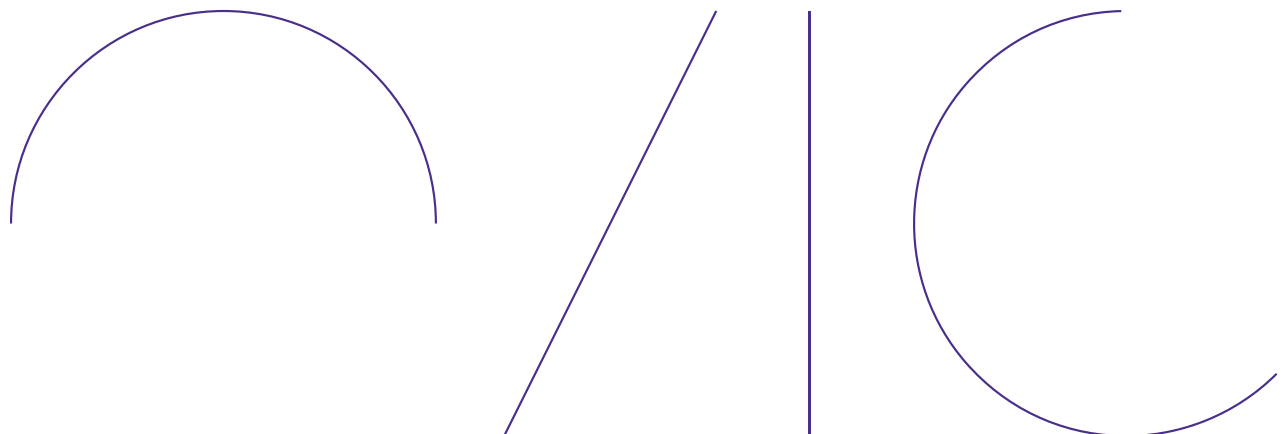


## Part VII – Miscellaneous

### Freedom of Information Guidelines

#### FREEDOM OF INFORMATION



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

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## Division 1 – Protections in relation to legal action

### Section 62 – Protection against actions for defamation or breach of confidence

#### Extract of legislation

#### **62 Protection against actions for defamation or breach of confidence**

- (1) Where access has been given to a document and—
- (a) the access was required or permitted by this Act to be given; or
  - (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 26 or Division 1 of Part VI, to make decisions in respect of requests, in the bona fide belief that the access was required by this Act to be given—

no action for defamation or breach of confidence lies against the Crown, an agency, a Minister or an officer by reason of the authorizing or giving of the access, and no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the document or any other person by reason of that author or other person having supplied the document to an agency or Minister.

- (1A) Subsection (1) applies in relation to a document of a council as if for "Minister" (except where lastly occurring) there were substituted "council, a member of a council".
- (2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken for the purpose of the law relating to defamation or breach of confidence to constitute an authorization or approval of the publication of the document or its contents by the person to whom access is given.
- (3) The provision of access to a document in accordance with—
- (a) a request by the Information Commissioner; or
  - (b) a notice under section 49KA or 61GA(1); or
  - (c) a notice to produce or attend—

does not constitute a waiver of any privilege attaching to that document in relation to its contents.

## Guidelines

### Overview of the protection against defamation and breach of confidence

- 1.1. An [agency](#), Minister, [council](#), [officer](#), the Crown, the author of a [document](#), or supplier of a document to an agency or Minister, is protected against an action for defamation or breach of confidence resulting from authorising or providing access to a document under the Act.<sup>1</sup> The protections apply where access was required or permitted by the Act and the person authorising access honestly believed access was required or permitted.
- 1.2. This protection helps to encourage access to information by removing the possibility of legal action for defamation or breach of confidence when giving access to documents under the Act.

A person who authorises or provides access to a document is also protected in relation to criminal offences. See [section 63 – Protection in respect of offences](#) for more information.

- 1.3. Defamation refers to damage to a person’s reputation.<sup>2</sup>
- 1.4. Breach of confidence refers to where there has been a failure to preserve the confidential character of information communicated in circumstances giving rise to an obligation of confidence.<sup>3</sup>

#### Will the protection apply if the applicant chooses to publish the information?

- 1.5. An applicant may not be protected from an action for defamation or breach of confidence if they choose to further disclose the information or document.<sup>4</sup>

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<sup>1</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 62.

<sup>2</sup> The remedy of defamation arises in common law and in Victoria, under the *Defamation Act 2005*.

<sup>3</sup> *Coco v A N Clark (Engineers) Ltd* [1968] FSR 415; *Moorgate Tobacco Co Ltd v Phillip Morris Ltd (No 2)* (1984) 156 CLR 414.

<sup>4</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 62(2).



## Example

*Toben v McCraw* (unreported, Vic Sup Ct, Harper J, 5 August 1993)

In this defamation matter, Harper J made some comments about section 62. He suggested that where a newspaper obtains access to a document after making a successful FOI application and publishes its contents, a defamation suit might be brought against the newspaper for publishing the FOI document, but not against the actual author of the originating document.

## When will the protection apply?

- 1.6. The protection against defamation and breach of confidence applies where access has been given to a document and:
- the access was required or permitted by the Act to be given; or
  - the Minister or authorised officer authorising access to the document held a genuine belief that the Act required access to be given.<sup>5</sup>

### Access was required or permitted

- 1.7. The protection will apply where access has been given to a document, and that access was required or permitted by the Act:
- ‘Require’ refers to an obligation under the Act to provide access to a document. In this context, the Act will require access where a valid request has been made for a non-exempt document.<sup>6</sup> An agency or Minister is not required to give access to an exempt document.<sup>7</sup>
  - ‘Permit’ refers to where the Act allows access to a document to be provided even if it does not expressly require access.
- 1.8. Other instances where the Act requires access to a document be given include where an agency is required to make certain documents available for inspection and purchase under [section 8](#).

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<sup>5</sup> ‘Authorised’ refers to an authorised officer under section 26.

<sup>6</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 20(1); section 17 outlines the requirements for making a valid request.

<sup>7</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 20(2).

1.9. The protections against defamation or breach of confidence, and protection against criminal liability, do not apply when documents or information are informally released. However, this should not be seen as a barrier as these protections do not have general application and will only apply when relevant.

## Honest belief

1.10. The Minister or agency officer who gave access to the document may rely on the protection if they held a “bona fide” belief that access was required by the Act. “Bona fide” means ‘good faith’ or ‘honest intention.’

1.11. If a Minister or officer of an agency honestly believes that the Act required access to the document, for instance, because a valid request was made and they believed the requested documents were not exempt, then no action for defamation or breach of confidence can be made against that Minister or agency officer.

## Who is protected?

1.12. The protection against an action for defamation or breach of confidence applies to:

- the Crown;<sup>8</sup>
- agencies (including councils);
- agency officers; and
- Ministers.<sup>9</sup>

1.13. The protection may apply to the author of the document or the person who originally supplied the document to the agency or Minister in a limited way. The protection is only likely to apply to any action for defamation or breach of confidence that might arise because of the giving of access to the document under the Act.

1.14. The author or supplier of the document may not be protected regarding the original provision of the information or document to the agency or Minister.<sup>10</sup>

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<sup>8</sup> Defined as the Crown in right of Victoria – *Interpretation of Legislation Act 1984* (Vic), section 38.

<sup>9</sup> [Freedom of Information Act 1982 \(Vic\)](#), sections 62(1) and 62(1A).

<sup>10</sup> There is no Victorian case law on how far the protection in section 62 extends in relation to authors and suppliers of documents. However the following cases support the interpretation outlined above: *Ainsworth v Burden* (2003) 56 NSWLR 620, *Re McKinnon and Department of Immigration and Ethnic Affairs* (1995) 40 ALD 343, *Pal v Weir* (unreported, 11 March 2003). Note the South Australian Supreme Court Decision *Morgan v Mallard* [2001] SASC 364 observed that the protection extended to the original provision of the document and so could not be used to institute defamation proceedings, however because the applicant had obtained the document by other means she might still be able to take action.

- 1.15. While the protection may not apply, the person who wrote or originally supplied the document to the agency or Minister may still rely on any relevant defences under defamation or breach of confidence (for example, under defamation law they may rely on the defence of qualified privilege).

### Case example

*Ainsworth v Burden* (2003) 56 NSWLR 620

The Court of Appeal considered whether section 64 of the NSW *Freedom of Information Act 1989* (NSW FOI Act) (which was then in effect) extended to the author and anyone else involved<sup>11</sup> in the original transmission of a document to a Minister.

Background:

- The claimant pursued an action for defamation against the defendant.
- The action was based on a letter written by the defendant, to the then Minister for Police.
- The claimant received a copy of the letter under FOI.
- The defendant applied for the action to be stayed on the ground that the publication to the Minister was protected by section 64(1)(b) of the NSW FOI Act (this section was very similar to section 62(1) of the Victorian Act).

The NSW Court of Appeal held:

- section 64(1)(b) of the NSW FOI Act protects the author or other person involved in the original transmission from defamation proceedings ‘in respect of any publication involved in or resulting from the giving of access’ under the NSW FOI Act (in relation to the publication involved in the secondary transmission)
- protection is not given for other publications, made to the public official or anyone else, including the original transmission

Handley JA said:

*The section gives no protection to the author or other person merely because the plaintiff became aware of the document by obtaining access to it under the Act and would not otherwise have known that he had been defamed, or been in a position to prove this. The protection is not given against the use of the document, it is given against an action for defamation in respect of defined publications.*<sup>12</sup>

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<sup>11</sup> For example, where a person other than the author sends the document to a public official (e.g., where an employee makes a report to their employer and the employer sends it to another agency).

<sup>12</sup> At paragraph 12.

The NSW Court of Appeal considered the words of section 64(1)(b) of the NSW FOI Act, noting:

- the importance of the limiting words '(publication) involved in, or resulting from, the giving of access' in that section;
- these words are words of limitation and it would be contrary to the intention of Parliament to read down the liability for defamation on the original transmission;
- other case law which reached different conclusions did not consider these limiting words;
- if the protection was intended to protect defamatory publications made independently of the NSW FOI Act, the words of limitation could have been omitted by Parliament;
- the purpose of section 64 was to ensure that the NSW FOI Act did not widen liability for defamation beyond the original transmission.

Has the document been provided in another context?

1.16. The protection in section 62 will only apply where the document is released under the Act. If the same document is released through another process (for example, discovery in legal proceedings), the protection in section 62 may not apply but other protections may apply.<sup>13</sup>

#### Example

In *Morgan v Mallard*,<sup>14</sup> the South Australian Supreme Court held that to the extent that the document was released under the FOI Act, the author was protected under the South Australian equivalent of section 62,<sup>15</sup> however, because that document was also supplied to her as a litigant in the Magistrate's Court where processes of discovery were used, the protection would not apply in that context.<sup>16</sup>

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<sup>13</sup> *Morgan v Mallard* [2001] SASC 364.

<sup>14</sup> *Morgan v Mallard* [2001] SASC 364.

<sup>15</sup> *Morgan v Mallard* [2001] SASC 364.

<sup>16</sup> *Morgan v Mallard* [2001] SASC 364 [30].

## Giving of access not to be taken as authorisation or approval

- 1.17. An element of a breach of confidence is that a person used confidential information where that person was not authorised to do so.<sup>17</sup> Similarly, a defence to a claim of defamation is that the person to whom the information relates consented to the publication of the information.
- 1.18. Section 62(2) clarifies that an agency or Minister who gives access to a document under the Act (even if that document is exempt) does not authorise or approve the person receiving the document to publish it or the information in it, for the purposes of the law relating to defamation or breach of confidence.

## Provision of access to the Information Commissioner does not constitute a waiver

- 1.19. The Information Commissioner may request or require access to documents generally, by ordering further searches under sections [49KA](#) or [61GA\(1\)](#), or by issuing a notice to produce or attend under [section 61U](#).
- 1.20. Where access has been given to the Information Commissioner in these ways, this access will not constitute a waiver of any privilege attached to the document.<sup>18</sup> For instance, where an agency claims that a document is exempt under section 32 because it is legal advice, the provision of that document to the Information Commissioner during a review of that decision will not waive legal professional privilege.

## More information

A person who authorises or provides access to a document is also protected in relation to criminal offences. See [section 63 – Protection in respect of offences](#) for more information.

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<sup>17</sup> *Coco v A N Clark (Engineers) Ltd* [1968] FSR 415.

<sup>18</sup> *Freedom of Information Act 1982 (Vic)*, section 62(3).

## Section 63 – Protection in respect of offences

### Extract of legislation

#### 63 Protection in respect of offences

Where access has been given to a document and—

- (a) the access was required or permitted by this Act to be given; or
  - (b) the access was authorized by a Minister or a council, or by an officer having authority, in accordance with section 26 or Division 1 of Part VI, to make decisions in respect of requests in the bona fide belief that the access was required by this Act to be given—
- neither the person authorizing the access nor any other person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorizing or giving of the access.

### Guidelines

#### Protection from criminal offences

- 1.1. A person who authorises access, and a person involved in giving access, to a document under the Act is not guilty of a criminal offence only because they authorised or gave access to a document under the Act. For example, a person authorised under [section 26](#) to make FOI decisions for an agency is protected under this section.
- 1.2. This protection applies where:
  - an agency or Minister gives access to a document under the Act;
  - the Act required or permitted access to the document;
  - the access was authorised by a Minister, a council, or an authorised officer, who honestly believed the Act required access be given to the document.

See [section 62 – Protection against actions for defamation or breach of confidence](#) for more information on what 'requires', 'permits' and 'bona fide' means and when the protection applies.

# Section 63A – Information Commissioner and certain other persons not compellable to produce documents in legal proceedings

## Extract of legislation

### 63A Information Commissioner and certain other persons not compellable to produce documents in legal proceedings

- (1) The following persons cannot be compelled in a legal proceeding to produce any document or any part of a document that has come into the person's possession in the performance of the person's functions under Part VI, VIA or VIB or in acting for or on behalf of a person in the performance of those functions—
  - (a) the Information Commissioner;
  - (b) the Public Access Deputy Commissioner;
  - (c) a member of staff of the Office of the Victorian Information Commissioner;
  - (d) a contractor, agent or other person acting for or on behalf of the Information Commissioner or the Public Access Deputy Commissioner.
- (2) This section does not apply to—
  - (a) a criminal proceeding; or
  - (b) a proceeding under section 63BA; or
  - (c) a proceeding involving a claim that the Information Commissioner does not have the jurisdiction to compel the production of documents.

## Guidelines

### Compelling documents from OVIC in legal proceedings

- 1.1. Generally, the Office of the Victorian Information Commissioner (**OVIC**) cannot be compelled in a legal proceeding to produce a document where OVIC has the document because it was performing functions under Part VI (reviews), Part VIA (complaints), or Part VIB (investigations).<sup>19</sup>

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<sup>19</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63A(1).

- 1.2. In other words, if a document comes into OVIC’s possession during a review, complaint or investigation, OVIC cannot be compelled to produce that document or any part of it.
- 1.3. However, there are three instances where OVIC can be compelled to produce a document. This includes in a:
- criminal proceeding;
  - Supreme Court proceeding under [section 63BA](#);<sup>20</sup> or
  - proceeding where an agency or Minister claims OVIC does not have jurisdiction to compel production of documents.

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<sup>20</sup> This kind of proceeding considers whether the Information Commissioner or Public Access Deputy Commissioner has jurisdiction to serve a notice to produce or attend.



# Section 63B – Protection of person making complaint

## Extract of legislation

### **63B Protection of person making complaint**

No civil action lies against a person who makes a complaint to the Information Commissioner under this Act for anything done in good faith by that person in making that complaint.

## Guidelines

### Protecting people who make a complaint

- 1.1. A person who makes a complaint under the Act is protected from civil action for anything they did in good faith when making that complaint.<sup>21</sup> For example, a complainant cannot be sued for defamation by a Minister they made a complaint about.
- 1.2. Complaints are a necessary mechanism to ensure the integrity and accountability of Victorian agencies when performing their obligations under the Act. It is important that complainants can make complaints without fear of legal repercussions.

### Good faith

- 1.3. Broadly speaking, ‘good faith’ indicates propriety or honesty. A complainant will be protected where the actions they take or things they say are done honestly. Where a person makes a complaint and knowingly makes untrue allegations in that complaint, they may not be protected by section 63B.

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<sup>21</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63B.

# Section 63BA – Application to Supreme Court

## Extract of legislation

### 63BA Application to Supreme Court

- (1) If a question arises as to whether the Information Commissioner or the Public Access Deputy Commissioner has jurisdiction to serve a notice to produce or attend on an agency, principal officer or a Minister under this Act, the Information Commissioner or, subject to subsection (2), the Public Access Deputy Commissioner or the agency, principal officer or Minister may apply to the Supreme Court for determination of that question.
- (2) The Public Access Deputy Commissioner may only apply for determination under this section in relation to a notice to produce or attend served by the Deputy Commissioner.
- (3) The Supreme Court may make any order it considers proper in relation to an application under subsection (1).
- (4) A Minister may, or a principal officer may, on behalf of the agency or, if the notice to produce or attend is served on the principal officer, on the officer's own behalf—
  - (a) make an application under this section; and
  - (b) be a party to an application by the Information Commissioner under this section.
- (5) Nothing in this section limits any application an agency, principal officer or Minister may make to the Supreme Court in respect of the issuing of a notice to produce or attend.

## Guidelines

### Applying to the Supreme Court

- 1.1. The Information Commissioner or Public Access Deputy Commissioner, agency principal officer or Minister may apply to the Supreme Court for the Court to decide whether the Information Commissioner or Deputy Commissioner has jurisdiction to serve a notice to produce or attend on the agency or Minister.<sup>22</sup>

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<sup>22</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63BA(1).

- 1.2. If an application is made, the Supreme Court may make any order it considers fit.<sup>23</sup>
- 1.3. The Public Access Deputy Commissioner may only apply to the Supreme Court in relation to a notice to produce or attend served by them.<sup>24</sup> The Deputy Commissioner cannot apply to the Supreme Court in relation to a notice to produce or attend served by the Information Commissioner.

### Applications by a Minister and a principal officer of an agency

- 1.4. A Minister or principal officer of an agency may apply to the Supreme Court if they have been served with a notice to produce or attend to decide whether the Information Commissioner or Public Access Commissioner has jurisdiction to issue that notice.<sup>25</sup>
- 1.5. The Minister or agency will be a party to those proceedings.<sup>26</sup>
- 1.6. An agency or Minister is not limited from otherwise applying to the Supreme Court about the issuing of a notice to produce or attend (for example, to seek judicial review of the decision to issue a notice).<sup>27</sup>

### More information

For more information on a notice to produce or attend, see [section 61U](#) of the FOI Guidelines.

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<sup>23</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63BA(3).

<sup>24</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63BA(2).

<sup>25</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63BA(4).

<sup>26</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63BA(4).

<sup>27</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63BA(5).

# Division 2—Production of documents to Information Commissioner

## Section 63C – Application of Division

### Extract of legislation

#### **63C Application of Division**

This Division applies to a document that is claimed to be an exempt document and is, or is to be, produced to the Information Commissioner in the course of the Information Commissioner—

- (a) conducting a review under Division 1 of Part VI; or
- (b) dealing with a complaint under Part VIA; or
- (c) conducting an investigation under Part VIB.

### Guidelines

#### When Division 2 of Part VI applies

- 1.1. During a review, agencies and Ministers must provide the Information Commissioner with documents claimed to be exempt so the Information Commissioner may review them. An agency or Minister may also provide documents to the Information Commissioner during a complaint or when conducting an investigation.
- 1.2. Division 2 of Part VI outlines special requirements for producing certain documents claimed to be exempt, and the procedure for maintaining confidentiality of an exempt document where it has been produced to the Information Commissioner during a review, complaint or investigation.
- 1.3. Section 63C clarifies that these requirements apply to a document that an agency or Minister claims is exempt and which needs to be produced to the Information Commissioner during a review, a complaint, or an investigation.

## Section 63D – Special requirements for production of documents claimed to be exempt under section 28, 29A, 31 or 31A

### Extract of legislation

#### **63D Special requirements for production of documents claimed to be exempt under section 28, 29A, 31 or 31A**

- (1) This section applies to the production of a document that is claimed to be exempt under section 28, 29A, 31 or 31A.
- (2) The document may only be inspected at the premises of the agency which, or the Minister who, made the claim that the document is exempt.
- (3) The Information Commissioner is not entitled to possession of, or to make copies of, the document.
- (4) Despite subsections (2) and (3), at the request of the Information Commissioner, the document must be provided to the Information Commissioner for inspection by secure electronic means.
- (5) If the Information Commissioner has made a request under subsection (4), after the Information Commissioner has inspected the document, the Information Commissioner must—
  - (a) destroy the document as soon as practicable after inspecting the document; and
  - (b) advise the agency or the Minister in writing that the inspection of the document has been completed and the document has been destroyed.

### Guidelines

#### OVIC may only inspect documents claimed to be exempt under section 28, 29A, 31 or 31A

- 1.1. During a review, complaint, or investigation, there are special requirements for providing the Office of the Victorian Information Commissioner (**OVIC**) with a document that an agency or Minister claims is exempt under:
  - [section 28](#) (Cabinet documents);
  - [section 29A](#) (documents affecting national security, defence or international relations);

- [section 31](#) (law enforcement documents); or
  - [section 31A](#) (documents relating to IBAC).
- 1.2. If an agency or Minister claims the document is exempt under one or more of the sections listed above, the Information Commissioner may only inspect the document at the premises of the agency or Minister. The Information Commissioner is not entitled to possess or make a copy of the document.<sup>28</sup> However, the Information Commissioner may request to inspect the document electronically.

### OVIC may request to inspect the document electronically

- 1.3. The Information Commissioner can request to inspect a document claimed to be exempt under section 28, 29A, 31, or 31A, electronically.<sup>29</sup>
- 1.4. If the Information Commissioner requests electronic inspection, the agency or Minister must provide the document to OVIC by secure electronic means. OVIC provides a platform for agencies and Ministers to provide documents securely, by electronic means.
- 1.5. After the Information Commissioner inspects the document that has been provided electronically, the Information Commissioner must destroy the document and tell the agency or Minister in writing that the inspection is complete and the document is destroyed.<sup>30</sup>

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<sup>28</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63D(2).

<sup>29</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63D(4).

<sup>30</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63D(5).

# Section 63E – Use of documents claimed to be exempt

## Extract of legislation

### 63E Use of documents claimed to be exempt

- (1) The Information Commissioner must do all things necessary to ensure that only a specified person has access to the document or its contents.
- (2) A person who is or has been a specified person must not intentionally or recklessly disclose the document or its contents to any person other than—
  - (a) to a specified person in the course of performing the person's functions under this or any other Act or acting for or on behalf of a specified person in the performance of those functions; or
  - (b) to a representative of the agency or Minister who produced the document.Penalty: 240 penalty units or imprisonment for 2 years or both.
- (3) A specified person may, to the extent practicable without disclosing any exempt matter, disclose the nature of the document to the applicant for review or the complainant (as the case requires) if—
  - (a) the specified person considers that the disclosure may assist in the resolution of the review or complaint; and
  - (b) the agency head, principal officer or Minister, or a person nominated by the agency head, principal officer or Minister, gives prior written consent to the disclosure.
- (4) Subject to section 63D, the Information Commissioner may copy the document, but only to the extent necessary for the performance of the Information Commissioner's functions in conducting the review, complaint or investigation.
- (5) On completion of the review, complaint or investigation process, the Information Commissioner must—
  - (a) return the document to the agency that produced it; and
  - (b) return to that agency, or destroy, any copies of the document.
- (6) In this section—

***former Commissioner*** means a person who was appointed as—

- (a) the Freedom of Information Commissioner; or
- (b) an Assistant Commissioner;

***specified person*** means—

- (a) the Information Commissioner; or
- (b) the Public Access Deputy Commissioner; or
- (c) a member of staff of the Office of the Victorian Information Commissioner; or

- (d) a former Commissioner, acting former Commissioner or employee, contractor or agent employed or engaged by a former Commissioner.

## Guidelines

### Ensuring confidentiality of documents produced to OVIC

- 1.1. Section 63E ensures the confidentiality of documents which are claimed to be exempt, and which are produced to the Information Commissioner during a review, complaint, or investigation.<sup>31</sup>
- 1.2. The Information Commissioner, Public Access Deputy Commissioner, a staff member of the Office of the Victorian Information Commissioner (**OVIC**) (and any former Commissioners, employees, contractors or agents) cannot intentionally or recklessly disclose a document (or what it says) to:
  - anyone who is not a specified person; or
  - a representative of the agency or Minister who provided the document,<sup>32</sup>or a penalty will apply.
- 1.3. This means OVIC can discuss a document subject to review within OVIC, but generally cannot disclose the contents of the document with anyone outside of OVIC. OVIC can, however, discuss the contents of a document subject to review with the agency or Minister who provided it.
- 1.4. A 'specified person' includes:
  - the Information Commissioner; or
  - the Public Access Deputy Commissioner; or
  - a member of staff of the Office of the Victorian Information Commissioner; or
  - a former Commissioner, acting former Commissioner or employee, contractor or agent employed or engaged by a former Commissioner.
- 1.5. For the FOI Guidelines on section 63E, a reference to 'OVIC' means a reference to a 'specified person'.

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<sup>31</sup> Section 63C clarifies that sections 63D and 63E apply to a document that is claimed to be an exempt document and is, or is to be, produced to the Information Commissioner during a review, complaint, or investigation.

<sup>32</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 63E(2).



## Can OVIC discuss exempt documents with an applicant?

- 1.6. OVIC may, without disclosing any exempt matter, disclose the nature of the document to the applicant or the complainant if:
  - OVIC considers disclosing information about the document may help to resolve the review or complaint; and
  - the agency or Minister consents to OVIC disclosing the document.<sup>33</sup>
- 1.7. Exempt matter is defined in section 5. It means matter which, if included in a document, causes the document to be an exempt document.

## Making a copy of a document claimed to be exempt

- 1.8. OVIC may make a copy of a document claimed to be exempt for the purpose of conducting a review, complaint, or investigation.
- 1.9. If OVIC requires an agency or Minister to provide a document that is claimed to be exempt under section 28, 29A, 31 or 31A, then OVIC may request to inspect the document electronically.

For more information on inspecting documents electronically, see [section 63D – Special requirements for production of documents claimed to be exempt under section 28, 29A, 31 or 31A](#).

## What happens to a document after the review, complaint or investigation is complete?

- 1.10. After OVIC completes the review, complaint or investigation, it must return the document to the agency or Minister that provided it and either return or destroy any copies that OVIC made.

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<sup>33</sup> The consent must come from the agency head, principal officer or Minister, or from a person nominated by the agency head, principal officer, or Minister (section 63E(3)(b)).

## Division 2A—Offences

### Section 63F – Offence to obstruct, mislead or provide false information

#### Extract of legislation

##### **63F Offence to obstruct, mislead or provide false information**

- (1) A person must not, without reasonable excuse, wilfully obstruct, hinder or resist the Information Commissioner, the Public Access Deputy Commissioner, a delegate of the Information Commissioner or the Public Access Deputy Commissioner or a member of staff of the Office of the Victorian Information Commissioner, in—
- (a) performing, or attempting to perform, a function or duty under this Act; or
  - (b) exercising, or attempting to exercise, a power under this Act.

Penalty: 60 penalty units.

- (2) A person must not, without reasonable excuse, provide information or make a statement to the Information Commissioner, the Public Access Deputy Commissioner, a delegate of the Information Commissioner or the Public Access Deputy Commissioner, or a member of staff of the Office of the Victorian Information Commissioner knowing that it is false or misleading in a material particular.

Penalty: 60 penalty units.

- (3) A person must not, without reasonable excuse, mislead or attempt to mislead the Information Commissioner, the Public Access Deputy Commissioner, a delegate of the Information Commissioner or the Public Access Deputy Commissioner, or a member of staff of the Office of the Victorian Information Commissioner.

Penalty: 60 penalty units.

#### Relevant FOI Professional Standards

**Professional Standard 10.1** An agency must assist the Information Commissioner or Public Access Deputy Commissioner in their attempt to informally resolve a review or complaint.

**Professional Standard 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.

<b>Professional Standard 10.3</b>	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.
<b>Professional Standard 10.4</b>	When providing documents subject to review by the Information Commissioner or Public Access Deputy Commissioner, an agency must markup documents clearly and legibly to indicate exempt matter and the applicable exemption or exemptions.  <i>Note: section 5 of the Act defines ‘exempt matter’ to mean matter the inclusion of which in a document causes the document to be an exempt document.</i>

## Guidelines

### Offences for obstructing, misleading, or providing false information

- 1.1. Section 63F helps to ensure that the Office of the Victorian Information Commissioner (**OVIC**) may efficiently and effectively perform functions and duties, and exercise powers, under the Act. It does this by making it an offence (attracting a penalty) for a person to:
  - wilfully obstruct, hinder or resist;
  - knowingly provide untrue or misleading information to;
  - knowingly make an untrue or misleading statement to;
  - mislead or try to mislead;

the Information Commissioner, Public Access Deputy Commissioner, a delegate of the Commissioners or an OVIC staff member.
- 1.2. This is unless the person has a reasonable excuse.
- 1.3. Agencies and Ministers are encouraged to be forthcoming and assist OVIC where possible.
- 1.4. Agencies and Ministers also have a positive obligation in [section 49I](#) to help the Information Commissioner to undertake a review.
- 1.5. Similarly, agencies must help the Information Commissioner under the Professional Standards such as by:
  - helping to informally resolve a review or complaint;

- considering a preliminary view from OVIC;
- responding to a request for documents or information from OVIC within requested or agreed timeframes; and
- when providing documents subject to review, marking up documents clearly and legibly to show exempt matter and the exemptions that apply.<sup>34</sup>

## More information

For more information on helping OVIC to undertake a review, see [section 49I – Agency or Minister must assist Information Commissioner](#).

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<sup>34</sup> FOI Professional Standards [10.1 to 10.4](#).

# Section 63G – Prosecutions

## Extract of legislation

### 63G Prosecutions

- (1) A proceeding for an offence against this Act may be commenced by—
  - (a) a member of the police force; or
  - (b) the Information Commissioner; or
  - (c) any other person authorised to do so by the Information Commissioner.
- (2) In a proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

## Guidelines

### Who can start a prosecution for an offence under the Act?

- 1.1. Section 63G specifies who can prosecute offences under the Act: a member of the police force, the Information Commissioner, or any person authorised by the Information Commissioner.

#### Examples of offences in the Act

Offences in the Act include:

- disclosing restricted matter specified in a confidentiality notice under [section 61TJ](#) – [section 61TM](#);
- failure to comply with a notice to produce or attend without reasonable excuse – [section 61X](#);
- failing to take an oath or make an affirmation when required without reasonable excuse under [section 61ZE](#);
- a specified person improperly using documents claimed to be exempt – [section 63E](#);
- wilfully obstructing, hindering or resisting the Information Commissioner in performing their functions or exercising their powers under the Act without reasonable excuse – [section 63F\(1\)](#);

- providing information or making a statement to the Information Commissioner knowing that it is false or misleading without reasonable excuse – [section 63F\(2\)](#);
- misleading or attempting to mislead the Information Commissioner without reasonable excuse – [section 63F\(3\)](#).

1.2. Prosecutions will be presumed to have been properly authorised unless there is evidence to the contrary. The procedure for prosecutions is set out in the [Civil Procedure Act 2010 \(Vic\)](#).

## Division 3—Reporting

### Section 64 – Reporting by Information Commissioner

#### Extract of legislation

#### **64 Reporting by Information Commissioner**

- (1) As soon as practicable after the end of each financial year, the Information Commissioner must prepare an annual report on the operation of this Act during that year.
- (2) The report must contain information relating to the following for the relevant year—
  - (a) the number of requests made to each agency and to each Minister;
  - (b) the number of decisions that an applicant was not entitled to access to a document on a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked;
  - (c) the name and designation of each officer of an agency with authority to make a decision in relation to a request, and the number of decisions made by each officer that an applicant was not entitled to access to a document pursuant to a request;
  - (d) the number of applications for review of a decision by the Information Commissioner under Division 1 of Part VI and the decisions on the applications;
  - (e) the number of applications to the Tribunal under section 50 and in respect of each application—
    - (i) the decision of the Tribunal; and
    - (ii) the details of any other order made by the Tribunal; and
    - (iii) if the decision in respect of which the application was made was a decision that an applicant is not entitled to access to a document in accordance with a request, the provision of this Act under which the first-mentioned decision was made;
  - (f) the number of complaints made to the Information Commissioner under Part VIA;
  - (g) the number of notices served on the principal officer of an agency under section 12(1) and the number of decisions by the principal officer under that section that are adverse to a person's claim;
  - (h) details of any disciplinary action taken against any officer in respect of the administration of this Act;
  - (i) details of any recommendations made by the Information Commissioner under Part VIA;

- (j) the amount of any charges collected by each agency and Minister under this Act;
  - (k) details of any reading room or other facility provided by the agency or Minister for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility;
  - (l) details of any difficulties met in the administration of this Act in relation to staffing and costs;
  - (m) any other facts that indicate an effort by the agency or Minister to administer and implement the spirit and intention of this Act.
- (3) The report may include a report on the performance and exercise of the Information Commissioner's functions and powers under this Act.
- (4) The report must fairly, fully and accurately set out the response of an agency, Minister, person or body in relation to a recommendation referred to in subsection (2)(i).
- (5) The Information Commissioner must transmit the annual report for a year to each House of the Parliament to be laid before that House on the same day that the annual report of the Information Commissioner under the **Financial Management Act 1994** for that year is laid before that House.
- (6) At least one business day before the Information Commissioner transmits the annual report to the Parliament under subsection (5), the Information Commissioner must give an advance copy of the annual report to—
- (a) the Minister; and
  - (b) the Secretary to the Department of Premier and Cabinet.

## Guidelines

### Annual reports

- 1.1. Every financial year, the Office of the Victorian Information Commissioner (**OVIC**) prepares an annual report on the performance and exercise of the Information Commissioner's functions and powers under the Act and under the *Privacy and Data Protection Act 2014* (Vic).<sup>35</sup> The annual report also reports on the operation of the FOI Act for that year.<sup>36</sup>

Read annual reports of the Office of the Victorian Information Commissioner, the former Office of the Commissioner for Privacy and Data Protection, the former Office of the Freedom of Information Commissioner and historic annual reports on the operation of the FOI Act [here](#).

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<sup>35</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(3) and [Privacy and Data Protection Act 2014 \(Vic\)](#), section 116.

<sup>36</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2).



## Reporting on the operation of the Act

- 1.2. OVIC must report on the operation of the Act in its annual report. Section 64(2) lists the information that OVIC must include in an annual report when reporting on the operation of the Act for that financial year.

### Example

Information that must be in the report includes:

- the number of requests made to each agency and to each Minister;<sup>37</sup>
- the number of decisions where an agency or Minister refused access to a document, the sections of the Act that the agency or Minister relied on to make those decisions, and the number of times the agency or Minister relied on each section;<sup>38</sup>
- the name and position of the person who has authority to make decisions in relation to a request and the number of decisions they made to refuse access to a document;<sup>39</sup>
- the number of review applications made to OVIC and the decisions on those applications;<sup>40</sup>
- the number of review applications to the Victorian Civil and Administrative Tribunal (VCAT), VCAT's decisions on those applications, details of any VCAT orders, and the section of the Act relied on if the decision is to refuse access to a document;<sup>41</sup>
- the number of complaints made to OVIC;<sup>42</sup>
- the number of notices served on an agency's Principal Officer requiring specification of documents in Part II statements under [section 12\(1\)](#);<sup>43</sup>

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<sup>37</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(a).

<sup>38</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(b).

<sup>39</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(c).

<sup>40</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(d).

<sup>41</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(e).

<sup>42</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(f).

<sup>43</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(g).

- details of any disciplinary action taken against any officer regarding the administration of the Act;<sup>44</sup>
- details of any recommendations made by the Information Commissioner under section 61L (if OVIC includes information about a recommendation it made under section 61L, OVIC must also fairly, fully, and accurately set out a response in relation to the recommendation);<sup>45</sup>
- the amount of any charges collected by each agency and each Minister under the Act;<sup>46</sup>
- details of any reading rooms;<sup>47</sup>
- details of any difficulties an agency or Minister met when administering the Act in relation to staffing and costs;<sup>48</sup> and
- any other information that shows an agency or Minister implementing the spirit and intention of the Act (to promote the disclosure of information at the lowest reasonable cost).<sup>49</sup>

1.3. So that OVIC can report on the operation of the Act, OVIC requires agencies and Ministers to complete an online survey at the end of each financial year to collect this data.

## Providing the annual report to Parliament

1.4. OVIC sends the annual report to Parliament to be tabled. At least one business day before sending the annual report to Parliament, OVIC must also give an advance copy of the annual report to the Minister and to the Secretary to the Department of Premier and Cabinet.<sup>50</sup>

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<sup>44</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(h).

<sup>45</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(i) and 64(4).

<sup>46</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(j).

<sup>47</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(k).

<sup>48</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(l).

<sup>49</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2)(m).

<sup>50</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(5) and (6).

# Section 64A – Reports to Integrity and Oversight Committee

## Extract of legislation

### 64A Reports to Integrity and Oversight Committee

- (1) The Information Commissioner must report to the Integrity and Oversight Committee of the Parliament—
  - (a) on the number of times that relevant Ministers have made statements under section 65AB; and
  - (ab) on the performance of functions and exercise of powers of the Information Commissioner and the operation of the Office of the Victorian Information Commissioner; and
  - (b) if there have been 4 or more successful applications to the Supreme Court or the Tribunal by agencies against decisions of the Information Commissioner in a 12 month period.
- (2) A report under subsection (1)(b) must—
  - (a) set out a summary of the cases and the reasons for the determination of the Supreme Court or the Tribunal in each case; and
  - (b) be made as soon as practicable after every 4 successful applications in the 12 month period.
- (3) A report is not required to set out a summary of a case if a summary of that case has been included in an earlier report under subsection (1)(b).

## Guidelines

### Reporting to the Integrity and Oversight Committee

- 1.1. The Information Commissioner must report annually to Parliament on how agencies and Ministers administer the Act and on the performance and exercise of the Information Commissioner’s functions and powers under the Act and under the *Privacy and Data Protection Act 2014* (Vic).<sup>51</sup>

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<sup>51</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64.

- 1.2. In addition to this, the Information Commissioner must report to the Integrity and Oversight Committee on specific matters. This includes on the:
- number of times that relevant Ministers have made a [section 65AB](#) statement;
  - Information Commissioner’s performance and the operation of the Office of the Victorian Information Commissioner’s (OVIC); and
  - successful review applications to the Supreme Court or the Victorian Civil and Administrative Tribunal of the Information Commissioner’s decisions where there have been more than four successful applications in a year.<sup>52</sup>
- 1.3. The Integrity and Oversight Committee monitors and reviews the performance of certain integrity bodies, including OVIC.

For more information on the Integrity and Oversight Committee, visit their website [here](#).

## Reporting on four or more successful applications to the Supreme Court or VCAT

- 1.4. As soon as practicable after every four successful applications by an agency or Minister to the Supreme Court or VCAT, OVIC must report to the Integrity and Oversight Committee and summarise the cases and the reasons for the Supreme Court or VCAT determination.<sup>53</sup>
- 1.5. A report does not need to set out a summary of the case if OVIC has previously reported on the case and provided a summary of it.<sup>54</sup>

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<sup>52</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64A(1)(a)-(c).

<sup>53</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64A(2).

<sup>54</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64A(3).

# Section 64B – Duty of agency or Minister to comply with requirements of Information Commissioner

## Extract of legislation

### **64B Duty of agency or Minister to comply with requirements of Information Commissioner**

An agency, principal officer or Minister must give the Information Commissioner any information referred to in section 64(2) in relation to the agency, principal officer or Minister.

## Guidelines

### Providing information to the Information Commissioner

- 1.1. The Information Commissioner must report annually to Parliament on how agencies and Ministers administer the Act.<sup>55</sup> This report includes information such as the number of requests made to each agency and to each Minister in the financial year.
- 1.2. In preparing the annual report, the Office of the Victorian Information Commissioner sends agencies and Ministers a survey to collect data for the financial year. Agencies, principal officers and Ministers must give the Information Commissioner any relevant information to assist the Commissioner to prepare the report.<sup>56</sup>

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<sup>55</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64(2).

<sup>56</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 64B; ‘any relevant information’ means information referred to in section 64(2).

# Section 65AB – Report to Parliament by Minister

## Extract of legislation

### 65AB Report to Parliament by Minister

- (1) This section applies if an agency or a Minister who was a party to a proceeding before the Tribunal under this Act seeks leave under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** to appeal on a question of law from an order of the Tribunal in the proceeding.
- (2) The Minister who is seeking leave to appeal or the responsible Minister in respect of the agency seeking leave to appeal must cause a brief statement of the reason or reasons for seeking leave to appeal—
  - (a) to be published in the Government Gazette within 10 days after the day on which the summons for leave to appeal is filed with the court; and
  - (b) to be laid before each House of Parliament on or before the 7th sitting day of that House after the day on which the summons for leave to appeal is filed with the court.
- (3) An agency that decides to seek leave to appeal must notify the responsible Minister of that decision as soon as practicable after it is made but not later than the day that the summons for leave to appeal is filed with the court.
- (4) The notice under subsection (3) must be in writing and must set out a brief statement of the reason or reasons for seeking leave to appeal.

## Guidelines

### Reporting on seeking leave to appeal on a question of law

- 1.1. An agency or Minister who was a party to a proceeding before the Victorian Civil and Administrative Tribunal (**VCAT**) under the Act may seek leave to appeal a VCAT order on a question of law.<sup>57</sup>

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<sup>57</sup> Under section 148 of the [Victorian Civil and Administrative Tribunal Act 1998 \(Vic\)](#).

- 1.2. If an agency decides it wants to seek leave to appeal, it must notify the responsible Minister as soon as practicable but no later than the day that the summons for leave to appeal is filed with the court.<sup>58</sup>
- 1.3. If an agency or Minister does seek leave to appeal, either the Minister (in the case of a Minister) or the responsible Minister (in the case of an agency) must prepare a brief written statement of reasons explaining why they want to appeal the order.<sup>59</sup>
- 1.4. This statement of reasons must be published in the Government Gazette within 10 days after the day on which the summons for leave to appeal is filed with the court.<sup>60</sup> It must also be laid before each House of Parliament on or before the seventh sitting day of that House, after the day on which the summons for leave to appeal is filed with the court.<sup>61</sup>

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<sup>58</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 65AB(3).

<sup>59</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 65AB(2) and section 65AB(4).

<sup>60</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 65AB(2)(a).

<sup>61</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 65AB(2)(b).

## Division 4—Regulations

### Section 66 – Regulations

#### Extract of legislation

##### 66 Regulations

- (1) The Governor in Council may make regulations prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to—
  - (a) the making of charges of amounts, or the fixing of rates, for access to documents (including the provision of copies or transcripts) in accordance with this Act; and
  - (c) forms of access to documents, including access through an Internet site accessible to the public.
- (2) Where, as a result of a request, access is given to an exempt document, regulations under this Act relating to charges apply as if the access had been given in accordance with this Act.

#### Guidelines

##### The Governor in Council may make regulations

1.1. The Governor in Council may make regulations in relation to:

- making charges or fixing rates for access to documents; and
- forms of access to documents (including access through Internet sites).<sup>62</sup>

1.2. Current regulations include:

- [\*Freedom of Information \(Access Charges\) Regulations 2014\*](#); and

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<sup>62</sup> [\*Freedom of Information Act 1982 \(Vic\)\*](#), section 66(1).



The *Freedom of Information (Access Charges) Regulations 2014 (Access Charges Regulations)* outline how much an agency or Minister can charge an applicant for access to a document. For more information, see the FOI Guidelines on the [Access Charges Regulations](#).

- [Freedom of Information Regulations 2019](#).

The *Freedom of Information Regulations 2019*:

- declare certain bodies to be [prescribed authorities](#) for the purpose of the Act,<sup>63</sup>
- prescribe certain offices for the purpose of [section 5\(3\)\(a\)](#);<sup>64</sup>
- prescribe persons or bodies to whom the Information Commissioner may refer matters under [section 490\(5\)](#) and under [section 61L\(8\)](#);<sup>65</sup> and
- prescribe a form for a confidentiality notice issued under [section 61TJ\(2\)\(a\)](#).<sup>66</sup>

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<sup>63</sup> See regulation 6 and Schedule 1 of the [Freedom of Information Regulations 2019](#).

<sup>64</sup> See regulation 7 of the [Freedom of Information Regulations 2019](#).

<sup>65</sup> See regulations 8 and 9 and Schedule 2 of the [Freedom of Information Regulations 2019](#).

<sup>66</sup> See regulation 10 and Schedule 3 of the [Freedom of Information Regulations 2019](#).

## Division 5—Transitional and saving provisions

### Section 67 – Retrospective operation of law

#### Extract of legislation

##### 67 Retrospective operation of law

- (1) An applicant for access to records about himself, within the meaning of section 33, shall be entitled to receive access subject to this Act to any such record notwithstanding that the record came into existence at any time prior to the date of commencement of this section.
- (2) An applicant for access to a document other than those referred to in subsection (1) shall be entitled to receive access, subject to this Act, to any such document provided that it came into existence not more than five years prior to the date of commencement of this section.
- (3) A Minister shall in his or her report under section 64 include advice regarding the practicability of extending the period of retrospective access provided under subsection (2) of this section.
- (4) Subsections (1) and (2) apply in relation to access to a document of an agency that is a council as if a reference to the date of commencement of this section were a reference to the date of commencement of section 25 of the **Freedom of Information (Amendment) Act 1993**.

#### Guidelines

##### Accessing older documents under the Act

- 1.1. Generally, there is a presumption that law does not have retrospective effect.<sup>67</sup> This would mean that a person is generally not able to receive access to a [document](#) under the Act if the document was created before the Act commenced (the Act commenced on 5 July 1983 except for Part II which commenced on 5 July 1984).<sup>68</sup>

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<sup>67</sup> *Maxwell v Murphy* (1957) 96 CLR 261.

<sup>68</sup> This is per section 1(3) of the Act, which states Part II shall come into operation on a day 12 months from the date of the commencement provided for in section 1(2).

- 1.2. However, section 67 changes this general presumption so that a person can seek access to a document under the Act where the document:
- was created on 5 July 1978 or later in relation to agencies (excluding councils) and Ministers;<sup>69</sup>
  - was created on 8 June 1989 or later in relation to [councils](#);<sup>70</sup>
  - is about the person requesting access to it irrespective of when the document was created (it does not matter how old a document is, if it is about the person applying for access, they have a right to seek access to it).
- 1.3. An applicant should also bear in mind that agencies and Ministers have recordkeeping obligations under the [Public Records Act 1973 \(Vic\)](#). Under this Act, the Keeper of Public Records issues Retention and Disposal Authorities (**RDAs**), which are legal instruments that authorise agencies and Ministers to dispose of (e.g., delete or destroy) public records. This may mean that an agency created a document between 5 July 1978 and 5 July 1983, however it appropriately destroyed the document under an RDA.

For more information on RDAs, visit PROV's [website](#).

- 1.4. Similarly, the Public Record Office Victoria may hold, or have custody of, certain documents.

For more information on accessing documents held by PROV, see:

- [section 14 – Part not to apply to certain documents](#);
- [section 15 – Documents in the Public Record Office](#); and
- Public Record Office Victoria [website](#).

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<sup>69</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 67(2).

<sup>70</sup> [Freedom of Information Act 1982 \(Vic\)](#), section 67(4).

## Sections 68 to 73

There are no FOI Guidelines on sections 68 to 73 (provisions relating to transitional matters).

**OVIC**

[www.ovic.vic.gov.au](http://www.ovic.vic.gov.au)