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Freedom of Information (FOI) resources and reference material

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Guides

- [FOI guide](#) - The Office of the Australian Information Commissioner (OAIC) developed the FOI guide for individuals and government agencies to assist in the application of the [Freedom of Information Act 1982](#) (FOI Act).
- [Guidance for agency websites: 'Access to information' web page](#)
- [Publications and resources provided by the Office of the Australian Information Commissioner](#)
- [Redaction and freedom of information](#)
- [FOI fact sheet - Records held by contractors \(TRIM ADD2017/2386469\)](#)

Checklists

- [Checklist - FOI Decision Maker \(TRIM ADD2017/2356875\)](#)
- [Checklist - Seeking documents - Call out to business areas \(TRIM ADD2017/2356867\)](#)

Other resources

The OAIC provides a range of resources to help agencies and decision-makers understand and apply the FOI Act:

- [Extension of time for processing requests](#)
- [FOI – Summary of exemptions \(TRIM ADD2017/3779566\)](#)
- [Making a decision on an FOI access request](#)
- [Processing requests for amendment or annotation of personal records](#)
- [Review - Internal](#)
- [Review - Personal and business information — third party review rights](#)
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Fact Sheet – *Freedom of Information Act 1982*

Purpose

To provide guidance on the legislative provisions of the *Freedom of Information Act 1982* (FOI Act) in connection to agencies and their contracted service providers.

Right of access

1. The FOI Act provides a legally enforceable right of access to documents held by an agency.¹ This includes the documents held by any contracted service providers.
2. Documents that are created or produced as part of the performance functions of the contract are subject to access under the FOI Act and the agency should take contractual steps to access documents when an FOI request is received.² This includes any sub-contractors.
3. A contractor's obligation to provide documents to an agency, in response to an FOI request, is triggered when a request to access documents under the FOI Act is received by the agency.³ The requirements for an FOI request are set out in section 15 of the FOI Act.
4. The Department's form 424A is not the authorisation for an individual to seek access to documents under the FOI Act and therefore cannot be relied upon for such a purpose. It is a Departmental construct and serves as a tool to assist an FOI decision maker in the processing of an FOI request.

Scope of an FOI Request

5. The right to access documents is not impacted by any reasons a person may have to make a request.
6. The FOI Act does not require an applicant to disclose or provide proof of identity. However, an exception may occur in the event that the agency needs to be satisfied of the individual's identity to release personal information to the correct individual.⁴
7. When interpreting the scope of a request an agency should consider any document that might reasonably be taken to be included within the description provided.⁵ An agency should not take a narrow or pedantic approach to the interpretation or construction of an FOI request.
8. The Office of the Australia Information Commissioner (OAIC) FOI guidelines provide that an agency has an obligation to assist an applicant to make a valid request and to remove any practical refusal reasons that may exist if the request is considered to be large.
9. If a request is considered to be large the Department is required to provide an estimate for the processing time of the request. The estimate must be based on evidence. In most cases a sample of documents subject to the request will assist in this process. The FOI Section has a checklist to assist areas when conducting a search and retrieval for documents and this is sent with the original tasking email.

¹ Section 11 of the FOI Act

² Section 6C of the FOI Act

³ OAIC - FOI resources, Documents held by government contractors

⁴ OAIC FOI Guidelines – Part 3 [3.39]

⁵ OAIC FOI Guidelines – Part 3 [3.54]

10. The interpretation for the scope of the request is the responsibility of the authorised FOI decision maker. The service provider is welcome to provide advice on this matter, however, any relevant documents should still be provided in connection with this advice. This allows the authorised FOI decision maker to make an informed decision, for which they may be asked to defend with either the Office of the Australian Information Commissioner (OAIC) or at an AAT hearing should the applicant seek a review of the access decision.

Documents/Decision:

11. Once documents have been located they **must** be provided to the Department as soon as possible. They should not have any markings or redactions applied to them.
12. If the service provider has an assessment / briefing / clearance process they may undertake this simultaneously to providing a copy of the documents to the Department.
13. Any comments or advice regarding the concerns in the release of the documents or specific information within the documents can be provided to the Department at a later date.
14. This allows the FOI Section of the Department sufficient time to consider whether a practical refusal reason applies to the request and to consider the application of charges against a request. The delay in providing documents prevents the Department from issuing a charge notice as this can only be done while the request remains within time.
15. No documents are released by this Department until a consultation has been completed, except in the circumstance that an individual is seeking to access their own records (see below). This can include an informal or formal consultation depending on the nature of the documents.
16. In the case of an individual seeking access to their own records consultation will only take place if there is sensitive operational information included. Requests from an individual seeking to access their own information are routine and there are often no exemptions that could be claimed. Alternatively, these requests could be managed by the Service provider under the Privacy Act prior to the client submitting an FOI request. Service providers should consider a mechanism for clients to seek access to their records from them in the first instance.
17. There are no blanket exemptions within the FOI Act. A document must be read fairly and exemptions applied only to material that meets an exemption under the FOI Act.

For example to claim an exemption under s.47E(d) adverse impact to the operations of the agency, the impact that release would have on current operations needs to be so **substantial** that it would result in the Department and its contractors having to make a changes to those operations in order for them to be effective.

18. If no documents can be located for a request the business area should provide a list / description of the searches conducted to locate the records or provide clear reasons for why the documents do not exist.

Staff names including contracted service providers:

19. The object of the FOI Act is to provide access to documents unless an exemption applies.
20. While there is an exemption for personal privacy within the FOI Act the Australian Information Commissioner guidelines provide detailed information about the test for this exemption and makes clear that staff names are not subject to an exemption unless harm can be demonstrated. Assessments of potential harm to a specific person must be evidence-based.
21. An extract of the guidelines is below for your reference:

6.152 Documents held by agencies or ministers often include personal information about public servants. For example, a document may include a public servant's name, work email address, position or title, contact details, decisions or opinions.

6.153 Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties [128] such information may often also be publicly available, such as on an agency website.

Consultation:

22. There are two types of consultation that the Department can undertake with a service provider: informal and formal. Both of these are discussed below.

- a. Where a contracted service provider is providing the services as outlined in the contract and documents are generated as part of the contractual obligations, including standard operating procedures, these documents are considered to be the (extended) operations of the Department. In these cases the Department would informally consult the service provider through their Departmental contact and seek their input on a proposed release. When responding the service provider should consider these documents in the context of the operations of the Department and by extension, the service provider.
- b. Where the document requested is specific to the private business / commercial information of a third party organisation i.e. a copy of the contract, then the Department **must** consult them formally under the FOI Act. In this case the FOI Section will issue a letter to the service provider inviting them to provide a submission in connection to the proposed release. A formal consultation under the FOI Act provides the third party with review rights should the Department decide to release the document.

23. The Department does not consult the service provider in the case of an individual seeking to access their own records. As discussed above this will only take place where sensitive information is identified. In many cases there are no provisions to apply an exemption in these cases as the right a person has to seek access to their own records under the FOI Act is given a greater weight.

For example a decision maker **must** take into consideration whether giving access to the documents would provide that person with access to their own information as part of the Public Interest Test⁶.

Links:

Freedom of Information Act 1982

See: http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/

Australian Information Commissioner guidelines – Part 2 – Scope of application of Freedom of Information Act

See: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act>

Australian Information Commissioner guidelines – Part 6 – Conditional exemptions

See: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions>

⁶ Section 11B(3)(d) of the FOI Act

CHECKLIST FOR FOI DECISION MAKER

STAGE 2 – Decision making

Delegation

- Do you hold the delegation to make decisions under s23 of the FOI Act? ☐

Scope of request

- Ensure you understand the scope of the request. ☐
 - If the scope is unclear, liaise with the FOI Contact Officer to clarify. If required clarification may be sought from the applicant.

Documents

- Are you satisfied all reasonable searches to identify documents are complete ☐
- Are you satisfied that the documents identified fall within the scope of the request, liaise with the FOI Contact Officer for assistance if required ☐
- Has a draft schedule of documents been prepared, If not liaise with the FOI Contact Officer and the FOI Coordination area to complete ☐

Extensions of time

- If it becomes apparent during the processing of this request that the initial processing period of 30 days will be insufficient, liaise with the FOI Contact Officer to discuss the options for an extension of time. ☐

Consultation

- Do third parties need to be consulted in relation to the following information within the documents: ☐
 - Information that originated with or was received from a State government/authority ☐
 - Business related information ☐
 - Personal information ☐
 - Foreign governments or international organisations ☐
- IF YES, notify the FOI Contact Officer ☐

Note: a 30 day extension of time will be applied to the initial processing period
- Should other Commonwealth agencies be consulted in relation to the documents? ☐

Note: PM&C should be consulted on Cabinet exemption claims. DFAT should be consulted on international relation exemption claims
- IF YES, notify the FOI Contact Officer ☐

Note: no additional time can be applied to the initial processing period, these consultations are done as a courtesy

Decision on access

- Review the documents to identify sensitivities and concerns. Having regard to the possible exemptions available (please refer to the following list). ☐
- Have regard to the OAIC guidelines as required by s93A – ☐

<http://www.oaic.gov.au/freedom-of-information/applying-the-foi-act/foi-guidelines/>

- In consultation with the FOI Coordination area / FOI Contact Officer have the documents marked with proposed exemptions. ☐
- Ensure you have updated the schedule of documents with your proposed exemptions ☐
- Identify the evidence and relevant factors for the reasons of your decision ☐
- Provide instructions to the FOI Contact Officer as to the decision made and request a draft Notice of Decision for your review. ☐
- Insert into the draft Notice of Decision any additional relevant factors you consider are appropriate to support the reasons for your decision ☐
- Keep notes and make a record of the evidence relied upon to make the decision. This may become important if your decision is subject to review or complaint. ☐

Exemptions

- Do any exemptions apply to the documents (in full or in part): ☐
 - s33 National security, defence or international relations ☐
 - s34 Cabinet documents ☐
 - s45 Material obtained in confidence ☐

Note: only applies to information provided by independent third parties outside the Commonwealth

- s47 Trade secrets or commercially valuable info ☐

Conditional Exemptions

- Do any conditional exemptions apply to the documents (in full or in part): ☐
 - s47B Commonwealth-State relations ☐
 - S47C Deliberative process ☐
 - s47E Operations of agencies ☐
 - s47F Personal Privacy ☐
 - s47G Business ☐

- Identify the public interest factors for and against disclosure. Would the giving of access, on balance, be contrary to the public interest, liaise with the FOI Contact Officer for assistance if required ☐

Media/sensitive requests:

- If your executive requires a briefing ensure this is completed **10-7 days** prior to the due date of the request ☐
- **5-4 days** prior to the due date of the request, provide the FOI Contact Officer with cleared talking points; signed decision on access; and a copy of documents (with redactions marked) to be released under the FOI Act. ☐

Time recording

- Keep a record of the time you spend on processing this request. ☐
- Provide a record of the time you spent on this FOI request to the FOI Contact Officer. ☐

FOI CHECKLIST FOR BUSINESS COORDINATION AREA

STAGE 1 - Search and Retrieval of documents

Scope of request

- Ensure you understand the scope of the request. ☐
 - If the scope is unclear, liaise with the FOI Section to clarify with the applicant.
 - Consider whether the request is too broad or there is a large number of documents.

If the request is unclear; too broad; or large please complete the relevant questions below. If not proceed to the Search and retrieval section.

Practical refusal reason / notice

1. What makes the request unclear:
2. Where are documents stored:
3. What is the document / file count:
4. Can you estimate how many pages there are:
Tip: every 1cm equals 100 pages
5. What other areas of the Department may hold documents:
6. Does the content of the documents require third party consultations:
7. If there is sensitive material, what is the nature of the sensitivities:
Tip: International relations; or National Security concerns; etc

During the consultation process under a practical refusal notice, the Department must provide assistance to the applicant to make a revised request.

Search and retrieval of documents

- Identify the documents that fall within the scope of the request ☐
- Provide an un-redacted copy of the documents to the FOI Section (7 calendar days) ☐
- If it is part of your usual practice to prepare a schedule and redact documents you may begin this process after a copy of un-redacted documents have been provided to the FOI Section. ☐

Issues management

When providing documents to the FOI Section please provide any high level concerns with respect to the content of the documents. To assist you please tick the relevant concerns below.

- ☐ International relations
- ☐ National Security
- ☐ Third party business information
- ☐ Third party personal information
- ☐ Ongoing investigation
- ☐ Trade secrets or commercially sensitive material
- ☐ Cabinet documents
- ☐ Other:

Extensions of time

- If it becomes apparent during the processing of this request that the initial processing period of 30 days will be insufficient, liaise with the FOI Section in relation to the extension of time options: ☐
 - **Extension with agreement of applicant**
an extension of no more than 30 days can be agreed to by the applicant. This agreement must be in place before the initial statutory period has expired (s15AA)
 - **Extension for complex/voluminous requests**
application may be made to the Information Commissioner for an extension because the request is complex/voluminous – consider s15AA above/issuing of Charges/Consultation

Consultation

- Do third parties need to be consulted in relation to the following information within the documents: ☐
 - Information that originated with or was received from a State government/authority
 - Business related information
 - Personal information
 - Foreign governments or international organisations
- If yes, notify the FOI Team - a 30 day extension of time will be applied to the initial processing period. ☐
- Should any other Commonwealth agencies be consulted in relation to the documents? ☐
 - **Note:** PM&C should be consulted in relation to documents that may be subject to a Cabinet documents exemption claim.

Time recording

- Keep a record of the time you spend on processing this request. You will be asked to provide a record of the time spent at the end of the matter. ☐



Freedom of Information Act 1982 (FOI Act)

Summary of exceptions and exemptions

Section 7 – documents concerning the activities of security and intelligence agencies.

Section 12 – documents in the archival ‘open access period’, unless the document contains personal information (including information about a deceased person); documents open to public access as part of a public register or in accordance with a law and subject to a fee or charge; documents available from land title registers for a fee or charge; and documents available for purchase by the public under arrangements made by an agency.

Section 13 – documents in the collection or custody of the Australian War Memorial, National Library, Museum of Australia, and Australian Archives, unless they were placed in that collection or in that custody by an agency. Section 22 – material considered irrelevant to a request may be removed (e.g. staff names if agreed by the applicant)

Non-conditional (standalone) exemptions

- Section 33 – Documents affecting national security, defence or international relations
- Section 34 – Cabinet documents
- Section 37 – Documents affecting enforcement of law and protection of public safety
- Section 38 – Documents to which secrecy provisions of enactments apply
- Section 42 – Documents subject to legal professional privilege
- Section 45 – Documents containing material obtained in confidence
- Section 45A – Parliamentary Budget Office documents
- Section 46 – Documents, disclosure of which would be contempt of Parliament or contempt of court
- Section 47 – Documents disclosing trade secrets or commercially valuable information
- Section 47A – Electoral rolls and related documents

Public Interest conditional exemptions

Note: Subject to the public interest test in section 11A(5) of the FOI Act

- Section 47B – Documents affecting Commonwealth-State relations
- Section 47C – Deliberative processes
- Section 47D – Financial or property interests of the Commonwealth
- Section 47E – Documents affecting certain operations of an agency
- Section 47F – Documents affecting personal privacy
- Section 47G – Documents affecting business
- Section 47H – Documents affecting research
- Section 47J – Documents affecting the economy

For guidance on FOI exceptions or exemptions, refer to the FOI Guidelines issued by the Office of the Australian Information Commissioner: www.oaic.gov.au/freedom-of-information/foi-guidelines/

For help, contact the FOI section: FOI@homeaffairs.gov.au