

WRITING FOI ACCESS DECISIONS

How to draft a full and complete decision letter

Full and complete decisions help applicants understand your agency's decision, and help your agency meet its obligations under the FOI Act.

Agencies are required to provide reasons for their decisions and certain other information in a decision letter to an applicant under section 27 of the FOI Act.

This checklist sets out the main elements you should include

when you are writing a notice of decision.

Relevant provisions of the FOI Act are noted for your reference. Templates for a decision letter and schedule of documents are also included.

Introduction

- > State your authority to make the decision on behalf of the agency under section 26 of the FOI Act.
- > Quote or summarise the terms of the applicant's request, including any variation from the initial request after consultation with the applicant.
- > Set out the agreed timeframe for processing the request, including any extension of time agreed by the applicant. If relevant, specify any time during which the processing time was suspended (for example, during consultation under section 25A) or, if the applicant paid a deposit, the date the processing period commenced.
- > Briefly describe the searches undertaken to locate relevant documents and describe the types of documents that were located (eg emails, file notes, audio recordings).

- > Summarise your decision (eg "I have decided to grant you access in full to four documents and partial access to nine documents, and to refuse access to three documents, as set out in the Schedule. The reasons for my decision are set out below.").

Body of the notice

- > Set out your decision clearly and precisely, specifying how it relates to each document or part of a document. Use plain English as much as possible rather than formal legal terms.
- > Quote relevant sections of the FOI Act if they are significant to your decision (either as an attachment or in the body of the decision letter). This may not always be necessary: simply referring to the relevant legislative provision may be enough if the matter is straightforward.
- > Explain in detail why each exempt document (or part of a document) meets the criteria for exemption, including any

public interest considerations taken into account and the weight given to them. Simply stating that a document is exempt is not enough.

- > Explain how the evidence and findings of material facts support your decision (including what material you used to make the decision, such as submissions from the applicant or a third party). A material fact is a fact that can affect the outcome of a decision (for example, finding that information was communicated in confidence to an agency is a material fact in applying an exemption under section 35).
- > If relevant, explain why it was not practicable to make deletions so that an edited copy of a document could be released under section 25. Agencies should ensure that applicants understand the effect of section 25 early in the process.

End of the notice

- > Remind the applicant that any outstanding charges must be paid before access can be provided (or provide a refund if necessary).
- > If a document you have decided to release contains information about a third party's personal affairs or business undertaking, do not provide access to that document until the third party's opportunities for review by VCAT have run out (they have 60 days to apply). If you know the applicant needs the documents urgently, consider whether it is practicable to provide an advance copy with the third

party's information deleted, pending any decision on review.

- > Advise the applicant about their right to have your decision reviewed by the FOI Commissioner or (if relevant) their right to complain to the FOI Commissioner (such as where no documents can be found). If the decision maker is the principal officer of an agency or a minister, or if an exemption under sections 28 or 29A is claimed, you must advise the applicant of their right to apply to the Victorian Civil and Administrative Tribunal for review. You must also advise the applicant of their right to apply for conciliation by the Health Services Commissioner in certain circumstances where access to their health information is refused.
- > Either provide copies of the documents with your decision (unless access has been deferred or there are third party review rights and it is not practicable to provide an edited version ahead of any review), or explain when and how access to the documents will be provided.
- > Check that any attachments you have referred to (such as a schedule of documents, or an extract of legislation) are attached. While the FOI Act does not require a schedule to be provided, it is good practice as it helps make clear a decision that involves numerous documents and exemptions.
- > Ensure your name and designation is in your signature block and sign and date the letter. Make sure you use the applicant's current address

Further Information

Visit our website, call or email us:

- > www.foicommissioner.vic.gov.au
- > 1300 842 364 (1300 VIC FOI)
- > enquiries@foicommissioner.vic.gov.au

Other related fact sheets include:

- > The FOI access process
- > Top tips for senior managers

Disclaimer: This fact sheet does not constitute legal advice and should not be used as a substitute for applying the provisions of the Freedom of Information Act 1982, or any other legal requirement, to individual cases.

Sample notice of decision under section 27

This sample notice assumes there are a reasonable number of documents with various exemptions. If there are only one or two documents with few exemptions, you may decide not to prepare a separate schedule and to amend the text below accordingly. The recommended information should still be included in some form.

[Date]

Dear [applicant name]

Freedom of information request no. [Insert identifier number/code]

I am writing to advise you of the decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

SUMMARY

I am an officer authorised under section 26 of the FOI Act to make decisions in relation to FOI requests.

You requested access to documents relating to [subject of request] on [insert date]. Specifically you sought access to:

- [quote or accurately paraphrase the terms of the request, including any clarification or variation in its scope resulting from subsequent consultation with the applicant.]

[Explain the background to processing the request. Relevant information could include:

- any revisions the applicant made to their request during the processing period
- any correspondence entered into by the applicant or agency during the processing period
- any other background material that provides context for the processing of the request.

Confirm the time frame for making the decision, including any extension of time agreed by the applicant and any period during which the timeframe was suspended (e.g. for consultation under section 25A).]

I identified [insert number] document[s] which fell within the scope of your request. [Briefly explain how you searched for and located documents.]

The attached schedule of documents provides a brief description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided [insert as applicable: to grant access to [insert number] documents, to grant access to edited versions of [insert number] documents, to defer access to [insert number] documents, to refuse access to the remaining [insert number] documents]. More information, including the reasons for my decision, is set out below.

DECISION AND REASONS FOR DECISION

In relation to the documents in the attached schedule, I have decided: *[insert the following as appropriate]*

- to grant access in full to documents *[insert document numbers as marked in schedule if applicable, e.g. 5, 6 and 12]*
- to grant access in part to documents *[insert document numbers]* with *[exempt/irrelevant]* matter deleted under section 25 *[or matter exempt under [insert relevant section number and nature of exemption, eg 'section 32 - documents affecting legal proceedings' deleted]*
- to defer access to documents *[insert document numbers]* under section 24(1) (*[insert reason for deferment, eg 'the document has been prepared for presentation to Parliament and is yet to be presented']*) until *[insert date]*.
- to refuse access to documents *[insert document numbers]* under section *[insert relevant section number and nature of the exemption eg 'section 28 - Cabinet documents']*

[If relevant] I found that:

- *[insert number]* documents you requested about *[insert details]* could not be found – information about the searches we carried out to locate them is given below
- no documents that meet the terms of your request about *[insert details]* exist – further information is given below.

Material taken into account

I have taken the following material into account in making my decision:

- the content and nature of the documents that fall within the scope of your request
- *[details of any relevant correspondence entered into by applicant and agency]*
- the FOI Act (specifically sections *[insert applicable sections]*)
- the views of a third party consulted by the *[name of agency]*
- *[insert further items as appropriate]*

The schedule indicates each document to which access is refused. My reasons for refusing access are given below.

[EXAMPLES]

1 Exemption - personal privacy

[Reiterate which documents are affected.]

Insert findings of material fact.

Cite the relevant section of the FOI Act (section 33).

Explain how the legislation applies to the relevant documents, including how the information in the documents meets the definition of 'personal affairs' and why it would be unreasonable to disclose the information. Without breaching the privacy of the person who is the subject of the information, explain any objections raised during consultation, if relevant. Explain why the decision was not to release edited copies of the documents with personal information redacted (section 25).

Accordingly, I am satisfied that the document is exempt under section 33(1).]

2 Documents could not be found / documents do not exist

[Sufficiently identify the documents and give reasons as to why they cannot be found or why it is known that they no longer exist. Describe the steps taken to conduct a thorough and diligent search for the documents – this could include a summary of the relevant areas searched, the time spent searching and any other steps taken.

Where the documents are known to have been destroyed in accordance with the Public Records Act 1973, state the disposal schedule under which the documents were destroyed and the date. Where the documents were destroyed under normal administrative practices, such as where the documents were ephemeral records, an explanation (such as reference to the agency's records management policy) should be included.]

Your review rights

If you are dissatisfied with my decision, you may apply for review by the Freedom of Information Commissioner.

You must apply in writing within 28 days after you receive this letter, identifying the agency concerned and the decision to be reviewed. You should also provide an explanation of why you disagree with the decision. You may lodge your application by:

email: enquiries@foicommissioner.vic.gov.au
post: Freedom of Information Commissioner
PO Box 24274
MELBOURNE VIC 3001
fax: (03) 8684 7588

More information about review by the FOI Commissioner, including a review application form to assist you in making your application, is available at www.foicommissioner.vic.gov.au.

[If the decision maker is a minister or the principal officer of an agency, or if the decision is an agency decision to refuse access to a document that is exempt under section 28 or 29A, replace these paragraphs with the following (if the decision covers other exemptions, you will need to also include the paragraphs above about FOI Commissioner review rights):

If you are dissatisfied with my decision, you may apply to the Victorian Civil and Administrative Tribunal for review. *[Provide contact details for VCAT.]*

[If the decision is a refusal to grant an applicant access to their own health information on the basis of an exemption under s 32, 33 or 38, or on the ground that providing access would pose a serious threat to their life or health, also inform them of the right to apply to the Health Services Commissioner as follows:]

As an alternative to applying for FOI Commissioner review, you may apply to the Health Services Commissioner for conciliation. You must apply within [28 days/70 days] after you receive this letter. *[Provide contact details for Health Services Commissioner.]*

Making a complaint

[If the decision is an agency decision that a document does not exist or cannot be located after a thorough and diligent search, you must advise the applicant of their right to complain to the FOI Commissioner under section 27(1)(e)). There are other grounds for complaint in section 61A in relation to actions of an agency or minister.]

If you are dissatisfied with my decision that the document *[does not exist/cannot be located]* you have the right to complain to the Freedom of Information Commissioner.

Your complaint must be in writing, setting out the nature of your complaint and identifying the agency *[or minister]*, and must be made within 60 days after you receive this notice of decision.

You may lodge your complaint by:

email: enquiries@foicommissioner.vic.gov.au
post: Freedom of Information Commissioner
PO Box 24274
MELBOURNE VIC 3001
fax: (03) 8684 7588

More information about complaints to the FOI Commissioner, including a form to assist you in making your complaint, is available at www.foicommissioner.vic.gov.au.

Questions about this decision

If you wish to discuss this decision, please contact *[me/another officer, if relevant]* on *[insert contact details]*.

Yours sincerely

[Name]
[Position]

Attachments

1. Schedule of documents
2. *[Insert others as necessary – e.g. relevant excerpts of FOI Act, relevant correspondence]*

Sample schedule of documents

This table sets out the recommended elements of a schedule of documents as part of an access decision under the *Freedom of Information Act 1982*. While a schedule of documents is not specifically required by the FOI Act, it is good practice, particularly for large or complex requests where it will help an applicant understand the notice of decision. Agencies should adapt this sample to suit their record keeping approaches.

Decision makers may also wish to record, for their own purposes, details of where a document is located (such as the file name or number, the folio number and whether it is an electronic or hardcopy record). This will help if there is a review of the decision.

SCHEDULE OF DOCUMENTS – FREEDOM OF INFORMATION REQUEST NO. *[Insert identifier number/code]*

No.	Date	Size	Description	Decision on access
	<i>Date document created (if known), or date document was received</i>	<i>Number of pages (or other details about size and format)</i>	<i>Describe the nature of the document and provide details of the author and/or addressee (where applicable)</i>	<p><i>State whether the document is:</i></p> <ul style="list-style-type: none"> <i>released in full</i> <i>released in part with deletions on the basis of one or more specific exemptions or deletion of irrelevant matter</i> <p><i>or</i></p> <ul style="list-style-type: none"> <i>access is refused on the basis of one or more specific exemptions</i> <i>access is being deferred</i> <i>access is being granted in a different form from that requested</i> <p><i>Where access is being refused either in full or in part, state which exemptions have been relied upon and, if possible, the locations within the document where exemptions have been claimed.</i></p>
EXAMPLE				
2	12-Feb-11	3 pages	Departmental brief to Minister for the Environment re red-plumed parrot population in Melbourne	Released in part – s.30: p.1, p.3 (para 17) s.35: p.3 (paras 13, 14)