

How to Respond to a Request for Information

This factsheet gives guidance about the RFI process, the dos and don'ts, how we can help agencies provide their response, the protections for agencies/persons providing information and how we handle the information we receive.¹

A Request for Information (RFI) is an essential part of an Ombudsman investigation.² We typically make an RFI under s 8(3) of the *Ombudsman Act 1976* (Cth).³ This gives the Ombudsman power to obtain information from such persons and to make such inquiries as the Ombudsman thinks fit. However, in certain cases, the Ombudsman may consider it appropriate to use powers under s 9 to compel production of information and documents (discussed below).

Agencies that provide a response critically engaging with the questions we ask help us identify relevant issues and identify improvements to benefit the agency and, most importantly, the people affected by the agency's action, typically the Australian public.

Why is it important for agencies to critically engage with our questions?

We appreciate responding to an RFI takes time and agency resources. This is why we try to ask targeted and focused questions. We want the best information from the agency in the shortest possible time.

Helping people and improving government are our core objectives. Agencies that properly engage with our RFIs are instrumental in helping us achieve these objectives. We often publicly acknowledge agencies who cooperate with our investigation.

However, agencies who do not properly engage with an RFI run the following risks:

- We may revisit the RFI with the agency until we are satisfied its response addresses our questions. This takes more time and resources for both the agency and our Office.
- Our RFI process is finite. We won't keep remaking requests if we take the view further follow up would not efficiently progress the matter, or the response does not demonstrate the agency has made a satisfactory attempt to engage. If so, we can:

¹ Please note this factsheet is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered because of reliance on this document. For the most up-to-date versions of cited Acts, please refer to the [Federal Register of Legislation](#). For more information about us visit [ombudsman.gov.au](#) or call 1300 362 072.

² For the purposes of this factsheet 'investigation' includes 'inquiry'.

³ All references to legislation in this factsheet are to the *Ombudsman Act 1976* (Cth).

- Serve a notice under s 9 to compel production of information, documents or require an agency official to attend our Office to answer our questions. When we use s 9, s 8(7A)(b) requires us to inform the agency's Minister. Under s 36, refusing or failing to comply with a s 9 notice potentially carries criminal penalties.
- Proceed to finalise our investigation on the information available to us.

We may comment publicly in our final report on how the agency engaged with our Office during the investigation.

Some tips on effectively engaging with our RFI

- ✓ Consider carefully what we are asking. Clearly and directly address the questions asked.
- ✓ Think about whether you need to get legal or other professional advice to provide a proper response. Act appropriately on any advice obtained.
- ✓ Where possible, backup statements of fact with supporting document(s) such as policies procedures and publicly available information. Avoid opinion.
- ✓ When providing documents, identify the section(s) in the document that are relevant to the response and explain why these section(s) are relevant. This is especially important where the relevant information is located within a large document.
- ✓ Provide the full information, keeping in mind that agencies and people giving us information under the Ombudsman Act have legal protections, for instance regarding privacy and claims of legal professional privilege (see '**Protection for agencies when responding to our RFI**' section below). If you think there is a genuine need to redact information, we can discuss whether this is appropriate.
- ✓ If you cannot provide the requested information or are unable to provide the requested information by the date we've asked for, please tell us quickly and explain why.
- ✓ Be open, honest, timely and transparent when providing your response and in all your dealings with us (as we will be with you).
- ✓ Ensure responses to the RFI are prepared by the people in the agency who are best placed to understand and/or compile the requested information.
- ✓ If you believe there is other information relevant to the matter that we have not asked for please provide this with an explanation why you believe this to be the case.
- ✗ **DO NOT** give us extraneous or irrelevant information (especially in large volumes).
- ✗ **DO NOT** overthink your response. If you are not clear on what our question is asking or how much information to provide, ask us.

We can help agencies respond to our RFI

We want agencies to hit the mark with their response. If they do this, we'll hit the mark in identifying the issues as well as any action for improvement for their benefit and, most importantly, for the public we serve.

When we issue an RFI, we may provide the agency with a template to help guide their response. If we provide a response template, we encourage the agency to carefully follow the model as it will assist with providing concise, relevant information.



We understand our questions may occasionally pose an agency concern. For example, an agency may be unsure how to answer a question. That's fine. Please reach out to us and we'll help. The earlier the agency does this, the better. We urge agencies to take the initiative well before the deadline for response. Please get in touch using the contact details with our RFI.

Where an investigation is especially sensitive and complex, we may set up a meeting with the agency to step through the detail of the investigation process and the information we are seeking. Even if we don't initiate this, we encourage agencies to ask for such a meeting if they feel it will help. We will assist.

Protection for agencies when responding to our RFI and how we treat the information we receive

Our legislation gives the following safeguards to agencies providing information to us:

- the information cannot be used in evidence against the person (other than for giving false or misleading information)
- provision of the information does not constitute a breach of the *Privacy Act 1988* (Cth)
- providing the information does not affect a claim that may be made for legal professional privilege.⁴

We have policies and procedures to ensure the information we collect is handled appropriately.⁵ This includes protection against unauthorised access, use, modification or disclosure, or other interferences. Information is handled in accordance with the *Privacy Act 1988* (Cth) and the Australian Government's [Protective Security Policy Framework](#).

Our investigations are conducted in private.⁶ We are also subject to confidentiality obligations which include not divulging or communicating information obtained during an investigation, *except for purposes connected with the exercise of the powers and the performance of the functions of the Ombudsman* or where other legislative exceptions apply.⁷

The Ombudsman may choose to publicly disclose any information, statement or report during or following an investigation if certain legislative requirements are met.⁸ However, if the Ombudsman intends to disclose any opinions that are either expressly or impliedly critical of an agency or individual, the Ombudsman must first give the agency or individual the opportunity to make submissions either orally or in writing.⁹

For more information visit ombudsman.gov.au

VERSION NUMBER 04/2024

⁴ Sections 8(2A), 8(2B), 8(2C), 8(2D) and 8(2E).

⁵ Please note our standard Office email system is only suitable for receipt of unclassified material. We can receive information classified as *Protected* through our secure [protected](#) enclave. In the event there is any material classified higher than *Protected*, we will arrange delivery via *safe hands transfer*.

⁶ Section 8(2).

⁷ Section 35.

⁸ Section s 35A.

⁹ Section 8(5).

