



Freedom of Information

Operational manual



Contents

- Purpose..... 3
- Introduction..... 4
 - What is Freedom of Information..... 4
 - Spirit of the Act..... 4
 - Overseeing FOI 5
- Responsibilities..... 5
 - All departmental staff 5
 - FOI section..... 6
 - Line areas/Action officers..... 6
 - Decision makers 6
- Search and retrieval 7
 - Contract service provider documents..... 7
 - Practical refusal 7
 - Highly sensitive documents..... 8
- Charges..... 8
 - Charge waiver or reduction..... 8
- Decision making 9
 - Primary decision making 9
 - Compliance with statutory times 9
 - Briefing stakeholders..... 10
 - Deemed refusal decision..... 10
 - Internal review decision making 10
 - Information Commissioner review decision 10
- Further information..... 11
- Attachment A 12

Purpose

The purpose of this Operational Manual (the Manual) is to ensure staff within the Department of Health and Aged Care (the Department) are aware of their obligations for handling Freedom of Information (FOI) requests within the Department. The Manual is to be read and used in conjunction with Corporate Business Rule 10, the Freedom of Information Act 1982 (FOI Act) and the Office of the Information Commissioner Guidelines (the Guidelines).

Version control

Version	Date	Revision description	Author
0.1	January 2022	Initial drafting	AD FOI
0.2	May 2022	Revised draft	AD FOI
0.3	May 2022	Review draft	PL FOI
0.4	May 2022	Review draft	AS LALB
1.0	July 2022	Implementation of the manual	FAS LAD

Introduction

What is Freedom of Information

The Australian Parliament first considered introducing freedom of information (FOI) legislation in the 1970s. In 1979, a Senate committee report outlined three reasons why FOI is important:

- FOI allows individuals to see what information government holds about them and to seek correction of that information if they consider it wrong or misleading.
- FOI enhances the transparency of policy making, administrative decision making and government service delivery.
- A community that is better informed can participate more effectively in the nation's democratic process.

The reasons are still valid today.

The Freedom of Information Act 1982 (FOI Act) was introduced in 1982 and provides a person (the applicant) either in Australia or overseas with a legally enforceable right to obtain access to documents held by agencies or official documents held by Ministers' offices.

The FOI Act promotes government accountability and transparency by providing a legal framework for individuals to request access to government documents. This includes documents about policy-making, administrative decision-making and government service delivery. Individuals can also request that ministers or agencies amend or annotate any information held about them.

The applicant does not have to provide a reason for making a FOI request as the reason does not affect the applicant's right of access to documents.¹

In 2010 the FOI Act underwent major reforms with the objective to promote a pro-disclosure culture across the government and to build a stronger foundation for openness in government. The changes came into effect on 1 November 2010. Some examples of the changes include:

- the establishment of the Office of the Australian Information Commissioner (OAIC) as an oversight body to all FOI processing in Commonwealth agencies
- changes to requirements to making a valid request to include electronic lodgement/communication and for requests to be made by persons outside Australia
- abolition of fees for lodging an initial request or internal review application
- changes to FOI charges
- changes to processing timeframes
- changes to review processes (including review by the OAIC)
- changes to the public interest test² in relation to the exemption provisions (sections 47B through 47H)
- the introduction of an Information Publication Scheme (IPS) to make Commonwealth information more publicly available (Part II).

Spirit of the Act

When interpreting or applying the provisions of the FOI Act, staff must seek to uphold the philosophy behind the FOI Act and promote its objectives as set out in section 3.

The objects are focussed on promoting a pro-disclosure culture across government and a strong foundation for openness in government. This focus is aimed at providing the Australian community with a comprehensive right of access to government documents under the FOI Act, that is limited only where there is a stronger public interest in withholding access to documents.

1 Sub-section 11(2) of the FOI Act.

2 Section 11B of the FOI Act.

The Parliament intended the FOI Act to contribute to an increase in public participation in government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of government activities. It also intended to facilitate and promote public access to information promptly and at the lowest reasonable cost where possible.

Overseeing FOI

The OAIC is an independent statutory agency within the Attorney General's Portfolio and is headed by the Australian Information Commissioner. The OAIC has three primary functions, with one of those functions being the oversight of the operation of the FOI Act and review of decisions made by agencies and ministers under that Act.

The OAIC's responsibilities include:

- granting extensions of FOI processing times where statutory timeframes may not be met
- providing advice to the public, government agencies and businesses
- reviewing decisions made by agencies under the FOI Act
- handling complaints and conducting investigations and monitoring agency administration into the processing of FOI requests.

The OAIC issued [guidelines](#)³ for agencies and ministers when performing a function or exercising a power under the FOI Act⁴.

The Department must comply with any request from the OAIC to provide information as set out in section 93 of the FOI Act.

Responsibilities

Processing FOI requests requires integration from various areas within the Department. To ensure tasks are not overlooked and to avoid ambiguity, there is a process chart outlining the various stages of the FOI process and what area of the Department is responsible for each task ([Attachment A](#)). As FOI is a Department wide responsibility, regular interaction with the FOI section will ensure the smooth administrative processing of requests.

All departmental staff

All staff have an obligation to assist the FOI section to comply with the Department's FOI obligations under the FOI Act.

The FOI section will provide guidance and training to assist departmental officers when processing FOI requests.

Staff who receive a FOI request, are required to promptly forward it to FOI@health.gov.au mailbox for action. If staff are unsure if the correspondence meets the terms of a valid FOI request, they need to seek guidance from the FOI section by forwarding it to the FOI mailbox with any background information and one of the team will advise on the action required to comply with the legislation.

3 <https://www.oaic.gov.au/freedom-of-information/foi-guidelines>

4 Section 93A of the FOI Act.

FOI section

The FOI section reviews all requests to the Department to ensure the application includes the necessary information to enable a responsible officer of the agency to clearly identify the documents being sought. Before a request is deemed valid⁵, the application must:

- be in writing
- state that the request is an application for the purposes of the FOI Act
- provide such information concerning the documents as is reasonably necessary to enable the Department to identify the documents; this is referred to as 'the scope' of the request
- provide an address for reply.

The FOI section attempts to make early contact with applicants to resolve scope and clarity issues with requests before assigning to a case officer and allocating to line areas for action.

FOI case officers undertake consultation, where necessary, with third parties and state and territory governments that may be affected by the release of documents subject to a FOI request. Consultation is also undertaken with other Commonwealth agencies if the documents relate to functions of those agencies or their portfolio responsibilities.

Internal stakeholder notifications are coordinated by the FOI section to the Executive. These email notifications are primarily for requests for access to documents other than personal information.

Line areas/Action officers

First Assistant Secretary's (FAS) must allocate appropriate staffing resources to the processing of FOI requests relevant to their Division. The FAS Executive Officer usually nominates a decision maker and action officer for a request allocated to their Division.

The action officer assists the decision maker and is a conduit between the decision maker and the FOI case officer. To comply with the FOI Act, the action officer must conduct a thorough [search](#) for all relevant documents in the possession of the Department and provide them to the FOI case officer. The action officer must complete the document search checklist and include an estimate of time spent undertaking the search and collection task before providing the material to the decision maker for review and signing.

The action officer is responsible to meet the deadlines set by the FOI case officer. If a request spans multiple line area, the assigned action officer and FOI case officer will work together to coordinate the search and collection of documents from other line areas.

Decision makers

Decisions relating to a FOI request can only be made by an authorised decision maker. Decision makers are usually SES band 1 or higher who have been authorised by the Minister or the Secretary under section 23 of the FOI Act.

It is important, as the decision maker, to ensure satisfactory searches were undertaken before signing the document search checklist and to take an evidence-based approach to decision making. Material can only be withheld from a document which is subject to a FOI request if an exemption applies, and evidence is needed to satisfy the decision maker that an exemption is applicable.

Evidence can be:

- the content of the documents
- advice from agency staff

5 Subsection 15(2) of the FOI Act.

- results of third-party consultation and courtesy consultation
- public source information
- material supplied by the applicant

Decision makers should be aware that good decision making is a time-consuming process. It is important to allow sufficient time to review all documents thoroughly and consider them for release in light of other evidence. The FOI case officer will assist with drafting a notice of decision based on consultation with the decision maker, the appointed action officer, as well as any submissions received from the consultation process.

The FOI case officer will provide you, as decision maker, with a decision pack checklist to assist with the process. It must be signed and returned to the FOI case officer at the conclusion of the request.

Search and retrieval

To comply with the FOI Act, action officers must conduct a thorough search for all relevant documents in the possession of the Department. The Information Commissioner or the Administrative Appeals Tribunal may ask a decision maker to provide proof that a reasonable search has occurred.

The action officer in the line area is responsible for locating and providing the FOI section with a copy of all documents identified as relevant to a FOI request. If the action officer in the line area is aware of other areas of the Department that may also hold documents within scope, they must advise the case officer in the FOI section who will issue a request to search for documents to those other areas.

The decision maker must carefully read the scope of the request and form a view about the documents that may be held. The FOI section seeks to ensure early contact with action officers and decision makers to discuss the scope (particularly where the scope is ambiguous). Action officers within the line area must undertake all reasonable searches for hard copy and electronic documents relevant to the request.

Where an action officer has commenced retrieving the relevant documents and it becomes apparent that the request is complex or voluminous in size, the action officer must advise the decision maker and FOI case officer as soon as possible to discuss the possibility of revising the scope of the request with the applicant.

Contract service provider documents

When locating documents for a FOI request, the Department (via the relevant line area action officer) must enforce its contractual rights to obtain documents from contracted service providers where they hold documents that may fall within the scope of a FOI request (see section 6C of the FOI Act).

Practical refusal

There are two types of practical refusal reasons. The first being that the request must provide enough information to enable a responsible officer of the Department to identify the document that the applicant is requesting. The second type of practical refusal is to ensure that the capacity the Department has to discharge its normal functions is not undermined by processing FOI requests that are unreasonably burdensome.

Failure to meet either of the above points is classified as a 'practical refusal reason' for which the FOI case officer will engage in consultation with the applicant.

In instances where the action officer or decision maker determines a request may meet one of the practical refusal reasons, contact with the FOI case officer should be undertaken to request a

consultation process with the applicant under section 24AB of the FOI Act to discuss how the scope can be refined.

Highly sensitive documents

FOI case officers must have access to all documents within scope of a request and a member of the FOI section with suitable security clearance will handle the documents. Action officers should provide such documents via the protected network to FOI@protected.health.gov.au

Action officers must not refuse to provide documents to the FOI case officer because they happen to be sensitive, marked 'In-Confidence' or 'Cabinet', or may otherwise be exempt under the FOI Act.

In-Confidence

An In-Confidence (section 45) exemption is available if a person/organisation who provided the confidential information would be able to bring an action under the common law for breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure. If a document contains such information, (such as commercial in confidence or sensitive personal material), it is important to notify the FOI case officer as consultation **must** be undertaken with the person/organisation. The FOI Act provides an additional 30 processing days to undertake such consultation.

Cabinet

A Cabinet (section 34) exemption **must not** be used without consultation and prior agreement of the Freedom of Information Coordinator of the Department of the Prime Minister and Cabinet as outlined in the Cabinet Handbook⁶. The FOI Case Officer will prepare the material and undertake the required consultation with the Department of the Prime Minister and Cabinet. It is important the action officer notifies the FOI case officer early if Cabinet material is identified within scope of a request, as consultation takes ordinarily up to two weeks and there is no specific extension provision within the FOI Act to undertake such consultation.

Charges

The FOI Act recognises that sometimes it is appropriate for applicants to make a contribution towards the cost of processing their FOI request. The FOI section calculates all charge estimates for the cost of processing every FOI request in accordance with the Freedom of Information (Charges) Regulations 2019. In some instances, charges may not apply such as:

- the applicant is seeking access to their personal documents
- the processing charge is so low that it would cost the Department more to process the charge
 - the first five hours of decision-making time in processing a FOI request is free, so where a request is straight forward, and only likely to take approximately 5 hours decision making time, the administrative cost processing charges may sometimes exceed the recoverable charge
- there is strong public interest or financial hardship ground not to impose a charge.

Charge waiver or reduction

An applicant may request a waiver or reduction of the charge for processing a FOI request.

Where the decision maker accepts that access to the documents is in the interest of the public, some reduction in the charge may be appropriate. The amount depends on the extent of public interest. However, public interest is just one of the many factors that may be taken into account and the decision maker is not obliged to waive charges where public interest is demonstrated.

6 <https://www.pmc.gov.au/resource-centre/government/cabinet-handbook> - Paragraph 140.

The mere fact that information will be in the public domain, that was not previously, is unlikely to be enough on its own to justify waiver – the information itself should have some demonstrable benefit to the public.

Similarly, where the decision maker is satisfied that the applicant will suffer financial hardship from paying the charges, some reduction may be appropriate. But it is not automatically the case and other factors may suggest some charges are appropriate despite the finding of financial hardship. The decision maker is entitled to insist on some evidence of financial hardship. It is not a question of whether the applicant has other expenses to meet, but whether they will suffer if the charge is imposed.

Decision making

When making an access decision, the objects of the FOI Act outlined in section 3 must be considered. The Department encourages administrative access to documents outside the formal FOI process whenever possible to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Primary decision making

The FOI Act gives every person a legally enforceable right of access to government documents. Access can be denied only on a ground listed in the FOI Act and decision makers must have regard to the Information Commissioner's FOI Guidelines when making decisions or exercising powers under the FOI Act.

Once the documents within scope of a request have been retrieved and all third-party consultations have been completed, the matter is ready for a decision.

Compliance with statutory times

The FOI Act stipulates an access decision must be provided within 30 calendar days from the date of receipt that a valid FOI request is made to the Department. Refer to the processing task timeline at [Attachment A](#).

The FOI case officer may ask to extend the processing period by up to 30 days from the applicant (section 15AA). If the applicant provides written agreement, the FOI case officer must advise the OAIC of the extension as soon as practicable. If the written notice is not provided to the OAIC, the extension is deemed invalid.

For complex or voluminous requests, the FOI case officer may apply to the OAIC for an extension (section 15AB). The FOI case officer must justify why the extension is necessary for OAIC consideration.

An application for further time can also be made to the OAIC (section 15AC) if a decision is not provided within time agreed. If granted, the further time is allowed to finalise a decision on the request and the request will still be within time.

Where the statutory timeframe is not met, all relevant documents have not been identified, or documents are refused that should have been released, there is the potential for:

- complaints to be made to the Information Commissioner or the Commonwealth Ombudsman
- request for external review of the decision by the Information Commissioner or the Administrative Appeals Tribunal
- adverse media coverage for the Department and/or the Minister.

All of the above points result in more work and have the potential to damage the Department's reputation.

Briefing stakeholders

The FOI section will distribute an awareness email attaching the decision and documents three days before the decision is due for release to an applicant.

Division Heads are responsible for providing briefings to their Deputy Secretary and the relevant adviser in the Minister's Office regarding sensitivities or possible media responses resulting from documents released under the FOI Act. Branch and Division Heads should also work with the media team to provide any media/talking points if a FOI release is likely to result in media publications or attention.

The FOI section can provide input into briefings and talking points in relation to the FOI legislative requirements and processes associated with a request if necessary. However, briefing responsibility lies with the line area as subject matter experts.

Deemed refusal decision

A 'deemed refusal decision' occurs if the time for making a primary decision on a request to access a document has expired and the applicant has not been given a notice of decision. The consequence of a deemed refusal is that an applicant may apply for a review by the Information Commissioner.

Internal review decision making

Where an applicant or third party requests an internal review of a FOI access decision, the request will be processed by a different authorised decision maker, usually the First Assistant Secretary in the relevant area.

There is a 30-day limit for internal review decisions. It cannot be extended for third party consultation and can only be extended where an extension is sought from the OAIC under section 54D of the FOI Act. Extension requests relating to internal reviews are coordinated by the FOI section.

In internal review decision making, a 'deemed affirmation' of the initial decision occurs when the time for making an internal review decision (30 days) has expired and the applicant has not been given a notice of the internal review decision. If this occurs, the principal officer of the agency is taken to have made a decision personally affirming the primary decision.

Information Commissioner review decision

An external review of the Department's primary decision or internal review decision is available to applicants and third parties who are dissatisfied with a decision and is referred to as an Information Commissioner review (IC review). An applicant or third party has 30 days from the date of receiving an internal review decision, or 60 days from the date of receiving a primary decision, to request an IC review of that decision.

All requests for IC review are undertaken at the discretion of the Information Commissioner. The Information Commissioner has accepted review requests more than 60 days past the initial decision date. The Information Commissioner also has power to decide not to undertake a review and redirect the Department, applicant or third party to the Administrative Appeals Tribunal (AAT) to make a final decision.

Further information

For further advice or assistance, please contact the FOI section in the Legal Advice & Legislation Branch by email to FOI@health.gov.au

Further information about FOI can be found on the Health Intranet⁷ and training is available via Learning at Health⁸ or SAP ESS.

7 [Freedom of information \(FOI\) - Health Intranet \(central.health\)](#)

8 [Learning at Health - Health Intranet \(central.health\)](#)

Attachment A - Freedom of information 30 Calendar day processing timeline

Freedom of Information – 30 Calendar day processing timeline

Roles and Responsibilities

Stage	Roles and Responsibilities		
	FOI Section/Case Officer (CO)	Line Area (LA)/Action Officer (AO)	Decision Maker (DM)
Time	<i>The primary source of advice and guidance on FOI. Provides case management for FOI requests and administrative support for decision makers. Responsible for preparing documents in form proposed for release in consultation with decision maker</i>	<i>Responsible for the identification, location and retrieval of all relevant documents within the scope of the request. Identify and communicate any sensitivities to the FOI case officer</i>	<i>Authorised to make decisions on requests under the FOI Act. Considers documents retrieved by the line area of the Department and makes decisions on consultation, access and disclosure</i>
STAGE 1 Validity	Day 0 <ul style="list-style-type: none"> Request received, determine validity and liaise with applicant to clarify requirements and scope if necessary Identify request significance and determine responsible LA, AO and DM to allocate request 		

Clock Starts

Initiation	Day 1-2 <ul style="list-style-type: none"> Acknowledge request with applicant Create tracking records (Records/FOI Case Management) Email template material to AO and DM and arrange an initial meeting to discuss request Email Executive that a request has been received (for non-personal requests only) 	<ul style="list-style-type: none"> Notify significant stakeholders of the terms of the request and provide briefing if required 	
STAGE 2 Search, Retrieval, and preliminary assessment	Day 2-7 <ul style="list-style-type: none"> Meet with AO and DM to discuss request Issue a practical refusal notice to applicant if applicable 	<ul style="list-style-type: none"> Meet with CO and DM to discuss request Conduct search and retrieval of documents Liaise with DM to determine if documents identified are in scope or if a practical refusal reason exists <p><i>If a practical refusal reason exists, advise FOI CO to issue notice</i></p>	<ul style="list-style-type: none"> Meet with CO and AO to discuss request Determine documents are in scope or confirm a practical refusal reason exists
		<ul style="list-style-type: none"> Prepare a schedule of documents PDF documents and add to TRIM 'Documents for consideration' folder Provide the DM signed search and retrieval form AND schedule to FOI CO 	<ul style="list-style-type: none"> Approve the Schedule of documents and advise AO of any sensitivities within the documents Advise AO if consultation with third parties or other agencies required Sign search and retrieval form
Charges	Day 8 <ul style="list-style-type: none"> Prepare a charge estimate and send a charge notice to applicant if applicable 		

If charges notice sent – clock pauses until response to charges received (applicant has 30 days to respond)

If practical refusal notice sent – clock pauses until response received (applicant has 14 days to respond)

STAGE 3 Decision Making	Day 8-20 (*Day 38-50)	<ul style="list-style-type: none"> Liaise with AO to prepare consultation notice and documents for third parties <p><i>If Third party consultation undertaken – Processing clock extended by 30 days*</i></p>	<ul style="list-style-type: none"> Liaise with FOI CO to confirm consultation notice and documents for third parties 	
	Day 20-28 (*Day 50-58)	<ul style="list-style-type: none"> Liaise with AO to prepare courtesy consultation notice for other departments or agencies if required Mark documents with proposed redactions as advised by DM combine documents into one with proposed redactions marked for DM consideration and label to reflect schedule Draft decision notice from DM advice on the schedule and initial meeting Send decision pack to AO and arrange final meeting with AO and DM to discuss decision Meet with AO and DM to discuss decision and proposed document release Incorporate any changes to documents and decision as requested by DM 	<ul style="list-style-type: none"> Liaise with FOI CO to confirm courtesy consultation with other departments or agencies if required 	<ul style="list-style-type: none"> Meet with CO and AO to confirm decision and document release Approve talking points if applicable
	Day 30-44 (*Day 60-74)	<ul style="list-style-type: none"> Send finalised decision, documents for release, disclosure log decision and draft significant stakeholder email notice to AO and DM for review and approval Send significant stakeholder notice email to advise imminent release of material 	<ul style="list-style-type: none"> Meet with CO and DM to discuss decision and proposed document release Draft talking points for DM approval Provide approved talking points to FOI CO for inclusion in significant stakeholder email notice Liaise with DM to confirm decision and sign relevant material Return SIGNED decision package to FOI CO 	<ul style="list-style-type: none"> Sign the Decision Notice; Disclosure Log Notice; Email Notice; and Checklist
Finalisation	Day 30-44 (*Day 60-74)	<ul style="list-style-type: none"> Send Notice of decision and documents for release to the applicant Prepare Disclosure Log email for the Web Check disclosure published is correct and complete TRIM filing and update Case Management System 		