



ATTORNEY-GENERAL

CANBERRA

MC15/05223

21 MAY 2015

Dear Mr Smith

Thank you for your letters received 7 April and 23 April 2015 concerning the new arrangements for privacy and FOI regulation.

In the 2014-15 Budget, the Australian Government announced arrangements for streamlining the regulation of privacy and freedom of information (FOI) under the measure *Smaller Government Privacy and Freedom of Information functions – new arrangements*. The Australian Government remains committed to this measure, which is consistent with its policy to reduce the size of government and streamline the external review system to make it more efficient, less complicated and more effective.

In accordance with the measure the Government introduced the Freedom of Information Amendment (New Arrangements) Bill 2014 (the Bill). As you are aware, the Bill proposes to abolish the Office of the Australian Information Commissioner (OAIC) and transfer its functions to other agencies. This includes the Administrative Appeals Tribunal (AAT) holding sole responsibility for external merits review of FOI decisions, following mandatory internal review for all decisions other than those made by a Minister or agency head. Removing the additional layer of merits review by the OAIC will streamline the FOI review process and align with other merits review processes across the Australian Government.

The Bill also provides for the Commonwealth Ombudsman to be responsible for investigating complaints about FOI processing for agencies, for the Office of the Privacy Commissioner to be established as an independent statutory office within the Australian Human Rights Commission (AHRC), and for my department to be responsible for issuing FOI guidelines and annual reporting on FOI statistics.

The new arrangements were to commence on 1 January 2015. However, as the Bill is still before the Parliament, the OAIC remains responsible for privacy and FOI regulation and continues to exercise its functions under both the *Privacy Act 1988* and the *Freedom of Information Act 1982* (FOI Act).

In December 2014, the OAIC closed its Canberra office. The Sydney office of the OAIC, with approximately 65 staff, continues to operate and is undertaking both privacy and essential FOI functions. I understand that the Australian Information Commissioner, Professor John McMillan, continues to work alternately from the Sydney office of the OAIC and from a home based office in Canberra with office assistance and IT support.

Resources are being reappropriated to the OAIC for the remainder of 2014-15 to allow it to continue the exercise of privacy and FOI functions, and the OAIC will also receive an appropriation in 2015-16 for these functions.

The OAIC has implemented a streamlined approach for applications for merits review of FOI decisions. Straightforward matters are being finalised by the OAIC, and where appropriate more complex or voluminous matters are being referred to the AAT if the Information Commissioner decides that it is desirable in the interests of the administration of the FOI Act that the matter be reviewed instead by the AAT. In such an event, an applicant may apply to the AAT in accordance with regular AAT procedures. All new FOI complaints are being referred to the Ombudsman.

The appointment of the Information Commissioner ends at the end of October 2015. If the Bill has not passed by then, the Government will ensure that arrangements are in place for the continued exercise of all of the Information Commissioner functions. The former Freedom of Information Commissioner, Dr James Popple, was appointed as a full-time Senior Member of the AAT on 1 January 2015. Dr Popple has been appointed until 31 December 2017.

Thank you again for writing on this matter.

Yours faithfully



(George Brandis)