

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

**Question No. 40**

**Senator Rhiannon asked the following question at the hearing on 18 November 2013:**

1. Currently, what government departments and agencies are exempt from FOI provisions?
2. What is the status of the OAIC's (Office of the Australian Information Commissioner) current resources? Are they likely to be subject to budgetary cuts?
3. The OAIC's caseload for FOI's is growing larger, and many cases are taking over a year to finalise. Why is the OAIC not referring cases directly to the Administrative Appeals Tribunal? Wouldn't that help speed up and resolve matters in a more timely way?
4. The Privacy Commissioner said in a July statement in relation to the NSA surveillance revelations that "The Privacy Act can extend to an act or practice that occurs outside Australia in certain circumstances". However, the Act also provides that an act or practice of an organisation done outside Australia does not breach the Privacy Act if it is required by an overseas law. Further, the Privacy Act will generally not cover the acts and practices of overseas government agencies."
  - a. What steps has the Commissioner taken to investigate whether the activities of the federal government and government agencies comply with privacy law and practice?
  - b. Has the Commissioner made enquiries to establish the extent of domestic surveillance?

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

1. Section 7 of the *Freedom of Information Act 1982* (FOI Act) exempts the following persons, bodies and parts of the Department of Defence from the operation of the FOI Act:
  - Aboriginal Land Councils and Land Trusts;
  - Auditor-General;
  - Australian Government Solicitor;
  - Australian Secret Intelligence Service;
  - Australian Security Intelligence Organisation;
  - Inspector-General of Intelligence and Security;
  - National Workplace Relations Consultative Council;
  - Office of National Assessments;
  - Parliamentary Budget Office;
  - Parliamentary Budget Officer;
  - Defence Imagery and Geospatial Organisation;
  - Defence Intelligence Organisation; and
  - Defence Signals Directorate.

Section 68A of the *Parliamentary Service Act 1999* excludes departments and office-holders established under that Act from the application of the FOI Act.

2. As set out in the Attorney-General's portfolio budget statements (PBS), the OAIC's revenue from government for 2013-14 is \$13.374 million (Table 1.1: Agency resource statement, 2013-14 PBS p 376). This comprises \$10.624 million departmental appropriation plus \$2.75 million from other agencies. The OAIC receives funds from a number of agencies for the provision of privacy advice and related services.

The OAIC is subject to savings and efficiency measures that apply generally across government agencies.

3. The OAIC is not able to refer matters directly to the Administrative Appeals Tribunal (AAT). Section 54W(b) of the FOI Act allows the Information Commissioner to not undertake an Information Commissioner review (IC review) if it is desirable, in the interests of the administration of the FOI Act, for the matter to be considered by the Tribunal. When a matter is finalised on this basis an applicant can then lodge a review application with the AAT if they wish to pursue the matter.

The Information Commissioner finalised 17 cases under s 54W(b) in 2012-13. This is actively considered by the Commissioner as an option for appropriately resolving IC reviews, for example, if the parties are already or may be engaged in a similar matter in the AAT, or the matter is particularly large and complex and might be resolved more suitably or expeditiously through AAT processes.

4.
  - a. The OAIC continues to monitor the activities of government primarily through its compliance activities such as responding to individual complaints, undertaking own motion investigations, audit activities and reviewing privacy impact assessments on request.
  - b. The OAIC has not made enquiries to establish the extent of domestic surveillance.