



# Freedom of Information Business Rules

## PURPOSE

This document sets out the key roles, responsibilities and procedures the Department of the Prime Minister and Cabinet (PM&C) will follow in managing and responding to requests made to the Department under the *Freedom of Information Act 1982* (Cth) (FOI Act).

## WHAT IS FREEDOM OF INFORMATION?

The FOI Act provides a legally enforceable right of access to government documents subject to certain exemptions. It applies to Australian Government ministers and most agencies (including PM&C).

Complying with the FOI Act is a statutory obligation with enforceable timeframes. An FOI applicant who is dissatisfied with a PM&C decision can ask for the decision to be reviewed internally; by the Office of the Australian Information Commissioner or by the Administrative Appeals Tribunal. FOI decisions can also receive scrutiny by Parliament, parliamentary committees, the media and the general public.

## ROLES AND RESPONSIBILITIES

### Decision Maker

This is a PM&C employee who is authorised by the Secretary of PM&C to make decisions on PM&C FOI requests. The Secretary has authorised all SES officers to make decisions. Usually, the decision maker for an individual request is identified by the FOI team as the SES officer with the closest connection or interest in the subject matter of the FOI request.

A decision maker is responsible (with the assistance of the FOI team and their line area) for:

- making key decisions under the FOI Act about how PM&C will handle and respond to the request (eg is the request too large to process, should charges be issued or should documents be released);
- ensuring that reasonable searches for documents have been made not just in their area but across the department;
- deciding whether other agencies and third parties should be consulted;
- ensuring relevant areas of the department, the Prime Minister's Office and other portfolio Minister's offices are informed as appropriate—your FOI Office can provide further advice on this point.

**Line Area**

This is the Branch or Division that supports the SES officer who is the decision maker for a particular FOI request.

The decision maker will nominate one or more contact officers in the line area who the FOI team can liaise with to assist in responding to the FOI request.

The line area is responsible for:

- supporting (together with the FOI team) the decision maker in responding to the request;
- conducting searches and retrieving relevant documents (not only in the line area but in any other areas that may have relevant documents);
- consulting internally within PM&C on the handling of the request (including Cabinet Division in relation to any Cabinet related documents);
- keeping records of the searches undertaken and time spent on searches;
- assisting the FOI team in responding to the request by identifying sensitivities and other agencies or third parties that may need to be consulted.

**The FOI Team**

The FOI team in Government Division work with the decision maker and the line area to respond to the FOI request. Usually one or two officers from the FOI team are assigned to each FOI request.

The FOI team is responsible for:

- supporting (together with the line area) the decision maker in responding to the request;
- providing specialised advice to the decision maker and line area on how the FOI Act applies to the request and documents (including drafting a statement of reasons; schedule of documents and redacting documents);
- managing consultations with agencies and third parties;
- communicating with the FOI applicant about how the request is being processed (including the scope of the request, providing updates and managing any queries that the FOI applicant may have);
- providing regular progress reports—PM&C executive, the Prime Minister's office and other PM&C portfolio Minister's offices;
- managing the following request types:
  - internal review
  - review by the Office of the Australian Information Commissioner
  - Administrative Appeals Tribunal Review
  - Court appeals

## KEEPING FOI APPLICANTS INFORMED

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The FOI Act requires the Department to contact an FOI applicant about their request at certain times (eg acknowledge receipt of the request or advise transfer of the request to another agency). The Act also requires an agency to take reasonable steps to assist a person to make a valid FOI request and to take reasonable steps to assist a person to direct their request to the appropriate agency or minister.

Taking account of the Guidelines issued by the Office of the Australian Information Commissioner and, as a matter of good administrative practice, the Department (through the FOI team) will contact the applicant to discuss their request as soon as practicable after receiving the request especially if the scope of the request is not clear or the formal requirements of the FOI Act have not been met.

The Department will also contact the applicant as soon as practicable if a preliminary assessment of the request indicates that:

- there may be a practical refusal reason—such as the request is too large to process or the terms of the request are not clear;
- the estimated charges for processing the request may be high; or
- the Department may not have the documents sought or another agency or minister may be more appropriate.

## PROCESSING FOI REQUESTS

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### How PM&C processes FOI Requests

PM&C actions FOI requests in three stages:

- Stage 1 – determining validity and tasking (usually within a week of receiving the request)
- Stage 2 – assessment of relevant documents within the scope of the request and drafting a decision (after the Department has acknowledged the request or any charges have been paid or a practical refusal reason is removed)
- Stage 3 – finalising the request

Attachment A sets out key timeframes and responsibilities.

**STAGE ONE—Determining validity and tasking**

WHO	WHAT
FOI team	<ul style="list-style-type: none"> <li>• Determines if request is a valid FOI request.</li> <li>• If valid, identifies an appropriate SES officer and line area (FOI team will consult with Government Division SES, other SES and Divisions that may be relevant to the subject of the request).</li> <li>• If a decision maker cannot be identified, the Deputy Secretary Governance will decide who the decision maker will be.</li> </ul>
FOI team Line area Decision maker	<ul style="list-style-type: none"> <li>• Meet to discuss:               <ul style="list-style-type: none"> <li>○ Scope and terms of request, including whether it is clear</li> <li>○ Key timeframes for managing the request</li> <li>○ The conduct of reasonable initial searches for documents</li> <li>○ Whether other agencies or third parties should be consulted about request</li> <li>○ Whether charges should be imposed for processing the request</li> <li>○ Whether processing the request is likely to be a substantial and unreasonable diversion of resources.</li> </ul> </li> </ul>
FOI team	<ul style="list-style-type: none"> <li>• Depending on outcome of discussions, FOI team will contact FOI applicant to:               <ul style="list-style-type: none"> <li>○ Acknowledge the request</li> <li>○ Set out the expected timeframes (including an extended timeframe if consultation with third parties is to be undertaken)</li> <li>○ Advise of an estimate of charges (if necessary)</li> <li>○ Flag the commencement of a practical refusal consultation process</li> <li>○ Clarify the scope / terms of the FOI request to assist the Department to process</li> </ul> </li> </ul>
Line area FOI team Decision maker	<ul style="list-style-type: none"> <li>• Consider what work, if any, can be undertaken while waiting for the FOI applicant to respond to a charges notice or a practical refusal consultation notice (for example, consultations with third parties or other agencies may be able to be commenced).</li> </ul>

**STAGE TWO—Assessment and Drafting**

WHO	WHAT
Line area	<ul style="list-style-type: none"> <li>• Finalises searches (reasonable searches should include: PDMS, Slipstream, team emails and other document management systems)—Ref to <u>Assessment Checklist</u>.</li> <li>• Collates documents that fall within the scope of the FOI request and sends them to the FOI team.</li> <li>• Together with FOI team and decision maker consider whether any exemptions or redactions should be made to the documents.</li> </ul>
FOI team	<ul style="list-style-type: none"> <li>• Carries out consultations with third parties and provides responses to decision maker and line area to be considered.</li> <li>• In consultation with the Decision Maker, drafts statement of reasons for the decision maker to consider.</li> </ul>
Decision maker Line area	<ul style="list-style-type: none"> <li>• Manages notification of relevant departmental executives (including the Secretary, Deputy Secretary Governance and relevant Deputy Secretary) and Prime Minister’s Office / Ministerial offices regarding sensitivities throughout the management of the request (copying in FOI team).</li> </ul>

**STAGE THREE—Finalising the Decision**

WHO	WHAT
FOI team	<ul style="list-style-type: none"> <li>• Continues to assess timeframe to determine if request will be completed on time—in doing so considers issues such as progress of document searches; drafting of the decision and status of third party consultations.</li> <li>• If required, consult with decision maker regarding timeframes and any remedial action required—such as extension of time (from applicant or OAIC). If an extension is required, FOI team will contact the applicant or the OAIC.</li> </ul>
Decision maker	<ul style="list-style-type: none"> <li>• In consultation with the FOI team finalise decision on access to the documents sought under the FOI request. During this time identify sensitivities.</li> <li>• Advise the following of their proposed approach including any documents proposed for release and outlining sensitivities: <ul style="list-style-type: none"> <li>○ Deputy Secretary (Governance) –Copying the relevant Deputy Secretary and First Assistant Secretary</li> <li>○ relevant adviser in the Prime Minister’s Office or minister’s office and the Prime Minister’s Office adviser responsible for FOI matters.</li> </ul> </li> <li>• At least 3 working days are to be provided to allow for consideration of the proposed decision.</li> </ul>
Decision maker	<ul style="list-style-type: none"> <li>• Signs the decision and completes <u>Final Stage Checklist</u></li> </ul>
FOI team	<ul style="list-style-type: none"> <li>• Final packaging of documents and internal check to ensure documents are consistent with decision.</li> <li>• Provides documents and decision to applicant.</li> <li>• Arranges for documents to be uploaded to the PM&amp;C FOI disclosure log unless there are reasons not to do so (eg an unreasonable disclosure of personal information)</li> </ul>

## ATTACHMENT A

Day	FOI Team	Decision Maker (DM)	Line Area Contact Officer (CO)
<b>Day 0</b> Request Received	<ul style="list-style-type: none"> <li>Determine Validity</li> </ul>		
<b>By day 2</b> Request Assigned	<ul style="list-style-type: none"> <li>FOI Officer appointed</li> <li>Decision maker appointed</li> <li>Acknowledge Request</li> </ul>	<ul style="list-style-type: none"> <li>Appoint Line Area Contact Officer</li> </ul>	
<b>By Day 7</b> Document Retrieval	<ul style="list-style-type: none"> <li>Determine Scope (in consultation with DM and CO)</li> <li>If relevant:</li> <li>Prepare and process Practical Refusal Consultation Notice</li> </ul>	<ul style="list-style-type: none"> <li>Determine Scope (in consultation with FOI Team and CO)</li> <li>Determine practical refusal reason exists (through review of Assessment stage checklist)</li> </ul>	<ul style="list-style-type: none"> <li>Determine Scope (in consultation with DM and FOI Team)</li> <li>Undertake reasonable searches</li> <li>Complete Assessment stage check list</li> <li>Provide captured documents to FOI Team and complete schedule of documents</li> </ul>
<b>CLOCK STOPS FOR CONSULTATION ON PRACTICAL REFUSAL and/or CLOCK STOPS UNTIL CHARGES FINALISED (Paid or Withdrawn)</b>			
<b>Day 8</b> Charges Assessment	<ul style="list-style-type: none"> <li>Calculate charges</li> <li>Prepare charges notification for DM</li> <li>Issue charges notification</li> </ul>	<ul style="list-style-type: none"> <li>Make decision on charging</li> </ul>	
<b>Day 9-17</b> Assessment and Drafting	<ul style="list-style-type: none"> <li>Review documents for content and potential third party consultation</li> <li>Consult with CO on likely exempt documents</li> <li>Prepare schedule regarding reviewed and consulted documents</li> </ul>	<ul style="list-style-type: none"> <li>Make any decision about consultation</li> <li>Make any decision on practical refusal grounds</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>Undertake internal consultations where necessary (keeping FOI Team informed)</li> <li>Provide information regarding exemptions and sensitivities to FOI Team</li> </ul>
<b>THIRD PARTY CONSULTATIONS—ADDITIONAL 30 DAYS PROVIDED</b>			
<b>ISSUE PRACTICAL REFUSAL DECISION</b>			
<b>Day 18-20</b> Draft Decision	<ul style="list-style-type: none"> <li>Draft decision package for consideration and consultation with DM</li> <li>Collates evidence in relation to the proposed decision</li> </ul>	<ul style="list-style-type: none"> <li>Liaise with PMO / Minister's office and prepare draft talking points as necessary</li> </ul>	<ul style="list-style-type: none"> <li>Liaise with PMO / Minister's office and prepare draft talking points as necessary</li> </ul>
<b>Day 21-27</b> Finalise Decision	<ul style="list-style-type: none"> <li>Provide assistance and support to DM to finalise decision</li> <li>Conducts consultation with DM—amending draft as necessary</li> </ul>	<ul style="list-style-type: none"> <li>Consider decision and revise as necessary—in consultation with the FOI Team</li> <li>Consider any proposed talking points and notifies relevant senior executives—manager (FAS/Dep Sec)</li> <li>Notify the following of proposed decision and any sensitivities: <ul style="list-style-type: none"> <li>Deputy Secretary (Governance)</li> <li>Including CCing and FOI Team, relevant Deputy Secretary/Associate Secretary and FAS</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Provide assistance and support to DM to finalise decision</li> <li>Make any changes to talking points as necessary</li> </ul>
<b>Day 28-29</b> Final Decision		<ul style="list-style-type: none"> <li>Finalise and signs decision and completes Final stage checklist</li> <li>Advise PMO / Minister's Office of decision as necessary (including PMO FOI Adviser)</li> <li>Provide talking points to PMO / Minister's office as necessary</li> </ul>	<ul style="list-style-type: none"> <li>Provide decision to the FOI Adviser</li> </ul>
<b>Day 30</b> Issue Decision	<ul style="list-style-type: none"> <li>Issue decision to applicant</li> <li>Notify DM and CO</li> </ul>		
<b>By Day 44</b> Disclosure Log	<ul style="list-style-type: none"> <li>Publish documents on Departments Disclosure Log</li> </ul>		