

THE FOI ACCESS PROCESS

A flowchart and checklist for agency decision makers

This checklist is to help decision makers in processing a request for documents and making a decision under the FOI Act.

It sets out the main steps and key points to consider at each step. Relevant provisions of the FOI Act are also noted at each step for your reference.

their duties with respect to assisting applicants and providing reasons for decisions made in most circumstances.

All agencies should be aware of

Good practices by agencies help to further the FOI Act's object.

Ensure you have authority

Authority to act

Make sure you are authorised to make a decision under the FOI Act. While other officers can assist in processing an FOI request, only the principal officer of an agency, the responsible minister or an agency officer authorised by the principal officer or minister can make a decision on the request (section 26(1)).

Consider transfer of the request

Transfer

Consider transferring the request if your agency is not in the possession of the requested document, but another agency holds the document; or your agency holds the document, but its subject matter is more closely connected with another agency's functions. For example, if the document is briefing material they prepared, you may transfer the request to that agency (section 18). You should send the other agency the document you hold if they need it to deal with the request. This process also applies to transfers to and by ministers. The need for transfer may be identified as soon as the application is received or later when documents are collated.

You must notify the applicant about the transfer.

You should act promptly to give the other agency or minister the maximum time. The 30 day period runs from the date of the transfer or 14 days after the original request, whichever is shorter (section 18(3))

Ensure the request is valid

Analyse the request

An FOI request for documents must be in writing, provide enough information to allow relevant documents to be identified, and include the application fee (unless waived or reduced due to hardship) (section 17). If information can be collated from a database, you may need to create a document to answer the request (section 19). Consider also if you can provide information outside the formal FOI process.

Duty to assist

Agencies and ministers have a duty to assist a person to make a valid request or to direct their request to the appropriate agency or minister (section 17(3)). Consult with the applicant as soon as possible to help them comply. Also talk to them if their request appears too broad (for example, “all documents relating to program X”). Asking them what they actually want can help narrow the scope at an early stage.

Ensure they understand that agreeing to accept edited copies of documents (with exempt or irrelevant material deleted) is likely to result in more documents being released to them (section 25).

Plan your time – act promptly

Timeframe

You have a maximum of 30 days to notify of your decision and must do so as soon as practicable (section 21). The time starts on the day after a valid request is received in the agency, not when it is given to an FOI officer for processing. Remember you may need to consult with third party individuals or business undertakings if the request involves documents containing personal affairs information, confidential information or information of a business, commercial or financial nature.

Estimate access charges

Estimate charges

The next step in the FOI Request Process is estimating the applicable fees and charges. Once an FOI request has been accepted and is being processed, an applicant may incur access charges. These charges are associated with searching for and providing access to documents, taking into account when charges must be waived (see section 22).

If the estimated charge is more than \$50 you can require the applicant to pay a deposit of \$25, or 50% of a charge that is more than \$100. You must advise the applicant in writing of the required deposit and ask them if they want to proceed with the request. The notice must advise the applicant of their right to apply for the charge to be reviewed, how they should apply and the timeframe. The applicant may apply to VCAT for a review of the amount of the

deposit required to be paid, if the Information Commissioner has certified that the matter is one of sufficient importance to VCAT to consider. An application to VCAT must be made within 60 days of being advised of the deposit.

If requested by the applicant, you should discuss ways to alter their request (such as by narrowing its scope) to reduce the charge (section 22(6)). For example, you may reduce the charge if they agree to extend the 30 day time limit.

The 30 day time limit starts afresh on the day the deposit is paid (section 22(6)).

Locate the documents

Searching

Identify and collect the documents that fall within the request. Apply a flexible and common sense approach to the words the applicant has used. You may need to ask different areas of your agency to search for relevant documents (emailing all relevant business areas can be a good idea), so give them a clear timeframe. Ensure that a thorough and diligent search is conducted.

Remember that a document includes a copy of all or part of the document, an electronic record, and a wide range of other materials such as photographs and discs (section 5(1)).

If the work involved in processing the request would substantially and unreasonably divert the agency's resources or substantially and unreasonably interfere with a minister's functions, you may refuse to grant access without processing the request (section 25A(1)). You must first advise the applicant and give them a reasonable opportunity to consult with you. The 30 day period is suspended during this process.

Assess the documents and decide

Assess and decide

Determine the relevant facts. Make sure that any findings you will rely on in your decision are supported by the documents and any other evidence.

If you are claiming an exemption, make sure the facts clearly establish the necessary elements. Remember discretions in the FOI Act are to be interpreted to facilitate and promote the disclosure of information (section 3(2)).

Consider if it is possible to delete exempt or irrelevant material from a document and give the applicant an edited version (section 25).

Calculate access charges

Calculate access charges

Calculate any fees and charges payable, taking into account when charges must be waived (see section 22) together with the *Freedom of Information (Access Charges) Regulations 2014*.

Examples of charges that may be levied are time utilised searching for documents, cost of making copies (20 cents per black and white page), and time for supervising access.

You cannot charge for: search time for a document that is lost or misplaced. Or search time if the applicant is a Member of Parliament, or if the applicant is seeking their own personal information, or if the applicant is seeking the information for general public interest or benefit.

In addition, you cannot charge for the time you take to make a decision or write a decision letter. Fees and charges are not applicable for the cost of copies if the applicant is seeking their own personal information and is impecunious.

Notify your decision

Notify

If you decide not to release a document or part of a document, or decide that access should be deferred (section 24) or that no such document exists, you must send the applicant a written notice that sets out your findings on material facts and the reasons for your decision. For example, if you claim an exemption under section 30 (internal working documents), you must include the factors you considered in deciding that release would be contrary to the public interest. You should also include a schedule of relevant documents with brief details and the exemptions that you have applied to each are helpful.

You do not need to prepare a statement of reasons if you give the applicant access in full.

In certain cases you can use terms that neither confirm nor deny the existence of any documents that would be exempt as Cabinet documents, law enforcement, national security and anti-terrorism documents, and documents containing a third party's personal information (sections 27(2) and 33(6)).

The decision letter must state the name and designation of the person making the decision. You must advise the applicant of their right to apply for a review of the decision, the authority to which the application for review should be made and the time within which the application must be made. If an agency decides that the document does not exist, or cannot be found after a thorough and diligent search, you must advise the applicant of their right to complain to the Information Commissioner (section 27(1)(e)).

Our Office has published a fact sheet, "Writing FOI access decisions", which includes a sample decision letter and schedule of documents for your reference.

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Provide access

Provide access

Collect any outstanding charges before you provide access.

You should provide access as soon as possible. Remember that if a document you have decided to disclose includes a third party's personal or business information under sections 33, 34 or 35, the third party has 60 days to apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of your decision (section 52(3)). You are required to notify any third parties in this circumstance.

Access should be provided in the form the applicant requests unless that is unreasonable or inappropriate (see section 23(3)). Usually copies of written documents are provided, but arrangements to inspect documents, listen to an audio recording or watch a visual recording may be appropriate. There are additional provisions under the Health Records Act 2001 relating to access to an applicant's health information.

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Further Information

Visit our website, call or email us:

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

Other related fact sheets include:

- > Writing FOI access decisions
- > Fees and charges
- > 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.