



**Australian Government**

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**Department of Broadband, Communications  
and the Digital Economy**

**GUIDELINES  
FOR PROCESSING  
FREEDOM OF INFORMATION  
REQUESTS**

***Freedom of Information Act 1982***

**13 July 2011**

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# INTRODUCTION

Amendments to the *Freedom of Information Act 1982 (FOI Act)* made by the *Freedom of Information Amendment (Reform) Act 2010* came into effect on 1 November 2010.

The FOI Act provides a legally enforceable right for any person to obtain access to information and documents held by an agency (subject to certain exceptions). The Act aims to promote open government and transparency in the operations and decision-making of agencies. This is reflected in the general objects set out in s.3, which states:

- (1) *The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth, by:*
  - (a) *requiring agencies to publish the information; and*
  - (b) *providing for a right of access to documents.*
- (2) *The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:*
  - (a) *increasing public participation in Government processes, with a view to promoting better-informed decision-making;*
  - (b) *increasing scrutiny, discussion, comment and review of the Government's activities.*
- (3) *The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.*
- (4) *The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.'*

To achieve these objects, agencies are required to have a pro-disclosure attitude with regard to information held and promote democracy by increasing public participation in government processes.

Departmental officers must always keep in mind the objects and intentions of the FOI Act when they are responding to FOI requests, making available as much government-held information as possible while at the same time taking steps to protect essential government and private and business information where necessary and appropriate.

# GUIDELINES OVERVIEW

## Content

These Guidelines outline the department's processes for actioning requests under the FOI Act by:

- providing guidance to officers in fulfilling their responsibilities under the FOI Act;
- setting timeframes for completion of certain actions in the FOI process;
- providing information about charges, third party consultation and review processes; and
- providing information and guidance about possible exemptions and conditional exemptions, including the application of the public interest test.

## Using these Guidelines

The policies, processes and guidance provided in these Guidelines should be applied in conjunction with:

- the provisions of the FOI Act and the *Freedom of Information (Charges) Regulations 1982 (Charges Regulations)*; and
- guidelines issued by the Information Commissioner under s.93A of the FOI Act; and
- relevant departmental policy.

## Department policy

As SES staff are ultimately responsible for the actions and decisions of functional areas, unless the name and contact details of non-SES staff are necessary to understand the nature of a document or information contained in a document, those details will be redacted as a matter of course. The department will apply this policy to the staff of other Commonwealth agencies if those agencies request, are able to identify relevant staff, and where it is practical to do so.

## Where to find FOI information

Information for FOI applicants on how to submit a request, including an FOI Request Form, contact officer information and a copy of these Guidelines is available on the department's website – [http://www.dbcde.gov.au/about\\_us/freedom\\_of\\_information](http://www.dbcde.gov.au/about_us/freedom_of_information) or by emailing [foi@dbcde.gov.au](mailto:foi@dbcde.gov.au)

Departmental action officers can also obtain information on *Owlnet* or by emailing the FOI mailbox.

Up to date FOI legislation can be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

Guidelines, fact sheets, decisions and other information issued by the Office of the Information Commissioner is available at [www.oaic.gov.au](http://www.oaic.gov.au).

## CHAPTER 1

# OVERVIEW OF FOI FRAMEWORK AND PROCESS

## FOI Framework

In processing FOI requests, department staff must have regard to:

- provisions of the FOI Act;
- *Freedom of Information (Charges) Regulations 1982*; and
- guidelines issued by the Information Commissioner under section 93A of the FOI Act.

Staff should also have regard to:

- fact sheets and other guidance material issued by the OAIC;
- Information Commissioner decisions; and
- department policies and procedures, including these Guidelines.

## Who can make an FOI request?

Any person can make an FOI request, including:

- an individual in Australia, whether or not they are an Australian citizen;
- an individual who is resident overseas, whether or not they are an Australian citizen, provided they specify an address in Australia to which notices under the FOI Act can be sent;
- an individual serving a prison sentence;
- a minor;
- a body corporate (eg a company).

The applicant's reasons for making an FOI request are not relevant in relation to accepting and processing a request.

## What is a "document"?

For the purposes of the FOI Act a "document" is defined broadly and includes, among other things:

- any paper on which there is writing,
- any paper with marks, symbols, figures or perforations with meanings for persons able to interpret them;
- maps, plans, drawing or photographs;
- audio and video reproductions (CD-ROMs, DVDs);
- stored electronic records (datasets, emails, mobile phone records, SMS, blogs, wikis, video recordings etc ); and
- copies of any documents.

The document must either be:

- ***a document of an agency*** – ie a document in the possession of the department (whether created or received by the department), or a document held by a contracted service provider which the department is entitled to obtain under contractual arrangements pursuant to s.6C of the FOI Act; or
- ***an official document of a Minister*** – ie a document in the possession of a Minister, in his or her capacity as a Minister, which relates to the affairs of an agency.

Documents 'in the possession of' the department include documents to which the department has a right of access.

## Documents not subject to release

Documents are not required to be released under the FOI Act if:

- the FOI Act does not apply in respect of the documents;
- the department is exempt from the operation of the FOI Act in respect of documents received from certain defence and security agencies;
- the work involved in processing the request would constitute a substantial and unreasonable diversion of resources (see FOI Act s.24 and ***Chapter 4: Refusing Requests***);

- the FOI request does not provide sufficient information to identify the documents sought (see FOI Act s.24 and **Chapter 4: Refusing Requests**);
- the department is satisfied that, after all reasonable searches, that the document cannot be found or does not exist (see FOI Act s.24A and **Chapter 4: Refusing Requests**);
- the document is an exempt document (see FOI Act Part IV and **Chapter 9: Exemptions & Conditional Exemptions**); or
- the document is a conditionally exempt document, and disclosure would be contrary to the public interest (see FOI Act Part IV and s.11A(5), and **Chapter 9: Exemptions & Conditional Exemptions**).

### **Documents not covered by the FOI Act (s.12)**

The FOI Act does not apply to the following documents (and therefore they do not need to be considered in processing an FOI request):

- documents that are within the open access period under the *Archives Act 1983* (Cth), unless the document contains personal information;
- documents that are open to public access under another Act, where that access is subject to a fee or other charge;
- documents that are open to public access as part of a land title register, in accordance with a State or Territory law, where that access is subject to a fee or other charge;
- a document that is available for purchase by the public in accordance with arrangements made by an agency.

Documents and information which is generally available on the department's website at no cost may still be the subject of an FOI request. In such cases, the department should advise the applicant of publicly available information outside the FOI Act, and invite the applicant to either withdraw their request or exclude publicly available information from the scope of the request.

### **Agency exemptions (s.7)**

The department and the Minister are exempt from the operation of the FOI Act in relation to:

- documents that have originated with, or been received from, specified intelligence agencies (and documents that contain a summary, extract or information from such documents); and

- documents that have originated with, or been received from, the Department of Defence which relate to:
    - the collection, reporting or analysis of operational intelligence; or
    - special access programs, under which a foreign government provides restricted access to technologies;
- or documents that contain a summary, extract or information from such documents.

## **Can exempt documents be released?**

Yes. The FOI Act sets minimum standards for the disclosure of documents held by government agencies. The FOI Act is not intended to prevent or discourage the department from giving access to documents above or outside the requirements of the Act if it is considered appropriate to do so, or is required by law (see s.3A(2)).

## **Forms of access**

Typically, documents released to an applicant under an FOI request will be provided in paper form. However, the department or Minister may also give an applicant access to the documents in the following alternate forms (either at the request of the applicant or where the decision-maker considers that it is appropriate to do so):

- an opportunity to inspect the documents;
- sound or video reproduction; or
- written transcripts of recorded material.

Documents could also be provided on a CD or disc with the applicant's agreement, rather than in paper form.

Note that conditions on access cannot be imposed.

Access to documents, including deferment of access (s.21) and releasing documents in redacted form (s.22) is discussed in further detail in **Chapter 10**.

## Time frames

The FOI Act imposes a number of statutory timeframes which must be complied with. In addition, the department has administrative timeframes for processing FOI requests which are also important to ensure the statutory timeframes are met.

### ***Statutory timeframes***

The FOI Act imposes a number of statutory timeframes which must be complied with.

On receiving a request, the department must:

- notify the applicant that the request has been received no later than **14 days** after the request is received; and
- notify the applicant of the department's decision on the request no later than **30 days** after the request is received.

The 30 day time period can be extended in the following circumstances

- consulting with third parties under the FOI Act (a further 30 days is added to the processing time);
- notifying the applicant of charges (the 30 day time period is not 'extended' per se, but is stopped until a deposit on the charges is paid, or the charges are paid in full);
- obtaining an extension of time of up to 30 days in agreement with the applicant; and
- obtaining an extension of time from the Information Commissioner for complex or voluminous requests.

If notice of the FOI decision is not given to the applicant by the relevant due date (taking into account extensions and discounts of time), this will amount to a ***deemed refusal decision***. The department may proceed to make a decision but cannot impose a charge because the decision is regarded as being out of time (Charges Regulations, reg.5).

### ***Administrative timeframes***

The department has administrative timeframes for processing FOI requests which are also important to ensure the statutory timeframes are met.

**Attachment B** contains an FOI Processing Chart which sets out the steps in the FOI process and relevant statutory and administrative timeframes.

## CHAPTER 2

# STAFF ROLES & RESPONSIBILITIES

The following is a summary of the roles and responsibilities of departmental staff. More detailed information and instructions for specific officers and areas are set out further below.

<b><i>All staff</i></b>
All staff have a responsibility to ensure the department meets its obligations under the FOI Act, including assisting applicants in making a valid request.
<b><i>CE&amp;FOI Section</i></b>
FOI management is the responsibility of the Client Engagement and FOI section, Parliamentary, Governance and Coordination Branch within Corporate and Business Division.
<b><i>FOI Officer</i></b>
The FOI Officer assists with the administrative aspects of FOI.  FOI Officer contact details: ph 6271 1741  email – <a href="mailto:foi@dbcde.gov.au">foi@dbcde.gov.au</a>
<b><i>Line Areas</i></b>
Although FOI decision-making responsibility is centralised within the Corporate & Business Division, it is the responsibility of line areas to process FOI requests and to assist the decision-maker throughout the process.  Line areas are responsible for: <ul style="list-style-type: none"><li>• search and retrieval of documents;</li><li>• preparing the schedule of documents;</li><li>• assisting with calculating charges;</li><li>• assisting in identifying third parties for the purposes of consultation;</li><li>• assisting the decision-maker in the decision-making process, including identifying material for possible release or redaction.</li></ul> The following persons should be consulted and kept informed during the FOI process: <ul style="list-style-type: none"><li>• FOI Officer – all stages;</li><li>• original decision-maker – during the processing of the FOI request in the first instance, and advised if the applicant seeks subsequent review of the original decision;</li><li>• internal review decision-maker – during the internal review process and subsequent review.</li></ul>

Line areas are also required to provide the Minister with talking points once a decision has been made regarding an FOI request (see <b>Protocol with the Minister's Office</b> below).
<i>Assistant Secretaries</i>
AS of relevant line areas must be satisfied that all reasonable searches have been undertaken, and are required to sign an acknowledgement to that effect.
<i>Decision-makers</i>
Must be independent, take all relevant considerations into account and have overall responsibility for processing of requests.  All decisions or correspondence must be approved by authorised FOI decision-makers

## Authorisations

Functions and powers under the FOI Act and Charges Regulations (eg decisions in relation to charges and access to documents) can only be made by officers with the relevant level of authorisation issued by the Secretary under s.23 of the FOI Act.

A copy of the current s.23 instrument of authorisation is available at

[http://ownet.dept.gov.au/\\_data/assets/pdf\\_file/0005/54779/Instrument-of-Authorisation-4.5.2010.pdf](http://ownet.dept.gov.au/_data/assets/pdf_file/0005/54779/Instrument-of-Authorisation-4.5.2010.pdf)

## Protocol with the Minister's Office

In February 2008, the Minister, the Minister's Office (**MO**) and the department agreed to the following protocol on handling FOI requests:

- The FOI Officer is responsible for advising the MO promptly of any FOI request received.
- The MO will advise the department of any FOI request it receives.
- The MO and the department will consider FOI requests on a case-by-case basis, but in most instances, it would be appropriate for the department to process the request and make decisions. The MO will provide any relevant documents it holds to the FOI Officer.
- After the department's Decision-maker has made a decision, the department will advise the MO of the outcome and the nature of the documents as soon as practicable, but at least 24 hours before documents are to be released.
- The line area will provide the Minister with talking points in relation to the request, 24 hours before documents are to be released.

## FOI Officer – Role and Responsibilities

In addition to the FOI Officer's responsibilities in relation to a specific FOI request, the FOI Officer has general obligations in relation to:

- actioning any FOI requests transferred to the department;
- updating and maintaining fortnightly status reports, and emailing the reports to all relevant stakeholders;
- monitoring compliance with, and progress against, statutory timeframes;
- completing reporting obligations, including –
  - compiling information and reports for the OAIC;
  - coordinating the preparation of required FOI statements;
  - preparing input for the department's Annual Report.

The following checklist set out the responsibilities and tasks which are required to be undertaken by the FOI Officer in relation to processing an FOI request.

FOI Officer – Description of Task
Record receipt of FOI request, including date and time stamp.
<p>Correspond with the applicant, including notification of:</p> <ul style="list-style-type: none"> <li>• receipt of request;</li> <li>• the department's understanding of the interpretation/scope of the request, in consultation with the decision-maker;</li> <li>• transfer of request (if relevant);</li> <li>• receipt of a non-compliant request, with information on how to make a valid request;</li> <li>• estimate of charges decisions, and the amount of deposit required;</li> <li>• proposal for extension of time by agreement under s.15AA (liaise with applicant to agree to extend processing time by up to 30 days);</li> <li>• any decision regarding a request for remission or reduction of charges;</li> <li>• final charges amount;</li> <li>• access decision;</li> <li>• preparation and release of documents.</li> </ul>
<p>Liaise with the relevant decision-maker on all aspects of the FOI process.</p> <ul style="list-style-type: none"> <li>• <i>The FOI Officer will follow direction from the decision-maker regarding processing of the request.</i></li> <li>• <i>In the case of an internal review, the original decision-maker should be advised of the fact that an internal review request has been made and the outcome of the internal review. However, the original decision-maker should not</i></li> </ul>

<p><i>be involved in the internal review process (other than to provide information to assist the internal review decision-maker).</i></p> <ul style="list-style-type: none"> <li>• <i>The applicant may be contacted by phone, email or letter.</i></li> <li>• <i>Any variation to the scope must be confirmed with the applicant in writing. This would normally be done by the FOI Officer.</i></li> </ul>
<p>Contact the Legal Services Group for allocation of a lawyer to the FOI matter.</p>
<p>Create and maintain new matter files, including:</p> <ul style="list-style-type: none"> <li>• electronic IMS file;</li> <li>• email file; and</li> <li>• paper TRIM file.</li> </ul>
<p>Liaise with the line area, including the following tasks:</p> <ul style="list-style-type: none"> <li>• determine which line area has responsibility (initially undertaken by phone), and establish the responsible Branch Head, Section Manager and Action Officer;</li> <li>• provide an electronic copy of the request;</li> <li>• provide a TRIM paper file and access to the IMS file;</li> <li>• provide relevant template documents used for FOI processing;</li> <li>• assist with meeting department and statutory timeframes for processing the FOI request;</li> <li>• organise for copies of the relevant documents to be provided to the decision-maker;</li> <li>• organise Issues Brief and talking points to be completed for the Minister (at least 24 hours prior to release of documents).</li> </ul>
<p>Notify the Minister (via the Minister's Office, copied to the Secretary, the Secretary's EA and EO, the relevant Deputy Secretary and relevant First Assistant Secretary) of:</p> <ul style="list-style-type: none"> <li>• details of the FOI request, including: <ul style="list-style-type: none"> <li>• name of (and if available, information relating to) the applicant;</li> <li>• brief description of the request;</li> <li>• the line area dealing with the request (ie name of Branch, Division, Action Officer, etc)</li> <li>• the decision-maker;</li> </ul> </li> <li>• an access decision (<b><i>at least 24 hours prior to release of documents</i></b>);</li> <li>• any review process and the outcome (ie internal review, Information Commissioner, AAT, Ombudsman or court).</li> </ul>
<p>Organise transfer of FOI request where a decision is made that the request more closely relates to the functions of another Commonwealth agency, including:</p> <ul style="list-style-type: none"> <li>• contacting the FOI Officer of the respective agency and transferring all information regarding the request; and</li> <li>• advising the applicant of the transfer.</li> </ul>
<p>Consult other Commonwealth and State government agencies in relation to documents.</p> <p><i>Where necessary, the FOI Officer conducts consultation with other agencies, especially PM&amp;C, DFAT and State government agencies.</i></p>
<p>Bank charges money received (deposit or full payment), including:</p> <ul style="list-style-type: none"> <li>• scanning copies of the cheque (save in IMS file);</li> </ul>

<ul style="list-style-type: none"> <li>• liaising with finance area for generation of invoice and receipt in Finance Online; and</li> <li>• raising an invoice in Finance Online for balance of money owing once the decision on access has been reached.</li> </ul>
Monitor and report on progress of processing FOI requests (by the line area, decision-maker and lawyers).
<p>Before the release of any relevant documents to the applicant:</p> <ul style="list-style-type: none"> <li>• if a third party had contended that the document should not be released – notify the third party of the access decision, and check that the third party's review rights have expired or been exhausted;</li> <li>• notify the MO and the Secretary of the decision;</li> <li>• organise the Issues Brief and talking points to be completed for the Minister by the line area (<b><i>at least 24 hours prior to release of documents</i></b>).</li> </ul>
<p>Assist with internal reviews.</p> <p><i>The FOI Officer should follow the same process as above. The decision-maker for internal reviews is the FAS Corporate and Business.</i></p>
<p>When notified of an IC review application:</p> <ul style="list-style-type: none"> <li>• advise the line area, the relevant decision-maker and the FOI Section manager;</li> <li>• contact the lawyer originally allocated to the matter;</li> <li>• advise the Secretary and the MO;</li> <li>• assist with the administration of the review process.</li> </ul>
<p>When notified of an IC or Ombudsman complaint/investigation:</p> <ul style="list-style-type: none"> <li>• advise the line area, the relevant decision-maker and the FOI Section manager;</li> <li>• contact the lawyer originally allocated to the matter;</li> <li>• advise the Secretary and the MO;</li> <li>• advise the OAIC of any Ombudsman complaint;</li> <li>• assist with the administration of the complaint/investigation process.</li> </ul>
<p>When notified of an AAT appeal:</p> <ul style="list-style-type: none"> <li>• advise the line area, the relevant decision-maker and the FOI Section manager;</li> <li>• contact the lawyer originally allocated to the matter;</li> <li>• advise the Secretary and the MO;</li> <li>• advise the OAIC and any affected third parties;</li> <li>• assist with the administration of the appeal process.</li> </ul>
<p>Once the FOI process (including review processes) is completed and relevant documents are released:</p> <ul style="list-style-type: none"> <li>• arrange with the line area and decision-maker to have files updated and finalised; and</li> <li>• request the line area, decision-maker and lawyer to finalise and return their DBCDE FOI Time and Cost Sheets (required for annual reporting).</li> </ul>

## Line Area - Role and Responsibilities

The relevant line area will be contacted by the FOI Officer when a FOI request is received.

The following checklist set out the responsibilities and tasks which are required to be undertaken by the line area in relation to processing an FOI request.

Line Area – Description of Task
<p>Allocate:</p> <ul style="list-style-type: none"> <li>• an Action Officer; and</li> <li>• a Section Manager (if different from the Action Officer).</li> </ul> <p><i>The Action Officer will liaise with the decision-maker, FOI Officer and allocated lawyer throughout the process.</i></p>
<p>Clarify the scope of the request if it is very broad or unclear.</p> <ul style="list-style-type: none"> <li>• <i>The Action Officer should engage the decision-maker and the FOI Officer in this discussion.</i></li> <li>• <i>The applicant may be contacted, by the FOI Officer.</i></li> <li>• <i>Any variation to the scope must be confirmed with the applicant in writing. This would normally be done by the FOI Officer.</i></li> </ul>
<p>Conduct a thorough search and retrieval of documents.</p> <ul style="list-style-type: none"> <li>• <i>The definition of 'document' is very broad (see FOI Act s.4 and <b>Chapter 2: Overview of FOI Framework and Process</b> in these Guidelines.</i></li> <li>• <i>In addition to checking hard-copy files, the Action Officer should search electronic systems (including IMS &amp; TRIM), email folders, personal drives, databases and group drives.</i></li> </ul>
<p>Make a clean copy of all of the identified documents, to be used as the master set for reproduction of working documents throughout the FOI process.</p> <ul style="list-style-type: none"> <li>• <i>Each document should be individually numbered and retained on the FOI matter file (provided by the FOI Officer).</i></li> <li>• <i>The original documents should be retained in their original file (paper or electronic).</i></li> <li>• <i>A copy of these documents must be provided to the FOI decision-maker by the advised due date.</i></li> </ul>
<p>Prepare the Schedule of Documents.</p> <ul style="list-style-type: none"> <li>• <i>All identified documents must be 'logged' in the Schedule of Documents in chronological order. This is a key element of FOI processing.</i></li> </ul>
<p>Prepare documents for possible release, taking account of applicable exemptions.</p>

Prepare an estimate of charges for discussion with the decision-maker.

- *The Action Officer is to complete the FOI Charges spreadsheet, detailing the number of documents, and the actual and expected hours relating to search and retrieval. See Chapter 6: Charges for further information.*

Consult with third parties.

- *The Action Officer should advise the decision-maker of the need to consult with third parties as early as possible in the process, as not all external consultations result in an extension of processing time (see Chapter 1: Overview of FOI Framework and Process and Chapter 7: Third Party Consultation).*
- *The decision-maker will need to approve an extension of time for certain third party consultation (up to 30 days).*

Provide all information and advice to the decision-maker by the advised due dates to ensure that:

- the decision-maker has sufficient time to undertake their responsibilities; and
- the department meets its statutory obligations under the FOI Act.

Consult with the allocated lawyer as required.

Maintain accurate records of staff hours spent on each FOI matter.

Prepare a draft decision and Statement of Reasons in collaboration with the decision-maker and allocated lawyer.

Prepare talking points for the Minister's Office once a decision has been finalised and prior to the release of any documents.

- *Departmental protocol is to advise the Minister at least 24 hours prior to release of any documents.*
- *Talking points should cover areas of likely parliamentary or media interest in the FOI decision.*

Provide assistance to the relevant decision-maker and allocated lawyer for any review application or complaint lodged subsequent to the FOI decision.

*The line area assists the decision-maker and/or lawyer and attends any hearings/conferences as required.*

## Notes

The applicant's right of access is not affected by their reasons for seeking access or by the department's or the Minister's belief as to what the applicant's reasons are for seeking access (s.11(2)).

The department should not adopt a restrictive or narrow interpretation of the scope of the request. If the scope is unclear, the decision-maker and FOI Officer should be consulted about approaching the applicant to seek clarification, including considering whether a request consultation process under s.24AB should be undertaken.

The department cannot impose conditions on access.

### **Template documents**

Departmental template documents are available for all stages of the FOI process. The templates are easy to use, cover all essential matters and incorporate notes to assist users.

- Sections in **blue** are for guidance only and should be deleted from the final version.
- Sections in **pink** indicate text needs to be inserted or a selection made from a range of options. Instructions are also in **pink** text. Officers should delete unwanted options before the template is finalised.
- Please ensure the document is converted to black text when completed.
- Please take care when using the templates that only relevant details are retained/inserted, and to maintain tense.

## Decision-maker – Role and Responsibilities

### ***Authorisation***

Officers making decisions under the FOI Act and the Charges Regulations must be authorised to do so under s.23 of the Act.

Subject to the terms of the FOI Instrument of Authorisation, decision-makers can be authorised to make all or some of the following decisions:

- grant, refuse or defer access to documents;
- grant access in another form;
- grant access to an edited copy of a document;
- impose or remit a charge;
- grant or refuse a request to amend a personal record;
- extend time limits.

The current FOI Instrument of Authorisation is available on

[http://owlnet.dept.gov.au/data/assets/pdf\\_file/0005/54779/Instrument-of-Authorisation-4.5.2010.pdf](http://owlnet.dept.gov.au/data/assets/pdf_file/0005/54779/Instrument-of-Authorisation-4.5.2010.pdf)

### ***Decision-making***

Decision-makers are required to act independently and in accordance with the law.

For information on principles of FOI decision-making, see ***Chapter 12: FOI Decision-making***.

### ***Internal review***

The original decision-maker in respect of an FOI request cannot undertake an internal review of their own decision (s.54C(2)). Wherever possible, internal review should be undertaken by a more senior authorised officer. This will usually be the FAS Corporate & Business.

An original decision made by the Secretary or the Minister cannot be subject to internal review. The applicant must apply to the Information Commissioner for review.

## Checklist of responsibilities

The following checklist set out the responsibilities and tasks which are required to be undertaken by the decision-maker in relation to processing an FOI request.

Decision-maker – Description of Task
<p>Keep written records on all aspects of the decision-making process, including in the event of an internal, IC or AAT review, or a complaint to the IC or Commonwealth Ombudsman.</p>
<p>In appropriate circumstances, consider and make a decision on whether access should be refused:</p> <ul style="list-style-type: none"> <li>• under s.24 on the basis of a 'practical refusal reason'; or</li> <li>• under s.24A on the basis that the documents cannot be found or do not exist.</li> </ul> <p><i>See Chapter 4: Refusing access. Note that a request consultation process under s.24AB must be undertaken before a decision to refuse access under s.24 can be made.</i></p>
<p>Consider the imposition of charges, including:</p> <ul style="list-style-type: none"> <li>• assessing whether the line area's charges estimate is accurate;</li> <li>• determining whether to impose a charge, and the amount of charges;</li> <li>• authorising the appropriate communication to be sent to the applicant regarding charges;</li> <li>• ensuring that accurate records of time spent on the FOI matter are kept for the purposes of determining final charges, and for OAIC and department reporting purposes;</li> <li>• considering any application to remit or reduce charges.</li> </ul>
<p>In relation to consultation with third parties (see <b>Chapter 7: Third Party Consultation</b>):</p> <ul style="list-style-type: none"> <li>• ensure that consultation with relevant third parties has occurred prior to making a decision to grant access to documents;</li> <li>• determine whether to extend the processing period under s.15 for third party consultation to be undertaken (up to 30 days), and if such an extension is made, ensure the applicant is notified;</li> <li>• consider submissions made by third parties in response to consultation.</li> </ul>
<p>In making a decision concerning access to documents:</p> <ul style="list-style-type: none"> <li>• ensure you are satisfied that all documents relevant to the request have been identified;</li> <li>• ensure that appropriate consultation has taken place within the department, and with the Minister (if the request concerns documents held by the Minister), other Commonwealth agencies and relevant third parties;</li> <li>• consider whether a relevant exemption or conditional exemption applies to a document;</li> <li>• consider whether it would be reasonably practicable and appropriate to release a document in part or in whole;</li> <li>• clearly articulate reasons for the decision (to be included in the Statement of Reasons to the applicant).</li> </ul>
<p>Complete a Statement of Reasons (SoR) for the decision (in consultation with the Action Officer and allocated legal adviser).</p> <p><i>A draft SoR should be submitted to the allocated legal adviser for review at least 3 working days before the decision is due to be notified to the applicant.</i></p>

Ensure that notice of the decision and statement of reasons is provided to:

- the applicant;
- if a decision is made to grant access document which a third party has contended should not be released – the third party. (Documents cannot be released until the third party's review rights have been exhausted or have expired.)

Assist (include preparing submissions and giving evidence relating to the decision-making process) in relation to any IC or AAT review, or IC complaint.

*Assistance will be provided by the allocated legal adviser.*

## **Notes**

The applicant's right of access is not affected by their reasons for seeking access or by the department's or the Minister's belief as to what the applicant's reasons are for seeking access (s.11(2)).

The department should not adopt a restrictive or narrow interpretation of the scope of the request. If the scope is unclear, the applicant should be contacted for clarification. If the request contains insufficient information to identify the documents sought, this may constitute a 'practical refusal reason' for the purposes of s.24 and a request consultation process under s.24AB must be undertaken.

The department cannot impose conditions on access.

## Lawyers – Role and Responsibilities

The department's Legal Services Group (LSG) or a lawyer engaged from the department's legal services panel will provide legal advice and assistance during the FOI process.

The following checklist set out the responsibilities and tasks which are required to be undertaken by the allocated lawyer in relation to processing an FOI request.

Lawyer – Description of Tasks
Provide legal advice and assistance to the decision-maker and line area in relation to the FOI request.
Include the decision-maker in all correspondence to assist him/her in making an informed decision.
Actively assist in the preparation of the Statement of Reasons (SoR), and work with the decision-maker in finalising the SoR.
Keep accurate records of time spent working on the FOI request, and provide this information to the FOI Officer at the end of the matter. <i>Keep and update records of lawyers' time for each FOI matter for OAIC and department reporting purposes.</i>
Represent the department in consultation with the decision-maker and line area in relation to IC reviews and complaints.
Represent the department in consultation with the decision-maker and line area in relation to Ombudsman complaints and investigations.
In relation to AAT appeals: <ul style="list-style-type: none"> <li>• LSG will engage an external lawyer to represent the department; and</li> <li>• the Principal Lawyer for the FOI matter will liaise with the external lawyer.</li> </ul>

## CHAPTER 3

# FOI APPLICATIONS

### Requirements for valid FOI requests

To be valid, an FOI request must:

- be in writing;
- state that the request for documents is for the purposes of the FOI Act;
  - even if the request does not expressly state this, it may still be valid if it is apparent that the applicant intended to make the request under the FOI Act;
- provide information concerning the requested document that can enable an officer of the department or the Minister to identify it; and
- provide details of how notices under the FOI Act can be sent to the applicant (an electronic address is acceptable).

The scope of an FOI request may be described in very broad terms, or could be framed as a request for 'information' as opposed to documents.

The department is required to read the terms of a request fairly, and to construe it in a manner that is intended to overcome the possibility that an applicant may not know exactly what documents the department holds. The department should take steps to seek clarification on the scope and nature of an FOI request from the applicant where necessary, including considering whether to issue a s.24AB notice. (For further discussion on refusal of a request under s.24 and the request consultation process under s.24AB, see **Chapter 4: Refusing Requests.**)

#### ***Invalid FOI requests***

If a request sent to the department or Minister is not a valid request, there is an obligation on the department to take reasonable steps to assist the applicant to complete or revise their request so that it complies with the FOI Act and can be processed.

A request is not valid if:

- it is not in writing (eg an oral request);
- it is not a request for the purposes of the FOI Act (eg it is a request for access to documents under another Act);

- it does not provide sufficient information to identify the documents requested;
- it does not provide details for sending notices to the applicant;

## Clarifying the scope of a request

The department should not adopt a restrictive or narrow interpretation of the scope of the request. If the scope is unclear, the applicant should be contacted for clarification.

If the request contains insufficient information to identify the documents sought (as required by s.15(2)(b)), this will constitute a 'practical refusal reason' for the purposes of s.24. A formal request consultation process under s.24AB must be undertaken. The statutory timeframe is suspended during the request consultation period.

Note that the clock continues to run where clarification of scope is undertaken on an informal basis.

## Transfer of requests (s.16)

A request may be transferred to another agency with the other agency's agreement where:

- the department does not possess the requested documents but knows that another agency possesses those documents; or
- the subject-matter of the requested documents is more closely connected with the functions of the other agency than the functions of the department.

Before a request for transfer is made to another agency, the department should first take whatever reasonable steps are necessary to determine whether it has the documents to meet the description of the applicant's FOI request.

Where a document originated with, or was received from, an **exempt agency**, or is more closely connected with the functions of that exempt agency, the request in respect of that document must be transferred to the portfolio department responsible for the exempt agency.

If the Department considers that it is appropriate to transfer a request, the department's FOI Officer should contact the FOI Officer in the other agency to discuss the request whether the other agency will accept the transfer (either in whole or in part). If the other agency accepts the transfer, the FOI Officer should:

- send a formal notice to the other agency confirming the transfer under s.16 of the FOI Act, together with a copy of the request and any other relevant information and documents (eg correspondence with the applicant);
- notify the applicant of the transfer.

## CHAPTER 4

# REFUSING REQUESTS

The FOI Act imposes a positive duty on the department to take reasonable steps to assist a person make a request that complies with the FOI Act requirements. However, the department may refuse a request where:

- a 'practical refusal reason' exists; or
- the documents cannot be found or do not exist.

### **Practical refusal reason (s.24)**

A decision-maker may decide to refuse a request for access to documents under s.24 on the basis of a ***practical refusal reason***, but only after undertaking a ***request consultation process***.

If, after the request consultation process, the decision-maker is satisfied that the practical refusal reason still exists, then the decision-maker may refuse to deal with the request.

### ***Practical refusal reason (s.24AA)***

A practical refusal reason exists where:

- the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations; or
  - the work involved in processing the request would substantially and unreasonably interfere with the performance of the Minister's functions; or
  - the documents cannot be identified from the information provided in the request (as required by s.15(2)(b)).
- As discussed in ***Chapter 3: FOI Applications***, the scope of an FOI request may be described in very broad terms, or may not be framed as a request for specific 'documents'. For example, a request could be framed as a request for information, or a series of questions. The department is required to interpret FOI requests in a fair manner that is intended to overcome the possibility that an applicant may not know exactly what documents the department holds, and to take steps to clarify the nature and scope of the request with the applicant.

Subsections 24AA(2) and (3) set out matters to which the decision-maker must and must not have regard in deciding whether a practical refusal reason exists.

### ***Request consultation process (s.24AB)***

Before making a decision to refuse access under s.24, the decision-maker must give written notice of his or her intention to refuse access. The FOI Act only requires the department to undertake one request consultation process for any particular request, but it may undertake this process more than once where appropriate.

The s.24AB notice must state the following:

- the decision-maker's intention to refuse access to a document as requested;
- the practical refusal reason;
- the name and contact details of an officer with whom the applicant may consult during the process;
- that the consultation period during which the applicant may consult the contact person is 14 days after the applicant is given the notice.

The 14 day request consultation process may be extended by the contact person with the applicant's agreement, by issuing a written notice to the applicant.

Before the end of the consultation period, the applicant must, by written notice to the department, either:

- withdraw the request;
- revise the request; or
- indicate that they do not wish to revise the request (s.24AB(6)).

If the applicant contacts the contact person during the consultation period in accordance with the notice, the department must take ***reasonable steps*** to assist the applicant to revise the request so that the practical refusal reason no longer exists. 'Reasonable steps' include:

- giving the applicant a reasonable opportunity to consult with the contact person
- providing the applicant with any information that would assist the applicant to revise the request.

The request is taken to have been withdrawn if the applicant does not provide a written notice under s.24AB(6), or does not consult the contact person during the consultation period.

## **Documents cannot be found or do not exist (s.24A)**

A decision-maker may decide to refuse a request for access a document under s.24A if, after taking all reasonable steps to find the document, the decision-maker is satisfied that the document:

- cannot be found;
- does not exist; or
- is unable to be obtained from a contracted service provider, as required by a contract (see s.6C).

The extent to which the department is required to undertake 'all reasonable steps' to find a document depends on the circumstances of each case, having regard to the department's knowledge and experience in relation to:

- the department's structure, functions and responsibilities;
- the department's administrative practices and procedures (including, for example, its information management systems and record-keeping practices);
- the nature and age of the requested documents, and the officers or area that may have been responsible for creating or retaining those documents.

## CHAPTER 5

# VEXATIOUS APPLICANTS

Under s.89K of the FOI Act, the Information Commissioner may declare a person to be a 'vexatious applicant' following an application by the department or the Minister, or on the Information Commissioner's own initiative. A vexatious applicant declaration may be made on any of the following grounds (s.89L):

- the person has repeatedly engaged in access actions (eg making FOI requests) that involve an 'abuse of process'; or
- the particular access action / FOI request involves an abuse of process in itself; or
- the particular access action / FOI request is manifestly unreasonable.

An ***abuse of process*** includes (but is not limited to):

- harassing or intimidating a department employee;
- unreasonably interfering with the department's operations; or
- trying to use the FOI process to circumvent restrictions on access to a document already imposed by a court.

A decision by the Information Commissioner to make a vexatious applicant declaration will be based on the facts and circumstances of each case, taking into consideration any submissions made by the person concerned.

A s.89K declaration has effect in accordance with the terms and conditions stated in the declaration. For example, the terms and conditions could provide that the department may refuse to consider any future FOI requests made by the applicant without the Information Commissioner's permission.

A person whose interests are affected by a vexatious applicant declaration may appeal to the AAT for a review of the Information Commissioner's decision.

### ***Application for vexatious application declaration***

The department has the onus of establishing that the Information Commissioner should make a declaration under s.89K. In making an application to the Information Commissioner, the decision-maker, in consultation with the line area and LSG, should make submissions and provide supporting evidence that one or more of the grounds for making a vexatious applicant declaration exists.



- A vexatious applicant declaration can only be made in respect of a person's actions after 1 November 2010. However, the Information Commissioner may take into account a person's access actions prior to that date in determining whether grounds for making a declaration currently exist.

It is a matter for the Information Commissioner to decide whether or not to declare the person to be a vexatious applicant, and what terms and conditions (if any) to apply to that declaration.

## CHAPTER 6

# CHARGES

Section 29 of the FOI Act authorises the department a charge for processing an FOI request and providing access to documents.

### Discretion in relation to imposition of charges

The department has a discretion to:

- impose a charge;
- not impose a charge;
- impose a reduced charge which is lower than the amounts prescribed under the Charges Regulations; or
- to reduce or waive a charge on the request of the applicant.

The Department should also advise an applicant of available avenues to obtain free access to documents or information outside the FOI Act (eg information on a website).

Following the 2010 amendments to the FOI Act, it is government policy that agencies are not expected to exercise the discretion to impose charges unless the agency considers it appropriate to do so in the circumstances. In exercising this discretion, the department should also be guided by the 'lowest reasonable cost' objective of the FOI Act, i.e that the functions and powers of the Act are to be performed and exercised *"to facilitate and promote public access to information, promptly and at the lowest reasonable cost"* (s.3(4)).

### Exceptions

No charge is payable:

- where an applicant is seeking access to their own personal information;
- in the case of a deemed refusal decision, where the department has not notified the applicant of its decision in relation to the request (ie whether to grant or refuse access to documents) within the statutory timeframes (taking into account any extensions of time or discounted time);<sup>1</sup>
- for the first five hours of decision-making time.

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<sup>1</sup> Any amount already paid by the applicant must be refunded.

## Estimating charges

Although the charges calculation is an 'estimate', it should be as realistic and accurate as possible. In making an assessment of the amount of work that will be required to process the request, the department can take into consideration its experience in dealing with previous requests of a similar nature.

The amount of charges payable must be calculated in accordance with the Charges Regulations, as set out below. The FOI Officer has a Microsoft Excel FOI Charges Calculator template to assist in calculating and recording estimated charges.

Service	Cost
Search and retrieval of existing documents	\$15.00 per hour
Extraction and production of documents from computers and like equipment	An amount not exceeding actual cost
Producing transcripts of sound recordings, shorthand, etc	\$4.40 per page of transcript
Decision-making – including examining documents, consultation with third parties, redacting documents, deciding to grant or refuse a request, notifying any interim or final decisions	First five hours are free of charge \$20 for each subsequent hour
Photocopying documents	10 cents per page
Inspection of original documents by applicant, or providing opportunity to hear or view a sound or audio document under supervision of an officer	If the period does not exceed half an hour - \$6.25 If the period exceeds half an hour – \$6.25 for each half hour, and any period not exceeding half an hour included in the period
Copies other than photocopies	\$4.40 per page
Copying films, audio or video tapes, computer discs, computer tapes etc	An amount not exceeding actual cost
Postage and delivery	An amount not exceeding actual cost of postage and delivery
Deposits	\$20 where total charge (or estimate) more than \$25 but less than \$100 25% of total charge (or estimate) if over \$100

## **Waiver or reduction in charges**

As discussed above, the department has a discretion to waive or reduce the amount of charges. In considering whether to exercise this discretion, the department must consider:

- whether payment would cause financial hardship to the applicant, taking into account the applicant's financial circumstances; and
- whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public.

The department should also take into account:

- the objects of the FOI Act;
- the fact that information relating to documents disclosed under FOI is required to be published on the department's website under the Information Publication Scheme; and
- any other relevant matters, including submissions made by the applicant.

When considering whether to exercise the discretion to waive or reduce the amount of charges a relevant matter in some cases will be the resource implications for the department involved in processing the request.

### ***Financial hardship***

A waiver or reduction on the grounds of financial hardship should be considered in the context of the applicant's individual financial circumstances. The applicant should provide some form of evidence that he or she would suffer financial hardship if payment of the charge is required, eg a copy of a pension or social security payment.

### ***Public interest***

In considering waiver or reduction of charges on public interest grounds, it is necessary to identify the 'general public interest' or the 'interest of the substantial section of the public' that would benefit from the disclosure of the documents. It is not enough if the documents are only of interest to the applicant.

There is no presumption that the public interest test is met merely because of the status of the applicant. For example, the fact that the applicant is an MP, a journalist or a not-for-profit organisation in itself does not automatically mean that disclosure of the requested documents is in the public interest, although it may be relevant in making a successful claim.

Although 'public interest' for the purposes of determining charges is not defined, some examples of relevant considerations include:

- whether the document relates to a matter of public debate, and disclosure would assist public comment;
- whether the document relates to a matter of public discussion and concern, and disclosure would assist in better informing the public on that matter;
- whether the document is to be used by an MP in parliamentary debate, or in relation to matters of general concern in the Member's electorate.

The applicant may be asked to provide details to substantiate a claim of public interest.

## Decision to impose charges

If a decision is made to impose a charge, written notice must be given as soon as possible to the applicant, stating:

- that the applicant is liable to pay a charge;
- the preliminary assessment (estimate) of the charge amount and the basis of the calculation;
- the amount of amount required, and due date for payment;
- the applicant's right to contend that the charge has been wrongly assessed, or should be reduced or waived;
- that the applicant must respond in writing within 30 days (or such further period as the department allows) by –
  - agreeing to pay the charges (and paying the deposit); or
  - contending that the charge has been wrongly assessed, or should be reduced or not imposed, with supporting reasons; or
  - withdrawing the request;
- that the request will be deemed to be withdrawn if the applicant does not respond within the 30 day period.

**Note: Once a charges notice is issued, the FOI clock stops until the relevant deposit or amount of charges has been paid or, following a review under the FOI Act, the applicant is notified of the review decision.**

If the charges or a deposit for the charges is not paid, or a written notification from the applicant is not received within 30 days (or any further period granted at the discretion of the department), the request for access is deemed to have been withdrawn. The applicant will be contacted and advised that the application has been taken to be withdrawn, due to non-payment of a deposit or non-response to correspondence.

### ***What if the applicant requests a waiver in the FOI request?***

In some cases, an applicant may seek a waiver of charges as part of the FOI request. In this circumstance, the department will consider whether it is appropriate to impose charges and may advise the applicant of the estimated charges and request detail to substantiate the claim for waiver of charges.

## **Review of charges decision**

For further information, see ***Chapter 13: Review Rights***.

### ***Contention of preliminary estimate***

If an applicant is unhappy with a decision to impose charges in the first instance, within 30 days of the charges notice, the applicant can give the department a written notice contending that the charge should be reduced or not imposed.

- The decision-maker must make a decision under s.29(4) on the amount of charges, including whether charges should be waived or reduced, within 30 days of receiving the applicant's contention notice.
  - The applicant must be given written notice of the decision and reasons for the decision.
  - The notice must also include the name and designation of the decision-maker, and provide information about the applicant's review rights and right to make a complaint to the Information Commissioner.
- If the applicant is not notified of the s.29(4) decision within 30 days, the department is deemed to have made a decision to the effect that the amount of charge payable is the amount of the preliminary assessment.

### ***Review of s.29(4) decision***

If the applicant is dissatisfied with the department's decision under s.29(4), the applicant has the choice of either:

- within 30 days, applying to the department for an internal review; or

- within 60 days, applying for review by the Information Commissioner.

If the applicant elects to apply for internal review, the department has 30 days to make an internal review decision. The applicant may then apply to the Information Commissioner if they are still dissatisfied with the internal review decision.

The applicant may appeal a decision by the Information Commissioner to the AAT.

## Payment of balance of charges

After a decision in relation to an FOI request is made, the final amount of charges payable based on the actual amount of work involved is required to be calculated.

- If the department has decided to refuse access to documents, an amount higher than the estimate cannot be imposed.
- If the actual charges are less than the estimated amount, the lesser amount is charged.
- If the actual charges are higher than the estimate, the higher amount can only be charged if access is granted to the documents in full.

Once the final charges decision is made, the applicant should be notified of the amount of balance owing.

Documents are not released to the applicant until the balance of charges is paid.

## Charges Process Checklist

The following checklist set out the tasks and responsibilities relating to the charges aspect of the FOI process.

Description of Task
<p>The line area calculates the preliminary estimate of charges, and provides the estimate to the decision-maker.</p> <p><i>The FOI Officer has a Microsoft Excel FOI Charges Calculator template to assist in calculating charges. This is a guide which incorporates standardised measures for aspects of the FOI process (eg decision-making time per document). The final figure may be adjusted as appropriate.</i></p>
<p>Within 30 days of receipt of the FOI request, the decision-maker:</p> <ul style="list-style-type: none"> <li>• decides whether to impose a charge (including whether to waive or reduce charges), and the amount of charges payable; and</li> <li>• advises the FOI Officer to complete the relevant paperwork (including letter to the applicant), and record the decision-maker's decision in writing;</li> <li>• if the decision is not to impose a charge – records that decision in writing.</li> </ul>

At the instruction of the decision-maker, the FOI Officer completes the relevant paperwork and sends a notice to the applicant advising of a decision to impose charges under s.29, and the estimated amount of charges.

The FOI Officer advises the decision-maker and line area:

- if the applicant withdraws the request; or
- that the applicant has paid the deposit and the amount of time left running on the clock, and banks the cheque for the deposit.

If the applicant contends that charges should be waived or reduced:

- the decision-maker makes a decision under s.29(4) whether to waive or reduce charges; and
- notice of the s.29(4) decision and a statement of reasons is provided to the applicant.

*The applicant has 30 days from being notified of charges to make a contention that charges should be waived or reduced. The decision-maker has a discretion to allow an extension of time for making such a contention.*

If the applicant applies for internal review of the s.29(4) decision, within 30 days of receiving the application:

- the internal review decision-maker (not being the officer that made the s.29(4) decision) makes an internal decision under s.54C on whether to impose, waive or reduce charges; and
- notice of the internal review decision and a statement of reasons is provided to the applicant.

If the applicant does not either pay the charges deposit, withdraw the request or lodge a contention against the charges within 30 days of the charges notice, the request is deemed to be withdrawn. The FOI Officer notifies the applicant of the deemed withdrawal.

Following a decision in relation to the FOI request:

*If the decision is made outside the statutory timeframes*

- no charges can be imposed and the FOI Officer refunds any amount already paid by the applicant.

*If the decision is made within the statutory timeframes*

- the line area calculates the final charges based on the actual work undertaken, and provides the final calculation to the decision-maker;
- the decision-maker makes a decision on final amount of charges payable, and advises the FOI Officer to complete the relevant paperwork (including letter to the applicant);
- FOI Officer completes the relevant paperwork and sends a notice to the applicant advising of the final charges and balance payable.
- the decision-maker must make a decision under s.29(4) whether to waive or reduce charges.

Following receipt of the balance of charges from the applicant, the FOI Officer banks the cheque and arranges for the relevant documents to be provided to the applicant.

*Access to documents is not required to be provided until charges are paid.*

## CHAPTER 7

# THIRD PARTY CONSULTATION

In processing an FOI request, it may be necessary for the department to consult with other parties to obtain their views on providing access to certain documents, having regard to the nature and content of the documents.

To meet departmental processing timeframes and statutory timeframes, all third party consultation should be undertaken early in the FOI process.

The decision-maker should record the decision to consult third parties, and any related decision under s.15 to extend the timeframe for processing the FOI request.

### **Formal Third Party Consultation (ss.26A, 27 & 27A)**

The FOI Act requires the department to undertake consultation with certain third parties before a decision to grant access documents concerning those third parties can be made.

#### ***Extension of time (s.15(6))***

Where consultation under ss.26A, 27 or 27A is required, the decision-maker can extend the 30 day timeframe by a further 30 days. It is important that consultation has commenced prior to the expiry of the initial 30 day period.

The FOI applicant must be notified in writing of the extension of time as soon as possible.

#### ***State or Territory Government (s.26A)***

Consultation with a State Government is required where:

- arrangements have been entered into between the Commonwealth and the State about consultation; and
- a request is made for a document that originated with, or was received from the State Government or an authority of the State, or contains State-originated information; and
- it appears the State concerned may reasonably wish to make a contention against release of the information (in particular under s.47B).

'State-originated information' is information that originated with, or was received from, a State Government or an authority of a State

The consultation must take place in accordance with the consultation arrangements entered into between the Commonwealth and the State. The decision-maker cannot decide to grant access to a document unless such consultation has taken place (s.26A(2)).

### ***Business (s.27)***

Consultation with a person, organisation or proprietor of an undertaking may be required where:

- a document contains business information in respect to a person, organisation or undertaking; and
- that person, organisation or proprietor might reasonably wish to make a contention against release of the information.

'Business information' means:

- information about a person's business or professional affairs
- information about the business, commercial or financial affairs of an organisation or undertaking.

If it is reasonably practicable to do so, the person or organisation must be given a reasonable opportunity to make a written submission to support their contention that the document is:

- exempt under s.47 (trade secrets); or
- conditionally exempt under s.47G (business) and release would, on balance, be contrary to public interest (s.11A(5)).

### ***Personal privacy (s.27A)***

Consultation with individuals may be required where:

- a document contains personal information about a person (including a deceased person); and
- it appears that the person (or the person's legal representative) might reasonably wish to contend against the release of the document.

If it is reasonably practicable to do so, the person concerned must be given reasonable opportunity to make a written submission to support their contention that the document is conditionally exempt under s.47F (personal privacy) and release would, on balance, be contrary to the public interest (s.11A(5)).

### ***Consideration of third party submissions***

Third party submissions are not binding on the decision-maker, but must be taken into consideration in deciding whether or not to grant access to documents.

### ***Access to documents***

If a decision is made to grant access to information where a third party objected to such release following consultation under ss.26A, 27 or 27A, written notice of the decision must be provided to the third party and the applicant.

Actual access to the relevant documents is not to be given to the applicant until all review opportunities for the third party concerned have expired or been exhausted.

### ***Third party review rights***

A third party consulted under ss.26A, 27 or 27A, and who made a submission objecting to the release of information, has review rights in respect of an access grant decision. Review rights are discussed in detail in **Chapter 13**. In summary:

- if the third party is unhappy with the original access grant decision, they may do either of the following within 30 days of notice of the decision –
  - lodge an application in writing for an internal review by the department under s.54B (the department then has 30 days to make the internal review decision); or
  - lodge an application in writing for review by the Information Commissioner under s.54M;
- if the third party had sought internal review and is still unhappy with the internal review decision, they may then apply to the Information Commissioner for review under s.54M;
- decisions of the Information Commissioner may be appealed to the AAT within 28 days, or to the Federal Court on a question of law.

## **Consultation with foreign governments, etc**

Consultation with a foreign government, authority of a foreign government or an international organisation may be required to determine whether a document is:

- exempt under s.33(a)(iii) (damage to international relations of the Commonwealth); or
- exempt under s.33(b) (information communicated in confidence by a foreign government, etc).

Consultation on these documents should also be undertaken through DFAT.

Submissions made by foreign governments, etc are not binding on the decision-maker, but must be taken into consideration in deciding whether or not to grant access to documents.

### ***Extension of time (s.15(7))***

Where consultation with a foreign government or international organisation is required, the decision-maker can extend the 30-day timeframe by a further 30 days. It is important that consultation has commenced prior to the expiry of the initial 30-day period.

The FOI applicant must be notified in writing of the extension of time as soon as possible.

## **Informal Third Party Consultation**

The FOI Act does not preclude consultation between agencies, and it is good practice to consult with other Commonwealth agencies in relation to documents which may concern or affect the interests of those agencies. In particular:

- consultation with another Commonwealth agency may be appropriate where the subject matter of the document is more closely related to that agency's functions;
- PM&C and the Minister's Office should be consulted on requests concerning Cabinet documents.

Submissions made by other Commonwealth agencies are not binding on the decision-maker, but must be taken into consideration in deciding whether or not to grant access to documents.

Other Commonwealth agencies cannot appeal a decision of the department with regard to release of information.

**No additional time** is allowed under the FOI Act for consultation with other Commonwealth agencies.

## CHAPTER 8

# EXTENSIONS OF TIME

### Extensions of time for the department

The department must make all reasonable attempts to comply with the statutory timeframes imposed by the FOI Act for processing FOI requests. However, it may be possible to obtain an extension of time to process an FOI request:

- with the agreement of the applicant;
- on application to the Information Commissioner where the request is complex or voluminous (s.15AB);
- in the case of a deemed refusal under s.15AC, or a deemed affirmation of initial refusal under s.54AD – on application to the Information Commissioner (s.15AC(4) and s.54D(3)).

Extension of time applications to the Information Commissioner should be sent by email to [FOIExtensions@oaic.gov.au](mailto:FOIExtensions@oaic.gov.au).

#### ***Extension with applicant agreement (s.15AA)***

An extension of time may be negotiated with the applicant, but only for a **maximum of 30 days**. The agreement must be reached before the statutory timeframe for making a decision on the request runs out.

The FOI Officer will contact the applicant on behalf of the responsible line area. The applicant's agreement to the extension must be documented in writing, and the department must give written notice of the agreement to the Information Commissioner.

If an extension has been obtained but it later becomes apparent that further time to process the request is necessary, the department may still be able to apply to the Information Commissioner for a further extension.

#### ***Information Commissioner extension – complex or voluminous request (s.15AB)***

An application to the Information Commissioner for an extension of time may be made if a longer period than allowed under the statutory timeframes is necessary to process an FOI request due to its complexity or large volume. Such an application must be made before the statutory timeframe for making a decision on the request runs out.

The department is required to justify the basis on which it requires the extension. This would include, for example, setting out the number and types of documents, the amount of third party consultation that will be required, the number of available staff resources to assist in processing the request, and the work the department has already undertaken.

The Information Commissioner has a discretion as to the length of extension granted (if any) – this could be more or less than 30 days. If an extension is granted, the Information Commissioner will notify the applicant, unless the department is directed otherwise.

If the department is granted an extension, but is still not able to deal with the request in the extended period, the department can apply for a variation of the extension. The variation application must be made before the statutory timeframe (as extended) runs out.

### ***Information Commissioner extension – deemed decisions (s.15AC & s.54D)***

If the department fails to notify an applicant of its decision in relation to access to documents within the relevant statutory period, the Secretary of the department is deemed to have made a decision personally refusing to give access to the documents requested (s.15AC(3)).

If an FOI request is the subject of an internal review, and the department fails to notify the applicant of its internal review decision within the 30 day period, the Secretary of the department is deemed to have made a decision personally affirming the original decision (s.54D(2)).

The department may make an application to the Information Commissioner for an extension of time to deal with an FOI request where there has been a deemed decision under s.15AC or s.54D. The department must provide reasons to justify the granting of an extension.

An extension of time in respect of a deemed decision can only be granted once and may be subject to conditions. However, it is still open to the department to negotiate an informal agreement with the applicant on providing a decision.

## **Extensions of time for the applicant**

The department has an unfettered discretion to grant an extension of time beyond the 30 day period to the applicant (even where the period has already expired) in respect of:

- making a contention under s.29(1)(f) that charges should be reduced or not imposed;
- making an internal review application.

Factors to consider in determining whether to grant a further period include:

- the applicant's reasons for the delay;

- the applicant's reasons for requiring an extension of time, including the prejudice to the applicant if the extension is not granted;
- the length of time sought;
- the prejudice to the department and the review process by granting the extension;
- the extent (if any) to which the ordinary consideration of other review applications would be impeded by allowing extra time;
- promoting the objects of the FOI Act.

## CHAPTER 9

# EXEMPTIONS AND CONDITIONAL EXEMPTIONS

The starting point for dealing with any FOI request is that an applicant has a right to obtain the requested material. However, the FOI Act provides for certain categories of documents where access may be refused in appropriate circumstances.

There are two types of exemption categories for documents within the FOI Act:

- **exempt documents** – not required to be released under the FOI Act;
- **conditionally exempt documents** – must be released unless it can be established that disclosure would be contrary to the public interest.
  - i.e. access under the FOI Act can only be refused if the elements of the conditional exemption are met and the public interest test is satisfied.

If a document is both an exempt document and a conditionally exempt document, access under the FOI Act is not required to be granted (s.11A(6)).

Exempt Documents	Conditionally Exempt Documents (subject to public interest test)
Section 33 – Documents affecting national security, defence or international relations	Section 47B – Commonwealth-State relations
Section 34 – Cabinet documents	Section 47C – Deliberative processes
Section 37 – Documents affecting enforcement of law and protection of public safety	Section 47D – Financial or property interests of the Commonwealth
Section 38 – Documents to which secrecy provisions of enactments apply	Section 47E – Certain operations of agencies
Section 42 – Documents subject to legal professional privilege	Section 47F – Personal privacy
Section 45 – Documents containing material obtained in confidence	Section 47G - Business
Section 46 – Documents the disclosure of which would be contempt of Parliament or contempt of court	Section 47H - Research
Section 47 – Documents disclosing trade secrets or commercially valuable information	Section 47J – The economy
Section 47A – Electoral rolls and related documents	

Note: The department will exempt the personal details of non-SES staff under s.22, unless their details are materially relevant to the subject of the FOI request.

## Exempt documents

The decision-maker must demonstrate that the document meets all of the elements of the exemption provision.

If a document contains information that is partly exempt, the document should be released in redacted form where practicable (s.22).

Guidance in relation to exemptions that commonly apply to the department's documents is provided below.

### ***Cabinet documents (s.34)***

A document is exempt under s.34 if:

- it has been submitted to the Cabinet for consideration (or was proposed by a Minister to be so submitted), and that the document was created for the main purpose of submission for consideration by the Cabinet (s.34(1)(a)); or
- it is an official record of the Cabinet (eg Cabinet minutes) (s.34(1)(b)); or
- it was created for the main purpose of briefing a Minister on a document to be submitted (or proposed to be submitted) to the Cabinet for consideration (s.34(1)(c)); or
- it is a draft or copy of, or contains an extract from, the above documents (ss.34(1)(d) and (2)); or
- it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed (s.33(3)).

### Exceptions

Attachments to Cabinet documents that were created for another purpose, and purely factual material are not exempt, unless disclosure would reveal a Cabinet deliberation or decision which has not been officially disclosed.

### Consultation

PM&C must be consulted in relation to Cabinet-related material. No extension of time applies.

## ***Documents subject to legal professional privilege (s.42)***

A document is exempt under s.42 if it would be privileged from production in legal proceedings on the grounds of legal professional privilege (LPP).

LPP applies to confidential communications between a lawyer and client and the dominant (ie the main, but not necessarily only) purpose for its creation was:

- giving or obtaining legal advice; or
- for use in, or in connection with, actual or anticipated legal proceedings.

Summaries of privileged communications (eg summaries of legal advice) also attract LPP.

### **Exceptions**

The s.42 exemption does not apply to operational information of the department.

It also does not apply where privilege has been waived. Privilege may be waived expressly (eg providing the legal advice, or its content or substance, to a third party that does not have a common interest in the advice), or may be implied by conduct (ie acting in a manner inconsistent with the maintenance of confidentiality).

## ***Documents containing material obtained in confidence (s.45)***

A document will be exempt under s.45 if its disclosure under the FOI Act would found a legal action by a person (other than another Commonwealth agency) against the department for breach of confidence.

It is not enough that a document is marked 'confidential'. To determine whether disclosure would found an action for breach of confidence, the following criteria must be satisfied:

- the information is specifically identified;
- the information is sufficiently secret (ie not public knowledge or available in the public domain);
- the information was provided on the basis of a mutual understanding (whether express or implied) that the information would be kept confidential;
- disclosure would cause the confider to suffer loss or detriment;
- there is an actual or threatened unauthorised use or misuse of the information.

## Exceptions

The s.45 exemption does not apply to documents to which s.47C(1) (deliberative processes) applies, or would apply but for ss.47C(2) or (3), unless the obligation of confidence is owed to persons other than the Minister, Ministerial staff or department officers.

## ***Other exemptions***

Other categories of exempt documents are as follows:

- documents affecting national security, defence or international relations (s.33)
- documents affecting enforcement of law and protection of public safety (s.37)
- secrecy provisions of enactments (s.38)
- documents disclosure of which would be contempt of Parliament or contempt of court (s.46)
- documents disclosing trade secrets or commercially valuable information (s.47)

If the decision-maker, the action officer or the FOI officer believes that any of the above exemptions may apply, it is advised that they consult with the allocated lawyer.

## **Conditionally exempt documents**

The decision-maker must demonstrate:

- the document meets all of the elements of the conditional exemption provision; and
- disclosure of the document would be contrary to the ***public interest***.

If only part of a document is conditionally exempt and meets the public interest test, the document should be released in redacted form where reasonably practicable (s.22).

The public interest test is explained further below.

Guidance in relation to conditional exemptions that commonly apply to the department's documents is provided as follows.

### ***Commonwealth-State relations (s.47B)***

Section 47B contains two conditional exemptions.

***Section 47B(a)*** applies in relation to documents the disclosure of which would, or could reasonably be expected to, damage relations between the Commonwealth and a State.

- There must be real and substantial grounds (and not just a mere possibility) for expecting the damage to occur which can be demonstrated by evidence or reasoning.
- 'Relations between the Commonwealth and a State' relates to the maintenance of good working relationships. 'Damage' in this context could include, for example –
  - an adverse effect on Commonwealth-State projects or programs;
  - damage or interruption to Commonwealth-State negotiations;
  - other impacts on Commonwealth-State cooperation.

**Section 47B(b)** applies in relation to documents containing information communicated to the Commonwealth in confidence by or on behalf of a State.

### Consultation

Consultation with State Governments under s.26A may be required in relation to documents to which s.47B potentially applies. The statutory timeframe for processing the request may be extended under s.15(6) by a further 30 days to undertake such consultation.

### ***Deliberative processes (s.47C)***

A document is conditionally exempt under s.47C if its disclosure would reveal:

- an opinion, advice or recommendation that has been obtained, prepared or recorded;  
or
- consultation or deliberation that has taken place,

in the course of, or for the purposes of, the deliberative processes relating to the functions of the department, the Minister or the Australian Government.

'Deliberative processes' refers to thinking, reflecting, and evaluating competing arguments or considerations, prior to the making of a final decision.

### Exceptions

The s.47C conditional exemption does not apply to:

- purely factual information;
- the department's operational information;
- scientific or technical reports;

- reports of an organisation prescribed by regulations;<sup>2</sup>
- records or formal statements of reasons relating to a final decision.

### ***Certain operations of agencies (s.47E)***

Section 47E contains four conditional exemptions. A document will be conditionally exempt if its disclosure would, or could reasonably be expected to:

- prejudice the effectiveness of procedures or methods used by the department for the conduct of tests, examinations or audits (s.47E(a));
  - eg giving forewarning of the usual manner of assessments, and compromising the integrity of the assessment process;
- prejudice the attainment of the objects of particular tests, examinations or audits by the department (s.47E(b));
- have a substantial adverse effect on the department's management or assessment of personnel (s.47E(c));
- have a substantial adverse effect on the proper and efficient conduct of the department's operations (s.47E(d)).

There must be real and substantial grounds (and not just a mere possibility) for expecting the damage to occur which can be demonstrated by evidence or reasoning.

### ***Personal privacy (s.47F)***

A document will be conditionally exempt under s.47F if its disclosure would involve the ***unreasonable*** disclosure of personal information.

'Personal information' means information about a natural person whose identity is apparent or can reasonably be ascertained.

To determine whether disclosure would be unreasonable in the circumstances, the decision-maker must take into account:

- the extent to which the information is well known;
- availability of the information from publicly accessible sources;
- whether the person is associated with the matters dealt with in the document;
- any other matters the department considers relevant.

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<sup>2</sup> N/A as at April 2011

## Exceptions

This conditional exemption does not apply if the personal information relates to the applicant.

## Granting access to qualified individual

If a document contains information concerning an individual applicant that was provided by a qualified person (eg medical practitioner, counsellor), and it appears that disclosure of that information to the applicant could be detrimental to the applicant's physical or mental health, the decision-maker may grant access to the qualified person instead of the applicant.

## Consultation

Consultation with individuals under s.27A may be required in relation to documents containing personal information about those individuals. The statutory timeframe for processing the request may be extended under s.15(6) by a further 30 days to undertake such consultation.

## ***Business (s.47G)***

Section 47G contains two conditional exemptions. A document that contains information relating to a person's or organisation's business or professional affairs is conditionally exempt under s.47G if its disclosure would, or could reasonably be expected to:

- adversely affect the person in respect of his/her business or professional affairs, or adversely affect the commercial, business or financial affairs of the organisation (s.47G(1)(a)); or
- prejudice the future supply of information to the department or the Commonwealth for the purpose of the administration of a Commonwealth/Territory law or matters administered by the department (s.47G(1)(b)).

There must be real and substantial grounds (and not just a mere possibility) for expecting the damage to occur which can be demonstrated by evidence or reasoning.

## Exceptions

The s.47G conditional exemption does not apply to:

- information relating to the applicant's own business or professional affairs; or
- trade secrets or other information to which s.47 applies.

## ***Other conditional exemptions***

Other categories of conditionally exempt documents are as follows:

- documents the disclosure of which would adversely affect the financial or property interests of the Commonwealth (s.47D);
- research undertaken by a prescribed agency (ie ANU or CSIRO as at April 2011) (s.47H);
- documents the disclosure of which would adversely affect the Australian economy (s.47J).

If the decision-maker, the action officer or the FOI officer believes that any of the above exemptions may apply, it is advised that they consult with the Legal Services Group.

## **Public interest test**

Subsection 11A(5) of the FOI Act states:

*"The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest."*

In other words, before access may be refused, the decision-maker must be able to demonstrate that releasing a conditionally exempt document is, at that time, contrary to the public interest.

The public interest test must be considered on a case by case basis, and applied independently to each document. This is important because if the decision-maker decides to refuse access to a conditionally exempt document, the statement of reasons for the decision is required to:

- identify all the public interest factors, both for and against disclosure, that were taken into account in applying the test; and
- demonstrate that a specific detriment would occur because of the disclosure.

Although 'public interest' is not specifically defined in the FOI Act, the concept refers to something of serious concern or benefit to the public, and not merely of individual interest. Something that is contrary to the public interest means that on balance, the detriment that would result from disclosure outweighs the benefits of releasing that information.

Decision-makers are required to have regard to a number of factors in considering the public interest test. This is discussed below.

## **FOI Act factors**

Section 11B of the FOI Act sets out a number of factors to be taken – and not taken – into account in working out whether access to a conditionally exempt document would be contrary to the public interest.

Factors favouring access (non-exhaustive)	Factors not to be taken into account
<ul style="list-style-type: none"> <li>• promote the objects of the FOI Act (note: presumption towards pro-disclosure)</li> <li>• inform debate on a matter of public importance</li> <li>• promote effective oversight of public expenditure</li> <li>• allow a person to access his or her own personal information</li> </ul>	<ul style="list-style-type: none"> <li>• access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government</li> <li>• access to the document could result in any person misinterpreting or misunderstanding the document</li> <li>• the author of the document is (or was) of high seniority in the agency to which the request for access to the document was made</li> <li>• access to the document could result in confusion or unnecessary debate</li> </ul>

## **OAIC Guideline factors**

Decision-makers must take into consideration the guidelines issued by the Information Commissioner when weighing up the public interest test.

The OAIC *'Conditional Exemptions Guidelines'* set out a non-exhaustive list of factors against disclosure. These factors include where disclosure could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;
- prejudice security, law enforcement, public health or public safety;
- impede the administration of justice, either generally or in a particular case;
- prejudice an agency's ability to obtain confidential or similar information in the future;
- prejudice the competitive commercial activities of an agency;
- prejudice the management functions of an agency;

- prejudice the effectiveness of testing or auditing procedures.

### ***Weighing up public interest factors***

The object of the FOI Act to ensure public access to government held information as far as possible, will always be included as a public interest factor by itself to be weighed in favour of release. For example, where the degree of disadvantage that may be caused by disclosure is small, the objective of the FOI Act may be enough on its own to tip the balance in favour of the disclosure.

There will usually be competing public interest arguments for and against disclosure which a decision-maker will have to weigh up.

When a decision-maker decides that it would be contrary to the public interest to disclose a document, he or she should list in the statement of reasons all the public interest factors, both for and against disclosure, that were taken into account. The decision-maker must be able to show that a specific detriment will occur because of the disclosure.

# TABLE OF FOI EXEMPTION CATEGORIES

The table below provides a summary of the categories of FOI exemptions and conditional exemptions. For further guidance on the application of these provisions, see the OAIC Guidelines at [www.oaic.gov.au](http://www.oaic.gov.au).

Relevant Provision	Examples of document type	Reason for exemption – possible effect of disclosure
<b>Exemptions</b>		
33	<p><b>National security, defence or international relations</b></p> <ul style="list-style-type: none"> <li>▪ documents concerning any of the above</li> <li>▪ information communicated in confidence by a Foreign Government or international organisation</li> </ul>	<p>Disclosure would, or could reasonably be expected to:</p> <ul style="list-style-type: none"> <li>▪ cause damage to the security of, the defence of, or the international relations of the Commonwealth</li> <li>▪ divulge information communicated in confidence to the Commonwealth by, or on behalf of, a Foreign Government or international organisation.</li> </ul>
34	<p><b>Cabinet documents</b></p> <ul style="list-style-type: none"> <li>▪ submitted to Cabinet or proposed to be submitted and was brought into existence for the dominant purpose of consideration by Cabinet</li> <li>▪ official record of Cabinet</li> <li>▪ dominant purpose of briefing a Minister on a Cabinet document</li> <li>▪ a draft of any of the above</li> <li>▪ where it is a copy or part of, or an extract from a Cabinet process/deliberation is included</li> </ul>	<p>To maintain the confidentiality necessary for the proper functioning of Cabinet.</p> <p><u>Exceptions:</u> - where deliberations or decisions have been officially disclosed or published</p> <ul style="list-style-type: none"> <li>▪ if the matter in the Cabinet document or discussion paper is purely factual and release will not reveal the deliberation or decision process of Cabinet</li> </ul>
38	<b>Secrecy provisions of enactments</b>	Disclosure is prohibited under provisions in another Act
42	<p><b>Legal professional privilege</b></p> <ul style="list-style-type: none"> <li>▪ documents created for giving or receiving legal advice, or for use in actual or anticipated litigation</li> </ul>	<p>Document would be privileged from production in legal proceedings on the ground of legal professional privilege.</p> <p><u>Exceptions:</u> information is operational information of an agency or the legal professional privilege has been waived.</p>
45	<p><b>Material obtained in confidence</b></p> <ul style="list-style-type: none"> <li>▪ documents containing information which was communicated and received on the basis of a mutual understanding of confidence <ul style="list-style-type: none"> <li>- if it were disclosed would be an <i>unauthorised use</i> of the information</li> <li>- by its disclosure would cause the confider to suffer a detriment</li> </ul> </li> </ul>	Where disclosure would be actionable by law for breach of confidence by a person (other than an agency or the Commonwealth)
46	<b>Contempt of Parliament or court</b>	Disclosure would be:

	<ul style="list-style-type: none"> <li>documents which are protected by the courts and their proceedings</li> <li>documents subject to an order of a Royal Commission, tribunal or other body having power to take evidence on oath</li> <li>documents and records of evidence presented to Parliament</li> </ul>	<ul style="list-style-type: none"> <li>in contempt of court</li> <li>contrary to an order made, or direction given, by a Royal Commission, tribunal or similar body</li> <li>an infringement of the privileges of the Commonwealth or of a State or Territory parliament</li> </ul>
47	<b>Trade secrets or commercially valuable</b> <ul style="list-style-type: none"> <li>trade secret documents or other information having a commercial value or activity</li> </ul>	Where disclosure: <ul style="list-style-type: none"> <li>could reasonably be expected to destroy or diminish the business/commercial value of the information if disclosed</li> </ul>

Conditional exemptions		
<b>Note:</b> Access must be given to a conditionally exempt document unless it would be contrary to the public interest (s.11A).		
47B	<b>Commonwealth-State relations</b> <ul style="list-style-type: none"> <li>documents that originated with, or were received from a State agency</li> <li>information or matter communicated in confidence by (or on behalf of) a State Government to the Commonwealth</li> </ul>	Disclosure would, or could reasonably be expected to: <ul style="list-style-type: none"> <li>cause damage to relations between the Commonwealth and a State</li> <li>divulge information communicated in confidence to the Commonwealth by or on behalf of a State</li> </ul>
47C	<b>Deliberative processes</b> <ul style="list-style-type: none"> <li>documents disclosing opinion, advice, recommendation, consultation or deliberation occurring as part of the deliberative processes involved in the functions of an agency, a Minister or Government</li> </ul>	Disclosure would, or could reasonably be expected to: <ul style="list-style-type: none"> <li>disclose matter of opinion, advice, recommendation, consultation or deliberation occurring as part of the deliberative processes involved in the functions of an agency, a Minister or a Government.</li> </ul> <p><u>Exceptions:</u> does not include</p> <ul style="list-style-type: none"> <li>either operational information (s 8A) or purely factual material</li> <li>reports of scientific or technical experts (whether or not employed within an agency)</li> <li>reports of a body or organisation that is established within an agency</li> <li>record of a final decision in the exercise of power or an adjudicative function</li> </ul>
47D	<b>Financial or property interests of the Commonwealth</b> <ul style="list-style-type: none"> <li>documents concerning revenue generating activities</li> <li>documents concerning property interests (other than buildings or land)</li> </ul>	Disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency

47E	<p><b>Certain operations of agencies</b></p> <p>Documents necessary for the proper conduct of the operations of an agency, including:</p> <ul style="list-style-type: none"> <li>• procedures and methods for tests, examinations or audits</li> <li>• management or assessment of personnel</li> </ul>	<p>Disclosure would, or could reasonably be expected to:</p> <ul style="list-style-type: none"> <li>• prejudice tests, examinations or audits conducted by an agency, or their attainment</li> <li>• have an adverse effect on the management or assessment of personnel</li> <li>• have a substantial adverse effect on the proper and efficient conduct of the operations of an agency</li> </ul>
47F	<p><b>Personal privacy</b></p> <ul style="list-style-type: none"> <li>• documents containing information relating to a natural person, which may be in the form of an opinion</li> <li>• the individual is identified in the information or is reasonably able to be identified</li> </ul> <p><i>Exceptions:</i> the person identified in the document is requesting the information; or they have nominated a qualified person to access the information on their behalf</p>	<p>Disclosure of the document would result in the unreasonable disclosure of personal information about any person (including a deceased person). In determining whether disclosure is unreasonable, consideration by an agency or Minister must have regard for:</p> <ul style="list-style-type: none"> <li>• the extent to which the information is well known</li> <li>• availability of the information from publicly accessible sources</li> <li>• whether the person is associated with the matters dealt with in the document</li> <li>• any other matters the agency or Minister consider relevant</li> </ul>
47G	<p><b>Business</b></p> <ul style="list-style-type: none"> <li>• documents containing information about a natural person and their business, professional or financial affairs</li> <li>• documents containing information about an organisations business, commercial or financial affairs or undertaking</li> </ul>	<p>Disclosure would or could reasonably be expected to:</p> <ul style="list-style-type: none"> <li>• affect that person adversely in respect of their lawful business or professional affairs</li> <li>• adversely affect an organisation in respect of its lawful business, commercial or financial affairs</li> <li>• prejudice the future supply of information to the Commonwealth or of a Territory or matters administered by an agency</li> </ul>
47H	<p><b>Research</b></p> <ul style="list-style-type: none"> <li>• documents containing information relating to research being, or is to be, undertaken by an officer of CSIRO or ANU</li> </ul>	<p>Disclosure of the information before the completion of the research would be likely to unreasonably disadvantage the agency or officer</p>
47J	<p><b>The economy</b></p> <p>Documents containing matter relating to any of the following (but not limited to):</p> <ul style="list-style-type: none"> <li>• currency and exchange rates, interest rates</li> <li>• taxes, including duties of customs or excise</li> <li>• regulation/supervision of banking, insurance and other financial institutions</li> <li>• proposals of expenditure</li> <li>• foreign investment in Australia</li> <li>• borrowings by the Commonwealth, State or an authority of the Commonwealth or State</li> </ul>	<p>Disclosure would or could reasonably be expected to have a substantial adverse effect on Australia's economy by:</p> <ul style="list-style-type: none"> <li>• influencing a decision or action of a person or entity</li> <li>• giving a person undue benefit or detriment in the business undertaken by the person, through premature knowledge of proposed or possible action or inaction of a person or entity.</li> </ul> <p>Substantial adverse effect on Australia's economy includes adverse effect on:</p> <ul style="list-style-type: none"> <li>• a particular sector of the economy</li> <li>• the economy of a particular region of Australia</li> </ul>

## CHAPTER 10

# ACCESS TO DOCUMENTS

Section 20 of the FOI Act provides for the following forms of access to documents:

- a reasonable opportunity to inspect documents;
- copies of documents;
- making arrangements for the applicant to hear or view sounds or visual images;
- provision of written transcripts of recorded material.

The department may give access in other alternative forms with the agreement of the applicant (eg providing scanned copies of documents on a CD, rather than paper copies).

### **Granting access in an alternative form (s.20(3))**

If an applicant is granted access to documents, the department is generally required to provide access in the form requested by the applicant, unless the giving of access in the requested form:

- would unreasonably interfere with the operations of the department, or the performance by the Minister of his or her functions; or
- would be detrimental to the preservation of the document, or would otherwise be inappropriate having regard to the physical nature of the document; or
- would, but for the FOI Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an agency or a State) of information contained in the document which does not relate to the affairs of an agency or of a Department of State.

If the decision-maker is satisfied that giving access in the requested form would result in any of the above situations, access in that form may be refused and access given in another form (s.20(3)).

Reasons for providing access in an alternative form must be given to the applicant in the Statement of Reasons for the decision.

## **Charges**

If the charge for providing access in the alternative form is higher than the requested form, the applicant can only be charged the amount that would have applied for granting access in the requested form.

## **Deferment of access (s.21)**

The department may decide to defer access to a document in the following situations.

<b>Circumstance under s.21(1)</b>	<b>Period of deferment</b>
Publication of the document is required by law	Until the expiration of the period within which the document is required to be published
The document has been prepared: <ul style="list-style-type: none"><li>• for presentation to Parliament; or</li><li>• for the purpose of being made available to a particular person or body; or</li><li>• with the intention that it should be made available to a particular person or body.</li></ul>	Until the expiration of a reasonable period after the preparation of the document so that it can be presented to Parliament, or made available to the particular person or body.
Premature release of the document would be contrary to the public interest	Until the occurrence of any event, or the expiration of any period of time, after which release of the document would not be contrary to the public interest.
The Minister considers that the document is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public	Until the expiration of 5 sitting days of either House of Parliament

If a decision is made to defer access to documents, the applicant must be given reasons for the decision and, as far as practicable, the period of deferment (ie the date on which access will be given).

## **Access to edited copies of documents (s.22)**

Where a document contains some exempt material and some non-exempt material, or contains material which is outside the scope of the request, an edited copy of the document (ie with redactions to the exempt material) should be released if it is practicable to do so.

In accordance with departmental policy, unless the name and contact details of non-SES staff member are necessary to understand the nature of a document or information contained in a document, those details will be redacted.

The Statement of Reasons for the decision should address:

- the grounds for the deletions (ie whether the deletions relate to exempt or irrelevant material); and
- if the deleted information is exempt material – the provision of the FOI Act under which the information is exempt.

## **Review rights**

A decision to grant access in an alternative form, defer access, or grant access to an edited copy of a document is subject to review rights. See **Chapter 13** for further information.

## CHAPTER 11

# FOI DECISION-MAKING

## Principles of FOI decision-making

- FOI decision-makers must:
  - be authorised under s.23 to exercise powers under the FOI Act; and
  - exercise their discretionary power independently and in accordance with the legislation.
- The starting point for dealing with FOI requests is a presumption in favour of granting access to documents.
- The decision about access to a document will depend on the particular content of the document and any other relevant factors. This will vary from case to case, so each FOI request and each document must be considered separately and independently.
- The decision-maker must have regard to all relevant factors (and weigh those factors against each other), and must not take irrelevant factors into account. In certain areas, the FOI Act prescribes what factors are relevant or irrelevant, eg public interest factors under s.11B.
  - The applicant's reasons for making the request is an irrelevant factor that must not be taken into account.
  - Any submissions made by the applicant and third parties must be considered.
- Procedural requirements specified under the FOI Act must also be followed.

## Internal review decision-making

An internal review decision must be a fresh and independent decision, having regard to all of the evidence that was before the original decision-maker and any new evidence. It should not merely be a 'rubber stamp' of the original decision.

### ***Reviewing decisions on access to documents***

All documents subject to internal review must be re-examined and a new decision (although not necessarily a different decision) made in respect of each document.

Relevant considerations in conducting an internal review include:

- the applicant's internal review submissions;
- the need for consultation where consultation was not previously undertaken;
- the need for further consultation to obtain additional evidence in support of granting or refusing access;
- the desirability of further searches for documents, particularly where the existence of documents is an issue;
- evidence and factors in support of an exemption, to ensure that such a claim is sustainable;
- whether documents should be released, notwithstanding that an exemption may apply.

### ***Reviewing charges decisions***

Relevant considerations in conducting an internal review of a charges decision include:

- the accuracy of the charges calculation;
- evidence of actual time spent in processing the FOI request (including consideration of whether the time recorded fairly reflects the workload);
- whether grounds exist to waive or reduce the amount of charges, taking into account any submissions by the applicant.

## **Notice of decision and statement of reasons**

The applicant must be notified in writing of decisions under the FOI Act, accompanied by a statement of reasons and a notice of review rights.

A third party must be notified of a decision to grant access to a document where that third party has made a contention against release as part of a consultation process.

A statement of reasons should set out:

- the name and designation of the decision-maker;
- findings on material questions of fact, referring to the material and evidence on which those findings were based;
- clear reasons for the decision.

## Good FOI Decision-making Guide

FOI decision-making considerations
<p>1. Check your authority</p> <ul style="list-style-type: none"><li>• Do you have authorisation under s.23 to make the decision?</li><li>• Are there any directions or conditions to your authorisation that affect the decision-making process?</li></ul>
<p>2. Identify the issues</p> <ul style="list-style-type: none"><li>• Look at the relevant provisions of the FOI Act to work out the issues that you must address before making a decision.</li></ul>
<p>3. Identify the procedure associated with the making of the decision</p> <ul style="list-style-type: none"><li>• Carefully read the provisions of the legislation to check the procedures associated with the making of the decision.<ul style="list-style-type: none"><li>▪ What are the constraints/conditions imposed by the FOI legislation?</li><li>▪ Does the FOI Act require certain procedures to be observed in connection with the making of the decision? (eg third party consultation, s.24AB request consultation process.)</li></ul></li></ul>
<p>4. Identify what information you need</p> <ul style="list-style-type: none"><li>• Based on the issues you need to decide, identify what information you require to make an informed decision.</li></ul>
<p>5. Identify the evidence and relevant factors</p> <ul style="list-style-type: none"><li>• Identify the relevant facts.</li><li>• Identify all the evidence and relevant factors that are available to you, or that are required under the FOI legislation or OAIC Guidelines to be taken into consideration. You should exclude any evidence or factors that do not relate to a relevant issue.</li><li>• Record the evidence relied upon in making the decision. Where there are two conflicting pieces of evidence or competing arguments, decide which you prefer and why.</li></ul>
<p>6. Keep notes and make a record of the decision</p> <ul style="list-style-type: none"><li>• Keep notes of how you reached the decision. This may become important if your decision is subject to review or a complaint.</li><li>• The final decision must be clearly recorded.</li></ul>

## CHAPTER 12

# REVIEW RIGHTS

### Merits review

The FOI Act provides for three tiers of merits review that are available to FOI applicants in relation to 'access refusal decisions', and to certain third parties in relation to 'access grant decisions':

- internal review by the department;
- review by the Information Commissioner (**IC review**);
- review by the AAT.

The department or Minister may also appeal to the AAT against a decision by the Information Commissioner.

An **access refusal decision** is any of the following decisions (s.53A):

- a decision refusing to give access to a document;
- a decision refusing to give access to all documents to which the request relates (ie a decision to only give access to some documents, or parts of documents);
- a decision purporting to give access, but not actually giving access;
- a decision to defer giving access to a document;
- a decision relating to the imposition of a charge or the amount of a charge;
- a decision to give access to a qualified person under s.47F(5);
- a decision refusing to amend a record of personal information;
- a decision refusing to annotate a record of personal information.

An **access grant decision** is a decision to give an applicant access to a document where:

- consultation with a State was undertaken under s.26A, and the State made a submission contending that the document should not be released pursuant to s.47B and s.11A(5);
- consultation with a person or organisation in relation to business documents was undertaken under s.27, and the person or organisation made a submission

contending that the document should not be released pursuant to s.47, or s.47G and s.11A(5);

- consultation with an individual (or their legal representative if the individual is deceased) was undertaken under s.27A, and the individual made a submission contending that the document should not be released pursuant to s.47F and s.11A(5).

Foreign governments and international organisations, and other Commonwealth agencies, that have been consulted in respect of documents do not have review rights in relation to the release of those documents.

### ***Options for review of original decision***

An applicant or third party has an option of either making an internal review application, or making an application for review directly to the Information Commissioner.

The exception is where the original decision was made by the Secretary of the department or by the Minister – in this case, an internal review cannot be conducted. The original decision can only be reviewed by the Information Commissioner.

### ***Internal review***

An internal review application must be made in writing:

- within 30 days (or such period as the department allows) after the day on which the applicant or third party is notified of the original decision; or
- in relation to a decision to only give access to some of the requested documents, or purporting to give access but not actually providing access – whichever is the longer period of:
  - 30 days (or such further period as the department allows) after the day the decision is notified to the applicant;
  - 15 days after the day the documents are provided to the applicant (or access is purported to be given).

(See **Chapter 8** in relation to granting an applicant further time to make an internal review application.)

The following table summarises the timeframes for making an internal review application in respect of certain decisions.

<b>Decision subject to internal review</b>	<b>Time limits for making internal review application</b>
Refusing access to a document in accordance with an FOI request	30 days after decision was notified, or such further period as agreed by the department
Granting access to a document but not granting access in accordance with the request to all documents	15 days after access was granted or 30 days after the decision was notified (whichever period was longer), or such further period as agreed by the department
Purporting to grant access in accordance with a request but not actually granting that access	15 days after access was granted or 30 days after the decision was notified (whichever period was longer), or such further period as agreed by the department
Deferring access to a document	30 days after decision was notified, or such further period as agreed by the department
Granting access to a document in respect of which a third party consulted under ss.26A, 27 or 27A has made an objection to release	30 days after decision was notified, or such further period as agreed by the department
Decision in relation to charges under s.29(4) (including the amount of charges, or reduction or waiver of charges)	30 days after decision was notified, or such further period as agreed by the department
The remission of charges	30 days after decision was notified, or such further period as agreed by the department
Granting access to a document only to a qualified person	15 days after access was granted or 30 days after the decision was notified (whichever period was longer), or such further period as agreed by the department
Decision to refuse to amend a record of personal information	30 days after decision was notified, or such further period as agreed by the department
Decision refusing to annotate a record of personal information	30 days after decision was notified, or such further period as agreed by the department

The internal review must be conducted by a person other than the original decision-maker.

The department must give the applicant/third party notice of the internal review decision (and accompanying statement of reasons) within 30 days of receiving the internal review application.

An application for an extension of time to deal with the internal review may be made to the Information Commissioner if required. If notice of the internal review decision is not given by the end of the statutory period (including any extension that has been granted by the Information Commissioner), the department is deemed to have made a decision affirming the original decision. The department can still apply for an extension to complete the internal review process. (See **Chapter 8: Extensions of Time.**)

## ***Information Commissioner review***

### IC review application requirements

An IC review application must be made in writing:

- within 60 days by an applicant in relation to an access refusal decision;
- within 30 days by a third party in relation to an access grant decision.

The application must include details for sending notices to the applicant/third party, and a copy of the decision and statement of reasons the subject of the IC review. The application should also include details of the basis on which the applicant/third party disagrees with the decision.

### Notice to affected third party of IC review application by FOI applicant

The department must notify an affected third party where the FOI applicant makes an IC review application, and give a copy of the notice to the Information Commissioner (s.54P). However, such notice is not required where the Information Commissioner makes an order, on application by the department or the Minister, that it would not be appropriate give notice to the third party on the basis that any of the following would, or could reasonably be expected to, occur (s.54Q):

- prejudice to the conduct of an investigation of a breach of the law, or failure to comply with a law relating to taxation;
- prejudice the enforcement or proper administration of the law in a particular instance;
- disclose the existence or identity of a confidential source of information in relation to the enforcement or administration of the law;
- endanger the life or physical safety of any person;
- cause damage to the security, defence or international relations of the Commonwealth.

### IC review process

The FOI Act does not impose a statutory timeframe for the Information Commissioner to make a decision.

The Information Commissioner has a discretion not to undertake, or to discontinue, an IC review in certain circumstances as set out in s.54W. The Information Commissioner must notify the relevant review parties in writing of such a decision (s.54X).

Although the FOI Act does not impose statutory timeframes for IC reviews, it is expected that this process will be conducted in a timely manner and lead to a resolution as quickly as possible.

Most matters will be non-adversarial and will be dealt with by a simple, practical and cost efficient review on the papers, rather than hearings.

### ***AAT appeal***

An 'affected third party' can appeal to the AAT against a decision of the Information Commissioner. This may include the FOI applicant, a third party, or the department or Minister.

An AAT appeal must be lodged within 28 days of notice of the Information Commissioner's decision.

The department must notify affected third parties if an applicant seeks AAT review, unless the AAT orders otherwise (see ss.60AA and 60AB).

### **Judicial review (Federal Court)**

Where a decision is under review by the Information Commissioner, the Information Commissioner may, during any time during that review process, refer a question of law to the Federal Court for decision.

Decisions of the Information Commissioner may be appealed to the Federal Court on a question of law. The appeal must be lodged within 28 days of notice of the Information Commissioner's decision.

### **Complaints to the Information Commissioner**

A person may make a complaint in writing to the Information Commissioner concerning any action by the department in relation to an FOI process.

Subject to limited exceptions, the Information Commissioner must investigate all complaints. The Information Commissioner can also undertake own motion investigations. A complaint may be transferred to the Commonwealth Ombudsman if the Information Commissioner is satisfied that it would be better dealt with by the Ombudsman.

At the conclusion of an investigation, the Information Commissioner will notify the department and the complainant of the investigation results and any investigation recommendations.

If the Information Commissioner is not satisfied that the department has taken adequate and appropriate action to implement the investigation recommendations, the Information Commissioner may issue an implementation notice requiring the department to provide particulars of the action it proposes to take to implement the recommendations, and timeframes for that action.

If the Information Commissioner is not satisfied that the department has responded to the implementation notice, or still has not taken appropriate action to implement the investigation recommendations, the Information may give a written report to the Minister, and to the Minister responsible for the administration of the FOI Act. The report is then required to be tabled in both Houses of Parliament.

## **Complaints to the Commonwealth Ombudsman**

The Commonwealth Ombudsman may conduct an investigation under the *Ombudsman Act 1976* (Cth) into a complaint relating to action taken by the department under the FOI Act. Before deciding to investigate, the Ombudsman is required to consult with the Information Commissioner to avoid the same matter being investigated twice.

The Ombudsman may transfer a complaint to the Information Commissioner if it decides not to investigate.

## CHAPTER 13

# OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

The Office of the Australian Information Commissioner (**OAIC**) is established by the *Australian Information Commissioner Act 2010* and is an independent statutory agency headed by the Australian Information Commissioner (**Information Commissioner**). The Information Commissioner is supported by the FOI Commissioner, the Privacy Commissioner and the staff of the OAIC, and is responsible for administering the FOI Act and the *Privacy Act 1988*.

The three main functions of the OAIC are:

- Information Commissioner functions - strategic functions relating to information management in the Australian Government;
- privacy functions - ensuring proper handling of personal information in accordance with the Privacy Act and other legislation;
- FOI functions - protecting the public's right of access to documents under the FOI Act.

Issues relating to privacy and FOI can be administered by all three Commissioners. However, the expectation is that FOI functions will mainly be undertaken by the FOI Commissioner.

The FOI functions and powers of the Information Commissioner include:

- conducting reviews of FOI decisions made by agencies;
- investigating complaints about the administration of FOI by agencies;
- issuing guidelines in relation to the FOI Act (including guidelines under s.93A);
- promoting awareness and understanding of the FOI Act;
- providing information, advice, assistance and training in relation to the operation of the FOI Act;
- assisting agencies to publish information in accordance with the Information Publication Scheme;

- monitoring, investigating and reporting on the department's compliance with the FOI Act;
- making reports and recommendations to the Minister about proposals for legislative change and administrative action necessary or desirable in relation to the operation of the FOI Act;
- collecting and publishing information and statistics about FOI matters;
- granting an extension of time for processing FOI requests;
- undertaking reviews of access refusal decisions and access grant decisions;
- making vexatious applicant declarations under s.89K.

The Information Commissioner can affirm, vary or substitute a decision that is subject to review.

The Information Commissioner may also investigate complaints on request by a complainant, or on its own motion. A complaint may be transferred to the Commonwealth Ombudsman if the Information Commissioner is satisfied that it would be better dealt with by the Ombudsman.

## CHAPTER 14

# INFORMATION PUBLICATION SCHEME

In accordance with section 11C of the FOI Act, where the department gives access to a document under section 11A of the FOI Act, the department must publish that information on its website within 10 working days after the day an applicant is given access to the documents.

Details of the department's Information Publication Scheme Plan are available at [http://www.dbcde.gov.au/about\\_us/information\\_publication\\_scheme\\_ips](http://www.dbcde.gov.au/about_us/information_publication_scheme_ips)

## FOI Disclosure Log

The department is required by the *Freedom of Information Act 1982* section 11C to publish a disclosure log on its website. The disclosure log lists information which has been released in response to an FOI access request.

The department will publish documents within the statutory timeframe. As it will require additional time to prepare documents for publication, it is envisaged that publication to the disclosure log will generally be in the latter part of the 10 working day timeframe. It is not the department's intention to simultaneously release documents to an applicant and publish to the disclosure log.

The disclosure log requirement does not apply to:

- personal information about any person if publication of that information would be 'unreasonable'
- information about the business, commercial, financial or professional affairs of any person if publication of that information would be 'unreasonable'
- other information covered by a determination made by the Australian Information Commissioner if publication of that information would be 'unreasonable'
- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete the information listed in the above dot points.

The information described in this register has been released by the department under the *Freedom of Information Act 1982* and is available for public access.

The register of documents released under FOI is available in the Disclosure Log at <http://www.dbcde.gov.au/disclosurelog>

If a document named in the disclosure log is not available for download you can request a copy by writing to:

The FOI Officer  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601

or to: [foi@dbcde.gov.au](mailto:foi@dbcde.gov.au)

A charge may be imposed to reimburse the department for the cost incurred in copying or reproducing the information or sending it to you. You will be notified if any charge is payable and required to pay the charge before the information is provided.

There may be documents in the disclosure log that are currently not available in HTML format. If you are unable to read the format provided please contact the FOI Officer at the address above. We will try to meet all reasonable requests for alternate document formats in a timely manner and at the lowest reasonable cost to you.

Information in the disclosure log may be removed after 12 months, unless it has ongoing public value.

# Glossary

**AAT** – Administrative Appeals Tribunal

**Charges Regulations** – *Freedom of Information (Charges) Regulations 1982* (Cth)

**Commonwealth Ombudsman / Ombudsman** – the Commonwealth Ombudsman established under the *Ombudsman Act 1976* (Cth)

**Department** – Department of Broadband, Communications and the Digital Economy

**DFAT** – Department of Foreign Affairs and Trade

**FOI** – Freedom of Information

**FOI Act** – *Freedom of Information Act 1982* (Cth)

**Information Commissioner / IC** – the Australian Information Commissioner established under the *Australian Information Commissioner Act 2010* (Cth)

**LSG** – Legal Services Group in the Department of Broadband, Communications and the Digital Economy

**Minister** – the Minister for Broadband, Communications and the Digital Economy

**OAIC** – Office of the Australian Information Commissioner

**OAIC Guidelines** – guidelines issued by the Information Commissioner under s.93A of the FOI Act

**Operational information** – as defined under s.8A of the FOI Act

**PM&C** – Department of the Prime Minister and Cabinet

**Privacy Act** – *Privacy Act 1988* (Cth)

## FOI PROCESSING CHART

DAY	TASK	COMMENTS
0	Valid request received – <i>FOI clock starts day after receipt</i>  Invalid request received – <i>FOI clock does not commence</i> . FOI Officer contacts applicant to assist in making a valid request.	
0-1	Request referred to line area to confirm scope, and commence search and retrieval.	
5	Line area confirms whether it has relevant documents, and whether the scope of the request is clear. Line area to advise whether: <ul style="list-style-type: none"> <li>• scope should be clarified informally – FOI Officer contacts applicant; or</li> <li>• a practical refusal reason exists (insufficient information to identify documents, or processing request would involve an unreasonable diversion of resources) – s.24AB notice to be sent to applicant.</li> </ul>	<i>FOI clock continues to run</i> if informal clarification.  <i>FOI clock stops</i> where s.24AB notice issued to applicant.
10	Acknowledgement letter sent to applicant.  Minister's Office notified of request.  Line area completes search and retrieval of documents (subject to scope being clarified/refined, if relevant).	
15	Line area: <ul style="list-style-type: none"> <li>• prepares a Schedule of Documents;</li> <li>• calculates preliminary estimate of charges;</li> <li>• identifies third parties requiring consultation;</li> <li>• provides all documents to the decision-maker.</li> </ul>	
15-17	Charges and Third Party Consultation decisions made	
20	Line area identifies all potentially exempt material	
25	Draft Statement of Reasons completed	
28	Talking points provided to Minister	
30-40	FOI Disclosure Log input prepared	

## FOI KEY MESSAGES

- The FOI Act gives any person a legally enforceable right of access to a document of an agency and to an official document of a Minister, subject to certain exemptions and exceptions.
- The department has a duty to take reasonable steps to assist an applicant to make a valid request.
- The department should process requests as soon as practicable, and within the legislative time frames set by the FOI Act. All officers must give priority to FOI requests to ensure compliance with the statutory time frames.
- The concept of a 'document' is broad (and includes electronic documents and all forms of media, including SMS text, blogs etc). Officers should ensure that a thorough and comprehensive search is conducted for relevant material.
- Before granting access to documents, the department is required to undertake consultation with third parties where the relevant documents include:
  - information provided in confidence by a State, or information the disclosure of which is likely to adversely affect Commonwealth-State relations;
  - business information relating to a person or organisation;
  - personal information relating to a person (including a deceased person);
  - information provided in confidence by a foreign government or international organisation, or information the disclosure of which is likely to damage the international relations of the Commonwealth.
- Consultation with other Commonwealth agencies may also be appropriate, depending upon the nature and source of the document, and whether the documents contain Cabinet information or concern international relations.
- A Statement of Reasons (SoR) must be prepared for all decisions under the FOI Act, and should clearly set out the grounds for the decision and supporting evidence. Being able to identify the evidence and rationale for the primary decision is important in relation to subsequent reviews, inquiries or complaint investigations.
- Access to a conditionally exempt document cannot be refused unless the decision-maker is satisfied, and can demonstrate, that disclosure of the document would be contrary to the public interest.
- The concept of public interest is significant in considering both, charges decisions and the application of conditional exemptions.