

# FREEDOM OF INFORMATION ACT 1982

## GUIDELINES FOR COMPLETING

### QUARTERLY AND ANNUAL STATISTICAL RETURNS

#### GENERAL INFORMATION

##### Reporting requirements

The electronic forms should be used for quarterly and annual statistical returns for the 1998-1999 reporting year and subsequent years. These Guidelines supersede FOI Memorandum No. 20 on Statistics and Reporting.

2. The electronic forms differ very slightly from the hardcopy Quarterly Statistical Return form [AG561 (9/95)] and Annual Statistical Return form [AG561 (2/88)] which agencies have been using to complete their returns. Primarily as a result of the shift to an electronic reporting environment, there have been minor changes to the layout of some of the questions. These changes do not affect the information that is required to be reported by agencies.

3. Section 93(1) of the *Freedom of Information Act 1982* ('the FOI Act') requires the Attorney-General, as the Minister administering the FOI Act, to prepare and table in Parliament an annual report on the operation of the Act. Section 93(2) of the FOI Act requires each agency and Minister to provide information for inclusion in the report.

4. Separate returns should be completed for each Minister (and Parliamentary Secretary) and agency. If no requests under the FOI Act have been received, a **Nil Return** should be submitted. Details on how to complete a Nil Return for quarterly and annual returns are contained in these Guidelines.

##### Meaning of 'agency'

5. Section 4(1) of the FOI Act defines 'agency' to mean a Department (Parliamentary Departments are not included), a 'prescribed authority' or an 'eligible case manager'. 'Prescribed authority' is also defined in section 4(1) and, subject to a number of exceptions, includes a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment or Order-in-Council. Companies and incorporated associations are not prescribed authorities (and therefore agencies) unless the Commonwealth is in a position to exercise control over that body and the body is listed in Schedule 1 of the Freedom of Information (Miscellaneous Provisions) Regulations ('FOI (MP) Regulations'). A list of agencies

is included in the FOI Annual Report. The contact number for any questions about the status of a body as an agency is Ph: (02) 6250 6818.

### **Reporting deadlines**

6. Regulation 6(a) of the FOI (MP) Regulations requires the information to be provided on a quarterly basis to the Attorney-General's Department not later than 21 days after the last day of each quarter. The quarters and the deadlines for submitting quarterly returns are:

- 1 July to 30 September: 21 October
- 1 October to 31 December: 21 January
- 1 January to 31 March: 21 April
- 1 April to 30 June: 21 July

7. The deadline specified in regulation 6(b) of the FOI (MP) Regulations for submitting annual returns is 31 July for each year ending on 30 June.

8. Agencies which supply the first three quarterly returns at the end of the reporting year are in breach of Regulation 6 of the FOI (MP) Regulations. Compliance with the quarterly deadlines ensures that the reporting of statistics is manageable for both agencies and the Attorney-General's Department.

9. It is important that agencies comply with the deadlines as the FOI Act requires the Attorney-General to prepare the annual report by 31 October each year. The names of agencies who have failed to submit quarterly or annual returns will be recorded in the FOI Annual Report.

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### **Non-electronic returns**

10. Where an agency is submitting a hand-written return (because it does not have Internet access and therefore cannot submit an electronic return), the return should be addressed to:

Information Access Section  
Information Law Branch  
Attorney-General's Department  
Robert Garran Offices  
Barton ACT 2600

### **Reconciling returns**

11. A return should be reconciled with the previous return to ensure that carry-overs of requests have been made correctly, as the database onto which statistics are entered will not accept a return which is inconsistent with the previous return. If it is subsequently discovered that a return which has been submitted is incorrect, please contact the Information Access Section on Phone: (02) 6250 6492 or Fax: (02) 6250 5939.

## **Attorney-General's Department contact details**

12. Inquiries in relation to processing of statistical return forms can be made to the Information Access Section on Phone: (02) 6250 6492 or Fax: (02) 6250 5939.

## **1. INSTRUCTIONS FOR COMPLETION OF AGENCY CONTACT DETAILS**

Option 1 from the Main Menu contains:

- **Agency Details:** The name of the agency and portfolio, and the name, telephone number and other details of a contact officer in the agency who is able to answer inquiries about the information supplied in the return.
- **Password Change:** A facility for users to change their Password.

## **2. INSTRUCTIONS FOR COMPLETION OF THE QUARTERLY RETURN**

### **General**

13. When submitting electronic returns *you must enter your quarterly returns in sequential order*. You cannot enter data for a later quarterly return until you have completed an earlier quarterly return.

### **PART 1 - Agency Quarterly Details**

14. Part 1 specifies the financial year being reported (eg. Financial Year Ending: 30 June 1999). The year-of-report (eg. 1999) is a system-generated figure which cannot be changed by the user.

15. Part 1 asks whether the quarterly return for an agency is its final quarterly return. This information will assist the Information Access Section in keeping agency information up to date. The Section also, where requested, provides advice to agencies on the legal aspects of requests for documents under the FOI Act. Where an agency is abolished, part of the paperwork in winding up the agency is the requirement to forward the last quarterly (and annual) return to the Attorney-General's Department. For example, where an agency was a statutory corporation and is being privatised, the FOI coordinator of the portfolio Department should ensure that a final quarterly (and annual) return for that agency is completed and forwarded to the Information Access Section. The final returns should be submitted as soon as practicable after the abolition of the agency and should not be left till the end of the reporting year. To submit a final quarterly return, click the box titled 'Is this your agency's last quarterly return?' and then click the 'Save' button.

*Nil Returns*

16. A 'Nil Return' is required to be submitted where there is nothing to report for the period. To submit a Nil Return, click the 'Nil Return' box in Part 1 and then click the 'Save' button.

## **PART 2 - Request Numbers**

17. A request for documents or information should only be included in the statistics if it satisfies the requirements of section 15 of the FOI Act. Do not include requests for access to personnel records under section 15A of the FOI Act. A request for full or partial remission of an application fee or for reduction or non-imposition of charges is not an application for the purposes of section 15 and should not be included in the statistics except in Part 7. For the purpose of inclusion in the quarterly report a request must be one which:

- is in writing;
- provides such information as is reasonably necessary to enable identification of the documents requested by the applicant;
- specifies an address in Australia for correspondence;
- has been posted or delivered to the agency or Minister at an office listed in a current telephone directory; and
- either includes the application fee of \$30 or such part of the application fee as has not been remitted or is a request in respect of which the application fee has been remitted in full.

18. A communication requesting access to documents should be counted as one request regardless of the number of categories of documents sought and the fact that documents may be held in different areas of an agency, eg. "I want to see my personal files and also any document relating to the taxation of maintenance payments."

19. Requests for internal review of an agency's decisions and appeals against an agency's decisions which are being considered by the Administrative Appeals Tribunal (AAT) or the Federal Court are not current requests for the purposes of Parts 2, 3 and 4 of this return.

20. **Part 2A** is a system-generated figure which records the number of requests on hand and which must reflect the actual number still being processed at the beginning of the quarter. This should be checked against the number of requests outstanding at the end of the last quarter (as recorded on the previous return.)

21. For the purposes of **Part 2B** do not include partial transfers. Include transfers in whole from the ACT under section 16A of the FOI Act.

22. **Part 2C** records the number of requests where a decision on access was given, including requests withdrawn, during the quarter.

23. **Part 2D** is a system-generated figure which reflects the sum of Part 2A plus Part 2B less the figure in Part 2C.

## **PART 3 - Processing of Requests**

24. Part 3 records a breakdown of the figure in Part 2C according to the type of decision made.

25. For the purposes of Part 3, where a decision has been made that access be granted in full or in part and the applicant has been notified in writing, the request is accordingly finalised for reporting purposes even if the relevant documents have not been forwarded to the applicant.

26. All requests where decisions were made regarding access in whole or part should be recorded whether or not:

- access may be deferred under section 21 of the FOI Act;
- the applicant sought review of a decision granting access with deletions or with a charge for access; or
- the applicant indicated that having regard to the charges imposed he or she no longer wanted access.

27. **Part 3C** covers all requests where the applicant was notified in writing that access was refused, including where access has been refused because:

- no relevant documents could be found in the possession of the agency;
- the documents sought were not subject to the FOI Act;
- the documents sought were exempt documents;
- the request and subsequent consultation under section 24(6) of the FOI Act failed to provide sufficient information to identify the document sought; or
- compliance with the request would involve a substantial and unreasonable diversion of resources under section 17(2) or section 24(1) of the FOI Act.

28. For the purposes of Part 3C do not include:

- those requests where access is deemed to have been refused in accordance with section 56(1) of the FOI Act because the 30 day time limit for notifying a decision has expired (a 'deemed refusal'); or
- those requests where access in the form sought has been refused but access in another form has been granted.

29. For the purposes of **Part 3D** only include requests transferred in whole to another agency.

30. For the purposes of **Part 3E**, enter the number of requests which applicants have withdrawn or are taken to have withdrawn. Apart from the situations where section 29(2) applies, a request should only be recorded as withdrawn where the applicant has specifically indicated that the request has been withdrawn.

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## **PART 4 - Response Time**

31. The response times in Part 4 refer only to initial decisions notifying the applicant that access was granted in full or in part or was refused. The period to be recorded is

the period between the date of receipt of the request by the agency and the date of dispatch of the notification of the access decision. The period is to be counted in calendar days. For the purposes of calculating response times in Part 4, do not take into account periods where the clock has stopped under sections 24(7) and 31 of the FOI Act. Where release is staged over a period of time because of the size or difficulty of a request, the response time still refers to the notification of the decision. Where, however, the size or difficulty of a request has caused a series of decisions to be made, the relevant response time is that of the last of the decisions.

### **PART 5 - Application Fees**

32. The amounts to be entered in Parts 5A and 5B are the application fees collected during the quarter irrespective of when the fees were notified. The amounts for Parts 5A and 5B should reflect the total of nominal charges net of remissions and refunds. The simple test for this Part is how much cash was actually banked during the quarter.

### **PART 6 - Processing Charges**

33. For **Part 6A** enter the number of requests, whenever received, for which charges were notified during the quarter.

34. **Part 6B** records a statement of the amount of charges notified during the quarter.

35. **Part 6C** records a statement of the amount of charges collected during the quarter, irrespective of when the charges were notified. The amount should reflect the total of nominal charges net of remissions and refunds. The simple test for this Part is how much cash was actually banked during the quarter.

### **PART 7 - Review of Access Decisions**

36. The FOI Act provides three procedures for review of a decision refusing access in accordance with a request but statistics are only collected on applications for internal review under section 54 of the Act and applications to the AAT under section 55. Statistics are not collected on complaints to the Ombudsman under section 57 of the FOI Act.

37. For the purposes of Part 7, include requests for internal and AAT review of decisions on fees and charges.

38. **Part 7A** requires the number of applications for review received by the agency during the quarter, according to whether the applications are for internal review or AAT review.

39. The results of reviews, whether internal or AAT, must be recorded at Parts 7B-7E. These figures should relate to the number of review decisions made and notified during the reporting period. They are not required to (and often will not) correlate with the number of review applications received during the quarter.

40. **Part 7B** requires the number of access decisions, whenever made, which are affirmed during the quarter according to whether they are made by way of internal review or on review by the AAT.

41. **Part 7C** requires the number of access decisions, whenever made, which are varied during the quarter according to whether they are made by way of internal review or on review by the AAT, and the nature of the variation.

42 **Part 7D** requires the number of applications for review where the applicant withdrew after either no concession (internal review and AAT review), partial concession or complete concession by the agency (AAT review only).

43. **Part 7E** requires the number of applications for AAT review, whenever received, where the AAT decided during the quarter that it had no jurisdiction.

44. **Part 7F** requires the number of applications for AAT review based on delay (deemed refusal - where the agency has not notified the applicant of a decision within 30 days), according to whether the delay occurred at the primary stage (Part 7F(a)) or at the internal review stage (Part 7F(b)).

## **PART 8 - Amendment of Personal Records**

45. Part 8 requires information about requests made under section 48 of the Act to amend personal records. Section 48 of the FOI Act provides that where a person claims that a document to which he or she obtained lawful access contains personal information about him or her:

- (a) that is incomplete, incorrect, out of date or misleading; and
- (b) that has been used, is being used or is available for use by the agency for an administrative purpose,

the person may request the agency to amend or annotate the record kept by the agency.

46. Since the amendment of the FOI Act in 1991 a person is not required to be an Australian citizen or be a person whose continued presence in Australia is not subject to any limitation imposed by law before he or she may make an application under Part V of the FOI Act.

47. Section 49 of the FOI Act requires that an application under Part V for amendment of a personal record must:

- be in writing;
- specify an address in Australia to which notices may be sent to the applicant;
- be posted or delivered to a central or regional office of the agency at the address listed in the telephone directory;

and must as far as practicable specify:

- the document that is claimed to require amendment;
- the information concerned and whether it is claimed to be incomplete, incorrect, out of date or misleading; and
- the applicant's reasons for the claim and the amendment requested by the applicant.

48. An agency deciding to amend a record in accordance with a request under section 48 has a discretion to make the amendment by altering the record or by adding an appropriate notation.

49. If the review decision is not to amend, the applicant may, under section 50(2), require the agency to add to the record a notation:

(a) specifying the respects in which the information is claimed to be incomplete, incorrect, out of date or misleading; and

(b) in a case where the information is claimed to be out of date - setting out such information as is claimed to be required to update the information.

50. Where an agency decides not to amend a document in accordance with a request it is required to assist the applicant to make an application for annotation of the personal record if the applicant so wishes. However, an agency is not required to annotate a record in the manner requested by an applicant if it considers that the statement provided by the applicant is irrelevant, defamatory or unnecessarily voluminous.

51. The requirements to notify an applicant of a decision in relation to an application under Part V of the FOI Act and to give reasons for a decision are the same as those that apply where an applicant has made an application for access to documents. The agency is required to take all reasonable steps to enable an applicant to be notified of a decision as soon as practicable but, in any case, within 30 days of the receipt of the request. The requirements that decisions be made by authorised persons and for reasons for decisions are the same as those that apply where an application is made for documents. The applicant has the same rights to internal review and appeal to AAT as he or she has where the application is one for access to documents.

52. **Part 8A** requires the number of requests under section 48 received during the quarter.

53. **Part 8B** requires information about the time taken to notify the applicant of the decision on his or her request under section 48. The information is required to be given in respect of all requests under section 48, whenever received, upon which a decision was notified in the quarter. The period to be recorded is from the date of receipt of the request to the date of despatch of the notification of the decision. The period is to be counted in calendar days.

54. **Part 8C** requires a statement of the number of applications received during the quarter for (a) internal review; and (b) AAT review of section 48 decisions.

55. **Part 8D** requires a statement of the number of section 48 requests, whenever received, which resulted in:

- (a) alteration of the record;
- (b) an addition of an appropriate notation;
- (c) both an alteration and an addition of an appropriate notation; and
- (d) refusal or confirmation of a decision to refuse to amend or add an appropriate notation;

for the quarter, according to whether the decision was made at the primary, internal review, or AAT review stage.

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### **3. INSTRUCTIONS FOR COMPLETION OF THE ANNUAL RETURN**

#### **PART 1 - Agency Annual Details**

56. Part 1 specifies the financial year being reported (eg. Financial Year Ending: 30 June 1999). The year-of-report (eg. 1999) is a system-generated figure which cannot be changed by the user.

57. Part 1 also specifies the number of requests received. This figure is also a system-generated figure which cannot be changed by the user, and it represents the total of requests received as reported in the quarterly returns.

58. Part 1 asks whether the annual return for an agency is its final annual return. This information will assist the Information Access Section in keeping agency information up to date. The Section also, where requested, provides advice to agencies on the legal aspects of requests for documents under the FOI Act. Where an agency is abolished, part of the paperwork in winding up the agency is the requirement to forward the last annual (and quarterly) return to the Attorney-General's Department. For example, where an agency was a statutory corporation and is being privatised, the FOI coordinator of the portfolio Department should ensure that a final annual (and quarterly) return for that agency is completed and forwarded to the Information Access Section. The final returns should be submitted as soon as practicable after the abolition of the agency and should not be left till the end of the reporting year. To submit a final annual return, click the box titled 'Is this your agency's last annual return?' and then click the 'Save' button.

#### *Nil Returns*

59. A 'Nil Return' is required to be submitted where there is nothing to report for the period. To submit a Nil Return, click the 'Nil Return' box in Part 1 and then click the 'Save' button.

#### **PART 2 - Staff Resources Involved in FOI Work**

60. Parts 2A and 2B require information about the staff resources in two categories:

- the number of staff who spent at least 75% of their time on FOI work; and
- the number of staff who spent 0-75% of their time on FOI work.

61. Staff resources reported in this Part should be staff whose positions include FOI as part of their normal functions. 'FOI work' includes work done in revising sections 8 and 9 statements and work done in dealing with requests under the FOI Act whether or not the application proceeds.

*Example 1*

An Administrative Review Unit consists of three officers: Executive Level 2, Australian Public Service Level 6 and an Australian Public Service Level 3. The APSL6 and the APSL3 spend all their time on FOI. The Executive Level 2 spends 90% of his or her time on FOI and 10% on Ombudsman and AAT matters. Part 2A would be recorded as three. The Unit is supervised by an Assistant Secretary who spends 20% of his or her time on FOI. The Branch is responsible to a First Assistant Secretary who spends 5% of his or her time on FOI. Part 2B would be recorded as two.

*Example 2*

A small agency receives 10 requests during the year. These are processed by an officer who spends 2% of his or her time on the requests. Three of the requests required internal review by the agency's general manager who spent less than 1% of his or her time on them. Part 2A would be recorded as nil and Part 2B would be recorded as two.

### **PART 3 - Staff-Years Spent on FOI**

62. Estimates for this item should be correct to two decimal places and should be based on the figure of 1.00 staff-years for each officer involved full time on FOI. It is important that these figures are as accurate as possible as they will be used to calculate the staff costs component of the report.

63. 'FOI work' has the same meaning as in Part 2. To convert from hours to staff-years, it is assumed, for simplicity, that one staff-year is 2,000 hours. The minimum time to be recorded is 0.01 staff-years which is equivalent to 20 hours. Any time less than 20 hours should be recorded as "0". Part 3A(i) records staff-years for officers whose primary function is FOI matters and for their supervisors (that is officers who spent at least 75% of their time on FOI work including sections 8 and 9 statements). Parts 3A(ii) and (iii) record staff-years for other staff, ie. line areas.

64. **Part 3A** requires information about staff resources within the agency. Ministers and their staff are reported separately in Part 3B.

*Example 3*

For the Administrative Review Unit described in Example 1 above, the estimated staff-years would be:

Executive Level 2 (90% of time on FOI)	0.90
APS Level 6 (100% of time on FOI)	1.00
APS Level 3 (100% of time on FOI)	1.00
Assistant Secretary (20% of time on FOI)	0.20
First Assistant Secretary (5% of time on FOI)	<u>0.05</u>
<b>TOTAL</b>	<b><u>3.15</u></b>

The number of staff-years would be recorded in Part 3A(i) as 3.15, as FOI is part of the duties of the above officers.

*Example 4*

An agency receives 10 requests which involve the following officers in a policy area: Executive Level 2, 100 hours; Assistant Secretary, 40 hours; First Assistant Secretary, 25 hours; and Deputy Secretary, 10 hours. This must be separated into 'SES' and 'APS Level 6, Executive Levels 1-2' officers. In this case 75 'SES' and 100 'APS Level 6, Executive Levels 1-2' hours were spent on FOI.

Before recording these figures they must be converted into staff-years:

SES	=	75 hours/2000 (1 staff-year)	=	0.04 staff-years
APSL6, Executive Levels 1-2	=	100 hours/2000 (1 staff-year)	=	0.05 staff-years

*Example 5*

Support staff (APS Levels 1-5) spent the following time on FOI matters:

typing of FOI letters and internal correspondence	122 hours
photocopying of documents for release	41 hours
filing	37 hours
data entry	<u>59 hours</u>
<b>TOTAL</b>	<b><u>259 hours</u></b>

Total staff-years for support staff = 259/2000 = 0.13 staff-years

65. **Part 3B** records the time spent by a Minister or Ministerial staff. If a request involves both an agency and a Minister's office the time spent by each should be recorded separately and, of course, reported separately. Time should be recorded separately for (i) Ministers and advisers; and (ii) Minister's support staff.

*Example 6*

The Minister and his or her advisers spent 0.02 staff-years and his or her support staff spent 0.05 staff-years on FOI work. Part 3B of the annual return would look like this:

**B. Minister's office**

(i) Minister and advisers	0.02
(ii) Minister's support staff	0.05
<b>TOTAL</b>	<b>0.07</b>

66. Section 93 of the FOI Act requires each Minister, as well as each agency, to furnish, in relation to their official documents, information for inclusion in the FOI annual report. Section 4(1) of the FOI Act defines "Minister" to include a Parliamentary Secretary appointed under the *Parliamentary Secretaries Act 1980*. Portfolios with Parliamentary Secretaries and other junior ministers should, therefore, submit separate annual and quarterly returns for each minister.

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**PART 4 - Non-Staff Costs Directly Attributable to FOI**

67. All expenditure on these items arising from FOI should be listed, whether in response to FOI requests, in the course of administrative processes for handling FOI, in the preparation of section 8 and section 9 documents or as a result of training programs etc.

<b>Item</b>	<b>Comments</b>
Photocopying	Includes documents for release, papers for consultation, file copies of correspondence, drafts of submissions, documentation for review bodies etc at 10 cents per page.
Printing	Includes brochures, agency FOI manuals, request forms etc.
Purchase of material	Includes audio visual and other training aids, publications on FOI, equipment, furniture and fittings for inspection facilities etc.
Postage	Includes routine correspondence and other methods of delivery (eg. priority paid, air express, courier). Current postage charges should be applied when making an estimation.

Telephone	Includes an estimate of the cost of local and STD calls for all officers of the agency for FOI matters.
Travel	Includes fares and travelling allowances for all officers of the agency on FOI matters.
Solicitors' fees and legal counsel fees	Is the actual fees paid during the period 1 July to 30 June, regardless of the period in which the services were performed.
Computer time	Includes cost of use of agency's computer facilities for entry of FOI statistical data, search and retrieval etc.
Other	Includes seminar fees, special access arrangements etc.

### **PART 5 - Comments on Operation/Administration of the FOI Act**

68. Completion of Part 5 is not compulsory but agencies are invited to provide comments on matters such as:

- the effect of amendments to the FOI Act;
- the level and quality of support offered by the Attorney-General's Department;
- the effect of changes to internal structures and procedures; and
- changes to the level or location of decision-makers within the agency.

Comments are sought on how such matters affect the operations of the agency and its ability to manage its FOI responsibilities.

### **PART 6 - Comparison with Previous Year**

69. Completion of Part 6 is not compulsory but agencies are urged to provide an explanation, which could be included in the FOI Annual Report at the request of an agency, of major differences in costs incurred in the year under report and costs incurred during the previous year. In the past, agencies have received adverse media criticism where there were significant increases in costs and no explanation was provided in the report.