

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.

Proactive release complements and is consistent with an agency's obligations under the Act to make the maximum amount of government information available to the public promptly and inexpensively.

Every agency should aim to provide access to government information outside the Act through proactive and informal release wherever possible.¹

Examples of proactive release

An agency can choose to proactively release information in several ways. Some examples include:

- information an agency publishes on its website such as information about what it does, publication of other non-personal information, reports, submissions and documents;
- data published on data.vic.gov.au;
- tender, contractual and financial information published on [Buying for Victoria](#);
- information published online in public registers; or
- information published in accordance with Part II of the Act.

Benefits of proactive release

There are significant benefits to both agencies and the public when government held information is released proactively. For example, proactive release:

- builds public trust and confidence in decision-making by government and public institutions and strengthens principles of liberal democracy;
- enhances public sector accountability and integrity;
- increases public access to government information and allows them to participate in policy development and government decision making;
- improves government service delivery to the public by providing access to information faster and more easily than under freedom of information (**FOI**);
- reduces the need for an individual to make a formal FOI request which reduces the resources required to administer the Act; and

¹ Informal release is different to proactive release in that informal release involves an agency receiving an information access request and releasing the requested information or document, either in full or in part, outside the Act. For more information on informal release, read OVIC's Practice Note. For more information on informal release, refer to [OVIC's Informal Release Practice Note](#).

- provides the opportunity for an agency and individual to agree on when and in what form information is to be released.

When to proactively release information or documents

An agency may release information or documents proactively at any time, provided it is lawful and possible for it to do so. For example, an agency should regularly identify information that may be suitable for proactive release, decide whether to provide access to it (bearing in mind any prohibitions which may prevent the agency from proactively releasing it), and publish the information accordingly.

While an agency may proactively release information at any time, it must publish certain information under Part II of the Act.

Part II of the Act and the information publication scheme

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 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 which 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. For an example of how OVIC sets out information required by Part II of the Act, visit our [About Us](#) webpage.

Information asset registers

The [Victorian Protective Data Security Framework \(VPDSF\)](#) and Standards (VPDSS), issued by the Information Commissioner under the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**), provides a framework and supporting standards for the security of all public sector information.

Certain Victorian public sector organisations, including departments and statutory authorities, are required to comply with the VPDSF and VPDSS.

The VPDSS requires relevant public sector organisations to identify and understand their information assets and maintain an information asset register,² which provides a complete record of an agency's entire information holdings.

Accordingly, the requirements under the VPDSS complement those under Part II of the Act, as they involve 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 can 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, personal information in a document will not be appropriate for proactive release unless there is a legislative requirement for it to be published. Instead, agencies may consider providing access to the document with the personal information removed.

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 proactive release as these protections do not have general application and will only apply when relevant.

Supporting a culture of proactive release

There are various steps an agency can take to promote and encourage proactive release of information.

Adopt a proactive and informal release policy

Adopting a policy to guide the proactive and informal release of information can assist agency staff to confidently provide access to information outside of the Act. A policy should identify information that can be proactively or informally released (such as commonly requested information) and authorise agency staff to facilitate access to it.

² For a sample information asset register, visit OVIC's website: <https://ovic.vic.gov.au/resource/sample-information-asset-register-iar-template/>.

Agencies may choose to publish their policies so that the public and other stakeholders are aware of the types of information the agency routinely provides access to outside of the Act. For an example of what should be included in a proactive and informal release policy, refer to OVIC's forthcoming *Proactive and Informal Release Policy Template*.

Keep Part II information statements current

Maintaining Part II information statements helps the public to understand what information an agency holds and in what form. Information published under Part II is required to be reviewed at least once every twelve months to make sure it is up to date.³ Each agency should take the most practical and efficient approach to keeping its Part II information statements up to date. For example, reviewing and updating the information on a regular basis, and when a change has occurred that affects the accuracy of the information, such as where the organisational structure changes.

Provide different options for accessing information

Agencies should present all options for accessing information on their website with sufficient detail for the public to make an informed choice about which option to use. For example, an agency may list options for accessing its information, such as an informal release scheme, another platform on which the information is available (such as data.vic.gov.au), contacting the agency, or making an FOI request. Briefly explain when a person would use each option and what information they are likely to receive. Listing the FOI option last will help individuals to understand what other options are available to them, which may be quicker and cheaper for them than seeking access to the information through FOI.

If an agency uses an FOI application form, consider including information about alternate ways a person may access information to help them make an informed choice about which option to use. For an example, see OVIC's [Template FOI form – application for documents – section 17](#).

Explore technological capabilities

Explore technological capabilities to flag documents that have been published or which are suitable for proactive or informal release (for example, use metadata to include a label on the document). Flagging documents can help to reduce the need to assess whether to release the document or information each time it is requested, which can reduce the time needed to provide access to it.

Additionally, flagging documents can indicate information that is sensitive and not suitable for release without review. This makes it easier for agency officers to navigate records and confidently decide what can be informally released versus what may need a more considered assessment.

Create documents with public access in mind

Create documents for public release where possible. Where a document must include sensitive information that cannot be released, consider siloing the sensitive information, or creating a summary of the document, so that as much information as possible can be released. Explain why some information cannot be provided, where possible.

Make information easy to find and accessible

Make sure the information is easy to find and is accessible (for example, making sure the content meets the Web Content Accessibility Guidelines and considers people from culturally and linguistically diverse communities). This will help people find the information an agency already publishes, and may reduce the number of enquiries it receives regarding accessing that information.

³ For example, see sections 7(1)(b), 8(2)(b), and 11(2)(b) of the Act.

Education and training

Build proactive and informal release and FOI into agency training and education (for example, new staff orientation and regular refresher training). Explain what information can be released and how to work with transparency in mind, so that all staff across agencies are aware of the role they play in their agency's information access processes.

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

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