

INFORMATION FOR AGENCIES AND THE PUBLIC

Draft Professional Standards

For public consultation

The Office of the Victorian information Commissioner (**OVIC**) is updating the FOI Professional Standards (the **Standards**). We would like your feedback on the proposed amendments to ensure they are relevant, practical, clear and useful.

This resource provides information about how to participate in the consultation and a link to download the feedback form.

Why is OVIC updating the Standards?

Pursuant to section 6X of the *Freedom of Information Act 1982* (Vic) (**the Act**), the Information Commissioner must review the Standards at least once every four years.

Following a competitive selection process, OVIC engaged an external consultant, KPMG, to undertake an independent review of the Standards.

On 23 August 2024, KPMG provided OVIC with its final report (the **report**), making 27 recommendations to uplift and improve the operation of the Standards. The Information Commissioner has considered the report and has prepared updated Professional Standards (**draft Standards**) in accordance with the recommendations.

Pursuant to section 6U(4) of the Act, OVIC is required to consult with agencies and interested parties on the draft Standards.

Further information can be found [here](#).

How to participate

OVIC seeks your feedback on the draft Standards attached below. The proposed amendments are contained in the tables within the body of the document.

All content outside the tables remains the same as the original Standards issued on 2 December 2019.

OFFICIAL

When providing feedback, please consider the questions in the feedback form.

Consultation will be open for 28 days commencing **18 February 2025** and ending on **20 March 2025**.

Submissions must be provided to OVIC directly. You can do this by:

1. Downloading the Professional Standards [Feedback Form](#), considering the questions and providing feedback and/or comments; or
2. Downloading this document and use tracked changes to mark-up suggestions and leave comments; or
3. Sending us an email or letter with your feedback (you do not need to use the feedback form).

Contact us

Email

communications@ovic.vic.gov.au

Mail

Public Access
Office of the Victorian Information Commissioner
PO Box 24274
Melbourne VIC 3001

Collection of personal information

You are not required to provide any personal information to provide feedback on OVIC's draft Standards.

Where you choose to provide personal information, OVIC may use it to provide you consolidated feedback on the responses we receive or seek clarification on your feedback. If you choose to provide personal information, we ask that you do not include this information anywhere other than the designated fields on the feedback form.

If you choose to make your submission by email, we may be able to identify you from your email address. If you prefer to remain anonymous, you can post your submission to OVIC.

OVIC will not disclose your personal information without your consent, except where required to do so by law. You may contact OVIC to request access to any personal information you have provided to us by emailing enquiries@ovic.vic.gov.au.

For further information on how OVIC handles personal information, please read [OVIC's privacy policy](#).

Draft Professional Standards

Introduction and interpretation

About

~~The FOI Professional Standards (the **Standards**) were issued on 2 December 2019 in accordance with Part IB of the *Freedom of Information Act 1982* (Vic) (**the Act**). The Standards are binding and apply to every Victorian agency subject to the Act. The Standards do not apply to Ministers.~~

Updated Information

The FOI Professional Standards (the **Standards**) were first issued on 2 December 2019 in accordance with Part IB of the *Freedom of Information Act 1982* (Vic) (**the Act**).

The Standards are binding and apply to every Victorian agency subject to the Act. The Standards do not apply to Ministers.

The purpose of the Standards is to ensure the Act is administered by agencies 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 so as 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.

Commencement

~~The Standards commence on 2 December 2019.~~

Updated Information

The Standards commence on [date].

References to legislation

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

Structure

~~There are 33 standards based on 10 themes. Each theme includes:~~

- ~~• a statement – describing the general principles and sections of the Act on which the Standards are based;~~
- ~~• the Standards – setting out the obligations of an agency and principal officer; and~~
- ~~• notes – providing further information to assist interpretation when necessary.~~

Updated Structure

There are 46 Standards, based on 10 key themes.

Each theme includes:

- a statement – describing the general principles and sections of the Act on which the Standards are based;
- the Standards – setting out the obligations of an agency and principal officer; and
- notes – providing further information to assist interpretation and compliance, where necessary.

Application

The Standards apply to every Victorian agency subject to the Act. This includes government departments, statutory authorities, public hospitals, councils, TAFEs and universities.

The Standards do not apply to Ministers.

Section 6W(1) of the Act states the principal officer of an agency, and any officer or employee of the agency concerned in the operation of the Act, must comply with the Standards.

It is the responsibility of a principal officer of an agency to ensure any officer or employee concerned with the operation of the Act complies with the Standards.

Non-compliance with the Standards may result in the Information Commissioner:

- receiving and dealing with a complaint under section 61A(1)(a) or 61A(1)(ab) of the Act; or
- conducting an own motion investigation under section 61O(1) of the Act.

Definitions

All terms in the Standards have the same definition as in section 5 of the Act, including the following:

agency means a department council or prescribed authority;

~~**Information Commissioner** means the Information Commissioner appointed under section 6C of the Act;~~

<u>Amended definition</u>
<p>Commissioner means the Information Commissioner appointed under section 6C of the Act and for the purpose of these Standards also includes the Public Access Deputy Commissioner appointed under section 6D of the Act;</p>

document includes, in addition to a document in writing-

- (a) any book map plan graph or drawing; and
- (b) any photograph; and
- (c) any label marking or other writing which identifies or describes any thing of which it forms part, or to which it is attached by any means whatsoever; and
- (d) any disc tape sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (e) any film negative tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom; and
- (f) anything whatsoever on which is marked any words figures letters of symbols which are capable of carrying a definite meaning to persons conversant with them; and
- (g) any copy, reproduction or duplicate of any thing referred to in paragraphs (a) to (f); and

- (h) any part of a copy, reproduction or duplicate referred to in paragraph (g) - but does not include such library material as is maintained for reference purposes.

exempt matter means matter the inclusion of which in a document causes the document to be an exempt document.

officer means -

- (a) in relation to an agency, other than a council, includes a member of the agency, a member of the staff of the agency, and any person employed by or for the agency, whether that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply or not; and
- (b) in relation to a council, includes a member of the council, a member of the staff of the council and any person employed by or for the council;

prescribed authority means -

- (a) a body corporate established for a public purpose by, or in accordance with, the provisions of an Act, or a body unincorporated created by the Governor in Council or by a Minister, other than-
 - (i) an incorporated company or association;
 - (ii) a body that, under subsection (2), is not to be taken to be a prescribed authority for the purposes of the Act;
 - (iii) a Royal Commission, Board of Inquiry or Formal Review;
- ***
- (v) a school council;
 - (b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of the Act, being-
 - (i) an incorporated company or association or unincorporated body which is supported directly or indirectly by government funds or other assistance or over which the State is in a position to exercise control; or
 - (ii) a body established by or under an Act of Parliament;
 - (c) subject to subsection (3), the person holding, or performing the duties of, an office established by an Act; or
 - (d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this

Act, being an appointment made by the Governor in Council, or by a Minister, otherwise than under an Act;

principal officer means -

- (a) in relation to a department, the person employed as or performing the duties of the Department Head within the meaning of the *Public Administration Act 2004* (Vic); and
- (aa) in relation to a council, the person holding, or performing the duties of, the office of chief administrative officer of the council (by whatever name called); and
- (b) in relation to a prescribed authority—
 - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
 - (ia) in the case of Court Services Victoria—the person holding the office or performing the duties of the Chief Executive Officer of Court Services Victoria; or
 - (ii) in any other case—the person who constitutes that authority or, if the authority is constituted by two or more persons, the person who is entitled to preside at any meeting of the authority at which he is present;

request means a request made in accordance with section 17 of the Act;

Tribunal means Victorian Civil and Administrative Tribunal established by the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

Calculation of days

Both the Standards and the Act (except for sections 49N(4) and 49M(4) of the Act) refer to ‘days’.

For the avoidance of doubt, any reference to ‘days’ means ‘calendar days’ and includes weekends and public holidays.

In calculating timeframes, such as a due date or when a certain action must be taken or completed, agencies should refer to the *Interpretation of Legislation Act 1984* (Vic) (**IOL Act**).

The provisions of the IOL Act apply to all Acts and subordinate instruments, which includes the Standards, unless a contrary intention appears in the relevant Act or subordinate instrument under consideration. Part of section 44 of the IOL Act is extracted below.

Section 44 – Time

- (1) Where in an Act or subordinate instrument a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period.

- (2) Where in an Act or subordinate instrument a period of time is expressed to end on, or to be reckoned to, a particular day, that day shall be included in the period.
- (3) Where the time limited by an Act or subordinate instrument for the doing of any act or thing expires or falls on a day that is a holiday, the time so limited shall extend to, and the act or thing may be done on, the day next following that is not a holiday.
- (4) In subsection (3) **holiday** means—
 - (a) a Saturday or Sunday;
 - (b) a day appointed under the *Public Holidays Act 1993* as a public holiday in the place in which the act or thing is to be or may be done.

Professional Standards

1. Access to government information

Statement

The Act creates a general right of access to a document in the possession of an agency, limited only by the exemptions and exceptions necessary for the protection of essential public interests and the private and business affairs of persons – *section 3(1) of the Act*.

An agency must also administer the Act with a view to making the maximum amount of government information available promptly and inexpensively – *section 16(1) of the Act*.

Professional Standards

- 1.1 An agency must consider whether a document in its possession, that is requested under the Act, can properly be provided to an applicant outside the Act.
- ~~1.2 Where a document in the possession of an agency can properly be provided to an applicant outside the Act, the agency must either:
 - ~~(a) facilitate access to the document; or~~
 - ~~(b) advise the applicant how the document can be accessed.~~~~

Amended Standard	Draft Standard	Comments

<p>1.2</p>	<p>Where a document is in the possession of an agency and can be provided to an applicant in-part outside the Act, the agency must, where practicable and prior to facilitating access to the document, notify the applicant about the impact of releasing information outside the Act, including where review or complaint rights will not apply, and obtain written consent from the applicant.</p> <p><i>Note: Where a document can be released in full outside the Act, the agency is to facilitate access to the document and prior consent from the applicant is not required.</i></p> <p><i>Note: Where an agency receives multiple or regular requests from the same applicant, an agency may seek written consent from the applicant in relation to dealing with future requests outside the Act to facilitate more timely access.</i></p>	<p>This amendment aims to improve the public’s understanding of the benefits and impacts of consenting to the release of documents outside of the Act.</p>
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Note: facilitating access to a document may include providing a copy, arranging inspection or viewing or otherwise providing access to the document. An applicant may otherwise be advised that access to a document can be obtained via another method such as a statutory release scheme or for purchase.

1.3 A principal officer must ensure information statements published in accordance with Part II of the Act are available on their agency’s internet site, where one exists.

Further Information

[Practice Note: Proactive release of information](#)

[Practice Note: Informal release of information](#)

[FOI Guidelines: Section 7 of the FOI Act](#)

<p>Additional resource</p>
<p><u>Proactive and Informal Release Policy Template</u></p>

2. Receiving a request

Statement

An agency has a duty to assist an applicant to make a request in a manner that complies with section 17 of the Act – *section 17(3) of the Act*. An agency is also required to provide an applicant with a reasonable opportunity to consult where the request does not provide sufficient information, as is reasonably necessary, to enable the agency to identify the requested document – *section 17(4) of the Act*.

Professional Standards

- 2.1 An agency must provide an applicant with an option to make a request by email.
- 2.2 An agency requiring payment of an application fee must take reasonable steps to provide options for payment of that fee in line with accepted payment methods the agency provides for other services of a similar financial sum.
- 2.3 An agency must not refuse to accept a request where an applicant has not utilised an agency's pro forma application form.

Note: a request must still meet the requirements of section 17 of the Act to be a valid request.

- 2.4 An agency that receives a request that is not valid, must take reasonable steps to notify the applicant of the following information within 21 days of receiving the request:
 - (a) why the request is not valid;
 - (b) provide reasonable assistance or advice to the applicant about how to make the request valid; and
 - (c) advise the applicant that the agency may refuse to comply with the request if it does not comply with section 17 of the Act.

Note: 'refuse to comply' reflects the language of section 17(4) of the Act. An agency may also consider this to mean the request to have lapsed, been refused or otherwise finalised without being processed.

- 2.5 Before refusing to comply with a request that is not valid, an agency must provide the applicant with a minimum of 21 days from the date the agency notified the applicant of the information in Standard 2.4 to:
 - (a) pay the application fee;
 - (b) provide evidence of hardship, if seeking a fee waiver or reduction;
 - (c) begin consulting with the agency to clarify the request or provide an amended request; or

(d) otherwise make the request compliant with section 17 of the Act.

New Standard	Draft Standard	Comments
2.6	<p>Where it is reasonable for an agency to consult further with an applicant to make the request compliant with section 17 of the Act, where practicable, the agency must respond to the applicant within 14 days of receiving each round of correspondence from the applicant, notifying the applicant of the information in Standard 2.4 that would make the request compliant with section 17 of the Act.</p> <p><i>Note: Standard 2.6 applies to correspondence from an applicant that is received by an agency within 21 days of the date the agency first notified the applicant of the information in Standard 2.4.</i></p>	<p>OVIC supports this recommendation aiming to ensure further correspondence by an agency is made within a specific time frame to reduce delays.</p>
2.7	<p>Where an agency receives a request, it must take reasonable steps to notify the applicant that the request has been received within 14 days of receiving the request.</p> <p><i>Note: the following information should also be included, where possible:</i></p> <ul style="list-style-type: none"> • <i>date the request became valid;</i> • <i>due date for notifying the applicant of a decision on the request;</i> • <i>terms of the request (this may be the wording of an original valid request or the wording of a clarified valid request);</i> • <i>possibility that the processing time may be extended by up to 15 days if third party consultation is required, or by 30 days by agreement with the applicant;</i> • <i>details about an applicant’s right to make a complaint to OVIC, and the right to apply to</i> 	<p>OVIC considers it best practice for FOI requests to be acknowledged by agencies. This recommendation aligns with practices in other FOI jurisdictions which require agencies to notify applicants of receipt or validity of their request.</p>

	<p><i>the Victorian Civil and Administrative Tribunal (VCAT) on a deemed refusal.</i></p> <p><i>Note: An acknowledgement may be a system generated email or letter, depending on how the FOI request was submitted.</i></p>	
2.8	<p>Where an agency receives an application to waive or reduce the application fee under section 17(2B) of the Act, the agency must decide the application or request further information in support of the application, within 14 days of receiving the application.</p>	<p>OVIC supports the recommendation to create a new Standard requiring agencies to make a decision to waive or reduce the fee or seek further information from the applicant in support of their request for a fee waiver/reduction, within a reasonable time frame.</p> <p>OVIC considers that 14 days is a reasonable time frame to make a decision on an application to waive or reduce the application fee.</p>
2.9	<p>Where an agency transfers a request to another agency under section 18 of the Act:</p> <ul style="list-style-type: none"> (a) the agency must action the transfer within 14 days of receiving the request, and (b) the agency must, as soon as practicable after transferring the application, notify the applicant that their application has been transferred and the name of the agency to which it has been transferred. 	<p>OVIC considers a new Standard is appropriate to specify a timeframe in which an agency should transfer an FOI request to another agency to reduce delays and the impact to the receiving agency. The applicant should be advised of the transfer as soon as practicable.</p>

Further Information

FOI Guidelines – Section 17 of the Act

Additional resource
<u>FOI Guidelines – Section 18 of the Act</u>

3. Extensions of time

Statement

An agency must take all reasonable steps to notify an applicant of a decision, as soon as practicable, but no later than 30 days after the day on which a valid request is received, or if the 30 day period is extended or further extended under section 21(2) of the Act, the day after the extended period ends – *section 21(1) of the Act.*

Professional Standards

~~3.1 An agency must not extend the time under section 21(2)(a) of the Act to make a decision unless third party consultation:~~

~~(a) is being undertaken; or~~

~~(b) will be undertaken.~~

Amended Standard	Draft Standard	Comments
3.1	<p>An agency must not extend the time under section 21(2)(a) of the Act to make a decision unless:</p> <ul style="list-style-type: none"> (a) it has notified the applicant in writing that the time has been extended; and (b) third party consultation: <ul style="list-style-type: none"> i. is being undertaken; or ii. (ii) will be undertaken. 	<p>OVIC considers this amendment will improve applicants' awareness and understanding that time can only be extended if the agency has first notified the applicant of the extension, and third party consultation is or will be undertaken.</p>

3.2 A notification under section 21(4) of the Act advising an applicant of an extension to the time for making a decision must state:

(a) under which subsection of section 21(2) of the Act the time has been extended or further extended;

(b) the particular reasons for the extension; and

(c) the number of days by which the agency is extending the due date.

Note: section 21(4) of the Act requires an agency to notify an applicant in writing where the time is extended or further extended.

Further Information

FOI Guidelines – Section 21 of the Act

4. Charges for access

Statement

Charges for access to documents, or ‘access charges’, are imposed in accordance with section 22 of the Act and any regulations made under sections 22(1A) and 66 of the Act.

Professional Standards

4.1 When providing a notification under section 22(3) of the Act, in addition to any other requirements of section 22, an agency must include the following details:

- (a) the estimated access charges;
- (b) how the estimated access charges were calculated;
- (c) the required access charges deposit amount;
- (d) the date by which the deposit must be paid (which must be no less than 60 days after an applicant receives the deposit notice);

Note: an applicant has 60 days from the day they receive a notification requesting a deposit to apply to the Tribunal for a review of the access charges amount where the Commissioner has issued a certificate – section 52(1) of the Act.

- (e) information outlining the applicant may contact the agency to discuss practicable alternatives for altering the request or reducing the anticipated access charges; and

Note: where an agency requires an applicant to pay an access charges deposit, the agency must, if requested by the applicant, discuss with the applicant practicable alternatives for altering the request or reducing the anticipated charge – section 22(6) of the Act.

- (f) information outlining the agency may or will finalise the request without processing it if the applicant does not do either of the following:

- (i) contact the agency to discuss options to reduce the anticipated charges; or
- (ii) pay the deposit by the date specified in the notification.

4.2 An agency must take reasonable steps to provide a notification under section 22(3) of the Act to an applicant within 21 days of receiving a valid request.

- 4.3 An agency requiring payment of an access charges deposit or access charges must take reasonable steps to provide options for payment of the relevant charge in line with accepted payment methods the agency provides for other services of a similar financial sum.

Further Information

FOI Guidelines – Section 22 of the Act

5. Substantial and unreasonable diversion of resources

Statement

An agency cannot rely on section 25A(1) of the Act unless it has provided an applicant with a reasonable opportunity to consult with the agency, and as far as reasonably practicable, provided any information that would assist the applicant to make a request in a form that removes the ground for refusal – *section 25A(6) of the Act*.

Professional Standards

- 5.1 An agency must take reasonable steps to notify an applicant under section 25A(6) of the Act of its intention to refuse a request under section 25A(1) within 21 days of receiving a valid request.
- 5.2 When providing a notice under section 25A(6) of the Act, in addition to the requirements of that section, an agency must:
- (a) explain why the applicant’s request would substantially and unreasonably divert the resources of the agency from its other operations; and
 - (b) provide a minimum of 21 days from the date of the agency’s notice, for the applicant to respond.
- 5.3 Where an agency consults with an applicant under section 25A(6) of the Act, it must ensure it keeps a record of consultation including:
- (a) any responses received from the applicant; and
 - (b) if amended, the final terms of the request.

New Standard	Draft Standard	Comments
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<p>5.4</p>	<p>Where it is reasonable for an agency to consult further with an applicant under section 25A(6), where practicable, the agency must respond to the applicant within 14 days of receiving each round of clarification correspondence from the applicant.</p>	<p>OVIC considers this new Standard will reduce delays associated with ongoing consultation processes.</p> <p>OVIC acknowledges that there might be situations where an agency is not able to respond within the recommended 14-day timeframe and to provide more flexibility with compliance, OVIC has added the words ‘where practicable’.</p>
<p>5.5</p>	<p>Where an agency is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations;</p> <p>(a) prior to refusing the request, an agency may seek written agreement from the applicant to process the request sequentially in order to remove the ground for refusal; and</p> <p>(b) may seek an extension of time from the applicant of not more than 30 days in accordance with section 21(2)(b) of the Act.</p> <p><i>Note: ‘sequential processing’ means processing a request in batches, with each part of the request processed consecutively. An applicant may determine the order in which each part of the request is processed.</i></p> <p><i>Where an applicant agrees to the sequential processing, the agency is permitted to treat the request as multiple requests, making a decision for each batch of documents processed, providing the</i></p>	<p>OVIC considers this recommendation will assist agencies in managing large requests and will give FOI Practitioners more flexibility when engaging with applicants to reduce the impact of FOI requests on agency resources.</p> <p>OVIC acknowledges that sequential processing of large FOI requests is likely to increase the overall volume of FOI requests as each batch is treated as a separate request however, OVIC considers this new Standard will support agencies facilitating more timely access to information and will assist agencies in resource allocation planning.</p>

	<p><i>applicant with appropriate review and complaint rights for each decision made.</i></p> <p><i>For the purpose of sequential processing, the 30-day timeframe in section 21 of the Act restarts at the commencement of each batch of documents processed. The timeframe may be extended by a period of not more than 30 days, as agreed by the applicant pursuant to section 21(2)(b).</i></p>	<p>Where an agency considers sequential processing is appropriate, an agency may seek the applicant’s written agreement. The word “may” provides flexibility to agencies to consider if this approach is appropriate.</p>
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Further Information

FOI Guidelines – Section 25A of the Act

6. Searching for documents

Statement

Where an agency undertakes a search for documents in response to a request it must ensure the search is thorough and diligent

Professional Standard

- 6.1 Where a search for documents is conducted, an agency must ensure it keeps a record of the searches undertaken, including information relating to:
- (a) the locations searched by the agency;
 - (b) the method or type of searches undertaken; and
 - (c) where applicable, the key words used in the searches.

Note: a record may include a completed proforma template, email response, or file note.

Further Information

FOI Guidelines – Section 5 of the Act

FOI Guidelines – Section 27 of the Act

7. Practicability of consulting third parties

Statement

~~Under sections 29(2), 29A(1D), 31(5), 31(6), 31A(2), 33(2B)(b), 34(3), and 35(1B)(b) of the Act, an agency may be required to consider the practicability of notifying and seeking the views of a third party.~~

Updated Statement	Draft statement	Comments
Statement	Under sections 29(2), 29A(1D), 31(5), 31(6), 31A(2), 33(2B)(b), 34(3), and 35(1B)(b) of the Act, an agency may notify and seeking the views of a third party where it is considered reasonably practicable to consult.	On 29 August 2024, the <i>Justice Legislation Amendment (Integrity, Defamation and Other Matters) Bill 2024</i> was passed. This amendment provides that third party consultation is only required when it is 'reasonably practicable'.

Professional Standards

- 7.1 ~~In determining whether it is practicable to notify and seek the views of a third party, an agency must consider all relevant factors which may include:~~
- ~~(a) the likelihood of a third party consenting to disclosure of the information or document;~~
 - ~~(b) the relative age of the information or document;~~
 - ~~(c) the number of third parties to be notified; and~~
 - ~~(d) whether the agency has, or is reasonably able to ascertain, current contact details for a third party.~~

- 7.2 ~~If an agency determines it is not practicable to notify and seek the views of a third party, it must keep a record of why it is not practicable.~~

~~Note: a record does not need to specify every individual third party and may be general in nature.~~

Amended Standards	Draft Standard	Comments

<p>7.1</p>	<p>In determining whether it is reasonably practicable to notify and seek the views of a third party, an agency must consider all relevant factors which may include:</p> <ul style="list-style-type: none"> (a) the likelihood a third party will not consent to disclosure of information or a document; (b) the age of the information or document; (c) the number of third parties to be notified; and (d) whether the agency has, or is reasonably able to find, current contact details <p>Note: further information about the factors above are set out in the FOI Guidelines at 1.81.</p>	<p>On 29 August 2024, the <i>Justice Legislation Amendment (Integrity, Defamation and Other Matters) Bill 2024</i> was passed. This amendment provides that third party consultation is only required when it is ‘reasonably practicable’.</p>
<p>7.2</p>	<p>If an agency determines it is not reasonably practicable to notify and seek the views of a third party, it must keep a record of why it is not reasonably practicable.</p> <p><i>Note: a record does not need to specify every individual third party and may be general in nature.</i></p>	

- 7.3 Where an agency notifies and seeks the views of a third party, it must ensure it keeps a record of:
- (a) who was notified;
 - (b) whether the third party did or did not respond to the notification;
 - (c) if the third party responded, whether they consented or objected to disclosure of the information or document; and
 - (d) where provided, the third party’s reasons for objecting.

Note: an agency should ensure a third party is aware of the applicable exemption and what must be established for the exemption to apply to the information or document.

Further Information

FOI Guidelines – Section 33 of the FOI Act - third party consultation

8. Decisions and reasons for decision

Statement

Where a decision is made that an applicant is not entitled to access a document in accordance with a request, or no such document exists, an agency must explain to the applicant the findings on any material questions of fact, refer to the material on which those findings were based, and state the reasons for the decision – *section 27(1)(a) of the Act*.

Professional Standards

- 8.1 An authorised officer must not be directed to make a particular decision under the Act, when properly exercising their statutory decision making power.
- 8.2 In a written decision, other than in accordance with sections 27(2) or 33(6) of the Act, where an agency relies on an exemption or exception, the agency must:
- (a) explain its reasons for why each exemption or exception applies; and
 - (b) address each limb of the relevant exemption or exception.
- 8.3 In a written decision, other than in accordance with sections 27(2) or 33(6) of the Act, an agency must take reasonable steps to:
- (a) identify whether documents are being released in full, released in part, or denied in full; and
 - (b) describe the documents or types of documents discovered.

Note: an agency may consider a page or pages as a document, a file containing multiple records as a document or however else an agency typically describes a document in the agency.

- 8.4 In a written decision, other than in accordance with sections 27(2) or 33(6) of the Act, where an agency cannot locate a document or a document does not exist in relation to a request or part of a request, the agency must:
- (a) where a search is conducted, provide a summary of the searches undertaken for the document, which may include:
 - (i) the locations searched by the agency;
 - (ii) the method or type of searches undertaken; and
 - (iii) where applicable, the key words used in the searches; and
 - (b) where practicable, explain why the relevant document does not exist or could not be located.

New Standard	Draft Standard	Comments
8.5	Where an agency decides to release documents to the applicant, the agency must release the documents no later than 14 days after expiry of any third party appeal rights under the Act.	OVIC supports the prompt release of documents to an applicant and considers this new Standard will reduce complaints being made to OVIC concerning delays in the release of documents following expiry of appeal rights.
8.6	<p>Where the Commissioner makes a review decision to release documents to the applicant, the agency must release the documents no later than 14 days after the expiry of any agency and/or third party appeal rights, where no application is made by the agency or third party.</p> <p><i>Note: a 'review decision' is a decision made by the Commissioner or Public Access Deputy Commissioner and appeal rights are to the Victorian Civil and Administrative Tribunal (VCAT).</i></p>	
8.7	Where an agency makes a decision on a request for documents that is subject to a complaint about delay at OVIC, the agency must notify OVIC of the date the decision was made within 14 days of the decision being made.	OVIC considers it is reasonable to require an agency to notify OVIC within 14 days of a decision being made. This will improve the timeliness of finalising complaints concerning delayed decision making
8.8	<p>Where the statutory period for an agency to make its decision has lapsed and the agency has not made its decision, the agency must notify the applicant as soon as reasonably practicable after the statutory period lapses, of the applicant's right to:</p> <ul style="list-style-type: none"> (a) make a complaint to OVIC; and (b) apply for review to Tribunal under section 50(1)(ea) of the Act, on the basis of a deemed 	OVIC considers it is appropriate to issue a new Standard requiring agencies to notify applicants of their complaint rights and the right to apply to the Tribunal on a deemed refusal at the expiry of the statutory timeframe if the decision has not been made by the agency within such timeframes.

	<p>refusal.</p> <p><i>Note: for the purpose of compliance with this Standard, an agency may notify an applicant of their right to complain to OVIC, or apply to the Tribunal on a deemed refusal at any time during the processing of the applicant's request.</i></p>	
8.9	<p>Where an agency refuses a request to correct or amend a record under section 39 of the Act, the agency must, in its decision letter to the applicant, explain why amendments and/or notations have not been made to the relevant document/s.</p>	<p>OVIC considers this recommendation will improve applicants' understanding of why amendments and notations have not been made to the relevant document, so that they can make an informed decision on whether to exercise their review rights to OVIC.</p>

Further Information

FOI Guidelines – Section 27 of the Act

9. Resources, training and awareness

Statement

An agency must administer the Act with a view to making the maximum amount of government information available to the public promptly and inexpensively – *section 16(1) of the Act*. This requires a principal officer to ensure their agency and its officers have the resources and training to administer the Act.

Professional Standards

- 9.1 A principal officer must ensure their agency has the necessary resources and procedures in place to be able to meet their agency's statutory obligations under the Act, including:
- (a) being sufficiently resourced to receive and process requests, as and when required, within the required statutory time;
 - (b) the necessary software or systems to enable officers to process requests;
 - (c) internal policies to enable officers to carry out their functions across the agency; and

- (d) anything else reasonably necessary for the agency to carry out its statutory obligations in an effective and efficient manner.
- 9.2 A principal officer must ensure, or must be actively working towards ensuring, all officers who are responsible for responding to requests have the appropriate skills and training to perform their responsibilities.
- 9.3 A principal officer must ensure officers who make decisions under the Act are authorised in accordance with section 26(1) of the Act.
- 9.4 A principal officer must ensure all officers are informed about the agency’s statutory obligations under the Act.
- 9.5 A principal officer must ensure all officers are aware they have a duty to assist and cooperate with officers who process requests under the Act.

Further Information

FOI Guidelines – Section 27 of the Act

10. Working with the Information Commissioner

Statement

An agency has an obligation under section 49I of the Act to assist the Commissioner to conduct a review under Part VI of the Act. Under section 61E of the Act, an agency must cooperate with the Commissioner in dealing with a complaint under Part VIA of the Act.

Professional Standards

- 10.1 An agency must assist the Commissioner in their attempt to informally resolve a review or complaint.
- ~~10.2 An agency must give consideration to a preliminary view issued by, or on behalf of, the Information Commissioner during a review.~~

Amended Standard	Draft Standard	Comments
10.2	An agency must consider an initial or preliminary view issued by, or on behalf of, the Commissioner during a review and/or complaint.	OVIC considers this recommendation will support the timely resolution of reviews and complaints.

- 10.3 An agency must respond to a request for documents and information by, or on behalf of, the Commissioner within requested or agreed timeframes.
- 10.4 When providing documents subject to review by the Commissioner, an agency must markup documents clearly and legibly to indicate exempt matter and the applicable exemption or exemptions.

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.

Further Information

[FOI Guidelines – Section 49G of the Act](#)

[FOI Guidelines – Section 49I of the Act](#)

[FOI Guidelines – Section 61GB of the Act](#)

New Standard	Draft Standard	Comments
10.5	<p>Where an agency claims documents are not subject to the Act or exempt from disclosure, upon request from the Commissioner, the agency’s principal officer, or an appropriately knowledgeable or senior staff member, must provide a statutory declaration or attestation attesting to:</p> <ul style="list-style-type: none"> (a) their belief that the documents are not subject to the Act or exempt from disclosure, and (b) the basis for forming this belief. <p><i>Note: Such a statutory declaration or attestation would only be sought if the Commissioner considers they do not have sufficient information to determine this issue through the Agency’s decision letter, review submission and other documentary evidence.</i></p> <p><i>Where the Commissioner is not satisfied with the provision of a statutory declaration or attestation, the Commissioner may issue a notice to produce the document/s under section 49KB to determine</i></p>	<p>OVIC supports this recommendation. Where appropriate, OVIC will seek an attestation or statutory declaration from the agency attesting to why a document is not subject to the Act or exempt from disclosure. In certain circumstances, OVIC may issue a notice to produce a document under s49KB to determine whether the documents are subject to the Act or exempt from disclosure.</p>

	<p><i>whether the documents are subject to the Act or exempt from disclosure.</i></p> <p><i>Where the Commissioner is satisfied that the documents are not subject to the Act or are exempt, they will be returned to the agency that provided them or destroyed in accordance with OVIC's destruction policy.</i></p>	
<p>10.6</p>	<p>Where the Commissioner requests an agency to complete the FOI Self-Assessment Tool, the agency must comply with the request and provide its results, including the principal officer's endorsement, to OVIC by email to enquiries@ovic.vic.gov.au within 28 days of such request.</p> <p><i>Note: the agency's principal officer must complete the endorsement section in FOI Self-Assessment Tool prior to the results being provided to OVIC.</i></p>	<p>OVIC considers it is reasonable to require an agency to complete the FOI Self-Assessment tool within 28 upon a request from the Commissioner. This will improve OVIC's ability to monitor an agency's practices and compliance with the Standards. This will also assist OVIC in identifying systemic and substantial non-compliance and to meaningfully engage with the agency to improve its statutory compliance.</p>