

# DOCUMENTS RELEASED UNDER THE FREEDOM OF INFORMATION ACT 1989

#### ONLINE FOI PUBLICATION POLICY

This policy applies to all requests under the Freedom of Information Act 1989 (the Act).

Information disclosed to an applicant under the Act will be made available to the public on the internet in accordance with this policy.

#### What will be made available online:

- Schedules of all documents released and schedules of documents withheld in response to an FOI request;
- Copies of all text documents released to an applicant under the FOI Act, subject to the exclusions detailed in this policy; and
- Details about how to obtain photographs, videos, or other non-text information released under an FOI request.

#### What will not be made available online:

- Information that is exempt from release under the FOI Act;
- Letters, including acknowledgement letters, that do not contain decisions to release documents:
- Material that is excluded under Parts III and IV of this policy; and
- Photographs, videos, or other content that cannot easily be shared in the PDF format.

## I. Internet publication policy and FOI applications – processing & notification

As part of its commitment to Open Government, the Government will make all written documents released to an applicant under the *Freedom of Information Act 1989* (the Act) available for online access by the public, subject to the exceptions in this policy. The information will be made available in PDF formats on the Open Government website, at <a href="http://www.cmd.act.gov.au/open\_government">http://www.cmd.act.gov.au/open\_government</a>

To facilitate the release of appropriate documents, not subject to exclusions detailed under the Online FOI Publication Policy, FOI officers and decision makers must apply the web release policy <u>before</u> an initial decision is made on an FOI request.

Once an FOI request is finalised and a decision is made, FOI officers and decision makers will be responsible for scanning all material released, including decision letters and schedules of documents, and uploading it to the Open Government website.

#### Notification to applicants and identification of material to be withheld

As far as practicable, **<u>before</u>** each FOI request is finalised, decision makers and FOI officers should:

- Notify applicants that within the provisions the FOI Act and the Online FOI
  Publication Policy, that the material they have requested may be made available
  online; and
- Direct applicants to <a href="http://www.cmd.act.gov.au/open government">http://www.cmd.act.gov.au/open government</a> where a copy of the policy and the Act will be available.

In addition to notifying FOI applicants about the Government's internet publication policy and before each FOI request is finalised, decision-makers must:

- Clearly identify any information that **should not** be published on the web in accordance with this policy;
- Ensure that information which **should not** be published online is removed from the package of materials that are to be scanned and uploaded to the Open Government website; and
- Identify each piece of information withheld from online publication and keep a record of the reasons why it was withheld.

#### Responsibility for publishing information

FOI officers and decision makers will be responsible for ensuring that decision letters, schedules of released documents, and any documents released are scanned into an appropriate format and uploaded electronically on the internet <a href="within15">within 15</a> business days of the finalisation of each FOI request.

An FOI request is **finalised** when;

- 1. The decision letter has been signed
- 2. Fees paid (if applicable)
- 3. Documents sent to the applicant

### The 15 business day timeline begins immediately (on the day) that all 3 steps have been completed and finalised.

Internal reviews should be treated as a new FOI request for the purposes of this policy. The decision letter advising of the outcome of the review, and any additional documents released, should be uploaded to the Open Government website in accordance with this policy.

Officers must comply with any procedures for uploading material to the Open Government website and supply all information, including any additional data required for web publication, in accordance with this policy.

Information will be available online for at least **12 months.** After this time, the information can be provided on request by contacting the relevant Directorate.

#### II. Formats to be published

The ACT Government is committed to providing information online in an accessible format. Anyone who needs assistance to access information on the website should contact the Directorate responsible for any relevant FOI materials on the website for further information. Access to this information will be provided in alternative formats on request for anyone who is unable to access PDF formats.

Decision letters, schedules of documents released, and copies of the released documents should each be scanned into separate PDF files. This will allow for the public to access a decision letter, a list of documents released, and the actual content of an FOI disclosure separately.

Anyone requiring further assistance to access FOI materials should contact the responsible Directorate.

#### Photograph, videos, and other information not in text format

Photographs, videos, and any other non-text information disclosed under an FOI request will not be made available on http://www.cmd.act.gov.au/open\_government

Instead, the website will note that this information has been disclosed, and provide contact details for interested members of the public to obtain the information.

Only decision letters and schedules in relation to photographs, videos and other non-text information will be published in PDF format. Decision makers will upload contact details to the Open Government website in relation to the information. The contact details will be used to allow members of the public to access the relevant non-text information.

#### III. Removal of certain information

#### Certain information defined

If information is only being released because it relates to the applicant, or only because of the identity of the applicant, and would not otherwise have been released, the information will not be made available online even if it has been made available to an applicant.

Whether the documents would not have been released, or would have had personal or other information removed before it was disclosed under the FOI Act, are the key elements for a decision maker to consider.

Certain information falls under two categories:

- 1. Personal information; and
- 2. Documents relating to business affairs.

Where an FOI response discloses certain information, decision makers should remove this information after disclosure to the applicant, but before the information is published on the web.

Decision makers should follow the same process in removing certain information used under section 21 (Deletion of exempt matter) to redact or omit information that would otherwise cause a document to be exempt under the Act.

#### Personal information (section 41 of the FOI Act; *Privacy Act 1988*)

If information could reasonably be used to identify an individual, it is personal information.

Officers should remove names and addresses from FOI decision letters that will be published on the web. All other personal information should be reviewed in accordance with this policy.

Personal information is exempt from release under the FOI Act when its disclosure would be unreasonable (section 41). However, even where personal information would otherwise be exempt, it cannot be withheld under section 41 if it relates to the person who is requesting the information (section 41(2)).

Whenever personal information is requested under the Act, decision makers must identify whether the information is being released only because of section 41(2).

It is important to note that personal information will not always be given only to the person who is the subject of the information. For example, a mother requesting information about her child, or a solicitor requesting information about a client are requests that might come under section 41(2).

In those cases where personal information is disclosed only because of the operation of section 41(2), the information must be reviewed again after the initial disclosure in preparation for online publication. All personal details disclosed to the applicant must be redacted, as if a third party had requested the information.

Information will be published only after personal information which would be exempt under section 41(1) if requested by anyone other than the applicant, is removed.

If redaction would make the information of no value to the public, or would not sufficiently protect the personal information at issue, the information will not be released online.

#### Documents relating to business affairs (section 43 of the FOI Act)

Documents may be exempt under section 43 if they would disclose:

- Trade secrets
- Commercially valuable information that would lose its value if disclosed;
- Information that would unreasonably affect a person adversely in respect of lawful business or professional affairs; or
- Information that could reasonably be expected to prejudice the future supply of information to the Territory for the purpose of administering the law or administering matters of an agency

However, as with personal information, business affairs documents cannot be withheld under section 43 if they relate to the person making the request, or a person who can access the information only because of their relationship to the business affairs (section 43(2)).

Decision makers must identify, in any documents relating to business affairs, whether they are only being released because of section 43(2). In those cases, the documents must be reviewed before web publication as if an uninvolved third party had requested the documents. Any business affairs information that would have been withheld on that basis must be redacted before the documents are placed online.

If redaction would make the document of no value to the public, or would not sufficiently protect the business affairs information at issue, the document will not be released online.

#### IV. Copyright material

As is presently the case, FOI officers and decision makers are responsible for identifying copyright material and ensuring that it is not released contrary to the legal rights of copyright owners.

In considering whether material will be published online, officers and decision makers must determine whether copyright in documents that are subject to an FOI request is owned by the Territory, or a third party.

#### Territory ownership of copyright

Material for which the Territory holds copyright will be published online. The website will notify members of the public that while they may reproduce copyright material owned by the Territory, the material should be attributed.

#### Third party ownership

Material for which copyright is owned by someone other than the Territory, but which is subject to an FOI request, will be published on the web only after all practicable efforts have been made to contact and obtain the consent of the copyright owner. As far as practicable, material for which the copyright is owned by a third party will be clearly labelled.

If the copyright owner objects, the material will not be made available online.