

Policy

Freedom of Information For Commission Members and Staff

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1. Purpose and application of this policy

Purpose

- 1.1. The purpose of this policy is to inform Commission staff and Members of their responsibilities regarding FOI and of the Commission's processes for handling FOI requests.

Application

- 1.2. This policy applies to all Commission staff and Members.

2. Definitions

- 2.1. In this policy:
 - a. "AAT" means the Administrative Appeals Tribunal;
 - b. "Act" means the *Fair Work Act 2009*;
 - c. "Commission" means the Fair Work Commission;
 - d. "Commission staff" means all ongoing and non-ongoing APS employees, contractors and consultants who are engaged by the Commission, and secondees and students undertaking work experience or a professional placement with the Commission;
 - e. "FOI" means Freedom of Information;
 - f. "FOI Act" means the *Freedom of Information Act 1982*;
 - g. "FOI officer" means a Commission staff member authorised by the President of the Commission to make FOI decisions;
 - h. "IPS" means the Information Publication Scheme;
 - i. "OAIC" means the Office of the Australian Information Commissioner;
 - j. "OAIC Guidelines" means the guidelines issued by the OAIC under s 93A of the FOI Act from time to time;
 - k. "Privacy Act" means the *Privacy Act 1988*.

3. Legislative and policy framework

- 3.1. The FOI Act governs the Commission's obligations in relation to requests for access to Commission documents and the online publication of Commission information under the IPS.
- 3.2. The FOI Act applies to the administrative arm of the Commission and to the tribunal (FOI Act s 4 definition of "prescribed authority"). This means that an FOI request can be made for access to Commission administrative documents and documents on Commission matter files.
- 3.3. The FOI Act provides any individual or body corporate with a legally enforceable right of access to Commission documents, other than exempt documents. FOI applicants do not need to reside in Australia or be Australian citizens.
- 3.4. In addition to the FOI Act, other relevant legislation includes the Privacy Act and the *Archives Act 1983*.

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- 3.5. The OAIC Guidelines provide comprehensive information about the FOI scheme. The OAIC Guidelines are available at: http://www.oaic.gov.au/freedom-of-information/applying-the-foi-act/foi-guidelines/#foi_guidelines.
 - 3.6. The OAIC is established by the *Australian Information Commissioner Act 2010* and is responsible for administering and providing advice on the operation of the FOI Act and the Privacy Act. The OAIC's powers include oversight of the operation of the FOI Act and review of decisions made by agencies, including the Commission. The Information Commissioner also investigates complaints about agencies.
 - 3.7. The Information Commissioner conducts merits reviews of FOI decisions made by agencies. As part of a merits review, the Information Commissioner has power to require the Commission to conduct further searches for documents and can issue a decision to affirm, vary or set aside an FOI decision of the Commission and substitute its own decision. The Information Commissioner's decisions are published on the OAIC's website.
 - 3.8. The actions of Commission staff and Members in relation to an FOI request are subject to scrutiny by the Information Commissioner and may be mentioned in a published decision. Commission staff and Members must be aware of their responsibilities under the FOI Act and must assist in ensuring that the Commission complies with its FOI obligations.
 - 3.9. The OAIC website contains FOI resources and information:
<http://www.oaic.gov.au/freedom-of-information/about-freedom-of-information>.
 - 3.10. This policy should be read in conjunction with relevant legislation and the OAIC Guidelines. It should also be read in conjunction with the Commission's internal policies, including the:
 - a. Email and Internet Policy;
 - b. Records Management Policy; and
 - c. Privacy Policy.

4. FOI objectives

- 4.1. The objects of the FOI Act are:
 - a. to give the Australian community access to information held by government, by requiring agencies to publish the information and by providing a right of access to documents;
 - b. to promote Australia's representative democracy by increasing public participation in government processes, with a view to promoting better-informed decision making;
 - c. to promote Australia's representative democracy by increasing scrutiny, discussion, comment and review of government activities;
 - d. to increase recognition that information held by government is to be managed for public purposes and is a national resource; and
 - e. that powers and functions under the FOI 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 (s 3).

5. FOI officers

- 5.1. Pursuant to s 23 of the FOI Act, decisions on FOI requests made to the Commission may **only** be made by the President of the Commission, or by an officer of the Commission acting within the scope of authority approved by the President.
- 5.2. Certain staff in the Reporting Planning and Legal team of the Corporate Services Branch are authorised by the President to make FOI decisions. Most FOI requests are dealt with by the Commission's FOI officer, whose name can be found on the FOI intranet page.
- 5.3. The FOI officer can be contacted at foi@fwc.gov.au.

6. Responsibilities of Commission staff and Members

- 6.1. All Commission staff and Members are responsible for:
 - a. adhering to the procedures outlined in this policy;
 - b. being aware of the Commission's obligations under the FOI Act;
 - c. complying with relevant records management policies and procedures for the creation, storage, retention, disposal and destruction of documents;
 - d. working cooperatively with FOI officers to assist the Commission to fulfil its FOI obligations; and
 - e. referring FOI queries and requests to the FOI officer at foi@fwc.gov.au as soon as possible.

7. Key steps in the FOI process

- 7.1. An FOI request made to the Commission will generally have the following life cycle:
 - 1) the FOI officer will determine whether the FOI request is valid and, if necessary, consult with the FOI applicant to clarify the scope of the request. The FOI officer will also decide whether the FOI applicant is liable to pay a charge in respect of a request for access to a document;
 - 2) where a valid FOI request is made, the FOI officer will conduct a document search with the assistance of relevant areas of the Commission. Member(s) may be consulted as appropriate;
 - 3) the FOI officer will review the documents located to assess whether they are within the scope of the request and whether any exemptions apply;
 - 4) the FOI officer will consult with third parties where appropriate;
 - 5) the FOI officer will issue the decision to the FOI applicant and notify any consulted third parties;
 - 6) where the decision is to grant access to documents (in whole or in part) and no consulted third parties objected to this, the FOI officer will release the documents to the FOI applicant at that time (provided any charge has been paid). Where consulted third parties have objected to release of documents, the documents will not be released unless, after all opportunities for them to seek review have run out, the decision to release the documents still stands or is confirmed;
 - 7) the FOI officer will publish the released documents on the Commission's FOI Disclosure Log within 10 working days, unless an exception applies.

8. FOI timeframes and consequences

- 8.1. The FOI Act sets out strict timeframes for processing FOI requests.
- 8.2. In general, an acknowledgement letter or email must be sent to an FOI applicant within 14 days after the date the FOI request is received, and an FOI decision must be sent within 30 days (unless this timeframe is extended in accordance with the FOI Act).
- 8.3. Due to these strict timeframes, Commission staff and Members must make every effort to provide requested documents or information to the FOI officer by the specified date, or contact the FOI officer as soon as possible if this may not be possible.
- 8.4. If the timeframe for processing a request has ended and the Commission has not issued a decision, the Commission is deemed to have refused the request. This can result in the applicant making a complaint or an application for review to the OAIC. The Commission is also required to provide quarterly and annual statistics to the OAIC. This compulsory reporting enables the OAIC to monitor the Commission's compliance with statutory timeframes.

9. What is a 'document'?

- 9.1. Section 4 of the FOI Act defines **document** to include any of the following (or any part of any of the following):
 - a. any paper or other material on which there is writing;
 - b. a map, plan, drawing or photograph;
 - c. any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - d. any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device;
 - e. any article on which information has been stored or recorded, either mechanically or electronically;
 - f. any other record of information;
 - g. any copy, reproduction or duplicate of a thing listed above.
- 9.2. This definition is not exhaustive. It includes emails, instant messages, text messages, sound recordings, films, video footage, microfilm, and information stored on computer tapes, disks, DVDs and portable hard drives and devices. It can also include information held on or transmitted between computer servers, backup tapes, mobile phones and mobile computing devices. As the definition includes 'any part of' a document, a request may be for a specific part of a large document, such as an appendix or a chapter.

10. What documents are subject to FOI?

- 10.1. The FOI Act applies to a **document of an agency** which is defined in s 4(1). A document is a document of the Commission if:
 - a. the document is in the Commission's possession, whether created in the Commission or received in the Commission; or

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- b. the Commission is entitled to receive the document from a contractor providing services under a Commonwealth contract.
- 10.2. 'Possession' of a Commission document is not limited to actual or physical possession, but can include constructive possession where the Commission has the right to deal with a document, regardless of where and by whom it is stored. Any record of information which the Commission has downloaded from any database and stored on hard disks or file servers in its physical possession should be treated as a 'document of the Commission'.
- 10.3. A document must have been "created in" or "received in" the Commission by a staff member or Member in the performance of his or her duties to be a document of the Commission. This will depend on the facts of the particular case.
- 10.4. Any document on Commission computers, phones, personal digital assistants or networks that is relevant or potentially relevant to an FOI request must be provided to the FOI officer, to determine whether it is a document of the Commission (and therefore subject to the FOI Act). This includes SMS messages sent from or received by a Commission-provided mobile phone and any emails or instant messages sent from or received by a Commission email or Skype account - including where only some of the content appears to be relevant, or where the SMS, email or instant message contains personal or confidential content.
- 10.5. If a Commission staff member or Member is unsure whether a document is a document of the Commission, they should note their concerns when providing the document to the FOI officer.
- 10.6. The FOI Act applies to *existing* documents and does not require the Commission to give information to the FOI applicant or to create new documents. The exception to this is where the FOI applicant seeks access to a document in a format other than the format in which it exists, or where the information is stored in a computer system rather than in discrete form. In this case, the FOI officer will consult with the FOI applicant about the most effective manner of providing access to the information. For example, this may apply to:
- a. data stored in CMS+ and other computer systems which can be compiled into a written document;
 - b. sound recordings which may be transcribed in writing; and
 - c. any information held on electronic storage media.

11. FOI requests

Addressing FOI requests

- 11.1. An FOI request may be sent to the Commission by delivering or mailing it to an officer of the Commission at the address of any Commission office or emailing it to an email address specified by the Commission (s 15(2A)).
- 11.2. The Commission has a dedicated email FOI inbox for receiving FOI requests: foi@fwc.gov.au. This inbox is monitored by an FOI officer on a daily basis. It is preferred that FOI requests be emailed to this address so that they are received by an FOI officer immediately. Staff should provide this email address to members of the public when dealing with FOI enquiries. All correspondence sent from the Commission in relation to FOI matters is also sent from this email address.

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- 11.3. The statutory time limit for processing an FOI request is calculated from the date the FOI request is received by the Commission, not the date it is received by the FOI officer. This means that the time it takes for the request to make its way to the FOI officer is deducted from the 30 day processing period. Therefore, if Commission staff receive an FOI request they must notify the FOI officer and forward the FOI request to the FOI inbox **immediately**.
- 11.4. FOI requests may also be received by way of transfer from other agencies or from Ministers, in accordance with s 16 of the FOI Act. The timeframe for processing a request that has been transferred from another agency is calculated from when the transferring agency received the request, not from when the Commission accepts the transfer.

What constitutes a valid FOI request

- 11.5. Once an FOI request is received, the FOI officer must determine whether or not the request is valid for the purposes of the FOI Act. An FOI request must:
- a. be in writing;
 - b. state that the request is an application for the purposes of the FOI Act;
 - c. provide such information concerning the requested documents as is reasonably necessary to enable the FOI officer of the Commission to identify them; and
 - d. give details of how notices regarding the FOI request may be sent to the FOI applicant, for example by providing an email address (s 15(2)).
- 11.6. The FOI officer may not always be able to determine whether or not the FOI applicant has provided sufficient information to identify the requested documents. In this case the FOI officer will consult with staff from the relevant area of the Commission to confirm whether there is sufficient information to identify the documents, or whether there are any other issues the FOI officer should be aware of (such as whether the documents are voluminous). The FOI officer may do this informally or by making a document search request (see 12 below).
- 11.7. The FOI officer may refuse an FOI request where:
- a. the work involved in processing the request would substantially and unreasonably divert the resources of the Commission from its other operations (s 24AA(1)(a)(i)); or
 - b. the request does not sufficiently identify the requested documents (s 24AA(1)(b)).
- 11.8. Before refusing an FOI request, the FOI officer will undertake a request consultation process to give the applicant an opportunity to revise the request.

FOI applicant's identity

- 11.9. The FOI Act does not require an FOI applicant to disclose their identity, and FOI applications can be made anonymously or pseudonymously. The FOI officer must determine whether information about the applicant's identity is required to assess an FOI request. For example, where a person has submitted a request for their own personal information or documents relating to their business affairs, the Commission should be satisfied of the applicant's identity before giving the applicant access to the documents.

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- 11.10. The FOI officer will not disclose an FOI applicant's identity in the course of consultation with any third party without the applicant's consent.
- 11.11. Where personal information is provided as part of an FOI request, it will be collected and dealt with in accordance with the Privacy Act and the Commission's Privacy Policy.

Reasons for the FOI request

- 11.12. An FOI applicant is not required to disclose the reasons for which they are seeking access to documents. An applicant's right of access is not affected by any reasons they give for seeking access, or by the Commission's belief as to why they are seeking access (s 11(2)).

Commission personnel records

- 11.13. Commission staff and Members, both current and former, can access their own personnel file without making an FOI request (s 15A). Anyone wishing to do this should contact the Workforce team. If access is sought to information not contained in a personnel file, an FOI request should be made.

Amendment and annotation of personal records

- 11.14. Although FOI requests received by the Commission are primarily concerned with access to documents, Part V of the FOI Act also provides for members of the public to apply for the amendment or annotation of their personal records.

12. Searching for documents

Identifying relevant documents

- 12.1. Following receipt of a valid FOI request, the Commission must identify all documents that fall within the scope of the request. The FOI officer will generally ask the relevant work area to conduct a document search, unless the FOI officer can readily search for the documents themselves (for example, if the documents are easily accessible in CMS+). Searches must identify all documents that can reasonably be considered to fall within the description of documents the applicant has used in the FOI request.
- 12.2. The OAIC Guidelines state that, at a minimum, an agency should take comprehensive steps to locate a document having regard to the:
- a. subject matter of the documents;
 - b. age of the documents;
 - c. current and past file management systems and the practice of destruction or removal of documents;
 - d. record management systems in place; and
 - e. individuals within an agency who may be able to assist with the location of documents.

Document search process – general information

- 12.3. On request, Commission staff and Members must assist the FOI officer to identify and locate documents within the scope of an FOI request.

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- 12.4. Where the FOI officer believes that a work area may have relevant documents, a formal document search request will be sent to the manager or team leader of the area. The document search request will outline the steps that need to be taken and the relevant timeframe. Document search requests and responses will be retained on the FOI file as a record of the searches undertaken for the request.
 - 12.5. Commission staff and Members who receive a document search request must make every reasonable effort to respond to the request by the specified date, so that the Commission can comply with the statutory timeframe for making FOI decisions. The recipient should notify the FOI officer as soon as possible if they believe that it would be more appropriate for another area of the Commission to conduct the document search or if the search request is not clear (as it may be necessary to seek clarification from the FOI applicant).
 - 12.6. Persons involved in the document search must search all records within their control including physical and electronic files. They should advise the FOI officer of the nature of the searches they have conducted, regardless of whether or not the searches located any documents. For example, if the Commission's practice is to store a certain type of document in a particular location and searches have been limited to that location, the FOI officer should be informed of this.
 - 12.7. During an FOI document search, a person may identify documents which appear to be only partially within the scope of the FOI request or to contain confidential or personal information which might be exempt from release.
 - 12.8. In these circumstances, the entire document must be provided to the FOI officer, who will decide whether any irrelevant or exempt material should be redacted or access to the document refused. Commission staff and Members should not withhold a document or make their own redactions or deletions before providing a document to the FOI officer. Only an FOI officer is authorised to delete or redact irrelevant or exempt information in dealing with an FOI request.
 - 12.9. If a person is unsure whether a document falls within the scope of an FOI request or considers that it may be exempt from release, they should inform the FOI officer of this and must provide the document to the FOI officer.
 - 12.10. If the FOI request is for documents contained on a Commission matter file and the documents are stored in CMS+, the FOI officer will generally search CMS+ themselves. If it appears that additional documents within the scope of the request may be held by the Chambers of the Member dealing with the matter, the FOI officer will send a document search request to the relevant Chambers.

Document searches involving former or absent Commission staff

- 12.11. The FOI officer may also conduct a document search themselves where the documents were created by a person who is no longer with the Commission or is on long term leave.
- 12.12. The FOI officer will obtain permission from the Director of Corporate Services before seeking the assistance of the ICT team to search electronic records or archives of former or absent Commission staff.

Document searches involving former Members or Members

- 12.13. Where an FOI request involves documents that may be in a Member's possession (other than Commission matter file documents), the ordinary practice is to send a document search request to the relevant Chambers.
- 12.14. Any queries or concerns regarding the FOI request or the document search request can be directed to the FOI officer, whose contact details will be included in the search request.
- 12.15. In limited circumstances, it may be appropriate for the FOI officer to ask the ICT team for direct access to relevant documents, for example, where the search relates to a former Member, the Member is on long term leave or otherwise unavailable during the statutory timeframe for processing an FOI request, or the Member's circumstances make it inappropriate or impractical for the FOI officer to send a document search request to Chambers. The FOI officer will only do this with the approval of the President. If the request relates to a current Member and it is reasonably practicable and appropriate to do so, the FOI officer will inform the Member of the proposed search in advance to seek to give them an opportunity to raise any concerns.

Searches that return no documents

- 12.16. Where searches show that the Commission does not hold any documents within the scope of an FOI request, the FOI officer can refuse the request under s 24A of the FOI Act. To make a decision on this basis, the FOI officer must be satisfied that all reasonable steps have been taken to find the requested documents, and that the documents cannot be found or do not exist.

13. Assessing documents

- 13.1. Once all relevant documents have been located, the FOI officer's role is to:
 - a. collate and assess the documents to determine which documents (or parts of them) fall within the scope of the FOI request;
 - b. assess each document to determine whether any consultation is required under the FOI Act, for example, where the document contains information about a third party's personal or business affairs; and
 - c. decide whether any exemptions under the FOI Act apply.

14. Consultation with third parties under the FOI Act

When is consultation required?

- 14.1. Where documents within the scope of an FOI request contain business information or personal information of a third party (including current or former Commission Members or staff), the Commission must consult with the third party if it appears that the third party might reasonably wish to make a contention that the documents are exempt and it is reasonably practicable to do so (ss 27 and 27A).¹

¹ Consultation is also required in relation to documents affecting Commonwealth-State relations (s 26A) but it is uncommon for such documents to be requested from the Commission.

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- 14.2. If consultation with third parties is required, the statutory timeframe for making the FOI decision is extended by 30 days (s 15(6)).

When Members or staff may receive a consultation notice

- 14.3. If a document within the scope of an FOI request contains personal information relating to a Commission Member or staff member and it appears that the personal information does not relate to their usual duties or responsibilities, the FOI officer will consult in writing with the Member or staff member, if it is reasonably practicable to do so. The purpose of this is to give the Member or staff member the opportunity to raise any objections to release of the document. The FOI officer will assist with any queries about the consultation process.
- 14.4. Members or staff who receive a consultation notice should read the information in the notice carefully and take note of the date by which a response is required. If no submission is received by the specified date, it will be assumed that the person does not object to the release of the document.
- 14.5. Members and staff will not usually be consulted if their personal information is included in a document because of their usual duties or responsibilities (for example, when their name and Commission contact details appear in Commission correspondence). The OAIC Guidelines provide that it is not unreasonable to disclose this information unless special circumstances exist, as “the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website” (at paragraph 6.153).
- 14.6. The presiding Member will always be consulted where an FOI request involves documents relating to an open matter currently before them, to obtain their view as to any exemptions that may apply to release of the documents (for example, prejudice to the proper administration of the law or confidential information). Chambers will be notified of any FOI decision to release documents on the file, prior to release.
- 14.7. Members may also be consulted about closed matter files (for example, to confirm whether any materials on the file were treated as confidential). The Information Commissioner has held that where material has been referred to in a public hearing and tendered in evidence, the principle of open justice will generally support its release, unless steps were taken during the hearing to suppress the material or there are countervailing public interest factors against disclosure.²

Result of consultation

- 14.8. While the FOI officer will consider any submission received in the course of consultation in deciding whether a document will be released, the decision on release of the document must be made by the FOI officer.
- 14.9. If a decision is made to release a document, any person who was consulted and made a submission objecting to its release will be notified in writing of the decision and of their rights of review. Access will not be given to the document unless, after all opportunities for the person to seek review have run out, the decision to release

² For example, that it would “frustrate the administration of justice by unfairly damaging some material private or public interest”: *Seven Network (Operations) Limited & Ors v James Warburton (No 1)* [2011] NSWSC 385 at [3].

the document still stands or is confirmed. Review options will be outlined in writing to the person concerned when they are notified of the Commission's FOI decision.

15.Exemptions and Conditional Exemptions

- 15.1. The FOI Act provides for two categories of exemptions:
 - a. 'full' exemptions under Division 2 of Part IV of the FOI Act; and
 - b. conditional exemptions under Division 3 of Part IV of the FOI Act.
- 15.2. The FOI officer is responsible for deciding whether any exemptions apply to a document. The FOI officer may obtain information from the relevant work area to assist in determining this.
- 15.3. An exemption may apply to a whole document or part of a document. Where only part of a document is exempt, the exempt part will be redacted (blacked out) prior to release of the document.

Exemptions under Division 2 of Part IV

- 15.4. The Commission is not required to provide access to a document which is exempt under Division 2. Exemptions that may be relevant to documents of the Commission include:
 - a. documents affecting enforcement of law and protection of public safety (s 37);
 - b. documents subject to legal professional privilege (s 42);
 - c. documents containing material obtained in confidence (s 45); and
 - d. documents disclosing trade secrets or commercially valuable information (s 47).

Conditional exemptions under Division 3 of Part IV

- 15.5. The FOI Act also contains a number of conditional exemptions. Conditional exemptions that may be relevant to documents of the Commission include:
 - a. personal privacy (s 47F);
 - b. business information (s 47G);
 - c. certain operations of agencies (s 47E);
 - d. deliberative processes (s 47C); and
 - e. Commonwealth-State relations (s 47B).
- 15.6. Where a conditional exemption applies to a document, the document is not exempt and the Commission must still give access to the document unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.
- 15.7. In deciding whether access to a conditionally exempt document would be contrary to the public interest, the FOI officer must consider the factors favouring access under s 11B of the FOI Act, including whether disclosure would:
 - a. promote the objects of the FOI Act;
 - b. inform debate on a matter of public importance;
 - c. promote effective oversight of public expenditure; or
 - d. allow a person to access his or her own personal information.

- 15.8. The FOI Act does not list any factors weighing against disclosure. However, the OAIC Guidelines include a non-exhaustive list of such factors. These include that disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy. The complete list of factors weighing against disclosure is available at: <https://www.oaic.gov.au/freedom-of-information/foi-resources/foi-agency-resources/factors-favouring-or-against-disclosure-in-the-public-interest>
- 15.9. Section 11B(4) of the FOI Act specifies factors that must not be taken into account in deciding whether access to a conditionally exempt document would be contrary to the public interest. These include that:
- a. access to the document could result in embarrassment to the Commonwealth Government or cause a loss of confidence in the Commonwealth Government;
 - b. access to the document could result in any person misinterpreting or misunderstanding the document;
 - c. the author of the document was (or is) a person of high seniority in the agency; or
 - d. access to the document could result in confusion or unnecessary debate.

Documents not available under the FOI Act

- 15.10. Section 12 of the FOI Act provides that a person is not entitled to access documents through FOI where:
- a. the document is open to public access in accordance with another enactment (as part of a public register or otherwise), where that access is subject to a fee or other charge; or
 - b. the document is made available for purchase by the public in accordance with arrangements made by an agency.

16. Decision on access

Timeframe for making an FOI decision

- 16.1. The Commission must provide an FOI applicant with a decision on access no later than **30 days** after the day on which the FOI request was received by the Commission. This may be extended in certain situations, including:
- a. where third party consultation is required under ss 27 or 27A of the FOI Act;
 - b. by agreement with the FOI applicant, provided that written notice of the extension is given to the Information Commissioner as soon as practicable (s 15AA);
 - c. upon application to the Information Commissioner for an extension of time in which to deal with a complex or voluminous request (s 15AB); or
 - d. upon application to the Information Commissioner, following the expiration of the initial decision period resulting in a deemed refusal (s 15AC).

Notice of the decision

- 16.2. If the FOI officer decides not to give access to a document or part of a document, the FOI officer will give the FOI applicant a written notice which includes (s 26):
- a. the decision;
 - b. the findings on any material questions of fact;

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- c. the evidence or other material on which those findings are based;
 - d. the reasons for the decision (including any public interest factors taken into account in deciding to refuse access to a conditionally exempt document);
 - e. the name and designation of the person making the decision; and
 - f. information about the FOI applicant's rights to make a complaint or seek review, and the procedure for doing so.
- 16.3. The notice generally will also include a schedule of documents which identifies each document within the scope of the FOI request (unless identifying a document would itself attract an exemption), the decision on release of each document and any applicable exemptions.

Releasing documents

- 16.4. Where an FOI decision includes releasing documents, where possible the FOI applicant will be sent copies of the documents with the decision. If a document is to be released only in part, the irrelevant or exempt parts of the document will be redacted (blacked out) before release.
- 16.5. However, where a third party was consulted and objected to release of a document, the document will not be released unless, after all the opportunities for the party to seek review have run out, the decision to release the documents still stands or is confirmed.

17. Reviews

- 17.1. Where an FOI applicant or an affected third party (e.g. a consulted third party) is dissatisfied with an FOI decision, it is open to them to seek review of the decision. There are two initial avenues for review: internal review by the Commission and Information Commissioner review.
- 17.2. It is not necessary to seek internal review before applying for Information Commissioner review. However, the internal review process is likely to be quicker than external review, and if the internal review applicant remains dissatisfied after the internal review decision, they may then apply for Information Commissioner review.

Internal review

- 17.3. If an FOI applicant or affected third party is dissatisfied with an FOI decision of the Commission (other than an internal review decision), they may apply for internal review of the decision. The application must be made in writing within 30 days after the date the person was notified of the decision. This timeframe can be extended by agreement with the Commission. Two categories of decision are open to review: an FOI applicant can apply for review of an access refusal decision, and an affected third party can apply for review of an access grant decision.
- 17.4. An internal review will be conducted by an FOI officer who is not the original decision-maker. The internal reviewer may choose to rely on the document searches conducted by the original decision-maker, or may make further searches. Generally, the internal reviewer must make a decision within 30 days of the date the application for internal review is received. However, the Commission may apply to the Information Commissioner for an extension of time if the initial period of 30 days has ended (s 54D(3)).

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- 17.5. The internal reviewer must make a fresh decision and can decide all issues raised by the FOI request and exercise all of the powers available to the original decision-maker.
- 17.6. Further information about internal review processes is included in the OAIC Guidelines which are available at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-9-internal-agency-review-of-decisions>

Information Commissioner review

- 17.7. If an FOI applicant or affected third party is dissatisfied with the Commission's FOI decision (either a first decision or an internal review decision), they may apply for review by the Information Commissioner. An application for review of an access refusal decision must be made within 60 days after the decision is given to the FOI applicant (s 54S(1)). An application for review of an access grant decision must be made within 30 days after the day notice was given to the affected third party (s 54S(2)). The Information Commissioner may hold a public hearing or may conduct the review in the absence of the parties.
- 17.8. If the Information Commissioner decides to conduct a review, the Information Commissioner must affirm, vary or set aside the decision under review.
- 17.9. Further information about Information Commissioner review procedures is included in the OAIC Guidelines which are available at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-10-review-by-the-information-commissioner>

Administrative Appeals Tribunal and Federal Court

- 17.10. A person whose interests are affected may apply to the AAT for review of an Information Commissioner review decision, or apply for review of a Commission FOI decision if the Information Commissioner has decided not to undertake a review of the decision on the basis that it is desirable that the AAT undertake the review.
- 17.11. A party to an Information Commissioner review may also appeal the review decision to the Federal Court of Australia on a question of law (s 56).

18.FOI disclosure log

- 18.1. The Commission is required to publish any information that has been released pursuant to an FOI request within 10 working days after the day the FOI applicant is given access, unless an exception applies (s 11C). The FOI applicant is notified of this requirement in the Commission's acknowledgement letter and the FOI decision.
- 18.2. The Commission's FOI disclosure log is available at: <https://www.fwc.gov.au/about-us/legal/foi-disclosure-log>. The disclosure log contains information about the request and either a direct link to the released documents or information about how to obtain access to the documents. Most documents released since 1 January 2015 are available on the disclosure log. Documents released prior to 1 January 2015 are available on request to an FOI officer.
- 18.3. The exceptions to the publication requirement include:
- a. personal information about any person, if it would be unreasonable to publish the information;
 - b. information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;

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- c. information of a kind determined by the Information Commissioner (by legislative instrument), if it would be unreasonable to publish the information. The current determination of the Information Commissioner covers:
 - i. information which was exempt at the time that access was given to the FOI applicant; or
 - ii. information which would have been exempt if the request for the document had been received from a person other than the FOI applicant; and
 - d. any information, if it is not reasonably practicable to publish the information because of the extent of any modifications to the document necessary to delete information mentioned in a-c above.

19. Information Publication Scheme

- 19.1. Part II of the FOI Act establishes an IPS which requires the Commission to publish a plan setting out how it proposes to meet the requirements of the IPS and to publish prescribed information on its website.
- 19.2. The Commission's Information Publication Plan is available at:
<https://www.fwc.gov.au/about-us/legal/information-publication-scheme>
- 19.3. More information about the IPS is available at <http://www.oaic.gov.au/freedom-of-information/freedom-of-information-act/the-information-publication-scheme>.

20. Further advice and support

- 20.1. Any questions about this policy should be directed to the FOI officer.