Proactive release of information

This practice note provides an overview of the proactive release of government information. All legislative references are to the *Freedom of Information Act 1982* (Vic) (**the Act**) unless otherwise stated.

What is proactive release?

Proactive release involves an agency making information or documents it holds or collects publicly available, on its own accord without someone making an information access request. For example, an agency may proactively release policy or non-sensitive documents by publishing them on its website.

Proactive release complements and is consistent with agencies’ obligations under the Act to make the maximum amount of government information available to the public promptly and inexpensively.

It promotes government transparency and accountability by increasing the public’s access to government information and allows them to participate in government decision making.

In addition to promoting open and accountable government, proactive release of information can reduce the need for information access requests. Proactive release can also enhance the public’s trust in government.

Agencies should aim to provide access to government information outside the Act through proactive and informal information access processes. For more information on informal release, refer to *Practice Note 6.*

Part II of the Act

Agencies generate and collect large amounts of information and documents in carrying out their functions. The Act recognises the importance of agencies identifying what information they hold and communicating that to the public.

Part II of the Act sets out an information publication scheme that requires an agency to publish and make available a range of information and documents used and created by the agency in carrying out its functions. This includes:

* a statement summarising its organisation and functions, documents and freedom of information (**FOI**) procedures (for example, the categories of documents maintained in the agency’s possession) – section 7;
* a statement listing its rules, policies and procedures relevant to the public (for example, manuals, rules of procedure, statements of policy) – section 8; and
* a statement of the categories of documents the agency possesses that details certain reports, records of decisions and submissions prepared by or for the agency (for example, a paid consultant’s report, a submission prepared for Cabinet, an environmental impact assessment prepared by the agency) – section 11.

The information publication scheme under the Act serves two purposes. The first purpose is to provide for the proactive disclosure of information and documents by the agency. The second purpose is to assist applicants by providing them with a better understanding of the information and documents held by the agency that may be requested under the Act if not published by the agency.

*Professional Standard 1.3* supports this by requiring the principal officer of an agency to ensure information statements published in accordance with Part II of the Act are available on their agency’s website.

Information asset registers

The Victorian Protective Data Security Framework, issued by the Information Commissioner under the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**), provides a framework for the security of all public sector information. Certain Victorian public sector organisations, including departments and statutory authorities are required to comply with the [Victorian Protective Data Security Framework](https://ovic.vic.gov.au/data-protection/what-is-data-protection/framework-vpdsf/).

It requires relevant public sector organisations to identify and understand their information assets and maintain an information asset register. In other words, an information asset register provides a complete record of an agency’s entire information holdings.

Accordingly, the requirements under the Victorian Protective Data Security Framework complement those under Part II of the Act, as it involves an agency identifying information assets that may be appropriate for public release, which provides assistance to agencies in meeting their obligations under Part II of the Act.

Considerations for proactive release

When considering whether information or a document should be proactively released, agencies may have regard to factors, including:

Common information requests

Whether there have been repeated requests for the same type of information or document, indicating that it may be of general interest to the public and should be made publicly available.

**Privacy**

Agencies should consider the Information Privacy Principles under the PDP Act, and ensure they have the authority under the PDP Act or other legislation to proactively release or publish any personal information. In most instances documents containing personal information will not be appropriate for proactive release unless there is a legislative requirement for it to be published.

**Restrictions on release**

Any statutory secrecy provisions or other restrictions (for example a court order) that may prevent the release of the information or document.

Unconditional use

Documents released under the Act are released without any conditions or restrictions on their future use or further dissemination. Similarly, the Act does not impose limits on how documents or information proactively released may be used. Agencies should keep this in mind when considering proactive release.

**Protection from liability**

The protections against defamation or breach of confidence under section 62 do not apply to proactive release outside the Act. However, this should not be seen as a barrier to the proactive release as these protections do not have general application and will only apply when relevant.

**Disclosure policy**

It is recommended agencies develop an information and document disclosure policy to assist agency staff to efficiently and securely identify categories or types of information or documents that are authorised by the agency to be released outside the Act.

**Disclaimer:** The information in this document is general in nature and does not constitute legal advice.

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