



Our reference: CP14/00757

Ms Abigail Bradshaw  
Parliamentary and Executive Coordination Branch  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

Sent by email [foi@immi.gov.au](mailto:foi@immi.gov.au)

Dear Ms Bradshaw

## Freedom of Information Complaint

I refer to a complaint by Mr Ben Fairless about the Department of Immigration and Border Protection under the *Freedom of Information Act 1982* (the **FOI Act**).

On 16 June 2014, I wrote to the Director, FOI and Privacy Policy, to provide my investigation findings and recommendations. An officer of the FOI and Privacy Policy provided a response on behalf of the Department on 27 June 2014. I have carefully considered the Department's submissions in response to my investigation recommendations.

I am writing to advise that I have completed my investigation into this matter and to ask the Department to provide me with particulars of the actions it proposes to take to implement my investigation recommendations.

## Background

In my letter of 16 June 2014, I recommended that the Department:

- review its process for 'validating' FOI requests to ensure that it is consistent with the FOI Act;
- accept all email addresses (including a [rightknow.org.au](mailto:rightknow.org.au) (RTK) email addresses) as valid addresses for notice, as required by s 15(2)(c) of the FOI Act; and
- start counting the processing period for FOI requests from the date on which the request is received, as required by s 15(5) of the FOI Act, rather than the day on which the request is 'validated'.

On 27 June 2014, the Department responded to each of the three recommendations as follows:

- The Department continually reviews its processes and makes changes as appropriate. The Department believes that the process is consistent with the FOI Act and allows the effective management of the FOI function.

- The Department always accepts email addresses as valid addresses as required by s 15(2)(c). The issue that seems to have been overlooked in the recommendations is that this cannot be an automatic approach. Section 15(2) outlines the requirements for an FOI request and each requires human intervention to assess whether the requirements of s 15(2) have been met.
- The Department has 14 days to acknowledge requests under the FOI Act and must provide a decision within the statutory timeframe. Reference from the FOI Commissioner to requests on the RTK website taking a week to validate is irrelevant, as it is not a requirement under the Act to validate the request within 1 week, but rather to commence processing time from when a valid request is received. A request may be physically received in an agency on a certain date, but it is not necessarily a 'received' date for the purposes of the FOI Act. Section 15 sets out a number of requirements for a request to be considered under the FOI Act ie to be 'valid' and, just because a request is physically received by an agency on a certain date does not necessarily make it a 'valid' FOI request from that date.

### **Next Steps**

I remain of the view that the Department's interpretation of s 15(2)(c) is incorrect.

The Department's view is that the time to process an FOI request starts from when the Department is satisfied that it has received a valid request, rather than from when the valid request was received. This approach effectively adds an additional step to processing an FOI request that is not envisaged by---or allowed by---the FOI Act.

An email address (including an RTK email address) is an address to which notices may be sent to the FOI applicant, as required by s 15(2)(c) of the FOI Act. As the Department notes, 'human intervention' is required to assess whether an FOI request meets the requirements of s 15(2). But, regardless of how long the Department takes to satisfy itself that a request is valid, such a request is valid from the date it is received.

I now ask that the Department provide me with particulars about the actions it proposes to take to implement my investigation recommendations. Please provide these to me by **25 July 2014**.

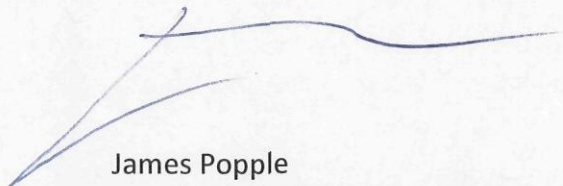
If I do not receive a response, I may issue an implementation notice under s 89 of the FOI Act. If an agency does not comply with such a notice, I may provide a written report to the Attorney-General (who must provide it to each House of the Parliament) under s 89A.

I have provided a copy of this letter to the complainant for his information.



Please contact Tina Jelenic on (02) 9284 9855 or by email at [tina.jelenic@oaic.gov.au](mailto:tina.jelenic@oaic.gov.au) if you would like to discuss this matter. Please quote the reference number **CP14/00757**.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of fluid, connected strokes that form the name 'James Popple'.

James Popple  
Freedom of Information Commissioner

10 July 2014