

GLOSSARY OF FOI TERMS

A plain language guide to commonly used words

Victoria's Freedom of Information (FOI) Act sets out the public's right to access information held by Victorian government agencies.

Members of the public may make an FOI request at any time to more than 1,000 Victorian government agencies.

This plain language glossary will help you understand words and phrases that are commonly used in FOI.

Whilst the FOI process is meant for the general public, the legal requirements can, at times, be confusing and difficult to understand.

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A

access charge

A charge that an FOI applicant must pay to an agency or minister before the applicant can receive access to documents. Access charges may be made for items such as the time spent by the agency or minister searching for documents or the cost of making copies of documents.

access decision

See *FOI decision*.

access request

See *FOI request*.

agency

A government organisation or body that is subject to the FOI Act, including Victorian government departments, Victorian local councils and any other organisation in Victoria that has been established by law for a public purpose (including universities, public hospitals and health services and statutory or regulatory authorities).

amendment request

A request by a person to change or correct personal affairs information in a document that is inaccurate, incomplete, out of date or would give a misleading impression.

applicant

A person or organisation that has made an FOI request to an agency or a minister.

application fee

An application fee that must be paid at the time an FOI request is made to an agency or a minister.

application for review

(1) An application made to the FOI Commissioner for review of a decision made by an agency.

(2) An application made to the Victorian Civil and Administrative Tribunal for review of a decision made by an agency, a minister or the FOI Commissioner.

C**case law**

See *precedent*.

complaint

(1) A statement by an applicant that they are not satisfied with an action taken (or not taken) by an agency in relation to the agency's functions and obligations under the FOI Act.

(2) A statement by an applicant that they are not satisfied with certain actions taken (or not taken) by a minister in relation to the minister's functions and obligations under the FOI Act.

conciliation

A way of resolving a complaint. The parties negotiate with the help of the FOI Commissioner or a representative who acts as the conciliator. The aim is to resolve the complaint with both parties agreeing on the outcome.

confidentiality

The principle that private or sensitive information provided to a person should not be revealed by that person to another person. Some professionals must keep certain information confidential.

constructive possession (of documents)

The right of an agency or minister to take possession or have control of documents not actually held by the agency or minister. These documents could include those stored by another agency or held by other organisations who provide a service to an agency. See also *possession*.

copyright

Property rights over creative works, such as books, music, art, sound recordings, films or broadcasts. Generally only the copyright owner, or someone who has their permission, can publish or copy the work. Copyright may affect the form of access to a document under the FOI Act. See also *intellectual property, form of access*.

D

decision

The formal written outcome of an FOI request or an application for review, where access is given to documents or parts of documents, or reasons are given for refusing access. See also **fresh decision**, **FOI decision**, **Notice of Decision**.

decision maker

A person who makes a decision in response to an FOI request. If this person is not a principal officer or minister, they must be authorised by a principal officer or minister to make decisions under the FOI Act. See also **principal officer**.

determination

(1) A formal finding made by the FOI Commissioner that ends a review or complaint without making a decision, in particular by dismissing the matter. See also **dismissal**, **Notice of Determination**.

(2) A finding made by the FOI Commissioner during a review or complaint about a particular part of the process. In some cases, the FOI Commissioner may need to make a determination so that a matter can move to the next stage of the process or to a different process.

dismissal

A way of ending a review or complaint without making a decision. The FOI Commissioner can dismiss a matter for a number of reasons, including if completing the matter is not appropriate in the circumstances, if the matter is more appropriately dealt with by another body or if an applicant cannot be contacted or does not cooperate. See also **determination**, **Notice of Determination**.

document

Any written, printed or electronic record that can be requested under the FOI Act. Under the FOI Act, the definition of document is broad and includes books, maps, plans, graphs, drawings, photographs, labels, discs, tapes, soundtracks, films, negatives, electronic information and data.

E

evidence

Information provided to the FOI Commissioner to establish the 'material' (relevant or important) facts and issues in a matter. Evidence may include submissions from the parties, the content of the documents being reviewed or any supporting documents.

exempt information

Information in a document that cannot be given to an applicant. This information will meet the requirements for one or more exemptions under the FOI Act. See also **exemption**.

exemption

A section of the FOI Act that describes information that, if it appears in a document, cannot be given to an applicant. See also **exempt information**.



F

FOI Act

The *Freedom of Information Act 1982 (Vic)*. A law passed by the Victorian Parliament that sets out the process, requirements and functions and duties of various people and organisations in relation to Freedom of Information in Victoria. See also ***Freedom of Information***.

FOI Commissioner

An independent person appointed under the FOI Act to conduct reviews of FOI decisions, investigate complaints, provide advice, education and guidance to agencies, monitor compliance with the FOI Act and report on the operation of the FOI Act each year.

FOI decision

The outcome of an FOI request to an agency or minister, where access is given to documents or parts of documents, or reasons are given for refusing access.

FOI request

A request made by an applicant to an agency or minister, under the FOI Act, for access to documents held by that agency or minister.

form of access (to a document)

The way in which an applicant is provided access to a document under the FOI Act. Forms of access can include paper copies, electronic copies or inspection of documents at an agency.

Freedom of Information

The right to access documents held by government agencies, except to documents or parts of documents that contain exempt information. See also ***FOI Act***.

fresh decision

(1) An FOI decision that has been reconsidered and changed by the agency while that matter is being reviewed by the FOI Commissioner. During a review, agencies have the opportunity to make a fresh decision by their own choice, or if they are asked to by the FOI Commissioner.

(2) A decision made by the FOI Commissioner that replaces an agency's FOI decision following a review. See also ***Notice of Decision***.

I

informal resolution

A way of resolving a matter that does not follow a formal process set down in the FOI Act or does not result in a formal decision or determination. Informal resolution often occurs in the early stages of a complaint or review, and usually happens when one or both parties agree to do something that resolves the matter.

information privacy

See ***privacy law***.



intellectual property

Rights given by legislation to make money out of inventions and creative work. It includes copyright, patents and trademarks. The inventor or creator can keep the rights or sell them, and other people can be sued for making copies without paying for the rights. Exemptions may apply to documents containing intellectual property. Intellectual property may also affect the form of access to a document under the FOI Act. See *also copyright*.

J

jurisdiction

The authority of a body to deal with matters brought to it. The jurisdiction of the FOI Commissioner and the Victorian Civil and Administrative Tribunal (in relation to FOI matters) is set out in the FOI Act.

M

material

Relevant or important. The FOI Commissioner will try to identify the material facts and issues in a matter.

merits review

A review of a case involving consideration of the full facts of the matter. This differs from appeals to courts that only deal with arguments about legal points. Reviews by the FOI Commissioner and the Victorian Civil and Administrative Tribunal in FOI matters are merits reviews.

N

natural justice

Rules that courts, other dispute settlement bodies and government officials must follow to ensure that decisions are fair to all parties. During a review, the FOI Commissioner must follow the rules of natural justice, including being impartial and giving the parties the opportunity to make submissions. Also called procedural fairness.

Notice of Decision/Notice of Determination

A formal notice provided by the FOI Commissioner to the parties setting out the decision or determination together with the reasons for reaching that outcome.

O

official document (of a minister)

A document held by a minister that relates to the affairs of an agency. Official documents are the only documents of a minister that can be requested by an applicant.

P

party

The people or organisations that are directly involved in a matter. The applicant and the agency or minister are the two parties involved in reviews or complaints dealt with by the FOI Commissioner.

personal affairs information

Information that relates to any aspect of an individual's personal life or personal matters, including information that identifies a person or their address or location.

possession

Holding or having control over an item. Documents in the possession of an agency or minister can be requested by an applicant. Possession is not the same as ownership or creation. Agencies or ministers do not need to own or create a document in order to have possession of the document. See also **constructive possession**.

precedent

The rule that judges or tribunal members must follow the past decisions of higher authorities in similar cases. Precedents in FOI cases set by the High Court of Australia, Supreme Court of Victoria and the Victorian Civil and Administrative Tribunal may also be followed by the FOI Commissioner and decision makers. Also called **case law**.

preliminary inquiries

An early stage of the review and complaint processes when the FOI Commissioner can consult with the parties to discuss issues, ask questions and ask for evidence so that the FOI Commissioner can identify the material facts and issues in a matter.

principal officer

Generally the most senior person within an agency. Principal officers have ultimate responsibility for making sure that their agency meets its obligations under the FOI Act. Principal officers include secretaries of departments, chief executive officers of local councils, chancellors of universities and chairpersons or commissioners of boards or organisations.

privacy law

A law that tells government agencies and certain other organisations how they should collect, use and manage personal information so that the person's right to privacy can be protected. Relevant laws in Victoria include the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*.

privileged information

Information that is not allowed to be revealed in public or in court. In particular, certain information between a lawyer and client can be protected by legal privilege. Exemptions may apply to privileged information.

R**recommendation**

A way of reaching a final outcome on a complaint. At this final stage of the complaint process, the FOI Commissioner may make any recommendations that they consider appropriate, including suggestions for improving the agency's or minister's policies, procedures or systems.

redact

To delete, remove or cover exempt information from a document so that it cannot be seen.



repeated request

An FOI request made to an agency or minister that is the same as (or similar to) a request previously made to the same agency or minister by the same applicant. Access must have been refused by the agency or minister and by the Victorian Civil and Administrative Tribunal following a review. The agency or minister can refuse to process a repeated request if there are no reasonable grounds for making the request again.

review

See *application for review*.

review on the merits

See *merits review*.

S

submission

A formal statement or explanation given to the FOI Commissioner by a party to a review or complaint, providing evidence, background information or the party's views or arguments in relation to the matter. These are usually made in writing.

T

third party

An individual or organisation that is not the applicant or the agency or minister in a particular matter. Information relating to third parties often appears in documents, and the third party usually has a right to be notified when an agency, minister or the FOI Commissioner makes a decision to release that information.

V

vexatious

Made only for the purpose of annoying, embarrassing or frustrating a person or organisation, not for honest or genuine reasons. The FOI Commissioner can dismiss a review or complaint if the Commissioner considers it is vexatious.

W

waive

To give up a legal right or claim, or remove an obligation to do something. An agency or minister can waive payment of an application fee or access charge if an applicant is unable to pay. Privilege may also be waived from a privileged document by the person who holds the privilege (for example, the client of a lawyer).

whistleblower

A person within an organisation who makes a complaint or alerts authorities that the organisation is doing something illegal or inappropriate.

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
- > Conciliating a complaint

Disclaimer: Individual cases may vary. This fact sheet does not constitute legal advice and should not be used as a substitute for seeking your own legal advice to address your needs or concerns.

