

# Freedom of Information PM&C Business Rules

## Key FOI process milestones

Time (in working days)	Milestones
<b>Stage 1</b>	
Day 0	<ul style="list-style-type: none"> <li>Request submitted</li> </ul>
Days 0-1	<ul style="list-style-type: none"> <li>Determine validity, identify decision maker and initial alert</li> </ul>
Days 2-3	<ul style="list-style-type: none"> <li>Initial discussion</li> </ul>
Days 3-8	<ul style="list-style-type: none"> <li>Initial search and checklist action</li> </ul>
Day 8	<ul style="list-style-type: none"> <li>Estimate of charges (or practical refusal) to applicant</li> </ul>
<b>Stage 2</b>	
Days 9-13	<ul style="list-style-type: none"> <li>Continue substantive analysis and consultation</li> </ul>
Days 14-16	<ul style="list-style-type: none"> <li>Finalisation of consultations, decision and document schedule</li> </ul>
Days 17-19	<ul style="list-style-type: none"> <li>Secretary, PMO and others notified of forthcoming release</li> </ul>
Day 20	<ul style="list-style-type: none"> <li>Decision to applicant</li> </ul>

**Note 1:** Not all FOI requests will progress to Stage 2 as some requests may lapse at the end of Stage 1

**Note 2:** The initial statutory timeframe for processing is 30 calendar days. This 20 working day timeline indicates the maximum time allowed for processing a request (unless extensions of time apply). Whenever possible, requests should be dealt with in a shorter timeframe than this.

## Day 0

1. Applicant submits FOI request.

## Days 0-1

2. Access and Administrative Review (A&AR) considers the FOI request:
  - If request is valid, A&AR creates FOI file for the request and allocates to FOI action officer
  - If not valid, A&AR contacts applicant to clarify request

If request is valid, A&AR consults FAS, Government Division regarding request, decision maker appointment and initial consultations. A&AR to identify a proposed decision maker, and confirm he/she will be available during the request processing period.

3. A&AR emails Deputy Secretary of relevant line area to inform them of details of the request and to notify them of the decision maker proposed by A&AR. For every FOI request it is imperative that this email is copied to:
  - The Secretary of the Department of the Prime Minister and Cabinet
  - The Prime Minister's Office (Adviser on FOI)
  - The First Assistant Secretary (relevant line area)
  - The identified decision maker
  - Relevant contacts as identified by A&AR (e.g. FAS, Cabinet Division)

The email provides an opportunity for the Deputy Secretary to nominate an alternative decision maker and/or additional parties for consultation. A&AR should proceed with their proposed decision maker, unless and until an alternative decision maker is nominated. The email also provides an opportunity for the Secretary and PMO to indicate their interest in being engaged in consultations.

4. A&AR will schedule a time with the decision maker for an initial meeting (on day 2 or 3). The decision maker should identify and extend the meeting invitation to a contact officer. If the decision maker should become unavailable, the line area should ensure an appropriate representative is present (in addition to the contact officer).

## Days 2-3

5. Decision maker (and contact officer) and A&AR meet to discuss the FOI request. The agenda for this meeting will include:
  - Initial discussion regarding documents in scope and availability of documents to fulfil the request

- Review of scope and any potential adjustments that should be discussed with the applicant
  - If relevant, discussion as to whether transfer to another agency, in whole, or in part, applies
  - Clear explanation of the role of the decision maker, and advisory support available to the decision maker (including A&AR and peer advisers)
  - An overview of FOI requirements including legislated timeframes (requirement for a decision to be processed within 30 calendar days plus any extensions)
  - Provision of the Stage 1 checklist of requirements for the decision maker to complete within the following 3-5 working days
6. Immediately following this meeting A&AR provides a letter of acknowledgement to the applicant including, as necessary, information pertaining to any clarification or narrowing of scope. The applicant should be notified that if a change or clarification of scope is necessary, failure to comply will likely result in a letter of practical refusal.

## Days 3-8

7. The decision maker should ensure all items on the Stage 1 checklist are completed within 3-5 working days of the initial meeting. These include:
- Appoint a contact officer and processing team (if not already appointed), and notifying A&AR of these contacts.
  - Conduct searches for requested documents, including Records Management Unit (RMU), Ministerial Support Division (MSD) keyword searches, IT email searches, and any further searches required (for example, Cabinet Secretariat records).
  - Identify projected milestones for completion of search and analysis. These milestone dates should be communicated to A&AR. If it becomes apparent that the workload was underestimated and milestones are unlikely to be met, the line area should notify A&AR as soon as possible regarding possible extensions or grounds for practical refusal.
  - An initial indication regarding other agencies and third parties that will require consultation. Some third party consultation triggers a 30 day extension to the deadline. If relevant, the decision maker should contact the relevant PMO adviser (and copy to the PMO adviser on FOI) regarding the request and further consultation.
  - Provide updates to the relevant First Assistant Secretary on a regular basis.
  - Identify the documents they have located.
  - Provide information (i.e. size of request and resources required) to feed into A&AR calculation of estimate of charges.

- Consult with A&AR as to whether a practical refusal notice is appropriate.
- Complete search and retrieval of documentation.
- Identify sensitivities and/or clearances required.

The Stage 1 checklist should be signed off by the decision maker and provided to A&AR.

## Day 8

8. If not already done, A&AR should communicate one of two options to the applicant:
- Estimate of charges letter (where charges are to be levied), or
  - Commencement of a practical refusal consultation indicating that the request is considered a substantial and unreasonable diversion of resources or remains unclear in scope.

In some circumstances, the applicant will also need to be notified that consultation of certain third parties is required, triggering a 30 day extension to the processing deadline.

### **Stop the clock: Awaiting the applicant's response**

The applicant has a range of options open to them at this stage. They must provide a response to the estimate of charges within 30 days as to whether they accept the charges and will pay deposit/request waiver/dispute the charges. If they do not respond within 30 days, the request will be deemed withdrawn. If a practical refusal notice is sent to the applicant, the applicant has 14 days to provide a response to pursue alternative options. If no response, the request will be deemed withdrawn. Clock does not restart until either:

- a deposit (or full amount of charges) is paid or a decision is made to waive charges;  
or
- any practical refusal reason is removed.

In the interests of efficiency and meeting the deadlines stipulated in the FOI Act, the decision maker is encouraged to consider what work, if any, should be undertaken while waiting for an applicant's response. At a minimum, other agency and third party consultation should generally be commenced.

## Days 9-13

9. By day 13 of processing, the decision maker with the assistance of the line area should ensure that:
- All external third party consultations (including other agencies) have been undertaken.

- All internal parties (Secretary, PM&C line areas, PMO, other ministerial offices in the portfolio) are consulted as appropriate. The Deputy Secretary and FAS of the line area should be kept consistently informed of all sensitivities arising and what consultations have or will occur relevant to those sensitivities. A&AR should be copied into all internal consultation to prevent double handling. The PMO FOI advisor should also be copied into any communications with the PMO.
- All document analysis is completed and collated into a document schedule.
- All concerns regarding potential exemptions of documents are discussed with A&AR, and proposed exemption claims are justified.
- The decision maker must consider whether a brief on documents being considered for potential release should be provided to the Secretary to allow him an opportunity to provide comments or insights, prior to a decision being finalised.

10. A&AR manages consultations with external third parties as identified, and any consultation with Cabinet Secretariat.

## Days 14-16

11. A&AR ensures that:

- They review all material proposed for exemption and all redactions have been completed as appropriate.
- All third party consultation responses (if applicable) have been received and forwarded to the decision maker.
- They actively consult and support the line area regarding progress of the decision.

12. During this stage, the decision maker should have formed a clear view on information to be released, and should ensure that:

- A&AR is provided with the schedule of all relevant documents with an indicative decision on release.
- A&AR is copied into all emails to the PMO (relevant issue adviser and adviser on FOI) consulting them on documents as may be relevant. The PMO should be given three days to provide final comment.
- If appropriate, final consultations with the Secretary are conducted, with A&AR advised of consultation.
- All matters on the Stage 2 checklist have been considered.

## Days 17-19

13. Three days before release, the decision maker should send a copy of the decision letter and documents for release to the Secretary with a noting brief advising of consultations and any sensitivities, and email copies to the relevant Deputy Secretary, First Assistant

Secretary and PMO contact/s. The brief will need to indicate whether the Secretary has been consulted previously on the documents. If not, the decision is not signed until after the Secretary has noted the brief. If the Secretary indicates more time will be required to review the documents, A&AR must be informed in order to negotiate a brief extension with the applicant.

14. The decision maker signs the Stage 2 checklist indicating that all procedures have been followed, and provides self-certification that they have undertaken all consultation required (particularly relating to any sensitivities associated with the request).
15. A&AR ensures all items on the Stage 1 and Stage 2 checklists have been completed and that the decision letter has been finalised and documents prepared for release.

## Day 20

16. A&AR sends the decision and the schedule of documents to the applicant. Documents are also provided if charges have been paid in full. If any payment is still pending, A&AR will request payment of outstanding charges, and release documents to applicant only upon payment of the outstanding charges. The Secretary and the PMO should be notified when delayed document release is to occur.
17. A&AR ensures that documents are released to applicant. Unless sensitivities have been previously identified (e.g. personal information), these documents should be *simultaneously*<sup>1</sup> released publicly on the department's disclosure log.

## Note regarding statutory timeframes

- The 30 calendar day decision notification period commences on the **day after** the day the department receives the request.
- The department must notify the applicant of a decision no later than 30 calendar days after receiving a request. If the last day for notifying a decision falls on a weekend day or public holiday, the timeframe expires on the next working day.
- Time taken in certain consultations with the applicant about the request are not counted within the 30 day decision notification period (i.e. the "clock stops" while waiting for the applicant's response in a consultation regarding charges or practical refusal).
- An extension of the decision notification period may also be available:
  - because consultation with a State/Territory/Norfolk Island government, a person or business is required
  - because consultation with a foreign entity is required
  - by agreement with the applicant

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<sup>1</sup> Subject to further discussion.

- if the request is complex or voluminous, by application to the Information Commissioner for an extension.
- For questions and concerns regarding timeframes, the decision maker should consult A&AR in the first instance.
- The Deputy Secretary (Governance) will be advised by A&AR in circumstances when request processing has been delayed and intervention and additional support may be required to prevent the decision becoming overdue.

## Ongoing A&AR reporting commitments

The A&AR team provides:

- Weekly short reports for Senior Management Group
- Longer weekly reports indicating the status and changes of FOI requests being processed through the Department
- Quarterly and annual statistical returns to the Office of the Australian Information Commissioner.

## Decision-maker's checklist for stage 1 of the request

No.	Description	Yes/No	Comments
1	Are the terms of the request clear and unambiguous (that is, can I clearly identify which documents are being sought)?		
2	Are any relevant documents likely to be held in other areas of the department? If so, where?		
3	Are any relevant documents known to be held in any PM&C portfolio minister's office (other than copies of documents already held by PM&C)?		
4	Is the subject-matter of the request more closely connected with the functions of another agency (including any minister's office)?		
5	Does the request seem too large to process within existing resources and within the statutory time frame?		
6	Who will be the primary contact officer in my Branch for actioning the request?		
7	Is it likely we will need to consult with other agencies, other governments, individuals or business entities? If so, see 12 below.		
8	Is this a sensitive matter that requires consultation with the Secretary, the Prime Minister's office and/or another portfolio Minister's office?		
9	Is it likely charges will be imposed for processing the request? If so, see 13 below.		
10	Have milestone dates for completion of searches and document analysis been identified and communicated to the FOI action officer? What are these dates?		
11	<p>Have all reasonable searches been conducted? In locating relevant material, consider searching all possible locations:</p> <ul style="list-style-type: none"> <li>• Slipstream</li> <li>• TRIM (RMU)</li> <li>• IT (e.g. backups of emails)</li> </ul> <p><b>Paper source searches:</b></p> <ul style="list-style-type: none"> <li>• Office files &amp; other records held by my area</li> <li>• Office files &amp; records held by other areas of PM&amp;C (specify)</li> <li>• Filing cabinets</li> <li>• Desk &amp; desk drawers of relevant officers</li> <li>• Bookshelves &amp; cupboards</li> <li>• Safe</li> <li>• Personal folders, notebooks, calendars &amp; diaries of relevant officers</li> <li>• Offsite locations, e.g. contractors, files in storage (specify)</li> </ul> <p><b>Electronic source searches:</b></p> <ul style="list-style-type: none"> <li>• Computer (electronic documents on group and personal drives and e-mails)</li> <li>• Personal electronic notebooks, calendars &amp; diaries</li> <li>• Disks, CDs and other storage devices</li> </ul>		
12	<p>Has the FOI action officer been advised what consultations are required with third parties in relation to:</p> <ul style="list-style-type: none"> <li>• Commonwealth/State relations</li> <li>• Personal information</li> <li>• Business affairs</li> <li>• Documents that originated from other Commonwealth departments or agencies</li> <li>• Documents that may impact foreign relations</li> </ul>		
13	<p>Has the following information been provided to the FOI action officer (to calculate charges or assess practical refusal reason)? Estimates of:</p> <ul style="list-style-type: none"> <li>• time spent on search and retrieval</li> <li>• number of relevant files</li> <li>• number of relevant pages</li> <li>• number of relevant documents</li> <li>• number of pages that may be exempt in full</li> <li>• number of pages that may be released with deletions</li> </ul> <p>number of third parties that may need to be consulted</p>		



## Decision-maker's checklist for stage 2 of the request

No.	Description	Yes/No	Comments
1	Has the Stage 1 checklist been completed and provided to the FOI action officer?		
2	Have all external third parties requiring consultation been consulted?		
3	Have all third party submissions been considered?		
4	<p>Have the following internal parties been advised or consulted as appropriate with regards to sensitivities on the potential release of information:</p> <ul style="list-style-type: none"> <li>• Secretary</li> <li>• Other areas of PM&amp;C (please identify)</li> <li>• PMO</li> <li>• Other Ministerial offices in the portfolio (please identify)</li> </ul> <p>Note: The FOI action officer should be copied into any such consultation. If being consulted, the Secretary should be briefed on documents identified for potential release no later than day 13.</p>		
5	Have my FAS and Deputy Secretary been kept informed of sensitivities and consultations relevant to those sensitivities?		
6	Has the line area completed assessment of all documents and collated relevant information into a document schedule?		
7	Have proposed exemptions and redactions been reviewed against the FOI Act in consultation with the FOI action officer?		
8	Have the indicative decision and copies of documents showing proposed exemptions been reviewed by me and provided to the FOI action officer?		
9	Have the Secretary and the PMO been notified of the intended decision and provided with copies of documents intended for release?		
10	If the Secretary was not consulted previously on the documents, has the Secretary noted the brief referred to at 9 above?		
11	If the Secretary requires more time to consider the documents, has the FOI action officer been advised to seek an extension of time?		

I confirm that:

- The First Assistant Secretary of my Division was kept informed of progress, sensitivities and the indicative decision throughout the process.
- All necessary external third party consultation has occurred and submissions considered.
- The Secretary, the PMO and any other internal parties have been consulted as and when required and their comments have been considered in reaching my decision.
- The Secretary and the PMO have been briefed on the documents proposed for release.

<Name>

<Position>

Department of the Prime Minister and Cabinet

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# A&AR internal checklist for new business rules processes

Day	Description of milestone to be reached	Completed?
<b>Stage one</b>		
Day 0	A&AR must advise FAS of new request and proposed DM	
Day 1	Determine validity of request and identify DM	
	A&AR must have emailed relevant DS, cc Secretary, proposed DM, FAS and PMO alerting to new request and requesting meeting with DM	
	Send meeting request to proposed DM attaching checklists and timeline	
Day 2		
Day 3	Initial meeting with DM must be completed by today At discussion with DM discuss: <ul style="list-style-type: none"> <li>● review of scope of request</li> <li>● initial discussion about documents in scope</li> <li>● possible transfer to another agency</li> <li>● DM role and advisory support available (A&amp;AR and peer advisers)</li> <li>● overview of FOI requirements (i.e. timeframes)</li> <li>● initial checklist requirements</li> </ul>	
Day 4	A&AR to send acknowledgment immediately following meeting with DM and outlining whether clarification of scope required	
Day 5		
Day 6		
Day 7	Within 3-5 working days (or by today) the DM should have: <ul style="list-style-type: none"> <li>● appointed a contact officer</li> <li>● conducted searches</li> <li>● identified projected milestones and advise if extension needed or grounds for practical refusal</li> <li>● initial indication regarding other agencies and third parties requiring consultation</li> <li>● made contact with PMO adviser</li> <li>● provided updates to relevant FAS on regular basis</li> <li>● identify documents located</li> <li>● provide information for charges calculation</li> <li>● consult with A&amp;AR as to whether practical refusal notice appropriate</li> <li>● complete search and retrieval of documents</li> <li>● identify sensitivities and/or clearances required</li> </ul> Line area must have completed initial tasks checklist and	

	returned checklist to A&AR by today	
Day 8		
Day 9		
Day 10		
Day 11		
Day 12		
Day 13		
Day 14	A&AR must have provided applicant either: estimate of charges/ or practical refusal notification and/or any third party notice by today Add appropriate reminders for timeframe for payment of charges or practical refusal notice (if applicable)	
<b>End of stage one. Clock stopped. Once clock restarts – stage two</b>		
Day 15		
Day 16		
Day 17		
Day 18		
Day 19		
Day 20		
Day 21	Between days 14 -21 (8-13 business days): <ul style="list-style-type: none"> <li>document analysis undertaken and sensitivities identified (schedule collated)</li> <li>consultation with PMO and Secretary undertaken if appropriate – must be finalised by today</li> <li>third party consultation undertaken</li> </ul>	
Day 22		
Day 23	Between days 21 – 23 (14-16 working days) A&AR should have: <ul style="list-style-type: none"> <li>finalised consultation and forwarded responses to DM</li> <li>review material proposed for exemption and all redactions completed</li> <li>All consultations, interactions and documentation recorded on the FOI SharePoint site</li> <li>Prepare draft decision and provide to DM for approval</li> <li>Ensure PMO adviser (line area and FOI advisers) consulted.</li> </ul>	
Day 24	Information brief must be provided to Secretary by DM by today, PMO must be alerted to release by today Webservices should be provided with documents by today.	
Day 25		
Day 26		
Day 27	Following uploaded to SharePoint site as well as G Drive: <ul style="list-style-type: none"> <li>Documentation (original, marked up and redacted)</li> <li>Reports</li> </ul>	

	<ul style="list-style-type: none"> <li>• Checklists</li> </ul> <p>Ensure:</p> <ul style="list-style-type: none"> <li>• Checklists completed</li> <li>• DM letter finalised</li> <li>• Documents prepared for release</li> <li>• Secretary signed brief returned and PMO comments finalised</li> <li>• DM self-certification checklist signed</li> </ul>	
Day 28		
Day 29		
Day 30	<p>Decision letter and documents sent to applicant (if charges paid in full) and documents published on disclosure log simultaneously</p> <p>A&amp;AR must advise DM, Secretary and PMO that decision has been sent</p> <p>Note date of release on all versions of case management files</p>	

