Responsibilities of public sector staff under the FOI Act

The *Freedom of Information Act 1982* (Vic) (FOI Act) sets out the public’s right to request access to documents held by Victorian public sector agencies.

Freedom of information (FOI) promotes government transparency and accountability, and helps build trust in government and the public sector. The FOI Act is one of several integrity mechanisms that allows the public to scrutinise, participate in and have confidence in the work of government.

The object of the FOI Act is to extend as far as possible the right of the community to access information in the possession of the government of Victoria. This right extends to all documents held by an agency and official documents of a Minister, except for specific kinds of documents that are exempt.

## What is a ‘document’?

The FOI Act defines ‘documents’ very broadly. It includes files, emails, text messages, case notes, draft material, handwritten notes, discs, photographs, and maps. Essentially, anything in the possession of an agency that is capable of conveying information or meaning is considered a document.

## What is the FOI process?

The FOI Act sets out certain requirements for a request to be made to an agency:

* it must be made in writing;
* it must be clear and specific enough to enable the requested documents to be identified; and
* it must be accompanied by an application fee, unless the fee is waived or reduced.

Timeliness is a key aspect of the FOI process. Once a valid request is received, an agency has 30 days to process the request and provide a decision to the applicant about whether or not the documents will be released. The 30-day timeframe includes all weekends and public holidays, and can be extended by an additional 15 days or 30 days in limited circumstances. Assistance and support from non-FOI staff is crucial in ensuring the FOI officer meets this timeline.

## What do I need to do?

All Victorian public sector officers play a role in ensuring an agency meets its responsibilities under the FOI Act. FOI officers rely on the assistance and cooperation of other agency staff to locate documents and understand their content and context. This informs the FOI officer’s decision as to whether the documents will be released.

## Conduct a thorough and diligent search

The FOI Act requires agencies to undertake a ‘thorough and diligent’ search for the requested documents. The search needs to capture all relevant documents in the possession of agency staff. This can include emails, hardcopy files, text messages, notebooks and many other records that may not be saved in an electronic document management system.

If you are asked to undertake a search for documents, you must ensure that you provide your FOI officer with all relevant documents, whether digital or hard copy, including rough notes and any other working documents that you have kept.

These documents must be provided to your FOI officer in full. You cannot delete, black out or withhold any documents or parts of documents because you believe they are irrelevant, exempt, or they will not assist the applicant. It is the responsibility of the FOI officer to make that assessment.

## Provide timely responses

FOI officers have many tasks they need to complete within the 30 calendar day timeframe, including assessing the request, searching for and assessing documents, undertaking internal or external consultation and preparing the decision letter and copies of documents. These actions will all be occurring concurrently for other FOI requests being processed and managed by the FOI officer.

If you are asked to undertake a search for documents or provide assistance, you need to prioritise that request to ensure your agency meets its statutory obligations under the FOI Act, and the FOI officer is not delayed. The duty to administer and comply with the FOI Act falls to the agency as a whole, not just the FOI officer.

## Provide expert advice when required

Documents can contain operational or technical information that can only be understood with expert knowledge. In order for an FOI officer to make a proper decision, they may need your assistance to understand the context and content of document. You should provide whatever assistance and advice necessary to enable the FOI officer to make an informed and timely decision.

## Maintain good record keeping practices

Ensure your agency documents are retained and maintained in accordance with public record keeping practices and requirements. Good document management enables document requested under the FOI Act to be quickly located and provided to your agency’s FOI officer.

## Will the documents be released to the applicant?

While there is a strong presumption on release of government information, the FOI Act does contain certain exemptions necessary to protect essential public interests, and the private and business affairs of individuals.

If an agency claims an exemption on any of the documents an applicant is requesting, the FOI officer must explain and give thorough reasons for the exemption applying. The input of non-FOI staff familiar with the documents will be critical in ensuring the FOI officer is able to make an informed decision and justify if any exemptions apply.

An applicant has the right to request review by the Information Commissioner, or in some instances, the Victorian Civil and Administrative Tribunal is access to a document is refused under the FOI Act.