

Feedback and OVIC's responses regarding the formal consultation on the draft professional standards

Note: this document is a summary of the feedback received only. It represents the main feedback OVIC received and does not include every piece of feedback provided. This document also does not outline all of the amendments to the draft standards. The proposed standards are available on the OVIC website for agencies and the public to view.

Theme/Standard	Feedback	OVIC response
Timeframes generally	<p>The timeframes for agencies to do certain things under the standards are generally short. These timeframes place added pressure on resources and make it difficult to comply. Further, the timeframes do not take into consideration agencies without full time FOI staff, staff on leave and Christmas close down periods.</p> <p>It would be helpful to clarify whether the standards refer to business days or calendar days.</p>	<p>OVIC recognises the potential administrative burden in requiring agencies to comply with certain timeframes under the standards. This burden must be balanced against the statutory timeframes in which to make a decision, and the potential disadvantage to an applicant who may not be aware of the progress of their request and whether there is outstanding information the applicant has to provide to expedite the process. However, in response to submissions, OVIC has extended the time to comply with the standards.</p> <p>The standards refer to 'days', meaning calendar days. This is consistent with the Act, which also refers to days except for in two provisions which refer to business days (sections 49N(4) and 49M(4) of the Act).</p>
Commencement date	<p>Agencies will need time to develop and implement new processes and procedures to comply with the standards. When will the standards take effect and how will they be implemented? Will there be a staged approach to commencement?</p>	<p>The standards will commence in late 2019 for all agencies, with a date still to be determined. There will not be a staged approach to the standards taking effect. OVIC has published the proposed standards. It is not anticipated that further amendments will be made to the published proposed standards. Agencies may begin adapting their processes to ensure they comply when the standards commence later this year. The standards are still required to be published in the Government Gazette and laid before each House of Parliament before they take effect.</p>
The rationale section	<p>The rationale is useful for FOI officers in understanding the reasoning behind the standards and should be public information.</p>	<p>OVIC is developing a short guide to the professional standards. This short guide will incorporate and expand on the rationale that was contained in the draft standards.</p>
Ambiguous terms	<p>Some of the terms in the standards are open to interpretation (for example, 'reasonable' and 'practicable'). These terms should be further explained, and OVIC should set minimum standards so agencies can ensure compliance.</p>	<p>OVIC recognises not all requests and agencies are the same. Therefore, terms such as 'reasonable' and 'practicable' provide flexibility to agencies in complying with the standards. To set minimum standards or attempt to clearly articulate these terms would render the purpose of these terms void. Agencies should consider the specific circumstances of their agency when interpreting terms such as these.</p>
1.1	<p>Guidance on proactive and informal release of information would be useful in discharging an agency's obligations under this standard.</p> <p>The standard should reflect section 16 of the Act, which outlines access to a document may be provided where an agency can properly do so.</p>	<p>OVIC has guidance on the proactive and informal release of information, which is being updated to incorporate the obligations under the standards.</p> <p>OVIC inserted 'properly' into the standard, to reflect the language of section 16 of the Act.</p>
1.2	<p>It would be helpful to explain what 'facilitate access' means, and how that is different to advising an applicant how the document may be accessed.</p>	<p>OVIC's view is that 'facilitating access' and 'advising an applicant how the document may be accessed' are different. To help explain this, OVIC inserted a note under the standard, which provides examples of how any agency may facilitate access to a document and how it may advise an applicant how the document may be accessed.</p>
2.1	<p>What does OVIC mean by 'electronic method for making a request'? Is this different to making an 'online' request? What would this standard include?</p> <p>This standard may be difficult for some agencies to implement, particularly cemetery trusts who do not use electronic communication methods. Similarly, it may be cost prohibitive to set up an online portal to receive requests.</p>	<p>The purpose of this standard is to encourage agencies to adopt more modern and convenient communication methods. The standard reflects the view that applicants who wish to make a request should not be limited to doing so by postal services only, where faster and more convenient communication methods exist.</p> <p>Notwithstanding this, OVIC amended the standard to refer to email only. This is intended to clarify the minimum standard for electronic communication methods OVIC expects agencies to provide for making a request. The standard refers to providing an option for making a request by email, which reflects the fact that an applicant may nonetheless prefer, to make a request in writing in another way (such as by Australia Post).</p> <p>The narrowing of the standard is not intended to discourage agencies from investigating and adopting more convenient and modern communication methods. OVIC encourages agencies to explore modern options, in line with advances in technology and community expectations.</p>

2.2 and 5.3	<p>It is unclear exactly how an agency may comply with this standard – what kinds of payment methods would fit within ‘electronic method for payment’?</p> <p>Some agencies already offer methods of payment other than cheque, bank cheque or money order.</p> <p>Complying with this standard would be a significant financial and administration burden on some agencies.</p>	<p>The purpose of this standard is to encourage agencies to adopt more modern and convenient payment methods. The standard recognises the additional cost to applicants who may be required to pay an application fee or access charges by cheque, bank cheque or money order.</p> <p>However, OVIC amended the standard to require agencies to provide options for paying an application fee or access charges in line with accepted payment methods the agency provides for other services of a similar financial sum. This means that if an agency offers an electronic method of payment for another service, it should to do the same for application fees and access charges, where the cost associated with these services is comparable. Agencies should not have to incur a significant financial and administrative burden in providing options for paying an application fee or access charges.</p> <p>The amendment of this standard is not intended to discourage agencies from investigating and adopting more convenient and modern payment methods. OVIC encourages agencies to explore modern options, in line with advances in technology and community expectations.</p>
3.1	<p>Acknowledging all requests would be an administrative burden on agencies, particularly those who receive large volumes of requests or who do not have dedicated FOI officers. Further, it is unclear what form of acknowledgement would be acceptable (for example, would an automatic email reply suffice?).</p> <p>When read in conjunction with other standards, this standard may result in duplication of effort and multiple communications to an applicant. This may be confusing for the applicant.</p> <p>The timeframe is not practicable.</p>	<p>The aim of this standard is to notify an applicant when their request has been received by the agency. For example, there is often uncertainty when a postal communication has actually been received by an agency. This is to promote early and consistent communication with an applicant, so they are informed as to the progress of their request.</p> <p>However, OVIC recognises the potential duplication of effort and communications as a result of this and other standards. As such, OVIC removed this standard and made further amendments to other standards to achieve the intended purpose of early communication with an applicant – but limited to where the request is not valid, and the agency has an obligation to assist the applicant.</p>
3.2	<p>Many requests are valid when an agency receives them. Therefore, it would be an administrative burden on agencies to acknowledge all valid requests. Similarly, complying with this standard may be duplicative when considering other, similar, standards.</p> <p>The time frame is too short, particularly when an agency is required to communicate with internal business areas to ask them to search for documents. Agencies should be given more time to thoroughly consider whether a request is valid before being required to tell the applicant.</p> <p>The date a decision is due can change multiple times during a request. Therefore, the date given in the notice may only be accurate for a short period of time and may be misleading to an applicant.</p>	<p>Similar to Standard 3.1, the aim of this standard is to let an applicant know when their request is valid and when a decision is due, so they know when to expect further communication from the agency. Conversely, if the request is not valid, the applicant will know, early, that their request is not valid and why, and that the agency can help them make it valid.</p> <p>However, OVIC recognises the potential burden on agencies who receive large volumes of already valid requests, and the need in many cases for an agency to consult internally on a request. Therefore, the standard has been amended to apply only to requests that are not valid. Similarly, the timeframe has been extended to provide more time to conduct a thorough analysis of whether the request is valid.</p>
3.3	<p>What does ‘refuse to comply with a request’ mean?</p> <p>Should there be another communication to tell the applicant their request has been closed in circumstances where the applicant does not consult or remedy their request that is not valid?</p>	<p>OVIC adopted the wording ‘refuse to comply’ from section 17(4) of the Act. To clarify what it means, OVIC inserted a note under the standard.</p> <p>OVIC inserted a requirement for an agency to tell an applicant their request may be closed, so the applicant is aware of what may happen to their request if they do not get in touch with the agency.</p>
4.2	<p>As noted under Standard 3.2, the date a decision is due (including revised due dates) can vary for many reasons.</p> <p>Does this standard require an agency to state the exemption under which the agency is consulting?</p>	<p>OVIC amended the standard to require an agency to advise an applicant the number of days by which the agency is extending the due date. This still achieves the intended purpose of informing an applicant when they can expect a decision from the agency. However, it negates the need to continually update the applicant of the revised due date.</p> <p>OVIC amended the language of the standard to clarify that an agency must advise which provision under section 21 of the Act the agency is extending or further extending.</p>
5.1	<p>There is confusion regarding how long an applicant has to pay access charges under the Act. Could OVIC prescribe such a time frame?</p>	<p>An applicant has 60 days from the day they receive a notification requesting a deposit to apply to the Tribunal for a review of the access charges amount where the Information Commissioner has issued a certificate (section 52(1)(g))</p>

	It is difficult for agencies to give an accurate estimate of access charges until all the documents are fully examined. Further, the full access charges cannot be determined until the decision is made. Therefore, it would be difficult to comply with this standard when, often, a full assessment has not yet been done.	of the Act). As such, OVIC inserted additional wording into the standard to reflect the fact that an agency must wait a minimum of 60 days before considering whether to finalise the request without processing it. The <i>Freedom of Information (Access Charges) Regulations 2014</i> suggest an agency must have a general idea of how much the access charges will be. This is so the agency may first identify whether a deposit is required, and if so, how much that deposit will be. The standard refers to 'estimated' access charges. Therefore, an exact amount that will actually be charged is not required. Rather, the purpose of the standard is to give an applicant an idea of how much the request may cost them and if it is too expensive, they may consider revising the request or discontinuing with the request.
5.2	The timeframe for providing a notice under section 22(3) of the Act is too short. A request must go through a certain level of assessment before an agency is able to determine whether access charges are payable, and if so, whether a deposit is required. The timeframe does not allow sufficient time for an agency to properly assess a request in this way.	The purpose of access charges is to provide an opportunity for an agency to request a deposit of charges without fully processing an FOI request. The charges are intended to be an estimate (in the opinion of the agency) and give an agency the ability to stop processing a request until the deposit is paid. However, OVIC recognises the time and effort required to assess a request to determine whether access charges are payable, and if so, whether a deposit is required. Therefore, the timeframe has been extended to allow more time for this assessment.
6.1	Record searches for every single request may be an administrative burden. This may be particularly so for those agencies who receive large volumes of requests, or where agencies do not have dedicated FOI officers or who may be required to search multiple business units within the agency. Similarly, it would be difficult to require officers within other agency business units to record and provide the kind of information outlined in the standard.	OVIC recognises there may be additional work involved in recording searches undertaken for requests. However, OVIC sees a great benefit in recording those searches. It will enable FOI officers to ensure a thorough and diligent search has been conducted – especially in circumstances where a search is undertaken by other agency officers. To clarify what OVIC means by 'keep a record', a note has been inserted under the standard. The note reflects the fact that a record may include a completed template, email response from a business unit, or file note.
6.2	Some requests are very large and require multiple business units to search for documents. Therefore, it would be an administrative burden to provide a summary of the searches undertaken in every case. Further, it can be difficult to explain why a document does not exist or could not be located. Similarly, to explain why may disclose exempt information.	As noted above, OVIC recognises the added work involved in recording the information outlined in the standard. However, OVIC sees a great benefit in recording searches and explaining the searches undertaken to an applicant in circumstances where the document cannot be located. This way, an applicant is better informed as to where the agency searched and may lead an applicant to accepting why a document does not exist or could not be located. This standard has been moved to fit under the standards relating to decisions. The standard has also been amended slightly to provide flexibility in the explanation provided to an applicant. In addition, OVIC notes an agency is not required to disclose exempt information in a decision, including in relation to the standards (section 27(2)(a) of the Act).
7.1	The time for providing a notice is too short. In providing a notice under section 25A(6) of the Act, an agency is required to make an assessment on the request. Further, an agency may be required to consult multiple internal business units to make this assessment. This consultation often takes time, which would impact an agency's ability to comply with the standard.	OVIC recognises the work involved in assessing a request, and coming to the conclusion that it is too voluminous per section 25A(1) of the Act. As such, OVIC extended the time frame in this standard.
8.1	It would be helpful to have more guidance, in general, on the practicability of consulting with a third party. This would help in reducing the administrative burden of consultation. It would be helpful to have more factors listed in the standard.	The aim of this standard is to provide some clarity around the factors an agency may consider. Determining whether consultation is not practicable will depend on the facts and circumstances of each matter and each agency. Therefore, it would be inappropriate for OVIC to prescribe thresholds for when it would not be practicable to consult. These factors are not exhaustive and provide a starting point for agencies to consider practicability. OVIC is also in the process of refreshing guidance on consultation.
8.2	Does the requirement to record why it is not practicable to consult with a third party apply to every single third party? For example, would an agency be required to record why it is not practicable for individual third parties? If so, it may be administrative burden to record this information.	The purpose of this standard is to improve internal record keeping practices, by requiring an agency to record why it did not consult with a third party. OVIC may request this information if the matter goes on review to OVIC. An agency may record this information generally and does not need to specify each individual third party. As such, OVIC inserted a note under the standard to clarify this.

9.3	<p>It would be an administrative burden to describe every document for many requests, particularly those involving large volumes of documents.</p> <p>Further, for some agencies, a 'document' may vary – in that, some agencies may class an entire file as one document, even though it may contain multiple documents within it. Similarly, some agencies break down requests into pages of documents as per their own administrative practices. In this context, it would be an administrative burden to break down large files/records.</p>	<p>OVIC amended the standard to state agencies are required to describe the documents or types of documents discovered for a request. Therefore, while encouraged, an agency is not required to list every document discovered.</p> <p>Similarly, a note is inserted under the standard to clarify that an agency will comply with the standard where it describes documents in accordance with its internal processes (for example, where it classifies a client file as one document). This will assist those agencies whose documents are grouped together for a particular purpose, and will not require that agency to break down each individual document.</p>
10.1 – 10.5	<p>It would be helpful to have guidance on how agencies can implement these standards and what OVIC expects.</p> <p>In addition, there should be a standard outlining that an authorised officer properly acting within their authority cannot be directed to make a particular decision.</p>	<p>OVIC is in the process of refreshing guidance for agencies.</p> <p>OVIC inserted a new standard relating to decisions and reasons for decisions, to reflect the fact an authorised officer must not be directed to make a particular decision, where they are acting properly and within their authority.</p>
11.3	<p>The timeframes requested by OVIC during a review or complaint can be too short, particularly for more complex reviews.</p>	<p>OVIC amended the standard to include 'or agree', to indicate there may be circumstances where an agency requires more time to provide information or the requested documents.</p>