

Guidelines for agencies on receiving & using mark-up documents provided with an OVIC Notice of Decision

PURPOSE

This document outlines the guiding principles for Victorian public sector organisations (**agencies**) receiving and utilising marked-up copies of documents from the Office of the Victorian Information Commissioner (**OVIC**) as part of a review of an agency's freedom of information (**FOI**) decision.

OVERVIEW

When a Notice of Decision from the Information Commissioner or Public Access Deputy Commissioner (**the Commissioner**) is issued under the *Freedom of Information Act 1982* (Vic) (**FOI Act**) to an agency and applicant, a Schedule of Documents is generally annexed to the Notice of Decision, containing written directions on the redactions required to be made to each document subject to review, to give effect to the decision.

As part of OVIC's commitment to taking a proactive and practical approach to reviewing FOI decisions, and to assist agencies in giving effect to Notices of Decision, OVIC will provide agencies with marked-up copies of documents, where appropriate, when issuing a Notice of Decision.

Why is OVIC providing marked-up copies of documents with a Notice of Decision?

OVIC will provide marked-up copies of documents to agencies on a case-by-case basis to streamline the process of preparing documents for release following a review decision and to reduce ambiguity. This will also result in more timely release of information to applicants.

What should an agency do with marked-up copies of documents with a Notice of Decision?

It is at the agency's discretion as to how it uses the marked-up documents, for example, whether it applies the redactions and issues the documents to the applicant, or whether it marks-up a fresh set of documents in accordance with the agency's own policies and procedures. Once the marked-up documents are in the possession of the agency, the agency is responsible for their use, disclosure, and accuracy.

When will OVIC provide marked-up copies of documents with a Notice of Decision?

OVIC will provide marked-up copies of documents with a Notice of Decision on a case-by-case basis. Factors impacting this will include the volume of documents, whether the Commissioner's decision significantly varies the agency's decision, the number and complexity of the redactions required and the difficulty in describing the redactions in written directions.

What about documents that are exempted under sections 28, 31 or 31A?

OVIC cannot provide marked-up copies of documents that are claimed exempt by an agency under sections 28, 31(1) or 31A(1) of the FOI Act. In accordance with section 63D of the FOI Act, OVIC can only inspect such documents received in electronic form.

OVIC is not entitled to possession of, or to make copies of, the documents. While such documents must be provided to OVIC electronically via OVIC's Secure Documents File Share Platform (the **Secure Platform**) for the purpose of any review, OVIC will not edit these documents to provide marked-up copies.

Where OVIC considers it is not appropriate to provide marked-up copies of the documents with a Notice of Decision, the Commissioner will continue to provide written directions on what information is to be redacted from the documents, either within the Notice of Decision or in a Schedule of Documents annexed to the Notice of Decision.

How should agencies provide documents to OVIC for review?

When notified of OVIC's acceptance of an application for review, agencies will be asked to provide OVIC with marked-up copies of the documents subject to review in an editable and unlocked format. This will allow OVIC to mark-up copies of the documents to provide to agencies with a Notice of Decision. OVIC will not be able to provide marked-up copies of documents if an agency provides documents in a locked or un-editable format.

Editable and unlocked copies of the documents subject to review are to be provided to OVIC electronically, either by email or preferably OVIC's Secure Platform.

Documents exempted under sections 28, 31 or 31A must be provided to OVIC via OVIC's Secure Platform.

What software will OVIC use to mark-up documents?

OVIC will use Adobe's Redax plug-in to mark-up documents subject to review to clearly identify what information the Commissioner has determined is exempt from release, including specifying the section/s of the FOI Act applied.

The marked-up documents will be provided to agencies in an unlocked and editable format.

How will OVIC securely provide marked-up documents to agencies?

The Notice of Decision and a copy of the marked-up documents will be provided to agencies separately.

Notices of Decision will continue to be issued to agencies by email. The Notice of Decision will specify whether an agency is to receive marked-up copies of documents from OVIC.

Marked-up documents will be provided to agencies via OVIC's Secure Platform, generally on the same date the Notice of Decision is issued. OVIC will provide agencies with a link to access the Secure Platform to download copies of the marked-up documents.

How long will the marked-up documents be available to download?

Agencies are required to download the marked-up documents from the OVIC Secure Platform within 5 business days. If documents are not downloaded within 5 days, an agency's link to access the documents from the Secure Platform will expire. The marked-up documents will be destroyed 60 days after the Commissioner's Notice of Decision is issued.

What are an agency's responsibilities when using OVIC's marked-up documents?

Once the marked-up documents are in the possession of an agency, the agency is responsible for their use and further disclosure.

Marked-up documents reflecting the Commissioner's decision on the review are provided to the agency as a guide only.

Agency officers are required to thoroughly check that the redactions in any marked-up documents provided by OVIC are in accordance with the Commissioner's written decision, as set out in the Notice of Decision. If any potential discrepancies are identified, agencies should contact OVIC either by email at reviews@ovic.vic.gov.au or by telephone on 1300 006 842 to seek clarification of the redactions, prior to issuing documents to an applicant.

If an agency chooses to provide the documents marked-up by OVIC directly to the applicant in a redacted form, the agency is responsible for ensuring that the redactions are correct and consistent with the Commissioner's decision and that it is satisfied the redactions cannot be reversed by the applicant or another third party.

What will OVIC do with marked-up documents after a Notice of Decision is issued?

Section 63E(5) of the FOI Act requires any original document provided as part of the review to be returned to an agency any copies in the possession of OVIC to be returned or destroyed.

OVIC will destroy marked-up copies of documents within 60 days of issuing its Notice of Decision.

Where can I get further information?

For more information on the provision of marked-up documents or the Secure Platform: please contact enquiries@ovic.vic.gov.au or 1300 006 842.
