

Freedom of Information PM&C Business Rules

Key FOI process milestones

Time (in working days)	Milestones
Stage 1	
Day 0	<ul style="list-style-type: none"> Request submitted
Days 0-1	<ul style="list-style-type: none"> Determine validity, identify decision maker and initial alert
Days 2-3	<ul style="list-style-type: none"> Initial discussion
Days 3-8	<ul style="list-style-type: none"> Initial search and checklist action
Day 8	<ul style="list-style-type: none"> Estimate of charges (or practical refusal) to applicant
Stage 2	
Days 9-13	<ul style="list-style-type: none"> Continue substantive analysis and consultation
Days 14-16	<ul style="list-style-type: none"> Finalisation of consultations, decision and document schedule
Days 18-19	<ul style="list-style-type: none"> Notifications, as necessary, of forthcoming release
Day 20	<ul style="list-style-type: none"> Decision to applicant

Note 1: Not all FOI requests will progress to Stage 2 as some requests may lapse at the end of Stage 1

Note 2: The initial statutory timeframe for processing is 30 calendar days. This 20 working day timeline indicates the maximum time allowed for processing a request (unless extensions of time apply). Whenever possible, requests should be dealt with in a shorter timeframe than this.

Day 0

1. Applicant submits FOI request.

Days 0-1

2. Access and Administrative Review (A&AR) considers the FOI request:

- If request is valid, A&AR creates FOI file for the request and allocates to FOI action officer
- If not valid, A&AR contacts applicant to clarify request

If request is valid, A&AR to identify a proposed decision maker, and confirm he/she will be available during the request processing period. A&AR consults FAS, Government Division (if available) regarding request, decision maker appointment and initial consultations.

3. A&AR emails Deputy (or Associate) Secretary of relevant line area to inform them of details of the request and to recommend a proposed decision maker. For every FOI request it is imperative that this email is copied to:

- The Secretary's Executive Officer
- The Prime Minister's Office (Adviser on FOI)
- The First Assistant Secretary (relevant line area)
- The identified decision maker
- FAS, Government Division; AS, Legal Policy Branch; and A&AR's Section Head
- Any relevant contacts as identified by A&AR (e.g. FAS, Cabinet Division)

The email provides an opportunity for the Deputy/Associate Secretary to nominate an alternative decision maker and/or additional parties for consultation. A&AR should proceed with the proposed decision maker as recommended to the Deputy/Associate Secretary, unless and until an alternative decision maker is nominated. The email also provides an opportunity for the Secretary's office and other recipients to indicate any interest in being engaged in consultations.

4. A&AR will schedule a time with the decision maker for an initial meeting (preferably on day 2 or 3). The decision maker should identify and extend the meeting invitation to a contact officer. If the decision maker should become unavailable, the line area should ensure an appropriate representative is present (in addition to the contact officer).

Days 2-3

5. The decision maker (and contact officer) and A&AR meet to discuss the FOI request. The agenda for this meeting will include:

- Initial discussion regarding documents in scope and availability and likely volume of documents to fulfil the request
 - Review of scope and any potential adjustments that should be discussed with the applicant
 - If relevant, discussion as to whether transfer to another agency, in whole, or in part, applies
 - Clear explanation of the role of the decision maker, and advisory support available to the decision maker (including A&AR and peer advisers)
 - An overview of FOI requirements including legislated timeframes (requirement for a decision to be processed within 30 calendar days plus any extensions)
 - Provision of the Business Rules and the Stage 1 checklist of requirements for the decision maker to complete within the following 3-5 working days
6. Following this meeting, and in any event within 14 days of receipt of a valid request, A&AR provides a letter of acknowledgement to the applicant including, as necessary, information pertaining to any clarification or narrowing of scope. The applicant should be notified that if a change or clarification of scope is necessary, failure to comply will likely result in a letter of practical refusal.

Days 3-8

7. The decision maker should ensure all items on the Stage 1 checklist are completed within 3-5 working days of the initial meeting. These include:
- Appoint a contact officer and processing team (if not already appointed), and notifying A&AR of these contacts.
 - Conduct searches for requested documents, including Records Management Unit (RMU), Ministerial Support Division (MSD) keyword searches, IT email searches, and any further searches required (for example, Cabinet Secretariat records).
 - Identify projected milestones for completion of search and analysis. These milestone dates should be communicated to A&AR. If it becomes apparent that the workload was underestimated and milestones are unlikely to be met, the line area should notify A&AR as soon as possible regarding possible extensions or grounds for practical refusal.
 - An initial indication regarding other agencies and third parties that will require consultation. Some third party consultation triggers a 30 day extension to the deadline. If relevant, the decision maker should inform the relevant PMO adviser (and copy to the PMO adviser on FOI) regarding the request and whether consultation with the PMO will be likely.
 - Provide updates to the relevant First Assistant Secretary on a regular basis.
 - Identify the documents they have located.

- Provide information (i.e. size of request and resources required) to feed into A&AR calculation of estimate of charges.
- Consult with A&AR as to whether a practical refusal notice is appropriate.
- Complete search and retrieval of documentation.
- Identify sensitivities and/or clearances required.

The Stage 1 checklist should be signed off by the decision maker and provided to A&AR.

Day 8

8. If not already done, where relevant, A&AR should communicate one of two options to the applicant:
 - Estimate of charges letter (where charges are to be levied), or
 - Commencement of a practical refusal consultation indicating that the request is considered a substantial and unreasonable diversion of resources or remains unclear in scope.

In some circumstances, the applicant will also need to be notified that consultation of certain third parties is required, triggering a 30 day extension to the processing deadline.

Stop the clock: Awaiting the applicant's response

The applicant has a range of options open to them at this stage. They must provide a response to the estimate of charges within 30 days as to whether they accept the charges and will pay deposit/request waiver/dispute the charges. If they do not respond within 30 days, the request will be deemed withdrawn. If a practical refusal notice is sent to the applicant, the applicant has 14 days to provide a response to pursue alternative options. If no response, the request will be deemed withdrawn. Clock does not restart until either:

- a deposit (or full amount of charges) is paid or a decision is made to waive charges; or
- any practical refusal reason is removed.

In the interests of efficiency and meeting the deadlines stipulated in the FOI Act, the decision maker is encouraged to consider what work, if any, should be undertaken while waiting for an applicant's response. At a minimum, if relevant, other agency and third party consultation should generally be commenced.

Days 9-13

9. A&AR manages consultations with identified external third parties, Cabinet Secretariat and other internal consultations as discussed with the line area.

10. By day 13 of processing, the decision maker with the assistance of the line area should ensure that:

- All external third party consultations (including other agencies) have been identified and undertaken.
- All internal parties (e.g. Executive¹, PM&C line areas, PMO, other ministerial offices in the portfolio) are consulted as appropriate. The Deputy/Associate Secretary and FAS of the line area should be kept informed of any sensitivities arising and what consultations have or will occur relevant to those sensitivities. A&AR should either undertake the consultation or be copied into all internal consultation to prevent double handling. The PMO FOI advisor should also be copied into any communications with the PMO.
- All document analysis is completed and collated into a document schedule.
- Potential exemptions of documents are discussed with A&AR, and proposed exemption claims are justified.
- The decision maker, in consultation with their manager, must consider whether a brief on the proposed decision, including where documents are being considered for potential release, should be provided to the any of the Executive to allow an opportunity for any comments or insights, prior to a decision being finalised.

Days 14-16

11. A&AR ensures that:

- They review all material proposed for exemption and all redactions have been completed as appropriate.
- All third party consultation responses (if applicable) have been received and forwarded to the decision maker.
- They actively consult and support the line area regarding progress of the decision.

12. During this stage, the decision maker should have formed a clear view on information to be released, and should ensure that:

- A&AR is provided with the schedule of all relevant documents with an indicative decision on release.
- A&AR is copied into all emails to the PMO (relevant issue adviser and adviser on FOI) or other ministerial offices in the portfolio consulting them on documents as may be relevant. Ministerial offices should be given three days to provide final comment.
- As appropriate, final consultations with the Executive are conducted, with A&AR advised of consultation.

¹ Secretary, Associate Secretaries and Deputy Secretaries

- All matters on the Stage 2 checklist have been considered.

Days 18-19

13. Three days before release, the decision maker should send a copy of the proposed decision letter and documents for proposed release to the Deputy Secretary Governance, with a noting brief advising of consultations and any sensitivities, copied to the Deputy/Associate Secretary, First Assistant Secretary of the relevant line area, FAS Government Division and AS Legal Policy Branch. The brief will need to indicate whether the any of the Executive has been consulted. If not, the decision is not signed until after the Deputy Secretary Governance has noted the brief. If the Deputy Secretary Governance indicates more time will be required to consider, A&AR must be informed in order to negotiate a brief extension with the applicant.
14. Even if no documents are proposed for release, the decision maker should consider if any aspect of the matter is sufficiently sensitive such that a noting brief to the Deputy Secretary Governance would be appropriate.
15. Once the noting brief has been signed, the original is provided to A&AR.
16. The decision maker then signs the decision and the Stage 2 checklist indicating that all procedures have been followed, and provides self-certification that they have undertaken all consultation required (particularly relating to any sensitivities associated with the request). The line area provides the hard copy documents to A&AR.
17. The decision maker also must inform the PMO of the proposed decision and documents proposed for release. Any communications with the PMO should be copied to the PMO FOI adviser.
18. Once A&AR receives all of the documents, A&AR ensures all items on the Stage 1 and Stage 2 checklists have been completed and that the decision letter has been finalised and documents prepared for release.

Day 20

19. A&AR undertakes a 'safe eyes' check of any documentation to be provided to the applicant.
20. A&AR sends the decision and the schedule of documents to the applicant. Documents are also provided if charges have been paid in full or no charge applies. If any payment is still pending, A&AR will request payment of outstanding charges, and release documents to the applicant only upon payment of the outstanding charges. The Deputy Secretary Governance and the PMO should be notified when delayed document release is ready to occur.
21. A&AR ensures that documents are released to the applicant. Unless sensitivities have been previously identified (e.g. personal information), these documents should be released publicly on the Department's disclosure log.

Note regarding statutory timeframes

- The 30 calendar day decision notification period commences on the **day after** the day the Department receives the request.
- The Department must notify the applicant that the request has been received no later than 14 calendar days after receiving the request. If the last day for notifying that the request has been received falls on a weekend day or public holiday, the timeframe expires on the next working day.
- The Department must notify the applicant of a decision no later than 30 calendar days after receiving the request. If the last day for notifying a decision falls on a weekend or public holiday, the timeframe expires on the next working day.
- Time taken in certain consultations with the applicant about the request are not counted within the 30 day decision notification period (i.e. the “clock stops” while waiting for the applicant’s response in a consultation regarding charges or practical refusal).
- An extension of the decision notification period may also be available:
 - because consultation with a State/Territory/Norfolk Island government, a person or business is required
 - because consultation with a foreign entity is required
 - by agreement with the applicant
 - if the request is complex or voluminous, by application to the Information Commissioner for an extension.
- For questions and concerns regarding timeframes, the decision maker should consult A&AR in the first instance.
- The Deputy Secretary Governance will be advised by A&AR in circumstances when request processing has been delayed significantly and intervention and additional support may be required to prevent the decision becoming overdue.

Ongoing A&AR reporting responsibilities

The A&AR team provides:

- Weekly short reports for the Senior Management Group
- Longer weekly reports indicating the status of FOI requests being processed through the Department
- Quarterly and annual statistical returns.
- A completed A&AR checklist on each file recording compliance with the FOI Act and noting any reasons for non-compliance.
- Documentation on the file to evidence or support key decision-making including, for example, a file note of the initial meeting with the decision-maker and emails from the decision maker and the line area contact officer.