

Freedom of Information

Guidelines to assist the administration of the FOI Act

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1. A general right of access

The FOI Act gives members of the community a legally enforceable right to information held by government. Departments and agencies must support this right by:

- (a) making information about their operations available to the public;
- (b) making all rules and information about practices readily available to those affected by them;
- (c) facilitating a general right of access to documents held by them. (This access should be limited only by the proper application of exceptions and exemptions provided for under the FOI Act); and
- (d) delivering an efficient, timely and reasonably-costed process for disclosing information.

2. Facilitating access

Members of the community requesting access to information held by a department or agency, should be:

- (a) treated promptly, fairly, with courtesy and sensitivity ;
- (b) assisted in determining the most appropriate way of getting the information; and
- (c) clearly advised how to lodge an application under the FOI Act.

3. Appeal rights of applicants

The FOI Act provides for several categories of information to be exempted from release. The main exemptions are:

- Cabinet documents ;
- Some internal working documents ;
- Law enforcement documents ;
- Documents covered by legal professional privilege ;
- Documents affecting personal privacy ;
- Documents containing information provided in confidence to an agency;
- Documents relating to trade secrets ; and
- Documents to which secrecy enactments apply.

The Act requires agencies to notify applicants of their appeal rights where access is denied to documents. Timely notification to applicants is crucial as an applicant is entitled to :

- seek an internal review of an FOI Officers' decision within 28 days of receipt of the initial decision ; and
- lodge an appeal with the Victorian Civil and Administrative Tribunal within 60 days of receipt of the internal review decision.

Similarly, agencies must advise applicants of their right to complain to the Ombudsman where documents requested under FOI cannot be found or are said not to exist.

4. Documents dealt with outside FOI

An agency or department **must not** rely on the FOI process to handle requests made for access to routine information or routine documentation.

Departments and agencies should develop a policy detailing the categories of information which may be released without a formal FOI application. For example, departments and agencies should automatically make available an individual's own employment records, information provided by the individual to the department or agency and information reflecting the policies of a department or agency. The latter includes manuals and rules of procedure.

5. Responding promptly

Agencies must respond promptly and **within** the timelines set out in the FOI Act for all matters related to FOI applications and requests for internal reviews and appeals. Particular care must be taken to ensure statutory response times are met for requests for access or amendments to documents and requests for internal reviews, as well as orders made by the Victorian Civil and Administrative Tribunal (VCAT).

The specified timelines include :

Decisions in response to FOI requests for access to documents	→	must be made and despatched by agency within 45 calendar days from date agency receives applicant's request
Decisions in response to FOI requests for amendment to documents	→	must be made and despatched by agency within 30 calendar days from date agency receives applicant's request
Decisions in response to FOI requests for internal reviews	→	must be made and despatched by agency within 14 calendar days from date agency receives applicant's request
Orders made by the VCAT on respondent agencies	→	must be made and despatched by agency within time limit specified by VCAT in order

6. Implementing the Guidelines

The implementation of these guidelines is the responsibility of a department or agency's principal officer who in most cases is the chief executive officer of an agency or the secretary of a department.

Principal officers must ensure that all staff are aware of these guidelines and that they are adhered to and practised at all times.

Principal officers must also ensure that adequate resources are available to fulfil their agency's obligations under the FOI Act. This includes an agency's ability to meet statutory response periods prescribed in the FOI Act and orders made by the Tribunal.

Departments and agencies are reminded that under section 61 of the FOI Act, the Victorian Civil and Administrative Tribunal is able to bring to the notice of a Principal Officer, Minister or Municipal Council, evidence found indicating that a person has been guilty of a breach of duty or of misconduct in the administration of the FOI Act.