

FREEDOM OF INFORMATION POLICY

INTRODUCTION

AGWA is subject to the *Freedom of Information Act 1982* (Cth) (**FOI Act**). The FOI Act provides a legally enforceable right for any person to obtain access to information and documents held by an agency (subject to certain exceptions).

POLICY

AGWA is committed to promoting the general objectives of the FOI Act by promoting transparency over what AGWA do.

The objects of the FOI Act are contained in section 3 of that Act. In summary they are to give the Australian community access to information held by the Government of the Commonwealth by:

- requiring agencies to publish the information; and
- providing for a right of access to documents,

with the intention of promoting Australia's representative democracy by contributing towards the following:

- increasing public participation in Government processes, with a view to promoting better-informed decision-making; and
- increasing scrutiny, discussion, comment and review of the Government's activities.

DEFINITIONS

"Document" is defined broadly and includes any paper on which there is writing; any paper with marks, symbols, figures or perforations with meanings for persons able to interpret them; maps, plans, drawings or photographs; audio and video reproductions (CD-ROMs, DVDs, USBs); stored electronic records (datasets, emails, mobile phone records, SMS, blogs, wikis, video recordings etc.); and copies of any documents.

"Document of an agency" is a document in the possession of the agency (whether created or received by the agency), or a document held by a contracted service provider.

"Business information" means information about a person's business or professional affairs and information about the business, commercial or financial affairs of an organisation or undertaking.

"Conditionally exempt documents" means documents that must be released unless it can be established that disclosure would be contrary to the public interest.

"Exempt documents" means documents not to be released under the FOI Act.

“FOI” means Freedom of Information

“FOI Act” is the *Freedom of Information Act 1982* (Cth) as amended by the *Freedom of Information Amendment (Reform) Act 2010* (Cth).

“Information Commissioner” is the Australian Information Commissioner established under the *Australian Information Commissioner Act 2010* (Cth).

“Minister” is the Minister for Agriculture, Fisheries and Forestry.

“OAIC” is the Office of the Australian Information Commissioner

“Personal Information” is information about a natural person whose identity is apparent or can be reasonably ascertained.

“State-originated information” is information that originated with, or was received from, a State Government or an authority of a State.

PROCEDURES

Who can make a FOI request?

Any person can make a FOI request, including:

- an individual in Australia, whether or not they are an Australian citizen;
- an individual who is resident overseas, whether or not they are an Australian citizen, provided they specify an address in Australia to which notices under the FOI Act can be sent;
- an individual serving a prison sentence;
- a minor; and
- a body corporate (e.g. a company).

The applicant's reasons for making an FOI request are not relevant in relation to accepting and processing a request.

Documents not subject to release

Documents are not required to be released under the FOI Act if:

- the FOI Act does not apply in respect of the documents;
- the agency is exempt from the operation of the FOI Act in respect of documents received from certain defence and security agencies;

- the work involved in processing the request would constitute a substantial and unreasonable diversion of resources (see FOI Act s 24 and ***Refusing Requests***);
- the FOI request does not provide sufficient information to identify the documents sought (see FOI Act s 24 and ***Refusing Requests***);
- the agency is satisfied that, after all reasonable searches, that the document cannot be found or does not exist (see FOI Act s 24A and ***Refusing Requests***);
- the document is an exempt document (see FOI Act Part IV and ***Exemptions & Conditional Exemptions***); or
- the document is a conditionally exempt document, and disclosure would be contrary to the public interest (see FOI Act Part IV and s.11A(5), and ***Exemptions & Conditional Exemptions***).

Documents not covered by the FOI Act (ss 7 & 12)

The FOI Act does not apply to the following documents (and therefore they do not need to be considered in processing an FOI request):

- documents that are within the open access period under the *Archives Act 1983* (Cth), unless the document contains personal information;
- documents that are open to public access under another Act, where that access is subject to a fee or other charge;
- documents that are open to public access as part of a land title register, in accordance with a State or Territory law, where that access is subject to a fee or other charge;
- a document that is available for purchase by the public in accordance with arrangements made by an agency;
- documents that have originated with, or been received from, specified intelligence agencies (and documents that contain a summary, extract or information from such documents); and
- documents that have originated with, or been received from, the Department of Defence which relate to:
 - the collection, reporting or analysis of operational intelligence; or
 - special access programs, under which a foreign government provides restricted access to technologies; or
 - documents that contain a summary, extract or information from such documents.

Documents and information which is generally available on the AGWA website at no cost may still be the subject of an FOI request. In such cases, AGWA should advise the applicant of publicly available information outside the FOI Act, and invite the applicant to either withdraw their request or exclude publicly available information from the scope of the request.

Timeframes

The FOI Act imposes a number of statutory timeframes which must be complied with:

Upon Receipt of Request

- **within 14 days:** notify the applicant that the request has been received;
- **within 30 days:** notify the applicant of the decision on the request.

Extensions

The 30 day time period can be extended in the following circumstances:

- consulting with third parties under the FOI Act (a further 30 days is added to the processing time);
- notifying the applicant of charges (the 30 day time period is stopped until a deposit on the charges is paid, or the charges are paid in full);
- obtaining an extension of time of up to 30 days in agreement with the applicant; and
- obtaining an extension of time from the Information Commissioner for complex or voluminous requests.

Failure to comply with the statutory timeframes will amount to a ***deemed refusal decision***. A decision should still proceed but charges cannot be imposed because the decision is regarded as being out of time.

Authorisations

In accordance with section 23 of the FOI Act, the Chief Executive Officer is the 'principal officer'. Accordingly, a decision in respect of a request made to AGWA may be made by the Chief Executive Officer or, if the Chief Executive Officer approves another person as the decision maker, by that person. This includes authorisation to grant, refuse or defer access to documents, impose or remit a charge and extend time limits. Any internal review decisions must be a fresh and independent decision.

Notifying the Minister's Office

The minister's office is to be informed if AGWA receives a new FOI request from:

- a Member of Parliament (MP);
- journalist;
- representative of a key agency stakeholder; or
- where the information requested is particularly sensitive.

The Chief Operating Officer is responsible for making a decision on whether to notify the minister's office of receipt and status of an FOI request and (where appropriate) for keeping the minister's office informed of its progress.

If a decision is made to notify the minister's office, the Chief Operating Officer is to send an email to the FOI adviser in the minister's office (currently Merric Foley: merric.foley@maff.gov.au). The email should be copied to the relevant Departmental Liaison Officer and media advisers in the minister's office. An example of the email to be sent to the FOI adviser is below:

Subject: FOI Alert from Australian Grape and Wine Authority	
Good [morning/afternoon]	
Australian Grape and Wine Authority has received a new FOI request [insert unique reference number] from:	
From:	[insert name of applicant]
Seeking:	[include a summary of the FOI request]
Decision-maker:	[insert name of Chief Operating Officer]
FOI contact officer:	[insert name and phone number of AGWA contact officer]
Earliest date decision due: [insert date decision is due, i.e., 30 days from receipt of request].	

Notification must be given to the minister's office once a decision has been made at least three days ahead of the decision letter being sent to the FOI applicant. The following information should be attached to the notification:

- a copy of the proposed decision letter;
- the statement of reasons;
- the schedule of documents; and
- redacted copies of the documents to be released.

Requirements for valid FOI requests

To be valid, an FOI request must:

- be in writing;
- state that the request for documents is for the purposes of the FOI Act (even if the request does not expressly state this, it may still be valid if it is apparent that the applicant intended to make the request under the FOI Act);
- provide information concerning the requested document that can enable it to be identified; and
- provide details of how notices under the FOI Act can be sent to the applicant (an electronic address is acceptable).

Steps should be taken to seek clarification on the scope and nature of an FOI request from the applicant where necessary. If the request is not a valid request, reasonable steps to assist the applicant to complete or revise their request so that it complies with the FOI Act should be taken.

Transfer of requests (s 16)

A request may be transferred to another agency with the other agency's agreement where:

- AGWA does not possess the requested documents but knows that another agency possesses those documents; or
- the subject-matter of the requested documents is more closely connected with the functions of the other agency than the functions of AGWA.

Before a request for transfer is made to another agency, AGWA should first take whatever reasonable steps are necessary to determine whether it has the documents to meet the description of the applicant's FOI request. If the other agency accepts the transfer, the authorised officer should:

- send a formal notice to the other agency confirming the transfer under s 16 of the FOI Act, together with a copy of the request and any other relevant information and documents (e.g. correspondence with the applicant);
- notify the applicant of the transfer.

Refusing requests

Practical refusal reason (s 24AA)

A request for access to documents may be refused under s 24 on the basis of a ***practical refusal reason***, but only after undertaking a ***request consultation process***.

A practical refusal reason exists where:

- the work involved in processing the request would substantially and unreasonably divert the resources of AGWA from its other operations; or
- the work involved in processing the request would substantially and unreasonably interfere with the performance of the Minister's functions; or
- the documents cannot be identified from the information provided in the request (as required by s 15(2)(b)).

Subsections 24AA(2) and (3) set out matters to which the decision-maker must and must not have regard in deciding whether a practical refusal reason exists.

Request consultation process (s 24AB)

Before making a decision to refuse access under s 24, the decision-maker must give written notice of their intention to refuse access. The s 24AB notice must state the following:

- the decision-maker's intention to refuse access to a document as requested;
- the practical refusal reason;
- the name and contact details of an officer with whom the applicant may consult during the process;
- that the consultation period during which the applicant may consult the contact person is 14 days after the applicant is given the notice.

The 14 day request consultation process may be extended by the contact person with the applicant's agreement, by issuing a written notice to the applicant.

Before the end of the consultation period, the applicant must, by written notice to the department, either:

- withdraw the request;
- revise the request; or
- indicate that they do not wish to revise the request (s 24AB(6)).

If the applicant contacts the contact person during the consultation period in accordance with the notice, **reasonable steps** must be taken to assist the applicant to revise the request so that the practical refusal reason no longer exists. 'Reasonable steps' include:

- giving the applicant a reasonable opportunity to consult with the contact person
- providing the applicant with any information that would assist the applicant to revise the request.

The request is taken to have been withdrawn if the applicant does not provide a written notice under s 24AB(6), or does not consult the contact person during the consultation period.

Documents cannot be found or do not exist (s 24A)

A decision-maker may decide to refuse a request for access to a document under s24A if, after taking all reasonable steps to find the document, the decision-maker is satisfied that the document:

- cannot be found;
- does not exist; or
- is unable to be obtained from a contracted service provider, as required by a contract (see s 6C).

The extent to which AGWA is required to undertake 'all reasonable steps' to find a document depends on the circumstances of each case, having regard to the knowledge and experience in relation to:

- AGWA's structure, functions and responsibilities;
- AGWA's administrative practices and procedures (including, for example, its information management systems and record-keeping practices);
- the nature and age of the requested documents, and the officers or area that may have been responsible for creating or retaining those documents.

Vexatious applicants

Under s 89K of the FOI Act, the Information Commissioner may declare a person to be a 'vexatious applicant' following an application by AGWA or the Minister, or on the Information Commissioner's

own initiative. A vexatious applicant declaration may be made on any of the following grounds (s89L):

- the person has repeatedly engaged in access actions (eg, making FOI requests) that involve an 'abuse of process'; or
- the particular access action / FOI request involves an abuse of process in itself; or
- the particular access action / FOI request is manifestly unreasonable.

An ***abuse of process*** includes (but is not limited to):

- harassing or intimidating an AGWA employee;
- unreasonably interfering with the AGWA's operations; or
- trying to use the FOI process to circumvent restrictions on access to a document already imposed by a court.

Charges

S 29 of the FOI Act authorises agencies to charge for processing an FOI request and providing access to documents. However, no charge is payable:

- where an applicant is seeking access to their own personal information;
- in the case of a deemed refusal decision, where AGWA has not notified the applicant of its decision in relation to the request (i.e., whether to grant or refuse access to documents) within the statutory timeframes (taking into account any extensions of time or discounted time); and any amount already paid by the applicant must be refunded;
- for the first five hours of decision-making time.

Estimating charges

PROCESSING – search and retrieval	TIME (in hours)	COST
Search and retrieval of electronic and registry files	0.00	\$15.00 per hour
Search files and tag relevant pages	0.00	\$15.00 per hour
Preparing schedules detailing all relevant documents	0.00	\$15.00 per hour
PROCESSING – decision making	TIME (in hours)	COST
Examine relevant pages for decision making	0.00	\$20.00 per hour
Exempted pages additional complexity	0.00	\$20.00 per hour
Pages released with deletions (to cover time needed to redact the material)	0.00	\$20.00 per hour
Consultation with third parties	0.00	\$20.00 per hour
Preparation and notification of decision	0.00	\$20.00 per hour
<i>(Decision-making Subtotal minus deduction of 5 hours)</i>	-5.00	\$0.00 per hour
ACCESS AND DELIVERY	PAGES	COST
Transcription (production of transcripts or sound recordings)	xx	\$4.40 per page
Photocopying	xx	\$0.10 per page
Electronic production	xx	actual cost
Replaying of sound or film	xx	actual cost
Delivery (packaging and postage costs)	xx	actual cost
Inspection of documents	xx	\$6.25 per ½ hour
DEPOSITS	– \$20 where total estimate between \$25-\$100 – 25% of total estimate if over \$100	

Waiving or reducing charges

The authorised officer has the discretion to waive or reduce the amount of charges considering:

- whether payment would cause financial hardship to the applicant, taking into account evidence of the applicant's financial circumstances; and
- whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public.

Notification of charges

If a decision is made to impose a charge, written notice must be given to the applicant as soon as possible stating:

- that the applicant is liable to pay a charge;
- the preliminary assessment (estimate) of the charge amount and the basis of the calculation;
- the amount required, and due date for payment;
- the applicant's right to contend that the charge has been wrongly assessed, or should be reduced or waived;
- that the applicant must respond in writing within 30 days (or such further period as stated) by :
 - agreeing to pay the charges (and paying the deposit); or
 - contending that the charge has been wrongly assessed, or should be reduced or not imposed, with supporting reasons; or
 - withdrawing the request;
- that the request will be deemed to be withdrawn if the applicant does not respond within the 30 day period.

Once a charge notice is issued, the FOI clock stops until the relevant deposit or amount of charges has been paid or, following a review under the FOI Act, the applicant is notified of the review decision. If the charges or a deposit for the charges is not paid, or a written notification from the applicant is not received within 30 days (or any further period granted at the discretion of AGWA), the request for access is deemed to have been withdrawn. The applicant is to be contacted and advised that the application has been taken to be withdrawn, due to non-payment of a deposit or non-response to correspondence.

Payment of the balance of charges should be adjusted if the actual charges are less than the estimated amount. If the actual charges are higher than the estimate, the higher amount can only be charged if access is granted to the documents in full. Documents are not released to the applicant until the balance of charges is paid.

Third party consultation

A decision to consult third parties should be made early in the FOI process. The decision-maker can extend the 30 day timeframe by a further 30 days where third party consultation is required provided the applicant is notified in writing. Third party submissions are not binding on the decision-maker but must be taken into consideration. If a decision is made to grant access to information where a third party objected, written notice of the decision must be provided to the third party and the applicant. Third parties retain review rights.

Informal consultation between Commonwealth agencies is good practice in relation to documents which may concern or affect the interests of those agencies.

State or Territory Government (s 26A)

Consultation with a State Government is required where:

- arrangements have been entered into between the Commonwealth and the State about consultation; and
- a request is made for a document that originated with, or was received from the State Government or an authority of the State, or contains 'State-originated information'; and
- it appears the State concerned may reasonably wish to make a contention against release of the information (in particular under s 47B).

The decision-maker cannot decide to grant access to a document unless such consultation has taken place (s 26A(2)).

Business (s 27)

Consultation with a person, organisation or proprietor of an undertaking may be required where:

- a document contains 'business information' in respect to a person, organisation or undertaking; and
- that person, organisation or proprietor might reasonably wish to make a contention against release of the information.

If it is reasonably practicable to do so, the person or organisation must be given a reasonable opportunity to make a written submission to support their contention that that the document is:

- exempt under s 47 (trade secrets); or
- conditionally exempt under s 7G (business) and release would, on balance, be contrary to public interest (s 11A(5)).

Personal privacy (s 27A)

Consultation with individuals may be required where:

- a document contains personal information about a person (including a deceased person); and
- it appears that the person (or the person's legal representative) might reasonably wish to contend against the release of the document.

If it is reasonably practicable to do so, the person concerned must be given reasonable opportunity to make a written submission to support their contention that the document is conditionally exempt under s 47F (personal privacy) and release would, on balance, be contrary to the public interest (s 11A(5)).

Foreign governments

Consultation with a foreign government, authority of a foreign government or an international organisation may be required to determine whether a document is:

- exempt under s 33(a)(iii) (damage to international relations of the Commonwealth); or
- exempt under s 33(b) (information communicated in confidence by a foreign government, etc.).

Consultation on these documents should also be undertaken through DFAT. Submissions made by foreign governments, etc. are not binding on the decision-maker, but must be taken into consideration in deciding whether or not to grant access to documents.

Exemptions and conditional exemptions

There are two types of exemption categories for documents within the FOI Act:

- exempt documents – not required to be released under the FOI Act;
- conditionally exempt documents – must be released unless it can be established that disclosure would be contrary to the public interest.

Public interest test (s 11B)

'Public interest' is not specifically defined in the FOI Act, however, the concept refers to something of serious concern or benefit to the public, and not merely of individual interest. Something that is contrary to the public interest means that on balance, the detriment that would result from disclosure outweighs the benefits of releasing that information.

Factors favouring access (non-exhaustive)	Factors not to be taken into account
<ul style="list-style-type: none"> • promote the objects of the FOI Act (note: presumption towards pro-disclosure) • inform debate on a matter of public importance • promote effective oversight of public expenditure • allow a person to access his or her own personal information 	<ul style="list-style-type: none"> • access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government • access to the document could result in any person misinterpreting or misunderstanding the document • the author of the document is (or was) of high seniority in the agency to which the request for access to the document was made • access to the document could result in confusion or unnecessary debate

The OAIC '*Conditional Exemptions Guidelines*' set out a non-exhaustive list of factors against disclosure. These factors include where disclosure could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;
- prejudice security, law enforcement, public health or public safety;
- impede the administration of justice, either generally or in a particular case;
- prejudice an agency's ability to obtain confidential or similar information in the future;
- prejudice the competitive commercial activities of an agency;
- prejudice the management functions of an agency;
- prejudice the effectiveness of testing or auditing procedures.

Relevant Provision	Examples of document type	Reason for exemption – possible effect of disclosure
Exemptions		
33	<p>National security, defence or international relations</p> <ul style="list-style-type: none"> • documents concerning any of the above • information communicated in confidence by a Foreign Government or international organisation 	<p>Disclosure would, or could reasonably be expected to:</p> <ul style="list-style-type: none"> • cause damage to the security of, the defence of, or the international relations of the Commonwealth • divulge information communicated in confidence to the Commonwealth by, or on behalf of, a Foreign Government or international organisation.
34	<p>Cabinet documents</p> <ul style="list-style-type: none"> • submitted to Cabinet or proposed to be submitted and was brought into existence for the dominant purpose of consideration by Cabinet • official record of Cabinet • dominant purpose of briefing a Minister on a Cabinet document • a draft of any of the above • where it is a copy or part of, or an extract from a Cabinet process/deliberation is included 	<p>To maintain the confidentiality necessary for the proper functioning of Cabinet.</p> <p><u>Exceptions:</u> - where deliberations or decisions have been officially disclosed or published</p> <ul style="list-style-type: none"> • if the matter in the Cabinet document or discussion paper is purely factual and release will not reveal the deliberation or decision process of Cabinet
38	<p>Secrecy provisions of enactments</p>	<p>Disclosure is prohibited under provisions in another Act</p>
42	<p>Legal professional privilege</p> <ul style="list-style-type: none"> • documents created for giving or receiving legal advice, or for use in actual or anticipated litigation 	<p>Document would be privileged from production in legal proceedings on the ground of legal professional privilege.</p> <p><u>Exceptions:</u> information is operational information of an agency or the legal professional privilege has been waived.</p>
45	<p>Material obtained in confidence</p> <ul style="list-style-type: none"> • documents containing information which was communicated and received on the basis of a mutual understanding of confidence <ul style="list-style-type: none"> ○ if it were disclosed would be an <i>unauthorised use</i> of the information ○ by its disclosure would cause the confider to suffer a detriment 	<p>Where disclosure would be actionable by law for breach of confidence by a person (other than an agency or the Commonwealth)</p>
46	<p>Contempt of Parliament or court</p> <ul style="list-style-type: none"> • documents which are protected by the courts and their proceedings • documents subject to an order of a Royal Commission, tribunal or other body having power to take evidence on oath • documents and records of evidence presented to Parliament 	<p>Disclosure would be:</p> <ul style="list-style-type: none"> • in contempt of court • contrary to an order made, or direction given, by a Royal Commission, tribunal or similar body • an infringement of the privileges of the Commonwealth or of a State or Territory parliament

47	Trade secrets or commercially valuable <ul style="list-style-type: none"> • trade secret documents or other information having a commercial value or activity 	Where disclosure: <ul style="list-style-type: none"> • could reasonably be expected to destroy or diminish the business/commercial value of the information if disclosed
Conditional exemptions		
Note: Access must be given to a conditionally exempt document unless it would be contrary to the public interest (s 11A).		
47B	Commonwealth-State relations <ul style="list-style-type: none"> • documents that originated with, or were received from a State agency • information or matter communicated in confidence by (or on behalf of) a State Government to the Commonwealth 	Disclosure would, or could reasonably be expected to: <ul style="list-style-type: none"> • cause damage to relations between the Commonwealth and a State • divulge information communicated in confidence to the Commonwealth by or on behalf of a State
47C	Deliberative processes <ul style="list-style-type: none"> • documents disclosing opinion, advice, recommendation, consultation or deliberation occurring as part of the deliberative processes involved in the functions of an agency, a Minister or Government 	Disclosure would, or could reasonably be expected to: <ul style="list-style-type: none"> • disclose matter of opinion, advice, recommendation, consultation or deliberation occurring as part of the deliberative processes involved in the functions of an agency, a Minister or a Government. <p><i>Exceptions:</i> does not include</p> <ul style="list-style-type: none"> • either operational information (s 8A) or purely factual material • reports of scientific or technical experts (whether or not employed within an agency) • reports of a body or organisation that is established within an agency • record of a final decision in the exercise of power or an adjudicative function
47D	Financial or property interests of the Commonwealth <ul style="list-style-type: none"> • documents concerning revenue generating activities • documents concerning property interests (other than buildings or land) 	Disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency
47E	Certain operations of agencies <p>Documents necessary for the proper conduct of the operations of an agency, including:</p> <ul style="list-style-type: none"> • procedures and methods for tests, examinations or audits 	Disclosure would, or could reasonably be expected to: <ul style="list-style-type: none"> • prejudice tests, examinations or audits conducted by an agency, or their attainment • have an adverse effect on the management or assessment of personnel • have a substantial adverse effect on the proper and

	<ul style="list-style-type: none"> • management or assessment of personnel 	efficient conduct of the operations of an agency
47F	<p>Personal privacy</p> <ul style="list-style-type: none"> • documents containing information relating to a natural person, which may be in the form of an opinion • the individual is identified in the information or is reasonably able to be identified <p><i>Exceptions:</i> the person identified in the document is requesting the information; or they have nominated a qualified person to access the information on their behalf</p>	<p>Disclosure of the document would result in the unreasonable disclosure of personal information about any person (including a deceased person). In determining whether disclosure is unreasonable, consideration by an agency or Minister must have regard for:</p> <ul style="list-style-type: none"> • the extent to which the information is well known • availability of the information from publicly accessible sources • whether the person is associated with the matters dealt with in the document • any other matters the agency or Minister consider relevant
47G	<p>Business</p> <ul style="list-style-type: none"> • documents containing information about a natural person and their business, professional or financial affairs • documents containing information about an organisations business, commercial or financial affairs or undertaking 	<p>Disclosure would or could reasonably be expected to:</p> <ul style="list-style-type: none"> • affect that person adversely in respect of their lawful business or professional affairs • adversely affect an organisation in respect of its lawful business, commercial or financial affairs • prejudice the future supply of information to the Commonwealth or of a Territory or matters administered by an agency
47H	<p>Research</p> <ul style="list-style-type: none"> • documents containing information relating to research being, or is to be, undertaken by an officer of CSIRO or ANU 	Disclosure of the information before the completion of the research would be likely to unreasonably disadvantage the agency or officer
47J	<p>The economy</p> <p>Documents containing matter relating to any of the following (but not limited to):</p> <ul style="list-style-type: none"> • currency and exchange rates, interest rates • taxes, including duties of customs or excise • regulation/supervision of banking, insurance and other financial institutions • proposals of expenditure • foreign investment in Australia • borrowings by the Commonwealth, State or an authority of the Commonwealth or State 	<p>Disclosure would or could reasonably be expected to have a substantial adverse effect on Australia’s economy by:</p> <ul style="list-style-type: none"> • influencing a decision or action of a person or entity • giving a person undue benefit or detriment in the business undertaken by the person, through premature knowledge of proposed or possible action or inaction of a person or entity. <p>Substantial adverse effect on Australia’s economy includes adverse effect on:</p> <ul style="list-style-type: none"> • a particular sector of the economy • the economy of a particular region of Australia

Notice of decision and statement of reasons

The applicant must be notified in writing of decisions under the FOI Act, accompanied by a statement of reasons and a notice of review rights.

A third party must be notified of a decision to grant access to a document where that third party has made a contention against release as part of a consultation process.

A statement of reasons should set out:

- the name and designation of the decision-maker;
- findings on material questions of fact, referring to the material and evidence on which those findings were based;
- clear reasons for the decision.

Merits review

The FOI Act provides for three tiers of merits review that are available to FOI applicants in relation to 'access refusal decisions', and to certain third parties in relation to 'access grant decisions':

- internal review by the agency;
- review by the Information Commissioner;
- review by the AAT.

Internal reviews must be undertaken within 30 days after the decision was notified and must be conducted by a person other than the original decision-maker.

FOI Information Publication Scheme

In accordance with s 11C of the FOI Act, where AGWA gives access to a document under s 11A of the FOI Act, AGWA must publish that information on its website within 10 working days after the day an applicant is given access to the documents.

In addition, AGWA is required by s 11C to publish a disclosure log on its website. The disclosure log lists information which has been released in response to an FOI access request. The disclosure log requirement does not apply to:

- personal information about any person if publication of that information would be 'unreasonable'
- information about the business, commercial, financial or professional affairs of any person if publication of that information would be 'unreasonable'
- other information covered by a determination made by the Australian Information Commissioner if publication of that information would be 'unreasonable'

- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete the information listed in the above dot points.

Office of the Australian Information Commissioner

Telephone: 1300 363 992

Email: foi@oaic.gov.au

Post: Office of the Australian Information Commissioner

GPO Box 5218

Sydney NSW 2001

Schedule 1: FOI Officer Checklist

Done?	Action
<input type="checkbox"/>	<p>Receive request – date stamp if in hardcopy.</p> <p>Clock starts.</p>
<input type="checkbox"/>	<p>Advise Chief Operating Officer of request.</p>
<input type="checkbox"/>	<p>Assess applicant /request</p> <ul style="list-style-type: none"> ▪ Who is the applicant? ▪ Is it a sensitive or significant request (*see criteria)? <ul style="list-style-type: none"> ○ If yes – Chief Operating Officer to act as decision-maker. ○ If routine – Chief Operating Officer may appoint an Authority Officer as decision-maker. ○ Decision-maker may appoint an FOI action-officer.
<input type="checkbox"/>	<p>FOI action officer to assess request – valid?</p> <ol style="list-style-type: none"> 1. Is it in writing? 2. State it is for the purposes of the FOI Act? 3. Provide sufficient information to be able to identify the documents requested? 4. Include contact details for corresponding with and sending documents to? <ul style="list-style-type: none"> ▪ If not a valid request, contact the applicant for more information. ▪ Does anything need to be clarified first with the applicant? ▪ Are they making a claim for financial hardship? ▪ Can this information be provided outside the FOI Act?
<input type="checkbox"/>	<p>Identify relevant divisions that may have documents within the scope of the request.</p>
<input type="checkbox"/>	<p>Notification (to be sent soon as practicable after validating request)</p> <ul style="list-style-type: none"> ▪ Prepare a notification for the Chief Operating Officer to send to the Minister’s office (see criteria and template above).
<input type="checkbox"/>	<p>Send acknowledgement letter or email to applicant (within 14 Calendar days) (Acknowledgement of FOI Request Received – [AWBC-288105]).</p>
<input type="checkbox"/>	<p>Register the request in the document management system (under Information Management – Freedom of Information – Freedom of Information Enquiries). Name the folder using the applicant’s name and date (mm/yyyy).</p>
<input type="checkbox"/>	<p>Save a copy of the FOI request into the folder. The ID created in the document management system becomes the FOI Request Id.</p>
<input type="checkbox"/>	<p>Start a new FOI Tracer using the template under Freedom of Information Templates [AWBC-288979] and file</p>

	into the new FOI folder.
<input type="checkbox"/>	Start tracking time spent processing the request via the timesheet in the FOI Tracer.
<input type="checkbox"/>	<p>Email identified divisional staff:</p> <ul style="list-style-type: none"> ▪ FOI Request ▪ FOI Search Checklist [AWBC-289005] ▪ Time frame (<i>generally 5 working days</i>)
<input type="checkbox"/>	<p>Maintain contact with identified staff – have you received confirmation that the tracer has been received?</p> <ol style="list-style-type: none"> 1. If no contact by day 5 – follow up by phone and email. 2. Discuss whether there is an indication that the scope might be too big or voluminous and whether any sensitivities might exist.
<input type="checkbox"/>	<p>Receive documents and returned FOI Search Checklist from identified staff by due date.</p> <p>Ensure FOI Search Checklist includes an estimate of the time taken to search and retrieve the documents.</p>
<input type="checkbox"/>	<p>Calculate estimate of charges and required deposit and draft charges letter to applicant [AWBC-288103] [if relevant – update letter to advise of third party consultation and extra 30 days of processing]</p> <p>Have regard to any claim for financial hardship.</p> <p>Have charges approved by the Chief Operating Officer before sending letter to applicant.</p> <p>Clock stops (deposit required before any further action).</p>
<input type="checkbox"/>	<p>Has deposit been received within 30 calendar days?</p> <ul style="list-style-type: none"> ▪ Yes – resume processing request – clock starts. ▪ No – applicant is deemed to have withdrawn the request. Notify the applicant of the withdrawn request. Close file and update records.
<input type="checkbox"/>	Process the receipt of deposit immediately (within 24 hours of receipt)
<input type="checkbox"/>	Build schedule of documents [AWBC-288110]
<input type="checkbox"/>	Review documents [identify third parties and make an initial assessment on exemptions]
<input type="checkbox"/>	Draft and send consultation letters to third parties
<input type="checkbox"/>	Log third party responses
<input type="checkbox"/>	Start redacting/making decisions (including decisions on disclosure log) – record notes on wording / reasons
<input type="checkbox"/>	Update final timesheets

<input type="checkbox"/>	Calculate final charges having regard to initial estimate and deposit paid. Calculate difference.
<input type="checkbox"/>	Finalise Decision Letter, Schedule and Update Charges letter
<input type="checkbox"/>	Send to applicant – await outstanding monies before sending documents.
<input type="checkbox"/>	If significant or sensitive request , Chief Operating Officer to send documents to the Minister’s office Include request, decision and schedule of documents to be released.
<input type="checkbox"/>	Once applicant pays outstanding monies, clock starts – receipt payment and send documents to applicant: <ul style="list-style-type: none"> ▪ Notice of Access Grant Decision [AWBC-288109] ▪ Notice of Access Refusal Decision [AWBC-288108]
<input type="checkbox"/>	Follow-up with third parties on decision.
<input type="checkbox"/>	Finalise FOI Tracer.
<input type="checkbox"/>	When third party appeal period has lapsed – release documents to applicant (if applicable) and to the FOI disclosure log.
<input type="checkbox"/>	Arrange for documents/details to be published to disclosure log on the AGWA website. If sensitive – ensure log records how third parties can request those documents (rather than publishing to the AGWA website).

DOCUMENT REVIEW

Document Revision History		
Date	Section	Summary of Revision

Created	December 2014
Document Version	1.0
Prepared by	Legal and Governance Services Officer
Approved by	
Date of Approval	

