

# CONCILIATING A COMPLAINT

## Frequently asked questions

**This fact sheet answers frequently asked questions about the conciliation process used in dealing with an FOI complaint.**

The Freedom of Information (FOI) Commissioner must take reasonable steps to resolve an FOI complaint informally.

If the FOI Commissioner believes that a complaint cannot be

resolved informally, the FOI Commissioner must endeavour to conciliate an FOI complaint.

You may choose to participate in conciliation in order to resolve your matter.

### What is conciliation?

The conciliation process involves the FOI Commissioner bringing together the parties to the complaint in an attempt to resolve the matter by way of a confidential negotiation process.

Conciliation is designed to –

- > Identify the key FOI issues which are in dispute;
- > Explore options for resolving the complaint;
- > Encourage all parties to work together to reach an agreement; and
- > Document any details of an agreement reached.

#### Conciliation under the FOI Act

The conciliation process for a complaint under the FOI Act is set out at section 61H of the FOI Act.

Conciliation can only be undertaken if a complaint cannot be resolved informally.

If conciliation fails, you will be given the opportunity to make a submission on possible recommendations to resolve the complaint.

### Can the FOI Commissioner compel a party to attend conciliation?

The FOI Commissioner cannot compel any party to participate in a conciliation process.

### What is the role of the FOI Commissioner when conciliation occurs?

The FOI Commissioner, or his or her representative, will act as an impartial third party, serving as the conciliator. It is not the role of a conciliator to resolve the matter for the parties.

The role of the conciliator is to –

- > Remain neutral;
- > Suggest options for resolving the complaint;
- > Provide guidance on the Freedom of Information Act 1982 (Vic) (the FOI Act), but does not extend to the providing of legal advice; and
- > Document any agreement reached by the parties.

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### What can I expect from conciliation?

Conciliation is designed to facilitate moderated communication, providing the parties with an opportunity to explore avenues for mutually resolving the complaint.

Parties are provided with an opportunity to –

- > Outline their views on the matter;
- > Clarify the issues; and
- > Consider options for resolution.

### How much will conciliation cost?

Conciliation is a free service provided by the FOI Commissioner. You are responsible for your own costs and expenses, such as travel costs and time off work.

### Where would conciliation occur?

Conciliation will usually occur at the office of the FOI Commissioner, which is located in Melbourne's CBD, within easy access to public transport or private car parking facilities.

### What happens if conciliation does not resolve the FOI dispute?

If conciliation is unsuccessful, the complainant and the agency or Minister will be invited to make oral or written submissions in relation to the complaint.

After considering the complaint and any related submissions and documents received, the FOI Commissioner may make any recommendations he or she considers appropriate to the agency or Minister in relation to the complaint. Recommendations may include suggestions for improvements to the policies, procedures and systems of the agency in relation to compliance with the FOI Act.

If the FOI Commissioner considers that the complaint requires further investigation, the complaint may be referred to another body that has the jurisdiction to investigate the complaint.

If the FOI Commissioner intends to make a recommendation, the agency, Minister, person or body affected will have an opportunity to respond to the draft recommendation. The FOI Commissioner will notify the complainant and the agency or Minister of any recommendations or comments made at the conclusion of the investigation.

If the FOI Commissioner decides not to make a recommendation, the complaint can be finalised if the complainant withdraws the matter or if the FOI Commissioner dismisses the matter under the FOI Act.

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## Further Information

### Visit our website, call or email us:

- > [www.foicommissioner.vic.gov.au](http://www.foicommissioner.vic.gov.au)
- > 1300 842 364 (1300 VIC FOI)
- > [enquiries@foicommissioner.vic.gov.au](mailto:enquiries@foicommissioner.vic.gov.au)

*Disclaimer: Individual cases may vary. This fact sheet does not constitute legal advice and should not be used as a substitute for seeking your own legal advice to address your needs or concerns.*

