

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

BUDGET ESTIMATES 2017

Office of the Australian Information Commission

Question No. BE17-184

Senator Pratt, Louise asked the following question on 28 August 2017:

1. What provisions have been made in the Budget or elsewhere for resourcing sufficient to:
 - a) discharge the statutory functions of the OAIC, and
 - b) implement the Open Government Partnership National Action Plan commitments?
If so, what are they?
2. Is the OAIC able to discharge its statutory functions under the current funding levels?
3. Will the Government be appointing an individual to each of the three independent Statutory Commissioner roles – Information Commissioner, Privacy Commissioner and FOI Commissioner?
4. If not, how does that not breach the Open Government Partnership National Action Plan and the Government's commitment to 'ensure the adequate resourcing of the OAIC to discharge its statutory functions'?
5. In the 2017-18 Budget, how much funding was provided for the OAIC to perform its privacy functions?
6. How much funding was provided for the OAIC to perform its FOI functions?
7. How much funding was provided for implementing the Open Government Partnership National Action Plan commitments?
8. How many staff are employed to perform the OAIC's privacy functions?
9. How many staff are employed to perform OAIC's FOI functions?
10. How many staff are employed to implement the Government commitments under the Open Government Partnership National Action Plan?
11. What additional functions were given to the OAIC under the Open Government Partnership National Action Plan?
12. Will additional funding or staffing be provided to the OAIC to perform those functions?
13. In the past 12 months, how many agencies received requests for documents that have been already released under FOI?
14. Is this an efficient use of agencies' time? Would it be more efficient to require Government agencies to publish on their websites documents released under FOI?
15. In the past 12 months, how many agencies received FOI requests that were substantively the same as other FOI requests already received and responded to?
16. Is this an efficient use of agencies' time? Would it be more efficient to require Government agencies to publish on their websites the reasons for decisions on all requests, including requests which are denied?
17. Would requiring Government agencies to publish on their websites documents released under FOI and the reasons for decisions on all requests improve transparency, expose inconsistent or arbitrary decision-making or improve public understanding of the FOI process?
18. What would be the benefits of reinstating the independent statutory role of FOI Commissioner, as distinct from the Privacy or Information commissioner?

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

- 1 – 4) The resources allocated to the Office of the Australian Information Commissioner (OAIC) are set out in the Portfolio Budget Statements 2017-18 Budget related Paper No. 12 for the Attorney-General's Portfolio. The remaining questions 1–4 should be directed to the Attorney-General's Department.
- 5 – 7) The annual Budget appropriations to the OAIC generally does not provide a breakdown between functions. As well the OAIC operates as an integrated agency in relation to all its statutory responsibilities and as such its internal budget is not separated by function.
- 8 – 9) The OAIC allocates staff from within existing resources proportionate to the workload requirements of each function and priority setting. As at 11 September 2017 the staff allocated to these core functions was approximately:
- Privacy: 47
 - FOI: 15

In addition to the above, a further 11 staff provide support across all the OAIC's statutory responsibilities in areas such as education and awareness, legal services, corporate governance. A further six staff are in the Executive Branch.

- 10) While no staff have been solely dedicated to the implementation of Australia's Open Government Partnership National Action Plan (NAP), staff will be drawn, as required, from various areas of the OAIC based on the skills and subject matter expertise required for particular NAP projects. This allocation will be done as part of the OAIC's priority setting and overall workload requirements.
- 11) In the NAP the OAIC is specifically named as a joint lead agency in relation to Commitments 2.2 and 3.2 and as an 'Other government actor involved' in relation to Commitment 3.1. In addition all Commonwealth entities, of which the OAIC is one, are named as 'Other government actors involved' in relation to Commitments 3.3, 4.3 and 5.2.
- 12) The OAIC operates from within existing resources to achieve its required outcomes based on priority setting and workload requirements. The provision of additional funding is a matter for Government.
- 13) The OAIC does not have information about how many agencies have received requests for documents that have already been released under the FOI Act. Generally, individual agencies are best placed to know whether requested documents have already been released in response to an FOI request. In those cases, agencies will usually direct the applicant to publically available documents, or their disclosure log, thereby avoiding the need to process the request.
- 14) The *Freedom of Information Act 1982* (FOI Act) currently requires agencies to publish documents released under the FOI Act on their disclosure log, except if the documents contain personal or business information that it would be unreasonable to publish (see s 11C of the FOI Act).
- 15) The OAIC does not have information about how many agencies have received requests for documents that are substantively the same as other FOI requests already received and

responded to. Generally agencies are best placed to know whether the same or similar requests have been made and responded to. In those cases, agencies can direct an applicant to publically available documents, or their disclosure log, to see whether what is already publicly available satisfies the request. If it does, there will be no need to process the FOI request.

- 16) Given that documents released in response to FOI requests are already required to be published, it is not apparent that publishing all FOI decisions will reduce the number of FOI requests made to agencies or make it easier for members of the public to identify whether similar FOI requests have been made (and refused).

The Guidelines issued by the Information Commissioner under s 93A of the FOI Act recommend that agencies provide a short summary of the FOI request in their disclosure log when publishing documents that are released in response to an FOI request.

FOI decisions would need to be carefully reviewed and redacted before publishing to ensure that personal information that might identify the applicant or other individuals has been removed.

- 17) Australian Government agencies are already required to publish documents released under the FOI Act on their websites (see s 11C of the FOI Act).

- 18) The appointment of an FOI Commissioner under the *Australian Information Commissioner Act 2010* is a matter for the Government. The OAIC is currently operating with one person who is appointed as both Australian Information Commissioner and Privacy Commissioner. That person is supported by three (3) SES staff, a Deputy Commissioner and two Assistant Commissioners. It is the view of the current Commissioner that this arrangement is working effectively.