



**Office of the Victorian
Information Commissioner**

A blurred, high-angle photograph of a crowd of people walking on a light-colored tiled floor, overlaid with a semi-transparent grey filter.

Professional Standards Information Session

A blurred, high-angle photograph of a crowd of people walking on a light-colored tiled floor, overlaid with a semi-transparent purple filter.

Sven Bluemmel
Information Commissioner

8 October 2019

Overview

- Introduction to the Professional Standards
- Overview of the Professional Standards
- Supporting the Professional Standards
- Questions

OVIC

The background is a high-angle, blurred photograph of a busy pedestrian walkway. The image is overlaid with a gradient from purple on the right to pink on the left. Several white geometric shapes, including circles, triangles, and rectangles, are scattered across the scene, some framing individual people or groups. The overall effect is modern and dynamic.

Introduction to the Professional Standards

Part IB of the FOI Act – Professional Standards

- The Information Commissioner may develop Professional Standards relating to the conduct of an agency in performing its functions under the FOI Act, and the administration and operation of the FOI Act by an agency – **section 6U(1) of the FOI Act.**
- The Professional Standards may include standards for processing requests, including standards for:
 - assistance for applicants to make requests;
 - identifying relevant documents;
 - consultation;
 - clear communication with applicants; and
 - timely decision making, including extending the time for making decisions on requests.

Section 6U(2) of the FOI Act

Why develop Professional Standards?

- Legislative function to develop and review Professional Standards – **section 6I(1)(b) of the FOI Act.**
- To fulfil Parliament's **intention** for the Professional Standards – to **provide guidance** to agencies as to how the FOI Act should be administered.
- To **elevate best practice** by Victorian agencies in administering the FOI Act.
- To **assist agencies** in administering the FOI Act.

Developing the Professional Standards

- Followed the procedures set out under the FOI Act and the *Subordinate Legislation Act 1994*, which included:
 - Research and preliminary consultation;
 - Formal consultation for six weeks (**sections 6U(4) and 6U(5) of the FOI Act**);
 - Considered all reasonable submissions and prepared the final Professional Standards (**section 6U(6) of the FOI Act**);
 - Published on OVIC's website (**section 6V(1)(b) of the FOI Act**);
 - Published in the Government Gazette (**section 6V(1)(a) of the FOI Act**); and
 - Tabled in both Houses of Parliament (**section 6V(3) of the FOI Act**).

Purpose of the Professional Standards

- To ensure the FOI Act is administered by agencies consistently with:
 - The **object of the FOI Act** – to extend as far as possible the right of the community to **access information** in the possession of an agency subject to the Act; and
 - **Parliament's intention** – that the provisions of the FOI Act are interpreted so as to further its object and any discretions conferred by the FOI Act are exercised as far as possible to **facilitate and promote** the prompt disclosure of information at the lowest reasonable cost.

Structure of the Professional Standards

- Thirty three Professional Standards, based on 10 themes
- Each theme includes:
 - a **statement** – describing the **general principles** and **sections of the FOI Act** on which the standards are based;
 - the **Professional Standards** – setting out the **obligation** of an agency and principal officer; and
 - **notes** – which provide further information to help with **interpreting** standards where necessary.

Application of the Professional Standards

- The Professional Standards apply to every Victorian **agency** subject to the FOI Act, including:
 - Government departments;
 - Statutory authorities;
 - Public hospitals;
 - Councils; and
 - Universities.
- The Professional Standards **do not apply** to Ministers.

Effect of non-compliance

- The Information Commissioner may receive and deal with a complaint related to non-compliance with the Professional Standards under:
 - **section 61A(1)(a)** – an action taken or failed to be taken by an agency in the performance or purported performance of the agency’s functions and obligations under the FOI Act; or
 - **section 61A(1)(ab)** – an action taken or failed to be taken by a principal officer in the performance or purported performance of the principal officer’s functions and obligations under Part IB.
- The Information Commissioner may conduct an own motion investigation under **section 61O(1)**, related to non-compliance with the Professional Standards.

Key terms

- **Definitions** are the same as in the FOI Act
- Days refer to **calendar days**
- **Flexible** terms (for example, 'reasonable' and 'practicable')

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Overview of the Professional Standards

1. Access to government information

- 1.1 An agency must consider whether a document in its **possession** can **properly** be provided **outside** of the FOI Act.
- 1.2 If access can **properly** be **provided**, then the agency is required to **facilitate access** or tell the applicant **how** they can access it.
- 1.3 A principal officer must ensure information statements published in accordance with Part II are available on the agency's **website** (if it has one).

2. Receiving a request

- 2.1 An agency must provide an option to make a request by **email**.
- 2.2 An agency requiring payment of an application fee must take **reasonable steps** to provide options for payment of that fee in line with **accepted payment methods** the agency provides for **other services** of a similar financial sum.
- 2.3 An agency must not refuse to accept a request where an applicant has not used its **pro forma** application form.
- 2.4 An agency that receives a request that is not valid must take reasonable steps to **notify** the applicant of certain information within **21 days** of receiving the request, including **why** the request is not valid, provide reasonable **assistance** or **advice** to the applicant about how to make the request valid, and advise the applicant the agency may **refuse to comply** with the request if it does not comply.
- 2.5 Before **refusing to comply** with a request that is not valid, an agency must provide the applicant with at least **21 days** from the date of the notification in Standard 2.4 to make the request **valid**.

3. Extensions of time

- 3.1** An agency must not extend the time under section 21(2)(a) to make a decision unless third party consultation **is being** undertaken or **will be** undertaken.
- 3.2** A notification under section 21(4) advising an applicant of an **extension of time** for making a decision must state:
- (a) under which **subsection** of section 21(2) of the FOI Act the time has been extended or further extended;
 - (b) the particular **reasons** for the extension; and
 - (c) the **number of days** by which the agency is extending the due date.

4. Charges for access

- 4.1 When providing a notice under section 22(3), in addition to any other requirements of section 22, an agency must include **certain details** including:
- (a) the **estimated** access charges;
 - (b) how the estimated access charges were **calculated**;
 - (c) the **required** access charges amount;
 - (d) the **date** by which the deposit must be paid;
 - (e) information outlining the applicant may contact the agency to discuss **practicable alternatives** for altering the request or **reducing** the anticipated access charges;
 - (f) information outlining the agency may or will **finalise** the request without processing it if the applicant does not contact the agency to discuss alternatives or pay the deposit by the specified date.
- 4.2 An agency must take reasonable steps to notify an applicant under section 22(3) within **21 days** of receiving a valid request.
- 4.3 An agency requiring payment of access charges, including a deposit, must take reasonable steps to provide options for payment in line with **accepted payment methods** it provides for other **services** of a similar financial sum.

5. Substantial and unreasonable diversion of resources

- 5.1 An agency must take reasonable steps to **notify** an applicant under section 25A(6) of its intention to refuse a request under section 25A(1) within **21 days** of receiving a valid request.
- 5.2 When providing a notice under section 25A(6), in addition to the requirements of that section, an agency must **explain** why the request would substantially and unreasonably divert the resources of the agency from its other operations and provide at least **21 days** from the date of the notice for the applicant to respond.
- 5.3 Where an agency **consults** with an applicant under section 25A(6), it must ensure it keeps a **record** of that consultation including any responses received from the applicant and (if amended) the final terms of the request.

6. Searching for documents

- 6.1** Where a search for documents is conducted, an agency must ensure it keeps a **record** of the searches undertaken, including information relating to:
- (a) **where** the agency searched;
 - (b) **how** the agency searched; and
 - (c) where applicable, the **key words** used in the searches.

7. Practicability of consulting third parties

- 7.1** In determining whether it is **practicable** to notify and seek the views of a third party, an agency must **consider** all relevant factors, which may include:
- (a) the likelihood of a third party **consenting** to disclosure of the information or documents;
 - (b) the relative **age** of the information or document;
 - (b) the **number** of third parties to be notified; and
 - (c) whether the agency has, or is reasonably able to ascertain, **current contact details** for a third party.
- 7.2** If an agency determines it is **not practicable** to notify and seek the views of a third party, it must keep a **record** of **why** it is not practicable.
- 7.3** Where an agency **notifies** and **seeks** the views of a third party, it must ensure it keeps a **record** of:
- (a) **who** was notified;
 - (b) whether the third party did or did not **respond** to the notification;
 - (c) if the third party responded, whether they **consented** to **objected** to disclosure of their information or document; and
 - (d) where provided, the third party's **reasons** for objecting.

8. Decisions and reasons for decisions

- 8.1** An authorised officer must not be **directed** to make a particular decision under the FOI Act, when **properly** exercising their statutory decision making power.
- 8.2** In a written decision, other than in accordance with sections 27(2) or 33(6), where an agency relies on an exemption or exception, the agency must **explain** its reasons for why each exemption or exception applies and **address** each limb of the relevant exemption or exception.
- 8.3** In a written decision, other than in accordance with sections 27(2) or 33(6), an agency must take reasonable steps to **identify** whether documents are being released in full, released in part or denied in full, and **describe** the documents or types of documents discovered.
- 8.4** In a written decision, other than in accordance with sections 27(2) or 33(6), where an agency **cannot locate** a document or a document **does not exist** in relation to a request or part of a request, the agency must:
- (a) where a search is conducted, provide a **summary of the searches** undertaken which may include **where** the agency searched, **how** the agency searched and, where applicable, the **key words** used in the searches; and
 - (b) where practicable, **explain** why the relevant document does not exist or could not be located.

9. Resources, training and awareness

- 9.1 A principal officer must ensure their agency has the necessary **resources** and **procedures** to meet their agency's **statutory obligations**, including:
- (a) being sufficiently **resourced** to receive and process requests within the statutory time;
 - (b) the necessary **software** or **systems** to enable officers to process requests;
 - (c) **internal policies** to enable officers to carry out their functions across the agency; and
 - (d) **anything else** reasonably necessary to carry out its statutory obligations in an **effective** and **efficient** manner.
- 9.2 A principal officer must ensure, or be actively working towards ensuring, all officers responsible for responding to requests have appropriate **skills** and **training** to perform their responsibilities.
- 9.3 A principal officer must ensure decision makers are **authorised** in accordance with **section 26(1)**.
- 9.4 A principal officer must ensure all officers are **informed** about the agency's FOI Act **obligations**.
- 9.5 A principal officer must ensure all officers are aware they have a **duty to assist** and **cooperate** with officers who process requests.

10. Working with the Information Commissioner

- 10.1 An agency must **assist** the Information Commissioner or Public Access Deputy Commissioner when they try to **informally resolve** a review or complaint.
- 10.2 An agency must give **consideration** to a **preliminary view** issued by, or on behalf of, the Information Commissioner or Public Access Deputy Commissioner during a **review**.
- 10.3 An agency must **respond** to a request for documents and information by, or on behalf of, the Information Commissioner or Public Access Deputy Commissioner within **requested** or **agreed timeframes**.
- 10.4 When **providing documents** subject to review by the Information Commissioner or Public Access Deputy Commissioner, an agency must **mark up** documents clearly and legibly to indicate **exempt matter** and the **applicable exemption** or **exemptions**.



Supporting the Professional Standards

Supporting the Professional Standards

- Guidance refresh
- Template refresh

Questions?

Contact us

GENERAL

enquiries@ovic.vic.gov.au

1300 006 842

ONLINE

www.ovic.vic.gov.au

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[@OVIC_AU](https://twitter.com/OVIC_AU)