



## Freedom of Information Investigation Outcomes<sup>1</sup>

Under Part VIIB of the FOI Act, the Information Commissioner can investigate an action taken by an agency in the performance of its functions or the exercise of powers under the FOI Act. This involves investigating complaints (s 69(1)), as well as conducting investigations at the Commissioner’s own initiative (Commissioner initiated investigations (CIIs)) (s 69(2)).

On completing an investigation, the Information Commissioner must provide a ‘notice on completion’ to the agency and to the complainant (if there is one) (s 86). The Information Commissioner’s notice on completion must include the investigation results, the investigation recommendations (if any), and the reasons for those results and any recommendations (s 86(2)). A notice on completion must not include exempt matter or information about the existence or non-existence of a document that would be exempt under ss 33, 37(1) or 45A (ss 89C and 25(1)).

If recommendations have been made (s 88), and the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement a formal recommendation, the Information Commissioner may issue a written ‘implementation notice’ requiring the agency to provide within a specified time particulars of any action the agency will take to implement the Information Commissioner’s recommendations (s 89).

The Information Commissioner may subsequently report to the minister responsible for the agency and the minister responsible for the FOI Act if the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement the recommendations or has not responded to the implementation notice within the specified time (s 89A). The minister responsible for the FOI Act must table the report before each House of the Parliament (s 89A(5)).

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<sup>1</sup> As of 30 September 2020.

<b>Respondent agency</b>	<b>Issue(s)</b>	<b>Type of FOI request</b>	<b>Date of Notice on completion</b>	<b>Outcome</b>	<b>Recommendations</b>	<b>Respondent's response to recommendations</b>	<b>Further action to be taken</b>
Department of Prime Minister and Cabinet	Compliance with statutory processing timeframes.	Non-personal information.	22 November 2019	The Department did not comply with the statutory processing periods in processing 35.56% of FOI requests in the 2017-18 financial year and 72.65% in the 2018-19 financial year.	Four recommendations were made: <ol style="list-style-type: none"> <li>1. a statement to be issued to all staff highlighting the Department's obligations under the FOI Act.</li> <li>2. FOI requests are processed in accordance with the objects of the FOI Act</li> <li>3. the development of policies and procedures in relation to administrative access</li> <li>4. conduct a review and audit of the Department's FOI processing guidance material and its compliance with statutory timeframes.</li> </ol>	Agreed and implemented.	No further action to be taken.
Australian Federal Police	Compliance with statutory processing timeframes.	Non-personal information.	22 November 2019	The AFP did not comply with the statutory processing periods in processing	Four recommendations were made: <ol style="list-style-type: none"> <li>1. a statement to be issued to all staff highlighting the AFP's</li> </ol>	Agreed and implemented.	No further action to be taken.

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				34.44% of FOI requests in the 2017-18 financial year and 53.08% in the 2018-19 financial year.	<ul style="list-style-type: none"> <li>obligations under the FOI Act.</li> <li>2. a review of its guidance relating to early assessment of whether an extension of time or consultation may be required</li> <li>3. a review and update its guidance material in line with the findings of the investigation.</li> </ul>		
Services Australia <sup>2</sup>	Acknowledgment of FOI requests in accordance with statutory timeframes.	Personal and non-personal information made by post.	22 November 2019	Delay in acknowledging the FOI requests was due to the complainant sending the FOI request as part of 'shared' correspondence addressed to the aged care pension	Two recommendations were made: <ul style="list-style-type: none"> <li>1. to provide general FOI training to the external providers tasked with opening and categorising correspondence to assist in the identification of FOI requests sent to</li> </ul>	Agreed and implemented.	No further action to be taken

<sup>2</sup> At the time this investigation commenced the responsible department was the Department of Human Services. On 29 May 2019, the Administrative Arrangements Order established Services Australia.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
				claims nominated PO Box rather than addressed to the FOI or central PO Box, and human error in categorising the documents as FOI requests at the mail sorting stage.	<ol style="list-style-type: none"> <li>general Departmental post boxes.</li> <li>to review and update its guidance material in line with the findings of the investigation.</li> </ol>		
Services Australia <sup>34</sup>	<p>Approach to the interpretation of the scope of FOI requests</p> <p>Approach to processing FOI requests relating to the OCI System</p> <p>Compliance with s 24AB of the FOI Act</p>	Non-personal and personal	5 December 2020	Services Australia took a narrow approach to requests for information and did not attribute the plain English meanings to the terms used by applicants when that meaning was ascertainable in satisfaction of	<p>Seven recommendations were made.</p> <ol style="list-style-type: none"> <li>A statement is provided to staff highlighting Services Australia's obligations under the FOI Act and the pro disclosure emphasis in the Act. This statement should encourage and support staff in</li> </ol>	Agreed and in the process of implementing.	Awaiting response in relation to recommendation six.

<sup>3</sup> At the time this investigation commenced the responsible department was the Department of Human Services. On 29 May 2019, the Administrative Arrangements Order established Services Australia.

<sup>4</sup> This investigation combined three FOI complaints made under s 70 of the FOI Act. Due to the overlapping issues raised in each FOI complaint the Information Commissioner progressed all three complaints under one investigation.

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
	<p>Combining FOI requests under s 24(2) of the FOI Act</p> <p>Imposition of a charge</p> <p>Payment of charges</p> <p>Disclosure Log content</p> <p>Delays in the provision of documents</p>			<p>paragraph 15(2)(b) of the Act.</p> <p>Services Australia did not comply with the request consultation process under s 24AB.</p> <p>Services Australia did not take into consideration relevant public interest factors when deciding if applying charges is appropriate</p> <p>At the time the decisions were made in the relevant FOI requests, Services Australia's processes for collecting charges imposed under the FOI Act were inconsistent with the objects of the Act</p>	<p>meeting their obligations under the FOI Act, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.</p> <p>2. Services Australia take an approach to interpreting the scope of FOI requests in accordance with its obligations under s 15(3) of the FOI Act in a manner that as far as possible, seeks to facilitate and promote public access to information.</p> <p>3. Services Australia develop a policy that provides that where information that is subject to multiple FOI requests, it is uploaded onto the</p>		

Respondent agency	Issue(s)	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response to recommendations	Further action to be taken
				<p>Services Australia did not comply with its obligations under s 11C(6) of the FOI Act in relation to the maintenance of its disclosure log.</p> <p>Services Australia did not have clear guidance for its FOI officers on:</p> <ul style="list-style-type: none"> <li>a) timeliness to respond to request for assistance during consultation process</li> <li>b) consideration of whether it is appropriate to transfer requests under s 16 once a</li> </ul>	<p>disclosure log as soon as practicable</p> <ul style="list-style-type: none"> <li>4. Services Australia update its FOI manual to include references to recent Information Commissioner decisions and FOI Guidelines on: <ul style="list-style-type: none"> <li>a. the imposition of charges</li> <li>b. the interpretation of scope and s 24AB process.</li> </ul> </li> <li>5. Services Australia update its FOI manual to include guidance about: <ul style="list-style-type: none"> <li>a. consideration of s 16 transfers once the scope has been revised</li> <li>b. the provision of documents as soon as</li> </ul> </li> </ul>		

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				<p>scope has been revised</p> <p>c) appropriate response times for the provision of documents on the disclosure log</p> <p>d) combining of requests under s 24(2) of the FOI Act, and</p> <p>e) making a decision to impose a charge.</p>	<p>practicable under s 11A</p> <p>c. responding to requests for documents held on the disclosure log which are otherwise not readily available, within five working days.</p> <p>d. where there are multiple requests for the same subject matter, implement a process through which they can identify and utilise work previously undertaken.</p> <p>e. when it is appropriate to combine</p>		

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					<p>requests under s 24(2).</p> <p>f. factors to consider whether to impose a charge, including factors set out in the Guidelines issued under s 93A of the Act.</p> <p>6. Services Australia within six months<sup>5</sup> of these conclusions conduct audits on the following and report back to the OAIC:</p> <p>a. The adherence to the FOI processing manual by FOI officers in relation to matters the subject of</p>		

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<sup>5</sup> On 8 July 2020, the Information Commissioner granted an extension of time to respond to recommendation six until 30 October 2020.

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					<p>recommendations four and five above.</p> <p>7. Services Australia ensure processes are in place to assist applicants through the s 24AB consultation process.</p>		
Department of Home Affairs	Compliance with statutory processing periods. <sup>6</sup>	Non-personal information	19 December 2019	The Department did not comply with s 15(5)(b) of the FOI Act.	The Information Commissioner deferred making any recommendations until the outcome of the Commissioner Initiated Investigation into the Department of Home Affairs' compliance with statutory processing periods for non-personal FOI requests. <sup>7</sup>	No recommendations made.	No further action to be taken pending the outcome of the CII.

<sup>6</sup> This investigation combined 11 FOI complaints made under s 70 of the FOI Act. Due to the overlapping issue raised in each FOI complaint the Information Commissioner progressed all 11 complaints together.

<sup>7</sup> Each FOI request forms a case study in the Commissioner Initiated Investigation into the Department of Home Affairs compliance with statutory processing periods for non-personal requests for information.

<b>Respondent agency</b>	<b>Issue(s)</b>	<b>Type of FOI request</b>	<b>Date of Notice on completion</b>	<b>Outcome</b>	<b>Recommendations</b>	<b>Respondent's response to recommendations</b>	<b>Further action to be taken</b>
Services Australia <sup>8</sup>	Consultation process under s 24AB of the FOI Act and internal review process	Personal information	18 February 2020	Consultation process was more appropriately considered in the related IC review process and subsequent decision by the Information Commissioner under s 55K of the FOI Act. Services Australia's internal review process complied with s 54C of the FOI Act.	No recommendations were made.	No recommendations made.	N/A
Airservices Australia	Acknowledgment of FOI requests in accordance with statutory timeframes.  Taking reasonable steps to conduct	Personal information	23 April 2020	At the time of the request, Airservices did not have a formalised process by which employees could access their personnel records.	Four recommendations were made.  1. Airservices to issue a statement to all staff reminding them of their obligations under the FOI Act	Agreed and in the process of implementing.	Awaiting response to recommendation four.

<sup>8</sup> At the time this investigation commenced the responsible department was the Department of Human Services. On 29 May 2019, the Administrative Arrangements Order established Services Australia.

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	<p>searches for documents within scope of the FOI request.</p> <p>Withholding documents which fell within the scope of the FOI request</p> <p>Compliance with s 26 of the FOI Act.</p>			<p>Airservices did not comply with ss 15(5)(a) and 26 of the FOI Act.</p> <p>During the processing of the request Airservices did not take reasonable steps to identify documents within the scope of the request.</p> <p>Airservices reduced the scope of the FOI request without agreement from the applicant.</p>	<p>2. Airservices to establish a general FOI training program for inclusion in its induction process and finalise policies which outline the procedures to follow when processing an FOI request.</p> <p>3. Airservices to write to each FOI applicant within the past 12 months of which the FOI complaint was made and advise them of their review rights.</p> <p>4. Airservices to conduct an audit within 6 months to track compliance of:</p> <p>a) Policies and procedures and</p> <p>b) Section 26 Notices</p>		
The Australian National University (the ANU)	Delay in processing FOI request	Personal information	14 September 2020	The statutory timeframe was not extended by agreement under s 15AA, or as a result of consultation (ss	The ANU should update its 'Guideline 1.15: Freedom of Information processing checklist' and 'Guideline 1.18: Freedom of Information request processing timeframes' to require staff to conduct an	Agree and recommendations implemented	No further action to be taken

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	Communication regarding the processing delays			<p>15(6), 15(8), 26A, 27, 27A), or under ss 15AB or 15AC.</p> <p>The ANU exceeded the statutory processing period by 26 days without authority.</p> <p>The ANU updated the complainant about the processing of the request and provided reasons for the delay.</p>	<p>early assessment of whether an extension of time may be required and if so, to seek agreement from the FOI applicant to extend the processing period under s 15AA.</p> <p>2. The ANU should update its 'Guideline 1.15: Freedom of Information request processing checklist' and 'Guideline 1.18: Freedom of Information request processing timeframes', to require staff to consider whether it is appropriate to seek an extension of time pursuant to s 15AB where an applicant has not agreed to extend the statutory processing period under s 15AA, or to seek an extension of time from the Information Commissioner under s 15AC where a decision about an FOI request has not been provided to the applicant within the statutory processing period.</p>		

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<p>Department of Home Affairs</p> <p>This investigation was an Commissioner Initiated Investigation under s 69(2) of the FOI Act.</p> <p>A copy of the Report is available <a href="#">here</a>.</p>	<p>Compliance with statutory timeframes for processing FOI request for non-personal information</p>	<p>Non-personal</p>	<p>11 December 2020</p>	<p>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.</p> <p>The other key findings from my investigation may be summarised as follows:</p> <p>a. In a general sense, a greater degree of senior level support and</p>	<p><b>1. Appoint an Information Champion</b></p> <p>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.</p> <p><b>2. Operational Processes and Procedures</b></p> <p>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 <b>Recommendation 1</b> and at a minimum:</p> <p>(a) specify the steps that will be taken to ensure compliance with statutory processing requirements (as set out in more detail in Part 5),</p>	<p>Agreed and in the process of implementing</p>	

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				<p>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.</p> <p>b. With regard to the Department's FOI Section:</p> <p>i. There is evidence that not all of the staff within the FOI Section are available to</p>	<p>(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</p> <p>(c) include a short form guidance note to assist business areas in processing FOI requests for non-personal information.</p> <p>Consistent with the requirements of the Information Publication Scheme, the operational manual should be made publicly available by the Department on its website.</p> <p>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>		

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				<p>assist in the processing of FOI requests for non-personal information which has contributed to delays in processing these FOI requests.</p> <p>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</p>	<p>contractual requirements for procurement by the Department.</p> <p><b>3. Training</b></p> <p>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>New staff joining the FOI Section should be trained within 2 weeks of commencing in the FOI Section.</p> <p><b>4. Audit of Compliance</b></p> <p>The Department undertakes an audit of the processing of FOI</p>		

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				<p>are contributed to by business areas of the Department or third parties.</p> <p>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.</p>	<p>requests for non-personal information to assess whether <b>Recommendations 2 and 3</b> 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>		

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				<p>c. With regard to the business areas of the Department:</p> <p>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</p>			

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				<p>does not facilitate processing FOI requests within the FOI Act statutory processing periods.</p> <p>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</p>			

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processing periods.

- d. There are inadequate policies and procedures in place to support compliance with the requirements of section 6C of the FOI Act.