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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Clarification to Hansard – Budget Estimates 2024-25 hearing on 29 May 2024

Dear Committee Secretary

I write to provide clarification of evidence I gave to the Senate Standing Committee on Legal and Constitutional Affairs during the Budget Estimates 2024-25 hearing on 29 May 2024.

Evidence of Ms Elizabeth Tydd, Acting Information Commissioner

On page 116 of the transcript, in response to a question from Senator Shoebridge regarding the number of FOI review applications, I said:

Ms Tydd: You're correct in that assumption, and we're looking at the sources of that. That's why I was so keen to ensure that you're able to receive information about deemed access refusals, because the volume of work that we are doing is actually initial decision work'.

I wish to clarify that in relation to review of deemed access refusal decisions, the OAIC may intervene to facilitate a revised decision or in some cases, may need to rely on submissions received from the agency to make a decision in the absence of an initial decision by the agency.

On page 118 of the transcript, Senator Scarr questioned:

'To the extent that an FOI request isn't responded to within the relevant time and there hasn't been an extension-of-time, is it the case that you then hit a threshold where it becomes a deemed refusal and it comes to your office as a matter which you need to try and respond to under that onerous workload you're under at the moment. That's correct, isn't it?'

In responding to the question I said:

Ms Tydd: That's correct.

I wish to clarify that deemed access refusal decisions can only be reviewed by the Information Commissioner where an FOI applicant applies for IC review.

Yours sincerely

Elizabeth Tydd
Freedom of Information Commissioner

20 June 2024