



ACT
Government

FREEDOM OF INFORMATION OPEN ACCESS INFORMATION GUIDELINE

CHIEF MINISTER, TREASURY AND
ECONOMIC DEVELOPMENT
DIRECTORATE

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DOCUMENT CONTROL

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REVISION

This Guideline must be reviewed and updated every two years (or more frequently following major change to business operations and/or priorities) as a part of Chief Minister, Treasury and Economic Development Directorate’s freedom of information processes.

Revision	Description	Date	Author
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This is an Open Access document.

REVIEW AND AUTHORISATION

The Guideline is to be reviewed and endorsed by the Executive Group Manager, Corporate, Chief Minister, Treasury and Economic Development Directorate.

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Date

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THE ACT *FREEDOM OF INFORMATION ACT 2016* (THE FOIACT)

The FOI Act gives individuals the legal right to:

- > access government information unless access to the information would, on balance, be contrary to the public interest;
- > request information concerning themselves to be changed if it is incomplete, out-of-date, incorrect or misleading; and
- > appeal against a decision to restrict access to a document or refuse to amend/annotate a personal record.

WHAT IS GOVERNMENT INFORMATION?

Government Information is information held by an agency¹ or Minister, excluding information relating to a Minister's personal or political activities or created or received by a Minister in the Minister's capacity as a Member of the Legislative Assembly.

Government Information² can include papers and other materials on which there is writing and any other material from which sounds, images or writing are capable of being reproduced. This includes emails and other electronic records, post-it notes, message pads, maps, diagrams, plans, photographs, film, sound and video recordings, notebooks and diaries.

WHAT IS OPEN ACCESS INFORMATION?

In addition to providing for access to information through a formal request, the *Freedom of Information Act 2016* also requires agencies to proactively release a range of government information including:

- > functional information about the agency including its structure, functions and kinds of information held;
- > information about the agency or the work of the agency that is tabled in the Legislative Assembly;
- > the agency's policy documents;
- > budgetary papers including details of appropriations;
- > information about government grants made or administered by the agency;
- > the agency's disclosure log;
- > a statement of boards, councils, committees, panels and other bodies that have been established by the agency for the purpose of advising the agency or a Minister responsible for the agency;
- > any report or recommendation prepared by a body mentioned in the point above;
- > information the agency undertakes to make available through an Agency Publication Undertaking;
- > any incoming ministerial briefs, parliamentary estimates briefs, annual reports briefs or question time briefs prepared after 31 December 2017 (note these only have to be released after they are 5 years old);
- > information declared by the Ombudsman to be Open Access Information; and
- > information prescribed by regulation.

¹ *Freedom of Information Act 2016* (ACT) s15.

² *Ibid* s14.

FUNCTIONAL INFORMATION

This includes information on the structure of the agency, functions of the agency, details of information held by the agency and how requests for information can be made to the agency. This information is prepared by the Information Access Team (IAT) in Corporate.

INFORMATION TABLED IN THE LEGISLATIVE ASSEMBLY

Any information tabled in the Legislative Assembly for an Agency, that contains information about the Agency or the work of the Agency is considered open access information.

The Legislative Assembly publishes most of this information on their website at https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/tabled_papers. They however don't publish a number of documents including budget papers and annual reports, which are published elsewhere.

POLICY DOCUMENTS

A policy document includes any of the following (but not a draft of the following):

- > a document containing interpretations, rules, guidelines, statements of policy, practices or precedents;
- > a document containing operational information that ensures that members of the public can be adequately informed about the framework of rules, policies, principles and procedures that agencies apply in making decisions or recommendations;
- > a document describing the procedures to be followed in investigating a contravention or possible contravention of an Act or administrative scheme; or
- > another document of a similar kind used to assist the Directorate to exercise its functions.

At the most general level a policy document is a set of ideas or a plan of what to do in particular situations that has been officially agreed to by the agency or government.

The following types of documents would not generally be considered policy documents:

- > policy analysis, discussions and decisions occurring with government about legislation, budgets and programs;
- > case study and capability reports that discuss an agency response to an actual or foreshadowed event; and
- > audit or evaluation reports on the operation of a government program or compliance with legislative requirements.

While all new policy documents which came into existence on or after 1 January 2018 are considered open access information, as a matter of better practice, older policies that are still in effect should also be placed on the Open Access Portal.

It is important that all policy documents are identified and assessed as the Act states that a person must not be subject to any prejudice due to any act or omission of the person because of the application of a policy document where:

- > the policy document was not publicly available; and
- > the person was not aware of the provisions of the policy; and
- > the person could have lawfully avoided the prejudice if they knew of the policy.

The only exemption to this is where the relevant provisions have been redacted in accordance with the *Freedom of Information Act 2016*.

BUDGETARY PAPERS

The Open Access Portal includes a link to past and present ACT Budget papers on its front page.

GRANTS

Information on grants offered by the Agency including what the grant is for and how to apply should be published. It may also be appropriate to publish information on grant applications funded.

Business units should forward information relating to their grant's programs to IAT.

DISCLOSURE LOG

The Disclosure Log provides details of access applications (FOI requests) made to the Agency under the Act. It includes details of the application, the decision, the information provided to the applicant, details of any fees charged and the time spent dealing with the application. Additionally, where a review has been undertaken by the Ombudsman or ACAT the details of their decisions and any further information they have decided to disclose.

The Disclosure Log does not include details of requests for personal information.

IAT maintain the Disclosure Log for CMTEDD and update it if appropriate following the completion of each FOI request within the required 3 to 10 working days.

BOARDS, COUNCILS, COMMITTEES, PANELS

While CMTEDD has many different boards, councils' committees, and panels, for the purposes of this requirement the following criteria needs to be considered, the body:

- > plays a substantial or important role in the formation of government policy;
- > advises on policy rather than administrative matters;
- > is permanent or established for a defined period;
- > provides reports or recommendations to the Cabinet, Ministers or Senior Executives of the agency;
- > is not a procurement or public service recruitment panel or an ad hoc stakeholder engagement.

The Information Access Team maintains a single list on the Open Access Portal. Where a Business Unit has a board not on the list and they think it should be added, or a board on the list needs to be removed, they should contact IAT who will arrange for the list to be updated.

REPORTS OR RECOMMENDATIONS FROM BOARDS, COMMITTEES ETC

Business Units need to ensure all reports and recommendations related to the boards, councils, committees and panels captured on the list mentioned above made on or after 1 January 2018 are provided to IAT for consideration for inclusion on the Open Access Portal.

AGENCY PUBLICATION UNDERTAKING

The Act allows for an agency to publish a list of information it holds that, while not defined as open access information, the agency wishes to release through the Open Access process.

Where an undertaking has been made it has to be reviewed once every 12 months. If an undertaking has not been made consideration needs to be given as to whether an undertaking should be made once every 12 months.

FREEDOM OF INFORMATION OPEN ACCESS INFORMATION

Currently CMTEDD has not made such an undertaking, however if a business unit thinks one is necessary, they should discuss the matter with the Information Officers in IAT.

If an undertaking is made, this policy will be updated to include the new requirements. Any information listed in such an undertaking should be treated in the same manner as other open access information.

MINISTERIAL BRIEFS

Any of the following briefs prepared on or after 1 January 2018 are considered Open Access Information:

- > incoming ministerial briefs;
- > parliamentary estimates briefs;
- > annual reports briefs; and
- > question time briefs.

There is a special provision in relation to Ministerial Briefs that means they don't have to be entered on the Open Access Portal until they are 5 years old. For example, question time briefs prepared for the February 2018 Assembly sittings are not required to be placed on the Open Access Portal until February 2023, noting that they still need to be reviewed against the public interest test prior to being entered on the portal.

INFORMATION DECLARED BY THE OMBUDSMAN

At this stage the Ombudsman has not made a declaration in relation to Open Access. If one is made IAT will inform any relevant areas of the requirements of the declaration and seek relevant information for possible inclusion. This would also trigger this policy being updated to include the new requirements.

INFORMATION PRESCRIBED BY REGULATION

At this stage no regulations have been made in relation to Open Access. If one is made IAT will inform any relevant areas of the requirements of the regulation and seek relevant information for possible inclusion. This would also trigger this policy being updated to include the new requirements.

ACT EXECUTIVE

The Act places a number of requirements on members of the ACT Executive including that the Chief Minister provide a range of information on Cabinet and Cabinet committee decisions. The [ACT Cabinet Handbook](#) prepared by Policy and Cabinet provides details relating to the preparation and release of these documents.

The Act also requires Ministers to provide details of Ministerial travel and hospitality expenses as well as a copy of their diary setting out all meetings, events and functions attended by the Minister that relate to the Minister's responsibilities. The processes relating to this are coordinated by the Ministers' Offices.

PROCESS FOR RELEASING OPEN ACCESS INFORMATION

IDENTIFICATION

Business Units are responsible for identifying possible open access information they hold. This should be an ongoing process with all new or modified documents being reviewed.

Where information is thought to fall within the requirements of Open Access, the information should be provided to the Information Access Team (IAT) who will determine if the information is open access information.

FREEDOM OF INFORMATION OPEN ACCESS INFORMATION

The information along with any concerns the business unit has about its possible release should be forwarded to the IAT inbox (CMTEDDFOI@act.gov.au). If the information cannot be forwarded by email, please contact IAT to discuss the best way of providing IAT with access to it.

REVIEW BY INFORMATION ACCESS TEAM

Once a Business Unit has forwarded possible open access information to IAT. The information will be registered as having been received and will then be assessed by an FOI Coordinator against the FOI Act. The FOI Coordinator will recommend to an Information Officer:

- > the information is not open access information, and no further actions are necessary under the FOI Act; or
- > the information is open access information and there is no requirement to redact or withhold the information; or
- > the information is open access information, and some redactions are required, providing details of the redactions and the reasons for them; or
- > the information is open access information, and all the information should be withheld and the reasons for withholding; or
- > the information is open access information, and all the information should be withheld, the reasons for withholding, that the notice withholding the information should be withheld, the reason for that and a draft notice to the Ombudsman telling them of that decision.

After the Information Officer has made a decision on the information, the details of the decision are entered on the Information Access register. A FOI Coordinator will inform the business unit of the decision.

PUBLICATION

Where IAT has determined that the information is open access information it will check to see if the business unit has already placed the information on a public facing website. If this has not happened IAT will arrange for the information to be placed on the appropriate website. IAT will then add the link and relevant information to the Open Access Portal.

Where the information has partial redactions the reason for the redactions will be included in the information placed online. Where information is withheld but the decision is to be published IAT will publish the decision and include it on the Open Access Portal.

The Act requires all information published to, as far as practicable, be published in a way that complies with the web content accessibility guidelines level AA³. Additionally, the information should be published in a form that provides at least the same range of functions to the user as was available to the agency before the information was published.

DECISION NOT TO PUBLISH ANY INFORMATION

Where the Information Officer has determined that information should not be released and that under s24 (3) of the Act no description of the information will be published, IAT will ensure appropriate notifications are made to the Ombudsman.

APPEALS ON DECISIONS

Where an individual appeals to the Ombudsman a decision made by the Information Officer, IAT will take the lead on the appeal process but will liaise with the relevant Business Unit as required.

³ See <https://www.w3.org/WAI/intro/wcag>.

TIMING OF RELEASE OF OPEN ACCESS INFORMATION

There is no specified timeframe for releasing most open access information, however the Act does require information to be as far as practicable accurate, up to date and complete. Therefore, it is recommended that as soon as open access information is created (and where appropriate approved) it is forwarded to IAT for consideration.

Note there are special requirements on the timing of the release of information on the Disclosure Log (page 7) and Ministerial Briefs (page 8).

OUT OF DATE INFORMATION

Where a Business Unit thinks that information on the Open Access Portal is no longer relevant, they should inform IAT who will review the information and if appropriate remove it from the system. For example, a policy relating to a superseded Act, where the new Act and policy are now in effect and there is no legacy work under the old act.

Where information has been identified as out of date but relates to subjects that are still relevant the information should be updated as soon as possible and considered for release as open access information as outlined above.

AUDITING OF DOCUMENTS AVAILABLE ON OPEN ACCESS

The IAT will undertake regular reviews of documents uploaded on the Open Access website to ensure they are up to date. Business Units will be chosen at random by the IAT for the purposes of conducting the review. Business Units will be contacted and advised on the process to be followed. The review of documents will ensure that CMTEDD meets its obligations under the Act.

FURTHER INFORMATION

Further information on this policy can be obtained from the Information Access Team (IAT) Chief Minister, Treasury and Economic Development Directorate.

Email: CMTEDDfoi@act.gov.au

Phone: (02) 6207 7754.

GLOSSARY

Business Unit – a distinct work team within the Chief Minister, Treasury and Economic Development Directorate

FOI Officer – Staff within the Information Access Team whose work is primarily processing FOI requests.

Information Access Team (IAT) – the team located within Corporate, Chief Minister, Treasury and Economic Development Directorate that coordinates the Directorate's responsibilities under the *Freedom of Information Act 2016*.

Information Officer – for this document the occupants of the two positions within the Information Access Team that have been appointed as Information Officers under s18 of the *Freedom of Information Act 2016*.

Open Access Portal – A web page that allows members of the public to search for open access information online. - <https://www.act.gov.au/open-access/search-results>



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