

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

Question No. AE16/015

Senator Rhiannon asked the following question at the hearing on 9 February 2016:

Senator RHIANNON: I noticed in some of the findings that it was suggested or reported that some of the departments were overestimating the amount of time it would take for the information to be found and to be released. Is that also a trend?

Mr Pilgrim: Again, I want to be careful of my words and not say it is a particular trend. It is an issue we are seeing, and one of the things we hope to do through the decisions we make is to use them also as an educative process so that they can understand the views of our office in terms of some of the time frames we think should be taken in terms of being able to identify and locate documents.

Senator RHIANNON: Are you just accepting that the departments will make a fair judgement on the time that will be required? Is it just a matter of trust or are there guidelines with regard to this matter? Because it seems as though that becomes quite influential in deciding where some of these cases go.

Mr Pilgrim: We certainly do monitor the IC reviews that are coming through to us to understand what some of the challenges may be for agencies. We try to use some of the decisions we make as the educative tool. Ms Toohey might want to make some observations in terms of sampling.

Ms Toohey: One of the things that we certainly encourage agencies to do is this idea of sampling so they can justify a decision if they have made a decision—

Senator RHIANNON: You used the word 'sampling'; could you define that.

Ms Toohey: If a matter comes to us and it has been a practical refusal, we generally ask the agency to produce a small sample of the documents so that we can then test their calculation versus our own. The commissioner has made a number of decisions looking at those sorts of processes and has certainly provided guidance in those decisions to the agencies about that approach.

Senator RHIANNON: Is there a trend that there is often considerable disparity between your estimations and other departments' estimations?

Mr Pilgrim: I think what I was saying is that I do not want to try to use the word 'trend' because it can be taken in a way to say that there is a major issue. It is certainly something we are looking at and it is something that I think we can provide more guidance to agencies on, and, as I said, our primary way of doing that is using the IC review process as part of that educative process to let agencies have an understanding about what we think in certain circumstances. Looking at each case individually would be a reasonable period of time.

Senator RHIANNON: So you said you are looking at it. In time will you be able to share with us what these trends are?

Mr Pilgrim: I can certainly take that back and see whether it is something we can produce any useful information on. I cannot guarantee what we may be able to produce, but I certainly will take it on board.

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

The OAIC has not identified a 'trend' in departments over estimating FOI processing time. There are some IC reviews where the Information Commissioner's estimates on processing time for an FOI request may vary from a Department's estimate. These are attributable to a range of factors, including:

- where the applicant may have revised the scope of their request and excluded from scope information that would have required third party consultation under section 27A of the FOI Act prior to release and
- where the Department has not assessed a sample of the documents at issue, prior to issuing a decision that a practical refusal reason exists
- where a department has relied on standardised assessment calculators rather than the actual documents to assess processing time.