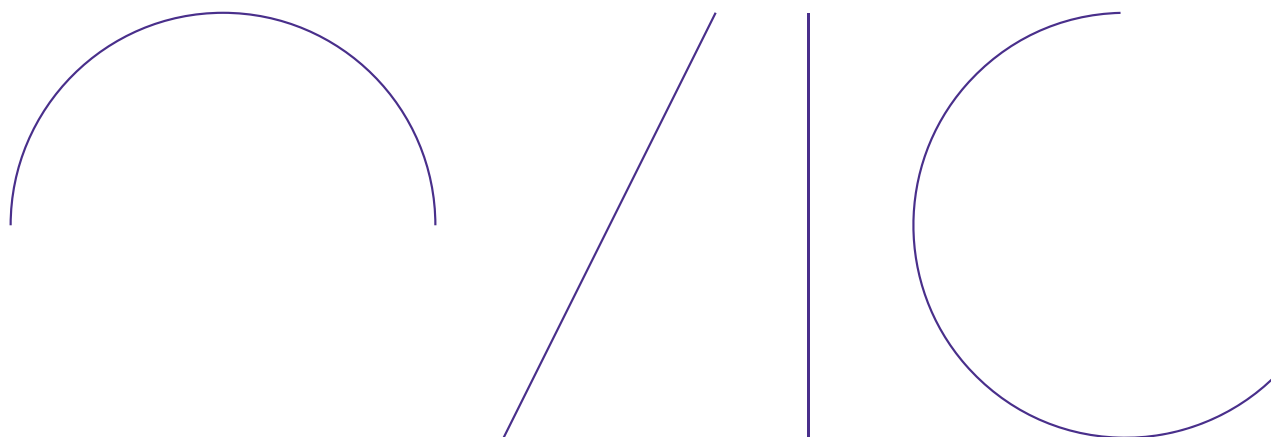




Part IB – Professional Standards

Freedom of Information Guidelines

FREEDOM OF INFORMATION



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References to legislation

All legislative references are to the *Freedom of Information Act 1982* (Vic) (**the Act**) unless otherwise stated.

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Section 6U – Development of professional standards

Extract of legislation

6U Development of professional standards

- (1) The Information Commissioner may develop professional standards relating to—
 - (a) the conduct of agencies in performing functions under this Act; and
 - (b) the administration of this Act in relation to agencies and the operation of this Act by agencies.
- (2) The professional standards may include standards for the processing of requests under this Act, including standards for—
 - (a) assistance for applicants in making requests; and
 - (b) identification of relevant documents; and
 - (c) consultation; and
 - (d) clear communication with applicants; and
 - (e) timely decision-making, including extending time for making decisions on requests.
- (3) The professional standards must not be inconsistent with this Act.
- (4) Before publishing professional standards under section 6V the Information Commissioner must—
 - (a) publish the draft professional standards on the Internet site of the Office of the Victorian Information Commissioner; and
 - (b) notify, in writing, principal officers of agencies and any other relevant person that—
 - (i) the draft professional standards have been published; and
 - (ii) submissions may be made to the Information Commissioner on or before the date specified in the notice.
- (5) The date specified in a notice under subsection (4)(b) must be at least 28 days after the day on which the draft professional standards are published.
- (6) The Information Commissioner must take into account all reasonable submissions made under this section relating to the draft professional standards before publishing them under section 6V.

Guidelines

Background to the Professional Standards

- 1.1. One of the Information Commissioner's FOI functions in [section 6I](#) is to develop and review [FOI Professional Standards](#), which are a binding legislative instrument. This means agencies must fulfil and comply with their obligations under the Professional Standards.¹
- 1.2. Section 6U gives effect to this FOI function by giving the Information Commissioner the power to develop Professional Standards.
- 1.3. The FOI Professional Standards apply to, and bind all, Victorian agencies subject to the Act.² This includes local government, departments, statutory authorities, public hospitals, councils, TAFEs and universities, but not Ministers.³

For more information on who must comply with the Professional Standards, read [section 6W](#).

- 1.4. There are 33 Professional Standards, based on 10 themes, relating to the conduct of agencies in performing functions under the Act, and the administration and operation of the Act by agencies.
- 1.5. The Professional Standards elaborate on obligations under the Act and articulate expectations for FOI practitioners when performing their FOI functions.

At a high level, the Professional Standards are organised in the following way and relate to:

- **Access to government Information:** [Professional Standard Group 1](#) relates to proactive and informal release of information. The Professional Standards requires agencies to consider informal release where possible and ensure information statements published in accordance with Part II are available online where possible.
- **Receiving a request:** [Professional Standard Group 2](#) relates to receiving a request. The Professional Standards relate to assisting applicants to make valid requests and modernising how the public may exercise their right to access government information under the Act (including by making an FOI request via email).

¹ Only the Information Commissioner can make Professional Standards under Part IB: [section 6I\(1\)\(b\)](#) and [section 6H\(1\)\(b\)](#).

² The Professional Standards commenced on 2 December 2019.

³ However, the Premier may adopt Professional Standards for Ministers under [section 6Y](#).

- **Extensions of time:** [Professional Standard Group 3](#) clarifies when an agency may extend the time for deciding a request and ensures applicants are aware of why an extension is necessary and for how long the period is extended.
- **Charges for access:** [Professional Standard Group 4](#) provides clarity around access charges, including providing certain information in an access charges notice and providing that notice within a specific period of time.
- **Substantial and unreasonable diversion of resources:** [Professional Standard Group 5](#) relates to where an agency refuses an FOI request if it is satisfied processing the request would substantially and unreasonably divert the resources of the agency from its other operations. The Professional Standards clarify when to provide, and how much information to include in, a notice to refuse a request.
- **Searching for documents:** [Professional Standard Group 6](#) recognises the importance of good record keeping by requiring an agency to ensure it keeps a record of its document searches.
- **Practicability of consulting third parties:** [Professional Standard Group 7](#) relates to the practicability of consulting third parties when processing a request, including factors to consider and record keeping requirements.
- **Decisions and reasons for decisions:** [Professional Standard Group 8](#) aims to ensure an applicant receives an informative decision letter which helps the applicant to understand how and why the agency made its decision.
- **Resources, training and awareness:** [Professional Standard Group 9](#) requires Principal Officers to ensure their agency has the necessary resources and training in place to support FOI officers in carrying out their functions. It also seeks to improve cooperation from all agency officers, to improve how requests are managed and the time taken by an agency to respond to requests.
- **Working with the Information Commissioner:** [Professional Standard Group 10](#) relates to working with, and assisting, the Information Commissioner. It includes considering preliminary views from OVIC, responding to requests for documents and information within agreed timeframes, and marking up documents clearly and legibly.

Why do we have Professional Standards?

1.5. The Professional Standards aim to ensure agencies administer the Act consistently with:

- the Act's object – 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 Act are interpreted to further its object and any discretions conferred by the Act are to be exercised as far as possible to facilitate and promote the prompt disclosure of information at the lowest reasonable cost.
- 1.6. The Professional Standards help to promote best practice in performing FOI functions by prescribing obligations. They give the Act a modern interpretation, both in practice and procedure.
- 1.7. The Professional Standards aim to:
- improve communication between agencies and applicants;
 - help ensure agencies process FOI requests in a timely manner;
 - clarify any unclear terms or tests in the Act; and
 - assist agencies to interpret the Act in a modern way.

Developing Professional Standards

What the Professional Standards may cover

- 1.8. The Information Commissioner may develop Professional Standards relating to how agencies perform their functions under the Act, and how agencies administer and apply the Act.⁴
- 1.9. The Professional Standards may relate to how agencies process FOI requests, including:
- assisting applicants to make requests;
 - identifying documents relevant to a request;
 - consultation;
 - communicating with applicants; and
 - timely decision-making, including extending the time for making decisions on requests.⁵
- 1.10. The Professional Standards may cover various themes relating to FOI however they cannot be inconsistent with the Act.⁶

⁴ [Freedom of Information Act 1982](#) (Vic), section 6U(1).

⁵ [Freedom of Information Act 1982](#) (Vic), section 6U(2).

⁶ [Freedom of Information Act 1982](#) (Vic), section 6U(3).

Consultation on draft Professional Standards

1.11. Before the Information Commissioner may publish binding Professional Standards, they must:

- publish draft Professional Standards on the Office of the Victorian Information Commissioner’s (OVIC) website;
- write to Principal Officers of agencies and any other relevant persons to notify them that the draft Professional Standards have been published; and
- invite submissions on the draft Professional Standards for at least 28 days from the day on which the draft Professional Standards are published.⁷

1.12. The purpose of this notification and consultation process is to promote transparency and participation in the development of the Professional Standards, and to help make sure they are fit for purpose. Consultation provides the opportunity for agencies and the public to identify and raise any concerns with the Information Commissioner before they finalise the Professional Standards.⁸

In consulting on draft Professional Standards, OVIC:

- invited the 21 agencies which process the largest number of FOI requests each year to provide preliminary views on what should be included in the Professional Standards;
- published a dedicated OVIC webpage inviting early submissions from any interested persons;
- invited OVIC’s Public Access Agency Reference Group⁹ to provide comments on an early draft of the Professional Standards;
- published draft Professional Standards on OVIC’s website and on the Engage Victoria consultation platform for a period of six weeks (from 25 March 2019 to 3 May 2019).

OVIC received 45 submissions on the draft Professional Standards, including

- 42 submissions from agencies;

⁷ [Freedom of Information Act 1982](#) (Vic), sections 6U(4) and 6U(5).

⁸ The Information Commissioner must also review and amend the Professional Standards at least once in every 4-year period in accordance with [section 6X](#).

⁹ OVIC coordinates the [Public Access Agency Reference Group](#) which is a stakeholder group with FOI representatives from across the Victorian Government. The purpose of the Reference Group is to engage with agencies on OVIC’s work and agencies’ experiences, operating environments and ideas regarding the operation and administration of the Act.

- 1 submission from a private sector organisation; and
- 2 submissions from members of the public.

Following public consultation in March and May 2019, OVIC considered all submissions received and published a summary of themes that the submissions raised and OVIC's consideration and response to them. OVIC also published submissions where the person making the submission consented to OVIC doing so.

'Taking into account' all reasonable submissions

- 1.13. The Information Commissioner must 'take into account' all reasonable submissions made in relation to the draft Professional Standards before publishing the final version.¹⁰
- 1.14. 'Take into account' means the Information Commissioner must consider or think carefully about all reasonable submissions received and decide whether to change the draft Professional Standards to address any questions, concerns, or suggestions that the submissions raise.
- 1.15. 'Take into account' does not mean the Information Commissioner must accept all suggestions for changes to the draft Professional Standards.

For example, OVIC received 45 submissions during public consultation on draft Professional Standards in March and May 2019.

Following public consultation, OVIC published a summary of themes that the submissions raised, and OVIC's consideration and response to them.

An example of feedback and OVIC's consideration and response to it include:

- **Feedback:** [Professional Standard 1.2](#) requires an agency to consider informal release of a document in its possession by facilitating access to the document or advising how the applicant can access the document. OVIC received feedback that it would be helpful to explain what 'facilitate access' means and how that is different to advising an applicant how the document may be accessed.
- **OVIC's response:** OVIC explained its view that 'facilitating access' and 'advising an applicant how the document may be accessed' are different and to help explain this, OVIC inserted a note under Professional Standard 1.2 which provides examples of how an agency may facilitate access to a document and how it may advise an applicant how the document may be accessed.

¹⁰ [Freedom of Information Act 1982](#) (Vic), section 6U(6).

The Professional Standards and the *Subordinate Legislation Act 1994*

- 1.16. The Professional Standards are a legislative instrument, which means in developing and finalising them, the Information Commissioner must follow the procedures in the [Subordinate Legislation Act 1994 \(Vic\)](#) (**Subordinate Legislation Act**) in addition to the procedures in Part IB.
- 1.17. The Subordinate Legislation Act sets out the requirements and process to make legislative instruments, including:¹¹
- preparing a regulatory impact statement;¹²
 - considering whether the proposed legislative instrument limits any human rights set out in the Charter of Human Rights and Responsibilities;¹³
 - consulting within government and the community;¹⁴ and
 - providing documents to Parliament to scrutinise.¹⁵

Exemption from requirement to undertake regulatory impact statement

- 1.18. Legislative instruments require the instrument maker to complete a regulatory impact statement, unless an exemption applies.¹⁶ The Professional Standards are exempt from the requirement to complete a regulatory impact statement because:
- the Professional Standards do not impose a significant economic or social burden on a sector of the public.¹⁷ The Professional Standards impose obligations on Victorian agencies subject to the Act and not on the public; and

¹¹ See Part 2A of the [Subordinate Legislation Act 1994](#) (Vic).

¹² [Subordinate Legislation Act 1994](#) (Vic), sections 12E and 12H.

¹³ [Subordinate Legislation Act 1994](#) (Vic), section 12D(2).

¹⁴ [Subordinate Legislation Act 1994](#) (Vic), sections 12C and 12I.

¹⁵ For example, section 12I(1)(a) of the [Subordinate Legislation Act 1994](#) (Vic) requires the responsible instrument maker to publish the regulatory impact statements in the Government Gazette.

¹⁶ [Subordinate Legislation Act 1994](#) (Vic), section 12E(3).

¹⁷ The Information Commissioner received an exemption certificate from the Special Minister of State under sections 12F(1)(a) and 12F(1)(g) of the [Subordinate Legislation Act 1994](#) (Vic).

- the significant formal consultation OVIC undertook with the public and agencies in developing and finalising the Professional Standards mirrors the regulatory impact statement process under the Subordinate Legislation Act.¹⁸

1.19. The Professional Standards (and Ministerial Professional Standards developed under [section 6Y](#)) have an ongoing exemption (except for the requirement to publish future Professional Standards in the Government Gazette) because the responsible Minister was satisfied that future Professional Standards would also be exempt.¹⁹

1.20. This means the Information Commissioner does not have to prepare a regulatory impact statement each time they update the Professional Standards, nor does the Information Commissioner have to apply for an exemption each time they wish to update the Professional Standards. However, the Information Commissioner must still follow the processes in sections 6U and 6V if they update the Professional Standards.²⁰

The 2014 Victorian Attorney-General’s Professional Standards

1.21. On 1 September 2017, a significant suite of changes to the Act came into effect.²¹ Amongst other things, the changes to the Act gave the Information Commissioner the power to create binding FOI Professional Standards applying to agencies.

1.22. Before the 2017 amendments to the Act, the Minister responsible for FOI could create non-binding FOI Professional Standards.²² To do so, the Minister had to recommend making regulations under the Act to prescribe the Professional Standards.²³ If the Professional Standards were not prescribed by regulation, then agencies were not bound by them.²⁴

¹⁸ [Subordinate Legislation Act 1994](#) (Vic), section 12E.

¹⁹ The ongoing exemption was made under section 4A(1)(c) of the [Subordinate Legislation Act 1994](#) (Vic); [Subordinate Legislation \(Legislative Instruments\) Regulations 2021](#), Schedule 3, clause 48.

²⁰ [Freedom of Information Act 1982](#) (Vic), section 6X.

²¹ [Freedom of Information Amendment \(Office of the Victorian Information Commissioner\) Act 2017](#) (Vic).

²² [Freedom of Information Act 1982](#) (Vic), section 6L(1), which was substituted by new Part IB under the [Freedom of Information Amendment \(Office of the Victorian Information Commissioner\) Act 2017](#) (Vic).

²³ [Freedom of Information Act 1982](#) (Vic), section 6L(4), later amended by the [Freedom of Information Amendment \(Office of the Victorian Information Commissioner\) Act 2017](#) (Vic).

²⁴ [Freedom of Information Act 1982](#) (Vic), section 6M, later amended by the [Freedom of Information Amendment \(Office of the Victorian Information Commissioner\) Act 2017](#) (Vic).

- 1.23. In 2014, the Victorian Attorney-General published FOI Professional Standards. However, these Professional Standards were not prescribed by regulation as required at the time and they therefore served as guidance only.²⁵
- 1.24. The power for the Attorney-General to publish FOI Professional Standards was repealed in 2017 when the Information Commissioner was given the power to create FOI Professional Standards.
- 1.25. For these reasons, the Attorney-General’s Professional Standards are not in force and agencies should not rely on them. Agencies must have regard to, and comply with, the Information Commissioner’s FOI Professional Standards.

More information

[Section 6V – Publication of professional standards](#)

[Section 6W – Compliance with professional standards](#)

[Section 6X – Review and amendment of professional standards](#)

[Section 6Y – Ministerial professional standards](#)

[Professional Standards](#)

[Professional Standards Practice Note](#)

[Subordinate Legislation Act 1994 Guidelines](#)

²⁵ Victoria, [Parliamentary Debates](#), Legislative Assembly, 23 June 2016, 2870 (Martin Pakula, Attorney-General), in the second reading speech for the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016, The Hon. Martin Pakula notes the Professional Standards under Part IB in 2016 are not binding on agencies unless they have been prescribed by regulation, and at the time, there were no standards prescribed by regulation.

Section 6V – Publication of professional standards

Extract of legislation

6V Publication of professional standards

- (1) As soon as practicable after finalising draft professional standards in accordance with section 6U, the Information Commissioner must cause the professional standards to be published—
 - (a) in the Government Gazette; and
 - (b) on the Internet site of the Office of the Victorian Information Commissioner.
- (2) Professional standards have effect on and after the later of the following—
 - (a) the date specified in the professional standards; or
 - (b) the date that is 20 business days after the day on which the professional standards are published in the Government Gazette.
- (3) The Information Commissioner must cause a copy of the professional standards published under subsection (1) to be laid before each House of Parliament not more than 6 sitting days after the day on which the standards are published in the Government Gazette.

Guidelines

Publishing the Professional Standards

- 1.1. In developing the [Professional Standards](#), the Information Commissioner must publish and consult on draft Professional Standards. As soon as practicable after finalising draft Professional Standards, the Information Commissioner must publish the finalised Professional Standards in the Government Gazette and on the Office of the Victorian Information Commissioner's (OVIC) website.²⁶
- 1.2. The Information Commissioner must also provide a copy of the Professional Standards to each House of Parliament within six sitting days after the day on which the Professional Standards are published in the Government Gazette.²⁷

²⁶ [Freedom of Information Act 1982](#) (Vic), section 6V(1).

²⁷ [Freedom of Information Act 1982](#) (Vic), section 6V(3).

- 1.3. This process provides notice to agencies, the public, and Parliament, regarding the final Professional Standards including what they contain and when they commence.

Commencement of the Professional Standards

- 1.4. The Professional Standards took effect from 2 December 2019. They were published in a special edition of the Government Gazette on 11 September 2019²⁸ and tabled in the Legislative Assembly and the Legislative Council in the Victorian Parliament on 12 September 2019.²⁹
- 1.5. Section 6V outlines the Professional Standards take effect on and after either (whichever date is later):
- the date specified in the Professional Standards; or
 - 20 business days after the day on which the Professional Standards are published in the Government Gazette.³⁰
- 1.6. Providing at least 20 business days until the Professional Standards commence provides time for agencies to familiarise themselves with the obligations in the Professional Standards, and to take the necessary steps to begin complying with them.

OVIC published the Professional Standards on 11 and 12 September 2019, however the Professional Standards did not take effect until 2 December 2019.

The Information Commissioner provided additional time from the date the Professional Standards were published in the Government Gazette before they took effect, for agencies to have time to become familiar with them.

More information

[Professional Standards](#)

[Professional Standards Practice Note](#)

²⁸ Read the [Government Gazette](#).

²⁹ Victoria, [Parliamentary Debates](#), Legislative Council, 12 September 2019, 3110; Victoria, [Parliamentary Debates](#), Legislative Assembly, 12 September 2019, 3322.

³⁰ [Freedom of Information Act 1982](#) (Vic), section 6V(2).

Section 6W – Compliance with professional standards

Extract of legislation

6W Compliance with professional standards

- (1) Subject to subsection (3), the principal officer of an agency and any officer or employee of the agency concerned in the operation of this Act must comply with professional standards in performing the officer's or employee's functions under this Act.
- (2) Subject to subsection (3), the principal officer of an agency must ensure that any officer or employee of the agency concerned in the operation of this Act complies with any professional standards in performing the officer's or employee's functions under this Act.
- (3) Professional standards do not apply to a principal officer, officer or employee of an agency in making decisions in respect of requests made to a Minister, except as provided under section 6Y.
- (4) A principal officer must ensure that all officers and employees of the agency are informed about the requirements of the professional standards.

Guidelines

Who must comply with the Professional Standards?

- 1.1. The [Professional Standards](#) apply to all Victorian [agencies](#) subject to the Act. This includes local governments, departments, statutory authorities, public hospitals, councils, TAFEs, and universities.
- 1.2. An agency's [Principal Officer](#) and any agency officer or employee concerned in the operation of the Act must comply with the Professional Standards when that person performs functions under the Act (for example, when searching for documents relevant to a request).³¹
- 1.3. Principal Officers must also ensure all agency officers and employees are informed about the requirements of the Professional Standards. In addition to complying with the Professional Standards, Principal Officers must make sure officers and employees who are required to comply with the Professional Standards do so.

³¹ [Freedom of Information Act 1982](#) (Vic), section 6W(1).

1.4. Ministers do not have to comply with the Professional Standards. Similarly, a Principal Officer, employee, or officer of an agency is not required to comply with the Professional Standards when processing an FOI request made to a Minister.³² However, the Premier may adopt Professional Standards to apply to Ministers under [section 6Y](#).

‘Any officer or employee of the agency concerned in the operation of this Act’

1.5. The Professional Standards apply to a broad range of agency officers and employees (anyone involved in the operation of the Act). This includes officers and employees both within and outside of an agency’s FOI unit, such as an:

- FOI officer;
- FOI decision maker;
- officer who searches for documents relevant to a request;
- officer who marks up documents relevant to a request; and/or
- officer who publishes information in accordance with Part II.

1.6. ‘[Officer](#)’ includes independent contractors and consultants employed by the agency.

1.7. ‘Any officer or employee of the agency concerned in the operation of this Act’ recognises that FOI, and access to information more generally, does not rest solely with an agency’s FOI unit. It is an agency’s obligation as a whole to facilitate access to information in accordance with the Act, and to be aware of the Professional Standards and their requirements.

1.8. Agency-wide awareness and understanding of FOI and access to information helps to ensure an agency can process a request in a timely manner and provide access to as much information as possible.

For example, an agency’s FOI unit may be required to consult with another business unit to search for relevant documents and receive more information about the documents.

To ensure an efficient and proper search for documents, the relevant business unit needs to be aware of, and understand, what FOI is and what the Professional Standards require.

1.9. Similarly, some Professional Standards relate to agency officers or employees outside of the agency’s FOI unit. Therefore, those individuals must be aware of, and comply with, the Professional Standards.

³² [Freedom of Information Act 1982](#) (Vic), section 6W(3).

For example, [Professional Standard 9.5](#) requires a Principal Officer to ensure all officers are aware that they have a duty to assist and cooperate with officers who process requests under the Act.

This Professional Standard seeks to ensure officers responsible for processing requests receive proper cooperation from other officers in the agency when processing a request.

What happens if an agency does not comply with the Professional Standards?

1.10. The Information Commissioner and the Public Access Deputy Commissioner are responsible for monitoring compliance with the Professional Standards.³³ The Information Commissioner may delegate functions to Office of the Victorian Information Commissioner (OVIC) staff under [section 6R](#). Therefore, this part collectively refers to the Information Commissioner, the Public Access Deputy Commissioner and OVIC staff as 'OVIC', unless otherwise stated.

1.11. Generally, in monitoring compliance with the Professional Standards, OVIC will:

- identify and record a Professional Standard 'engagement' (a potential or actual non-compliance with a Professional Standard recorded in OVIC's case management system);
- gather information about the engagement and decide if there has been a breach; and
- consider the nature of the breach and the action required.

For a visual representation of the process, [download](#) the process flowchart.

Step 1: Identify a Professional Standard engagement

1.12. Professional Standards are 'engaged' when potential or actual instances of non-compliance with the Professional Standards are identified and recorded in OVIC's case management system (referred to as 'engagements').

1.13. OVIC initially assesses each FOI review and FOI complaint it accepts for Professional Standards engagements. OVIC also monitors for Professional Standards engagements during the handling of a review or complaint matter.

³³ [Freedom of Information Act 1982](#) (Vic), section 6I(2)(c).

1.14. OVIC identifies most Professional Standard engagements, but they can also be identified by:

- an applicant to a review application before OVIC;
- a complainant by way of a complaint to OVIC; or
- an agency, by way of self-reporting.

1.15. After a Professional Standards engagement has been identified, OVIC will record and consider if it amounts to a breach of the Professional Standards.

Step 2: Gather information and determine if there has been a breach

1.16. After OVIC records a Professional Standard engagement, OVIC will consider the information it has to determine if there has been a breach of the Professional Standards.

1.17. In some instances, non-compliance with the Professional Standards will be apparent based on the information OVIC already has. In that case, OVIC will consider the nature of the breach and how to respond.

Example

[Professional Standard 2.4](#) requires an agency that receives a request that is not valid to take reasonable steps to notify the applicant of certain information within 21 days of receiving the request.

In the application for review of the Agency's decision, the Applicant includes a copy of the Agency's initial notification letter advising the applicant that the FOI request was not valid. This notification letter is dated 50 days after the Agency received the Applicant's request.

Based on the date of the initial FOI request and the date of the Agency's notification letter, OVIC has enough information to consider whether there has been a breach of Professional Standard 2.4.

1.18. If more information is needed to decide if there has been a breach of a Professional Standard, OVIC will make preliminary inquiries with the agency and the applicant or complainant. For example, OVIC may ask an agency to provide copies of emails or letters the agency sent to the applicant where a Professional Standard requires an agency to notify an applicant of certain information within a specified timeframe.

Example

[Professional Standard 4.2](#) requires an agency to take reasonable steps to provide a notification under section 22(3) advising that it is the agency's opinion that charges to access the

documents the applicant is seeking access to will be more than \$50 within 21 days of receiving a valid request.

In their review application, the Applicant states the Agency did not provide notice of the access charges within 21 days of receiving the Applicant's request. The Applicant does not provide any supporting information to demonstrate when the Agency did send the access charges notice.

OVIC records a Professional Standard engagement with Professional Standard 4.2 and decides it needs more information to consider whether there has been a breach.

OVIC contacts the Agency and asks them to provide a copy of the access charges notice.

The Agency provides a copy of the notice to OVIC, which is an email sent to the Applicant 10 days after the Agency received the Applicant's valid request.

Based on the date of the valid request and the date the Agency notified the Applicant of the access charges deposit, OVIC has enough information to determine the Agency did not breach Professional Standard 4.2 and decides to take no further action.

Example

[Professional Standard 10.3](#) requires an agency to 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.

While handling a review application, OVIC asks the Agency for a written submission about an exemption it claimed to refuse access to information in a document. OVIC asks that the Agency provide the written submission within 10 business days from the date of OVIC's communication. OVIC notes the Agency may ask for an extension of time to provide the submission.

OVIC does not receive a written submission from the Agency within the requested timeframe and no extension of time is sought.

OVIC records a Professional Standard engagement under Professional Standard 10.3 on the basis that the Agency did not respond to a request for information within requested or agreed timeframes.

OVIC sends the Agency a follow up request for a written submission, reminds the Agency of its obligations under Professional Standard 10.3, and provides a new timeframe in which to provide a written submission.

The Agency provides the written submission within the new timeframe and OVIC decides to take no further action regarding the engagement. The engagement is recorded as being informally resolved.

- 1.19. Where OVIC has gathered sufficient information about the Professional Standard engagement and determines the agency has complied with the Professional Standards, OVIC will record the outcome of the engagement and no further action is taken.
- 1.20. Where OVIC has gathered sufficient information about the Professional Standard engagement and finds an agency has not complied with the Professional Standards, OVIC will consider the nature and extent of the breach and the action required.

Step 3: Consider the nature of the breach and the action required

- 1.21. If OVIC finds an agency has not complied with the Professional Standards, it will consider the nature of the breach (how significant it is) and what kind of action to take in response to it.
- 1.22. OVIC uses a range of compliance and enforcement tools to address non-compliance of the Professional Standards such as:
 - educational or informal; and/or
 - formal.
- 1.23. OVIC's approach will depend on the nature and seriousness of the conduct, the impact of the non-compliance, and the circumstances of each case. Generally, the more serious, repeated, or systemic the breach, the more interventionist the response will be.

Types of breaches

- 1.24. OVIC classifies breaches of the Professional Standards into two categories:
 - minor or technical breaches; and
 - substantial, persistent, or systemic breaches.
- 1.25. A minor or technical breach is where an agency's action or inaction results in a minimal risk of detriment to members of the public or OVIC (such as a minor delay in providing information where an agency must provide it in a specified timeframe).
- 1.26. A substantial, persistent, or systemic breach relates to an agency's action or inaction where there is moderate to high risk of detriment to members of the public or OVIC (such as significant and ongoing delays, repeated and persistent breaches, or the identification of wider systemic concerns).

Action OVIC may take in response to a breach

Educational or informal action

- 1.27. OVIC mostly uses educational and informal tools to resolve breaches. This reflects the fact that most agencies are willing and able to comply with their statutory obligations but may need guidance in specific instances.
- 1.28. OVIC will generally take educational and informal action to resolve minor or technical instances of non-compliance.
- 1.29. Educational or informal action may involve OVIC:
 - talking to FOI practitioners to educate and support them in meeting their Professional Standards obligations. For example, OVIC may meet with an FOI practitioner to discuss the breach, how it could have been avoided, and how to avoid it in the future;
 - requesting that an agency participate in an educational activity, such as completing the [Professional Standards Self-Assessment Tool](#) or referring an agency to OVIC's online resources;
 - requesting evidence from the agency to show how it intends to comply with the Professional Standards in the future (for example a policy, procedure, or template letter);
 - writing to an FOI practitioner about the breach and asking them for a response or written submission to explain how the breach happened;
 - requesting a meeting between OVIC and an agency's FOI unit to talk about the Professional Standards and how to meet them;
 - addressing breaches of the Professional Standards in the covering letter of a Notice of Decision to an agency (for example, to remind the agency of their obligations under the Professional Standards); and/or
 - monitoring the agency's compliance with the Professional Standards for a period of time.

Formal action

- 1.30. OVIC may take formal action in response to a significant, persistent, or systemic breach of the Professional Standards.
- 1.31. If OVIC takes formal action, it will escalate the breach of the Professional Standards to a senior OVIC staff member or to a Commissioner to consider what kind of action to take.
- 1.32. Formal action may involve OVIC contacting the agency's Principal Officer to notify them of the breach and providing them with an opportunity to respond to the alleged breach.

Ongoing monitoring

- 1.33. Where appropriate, OVIC may monitor an agency's performance and compliance with the Professional Standards on an ongoing basis.
- 1.34. Ongoing monitoring refers to OVIC observing an agency's performance and compliance with the Professional Standards for a period of time. OVIC does this via stakeholder engagement activities, analysing Annual Report data, and examining instances of non-compliance with the Professional Standards recorded in OVIC's case management system.
- 1.35. Monitoring agency performance allows OVIC to identify and address systemic issues in an agency so that OVIC can measure the extent of an agency's non-compliance and support them to improve their practices.

Recommendations under section 61L

- 1.36. When OVIC is dealing with a complaint, OVIC may make recommendations under [section 61L](#), which gives the Information Commissioner the power to make recommendations to an agency, Principal Officer, or Minister, regarding the complaint.
- 1.37. Recommendations may include suggestions for improvements to the policies, procedures, and systems of the agency regarding compliance with the Act. The Information Commissioner must give the agency, Principal Officer, or Minister an opportunity to comment on, and respond to, the draft recommendation.
- 1.38. The Information Commissioner may also decide to refer the matter to another body to investigate (the body to whom OVIC may refer the complaint will depend on the subject matter of the complaint).

For more information, see [section 61L – Outcome of complaint](#)

Referral for consideration of an own motion investigation

- 1.39. Where appropriate, OVIC may consider whether to conduct an own motion investigation into a breach of the Professional Standards.

OVIC's [Regulatory Action Policy](#) sets out when and how OVIC conducts an investigation.

For more information, see Part VIB – Investigations

Reporting in OVIC's Annual Report

- 1.40. Where OVIC formally records a breach of the Professional Standards (after giving an agency the opportunity to respond to the proposed finding of a breach), OVIC may report the breach in its Annual Report as an educative tool for other agencies.

More information

[Section 6Y – Ministerial professional standards](#)

[Section 6X – Review and amendment of professional standards](#)

[Professional Standards](#)

[Professional Standards Practice Note](#)

[Regulatory Action Policy](#)

Section 6X – Review and amendment of professional standards

Extract of legislation

6X Review and amendment of professional standards

- (1) The Information Commissioner must review professional standards at least once in every 4-year period.
- (2) The Information Commissioner may at any time amend professional standards.
- (3) The requirements of sections 6U and 6V apply to any amendment of professional standards, other than typographical or similar amendments.

Guidelines

The Information Commissioner must review the Professional Standards

- 1.1. The Information Commissioner must review the [Professional Standards](#) at least once every four years.³⁴ The Information Commissioner may amend the Professional Standards at any time.³⁵
- 1.2. Reviewing the Professional Standards helps to ensure they continue to be fit for purpose and up to date. The review process provides the opportunity to:
 - revisit the policy basis for existing Professional Standards and consider whether they are still required or if they need to be amended or repealed;
 - consider and introduce new Professional Standards;
 - update the Professional Standards in response to any amendments to the Act where necessary; and
 - review the Professional Standards for readability, usability, and clarity.

³⁴ [Freedom of Information Act 1982](#) (Vic), section 6X(1).

³⁵ [Freedom of Information Act 1982](#) (Vic), section 6X(2).

Process for amending the Professional Standards

- 1.3. The Information Commissioner must follow the processes in sections 6U and 6V when amending the Professional Standards. Sections 6U and 6V outline the processes the Information Commissioner must follow when developing the Professional Standards, such as publishing draft Professional Standards and publicly consulting on them.³⁶
- 1.4. However, the Information Commissioner is not required to go through the processes in sections 6U and 6V if the changes to the Professional Standards are typographical or similarly minor (for example, to fix a spelling error).

More information

[Section 6U – Development of professional standards](#)

[Section 6V – Publication of professional standards](#)

³⁶ [Freedom of Information Act 1982](#) (Vic) section 6X(3).

Section 6Y – Ministerial professional standards

Extract of legislation

6Y Ministerial professional standards

- (1) The Premier, by notice published in the Government Gazette, may adopt professional standards (either wholly or with modifications) to be applied to Ministers.
- (2) If the Premier adopts professional standards under subsection (1)—
 - (a) the professional standards as adopted have effect on and after the date stated in the notice; and
 - (b) the Premier must cause the professional standards as adopted to be published on the Internet site of the Department of Premier and Cabinet at least 20 business days before the date stated in the notice.
- (3) The Premier must review Ministerial professional standards whenever the Information Commissioner reviews or amends professional standards under section 6X.
- (4) The Premier may at any time amend Ministerial professional standards.
- (5) The requirements of subsections (1) and (2) apply to any amendment of Ministerial professional standards, other than typographical or similar amendments.

Guidelines

The Premier may adopt the Professional Standards and apply them to Ministers

- 1.1. The [Professional Standards](#) developed by the Information Commissioner under [section 6U](#) do not apply to requests made to Ministers.³⁷ However, the Premier of Victoria can adopt the Professional Standards in whole or with changes and apply them to Ministers.³⁸

³⁷ [Freedom of Information Act 1982](#) (Vic), section 6W(3).

³⁸ [Freedom of Information Act 1982](#) (Vic), section 6Y(1).

The process for adopting Ministerial Professional Standards

- 1.2. If the Premier decides to adopt Ministerial Professional Standards, the Premier must publish:
 - a notice in the Government Gazette, which states the date on which the Ministerial Professional Standards take effect,³⁹ and
 - the Ministerial Professional Standards on the Department of Premier and Cabinet’s website at least 20 business days before the commencement date stated in the notice.⁴⁰
- 1.3. The obligations in sections 6Y(1) and 6Y(2) to publish a notice in the Government Gazette and to publish the Ministerial Professional Standards on the Department of Premier and Cabinet’s website are similar to the publication requirements in section 6V(1) in relation to the Information Commissioner’s Professional Standards.
- 1.4. While the Premier must publish information about the final Ministerial Professional Standards as outlined above, the Premier does not have the same consultation obligations when adopting Ministerial Professional Standards as the Information Commissioner does when developing Professional Standards.⁴¹

For example, the Premier does not have to:

- publish draft Ministerial Professional Standards and consult on them; or
- notify persons that the Ministerial Professional Standards have been published and when submissions are due.

Amending the Ministerial Professional Standards

- 1.5. The Premier must review Ministerial Professional Standards whenever the Information Commissioner reviews or amends the Professional Standards under [section 6X](#).⁴² The Premier may also amend the Ministerial Professional Standards at any time.⁴³

³⁹ [Freedom of Information Act 1982](#) (Vic), sections 6Y(1) and 6Y(2)(a).

⁴⁰ [Freedom of Information Act 1982](#) (Vic), section 6Y(2)(b).

⁴¹ [Freedom of Information Act 1982](#) (Vic), section 6U.

⁴² [Freedom of Information Act 1982](#) (Vic), section 6Y(3).

⁴³ [Freedom of Information Act 1982](#) (Vic), section 6Y(4).

- 1.6. Reviewing the Ministerial Professional Standards helps to ensure they continue to be fit for purpose and up to date. The review process provides the opportunity to:
- revisit the policy basis for existing Ministerial Professional Standards and consider whether they are still required or need to be amended or repealed;
 - consider and introduce new Ministerial Professional Standards;
 - update the Ministerial Professional Standards in response to any amendments to the Act where necessary;
 - review the Ministerial Professional Standards for readability, useability, and clarity.
- 1.7. The power to amend the Ministerial Professional Standards at any time provides flexibility to make sure they stay up to date.

The process for amending Ministerial Professional Standards

- 1.8. If the Premier amends the Ministerial Professional Standards, the Premier must publish:
- a notice in the Government Gazette, which states the date on which the Ministerial Professional Standards take effect;⁴⁴
 - the Ministerial Professional Standards on the Department of Premier and Cabinet's website at least 20 business days before the date stated in the notice.⁴⁵
- 1.9. The Premier is not required to go through the process outlined above if the changes to the Ministerial Professional Standards are typographical or similarly minor (for example, to fix a spelling error).⁴⁶

⁴⁴ [Freedom of Information Act 1982](#) (Vic), sections 6Y(1) and 6Y(2)(a).

⁴⁵ [Freedom of Information Act 1982](#) (Vic), section 6Y(2)(b); the Premier must comply with sections 6Y(1) and 6Y(2) each time the Premier amends the Ministerial Professional Standards, unless the amendments are typographical or similar, section 6Y(5).

⁴⁶ [Freedom of Information Act 1982](#) (Vic), section 6Y(5).

Section 6Z – Compliance with Ministerial professional standards

Extract of legislation

6Z Compliance with Ministerial professional standards

- (1) A Minister must comply with Ministerial professional standards in performing the Minister's functions under this Act.
- (2) A person (including an officer of an agency) authorised to make decisions in respect of requests made to a Minister must comply with Ministerial professional standards in relation to that request.

Guidelines

Who do the Ministerial Professional Standards apply to?

- 1.1. Ministers and persons authorised to make freedom of information (**FOI**) decisions on behalf of Ministers (this may include an agency officer) must comply with Ministerial Professional Standards when making an FOI decision in relation to a request made to a Minister.⁴⁷
- 1.2. An agency officer authorised to make an FOI decision regarding a request made to a Minister must comply with the Ministerial Professional Standards only regarding that request.⁴⁸

For example, an agency officer may make FOI decisions regarding requests made to their agency as well as their relevant Minister, provided they are authorised to do so.

Section 6Z(2) ensures an agency officer follows the correct Professional Standards depending on who the request was made to (for example, depending on if the request was made to the Department or to the Minister).

⁴⁷ [Freedom of Information Act 1982](#) (Vic) sections 6Z(1) and 6Z(2).

⁴⁸ [Freedom of Information Act 1982](#) (Vic) section 6Z(2).

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