

OVIC

Office of the Victorian Information Commissioner
Freedom of Information

RECENT AMENDMENTS TO THE FOI ACT

A brief overview of recent key changes made to the FOI Act by the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017*

Overview

A number of amendments have been made to the *Freedom of Information Act 1982* to improve the operation of the FOI system in Victoria.

The amendments commenced on 1 September 2017 and apply to all new access requests received on or after that date.

This document provides a general overview of the key changes.

Office of the Victorian Information Commissioner

The new Office of the Victorian Information Commissioner is responsible for the regulation of freedom of information, privacy, and data protection in Victoria. It comprises –

- > the Information Commissioner;
- > the Public Access Deputy Commissioner;
- > the Privacy and Data Protection Deputy Commissioner; and
- > staff to support their statutory functions.

Transitional arrangements

The transitional arrangements are set out in Schedule 1 of the FOI Act. In short, access or amendment requests made under ss 17 or 39 before 1 September 2017 are subject to the FOI Act as in force on 31 August 2017.

The new provisions (including those relating to the conduct of reviews and the handling of complaints) only apply to access or amendment requests made on or after 1 September 2017

Shorter timeframe to make access decisions

Agencies and Ministers now have a **30 day** timeframe for notifying a decision, rather than 45 days (s 21(1)(a)).

The new provisions set out two circumstances in which the statutory time for notifying a decision may be extended –

- > The first is an extension of **not more than 15 days**, at the initiative of the agency or Minister, if consultation is required under ss 29, 29A, 31, 31A, 33, 34 or 35 (s 21(2)(a)).
- > The second is by a period of **not more than 30 days at a time**, with the agreement of the applicant (s 21(2)(b)).

Download our guide to ‘Timeframe for deciding access requests, including extensions of time’ for further information.

Shorter timeframe for agencies to appeal OVIC decisions

Agencies and Ministers now have **14 days** only, instead of 60 days, to make an application to VCAT for review of a decision of the Information Commissioner or the Public Access Deputy Commissioner (s 52(9)).

Mandatory consultation and notification

Decision makers are now required to consult with relevant third parties before deciding whether the exemptions in ss 29, 29A, 31, 31A, 33 or 34 of the FOI Act apply.

Additionally, following consultation under ss 33, 34 or 35, if a decision maker decides to release all or part of a document, they must notify any third party that objected to disclosure of their right to seek review of their decision by VCAT.

Download our guide to 'Consultation and notification' for further information.

New grounds of complaint

The FOI Act now includes two specific grounds of complaint against a principal officer. Specifically, a complaint may be made to the Information Commissioner about an action taken or failed to be taken by a principal officer in the performance or purported performance of their functions or obligations under –

- > Part IB of the FOI Act, relating to professional standards published by the Information Commissioner; and
- > Part II of the FOI Act, relating to the proactive publication of certain documents.

New exemption for IBAC documents

The FOI Act now includes a specific exemption for documents relating to IBAC. Section 31A provides that a document is exempt if its disclosure would be reasonably likely to –

- > prejudice an investigation undertaken by the IBAC; or
- > disclose, or enable a person to ascertain, the identity of any person or body who has provided information to the IBAC; or
- > disclose methods or procedures for preventing, investigating, or dealing with protected disclosures, complaints, or notifications relating to corrupt conduct or police personnel conduct the disclosure of which would, or would be reasonably

likely to, prejudice the effectiveness of those methods or procedures; or

- > endanger the lives or physical safety of persons engaged in or in connection with the IBAC's functions or persons who have provided information to the IBAC.

Expanded review jurisdiction

The access decisions of principal officers and Ministers are now subject to first instance review by the Information Commissioner or Public Access Deputy Commissioner where a decision is made to –

- > refuse or defer access in accordance with a request under s 17;
- > refuse to waive or reduce an application fee under s 17; or
- > refuse to amend records in response to a request under s 39.

The Information Commissioner or Public Access Deputy Commissioner are also able to review an agency or Minister's decision to refuse access to a document on the basis of a cabinet exemption under s 28 of the FOI Act.

Information Commissioner's Professional Standards

The Information Commissioner can now develop and issue binding Professional Standards relating to –

- > the conduct of agencies in performing functions under the FOI Act; and
- > the administration of the FOI Act in relation to agencies and the operation of the FOI act by agencies.

The Professional Standards may include standards for the processing of requests under the FOI Act, including standards for –

- > assistance for applicants in making requests;
 - > identification of relevant documents;
 - > consultation;
 - > clear communication with applicants; and
 - > timely decisions-making, including extending time for making decisions on requests.
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The Information Commissioner must publish draft Professional Standards and seek submissions from principal officers before publishing the Professional Standards (s 61U(4)).

Principal officers and agency officers must comply with the Professional Standards in performing their functions under the FOI Act (s 6W(1)). Additionally, principal officers are responsible for ensuring agency officers comply with the Professional Standards (s 6W(2)).

Coercive powers

Under the new Part VIC, the Information Commissioner or the Public Access Deputy Commissioner may issue a notice to produce or attend during –

- > a review (s 49KB);
- > in dealing with a complaint (s61I(4)); or
- > in conducting an own motion investigation (s 61P(2)).

Section 61U provides that a notice to produce or attend may require a person to –

- > produce a specified document, by or before a specified time and in a specified manner;
- > attend at a specified time and place on a specified date to produce documents;
- > attend an examination to give evidence and produce documents at a specified time and place on a specified date; or
- > attend at a specified time and place to produce a specified document.

Penalties may apply for non-compliance with a notice to produce or attend.

Additionally, where the Information Commissioner reasonably believes that an agency or Minister has failed to undertake an

adequate search for documents, the Information Commissioner is empowered to direct further searches for documents to be undertaken.

This is available –

- > during a review (s 49KA); or
- > in handling complaint (s 61GA).

Own motion investigations

Under the new Part VIB, the Information Commissioner is able to conduct own motion investigations into an agency or principal officer in relation to –

- > performance or exercise of a function or obligation under the FOI Act; or
- > failure to perform or exercise a function or obligation under the FOI Act; or
- > purported performance or purported exercise of a function or obligation under the FOI Act.

New offences

Division 2A of Part VII of the FOI Act contains a number of new offences. A person must not, without reasonable excuse –

- > wilfully obstruct, hinder or resist the Information Commissioner, Public Access Deputy Commissioner or OVIC staff member (s 63F(1));
- > knowingly provide information or make a statement to the Information Commissioner, Public Access Deputy Commissioner or OVIC staff member that is false or misleading in a material particular (s 63F(2));
- > mislead or attempt to mislead the Information Commissioner, Public Access Deputy Commissioner or OVIC staff member (s 63F(3)).

Further Information

Visit our website, call or email us:

- > www.ovic.vic.gov.au
- > 1300 842 364 (1300 VIC FOI)
- > enquiries@foicommisioner.vic.gov.au

Other related fact sheets include:

- > Guide to Consultation and Notification
- > Consultation and Notification Flowchart
- > Time for Deciding Requests