



**Australian Government**

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**Department of the Prime Minister and Cabinet**

## **FOI GUIDELINES**

# **REPORTING AND DISCLOSURE OBLIGATIONS OF AGENCIES**

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# **FOI GUIDELINES**

## **REPORTING AND DISCLOSURE OBLIGATIONS OF AGENCIES**

### **PURPOSE**

These Guidelines set out agencies' obligations in relation to:

- decision-making authorisations (section 23);
- making documents available for purchase or inspection (section 9);
- publishing information about functions and documents of agencies (section 8); and
- FOI statistics and reporting (subsection 93(1)).

Other statutory obligations are covered in FOI Guidelines dealing with procedures, review, transfer and consultations and fees and charges.

## **AUTHORISED DECISION-MAKERS UNDER THE FOI ACT**

### **Overview**

- FOI decisions may be made only by authorised persons
- agencies should have arrangements in place to authorise FOI decision-makers
- authorisations should be in writing and should be reviewed regularly

### **FOI decision-makers: subsection 23(1)**

The FOI Act requires that a decision on an FOI request received by an agency can be made only by:

- the responsible Minister;
- the agency's principal officer; or
- an officer of the agency who has been authorised to do so under arrangements approved by the Minister or the principal officer.

### **Content of authorisations**

Authorisations of agency officers should be as specific as necessary under the circumstances. In most cases a general authorisation will be sufficient, but in some instances it may be advisable to make specific authorisations in relation to:

- decisions to give or deny access in accordance with a request;
- decisions in relation to the charging or remission of application fees and other charges;
- decisions in granting extension of time for review applications to be lodged;
- decisions in relation to amendment or annotation of records containing personal information; and
- decisions about internal review.

### **Level of decision-makers**

It is a matter for the agency as to what level of officer is appropriate to make decisions under the FOI Act. The appropriate levels of decision-makers may vary according to:

- the size and function of the agency concerned;
- the nature of the requests received;
- the sensitivity of the documents to which access is being sought; and
- whether FOI decision-making is centralised or decentralised.

In every case, agencies should endeavour to give effect to the general principle that the authority to grant requests to access documents should be delegated downwards as far as realistically possible.

Internal review decisions should be made, at the very least, at a level higher than the position of the person who made the primary decision. It should be noted that internal review is not possible if a primary decision has been made by a Minister or principal officer. In these cases the only avenue for the aggrieved applicant is an appeal to the Administrative Appeals Tribunal (AAT).

## **Form of authorisation arrangements**

Authorisation arrangements do not have to take any particular form. Again, it is up to each agency to determine the arrangements which best suit their organisation, functions and internal management requirements. However, good administration requires that authorisation arrangements should be in writing and kept on file for ready access.

Authorisations should identify, as clearly as possible, the persons authorised to make decisions and the decisions they are authorised to make. This is important as only Ministers and authorised decision-makers can take advantage of protections given under sections 91 and 92 against actions for defamation, infringement of copyright and certain criminal offences.

Depending on the circumstances of the agency, authorised persons can be identified by their position title or their location in a particular part of the agency's structure. Agencies should regularly review their authorisations to ensure that they are kept up to date and in line with changes in the agency's operations and functions.

## **Approval of decision-making arrangements**

Authorisation arrangements may be approved by either the Minister or the agency's principal officer. It is suggested that, in agencies which have substantial policy responsibilities, the relevant Ministers should be made aware, at least, of the proposed decision-making arrangements. Again, good administrative practice requires that approval of the arrangements be documented and filed for ready access.

## SECTION 9 DOCUMENTS

### Overview

Agencies must:

- make available for inspection or purchase manuals and like materials which the agency uses in making decisions or recommendations affecting members of the public;
- publish a statement setting out what materials are available for inspection and purchase and from where this material can be obtained (the statement is to be lodged with and made available from the National Archives of Australia); and
- update the statement no later than 12 months from the date of the last statement.

Documents to be included are those concerned with the administration by an agency of an enactment or scheme.

Exempt material *should not* be included.

### Obligations on principal officers

There are three obligations on the principal officer of the agency:

- to make available for inspection and purchase manuals and like materials which the agency uses in making decisions or recommendations affecting members of the public;
- to publish a statement setting out what materials are available for inspection and purchase and from where this material can be obtained (the section 9 statement should be available from the National Archives of Australia); and
- to update the statement every 3 months if practicable, but no later than 12 months, from the date of the last statement.

For agencies which come into existence because of changes to government policies or administrative arrangements, the requirement is that the section 9 statement obligations must be met *no later* than 12 months after the agency came into existence.

The obligations of section 9 exist regardless of whether there have been any FOI requests for the material. Section 9 does not require an agency to prepare manuals or other like material where none exists, only that existing material falling within the criteria of section 9 is available for inspection or purchase. The rewriting of an existing manual or instruction would be required only where it is necessary to exclude exempt material that the agency does not wish to disclose.

### What documents are section 9 documents?

Agencies must make available for inspection or purchase documents available for use or used by officers of the agency to make decisions or recommendations, under an enactment or under schemes which the agency administers, concerning the entitlements, rights, privileges, benefits, penalties or other detriments affecting members of the public. These documents include:

- copies of manuals and the like;
- operating guides and guidelines giving details of schemes and statements setting out how schemes are intended to operate or be administered;
- documents describing procedures to be followed in investigating breaches or possible breaches or evasions of the law or a scheme;

- circulars;
- instructions, practices or precedents and such like documents; and
- legal rulings, instruments, instructions, operating guides and the like (note that it is the content of the document, not the form of the document which is important).

For these purposes, an ‘*enactment*’ means a Commonwealth Act or instruments (including rules, regulations or by-laws) made under an Act. An enactment also encompasses amendments as made from time to time. The definition also includes an Ordinance of the Australian Capital Territory or instruments made under an Ordinance. However, since self-government commenced in the ACT, Ordinances are not common and FOI practitioners would rarely encounter one. It should be noted that ACT Ordinances and Acts passed by the ACT Legislative Assembly are *not* the same thing. The term ‘scheme’ refers to administrative schemes for which there is no statutory backing except through an appropriation in the Appropriation Acts.

‘Decisions or recommendations’ refer to decisions or recommendations concerning:

- rights, entitlements or benefits to which persons may be entitled eg determining an amount of a pension or benefit payable under social security law; and
- obligations, penalties or other detriments eg recovery of overpayments by Centrelink under social security law; or assessment of Goods and Services Tax (GST).

Where the documents are available for reference by an officer for work purposes and they have ready access to it, the document would be regarded as ‘*being provided for the use*’ of the officers.

Agencies are not obliged to make available documents containing any exempt material although, if it is practicable to do so, the agency should make available as much of the material it can with the exempt material removed. This does not apply to material being used to make decisions or recommendations in documents to which:

- a section 36 exemption claim could be made (deliberative process documents: subsection 36(2)); or
- a section 42 exemption claim could be made (legal professional privilege: subsection 42(2)).

The exclusion of sections 36 and 42 material applies only insofar as that material is being used to make decisions or recommendations. If there is other material in the manual, for example, to which section 36 or section 42 may apply, then there is no requirement to make that material available.

### **What documents are not section 9 documents?**

The following *are not* section 9 documents:

- library material used for reference purposes in an agency;
- documents in respect of which an agency is exempt under Part II of Schedule 2 to the FOI Act;
- documents available to the public from other publishing sources eg law reports; and
- documents published by another agency and already available to the public.

The word ‘published’ is to be read in the ordinary sense of copies being made available to the public either for sale or free of charge.

### **How and where should documents be made available?**

Agencies may make available documents for inspection or purchase by:

- publishing documents on their agency's website;
- printing in hard copy either for sale or to be provided when requested; or
- 'dumping' from an electronic copy on request.

It is up to the agency whether it sells its manuals or like material, or gives them away free of charge. If charges are to be made and no pricing policy is available, a charge for photocopying at the rate provided in the FOI Regulations could be made (currently 10 cents per page).

### **How are section 9 statements published?**

The purpose of the statement required by paragraph 9(2)(b) of the FOI Act is to inform members of the public about documents that an agency uses to make decisions affecting the benefits or liabilities of individuals, and how and where they may obtain access to them or purchase copies.

The section 9 statement must be accessible from each 'Information Access Office'. In practice, this means lodging the section 9 statement and quarterly or annual updates with the National Archives of Australia. The statement can also be published in the agency's annual report or on its website, and it would be good administrative practice to do so.

The Minister administering the FOI Act reports the extent of compliance by agencies each year in the annual report on the operation of the FOI Act. This includes compliance with the requirements of section 9.

### **Reviewing section 9 statements**

Agencies should implement processes to review their section 9 statement details in a timely manner. The FOI Act requires statements to be reviewed at least annually, but preferably quarterly. Agencies' review procedures should ensure that section 9 statements are provided to the National Archives of Australia.

### **Consequences of not including documents in a section 9 statement**

If a document of a kind encompassed by section 9 of the FOI Act is not made available for purchase or inspection or included in a statement in accordance with that provision, then no individual can be prejudiced because of non-compliance with some rule, guideline or practice if the individual was not aware of it because it was not published when it should have been. This reflects procedural fairness. If the individual had been aware of the rule, guideline or practice, the individual could have lawfully avoided the prejudice to his or her interests.

## SECTION 8 STATEMENTS

### Overview

Agencies must publish a statement setting out:

- categories of documents held in the agency;
- how access can be sought to those documents;
- what arrangements exist for persons outside the Commonwealth to participate in policy formulation or administration by the agency of any legislation or scheme; and
- details of the functions of the agency and powers affecting members of the public.

Statements should be published in the agency's annual report.

Each Minister, in respect of each agency for which that Minister is responsible, must publish and update the following information, as specified in section 8 of the FOI Act:

- a statement setting out the particulars of the organisation and its functions, including decision-making powers and other powers affecting members of the public involved in those functions;
- a statement setting out the arrangements by which any person or bodies outside the Commonwealth administration can participate in policy formulation or in the administration by the agency of any legislation or scheme, either through consultative processes or by making representations;
- a statement of the categories of documents that are held by the agency;
- a statement of how members of the public can get physical access to documents held in the agency; and
- a statement of any information that needs to be available to members of the public about procedures for gaining access to documents and to whom and where such requests for access may be directed.

### The object of section 8

The object of section 8 is to:

- enable members of the public to effectively exercise their rights under the FOI Act;
- provide members of the public with information about their opportunities to participate in government decision-making; and
- make information available to the public about information resources which can be used by the public.

### Ministers' Offices

Although section 8 does not apply to documents held by the Minister or his offices, the functions and powers of the Minister should be listed in the section 8 statement of the Minister's department.

## **Exempt agencies**

Agencies specified in Part I of Schedule 2 to the FOI Act are exempt from the requirements to publish section 8 statements, as are bodies which are not ‘*prescribed authorities*’ for the purposes of section 4 of the FOI Act.

## **How are section 8 statements published?**

Section 8 statements should be published in the agency’s annual report. This is because annual reports contain information about structure and functions similar to that required by section 8 of the FOI Act, which means there is a cost saving but also because the reports are tabled in Parliament which means they are widely available.

The statements may be published:

- as an appendix to the annual report;
- in a separate volume as a supplement to the annual report; or
- distributed throughout the annual report or be otherwise included in the annual report.

If an agency does not produce an annual report then the section 8 statement must be included in the annual report of the Minister’s department.

While the FOI Act only requires section 8 statements to be published in annual reports, it would be good administrative practice and in the spirit of the provision to publish the information on the agency’s website as well, if that is practicable.

## **Time limits**

Where a new agency comes into existence, a section 8 statement must be published in the first annual report after the establishment of the agency or, in any event, 12 months after its establishment.

Statements are to be regularly updated each year, beginning in the calendar year following the date of which the information was first published by the agency.

## **Responsibility for publication**

The responsibility for preparation of section 8 materials lies with the Minister responsible for the agency concerned and must be met every 12 months.

Agencies can decide what information they will publish about their functions to satisfy the informative aspects of section 8. However, failure to publish the material because of administrative convenience or on aesthetic grounds may expose their Minister to criticism that the Minister failed to comply with the Minister’s statutory obligations.

## **Particular requirements of section 8**

### ***Organisation and functions of an agency: subparagraph 8(1)(a)(i)***

Agencies must publish a statement of the particulars of the organisation and functions of the agency: subparagraph 8(1)(a)(i).

In relation to the *organisation* of an agency, publication of organisation charts needs to be supplemented with sufficient narrative to explain the charts. The amount of detail in the charts will vary from agency to agency, but best practice would indicate that more details should be provided in those areas of the agency where there is contact with the public.

In relation to the *functions* of the agency, the statement should be detailed enough to allow an adequate understanding of the agency's functions as a whole and the functions of its various divisions or branches. Where there are overlapping functions, it should enable a member of the public to know to which area or agency an enquiry about any particular issue should be addressed. It should set out all the legislation for which the agency is responsible.

The primary sources of the functions of an agency are:

- for a *department*, the functions as set out in the Administrative Arrangements Order and those additional functions conferred on a Minister where the Minister is advised by, or otherwise assisted by, the department in performing those functions;
- for a *statutory authority*, the statement of functions as set out in the legislation establishing the authority; and
- for *any other agency*, the functions set out in the document that established the agency.

Other sources of information include Government decisions and Ministerial directions.

***Decision-making powers of an agency: subparagraph 8(1)(a)(i)***

Statements should include as far as practicable a statement of the decision-making powers affecting members of the public involved in the functions of the agency, including:

- powers conferred by legislation, including subordinate legislation such as regulations (a general description of powers exercised indicating the nature and purpose of the power would be sufficient); and
- powers conferred by Government or Ministerial directions.

Powers affecting staff of an agency in their capacity as officers or employees (internal management) of that agency need not be included.

The term 'power' should not be interpreted narrowly in the sense of a power to impose legal obligations to create legal rights. It should be understood to include the use of executive authority to grant benefits, including the power to grant money, otherwise than by statute. A power is to be regarded as affecting a member of public, even if it only affects a member of a particular section of the public.

Powers vested in a Minister are regarded as powers involved in the functions of an agency, as powers exercised by a statutory officer holder who is not described separately as a 'prescribed authority' for the purposes of the FOI Act.

***Arrangements for outside participation: subparagraph 8(1)(a)(ii)***

The statement must set out how bodies outside the Commonwealth may participate in the policy formulation of the agency or the administration by the agency of any schemes or enactments. This can be done by cross-referencing the statement to the relevant functions of the agency, to make the statement more useful.

The term ‘arrangements’ means arrangements, whether statutory or not, which are continuing in character. It does not include ad hoc arrangements confined to particular issues, even if they are formally established.

Arrangements with persons or bodies outside the Commonwealth includes:

- all bodies other than those established by or under Commonwealth or Australian Capital Territory statutes or by Government or Ministerial directions; or
- all persons other than officers or employees of the Commonwealth or ACT authorities; or
- States, State Ministers or authorities, the Northern Territory and Norfolk Island and the Ministers or authorities of those territories; or
- Industry Councils; the National Health and Medical Research Council or other such bodies; or
- Standing Interdepartmental Committees; or
- standing arrangements made under enactments which require the holding of enquiries or conferences or otherwise provide channels for members of the public to make submissions to the agency on its administration of the law.

Note that the arrangements may involve agencies which are themselves agencies for the purposes of the FOI Act but which also facilitate outside participation in both the formulation of recommendations and the formulation of relevant policy issues eg the Administrative Review Council is such an agency as it provides recommendations to the Attorney-General on administrative law issues.

The statement should include:

- the structure of the body which is the vehicle for outside participation;
- the basis for its formation (statute, Ministerial direction, Commonwealth/State arrangement);
- the basis on which membership exists and procedures as to how to become a member of the body;
- procedures for participation, consultation or making submissions;
- whether the body can act on its own motion only or upon reference made to it by the Government; and
- whether any submissions or representations made to the body are received on a confidential basis or whether they are open to public scrutiny.

The statement does not have to include:

- any descriptions of methods of dealing with Ministerial correspondence; or
- Parliamentary questions and the like.

These do not have the character of *arrangements* for the purposes of section 8.

The reference to *policy formulation by the agency* includes policy formulation by the Minister responsible for the agency and the statement would include advisory bodies which provide advice directly to the Minister as well as those providing advice directly to the department.

***Categories of document: subparagraph 8(1)(a)(iii)***

Section 8 should be read in conjunction with the *Requirements for Annual Reports* which outlines requirements for agencies to report on categories of documents maintained by the agency.

Each agency must set out the categories of documents maintained in the agency including those listed in subsection 8(6). What is required is not a detailed description of documents but only the categories of documents held and a sufficient description of the documents in the possession of the agency so as to assist members of the public to effectively exercise their rights under the FOI Act.

The statement must include the categories of documents even if they are exempt documents under the FOI Act eg Cabinet documents, but does not require inclusion of any information in the statement where that information itself would be exempt. Nor does the agency have to list all the documents it has in its possession. Where agencies have overseas posts, that category of documents should be included but documents sent to National Archives of Australia should not be included.

The type of documents held by an agency will depend on the functions of the agency although most agencies will hold categories of documents in common such as personnel files and financial files.

The following category of documents ***must be*** included:

- categories of documents open to public access as part of a public register or otherwise in accordance with an enactment other than the FOI Act (paragraph 12(1)(b));
- categories of documents available for purchase by the public or sections of the public in accordance with any agency arrangements (paragraph 12(1)(c)); and
- categories of documents available to the public free of charge on request or other than through FOI.

The list below is indicative only of categories of documents:

- documents maintained as separate records of decision-making machinery within an agency eg agenda and minutes of meetings of committees, boards or senior officials in the agency;
- documents maintained as separate records of Cabinet matters, including submissions to Cabinet and Cabinet Minutes;
- documents maintained separately relating to specific agency functions eg research and technical reports, studies, surveys, development of policy, submissions, transcripts or documents relating to assessments, decisions and consequential accounting of payments of benefits;
- maps, plans, licence registers, photographs, films, videos or scripts which may be held separately; and
- documents relating to day-to-day internal administration and management eg personnel files, staff and management services, correspondence, finance and accounting documents, tenders and assets lists etc.

***Facilities for access: subparagraph 8(1)(a)(iv)***

Agencies must set out:

- arrangements, if any, facilitating physical access (including disabled access) by members of the public to documents; and

- facilities for access to documents, such as those held in public registers and documents which an agency may make available for free or subject to a charge.

***Publication of FOI procedures for access: subparagraph 8(1)(a)(v)***

Agencies must set out the procedures for providing access to documents held by the agency. These include:

- how to make a request (while an agency may encourage an applicant to use a form, it cannot insist that such a form be used); and
- the title, address and contact details of a person to whom applications can be addressed (officers names are not required).

**Other information can be included in annual reports**

An agency can also include in its annual report the following information:

- the number of FOI requests received;
- fees and charges; and
- appeals.

This information can be compiled from the statistical returns which agencies are required to submit to the Department of the Prime Minister and Cabinet.

## QUARTERLY AND ANNUAL STATISTICAL RETURNS

### Overview

- Agencies must provide quarterly and annually statistical returns to the Department of the Prime Minister and Cabinet within statutory deadlines.
- The Minister administering the FOI Act must prepare and table in Parliament an annual report on the operation of the FOI Act.
- The FOI Act requires each agency and Minister to provide information for inclusion in the report: subsection 93(2).
- 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.

### Meaning of ‘agency’: subsection 4(1)

‘Agency’ means a department (except parliamentary departments), a ‘prescribed authority’ or an ‘eligible case manager’.

‘Prescribed authority’, 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 an Order-in-Council.

Companies and incorporated associations are not prescribed authorities (and therefore not agencies) unless the Commonwealth is in a position to exercise control over that body and the body is listed in Schedule 1 to the Freedom of Information (Miscellaneous Provisions) Regulations 1982. A list of agencies is included in the FOI annual report.

### Reporting deadlines: Regulation 6(a)

Statistical information is to be provided on a quarterly basis to the Department of the Prime Minister and Cabinet, 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**

The deadline for submitting annual returns is **31 July** for each year ending on 30 June.

Agencies which supply the first three quarterly returns at the end of the reporting year, rather than at the end of each quarter, are in breach of the Regulations. It is important that agencies comply with the deadlines as the FOI Act requires the Minister administering the FOI Act to prepare the annual report by 31 October each year. The names of agencies that have failed to submit quarterly or annual returns may be recorded in the FOI Annual Report.

## Reconciling returns

Each return should be reconciled with the previous return to ensure that carry-overs of requests have been made correctly. The database onto which statistics are entered will not accept a return which is inconsistent with the previous return.

## HOW TO COMPLETE RETURNS

The Department of the Prime Minister and Cabinet maintains a web-based database for agencies to record their FOI statistics. The following paragraphs give basic information on how to use the system to lodge statistical returns. For more detailed information or for help to resolve problems, please contact the FOI Statistics Administration Officer in the Department of the Prime Minister and Cabinet (email: foistats@pmc.gov.au).

### PART 1 - 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.

### PART 2 - THE QUARTERLY RETURN

#### General

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 all earlier quarterly returns for the reporting year.

#### Part 1 - Agency Quarterly Details

Part 1 specifies the financial year being reported (eg Financial Year Ending: 30 June 2010). The year-of-report (eg 2010) is a system-generated figure that cannot be changed by the user.

Part 1 asks whether the quarterly return for an agency is its final quarterly return. This information will assist the Department of the Prime Minister and Cabinet to keep agency information up to date. **Where an agency is abolished**, it is a requirement of the winding up process that the agency forwards the last quarterly and annual return to the Department of the Prime Minister and Cabinet. For example, where an agency was a statutory corporation and is being privatised, the FOI coordinator of the agency should ensure that the final quarterly (and annual) returns for that agency are completed and forwarded to the Department of the Prime Minister and Cabinet. The final returns should be submitted as soon as practicable after the abolition of the agency and should not be left until the end of the reporting year. To submit a final quarterly return, click the box which asks 'Is this your agency's last quarterly return?' and then click the 'Save' button.

## Nil Returns

A 'Nil Return' should be submitted where there is nothing to report for the period ie there are no figures, including on hand figures, in the quarterly return whatsoever. To submit a nil return, click the 'Nil Return' box in Part 1 and then click the 'Save' button.

## Part 2 - Request Numbers

A request for documents or information should be included in the statistics only if it satisfies the requirements of section 15 of the FOI Act (see below). 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 full application fee of \$30, or such part of the application fee as has not been remitted, or a request for remission of the application fee.

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'.

Neither a request for an internal review of an agency's decision or an appeal against an agency's decision which is being considered by the AAT or the Federal Court are current requests for the purposes of Parts 2, 3 and 4 of this return.

**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).

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

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

**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**

**Part 3** records a breakdown of the figure in Part 2C according to the type of decision made. For the purposes of Part 3, where a decision has been made to grant access in full or in part and the applicant has been notified in writing, the request is to be regarded as finalised even if the relevant documents have not yet been forwarded to the applicant.

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

- access is 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, the applicant no longer sought access.

**Part 3C** covers all requests where the applicant was notified in writing that access was refused, including where access was 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 subsection 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 subsection 17(2) or subsection 24(1) of the FOI Act.

For the purposes of Part 3C *do not include*:

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

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

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

### **Part 4 - Response Time**

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 subsection 24(7) or section 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 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**

The amounts to be entered in **Part 5A** and **Part 5B** are the application fees collected during the quarter irrespective of when the fees were notified. The amounts in Part 5A and Part 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**

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

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

**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**

The FOI Act provides three procedures for review of a decision refusing access in accordance with a request. Statistics are, however, collected only 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.

For the purposes of Part 7 you need to include requests for internal and AAT review of decisions on fees and charges.

**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.

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.

**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.

**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.

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

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

**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**

**Part 8** collates information about requests made under section 48 of the FOI Act to amend personal records.

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

**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 should 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. This period is to be counted in calendar days.

**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.

**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.

## **PART 3 - THE ANNUAL RETURN**

### **Part 1 - Agency Annual Details**

Part 1 specifies the financial year being reported (eg Financial Year Ending: 30 June 2010). The year-of-report (eg 2010) is a system-generated figure which cannot be changed by the user.

Part 1 also specifies the number of requests received. This figure is 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.

Part 1 asks whether the annual return for an agency is its final annual return. This information will assist the Department of the Prime Minister and Cabinet to keep agency information up to date.

**Where an agency is abolished**, it is a requirement of the winding up process that the agency forwards the last annual (and quarterly) return to the Department of the Prime Minister and Cabinet.

For example, where an agency was a statutory corporation and is being privatised, the FOI coordinator of the portfolio Department should ensure that the final annual (and quarterly) return for that agency are completed and forwarded to the Department of the Prime Minister and Cabinet. The final returns should be submitted as soon as practicable after the abolition of the agency and should not be left until the end of the reporting year. To submit a final annual return, click the box which asks 'Is this your agency's last annual return?' and then click the 'Save' button.

## **Nil Returns**

A 'Nil Return' should 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**

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.

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 3. 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 2.

### *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 0 and Part 2B would be recorded as 2.

## **Part 3 - Staff-Hours Spent on FOI**

*Note: Prior to 2008-09 agencies reported in Staff-Years rather than Staff-Hours.*

'Staff-Hours' means the number of hours spent on FOI work.

Estimates for this item should be correct to the nearest **whole hour** (no decimal places, commas or other punctuation should be entered). The figures should be rounded to the nearest whole number where necessary eg a total of 35½ Staff-Hours would be entered as 36 (not 35.5 or 35). It is

important that these figures are as accurate as possible because they will be used to calculate the staff costs component of the report.

‘FOI work’ has the same meaning as in Part 2. Part 3A(i) records Staff-Hours for officers whose primary function is FOI matters. Parts 3A(ii) and (iii) record Staff-Hours for other staff eg staff in line areas in the agency.

**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-Hours would be as follows (based on the assumption, for the sake of simplicity, that 100% of time is 2,000 hours):

|   |             |
|---|-------------|
| Executive Level 2 (90% of time on FOI)        | 1800        |
| APS Level 6 (100% of time on FOI)             | 2000        |
| APS Level 3 (100% of time on FOI)             | 2000        |
| Assistant Secretary (20% of time on FOI)      | 400         |
| First Assistant Secretary (5% of time on FOI) | 100         |
| <b>TOTAL</b>                                  | <b>6300</b> |

A figure of 6300 would be recorded in the answer to Part 3A(i), 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 – 110 hours; Assistant Secretary - 40 hours; First Assistant Secretary - 25 hours; and Deputy Secretary - 12 hours. This must be separated into ‘SES’ and ‘APS Level 6, Executive Levels 1-2’ categories. In this case, 77 Staff-Hours were spent by ‘SES’ officers on FOI and 110 Staff-Hours were spent by ‘APS Level 6, Executive Levels 1-2’ officers on FOI.

These figures would be recorded in Part 3A(ii) as follows:

|                              |     |
|------------------------------|-----|
| SES officers (or equivalent) | 77  |
| APSL6, Executive Levels 1-2  | 110 |

*Example 5*

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

|  |            |
|--|------------|
| Typing FOI letters and internal correspondence | 122        |
| Photocopying of documents for release          | 41         |
| Filing   | 37         |
| Data entry                                     | 59         |
| <b>TOTAL</b>                                   | <b>259</b> |

A figure of 259 would be recorded in the answer to Part 3A(iii).

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. Portfolios with Parliamentary Secretaries and other junior Ministers should, therefore, submit separate annual and quarterly returns for each Minister.

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

*Example 6*

The Minister and the Minister's adviser spent 44 Staff-Hours and the Minister's support staff spent 115 Staff-Hours on FOI work. Part 3B of the annual return would be entered as follows:

**B. Minister's office**

|                               |            |
|-------------------------------|------------|
| (i) Minister and advisers     | 44         |
| (ii) Minister's support staff | 115        |
| <b>TOTAL</b>                  | <b>159</b> |

#### **Part 4 - Non-Staff Costs Directly Attributable to FOI**

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.

*Note: Prior to 2008-09 agencies reported on 'Computer time' costs but from 2008-09 are no longer required to do so. From 2008-09 agencies have reported on 'Training' costs.*

| <b>Item</b>                                    | <b>Comments</b>  |
|--|--|
| <b>Photocopying</b>                            | Includes documents for release, papers for consultation, file copies of correspondence, drafts of submissions, documentation for review bodies etc at 10 cents per page.     |
| <b>Printing</b>                                | Includes brochures, agency FOI manuals, request forms etc.   |
| <b>Purchase of material</b>                    | Includes audio visual and other training aids, publications on FOI, and equipment, furniture and fittings for inspection facilities etc.                                     |
| <b>Postage</b>                                 | Includes routine correspondence and other methods of delivery (eg priority paid, air express, courier). Current postage charges should be applied when making an estimation. |
| <b>Telephone</b>                               | Includes an estimate of the cost of local and STD calls for all officers of the agency for FOI matters.  |
| <b>Travel</b>                                  | Includes fares and travelling allowances for all officers of the agency on FOI matters.  |
| <b>Solicitors' fees and legal counsel fees</b> | Is the actual fees paid during the period 1 July to 30 June, regardless of the period in which the services were performed.  |
| <b>Training</b>                                | Includes cost of attending FOI training.   |
| <b>Other</b>                                   | Includes conference fees, special access arrangements etc.   |

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

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 Department of the Prime Minister and Cabinet;
- 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

Completion of **Part 6** is not compulsory although agencies are urged to provide an explanation, which could be included in the FOI annual report of major *differences* in statistics for the year under report and the previous year including, for example:

- the number of FOI requests received;
- FOI costs incurred;
- FOI fees and charges collected;
- Staff-Hours spent on FOI matters;
- FOI response times; and
- Outcomes of decisions eg the reasons for an increase or decrease in the percentage of requests granted in full, in part or refused.

In the past, agencies have received adverse media criticism where there were significant increases in costs and no explanation was provided in the report.