statutory processing timeframes in about 50% of FOI requests.7

**Legislative framework**

The FOI Act provides a statutory timeframe of 30 days to process an FOI request (s 15(5)).

That period can be extended by up to 30 days with the applicant’s agreement (s 15AA), by 30 days if consultation with a third party is undertaken (s 15(6)), and by 30 days if consultation with a foreign entity is undertaken (s 15(8)).

An agency or minister may apply to the Information Commissioner for extension of the statutory timeframe for complex or voluminous requests (s 15AB) or following a deemed access refusal decision (s 15AC).8

The FOI Guidelines at [3.139] state:

> 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)). Section 15(5)(b) provides that the 30-day processing period commences on the day after the day the agency or minister is taken to have received a request that meets the formal requirements of s 15(2), (2A). An agency should act promptly to assist an applicant whose request does not meet the formal requirements in keeping with its obligations under s 15(3).

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7 Complainant’s submissions of 9 May 2018.
8 See also, *FOI Guidelines* at [3.125].
Deemed access refusal

Section 15AC provides that where a decision on an FOI request has not been provided to the applicant within the statutory processing period, the principal officer of the agency or the minister is deemed to have made a decision refusing access to the documents (s 15AC(3)).


The consequence of a deemed refusal is that an applicant may apply for IC review (s 54L(2)(a)). ... In addition, once the time has expired and there is a deemed decision, the agency or minister cannot impose a charge for access...

Where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the FOI request. This obligation to provide a statement of reasons on the FOI request continues until any IC review of the deemed decision is finalised. ...

Department’s submissions

Overview of the Department’s process for dealing with FOI requests

The Department’s submissions of 10 December 2018 state:

The Department has a “devolved” decision-making process for dealing with FOI requests. FOI requests are received and managed by the Department’s FOI and Privacy Section. Document searches and decision on access to documents are the responsibility of the relevant Senior Executive Service-level decision maker in the line area that has responsibility for the subject-matter of the FOI request.

When the Department receives an FOI request, the FOI and Privacy Section identifies the relevant line area (and consequently the relevant decision maker) that will be responsible for document searches and making the decision on access to the documents.

Department’s data regarding timeframes

The Department’s submissions of 15 June 2018 state:

The Department notes that the percentage of FOI requests that the Department finalised within the statutory time period in 2016-17 is substantially above average for all agencies for 2016-17 as in detailed in the table below…

<table>
<thead>
<tr>
<th>Agency</th>
<th>Requests determined</th>
<th>Response time within statutory time period</th>
<th>Percentage of requests determined within statutory time period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of the Prime Minister and Cabinet</td>
<td>130</td>
<td>105</td>
<td>80.76%</td>
</tr>
<tr>
<td>All agencies</td>
<td>34,029</td>
<td>19,607</td>
<td>57.61%</td>
</tr>
</tbody>
</table>
The Department’s submissions of 11 February 2019 further explain:

Since 31 October 2018, the Department’s caseload has stabilised and there has been a significant increase in the percentage of the Department’s FOI caseload which has been finalised, or is currently on track to be finalised, within the statutory processing period. …

This trend in the Department’s improved timeliness in processing FOI requests means that timeframes for FOI requests received by the Department through the RTK [Right to Know] website have also improved. Again, this is not because the Department processes requests form the RTK website differently to other requests, but is a reflection of the Department’s overall improved capability to process FOI requests.

The Department submits that its caseload has stabilised since 31 October 2018 and this has increased its timeliness in processing FOI requests, explaining:

… as at 5 October 2018, 58% of the Department’s FOI caseload was [processed] within the statutory processing period. As at 25 January 2019, 87% of the Department’s FOI caseload is on track to being finalised within the statutory processing time.

Department’s submissions regarding the Right to Know website

The Department’s submissions of 11 February 2019 explain:

Between 1 July 2017 and 31 October 208, the Department received 16 valid FOI requests from the RTK website. …

From the information the Department holds, it appears that one of the 16 requests was made by [redacted], which is the subject of the current complaint. [footnote omitted]

…

Eight requests were finalised outside the statutory processing period (as extended, where applicable). …

There were three requests that were not finalised within the statutory processing period and for which an extension of time was not sought by the Department:

• One request was received on 8 August 2017. The Department identified that the requested information was publicly available and, on the day after the statutory processing period ended, advised the applicant of this fact (including the website where the information could be accessed by the applicant). The Department also advised the applicant that unless the Department heard from the applicant, then the Department will consider the request to have been withdrawn. The applicant did not respond to the Department and therefore the request was finalised.

• One request was received on 12 December 2017, which meant that a significant part of the processing period fell during the Department’s Christmas shutdown period. The Department expected that a decision would be notified to the Applicant on time, however, as set out in the Department’s previous response to this investigation, the Department received an unforeseen substantial volume of FOI requests during the same period, which placed significant strain on the Department’s limited FOI resources and impacted on the timeliness of the processing of all FOI requests. The Department notified the applicant of its decision 19 days after the statutory processing period ended.
One request was received on 27 January 2018. This was a request from the applicant of its decision two months after the statutory processing period ended. Further details were provided in the Department’s response to Part 1(c) of the questions in the Notice. [footnotes omitted]

The Department also submits that it does not distinguish FOI requests by the way in which they are received by the Department, stating:

The Department does not distinguish requests made under the Freedom of Information Act 1982 (Cth) (FOI Act) based on whether they were lodged through a public platform, such as the RTK website, or based on the applicant.

In relation to FOI requests made to the Department via the Right to Know website, the Department submitted on 11 February 2019:

For the period 1 July 2018 and 15 January 2019, all valid FOI requests received by the Department through the RTK website have either been finalised, or on track to being finalised, within the statutory processing period under the FOI Act…

Department’s reasons for delay

The Department has provided the following reasons for the delay experienced by the complainant:

- the Department experienced ‘short term resourcing constraints during the 2017-18 financial year, where the Department experienced a substantial and unforeseeable increase in the number of FOI requests that it received’
- the Department experienced an unforeseen increase of FOI requests prior to the 2017-2018 Christmas/New year shutdown period
- on 21 December 2017, a single applicant made 87 FOI requests to the Department
- the Department was unable to obtain extensions of time for the 87 FOI requests on the basis that the applicant did not agree to extensions under s 15AA and the OAIC advised that extension requests under s 15AB had to be made on a case-by-case basis, which had a substantial impact on both the Department’s ability to meet timeframes in relation to the 87 FOI requests and in relation to other FOI requests received during the relevant period, and
- absences of the relevant decision maker due to unforeseen personal reasons and workplace commitments tied to parliamentary obligations.
Steps taken by the Department to improve compliance with statutory timeframes

The Department has also detailed the steps it has taken to improve compliance with the statutory timeframes under the FOI Act, which are summarised as follows:

− resources:
  • increase of staff in the FOI and Privacy Section of the Department
  • engagement of additional staff to assist the FOI team during periods of high volume of FOI request and FOI-related casework
  • engagement of external expertise to provide advice on complex issues and assist with processing FOI requests.

− education:
  • weekly SES meetings have FOI as a standing agenda item
  • continued education and training of the Department’s FOI advisers
  • during the second half of 2018, the Department engaged the Australian Government Solicitor to provide specialised FOI training to decision makers and FOI contact officers within each Department branch, with the aim of:
    increasing knowledge and awareness of the FOI Act
    provide a high-level overview of the Department’s responsibilities and obligations under the FOI Act
    to encourage the adequacy of resources and the priority given to FOI requests
    familiarise the Department’s branch FOI Contact Officers with the standards and requirements for document retrieval and assessment.
  • additional training will be provided on a regular basis, and
  • the Department is working on development of a centralised suite of online training modules for SES decision-makers.

− transformation:
  • the Department is undertaking a review of its processes to ensure that decision makers are provided with ‘helpful and effective assistance in performing their duties’, and
  • the Department is currently transitioning to a centralised digital case management system. When implemented, the centralised system will assist with more efficient record keeping which will increase efficiency in processing FOI requests.
Discussion

Statutory processing period

The FOI request was made on 27 January 2018. Pursuant to s 15(5)(b) of the FOI Act, the statutory processing period is ‘as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received’ by an agency or minister. Therefore, the Department was due to provide a decision to the complainant not later than 26 February 2018.

The Department provided the complaint with its substantive decision on 27 April 2018.

The Department advises that it has a ‘devolved’ decision making FOI process, in which each line area within the Department has a decision maker appointed to make FOI decisions for documents related to that particular line area. The decision maker then liaises with the FOI team in order to process the FOI request.

However, the Department’s devolved decision-making process should not hinder FOI decisions being made within the statutory timeframe, even in circumstances where the allocated decision maker is not available due to expected or unexpected leave.

Beyond confirming which line area officer would be the decision maker, no steps were taken to process the complainant’s request prior to the statutory timeframe expiring. It is unclear whether the FOI team made further contact with the relevant decision maker during this time, however it should have been clear to the Department that a decision would not be provided to the complainant within the statutory timeframe and an extension of time would be required.

I accept that the Department’s receipt of 87 FOI requests on the second last day before the 2017-2018 Christmas/New Year shutdown period had a substantial impact on the Department’s ability to comply with the statutory timeframes at that time.

The Department submits:

… once the Department was notified by the OAIC on 23 March 2018 of the request for IC review, the Department’s priority was firstly to respond to the OAIC’s enquiries and requests for information, and secondly to finalise the decision as soon as practicable. It is arguable that an extension of time under s 15AC of the FOI Act was open for discussion at this time, however this did not appear to have been considered by either the OAIC or the Department, based on documented correspondence on file.

Section 15AC of the FOI Act provides for agencies to apply in writing to the Information Commissioner for further time to deal with the request.

While it was open to the Department to apply for an extension of time under s 15AC of the FOI Act, this did not occur. Further, the OAIC is unlikely to suggest an agency apply for a
s 15AC extension of time in circumstances such as these where it is unlikely that an extension of time would have been granted, as:

- while the documents within the scope of the request may have been considered sensitive, the matter does not appear complex in that the request was specific and the applicant provided clarification when requested, and the request did not appear voluminous
- no consultations had occurred under ss 26A, 27 or 27A of the FOI Act
- the Department did not appear to have engaged in discussions with the applicant about the delay and any extension of time application, and
- the applicant had already sought IC review of the Department’s deemed access refusal decision.

In consideration of the statistical data provided by the Department for the 2016-17 financial year above, I have also examined the Department’s statistical data for the 2017-18 and 2018-19 financial years as follows:

2017-18 financial year

<table>
<thead>
<tr>
<th>Agency</th>
<th>Requests determined</th>
<th>Response time within statutory time period</th>
<th>Percentage of requests determined within statutory time period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of the Prime Minister and Cabinet</td>
<td>180</td>
<td>64</td>
<td>35.56%</td>
</tr>
<tr>
<td>All agencies</td>
<td>31,674</td>
<td>26,879</td>
<td>84.86%</td>
</tr>
</tbody>
</table>

2018-19 financial year

<table>
<thead>
<tr>
<th>Agency</th>
<th>Requests determined</th>
<th>Response time within statutory time period</th>
<th>Percentage of requests determined within statutory time period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of the Prime Minister and Cabinet</td>
<td>117</td>
<td>85</td>
<td>72.65%</td>
</tr>
<tr>
<td>All agencies</td>
<td>30,143</td>
<td>24,892</td>
<td>82.58%</td>
</tr>
</tbody>
</table>

It is apparent from the Department’s processing of the complainant’s FOI request and the statistical data and submissions provided by the Department, that statutory timeframes
were not being met in the majority of FOI requests received by the Department in the 2017-18 financial year.\(^9\)

The statistical data demonstrates that during the last financial year, the Department has improved on its compliance with statutory timeframes. I note that this is below the average for all agencies for the 2018-19 financial year. While I acknowledge this statistical increase in compliance by the Department on the previous financial year, it must also be considered in that context that the Department experienced a decrease in the total number of FOI requests received in the 2018-19 financial year of \(-38.41\%\), when compared with the previous 2017-18 financial year.\(^10\)

Findings

I find The Department did not comply with s 15(5)(b) of the FOI Act as it did not provide the complainant with a decision in relation to his FOI request within the statutory timeframe of 30 days and did not seek an extension of time under ss 15AA or 15AB of the FOI Act.

However, based on the information provided by the Department during the course of this investigation, I acknowledge the steps taken by the Department to implement a variety of strategies to support Department officers to comply with the statutory timeframes under the FOI Act. I further note that these strategies have already had a demonstrated impact on increasing the Department’s ability to meet statutory timeframes for processing FOI requests.

Recommendations

Pursuant to s 88 of the FOI Act, I make the following investigation recommendations:

1. The Secretary, or relevant Deputy Secretary with responsibility for FOI and information access, issue a statement to all staff highlighting the Department’s obligations under the FOI Act and draw attention to the pro disclosure emphasis in the Act. This statement should encourage and support staff in meeting their obligations under the FOI Act, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

2. The Department continue to ensure that the objects of the Act are promoted, and the functions and powers performed under the Act are exercised, as far as possible, to facilitate and promote access to information, promptly and at the lowest reasonable cost.

\(^9\) The Department’s submissions of 11 February 2019 also stated that the percentage of all requests received by the Department during the 2017-2018 financial year and determined within the statutory period was 35.55%.

\(^10\) The Department received 170 FOI requests in 2018-19 financial year compared with 276 FOI requests in the 2017-18 financial year.
cost by conducting general FOI training during the induction process for new employees and refresher training for existing employees at least annually.

3. The Department develop or continue to develop policies and procedures for providing administrative access to information and make those policies and procedures publicly available, in order to demonstrate proactive disclosure through the information publication scheme (Part II of the FOI Act).

4. The Department, within three months:
   a. review and update its FOI processing guidance material to address the findings in this investigation and provide clear guidance, which is consistent with the objects of the Act, on:
      i. search and retrieval timeliness
      ii. steps to be taken by the FOI team where there is a delay in receiving the documents from line areas which includes appropriate escalation
      iii. keeping applicants updated on the progress of their requests where delays are being experienced, and
      iv. seeking extensions of time.
   b. conduct an audit and report to the OAIC on:
      i. its compliance with statutory timeframes under the FOI Act
      ii. the completion and delivery of its centralised suite of online training modules for SES decision makers.
ATTACHMENT B

On 27 January 2018, the complainant made an FOI request to the Department via the ‘Right to Know’ website for access to:

I refer the Department of the Prime Minister and Cabinet (PMC) to the following media coverage:

https://www.canberratimes.com.au/national...
https://www.crikey.com.au/2017/10/24/lib...
http://www.canberratimes.com.au/national...

which intimates that the Public Service Commissioner, Mr John Lloyd, has acted corruptly, unlawfully and/or otherwise improperly.

One would expect, and the public interest would require, that in the normal course of an ethical and apolitical public service, that the Secretary of PMC, being the head of the public service, would take an interest in such allegations.

Accordingly, I seek access to documents held by the Secretary of PMC that concern the matters alluded to in the articles mentioned above.

Appreciating the volume of documents held by the Secretary, the scope of my request is limited to:

- documents that exist as emails (including any attachments);
- documents that fall within the date range 23 October 2017 to the date of this application; and
- documents that contain the words: a) "John Lloyd" and/or "Lloyd"; as well as b) "IPA" and/or "Institute of Public Affairs".

Further, I’m happy for the personal information of anyone who’s not a public servant/MP/Minister to be redacted from relevant documents.

On the basis of the tightly defined scope set out above, the Department need only conduct a handful of searches (using the key terms referred to above) of "ALL" items (my emphasis) in the Secretary’s email client (likely Microsoft Outlook) to quickly determine whether the Secretary holds any documents the subject of my request (and whether the Secretary has, in the general public interest, considered and/or inquired into the misconduct described).1

1 See www.righttoknow.org.au/request/pmc_action_against_aps_misconduct.
On 31 January 2018, the Department wrote to the complainant acknowledging the receipt of the FOI request and advised him that a decision was due by 26 February 2018.²

On 13 March 2018, the Department requested that the complainant:

… advise whether you be willing to exclude the following documents from the scope of your FOI request:

- daily media summaries
- where an email is contained in a later email chain, exclude the earlier email as a duplicate.

On 14 March 2018, the complaint responded to the Department’s request, stating:

Where a relevant email is contained in a later email chain, I am willing to exclude the earlier email as a duplicate.

I am not willing to exclude relevant daily media summaries because there is a wide public interest in knowing when the Secretary/head of the APS was put on notice of corrupt conduct engaged in by a senior public servant who is the head of an agency within the portfolio for which the Secretary has oversight.

On 23 March 2018, the complainant sought IC review of the Department’s deemed access refusal decision under s 54L of the FOI Act (OAIC reference: MR18/00212).³

On the same date, the OAIC conducted preliminary inquiries with the Department in relation to the IC review under s 54V of the FOI Act.

On 27 March 2018, the Department provided a response to the OAIC’s preliminary inquiries and advised that a decision in relation to the FOI request was expected by 20 April 2018.

On 20 April 2018, the Department provided the OAIC with an update on its processing of the request and advised that ‘we are now proposing to notify a decision to the applicant by Friday, 27 April 2018’.

On 23 April 2018, the complainant requested an update from the OAIC in relation to his IC review as he had not yet received a decision from the Department. The complainant also advised that he wished to make a complaint regarding:

… the Department’s repeated and ongoing failure to deal with FOI requests in accordance with its legal obligations.⁴

On 27 April 2018, the Department issued its decision on the applicant’s FOI request, identifying four documents (totalling 57 pages) within the scope of the request. The Department provided access in full to two documents and refused access in full to the two

² See www.righttoknow.org.au/request/pmc_action_against_aps_misconduct.
³ The FOI request was received by the Department on 27 January 2018. Therefore, a decision on the request was to be provided no later than 26 February 2018 in accordance with s 15(5)(b) of the FOI Act.
⁴ OAIC reference CP18/01243.
remaining documents. In making its decision, the Department relied on the documents affecting enforcement of law and protection of public safety exemption (ss 37(1)(a) and 37(2)(a)), the deliberative processes exemption (s 47C), the certain operations of agencies exemption (s 47E(d)) and the personal privacy exemption (s 47F) of the FOI Act.  

On 30 April 2018, the OAIC wrote to the complainant in relation to his IC review application, requesting he advise if he wished to withdraw or continue with his IC review application in light of the Department’s decision.

On the same date, the OAIC wrote to the complainant requesting he advise if he wished to withdraw or continue with his FOI complaint in light of the Department providing its decision and the relevant documents.

On 9 May 2018, the complainant withdrew his IC review application under s 54R of the FOI Act. In relation to his complaint, the complainant also advised as follows:

The Department’s FOI processing function appears to be characterised by a systemic disregard for the law. An assessment of the FOI applications made of the Department by way of the righttoknow website suggests that the Department acts illegally in respect of around 50% of the applications [sic] it receives. And so I’d like to pursue my complaint.

Here’s a short sample of FOI requests that haven’t [sic] been dealt with by the Department in accordance with the requirements of the FOI Act (mainly the temporal requirements of s.15(5)(b)):

https://www.righttoknow.org.au/request/official_functions
https://www.righttoknow.org.au/request/year_on_year_percentage_pay_incr_3
https://www.righttoknow.org.au/request/inquiry_into_sussan_ley_expenses
https://www.righttoknow.org.au/request/letters_from_the_pm_to_the_queen
https://www.righttoknow.org.au/request/letters_between_gough_whitlam_pm
https://www.righttoknow.org.au/request/wikipedia_edits_made_by_public_s
https://www.righttoknow.org.au/request/group_certificatespayg_payment_s_4
https://www.righttoknow.org.au/request/all_correspondence_between_pmc_a
https://www.righttoknow.org.au/request/bill_priorities
https://www.righttoknow.org.au/request/draft_open_government_partnershi
https://www.righttoknow.org.au/request/grand_challenge_information
https://www.righttoknow.org.au/request/letter_to_the_leader_of_the_oppo
https://www.righttoknow.org.au/request/letters_from_prince_charles_and

On 31 May 2018, the OAIC notified the Department of the complaint and conducted preliminary inquiries with the Department under s 72 of the FOI Act. A response was requested from the Department by 14 June 2018.

On 14 June 2018, the Department contacted the OAIC requesting an extension of time until 19 June 2018 in which to provide a response to the OAIC’s preliminary inquiries.

On 15 June 2018, the OAIC granted the extension of time to the Department.

On the same date, the Department provided its response to the preliminary inquiries.

On 9 November 2018, the OAIC issued the Department with an investigation notice under s 75 of the FOI Act. A response was requested by 7 December 2018.

On 27 November 2018, the Department sought clarification from the OAIC on a number of issues and on 29 November 2018, the OAIC provided a response to the Department queries.

On 6 December 2018, the Department called the OAIC to advise that there are confidential third parties referred to in the submissions and information the Department is providing and that it may not be possible to separate them given the nature of the submissions and information. The Department further advised that submissions in response to Parts 1 and 3 would be provided the next day and a response to Part 3 was expected to be provided by 14 to 17 December 2018.

On 7 December 2018, the Department advised that they were:

… urgently finalising our response to the majority of Part 1 and the entirety of Part 3, with a view to providing them to you on Monday. ...

On 10 December 2018, the Department provided confidential submissions and three attachments and advised:

… please find attached the Department’s response to the OAIC’S Investigation Notice – it covers the majority of Part 1 and the entirety of Part 3. We are preparing the Department’s response to Part 2 and will provide this to you shortly.
On 11 December 2018, the OAIC acknowledged receipt of the Department’s email and on the same date, the Department advised that:

We are also aiming to provide you with the Department’s response to Part 2 by close of business, 21 December 2018.

On 21 December 2018, the Department contacted the OAIC, advising:

… Unfortunately we are unlikely to be in a position to provide our response to you today, however we are aiming to be able to provide them to you on Monday 24 December 2018. We will also touch base with you on Monday to keep you updated.

On 3 January 2019, the Department called the OAIC to advise that the submissions were with the Assistant Secretary who was currently on leave and that a further update would be provided the next week.

On 8 January 2019, the Department contacted the OAIC advising:

… the Department is in the process of finalising Part 1(d) and Part 2 of its Complaint Response by COB 18 January 2019. I appreciate the extensions of time given to the Department to date for this matter. Grateful if you can confirm whether the OAIC will agree to this timeframe.

On the same date, the OAIC agreed to the extension of time requested by the Department.

On 21 January 2019, the Department called the OAIC advising that the outstanding information would be provided by the end of the day.

On the same date, the Department wrote to the OAIC stating:

We’re having some issues with our positional FOI mailbox this evening – I am hoping that the email I sent you this evening in relation to the Department’s Response to CP18/01243 (there are some large attachments) has reached. If not, I will retry in the morning.

On 22 January 2019, the OAIC confirmed that it had not received any emails from the Department in relation to this complaint matter.

On 23 January 2019, the OAIC called and left a voice mail message advising that the response had not been received and requesting an update.

On 29 January 2019, the Department contacted the OAIC stating:

My apologies for the delay in responding to you, I’ve been unexpectedly out of the office (and my out of office message was not on).

I return tomorrow but I have made enquiries with my Team. Will revert to you shortly.
On 1 February 2019, the OAIC called the Department requesting an update on the outstanding material, and on the same date, the Department contacted the OAIC stating:

As discussed, we are urgently finalising the Department’s submissions and I hope to be in a position to provide these to you early next week (4 February 2019 if possible). I will give you a call to give you an update early on Monday morning with how we are progressing.

On 5 February 2019, the OAIC wrote to the Department requesting an update on progress of the submissions.

On 6 February 2019, the Department responded advising:

… I have been in and out of meetings today. We are urgently finalising our submissions and I hope to provide them to you by 8 February 2019.

On 7 February 2019, the OAIC called the Department and left a voice message requesting an update on the outstanding submissions.

On 12 February 2019, the Department provided the final part of its submissions and one attachment.

On 29 March 2019, the complainant lodged an FOI request with the OAIC for access to:

… a copy of any submissions provided to the OAIC by the DPMC in relation to my complaint.6

On 26 April 2019, the authorised decision maker issued their decision to the complainant. The decision maker identified two documents within the scope of the FOI request and refused access in full. The decision maker relied on the certain operations of agencies exemption (s 47E(d)) of the FOI Act.

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6 OAIC reference: FOIREQ19/00078.