Noting and briefing processes on freedom of information decisions

Agency officers must be conscious of their obligations under the *Freedom of Information Act 1982* (Vic) (the Act) when undertaking a ‘noting’ or ‘briefing’ process before a decision is made. This includes noting by a Minister, executive, or another agency business unit. All legislative references are to the Act unless otherwise stated.

Internal agency policy may require certain individuals to be briefed for the purpose of noting a decision before it is made. The briefing or noting process brings the decision to the attention of the individual for visibility; it is not a request for permission, endorsement, or direction to make a particular decision. Internal policies must be designed in a way that enables the agency to meet its statutory obligations under the Act (Professional Standard 9.1), including its obligations to make an independent and timely decision.

## An authorised officer cannot be directed to make a decision

Only an agency’s principal officer, authorised officers (such as an FOI officer), or the responsible Minister of an agency can make a decision on an FOI request on behalf of the agency (section 26).

An authorised officer must make their decision independently and cannot be directed to make a particular decision under the Act when properly exercising their statutory decision-making power (Professional Standard 8.1).

## Timeframes do not pause for noting or briefing processes

An agency has a legal requirement to notify an applicant of a decision as soon as practicable, and no later than the statutory timeframe outlined in section 21(1). The statutory timeframe is 30 days and commences after receiving a valid request. The statutory timeframe includes weekends, public holidays, and closedown periods and may only be extended in limited circumstances.

The statutory timeframe does not pause or extend for noting or briefing processes, and is not displaced by a delay caused by those processes. Any brief that requires a decision to be noted should state the decision will be made by the due date, regardless of whether it has been noted.

Noting or briefing processes should be completed within four days or less to facilitate a decision being made within the statutory timeframe. An agency should ensure their internal policies and procedures specify a timely turnaround for any noting and briefing processes to occur within the statutory timeframe.

## Effect of delay in processing a request

If an agency does not notify an applicant of a decision within the statutory timeframe, the applicant may:

* make a complaint to the Information Commissioner (section 61A(1)(a)); and/or
* make a free application to the Victorian Civil and Administrative Tribunal for a review (sections 50(1)(ea) and 53(1)). For the purposes of this application, the agency is taken to have made a decision refusing to grant access.

The Office of the Victorian Information Commissioner does not consider a delay caused by noting or briefing processes to be a reasonable excuse in response to a complaint made by an applicant.