



Australian Government



Better Practice Guide

Freedom of Information Act 1982

June 2013

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FOREWORD

This Better Practice Guide for Commonwealth agencies administering the *Freedom of Information Act 1982* has been developed to assist agency officers and Ministerial advisers manage FOI requests efficiently and effectively within their own context. It has been written from the point of view of FOI practitioners and managers as the target audience.

The Guide:

- recognises that each agency is different, and there is no 'one-size-fits-all' approach to handling FOI. It is not intended to be prescriptive, but rather to present a range of issues, ideas and strategies to assist practitioners to make choices about FOI administration that maximise outcomes for FOI users and the Commonwealth alike. In this way, it aims to assist individual agencies to develop their own better practices;
- covers the main issues that arise in managing FOI requests day to day, but is not exhaustive. It is not intended to supplant the Guidelines issued by the Office of the Australian Information Commissioner (OAIC). Agency officers and Ministerial advisers dealing with FOI matters must have regard to the OAIC Guidelines.¹ This Guide does not have that status, and should be treated as helpful information rather than mandatory. It should be considered as a supplement rather than replacement for the OAIC Guidelines or agencies' own internal guidelines. It is not intended to be and should not be taken as legal advice; and
- annexes some sample materials which should be treated as examples to assist agencies in developing their own materials, rather than comprehensive models for immediate adoption. The OAIC website also provides sample materials for agencies to consider in this regard.

I am particularly grateful to Tony Corcoran and Neil Phillips of Defence for their stewardship of this Guide on my behalf and for the Secretary of Defence's permission for them to do so.

May I also express my appreciation to the FOI practitioners who contributed to the roundtable discussions and provided comments on the draft material. They were drawn from the:

- Attorney-General's Department;
- Australian Competition and Consumer Commission;
- Australian Federal Police;
- Australian Government Solicitor;
- Australian Taxation Office;
- Department of Defence;
- Department of Finance and Deregulation;
- Department of Foreign Affairs and Trade;
- Department of Health and Ageing;
- Department of Human Services;

¹ Section 93A FOI Act. All footnotes in this Guide are references to the FOI Act unless otherwise indicated.

- Department of Immigration and Citizenship;
- Department of Sustainability, Environment, Water, Population and Communities;
- Department of the Treasury; and
- the Office of the Australian Information Commissioner.

I hope that, like me, you too will find this Guide useful and practical and enjoy its engaging style.

A handwritten signature in black ink that reads "Allan Hawke". The signature is written in a cursive, flowing style.

Allan Hawke

7 June 2013

CHAPTER 1: INTRODUCTION

1. The *Freedom of Information Act 1982* (Cth) (FOI Act) is built around a basic principle. Put simply, government-held information is a national resource², and the public is entitled to have access to it within reasonable limits. The objects clause in section 3 of the FOI Act expands on this concept and provides clear direction on how the FOI Act is to be understood and administered:

Objects-General

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
 - (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making; and
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
 - (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
 - (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
2. FOI Act mechanisms are designed to achieve a balance between a right to access on the one hand and reasonable limits on the other. Managing FOI requests is an integral part of doing business as a government agency in a vibrant democracy. It is a key transparency and accountability measure, much like Senate committee processes or inquiries by the Commonwealth Ombudsman or Australian National Audit Office. It deserves, and requires, the same care and attention.
 3. This Guide contains practical tips and suggestions for managing the FOI function within an agency.³ It emphasises taking a win-win approach to FOI as an essential and integral part of the accountability framework that underpins Australia's democratic framework. FOI can be managed in a way that fulfils that important role while allowing agencies to continue to deliver their full range of services. The system works best when agencies foster open and cooperative relationships with

² Section 3(3).

³ A Minister is also subject to FOI requests for access to documents held in their official capacity as a Minister and relating to the affairs of a Department or agency. For ease of reading, this Guide will refer to 'agencies' except where the distinction is significant. The principles in this Guide are equally applicable to handling requests made to Ministers.

stakeholders, most particularly users of FOI, while engaging the full spectrum of options provided within the FOI Act for dealing with requests.

4. This Guide will consider the key questions that arise whenever an FOI request is received, including:
 - is it valid?
 - who within the agency should deal with it?
 - is it better dealt with outside of FOI processes?
 - is it better dealt with by another agency?
 - should we talk to the applicant about reducing the scope of the request?
 - where are the documents and how do I know I have them all?
 - should we charge?
 - who outside of government needs to be consulted?
 - which other agency should be consulted?
 - how much of this material can I release?
 - how do I explain what I'm not releasing?
 - will I publish what I've released on the disclosure log?
5. Systemic questions such as how to establish an in-house FOI management system, staff awareness and training, and the relationship between FOI and other forms of access to information are examined.
6. There is no one right way to handle FOI requests. Each agency is subtly different in important ways, including size, core functions and the volume of FOI matters they deal with. This Guide draws on the experiences of a range of practitioners with different backgrounds to present ideas and examples which can be adapted to any agency's particular circumstances.
7. Practitioners are free to, and can benefit from, discussing structural and practical issues around handling FOI requests with their counterparts in other agencies.

CHAPTER 2: AGENCY PROCESSES FOR FOI REQUESTS

8. For agencies subject to the FOI Act, handling requests is a constant task. While most agencies experience peaks and troughs, FOI is always there and many agencies have multiple requests on the go at any given time. It is worthwhile considering how best to place the agency strategically so as to respond quickly and appropriately to FOI requests.

Whole of Agency Awareness

9. FOI is easier to deal with when there is an agency-wide understanding and situational awareness of FOI.⁴ For example:
 - understanding the scope and operation of FOI leads to better record-keeping practices;
 - knowledge of how FOI works leads to higher quality responsiveness on issues like searches for documents and estimating charges; and
 - advice on potential exemption issues is better when there is greater knowledge of what the exemptions cover.
10. Cooperation between business areas and officers responsible for FOI in the agency is crucial for success. Agencies which do FOI well are typified by an understanding at every level that FOI administration is part of the business of government, and that getting it right is an important part of demonstrating effective governance.
11. Keeping FOI on the corporate radar can be achieved in a number of ways, including:
 - regular reports to senior management on significant FOI matters in play;
 - debriefs with the business area and other interested staff about the outcome of FOI decision processes or appeals;
 - conducting regular internal seminars or issuing email alerts or updates on FOI issues; and
 - ensuring FOI familiarity is part of standard induction training.
12. Agency FOI performance improves where a senior figure in the agency has a role as an FOI champion. They may or may not have formal decision-making responsibilities, but it is their role to ensure that the agency is committed to high standards of professionalism in handling its FOI workload. They can also be a focal point for managing issues and developing strategic plans for FOI management within the agency.

Approaches to FOI

13. FOI administration can be approached from a range of perspectives. One approach is to focus on the intent of the FOI Act through its objects which include providing access to documents at the lowest reasonable cost.⁵ Taking this approach maximises provision of information, but may lead to overlooking mechanisms that support the agency in trying to balance competing priorities, including competing FOI requests - for example, practical refusal processes (see Chapter 4) and the charges regime (see Chapter 7).

⁴ This was a key finding of a 2012 review of the Department of Immigration and Citizenship's handling of FOI requests: <http://www.immi.gov.au/about/foi/pdf/independent-comparative-review-foi-procedures.pdf>

⁵ Section 3(4).

14. Second, FOI can also be approached in a technical way which focuses on the letter of the law. This generally leads the agency to take a firm stance on things like charges and the exemption provisions. While this has the advantage of creating greater certainty around how FOI requests will be handled, it may also lead to inflexibility and can be at odds with the spirit and objects of the FOI Act.
15. The third is to take a win-win attitude, or a 'give a little, get a little' approach. There are many opportunities for negotiation in processing an FOI request, around issues like scope or size of the request, imposition of processing charges, handling information about third parties, time frames for finalising the request, and timing and form of release and publication of documents. Positive relationships with FOI applicants can significantly enhance an agency's experiences and lead to better overall outcomes for the FOI user. Treating all applicants fairly and consistently is crucial.
16. Agencies typically combine elements of all three approaches. Different emphases may be appropriate in different circumstances. From time to time, senior managers can reflect on the agency's approach to FOI and provide guidance to agency staff where appropriate. FOI runs more smoothly within an agency if there is a common understanding of how it should be, or is being, approached.

Where should the Function Sit within the Agency?

17. FOI has natural links to a number of functions within an agency. Management of FOI sits in various places across the Commonwealth, including:
 - within the legal stream;
 - within the governance area;
 - as part of media or parliamentary liaison teams; or
 - within a strategic policy or issues management portfolio.
18. There is no one right answer. The key is to think about how FOI can best operate in your agency and then, in light of that, consider where it most naturally fits.

Do Lawyers have to be Involved?

19. You do not need a law degree to do FOI well. Most of the time, it comes down to common sense, judgement and attention to detail.
20. While your FOI team does not need to be staffed by lawyers, there is value in having access to lawyers with FOI experience. The FOI Act is quite technical with an extraordinary body of case law sitting behind it, interpreting the various provisions. If you have an in-house legal team, it is worth ensuring that one or more of them are familiar with the FOI Act.

Centralised or Decentralised?

21. Handling FOI requests can be roughly divided into two parts: processing and decision making. 'Processing' here refers to all of the work that precedes the

decision making phase. This can include assessing the validity of the FOI request, managing the collection of relevant documents, liaising with third parties and dealing with charges. 'Decision making' is the process of analysing the evidence and any relevant documents to make the decision (eg the decision to impose charges, or the decision to exempt or release a document).

22. All agencies centralise FOI processing to some extent. Agencies normally have a central point of contact (an FOI contact officer) who is usually the recipient of requests and the first port of call for the public or other stakeholders looking to engage the agency on an FOI matter. Having a central point of contact ensures consistency of messages going to external stakeholders as well as coordination across the agency.
23. Beyond this, the degree of centralisation varies. Some agencies have a small team that manages the processing of every request for the agency. Other agencies hand over responsibility for processing to the decision maker and their business unit. The benefits of centralisation include efficiencies, consistency of approach and building up experience. The benefits of decentralisation include placing whole-of-issue control more directly in the decision maker's hands, although this requires often busy senior officers to manage more directly the wider range of tasks associated with handling the FOI request.
24. Some agencies centralise decision making within a core team. The advantage of this approach, particularly for agencies with smaller volumes of requests, is that it enables decision makers to develop expertise in FOI decision making. A disadvantage is that the decision makers may not be from the business area of the agency with the closest relationship to the subject matter of the request and may need advice from other agency staff to understand the documents.
25. Other agencies devolve decision-making powers to nominated personnel within various business units. Having embedded decision makers utilises subject matter expertise well, but works best where there is a sufficient volume of requests to that business unit to maintain the decision maker's familiarity with FOI processes and exemptions. Having more decision makers, or more dispersed decision makers, can make maintaining decision-maker knowledge and skills, and consistency of approach, harder to manage across the agency. This approach also requires greater care in managing objectivity and perception of bias issues.
26. Decision makers are discussed further at Chapter 12.

Clarifying Roles and Responsibilities

27. Some agencies have written policies that specify roles and responsibilities for FOI management within the agency. This can be a useful reference point for agency staff.
28. Some examples of internal FOI management policies are at Annex 1 to the Guide.

CHAPTER 3: ADMINISTRATIVE RELEASE OF DOCUMENTS OUTSIDE OF THE FOI ACT

29. Release of documents in response to an FOI request is just one way in which access to agency information may be given. Section 3A of the FOI Act explains that it is not intended to limit, prevent or discourage agencies from otherwise releasing information where they have the power to do so. Other mechanisms for release of material into the public domain include:
- responding to Parliamentary processes (eg questions on notice);
 - media releases and statements;
 - provision of material on agency websites, including collation and release of data or statistics following a specific request;
 - the Information Publication Scheme (proactive publication in accordance with Part II of the FOI Act - see Chapter 17);
 - release of personal information to the individual concerned under the *Privacy Act 1988*;
 - release of personnel information to your staff in accordance with established agency procedures,⁶ and
 - where the record becomes an open record under the *Archives Act 1983* (for older records).
30. The OAIC encourages agencies to adopt and publish administrative access schemes outside of FOI.⁷ Agencies should encourage applicants to approach them informally in the first instance, even where they have made a formal FOI request (see following paragraphs). Consideration should be given to only having an "Access to Information" logo on agencies' home pages with subsequent links pointing a possible applicant to administrative means of release, rather than to FOI first. FOI should be a last resort, not a first!

Can an FOI Request be Answered Outside of FOI?

31. If a person makes an FOI request, but you think the request can be answered administratively, it is always open to you to do so. This is usually quicker and cheaper for both the agency and the applicant. If the applicant is agreeable, you can negotiate a withdrawal of the FOI request and for provision of the material outside of FOI. The applicant can then re-submit the FOI request if unhappy with the administrative response.
32. If an applicant insists on a formal FOI decision, the agency will generally have to process the request under the FOI Act. The agency cannot simply refuse to deal with the request on the ground that it is unnecessary to deal with it formally.⁸ It is always a matter of negotiation. The disadvantages for an applicant who insists on a

⁶ Note Section 15A.

⁷ www.oaic.gov.au/publications/agency_resources/agency_resource14_admin_access_schemes.html

⁸ This may be relevant to a practical refusal decision or the vexatious application provisions in appropriate circumstances.

decision under the FOI Act include that a formal decision-making process usually takes longer to complete, and the agency may decide to impose charges.

33. Sometimes an FOI request will seek access to information, or answers to questions, rather than documents. At other times, applicants will seek documents which don't exist, but the agency could provide some useful information. These are scenarios where agencies can usefully consider non-FOI solutions.
34. Similarly, a request for amendment or annotation can be responded to outside of the FOI Act. The *Privacy Act 1988* also permits agencies to annotate or amend records of personal information with less formality than the FOI regime.

Is it Safer to Release under FOI?

35. The FOI Act extends significant protections to officers publishing or giving access to information. Those protections cover claims for defamation, breach of confidence, infringement of copyright and criminal liability associated with disclosure offences. Those protections, in sections 90-92 of the FOI Act, generally require the officer to have acted in good faith in the belief that giving access to the information was required or permitted within the scope of their lawful authority.
36. Importantly, these protections are not restricted to release of information under the FOI Act itself (although disclosures in good faith by authorised officers under the FOI request process or the Information Publication Scheme - see Chapter 17 - are clearly covered). They are also triggered when an authorised officer publishes, or gives access to, a document in good faith in the belief that the publication or access is required or permitted otherwise than under the FOI Act, whether under an express legislative power or not.⁹ This change was introduced with the 2010 reforms to the FOI Act.¹⁰ The intended consequence of the change is that, where information is sought, the agency does not have to insist on processing the request formally under the FOI Act for the protections in sections 90-92 to apply. Agencies should be aware, however, that these new protection provisions have not been tested in any court. Nevertheless, if the information being released in response to a request could raise legal liability issues (eg, defamation, or breach of copyright), a safer option to follow is to require an FOI request prior to release of the information.
37. While these are strong protections, agencies should be aware that there are some kinds of legal claims which are not protected, such as the tort of negligent misrepresentation of fact.
38. Agency officers should ensure they are aware of how the *Privacy Act 1988* and any confidentiality/secretcy provisions in their governing legislation operate before deciding to release material administratively.

⁹ Section 90(1)(c).

¹⁰ The revised explanatory memorandum to the *Freedom of Information (Reform) Bill 2010* stated at 46 'Proposed section 90 extends the immunity given to officers, Ministers, agencies and the Commonwealth...[the previous provision] provides protection where access is 'required' to be given under the Act. It does not cover discretionary disclosure outside the FOI Act or disclosure of exempt documents. Proposed section 90 extends the scope of the immunity to disclosures of that kind made in good faith...'

39. A benefit to using FOI is that it provides certainty for all parties around procedural issues like what charges can be imposed, what the time frames are for responding to requests, and what the appeals process will be if the requesting party is not happy with the outcome. However, where the material is uncontentious and can be readily given, administrative release is far simpler - and cheaper. One approach could be to provide as much as can properly be provided outside FOI, and invite the requesting party to submit an FOI request if they are not satisfied with the outcome.

What if the FOI Request Seeks Publicly Available Information?

40. One scenario where it can be useful to deal with an FOI request outside of the Act is where the request seeks material that is already publicly available - for example, copies of published reports or material which is on an agency's website. It is often possible to explain to applicants how they may access material outside the FOI process and assist them to do so while negotiating withdrawal of the FOI request.
41. Where an applicant insists on pursuing a formal FOI request despite the relevant information being publicly available, consider the following:
- an applicant may seek access to 'documents' but the definition of 'document' in section 4 excludes material maintained for reference purposes that is otherwise publicly available. 'Reference purposes' means material kept in a library or similar repository. It does not include agency files (otherwise everything would be maintained for 'reference purposes');
 - section 12 excludes from the FOI Act documents available for purchase from an agency under other arrangements, or made available free or for a charge under another enactment;
 - insisting on obtaining publicly available documents under FOI may be an appropriate circumstance to impose charges.¹¹ Given the additional administrative burden on the agency, despite the agency's efforts to provide access at the lowest reasonable cost (ie outside FOI), insistence on a formal decision can be a factor in determining whether charging is appropriate; and the fact that material is publicly available is relevant to whether processing the request is an unreasonable diversion of resources¹² and may be relevant to whether the FOI application is vexatious.¹³
42. Note that these exclusions do not cover all material that is publicly available. Some publicly available material may be subject to FOI requests, such as:
- copies of public documents (eg a publicly-listed company's annual report) which are kept on agency operational files relating to specific matters, rather than for reference purposes;

¹¹ See *Encel and Secretary, Department of Broadband, Communications and the Digital Economy* [2008] AATA 72, but note *Peatling and Department of Employment and Workplace Relations* [2007] AATA 1011.

¹² See sections 24-24AB. But, see also *T and Australian Securities and Investments Commission* [2013] AICmr 33 which suggests publicly available information should be easy to process and so less likely to represent a substantial resource burden.

¹³ See sections 89K-89L.

- material on the agency's internet pages; and
 - documents on the agency's disclosure log (see Chapter 16) or Information Publication Scheme (see Chapter 17) where the agency does not charge for access to them.
43. A real-life example of an FOI request applying to publicly-available documents is the case of *Encel and Secretary, Department of Broadband, Communications and the Digital Economy*.¹⁴ This was a charges decision where the documents in issue included Explanatory Memoranda otherwise available on ComLaw, departmental Portfolio Budget Statements and policy discussion papers available on the Department's website, annual reports available on other agency (ABC, ACMA, SBS) websites, Auditor-General's reports and information available in answers to Senate Standing Committee documents available on the Parliament House website. In that case, there was no question about the validity of the FOI request as far as publicly available information was concerned. (On the charges question, the Administrative Appeals Tribunal decided that charges could be imposed for any documents which were already publicly available.)

CHAPTER 4: SCOPING REQUESTS

44. A fundamental first step in handling a request for access to documents is being clear about the scope. In other words, what is the applicant requesting access to?
45. An FOI request must provide enough information to enable the agency to identify which documents in the agency will be caught, in whole or in part, by the request.¹⁵ An applicant is not required to name the document they want. Often a category of documents will be requested (for example 'documents relating to the Minister's decision to...'). The applicant must provide enough information to enable the agency officer to identify which documents are sought and may mean that the agency has to do some digging to identify the documents in question.
46. Where an FOI application is so vague that the agency is not able to identify which of its documents are in and which are out, the request is not valid. In those circumstances, the agency is obliged to assist the applicant to make a valid request.¹⁶ Techniques for this include:
- explaining to the applicant the reasons why their original request was unclear and exploring those aspects in more detail to see what the applicant had in mind;
 - explaining to the applicant what kinds of documents the agency holds, or how it operates;
 - suggesting possible FOI requests along the lines of what has been sought to demonstrate how to construct an FOI request properly; and

¹⁴ (2008) 100 ALD 618. A more recent example is *T and Australian Securities and Investments Commission* [2013] AICmr 33.

¹⁵ Section 15(2)(b). See the OAI Guidelines at Part 3.

¹⁶ Section 15(3).

- seeking to understand what it is that the applicant is trying to achieve from the FOI request. Conversations of this type can be assisted by pointing out to applicants that their reasons for seeking access will not be taken into account in deciding whether to grant access or not.¹⁷ Noting that this protection exists, it is still legitimate for agencies to seek to understand an applicant's area of interest in order to assist them to make an appropriate request.
47. An agency is not obliged to process a request until it is satisfied that it is valid.¹⁸ The 30-day time limit for processing a request only commences when the agency receives a valid request. It can be useful to ask an applicant to re-submit formally a request that has been negotiated, or otherwise agree that it was received the day it was agreed, so that everyone is clear on when the clock commences running. If there is a dispute between the agency and the applicant about whether a request is valid or not, this can end up before the Information Commissioner as a deemed refusal¹⁹ so it may be necessary to escalate these questions or seek advice before that happens.

What if there is Crossover between the Agency and the Minister's office?

48. An applicant can make an FOI request to the agency, or the Minister's office, or both. Each entity deals with the request in so far as it is in possession of relevant documents. In reality, the agency will often be in possession of most, if not all, of the relevant documents held by the Minister. It can be useful to consult the Minister's office with a view to coordinating the response (eg avoiding duplication, which can be costly for the applicant and lead to delays).
49. Alternatively, the Minister's office can transfer an FOI request it receives to the relevant agency.²⁰ This will most often make sense because:
- the agency will have the same, and possibly more, documents;
 - the documents will often relate more closely to the agency's functions than the Minister's; and
 - the agency usually has greater resources and better infrastructure for handling FOI requests.
50. Alternatively, the Minister's office may retain decision-making responsibility, but enlist the support of the agency FOI team to manage the request logistically (undertake consultation, prepare documentation etc).
51. It is also possible, but less usual, for an agency to transfer a request to the Minister.

¹⁷ Section 11(2).

¹⁸ The test for validity is in section 15(2) and includes, at section 15(2)(b), the requirement that it 'provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it'. Importantly, this test does not go to the breadth of the request. An unreasonably large request can still be valid in section 15(2)(b) terms, though subsequently refused under section 24.

¹⁹ See section 15AC.

²⁰ Section 16 deals with transfers.

Can you Negotiate Scope even where the Request is Valid?

52. Even where the request is reasonably clear, it is open to agencies to negotiate the scope of the request up front. This can be particularly useful where the request is expressed broadly (eg 'all documents concerning...' or without specifying a date range). Many people are unaware of the sheer volume of documentation generated by agencies. If the agency understands what the applicant is trying to find out or is really interested in, it can assist the applicant to make a properly-targeted request which reduces the administrative burden on the agency, as well as the time and charges implications for the applicant. So, for example:
- a simple request like 'all documents relating to the recruitment process in which I was unsuccessful' could in fact capture hundreds of documents; and
 - following a negotiation process that request could, at the outset, be reduced to 'a copy of the selection committee report, excluding personal information about any other unsuccessful candidate'.
53. Again, conversations of this type can be assisted by pointing out to applicants that their reasons for seeking access will not be taken into account in deciding whether to grant access or not.²¹ So while asking 'why do you want the documents?' may give the wrong impression and run counter to the philosophy of the Act, asking 'what is it you are really after?' genuinely assists in arriving at a more targeted request. This is part of assisting the applicant to give the agency the information it needs to assist the applicant through the FOI process at the lowest reasonable cost.
54. Note that it is only where a request is not valid that the 30-day time for processing does not commence. Where the request is valid, but you are assisting the applicant to refine it, the clock is ticking. A practical refusal notice (for unreasonably time-consuming requests) will pause the processing clock.²² Where that discussion process is a protracted one, or it results in a substantially different request, it may be appropriate to ask the applicant to re-submit the application. An agency cannot unilaterally declare that the 30-day period re-starts when a new scope is agreed (the effect of this would be that the old request remains live, even though the agency is not actioning it).

What if the Request is Unreasonably Large or Time Consuming?

55. Where a request is large, or would involve an unreasonable amount of work, the agency can take a range of informal and formal steps to manage down the request:
- informally negotiate with the applicant, pointing out that the bigger the request, the longer it will take to process. For example, propose that only part of the request be dealt with initially (eg only documents created in the last six months, or only the most recent document on the topic) and suggest the applicant make a further request for other parts at a later time if they wish;
 - send the applicant an estimate of the charges and invite them to reconsider the scope in that context (see Chapter 7); and

²¹ Section 11(2).

²² Section 24AB(8).

- commence a practical refusal decision process.
56. A practical refusal decision process is a formal method for refusing to deal with a request on the grounds that it is simply too big. The first step involves sending an email or letter (a notice) to the applicant telling them that you are considering invoking the practical refusal power and inviting them to reduce the scope of the request.²³ A practical refusal notice is often successful in creating an environment in which fruitful negotiations around the scope can take place. It is a good opportunity to assist the applicant and to assert some sensible and fair boundaries. The process works well where the agency can give helpful suggestions about how the scope might be reduced, for example:
- by identifying a time period in which the critical documents were generated, and encouraging the applicant to limit the request to that time frame;
 - by suggesting elimination of third-party material to simplify processing the request without compromising the outcome for the FOI applicant;
 - by suggesting elimination of duplicates, drafts or early parts of email chains where they are captured in later parts, or specifically excluding obviously exempt material (such as Cabinet submissions or privileged legal advice); and
 - by identifying for the applicant the specific document or documents that are likely to be of interest, and suggesting the request be confined to those documents (for example a request for 'all documents about policy proposal X' could become 'the brief to the Minister about policy proposal X').
57. It is possible to undertake multiple practical refusal notice rounds. For example, where an applicant receives a notice, and agrees to narrow the scope, but not in a way that avoids the resources dilemma, the agency can send a further practical refusal notice asking the applicant to narrow further. This is at the agency's election.²⁴ Alternatively, it may choose to make a decision refusing the request on resource grounds. It can point out to the applicant that they are always welcome to put in a fresh FOI request.
58. Note that the agency is not bound to refuse to process a request where it issues a notice and the applicant refuses to narrow the scope. The agency decision maker retains a discretion to proceed to process the request as originally expressed if, on reflection, they are not satisfied the practical refusal test is met.
59. If the practical refusal issue is resolved (either because the agency accepts the original scope or the applicant reduces it to something acceptable), the agency should then consider whether charges are appropriate. It is possible to issue a charges estimate first, and then engage in a practical refusal process, but this is more complex.

²³ Section 24AB(2).

²⁴ Section 24AB(9).

When Should I Use Practical Refusal Processes? How Big is too Big?

60. Requests may be refused where they involve a 'substantial and unreasonable diversion of resources'.²⁵ There is no hard and fast formula for determining when a request is 'substantial' in practical refusal terms. A useful starting point for calculating the resource burden is to use the charges estimator (see Chapter 7 and Annex 3), disregarding the dollar amounts and focusing on the hours. As with charging, agencies should analyse a sample of the documents to test the reasonableness of the timing assumptions contained in the estimator; for example, to discount charges for publicly available material.²⁶
61. The resource impost needs to be out of the ordinary (otherwise it is not a diversion - it is just managing FOI as every agency is obliged to do). As a rule of thumb, if the agency cannot complete the request in the 30-day period with the available resources, it may be a diversion situation. OAIC Commissioner decisions on practical refusal reasons can provide a helpful guide to what those commissioners might decide on Information Commissioner review (IC review). Note *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10, where something in the vicinity of 163 hours in the context of the Prime Minister's diaries was considered too big.
62. In assessing the reasonableness of that resources diversion, you can make a realistic assessment of the actual people and hours required. For example, if the agency has 20,000 staff but only three people with the relevant expertise, the consequences of diverting those specific three people for some time can be considered. Where this is a factor, it should be articulated in the practical refusal decision so the applicant understands where the agency is coming from.
63. Reasonableness should also be assessed with regard to the whole context of the application, including the proportion of documents which would be able to be released. For example, a diversion of resources to process a request for 'all legal advice on X' is less likely to be reasonable since the most likely outcome of the agency's work is a decision to exempt most or all of the relevant documents.

CHAPTER 5: TIMELINESS

64. FOI requests must be processed within set statutory time frames. Failing to meet the time frame has two main practical consequences:
- the agency becomes disentitled to impose any charges;²⁷ and
 - the applicant can seek review by the OAIC of a 'deemed refusal' decision.²⁸ This means that the agency is taken to have refused access (or amendment)

²⁵ Section 24AA(1)(a). See also the OAIC Guidelines at Part 3.

²⁶ Note that the Acting FOI Commissioner has been critical of unsophisticated reliance on the charges estimator for the purpose of calculating resource burdens: *T and Australian Securities and Investments Commission* [2013] AICmr 33 at [27].

²⁷ *Freedom of Information (Charges) Regulations 1982* reg 5.

²⁸ Section 15AC.

to enable the applicant to seek IC review. The OAIC advises agencies that they may (and should) still make decisions in this period.²⁹

65. The starting point is that the agency has 30 calendar days from the day of receipt of a valid request (this is day 0).³⁰ The 30-day period can be extended in a range of circumstances (for certain consultation,³¹ with the applicant's agreement,³² or with the OAIC's permission).³³ It can also be temporarily suspended (while negotiating charges³⁴ or undertaking a practical refusal consultation process).³⁵ The agency must deliver the decision on the request into the applicant's hands by the end of the time frame (it is not enough merely to have made the decision - it must be received by the applicant). The documents for release should be provided either with the decision or within a reasonable time after the decision (noting they may be delayed by outstanding charges - see Chapter 7 - or where third party appeal rights are in play - see Chapter 10).

How can I Manage my Time Effectively?

66. The single biggest risk factor in managing FOI requests in a timely way is the scope of the request. If the agency proactively manages the scope (see Chapter 4), it will find the time frames manageable in most cases.
67. Another key issue is in ensuring that all relevant documents are located at an early stage. All other steps depend on the agency accurately identifying the documents and marshalling them for consideration.
68. Finding an additional file or document late in the piece can complicate the handling of a request significantly, especially if the content of the file throws a different light on the documents you had previously found and the deliberations of the decision maker up to that point.
69. Good record keeping practices can dramatically reduce the time taken to make a charges decision, to begin consideration of documents and to ensure that adequate searches have identified all documents relevant to the request.
70. There are many steps to managing an FOI request from beginning to end. Even with extensions of time, the process must be carefully managed. Some sample flowcharts are included at Annex 2 to provide a sense of how the time might be used in processing a standard FOI request.

²⁹ http://www.oaic.gov.au/publications/agency_resources/agency_resource13_extension_of_time.html.

³⁰ Section 15(5).

³¹ Section 15(6)-(8).

³² Section 15AA.

³³ Section 15AB.

³⁴ Section 31.

³⁵ Section 24AB(8).

CHAPTER 6: AMENDMENT AND ANNOTATION REQUESTS

71. Quite apart from the regime for accessing documents, the FOI Act contains a process for individuals to seek correction of personal information about them held in agency documents.³⁶ It contains two separate but related elements:
- Amendment. Where the agency is satisfied that a record of personal information is incomplete, incorrect, out of date or misleading, it can amend the record. The amendment might take the form of a correction (for example, deleting one date of birth and inserting another date of birth). Alternatively, and particularly where the issue is the completeness of the record, it might take the form of a note on the document (for example, adding the year of birth where this had been missing previously); and
 - Annotation. Where the agency is *not* satisfied that a record of personal information is incomplete, incorrect, out of date or misleading, it can (and usually must) annotate the record. An annotation usually takes the form of an addition to the record (for example, a note that, while the record correctly records the individual's legal date of birth, for religious or other reasons they prefer to celebrate and identify their birthday as being an alternative date).
72. A common difficulty in this area is a lack of precision in the request for amendment or annotation. The request should be in respect of a document to which the applicant has had lawful access,³⁷ so they should be able to specify the document of concern. In addition, it is reasonable to expect the applicant to identify the passage which the applicant takes issue with, and what they think it should say instead. The applicant should be able to provide some rationale and it is reasonable to request supporting evidence for their claim if it is not self evident.
73. For amendment requests, the practical issue is often evidence. It can be difficult for an applicant to demonstrate that the record is wrong, or that the amendment they contend for is the correct amendment. The decision maker must be satisfied that the record is incomplete, incorrect, out of date or misleading before they can agree to amend it.³⁸ Agencies should take a common sense approach, recognising that the best possible evidence will not always be available.
74. Even where the decision maker is satisfied that the record is wrong, they are entitled to refuse to amend the record (in other words, amendment is discretionary).³⁹ However, in normal circumstances, an amendment would follow where the decision maker agrees the record is incomplete etc. In any case where an amendment is refused, the applicant is entitled to an annotation on the record.⁴⁰
75. For annotation requests (or where amendment is refused and annotation arises as the fall-back solution), agencies can usually afford to be generous. The legal and practical consequences of placing a statement on the file is generally much less

³⁶ Part V. See also the OAIC Guidelines at Part 7.

³⁷ Section 48.

³⁸ Section 50(1).

³⁹ Section 50(1).

⁴⁰ Section 51.

than amending a document. Agencies are only entitled to refuse an annotation request where it is irrelevant, defamatory or unnecessarily voluminous.⁴¹ In many cases, the best approach is to negotiate the terms of the annotation and sometimes suggesting an annotation to the applicant can move the negotiation along in a profitable way. An annotation that begins with '[Applicant's name] states that...' can provide considerable latitude.

76. Agencies are also entitled to include additional information when annotating or amending a document.⁴² This can be used to add extra contextual comments where necessary (noting that if those contextual comments contain personal information about the applicant, amendment or annotation of those might also be sought). An amendment or annotation can record that it has been made under FOI and the date it was made, and this can be very useful for those looking at the record in future years or in other agencies or organisations.

CHAPTER 7: CHARGES

77. The FOI Act recognises that sometimes it is appropriate for applicants to make a contribution towards the cost of processing their FOI request. This is the role of the charges regime in section 29 and the charges regulations.⁴³
78. Most agencies start from a perspective that charges should be levied for an FOI request unless there is good reason not to. Others are more reluctant to commence a charges process on the grounds that the charges regime can add complexity to the FOI processing work and can be time consuming to administer.
79. Whatever the ultimate decision, it is beneficial to consider the question of whether to charge each time you receive an FOI request. Some things to weigh up include:
- where the request is for personal information, no charges can be levied.⁴⁴ Keep in mind, however, that where there is a mixed request (eg the relevant documents contain 25% personal information, 75% other) it is allowable to charge for the non-personal information (eg the time involved in processing the 75% of other material);
 - applicants receive the first five hours decision making time free.⁴⁵ Where the request is quite straightforward, and it will only run to five to eight hours decision-making time, the administrative cost of dealing with charges may exceed the recoverable charges; and
 - on the other hand, the charges context is a useful time to have a discussion about narrowing scope. Attaching a dollar price to an FOI process should not be used as a deterrent, but can help an applicant understand the resource

⁴¹ Section 51B(2).

⁴² Section 51E. This applies expressly to annotations but there is no legal barrier to doing the same in relation to amendments.

⁴³ *Freedom of Information (Charges) Regulations 1982*. See also the OAIC Guidelines at Part 4.

⁴⁴ Charges reg 5(1) states '[t]here is no charge for a request for, or for the provision of, access to a document that contains information that is the personal information of the applicant.'

⁴⁵ Charges regs Schedule Part 1 item 5.

implications and to agree to a narrower scope in order to reduce or eliminate the charges.

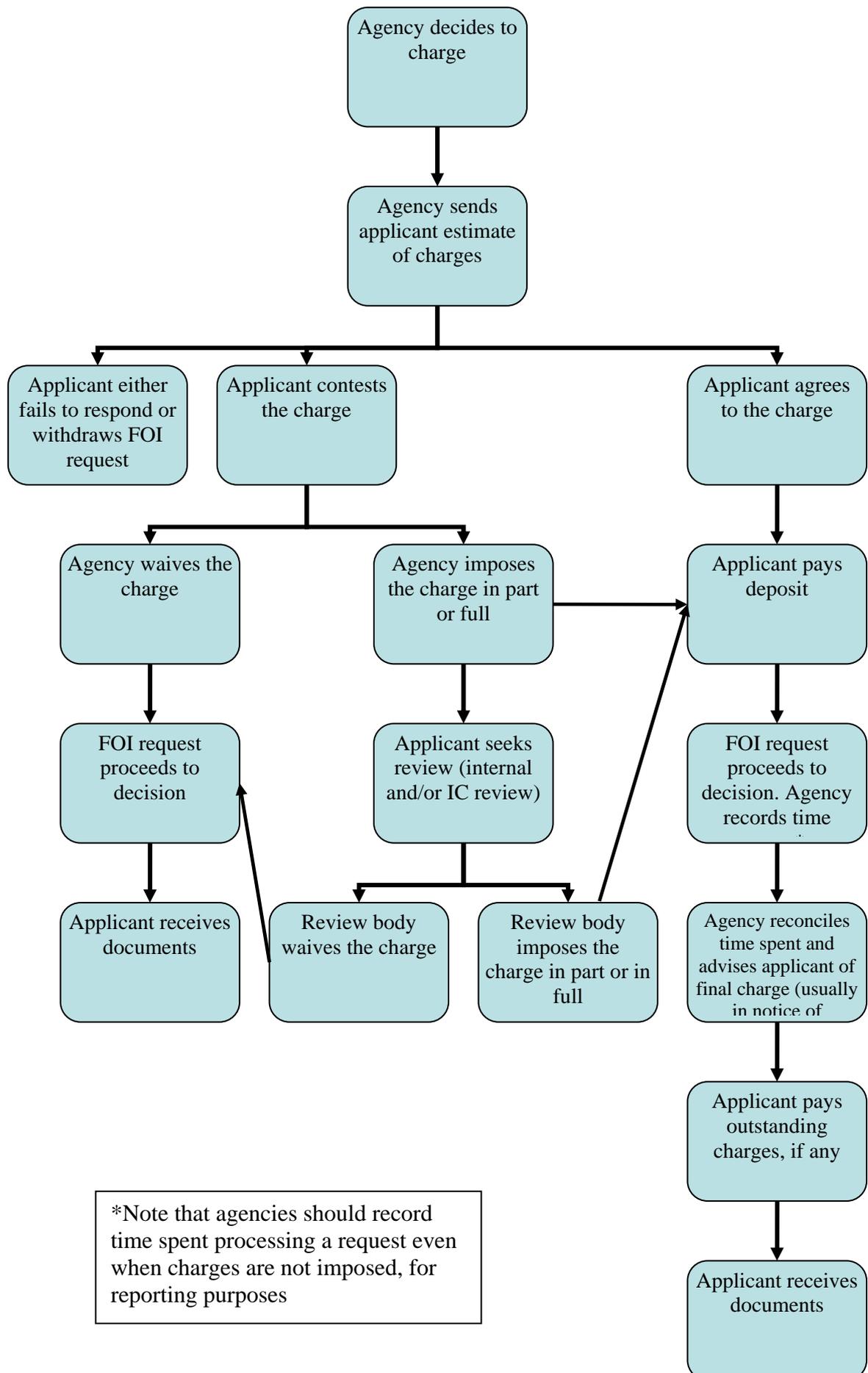
80. Where an agency decides to impose charges, this creates a decision-making process. The chart overleaf gives some indicative general guidance on the process, although agencies should refer to section 29 of the Act and also the charges regulations, as well as the OAIC Guidelines.
81. The amounts that may be charged are capped by the regulations.⁴⁶ A commonly used tool for estimating charges is reproduced at Annex 3. It contains working assumptions around the average time taken for a range of tasks. Agencies should adapt those assumptions to the circumstances of the particular request before using the tool. This usually involves analysing a sample of the documents to test the timing assumptions contained in the estimator before relying on it. An Excel spreadsheet version is available on the Attorney-General's Department's website.

Rules of Thumb for Waiving Charges

82. Charges can be waived or reduced on public interest grounds. The mere fact that information will be in the public domain that was not previously is unlikely to be enough on its own to justify waiver - otherwise every request would qualify and the public interest waiver would be meaningless. To qualify for a charges reduction on public interest grounds the information itself should have some demonstrable benefit to the general public or a substantial section of the public. Where the agency decision maker accepts that access to some or all of the documents is in the public interest, some reduction in the charges will usually be appropriate. The amount may depend on the extent of public interest, as well as the interplay with other factors.
83. Similarly, where an agency is satisfied that the applicant will suffer financial hardship from paying the charges, some reduction is usually appropriate. But, it is not automatically the case and other factors may suggest some charges are appropriate despite the finding of financial hardship. Agencies are entitled to insist on evidence of financial hardship (such as possession of a current means tested concession card). It is not a question of whether the applicant has other expenses to meet, but whether they will suffer appreciable detriment if the charge is imposed.
84. Other factors that affect a decision on whether to waive or reduce charges include:
 - whether the FOI request is relatively simple or will require a lot of effort;
 - whether the applicant has agreed to reduce the scope, in which case it may be reasonable to waive the charges or reduce them substantially;
 - whether the request seeks publicly available information, in which case it may be reasonable to impose charges if the applicant insists that the agency must go through a formal decision-making process; and
 - whether the applicant is repetitively seeking the same or similar material.

⁴⁶ *Freedom of Information (Charges) Regulations 1982 Schedule.*

GUIDE TO THE CHARGING REGIME



*Note that agencies should record time spent processing a request even when charges are not imposed, for reporting purposes

85. No one factor is ever determinative of the outcome. All relevant factors should be considered on each occasion. For example, agencies are not automatically obliged to waive charges where public interest is demonstrated. It may be in a particular case that the high cost of providing the documents, the ready capacity of the applicant to pay the charges (ie the absence of financial hardship) and the particular benefit to the applicant combine to justify imposition of the charges in whole or in substantial part even where a public interest in release is established. The FOI Commissioner has made a number of decisions dealing with charges and the public interest, which offer guidance.⁴⁷
86. The applicant's identity (eg as a member of Parliament or journalist) will not of itself automatically entitle any applicant to a waiver or reduction of charges.

What Happens if the Applicant Defaults?

87. If the agency sends a charges estimate and the applicant then withdraws the FOI request, the charges need go no further. However, if the applicant agrees to pay the charges and they are subsequently determined and imposed, or the applicant unsuccessfully contends that the charges should be waived and they are subsequently imposed, then the charge becomes payable to the Commonwealth (subject to any further reduction when actual processing time is worked out at the end of the process). The agency should follow its Chief Executive's Instructions concerning recovery of moneys payable to the agency.
88. This scenario typically arises in this way:
- the applicant agrees to pay the charges as estimated, and pays a deposit on those charges. This entitles the applicant to a decision on their request, with documents to follow once the outstanding balance of charges is paid;⁴⁸
 - the applicant receives the decision, along with the final determination of charges owing, but fails to pay the balance of the charges (perhaps because they decide that the documents which are indicated for release are not worth it) or simply stops corresponding with the agency at some point after charges have been determined; and
 - where an applicant fails within a reasonable time to pay the charges as imposed, the agency can (arguably should) engage its usual recovery procedures in accordance with its Chief Executive's Instructions.

Tips for Simplifying the Process

89. Agency officers who are involved in processing an FOI request should record the time they spend on it as they go. In that way, the reconciliation process at the end is accurate and relatively straightforward.
90. An applicant can re-start the 30-day clock for a request (which pauses on their receipt of the charges estimate) by paying a deposit on the estimate.⁴⁹ Applicants

⁴⁷ Compare, for example, *'M' and Department of Agriculture, Fisheries and Forestry* [2013] AICmr 24 and *Briggs and Department of the Treasury (No. 2)* [2012] AICmr 17.

⁴⁸ Charges reg 11.

⁴⁹ Section 31(2).

can also elect to pay the estimated charges in full up front, but asking the applicant for a deposit only is recommended. Any reduction in charges at the end of the process will incur extra resources for an agency in providing a refund if the applicant pays too much up front. This is less likely to occur when only a deposit is taken initially.

91. Keep in mind that your estimate essentially operates as a cap on the charges you can impose. If you take less time than you estimated, the applicant is entitled to a reduction in the final amount of charges. If you under-estimate, you cannot charge more than the estimate unless you release absolutely everything in full.⁵⁰
92. It is, of course, possible to skip the estimate procedure altogether, and simply notify the actual amount of the charges at the end of the process (eg within the decision).⁵¹ This is less transparent for the applicant, and does not allow the parties the opportunity to suspend the processing time to negotiate the scope of the request in a way that manages down any applicable charges. It risks complaints about unfairness or a lack of warning. Moreover, it does not avoid the need to record the time taken on processing tasks, which must still be done to impose the charges (as well as for statistical reporting purposes). Very few agencies ever impose charges without first providing an estimate to the applicant.

CHAPTER 8: SEARCHING FOR DOCUMENTS

93. Identifying the documents which are relevant to an FOI request is absolutely fundamental to managing the process successfully. The benefits from doing this well include:
 - accurately estimating the charges (instead of underestimating them);
 - accurately planning the workload and resourcing needs;
 - protecting time frames (and therefore charges) - where late-found documents shed new light on the work done to date or significantly increase the workload beyond what was planned for, this can be problematic;
 - identifying all critical information needed for the decision maker to make the best possible decision;
 - identifying and acting promptly on opportunities to transfer requests to a more appropriate agency;
 - maintaining the trust and confidence of the applicant or a review body, which can be lost when it becomes apparent that the agency has more documents that it should have found, but did not; and
 - avoiding complaints (to the OAIC, in the media, or elsewhere) that the agency is not fulfilling its FOI obligations.
94. Everyone involved in the process can take responsibility for checking that all documents which can and should be identified have been included. Where multiple

⁵⁰ Charges reg 10(1) and 10(2).

⁵¹ Charges reg 3, see also reg 9.

searches in multiple areas of the agency are required, it can be helpful to have someone centrally coordinating the process to avoid duplication of effort.

95. Searching officers can take a reasonably generous interpretation of relevance of material at the search stage - if in doubt, include it. This allows the decision maker to see the maximum contextual material and make a global assessment of relevance.

How Far do We Need to Go?

96. Where a decision maker refuses a request on the grounds that the document cannot be found, or the agency does not have it, they must be satisfied that the agency has taken all reasonable steps to find the document.⁵² This is the test that will be applied on internal and external review where the FOI applicant challenges the sufficiency of the searches undertaken.
97. Where electronic data has been deleted in accordance with records management policies, agencies may be asked by the applicant to attempt to recover the information. In this situation, the resource implications should be carefully considered to determine whether it is a reasonable step (or, alternatively, whether taking that step would trigger a practical refusal reason in respect of the FOI request - see Chapter 4).

Practical Tips

98. Some points to keep in mind when conducting the search include:
 - the concept of a 'document' is a broad one. In addition to the more obvious things (like minutes, briefs, letters, emails, file notes etc), it includes other physical media from which information may be extracted (photographs, audio/visual material, post-it notes, logs of instant messages, SMS/MMS and files downloaded to an agency-owned portable device, loose papers and spiral-bound notebooks or diaries issued for work use). Ensure those doing the searching understand that it is not limited to 'formal' documents or final versions (unless this has been negotiated with the applicant); and
 - you cannot simply assume that all documents will be on the agency's file (electronic or hard copy) for that particular issue. The document may not have made it to the file yet, or it may be something that the author considered a 'personal' draft (such as scribbles in a spiral-bound notebook, which is still a document in the possession of the agency). There may be a separate spin-off file on an aspect of the issue (eg an audit in relation to the activity in question). Use fuzzy searching and cast the net widely to begin with. You can always refine later, but once something is missed, it is harder to correct and you may be faced with a request for a review.
99. A number of simple steps can assist an agency to test whether all relevant documents have been identified:
 - keep a detailed written record of all searches undertaken. This will also be handy in the event that you have to justify the search process on review;

⁵² Section 24A.

- it is good practice to keep a detailed record of all searches conducted in a form that can be provided to a review body should the agency's decision be challenged. This could take the form of time-sheets, email confirmations that officers of relevant business areas do not know of any other places documents would be held, lists of key words etc;
 - consider putting the documents in chronological order for the decision maker to review. It will be easier to identify any gaps this way;
 - talk to the people involved in the work which forms the subject matter of the request. They may be aware of the location of any additional documents which are not in the official document repositories (for example, a 'working bundle' of field notes for a project which is still continuing);
 - talk to the applicant. They may have some special knowledge about the subject matter, eg they may have complained to the Minister or the Ombudsman about the issue, which generated an additional separate file. Questions like 'can you give me an idea of what you are expecting to see?' or 'is there anything you can tell me about the history of the issue or the people involved which will help me locate all the relevant documents?' can prompt the discussion;
 - examine the documents with a critical eye for completeness. For example, if there is an agenda for a meeting, is there a file note of that meeting?; and
 - ensure the decision maker takes responsibility for this issue. It is an integral part of their decision.
100. Of course, ensuring that you have refined the scope of the request to manageable proportions will greatly ease the burden of searching!

CHAPTER 9: DEALING WITH CONTRACTORS

101. An agency's relationship with its contracted service providers will have implications under the FOI Act. Depending on the nature of the relationship with the contractor, documents held by the contractor may be constructively in the agency's possession and will need to be obtained and dealt with in the event of an FOI request. Section 6C of the FOI Act also requires agencies to include clauses in contracts which ensure access to documents relating to the performance of that contract when the services are to be provided to the public on behalf of the agency.
102. Moreover, documents sent from the contractor to the agency will be directly in the possession of the agency for FOI purposes. Most contracted service providers operate in an environment where they are not subject to FOI laws most of the time. The idea that their communications with their clients could be exposed to public scrutiny is often foreign to them.
103. Beyond ensuring that the agency takes appropriate contractual measures to meet their obligations in the event of an FOI request, it can be very helpful to ensure that contractors are educated about FOI and its consequences for them in dealing with agencies. Good times for these conversations include:
- in dealing with a Request For Tenders process;
 - when establishing relationships with a successful tenderer for new work; and

- when engaging contractors on specific tasks.
104. Issues which can be usefully covered include:
- an overview of FOI and the agency's obligations;
 - the contractor's obligations to assist the agency;
 - limits on protections for commercial communications; and
 - how the contractor can assist the agency protect any genuinely sensitive information (for example, by clearly and specifically identifying it up front with appropriate caveats, such as 'commercial-in-confidence').

CHAPTER 10: THIRD PARTY CONSULTATIONS, INCLUDING COURTESY CONSULTATIONS

105. Consultation with persons outside your own agency is an important part of processing most FOI requests. Aside from consultation with the applicant, discussions will generally fall into one of two categories:
- statutory consultation: this is consultation which the FOI Act makes special provision for; and
 - courtesy consultation: this consultation is not provided for in the FOI Act, but it can form an essential part of properly informing the decision maker on the matters they must take into account in order to make a good decision.
106. Each kind is discussed separately below.⁵³

Statutory Consultation

107. The FOI Act provides for a formal process of consultation with certain third parties whose information is contained in documents held by the agency.⁵⁴ These processes are for individuals, businesses or other Australian State and Territory governments (including Norfolk Island) whose information is contained in the documents in issue.
108. For this kind of information, the basic rule is that you cannot release it without consultation whenever the third party could reasonably wish to contend that the information is exempt under the personal privacy, business affairs or State and Territory exemptions respectively.

What does 'Could Reasonably Wish to Contend' Mean?

109. One way of approaching this kind of consultation is to ask 'would the third party have any proper basis for objecting to disclosure?' If the answer is no, the decision maker is free to release the information without consultation. Examples of this might be company-related information that is drawn from the company's website, or information about a State government agency reproduced from its annual report.

⁵³ See also OAIC Guidelines at Part 3.

⁵⁴ Sections 26A-27A.

110. It is possible for agencies to consult even where they are not legally obliged to. Consultation may also be appropriate:
- where the decision maker is in any doubt about release without consultation;
 - where the agency thinks that the third party could not reasonably wish to contend but wish to confirm that conclusion; and
 - where the agency plans to exempt the material but wishes to test the logic.
111. The third party may well have a different point of view, or additional information that would affect the decision, and this can be very helpful for the decision maker in weighing the application of the exemption.
112. This kind of consultation attracts a 30-day extension of the processing time.⁵⁵ So too does consultation with foreign governments and public international organisations (such as UNESCO or the International Monetary Fund - note however that foreign governments do not enjoy the same appeal rights discussed below).⁵⁶ It helps to be specific with the third party about when you expect them to reply. Most agencies allow no more than 14 days. This leaves room for further consultation if the initial response does not meet the agency's needs.

How do I go about this Kind of Consultation?

113. Some agencies prefer a minimalist approach. They provide the third party with a summary of the information at issue and ask what the third party's attitude to its release would be. Others provide copies of the documents and ask a series of questions which focus on the primary exemption relevant to that third party. For example, in the business context questions directed at sections 47 and 47G, like:
- is this information still current;
 - does the business consider it confidential;
 - would it have any adverse effect on the business if released;
 - if so, how do you describe that adverse effect; and
 - what is your basis for believing that adverse effect would occur.
114. Other agencies use a directive approach, by providing a copy of the documents marked up with the exemptions that the agency proposes to claim, and ask the third party if they have any additional objections.
115. The advantage of the minimalist approach is that it allows the third party the widest scope for providing relevant information for the decision-making process. The third party might have useful things to say about exemptions other than the primary exemption (for example, about obligations of confidence which might trigger a section 45 exemption). In addition, the third party might surprise the agency (for example, by agreeing to the release of information that was assumed to be commercially sensitive). The advantage of a more directive approach is that it is more efficient in getting to the heart of the issues that the agency is interested in.

⁵⁵ Section 15(6).

⁵⁶ Section 15(7)-(8).

116. Most third parties will request a copy of the documents if they are not provided up front. Take care to redact information about other third parties and/or the FOI applicant, and other sensitive government information (such as Cabinet material) before providing a copy to the third party.

Are there any Traps in the Appeal Process?

117. Where a third party objects to disclosure, but the agency decision maker decides to release some or all of the third-party information regardless, the third party has appeal rights (sometimes known as 'reverse FOI').⁵⁷ The most important thing is not to release the third-party material which was the subject of an objection until those appeal rights have run out.⁵⁸
118. The agency may not be made aware immediately when the third party appeals to the Information Commissioner or subsequently the Administrative Appeals Tribunal or Federal Court of Australia. It is prudent to check with the third party or the appeal body whether there has been an appeal before releasing the information the day after the appeal period expires.

What about 'Courtesy Consultation' with other Commonwealth agencies?

119. Consultation with other Commonwealth agencies does not attract an extra 30 days of processing time. But, it can lead to more information about the documents, which can be very valuable to the decision maker. This kind of consultation can be beneficial even where you are proposing to exempt the documents.
120. There is an expectation that the Department of the Prime Minister and Cabinet will be consulted about any Cabinet-related material - even if you are planning to exempt it.⁵⁹ Similarly, the Department of Foreign Affairs and Trade should be consulted about international relations matters (including all diplomatic cables) and the Attorney-General's Department should be consulted about copies of constitutional advice. Ultimately, however, the obligation to make a decision rests with the agency to which the request is made, unless the request is formally transferred.
121. Agencies frequently consult their Minister's office in the course of processing an FOI request, either to seek the Minister's input on issues about which they may have relevant information, or to notify of the imminent release of information about which the Minister may receive questions. It is important to ensure that the decision maker's independence is maintained in this process - it is not a process of getting the Minister's agreement to release. It is about informing the decision maker's deliberations, or informing the Minister of the outcome of the decision. It may also sometimes be appropriate to afford a courtesy consult to a former Minister before releasing information about decisions that they took in their former role which may

⁵⁷ In the context of reviews, this is known as an access grant decision: section 53B.

⁵⁸ Sections 26A(4), 26AA(4), 27(7), and 27A(6).

⁵⁹ http://www.dpmc.gov.au/foi/docs/foi_guidance_notes/foi_guidance_notes.pdf. Note in particular that the Cabinet Office requests seven working days to deal with any consultation. In practice, we suggest that you allow the Cabinet Office at least ten working days for consultation, going through Prime Minister and Cabinet's FOI section in the first instance.

attract questions or interest on release. This may also be something to consider for former Secretaries or Deputy Secretaries of agencies.

122. Consultation for the purposes of coordinating approaches to FOI requests can also be beneficial. Where multiple agencies have the same request, they can be dealing with the same documents, and a consistent approach can lead to better outcomes for both the agencies and the applicant. Agencies should note their obligations under the *Privacy Act 1988* when dealing with information that identifies an individual as the FOI applicant.

What if Agencies Can't Agree?

123. Where agencies are at loggerheads, it may be appropriate to:
- transfer that part of the request to the agency with closest responsibility for the information that is contentious so responsibility can rest with the most appropriate agency;⁶⁰ and
 - seek advice from a trusted independent body (a third agency).

CHAPTER 11: A PRINCIPLED APPROACH TO DECISION MAKING

124. The OAIC Guidelines provide a detailed overview of the exemption provisions in the FOI Act as well as the amendment and charges decision-making regimes.⁶¹ The purpose of this Chapter is to explore more general themes which can inform decision makers and assist them to approach decision making from a solid standpoint.
125. Decision makers are not bound to exempt material which they conclude an exemption applies to. In circumstances where an exemption technically applies, but no harm would come from releasing the material, a decision maker is at liberty to release it.⁶² (Note that external review bodies, namely the Information Commissioner and the Administrative Appeals Tribunal do not have this discretion.) The Commonwealth has advocated this policy approach since 1986 in various policies and guidelines.⁶³

On the other hand, once an exemption is made out it is lawful for the agency to apply it. Many exemptions are founded on establishing an identifiable harm (for example, damage to international relations, prejudice to investigations, and conditional exemptions, which only apply where disclosure would be contrary to the public interest).⁶⁴

126. The same principle applies to deletions for irrelevancy. If the decision maker determines that parts of a document are not within the scope of the request, they may be withheld under section 22. However, if they give context to the relevant

⁶⁰ Section 16.

⁶¹ Parts 4, 5 and 6 of the OAIC Guidelines.

⁶² See section 3A and the discussion in '*A*' and *Department of Health and Ageing* [2011] AICmr 4 and *Doney and Department of Finance and Deregulation* [2012] AICmr 25.

⁶³ Including in the OAIC Guidelines, at Part 5.

⁶⁴ Sections 33, 37(1)(a) and Part IV Division 3 respectively.

parts of the document, and would have been released had they been found to be in scope, it may be appropriate to take a generous interpretation of relevance in that instance.

Dealing with Material about Agency Staff Members

127. In virtually every FOI request, the documents will include emails, minutes or reports authored by agency staff. A question arises as to how much information about staff members should be released. Broadly, there are two ways to deal with this.
128. The first way is to apply appropriate exemptions (especially the privacy or operation of agency exemptions).⁶⁵ Remember that all information in a relevant document must be released unless an exemption applies, and any exemption must be substantiated by evidence and explained in the statement of reasons. Different issues will arise for different agencies in terms of the possible consequences of releasing names. Agencies should have a policy and apply it as consistently as the relevant circumstances allow. For example:
- staff signatures are exempted where they are not already in the public domain, and where there is sufficient information about that staff member in the public domain to create a real risk of identity theft if the signature is released;
 - work landlines and email addresses are released, but personal details, including mobile phone numbers and personal email addresses, are not, to protect the personal privacy of public servants when in their private capacity and to prevent nuisance contact on work matters out-of-hours; and
 - names of non-Senior Executive Service staff should only be omitted where there is evidence that positively demonstrates that direct public accountability of junior staff in the particular agency context creates unreasonable risks from a work health and safety perspective.
129. The second way is to delete information that identifies staff members on the grounds that it is irrelevant. If this approach is taken it must be absolutely transparent to the applicant that this is what is occurring. As a starting point, if an applicant requests 'the brief to the Secretary on X' then the whole of that brief is relevant to the request, including names of agency staff in the brief. It is always possible to negotiate with the applicant for an exclusion of staff names on the basis that the applicant is really interested in the substance and the decision of the Secretary, not the identity of the author of the brief.

What is the Best Advice to Give to a New Decision Maker?

130. The most important discipline for decision makers is to ensure that they take an evidence-based approach to decision making. Material can only be withheld from a document subject to an FOI request if an exemption applies, and a decision maker needs evidence to be satisfied that an exemption is applicable. Evidence can be:
- the content of the documents;
 - advice from agency staff;

⁶⁵ Sections 47F and 47E respectively.

- results of third-party consultation with statutory parties;
 - results of courtesy consults;
 - public source information; and
 - material supplied by the applicant.
131. Here are some examples:
- where a decision maker suspects material relates to a Cabinet process, the agency needs to consult the Department of the Prime Minister and Cabinet. The response to that consultation is important evidence in support of, or against, a section 34 exemption claim;
 - the decision maker is considering exempting legal advice under section 42 (legal professional privilege). They consult the relevant business area within their agency to determine whether the advice has been shared with anyone or relied on in a public setting. This will be evidence going to whether legal professional privilege has been waived; and
 - the decision maker identifies business information and consults the business which objects on the basis that the information is commercially sensitive. The agency searches the internet and finds the same material on the business' website. Both the consultation response and the results of the internet search are relevant pieces of evidence which must be weighed and considered.
132. There are very few global exemptions. Usually each sentence of each document needs to be considered independently to decide whether the exemption applies. This is particularly so where the exemption is a conditional exemption (to which the public interest test applies). Decision makers should be aware that FOI decision making is a time-consuming process and should allow sufficient time to review the documents thoroughly in light of other evidence.

What about Security Classifications?

133. A security classification on a document is a prompt to ask questions. It is not an answer. Remember that a document is classified according to the most sensitive information in it. There may be only one sentence which needs to be exempted, and the rest can be released, even though the whole document is classified. Remember too that documents can be over-classified, or not de-classified after the sensitivity which originally justified the classification has passed.
134. Similarly, the absence of a security classification should not be taken to indicate that the document is fine to release. Documents may be under-classified. There is no effective substitute for a careful examination of the content of the documents.

Should the Passage of Time be Considered?

135. The decision maker decides whether information should be released based on the circumstances that exist on the day the decision is made, rather than the day the

document was written.⁶⁶ In some cases, many years will have passed since the document was created. Information that was sensitive when it was written may lose that sensitivity over time. Decision makers need to take this into account.

136. The same is true for internal reviews where the delegate does not consider whether the original decision was right at the time it was made, but must make a fresh decision. One or two months might pass between the day the original decision was made and the day the internal review delegate finalises their decision. Even that period may be enough for circumstances to change such that information which was sensitive at the original decision stage is no longer so.

What if the Information is Sensitive Now but won't be Later?

137. Sometimes the effect of the passage of time will be obviously determinative, but at some future time. For example, a report prepared for tabling in Parliament might be inappropriate to release prematurely, but would not be exempt after it is tabled. Another example might be plans relating to a Commonwealth Heads of Government meeting, which could be seriously threatened if released before or during the event, but which could safely be disclosed after its conclusion. In these circumstances, you may wish to consider deferral of access.

Deferral of Access

138. Section 21 of the FOI Act allows agencies to make a decision to defer access as an alternative to immediate release or exemption. Deferment is available in a range of circumstances, including where the document was authored for presentation to a particular audience, and where premature release would be contrary to the public interest. Deferment is rarely used. There are two factors to pay particular attention to if you are considering deferment:
- the 'trigger event' which marks the point at which the document will be released must be calculable and certain (eg 'at the conclusion of the Commonwealth Heads of Government meeting on 12 October' as opposed to 'when the resources boom comes to an end'); and
 - a decision to defer is a commitment to release, just at a later time. You cannot retract the decision and exempt it if things do not play out as you expected. Be sure that the document will be able to be released following the trigger event.

CHAPTER 12: IDENTIFICATION OF DECISION-MAKING LEVELS

139. Identifying the right decision maker for an FOI request is an important part of achieving a successful outcome. A decision maker must be authorised by the 'principal officer' of the agency (usually the Secretary or CEO)⁶⁷ so some planning is needed to ensure the right people are identified and available.
140. Different agencies pitch their decision makers at different levels. Usually an internal review delegate is more senior than the original decision maker. The decision

⁶⁶ A notable exception is the exemption in section 33(b) which focuses on the confidentiality of the communication at the time it occurred, rather than whether the information is presently confidential.

⁶⁷ Section 23.

maker should be sufficiently senior to have a strong understanding of the agency's business and the broader context in which it operates. Very senior people are more likely to have competing priorities, however, and FOI decision making is a time intensive task. Unless the decision maker is a dedicated FOI resource, they will usually need to plan to go offline for some time (perhaps a few days) to complete their decision.

141. Some agencies prefer to identify a decision maker from within the business area of the agency with the closest connection to the subject matter of the documents at issue. This maximises the leverage of subject matter expertise. Other agencies prefer to identify an independent decision maker who consults the business area, but is seen to be outside of it. This maximises the objectivity and independence of the decision maker. Where the subject matter is highly technical, there may be greater value in having a subject matter expert as the decision maker. Where the subject matter is highly contentious, the choice of decision maker should be made in the course of demonstrating independence and an absence of bias.

What Training should Decision Makers have?

142. Wherever decision makers might be identified, it is crucial that they be sufficiently skilled. FOI is a technical area of government administration with a significant volume of case law and guidelines which must be considered. In addition, general principles of administrative decision making (such as procedural fairness, taking into account only relevant considerations and the appropriate application of policy) are all relevant to FOI decision making.
143. A number of written resources are available for decision makers (such as the OAIC Guidelines and website, and guidance notes published by the Department of the Prime Minister and Cabinet), as well as regular forums and presentations in most capital cities. Some law firms and consultants offer formal training on FOI.
144. Some agencies have a program for accrediting decision makers. This works by structuring delegations in such a way that a person must attend a specified course of learning and pass an examination before they can exercise decision-making powers in that agency. This has been very successful in raising the standard of decision making within those agencies.
145. Like any qualifications, expertise in FOI decision making can be lost if it is not used on a frequent basis. Regular refresher training and/or learning is important, especially for decision makers who only engage with FOI on an occasional basis.

CHAPTER 13: STATEMENTS OF REASONS

146. A decision maker must provide a written statement of reasons in a range of circumstances, including where a document is exempted from disclosure in whole or in part.⁶⁸ Investing energy in producing a quality statement of reasons is a significant tool in minimising reviews. Put another way, even the very best decision is likely to be appealed if it is not well explained in the statement of reasons.

⁶⁸ See section 26. See also the OAIC Guidelines at Part 8.

147. The key to a good statement of reasons in FOI is getting the balance of detail right. It will give enough detail to demonstrate a thorough understanding of the issues and a genuine consideration of the documents. It should go beyond merely regurgitating the exemption sections, but should stop short of revealing any exempt material.
148. For example, for a section 37(1)(a) exemption, the reasons might say:
- too little: 'I find that the document, if disclosed, would prejudice a current investigation. Accordingly, it is exempt under section 37(1)(a)'; or
 - too much: 'if the information is disclosed, it will reveal that the investigating agency has planted a mole in your accounts department. The mole is still actively gathering intelligence about your company's unlawful practices and their work would be undermined if they were exposed'; or
 - about right: 'the information reveals an aspect of an investigation which is currently on foot. For that aspect of the investigation to be effective, it is necessary for an element of confidentiality to be maintained about the investigative process. In the event that this confidentiality is lost, the investigation as a whole will be prejudiced because an important information gathering component may be rendered ineffective. On this basis I consider section 37(1)(a) applies.'
149. The notice to the applicant setting out the decision generally takes one of two forms:
- a letter which describes the decision, including the material taken into account, the reasons in respect of each document, the outcome and the appeal rights in a narrative form; or
 - a covering letter with various attachments: a statement of the reasons for the decision in respect of each document; a schedule of the documents; a statement of appeal rights; anything else that is relevant (eg a copy of the provisions of the FOI Act referred to, though this is optional).

Do I have to Schedule the Documents?

150. Many agencies produce a schedule of documents as part of the statement of reasons. The schedule sets out a basic description of each document as well as summarising the decision in respect of each document. An example is at Annex 4.
151. The amount of detail that goes into a schedule is variable. Where a document is released in full, it is unnecessary to say too much about it in the schedule - eg 'email of 12 March 2013'. Where a document is exempted, there may be benefit in explaining or describing the document in more detail (without revealing exempt material) to support the exemption claim - eg 'email of 12 March 2013 from [agency] to [law firm] requesting confidential legal advice, and reply from [law firm] providing that advice'.
152. Scheduling has a number of advantages where there are multiple documents. It summarises the decision in an easily digestible format. It facilitates grouping of exemption claims into categories, which can simplify the statement of reasons. It provides a good discipline for ensuring all documents have been identified and dealt with, especially if the schedule is ordered by date. In the event of an external

review, it is likely that a schedule will need to be produced at that stage in any event.

153. However, scheduling is not mandatory. Where there are only a small number of documents (five or less) it may be just as easy to describe each document in the statement of reasons and explain the exemption for each, rather than scheduling the documents and cross-referencing the schedule in the statement of reasons.
154. If you schedule, it is beneficial to number the documents as released to correspond with the schedule. The decision letter should explain that this has been done, and where the FOI schedule number appears (eg top left corner) to avoid confusion - some documents will have multiple folio numbers on them even before they are scheduled.

CHAPTER 14: FORMS OF ACCESS TO DOCUMENTS

155. When the decision maker determines that a document may be released, the document needs to be provided to the applicant (subject to any third-party appeals and the payment of any outstanding charges). The Act allows for a variety of means of disclosure, including:
 - provision of a copy (either paper or electronic): this is most useful where there are redactions in the documents. This is the most common method of release;
 - inspection: this is useful where there is a large volume of material which is not subject to any exemption claims (for example, a file about administration of a funding agreement where the funding recipient is the FOI applicant and there is nothing to exempt) or where the item cannot be copied (eg a painting); and
 - transcription: this is most useful where the document is a sound recording and a party objects on privacy grounds to access being given in a form that records the sound of their voice, but does not object to release of the words spoken.⁶⁹
156. The form of release is a matter which the applicant can appeal if they are not satisfied with it. It is also an aspect which can, and often should, be discussed with the applicant as part of processing the FOI request.

How should Redactions be Made?

157. Where a document is partially exempt or partially irrelevant, the exempt or irrelevant parts can usually be redacted (masked) and access given to the remainder.⁷⁰
158. Most agencies now use computer programs to do the redaction work electronically. This has advantages over manual processes in terms of time and copying costs. It also results in a product which is harder to reverse engineer the information from (for example, running a black texta through text and then photocopying it again is generally not an effective redaction method). Care needs to be taken that the electronic redactions are 'locked down' before access is given to the applicant.

⁶⁹ Section 20. See also the OAIC Guidelines at Part 8.

⁷⁰ Section 22.

159. A range of redacting software is available off-the-shelf and agencies are free to choose what suits them. Adobe Acrobat Professional 10 has been tested and approved, for the purpose of redacting, by the Defence Signals Directorate, without the necessity to print and rescan, as redactions are irreversible. Casebook Ringtail Image Viewer is another program which saves a new image file of the redacted page and is similarly irreversible. If using any other version of Adobe or another redacting tool, you will need to ensure the redactions are irreversible, eg apply redactions, save, print and rescan the printed documents.
160. When releasing a document that bears a security classification, it can be beneficial to strike through the classification to indicate that the document being released is not classified. The classification should not be obliterated, however, unless it is exempt from disclosure under one of the exemption provisions.
161. When redactions are applied, it is helpful to indicate (usually by a box around the redaction) how much text has been removed. For example, a page might only contain one paragraph at the top and the rest is blank. Without a box around the redaction, the applicant might think they are missing a whole page of text, rather than just a few lines, and may be more inclined to appeal. A white box with a black line or a light grey box, depending on the software used, will save on printer toner.
162. It is also helpful to include within the box a note which indicates the exemption provision(s) relied upon in withholding particular text. This improves understanding of the decision as well as assisting any future appeals. It also assists in contextualising redactions if the material is placed on the disclosure log.
163. Here is an example, first as it appears:

<i>Investigator's handbook</i>	<i>Chapter 2 - devices</i>
under appropriate supervision. Ensure that the recording device has sufficient storage for the task and that the microphone is properly positioned and the device is on before engaging the target.	

2.34 The recording device should be worn on the right side to avoid it being spotted when reaching for your breast pocket. Wear a blue or grey shirt rather than white to avoid it being seen through the fabric.

v 1.4	p 18
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and with redaction:

<i>Investigator's handbook</i>	<i>Chapter 2 - devices</i>
under appropriate supervision. Ensure that the recording device has sufficient storage for the task and that the microphone is properly positioned and the device is on before engaging the target.	
2.34 The recording device should be worn	s 37(2)(b)
.	
v 1.4	p 18

CHAPTER 15: INTERNAL REVIEWS

164. Where an applicant or third party requests internal review, a different agency delegate re-makes the decision.⁷¹ The internal review delegate takes responsibility for the whole of the decision, including satisfying themselves that the searches have been conducted properly. They may apply any exemption they consider relevant and are not limited to the exemptions relied upon by the original decision maker. However, they cannot exempt material that has already been provided to the applicant in accordance with the original decision.
165. The internal review delegate makes a completely fresh decision. This means the question they ask themselves is not 'was the original decision right?' but 'what would my decision be?' In addition, it is not a question of 'what would my decision have been then?' but 'what is my decision today, taking into account any developments in the meantime?'
166. The internal review delegate can have regard to the original decision and the evidence gathered for that decision, and quiz the previous delegate on the basis of their decision. However, they will need to make, and be seen to make, a fresh independent decision. They will also need to gather new evidence, particularly in relation to any changes in circumstances since the original decision was made. They will need to decide whether any third parties who were consulted (including courtesy consults) need to be updated or re-done, and may consider there are further third parties that need to be consulted.
167. There is a 30-day limit for internal reviews.⁷² It cannot be extended for third-party consultation that should have been done at an earlier stage but was not, or for any other reason. If the decision is not made within 30 days the agency is deemed to have made a decision upholding the original decision, for the purpose of allowing the applicant to proceed immediately to IC review. The Information Commissioner may grant the agency further time to decide the internal review request; but note that this is discretionary. If further time is granted, the applicant is prevented from seeking IC review during that period.⁷³

⁷¹ See the OAIC Guidelines at Part 9.

⁷² Section 54D.

⁷³ Section 54D(3).

168. The observations around training decision makers and the choice between centralising or decentralising decision-making expertise (see Chapter 12) apply equally to internal review delegates.

CHAPTER 16: DISCLOSURE LOG

169. When documents are released in response to an FOI request, agencies are normally obliged to publish the information to the general public as well.⁷⁴ There are some exclusions (particularly where you are releasing personal or business information and the FOI applicant is the individual or business concerned). The documents are published on the agency's 'disclosure log'.
170. Agencies are encouraged by the OAIC to publish the documents on their websites. Where that is not possible, agencies can publish information about the documents that have been released and invite interested parties to contact them to access the documents. The documents are then provided electronically or in hard copy.⁷⁵
171. There are practical benefits to publishing online. The more material that is published on the website, the fewer inquiries the agency will need to manage administratively. It also enhances the value of the information to the public generally and maximises accessibility. The most significant limitation is the agency's data-hosting capacity. Some agencies are starting to explore whether external hosting or cloud-computing services can overcome their own data limits.
172. Some agencies publish just the documents. Others publish the documents with an extract which sets out the terms of the FOI request against which the documents were released. Others supply the statement of reasons for the decision along with the documents (omitting information that identifies the FOI applicant personally). Agencies are free to add their own contextual remarks (for example, explaining that a document as released was a draft only and does not reflect settled government policy). In general terms, the more context a document has, the better it will be understood by the public, and the fewer administrative follow-up questions the agency can expect to receive.

When should Documents be Published?

173. The FOI Act requires publication on the disclosure log within ten working days after the day the applicant receives them.⁷⁶ Some agencies publish simultaneously: they provide the documents to the applicant by email, and on the same day publish them on the disclosure log. Applicants such as journalists argue that this is unfair - particularly if they have been required to pay processing charges. Accordingly, some agencies give the applicant a 24 or 48 hour window of exclusive access before publishing. Other agencies publish in batches, eg once a week publish all the material released under FOI in the preceding work week. A range of factors require consideration when deciding an appropriate time frame on publication:

⁷⁴ Section 11C. See the OAIC Guidelines at Part 14, including on the question of same day publication.

⁷⁵ Section 11C(3).

⁷⁶ Section 11C(6).

- whether the applicant has a special interest in the material which would make it appropriate for them to have access in advance of the general public;
 - the relationship between publication and charges - where publication occurs simultaneously, a question arises whether it is fair to charge the FOI applicant when they receive no benefit in terms of access to information which is greater than that conferred on the general public through publication;
 - whether same day publication will have a deterrent effect and whether this is contrary to the objects of the Act; and
 - the effect on stakeholder relationships, including with repeat FOI customers and persons who are agency stakeholders in other contexts.
174. Fairness is an important consideration in the timing of release. Consistency and transparency are two reasonably objective indicators of fairness. Agencies can ensure transparency by notifying their disclosure log timing practices:
- in acknowledgement letters when an FOI request is received;
 - in FOI policies published internally and externally;
 - in the notice of decision given to the FOI applicant; and
 - on the disclosure log itself.

CHAPTER 17: INFORMATION PUBLICATION SCHEME

175. Part II of the FOI Act contains the provisions relating to what is known as the Information Publication Scheme (IPS).⁷⁷ The idea behind the IPS is to encourage agencies to proactively provide access to the kinds of information that the public are likely to want access to. Part II sets a minimum standard for the publication of information - it is always open to the agency to publish more than is required.
176. Agencies take slightly different approaches to publication of materials. Links to each agency's IPS material are readily accessible from home web pages and it can be worthwhile exploring those to get a feel for what other agencies are doing.
177. There is no single best way to manage an IPS, but useful questions include:
- what do people most want to know about my agency? What media and other inquiries do we get? Can we pre-empt that by publishing material on the IPS;
 - are there frequently used internal documents, and if so can they be included;
 - how do I keep it up to date as simply as possible;
 - are there functions in my agency which lend themselves to publications;
 - who is responsible for creating and capturing content in my agency? How do I get work authors in my agency to think 'should this go on the IPS'; and
 - is my IPS user friendly and easily navigable? Does it link intuitively to the rest of my web content.

⁷⁷ See the OAIC Guidelines at Part 13.

178. Publication of material on the IPS in good faith by an authorised officer attracts the protections in section 90-92 of the Act discussed in Chapter 3.

ANNEX 1 - SAMPLE INTERNAL FOI MANAGEMENT POLICIES

Secretary's Instruction 15 Freedom of Information

Purpose

For all officers to understand their obligations in responding to requests made under the *Freedom of Information Act 1982* (FOI Act).

The purpose of the FOI Act is to open government activity to public scrutiny, so as to enhance accountability and encourage citizen engagement with public administration - the foundations of democracy.

The objects of the FOI Act are a clear statement of the intention to promote disclosure of information held by government. The objects include to:

- give the Australian community access to information by requiring agencies to publish the information, and provide a right of access;
- contribute to increased participation in government processes and increased scrutiny, discussion and review of government activities;
- increase recognition that information held by government is a national resource; and
- promote public access to information, promptly and at the lowest reasonable cost.

The FOI Act sets out a process for ensuring the public's right to access documents held by government.

Background

This Secretary's Instruction and related information provide direction to all staff relating to FOI. Secretary's Instructions are delivered under the department head's authority as outlined in the *Public Service Act 1999* and **must** be complied with.

Mandate

As there are tight statutory timeframes in the FOI Act for responding to FOI requests, all departmental staff **must** have a good understanding of their obligations and must comply with the following documents:

- [Departmental Procedures for Responding to FOI Requests](#); and
- [FOI Time Frames and Responsibilities](#).

All SES employees **must** ensure that they have appropriate practices and procedures in place within their business areas to ensure that the department complies with its obligations under the FOI Act.

Related Information

- [Freedom of Information Act 1982](#)
- [Freedom of Information Amendment \(Reform\) Act 2010](#)
- [Australian Information Commissioner Act 2010](#)
- [Guidelines issued under section 93A of the Freedom of Information Act 1982](#)
- [Secretary's Instruction 4 – Recordkeeping](#)

Authorisation

This Secretary's Instruction is issued under the authority of the Acting Secretary, Martin Bowles PSM, head of the Department of Immigration and Citizenship.

Sample from
Department of
Immigration and
Citizenship

DEPARTMENTAL PROCEDURES FOR RESPONDING TO FOI REQUESTS

The *Freedom of Information Act 1982* (FOI Act) provides a statutory time frame of **30 calendar days** for an applicant to be advised of a decision

All staff are required to assist the department in complying with the FOI Act by:

- maintaining business records in accordance with *Secretary's Instruction 4 – Recordkeeping*;
- actioning any requests for documents that can be provided outside of the FOI Act within 30 days;
- when requested by the FOI section, identifying and providing all documents relevant to the FOI request and/or advising where documents do not exist;
- advising the FOI section if there are documents held by other areas of the department;
- advising the FOI section of any sensitivities in the documents provided;
- complying with all time frames for response; and
- seeking advice from the FOI section if they have any questions about their obligations in relation to FOI requests.

SES officers in responsible business areas must also:

- consider regularly publishing information which may be of interest to the public on DIAC's website;
- ensure sufficient resources have been allocated in order to meet the legislative time frames in the FOI Act;
- ensure that their staff understand their FOI responsibilities and comply with relevant time frames;
- provide formal sign-off for significant* FOI releases, confirming that all relevant documents have been identified and any sensitivities brought to the attention of the FOI decision-maker. This will generally occur at First Assistant Secretary level;
- ensure that the Minister's Office has been advised of any sensitive issues prior to any FOI release in matters identified as significant; and
- prepare any talking points or briefing material on sensitive issues that may arise from an FOI release.

Escalation

Failure to comply with requests for documents or other assistance within the required time frames will result in escalation to the Chief Lawyer as the department's *Information/FOI Champion*. The Chief Lawyer is responsible for reporting serious non-compliance to the Secretary and/or Deputy Secretaries.

Further information about FOI decision-making is contained in the document *Indicative FOI time frames and responsibilities where business area consultation is required*. Staff must also ensure they are familiar with that document.

Further information

FOI & Privacy Policy Section
PO Box 25, Belconnen ACT 2616
Ph: (02) 6264 1482
Fax: (02) 6264 1818
Email: foi@immi.gov.au

For more information on the FOI Act and its implications for government, see the Office of the Information Commissioner website: www.oaic.gov.au

*Cases identified as significant include requests from journalists, members of parliament and requests concerning highly sensitive matters. These cases are included on the *Significant Case Register*. Decisions on significant cases are made in National Office

ANNEX 2 - SAMPLE FLOW CHARTS FOR FOI PROCESSES



FREEDOM OF INFORMATION STANDARD 30-DAY TIMELINE

Roles and Responsibilities		FOI Directorate	Decision Support Staff (Group Coord/Action Area)	Accredited Decision Maker		
Time	Stages	The primary source of advice and guidance on FOI requests to Defence. The FOI Directorate determines whether a request is valid, and is responsible for referring valid requests to Action Areas and Decision Makers for processing. The FOI Directorate handles all external contact with applicants and third parties.	Responsible for the identification, location and retrieval of all relevant documents within the scope of the request, wherever they may be held. Identify and communicate any sensitivities relating to the documents. Also responsible for scheduling and preparing documents in the form proposed for release, in consultation with Decision Maker.	Accredited and authorised to make decisions on requests under the FOI Act. Once documents are retrieved by the Action Area, the Decision Maker considers documents and makes decisions on consultation and disclosure.		
Day 0	Determine Validity	<ul style="list-style-type: none"> Receives request Determines validity and scope 	<ul style="list-style-type: none"> Provides guidance to FOI Directorate on scope and existence of documents Determines if any other action areas involved 			
Day 1		CLOCK STARTS NOW			Contact us: Directorate of Freedom of Information PO Box 7910 Canberra ACT 2600 CP1-6-001 Campbell Park Offices Ph: (02) 626 62200 Fax: (02) 626 62112 Email: FOI.Inquiries@defence.gov.au	
By Day 2	Preliminary Assessment of Charges	<ul style="list-style-type: none"> If request is not subject to charges, proceed to tasking email. Sends Preliminary Assessment (PA) (AD650 Webform) Gives notice of charges (if applicable) to applicant 	<ul style="list-style-type: none"> Determines if any other action areas involved Completes PA 			
	Tasking Email	CLOCK STOPS UNTIL CHARGES ARE ACCEPTED BY APPLICANT			FOI do's and don'ts <ul style="list-style-type: none"> It is important you fully understand the scope of the request and identify all relevant documents Advise FOI Directorate if there are documents held by other areas Do not make any contact with the applicant or third parties Record the time you spend on each case as you progress If there is anything you are unsure of, seek advice from the FOI Directorate. 	
By Day 7	Document Retrieval	<ul style="list-style-type: none"> Tasking email is sent if no charges or once charges are accepted 	<ul style="list-style-type: none"> Receives tasking email from FOI Directorate Identifies and retrieves relevant documents Provides copy of original documents to FOI Directorate and identifies any sensitivities Nominates contact officer from Action Area 	<ul style="list-style-type: none"> Notify likely Decision Maker of potential appointment to check availability 		
Day 7	Decision Maker Appointed	<ul style="list-style-type: none"> ASFOIM appoints Decision Maker 	<ul style="list-style-type: none"> Decision support staff informed of appointment of Decision Maker 	<ul style="list-style-type: none"> Decision Maker appointed by ASFOIM 	Consultation process Third party consultation for documents containing business or personal information is subject to an additional 30 days for processing	
Day 8 - 17	Examination/Preparation & Review	<ul style="list-style-type: none"> Reviews documents for content and potential third party consultations Identifies any ministerial sensitivities Provides guidance and advice to Decision Maker and to Decision support staff 	<ul style="list-style-type: none"> Action Area prepares schedule and documents in the form proposed for release for consideration by Decision Maker Identifies any sensitivities Identifies potential third party consultation 	<ul style="list-style-type: none"> Advised of request Provided with documents Examines documents, identifies any third party consultations Consults with FOI Directorate 		
Day 17	Draft Decision	<ul style="list-style-type: none"> Receives draft decision, marked-up documents and draft Talking Points (TPs) in the form proposed for release by Decision Maker 	<ul style="list-style-type: none"> Provides draft TPs addressing issues raised in the documents -cleared by Subject Matter Expert 	<ul style="list-style-type: none"> Provides draft decision and marked-up documents in the form proposed for release to FOI Directorate 	Day 47	Draft Decision
Day 18 - 22	Quality Assurance	<ul style="list-style-type: none"> Considers decision, scheduled documents and TPs Provides feedback to Decision Maker (and Action Area) on compliance with FOI Act and Information Commissioner Guidelines 			Day 48 - 52	Quality Assurance
Day 23 - 25	Finalising Decision		<ul style="list-style-type: none"> Provides assistance and support to Decision Maker in finalising schedule and documents in form for release 	<ul style="list-style-type: none"> Considers FOI Directorate advice and feedback Drafts final decision 	Day 53 - 55	Finalising Decision
Day 26	Final Decision			<ul style="list-style-type: none"> Provides final signed decision to FOI Directorate 	Day 56	Final Decision
Day 26 - 29	Processing	<ul style="list-style-type: none"> Prepares decision letter and documents in form approved for release Completes any TPs or FOI Alerts if required Liaises with Communication and Media (CAM) Branch for clearance of TPs 	<ul style="list-style-type: none"> Provides final agreed TPs to FOI Directorate if required 		Day 56 - 59	Processing
Day 30	Decision sent to Applicant	<ul style="list-style-type: none"> Sends decision letter and documents to applicant 2 days after applicant receives documents, documents are published on the Disclosure Log, if applicable 			Day 60	Decision sent to applicant and third party advised

INDICATIVE FOI TIME FRAMES AND RESPONSIBILITIES WHERE BUSINESS AREA CONSULTATION IS REQUIRED

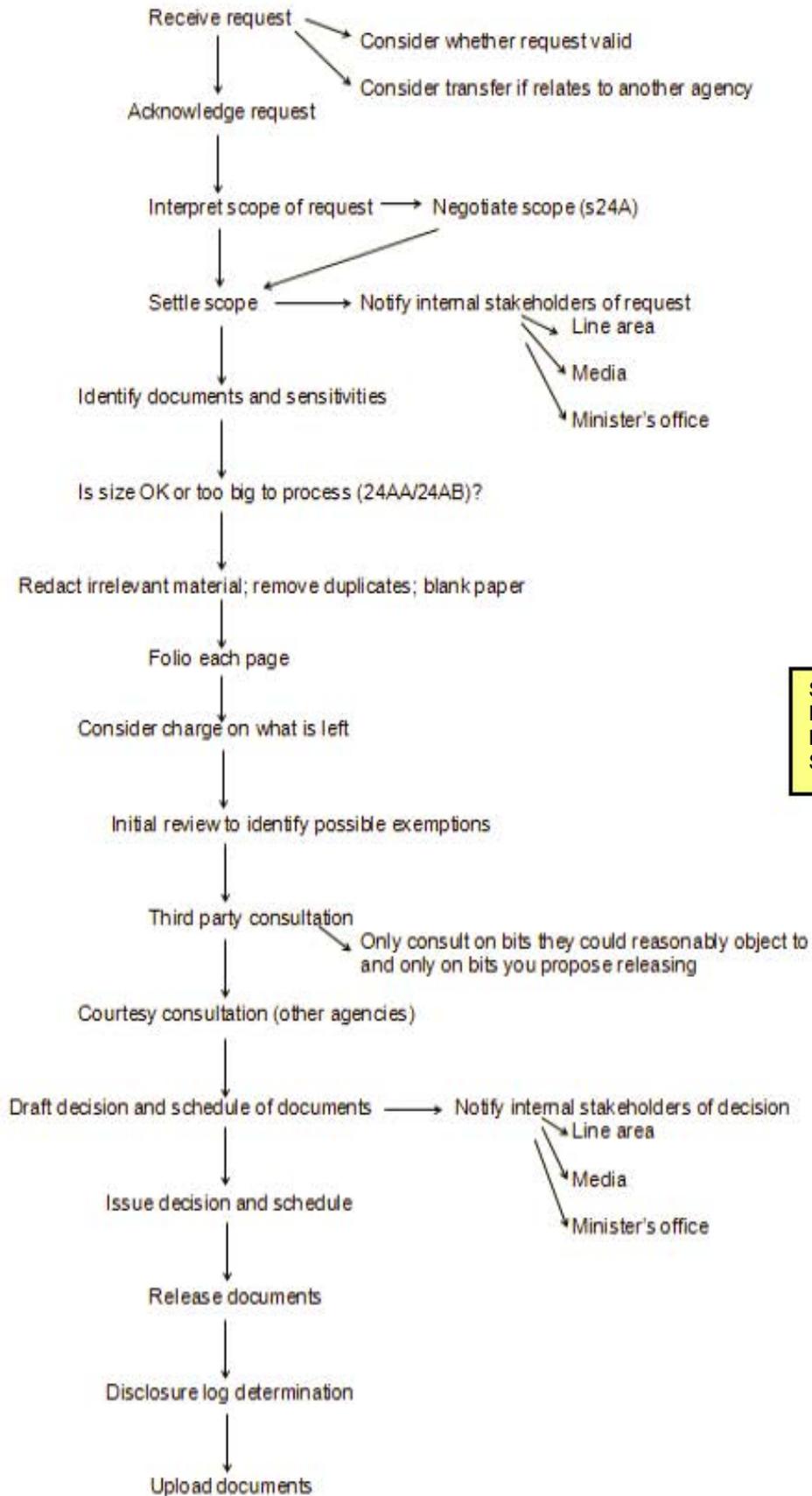
Calendar Day	FOI Section	Responsible Business Area/s
1	<i>Days 1-2</i> Receive and register request Send acknowledgement letter Assess scope of request and negotiate scope with applicant if required Request documents from relevant business area/s	
3		<i>Days 3-6</i> Identify all documents within scope. Where a request is lodged for a specific file also identify any related documents stored in other locations Advise FOI Section if documents have already been published or can be released outside the FOI Act Advise FOI Section of any issues with documents – including if there are more than 300 pages or if another business area/s may hold documents
7		Provide documents to FOI Section identifying any sensitivities that the FOI decision maker needs to take into consideration
8	<i>Days 8-15</i> Assess documents and prepare proposed decision	
16	Seek comments on proposed decision from business area/s	<i>Days 16-19</i> Provide any comments on proposed decision to FOI Section (This is the final opportunity to alert the FOI Section to any sensitivities in documents)
19	<i>Days 19-21</i> Finalise assessment of documents and proposed decision	
22	Refer proposed decision to SES officer in business area/s*	<i>Days 22-24</i> SES officer reviews proposed decision and confirms that all relevant documents have been provided and sensitivities identified* Prepare talking points if required and alert the Minister’s office to any sensitivities in proposed release*
25	Provide copy of the proposed decision to the Minister’s Office and any other relevant stakeholders for information*	
28	<i>Days 28-30</i> Finalise decision Finalise decision letter Send decision to applicant	Provide final cleared talking points to Minister’s Office and National Communications*

Sample from Department of Immigration and Citizenship

Preparation stage (*days 1- 7*)
 Decision making stage (*days 8- 21*)
 Finalisation stage (*days 22-30*)

*For cases identified as significant. Significant cases include requests from journalists, members of parliament and requests concerning highly sensitive matters. These cases are included on the *Significant Case Register*. Decisions on significant cases are made in National Office

FOI Decision Tree



Sample from Department of Human Services

ANNEX 3 - CHARGES ESTIMATOR TOOL

Note: a read/write Excel version of this tool is available on the website on which the Guide is hosted.

PROCESS - search and retrieval	TIME (in hours)	COST @ \$15 per hr
Search and retrieval (10 mins per file)		
Search files and collect/collate relevant pages (45 mins average per file)		
preparing schedules detailing all relevant documents (basic data entry e.g. doc no, date, description - 30 minutes per 10 documents)		
<i>Search & Retrieval Subtotal</i>		
PROCESS - decision-making	TIME (in hours)	COST @ \$20 per hr
examine relevant pages for decision making (5 mins per relevant page).		
add 5 mins per fully exempted page to cover additional consideration of complexity of material, elements of exemption claim, public interest etc		
add 5 mins per pages released with deletions to cover time needed to redact the material		
consult third parties (2 hours per third party)		
preparation and notification of decision (4 hours per 250 relevant pages - includes completing schedule by recording decision and drafting statement of reasons) - NB if several exemptions are involved, further time may be required.		
<i>Decision-making Subtotal (before deduction of 5 hours)</i>		
<i>Decision-making Subtotal (after deduction of first 5 hours free for all)</i>		
ACCESS - view / inspect	TIME (in hours)	COST @ \$6.25 per 1/2 hr
Access given through inspection of documents (10 min per document, rounded up to nearest 1/2 hour)		
Access given through hearing and/or viewing of documents e.g audio/visual material - insert duration of files and add 1/2 hour set-up and pack-up time (rounded up to nearest 1/2 hour)		
<i>Inspection/Viewing Subtotal</i>		
ACCESS - copy and post	PAGES	COST
Photocopies of estimated released docs (including those with deletions)		
Electronic copies (by CD, USB stick, etc - include actual costs incurred in producing the copy)	N/A	
Packaging and postage-insert estimated cost	N/A	
<i>Photocopying & Postage Subtotal</i>		

Provided by Australian Government Solicitor

ANNEX 4 - SCHEDULE OF DOCUMENTS

Doc No.	Pgs	Date	Author	Addressee	Description	Decision	Exemption	Parts over which exemption claimed (this column optional prior to external review)
1.	<no of pgs>	<date> or <unknown >	<name> or <unknown >	<name> or <unknown>	<i.e. email correspondence between <name> and <name> dated <date> and titled 'The new policy proposal.>	Release in part Release in full or Exempt in full	<insert relevant section numbers>	The last 4 words in the 1 st sentence and all of the 2 nd sentence on the page - s 22(1) The 5 th -8 th words in the 4 th sentence on the page - s 42 All remaining text on the page following the 4 th sentence - s 37(2)(b) All text on pages 2-3 - s 34(1)(a)
2.								

Sample from Australian Government Solicitor