

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Portfolio

Question No. 117

Senator Humphries asked the following question at the hearing on 30 May 2013:

Freedom of information

- a) Has the department/agency received any updated advice on how to respond to FOI requests?
- b) What is the total cost to the department to process FOI requests for this financial year to date?
- c) How many FOI requests has the Department received for this financial year to date?
- d) How many requests have been denied and how many have been granted?
- e) Has the department failed to meet the processing times outlined in the FOI Act for any requests? If so, how many and why?
- f) Do any of these requests remain outstanding? If so, how many and why?

The answer to the honourable Senator's question is as follows:

For 2012-13 financial year information up to 31 January 2013, please refer to QoN response 146 from the Additional Estimates round.

For the period 1 February 2013 to 31 May 2013 please see below.

Attorney General's Department

- a) On 12 April 2013 the Deputy Secretary Civil Justice and Legal Services, Mr David Fredericks, provided policy advice to departments in relation to FOI requests seeking access to an incoming Secretary or incoming Minister brief. On 7 June 2013 the Secretary, Mr Roger Wilkins AO, wrote to other Secretaries regarding FOI requests relating to cyber incidents and possible data breaches.

The department accesses the advice provided by the Office of the Australian Information Commissioner (OAIC), which provides general advice to all agencies under the *Freedom of Information Act 1982*. The advice is available at http://www.oaic.gov.au/publications/guidelines.html#foi_guidelines and other FOI advice is available from the OAIC at http://www.oaic.gov.au/publications/agency_resources.html#FOI

- b) Cost statistics are not yet available for the 2012-2013 financial year.
- c) The department received 47 FOI requests during the period 1 February 2013 to 31 May 2013.

- d) Of the requests the department received in the period 1 February 2013 to 31 May 2013 the department granted 5 FOI requests in full, partially granted 7 requests and refused 4 requests. The remaining requests comprised 8 requests that were subsequently withdrawn by the applicant, 5 requests that were transferred to other agencies, 5 requests in relation to which no documents were held by the department (s24A) and 13 requests that remained outstanding on 31 May 2013.
- e) Processing has extended outside the statutory time limits for 7 of the finalised requests. Where delays have occurred, they have generally been associated with large or complex requests requiring extensive analysis and external consultation.
- f) Of the 13 requests that were outstanding on 31 May none were outside the statutory timeframe. Of the 47 requests received in the period 1 February 2013 to 31 May 2013, 34 were finalised and 13 remained outstanding at the end of the period.

Administrative Appeals Tribunal

- a) No.
- b) Nil.
- c) Nil.
- d) N/A
- e) N/A
- f) N/A

Australian Crime Commission

- a) Yes. The Office of the Australian Information Commissioner (OAIC) provides general advice to all agencies under the *Freedom of Information Act 1982* and this has been updated in recent months. The updated advice is available at:
http://www.oaic.gov.au/publications/guidelines.html#foi_guidelines

The OAIC has also published a series of resources for agencies relating to responding to FOI requests: http://www.oaic.gov.au/publications/agency_resources.html#FOI

- b) Staff hours: 473 This amounts to approximately \$26,596.79*

** Figures are based on an average gross annual salary of \$110,000.00 which includes allowances for superannuation and leave provision.*

- c) Number of FOI applications received: 17 with 2 applications on hand at the beginning of the period.
- d) The outcome of the FOI requests are as follows:
 - Access granted in full: 2

- Access granted in part: 8
 - Access refused: 5
 - Transferred to another agency: 0
 - Withdrawn: 4
- e) Yes. The ACC had four requests where the response time was up to 30 days after the statutory period. However, in three of those requests a response was provided to the applicant less than one week after the lapse of the statutory period.
- These four applications were large requests requiring extensive consultation with private individuals, Commonwealth and State partner agencies on sensitive and classified material.
- f) These requests have all been finalised.

Australian Commission for Law Enforcement Integrity

- a) The Australian Commission for Law Enforcement Integrity (ACLEI) has received updated advice on how to respond to FOI requests. The Office of the Australian Information Commissioner (OAIC) provides general advice to all agencies under the *Freedom of Information Act 1982* (the FOI Act). The advice is available at http://www.oaic.gov.au/publications/guidelines.html#foi_guidelines and other FOI advice is available from the OAIC at http://www.oaic.gov.au/publications/agency_resources.html#FOI.
- b) Each year, ACLEI provides financial data to the OAIC concerning the processing of FOI requests. This data is compiled and published on the OAIC website in the FOI Act Annual Report. Accordingly, figures are not yet available for the 2012–13 financial year.
- c) ACLEI received two FOI requests between 1 February 2013 and 31 May 2013.
- d) Four FOI requests were granted between 1 February 2013 and 31 May 2013. One FOI request was denied in that period.
- e) Processing times outlined in the FOI Act were not met for three of the requests dealt with between 1 February 2013 and 31 May 2013. All three requests were finalised in the reporting period. These requests took longer to process because of their size and complexity.
- f) No FOI requests remain outstanding as at 31 May 2013.

Australian Federal Police

- a) The Office of the Australian Information Commissioner (OAIC) provides general advice to all agencies under the *Freedom of Information Act 1982* (FOI Act). The most up to date advice is available at: http://www.oaic.gov.au/publications/guidelinesvhtml#foi_guidelines. The OAIC has also published a series of resources for agencies relating to responding to FOI requests at http://www.oaic.gov.au/publications/agency_resources.html#FOI

- b) In relation to costs to agencies, the agency input relates to estimated total staff time spent and non-labour costs. Between 1 February 2013 and 31 May 2013 estimates that the Australian Federal Police's total costs were 4,202 staff hours with no recorded non-labour costs.
- c) The Australian Federal Police between 1 February 2013 and 31 May 2013 has received 206 requests for information including the transfer to the AFP of four (4) FOI requests initially received by other agencies.
- d) The Australian Federal Police between 1 February 2013 and 31 May 2013 granted access to the requested information in full to 10 requests, partially to 109 requests, while 13 requests were withdrawn by the applicant, 2 transferred to other agencies and 49 were refused.
- e) The Australian Federal Police between 1 February 2013 and 31 May 2013 exhausted all extension of time options and was unable to comply with the statutory processing times for 21 requests due to a range of factors including: awaiting legal advice; responses from courts; increase in number and complexity of requests.
- f) Only 4 of these requests remain outstanding at the beginning of 1 June 2013 due to a range of factors concerning document discovery, complexity of the information, extensive consultation processes and denial of extension of time.

Australian Customs and Border Protection Service (ACBPS)

- a) Yes. The Office of the Australian Information Commissioner (OAIC) provides general advice to all agencies under the *Freedom of Information Act 1982*. The OAIC's advice is available at: http://www.oaic.gov.au/publications/guidelines.html#foi_guidelines.
- b) See table below. The input relates to estimated total staff time spent and non-labour costs for the period 1 February 2013 to 31 May 2013:

Staff Years	Non-labour costs (\$)
0.8	\$135

- c) ACBPS received 49 requests from 1 February 2013 to 31 May 2013.
- d) See table below.

Granted in full	Granted in part	Access refused	Total determined
11	21	5	37

e) Yes. See table below

Where delays have occurred, these are usually associated with large or complex requests requiring extensive analysis and external consultation. ACBPS has an obligation under the FOI Act to ensure that it makes sound decisions.

Response time within statutory timeframes	Response time up to 30 days after statutory period	Response time 31-60 days after statutory period	Response time 61-90 days after statutory period	Response time over 90 days after statutory period
22	10	5	0	0

f) Yes. As at 31 May 2013, ACBPS had 5 requests on hand that were not finalised within the required statutory timeframes. Four of these requests were finalised after 1 June 2013. One request remains outstanding.

As stated above, where delays have occurred, these are usually associated with large or complex requests requiring extensive analysis and external consultation. ACBPS has an obligation under the FOI Act to ensure that it makes sound decisions.

Australian Government Solicitor

Australian Government Solicitor (AGS) is a government business enterprise operating on a commercial and competitive basis in providing legal and related services to government and its agencies. AGS does not receive any Budget or other appropriations and its employees are engaged outside of the Public Service Act 1999. The question is therefore not applicable to AGS.

Australian Human Rights Commission

- a) No
- b) Approx \$1338
- c) 4
- d) 3 granted in part, 1 granted in full
- e) No
- f) No

Australian Institute of Criminology

- a) No

- b) \$2,000
- c) 2
- d) 2 granted.
- e) Yes, one, because it involved a transfer from another agency, and required extensive consultation.
- f) Yes, one, because it was complicated (see part e) above)

Australian Law Reform Commission

- a) The ALRC has not received any updated advice on how to respond to FOI requests
- b) Nil
- c) Nil
- d) N/A
- e) N/A
- f) N/A

Australian Security Intelligence Organisation

ASIO is an exempt agency under the *Freedom of Information Act 1982* (Schedule 2, Part I, Division I).

Australian Transaction Reports and Analysis Centre (AUSTRAC)

- a) Yes. The Office of the Australian Information Commissioner (OAIC) provides general advice to all agencies under the *Freedom of Information Act 1982* (FOI Act) and this has been updated in recent months. The updated advice is available at:
http://www.oaic.gov.au/publications/guidelines.html#foi_guidelines.
- b) Each year, those agencies subject to the FOI Act provide data to the OAIC concerning processing of FOI requests, which is compiled and published on the OAIC website in the *Freedom of Information Act 1982 Annual Report*. The costs for AUSTRAC for the financial year 1 July 2012 to 30 June 2013 will be only ascertained at the end of 30 June 2013 when AUSTRAC reports the second half (1 January 2013 to 30 June 2013) of its FOI statistics to OAIC for that financial year. The approximate cost for the processing of FOI requests for 1 February 2013 to 31 May 2013 (this period) is \$126,485, calculated as a pro-rata amount based on the figures published by OIAC for the 2011-12 financial year.
- c) For this period, 41 FOI requests have been received.

- d) For this period, 13 requests for access to documents were released in full and/or in part and 26 requests were refused.
- e) No.
- f) Two requests remain outstanding for this period because they were received on 27 May 2013 and 29 May 2013 respectively. AUSTRAC added 30 days for third-party consultation (that is, in addition to the 30-day statutory processing time) to make a decision under the FOI Act for these two requests.

Commonwealth Director of Public Prosecutions

- a) No.
- b) \$640.
- c) 11 applications.
- d) Access to documents was granted in full or in part in 9 applications, access was refused in 1 application and 1 application was withdrawn.
- e) No. All requests were processed within the statutory timeframe.
- f) No requests are outstanding. Two applicants have sought review by the Office of the Information Commissioner of decisions by the CDPP to refuse access to documents. Those reviews are pending.

CrimTrac

- a) No. CrimTrac continues to receive regular advice provided by the Office of the Australian Information Commissioner (OAIC) of a general nature that is publicly available and assists all Commonwealth government agencies. Since the last Supplementary Estimates, CrimTrac has neither sought nor received any advice on how to respond to any specific FOI requests.
- b) It is normal practice to collate these figures for the statistical return to the OAIC closer to the end of the financial year. To identify the information sought at this stage would require an unreasonable diversion of resources at this time.
- c) Three requests have been received.
- d) Two requests were granted. One request was partially granted; parts of the request were denied as there were no existing documents of the agency.
- e) All processing timeframes have been met.
- f) There are no outstanding requests.

Family Court of Australia

- a) Only the usual general advices regularly provided to all agencies by OAIC.

- b) Approx \$200.
- c) f) Three FOI requests to date this financial year.

July 2012	Released in full	Within legislated time frame
Sept 2012	Released in part	Within legislated time frame
June 2013	Still on foot	N/A

Federal Circuit Court of Australia (FCCoA)

- a) The FCCoA has received general information about matters pertaining to FOI review decisions sent by way of email alerts to the Agency and other subscribers as a member of the OAIC icon email list. There has been no specific advice on responding to FOI requests.
- b) Nil
- c) One
- d) Nil requests have been denied. One request has been granted in part to the extent there were documents in existence
- e) No
- f) N/A

Federal Court of Australia

(excluding the Deputy Registrars of the NNTT and staff assisting the NNTT)

- a) The Australian Information Commissioner revised parts of the Guidelines issued under s93A of the *Freedom of Information Act 1982* on 27 and 28 March 2013.
- b) This would include both direct and indirect costs. Specific data is not available to enable these to be calculated.
- c) 1 FOI request was received in the period from 1 February 2013 to 31 May 2013.
- d) The only request received in the period from 1 February 2013 to 31 May 2013 was granted in part.
- e) No. All processing times outlined in the FOI Act were met.
- f) There were no outstanding requests as at 31 May 2013.

National Native Title Tribunal

(comprised of the Tribunal, Native Title Registrar and the Deputy Registrars of the NNTT and staff assisting the NNTT)

- a) The Australian Information Commissioner revised parts of the Guidelines issued under s93A of the *Freedom of Information Act 1982* on 27 and 28 March 2013.

- b) This would include both direct and indirect costs. Specific data is not available to enable these to be calculated.
- c) 1 FOI request was received in the period from 1 February 2013 to 31 May 2013.
- d) The only request received in the period from 1 February 2013 to 31 May 2013 was granted in part.
- e) No. All processing times outlined in the FOI Act were met.
- f) There were no outstanding requests as at 31 May 2013.

High Court of Australia

- a) No
- b) \$1,840
- c) 1 request received and 1 application for internal review arising out of the request
- d) 1 requested granted, 0 denied
- e) No
- f) None

Insolvency and Trustee Service Australia

- a) No
- b) Approximately \$13,000 (including staff costs)
- c) 10
- d) 2 requests were granted full access
4 requests were granted partial access
1 request was denied access.
3 requests remained on hand at 31 May 2013 (all within the statutory processing period)
- e) No
- f) No

Office of the Australian Information Commissioner

- a) Yes. Agencies must have regard to guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982* when they are performing a function or exercising a power under that Act. The Information Commissioner most recently updated the FOI Guidelines on 28 March 2013. The Guidelines and information about the most recent changes are available on: http://www.oaic.gov.au/freedom-of-information/applying-the-foi-act/foi-guidelines/#foi_guidelines

The OAIC has also published a series of resources for agencies relating to responding to FOI requests: <http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-agency-resources/>.

b) \$16,391

- c) The OAIC has received 15 FOI requests in the period 1 February 2013 to 31 May 2013.

This does not include requests for documents that were responded to administratively and not required to be processed as formal FOI requests. It also does not include the OAIC's total expenditure on its broader freedom of information functions as defined in section 8 of the *Australian Information Commissioner Act 2010*.

- d) The OAIC has finalised 11 of the FOI requests it received during the period 1 February 2013 to 31 May 2013:

- 2 granted in full
- 8 granted in part
- 1 transferred to another agency

e) No

f) N/A.

Office of Parliamentary Counsel

a) No

b) Nil

c) Nil

d) N/A

e) N/A

f) N/A