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LEGAL TEAM GUIDANCE DOCUMENT

PROCESSING COMMONWEALTH FREEDOM OF INFORMATION (FOI) REQUESTS

ENDORSED JULY 2024

About this document	
Purpose	<p>This Guidance Document sets out how to process Freedom of Information (FOI) requests received by the Office of the Commonwealth Ombudsman (the Office).</p> <p>FOI requests are processed in accordance with the <i>Freedom of Information Act 1982</i> (Cth) (FOI Act).</p> <p>The Legal Team is responsible for processing both Commonwealth and ACT FOI requests.</p>
User/s	Legal Team
Outcome	FOI requests are processed in accordance with the FOI Act and the Legal Team consistently uses Resolve and the FOI Spreadsheet to manage those matters.
Version number	1.1
Consultation	David Fintan, Senior Assistant Ombudsman, Defence Investigations ACT and Legal (DIAL) Branch
Approved/endorsed by	Amelia s 47F Director, Legal
Date approved/endorsed	July 2024
Next review date	April 2025
Contact team	Legal

Version history	<p>This document replaces the "Freedom of Information and Administrative Access Scheme Requests Standard Operating Procedure".</p> <p>The following changes have been made:</p> <ul style="list-style-type: none">- Additional guidance around processing requests, where requests may be invalid, what might give rise to a practical refusal reason, what steps should be taken when consulting internally and externally, refusing to confirm or deny existence of document, where a third party disagrees with a decision to release.- Updated recording requirements including FOI spreadsheet and a new clearance process.- Updated flowchart for processing FOI- Removal of technical guidance e.g converting documents to PDF, specific use of Resolve, posting letters- Administrative Access Scheme: Defence Force Ombudsman moved to a standalone document and simplified- Administrative Access Scheme: Complaints and Investigations developed as standalone document- Accompanying templates updated- Guidance around specific documents updated and moved to standalone legal team document <p>Version 1.1 involves minor edits (e.g., stylistic and clarifying) only, made by the responsible SAO on review.</p>
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Table of Contents

s 22

Disclosure log	25
----------------------	----

Closing the Resolve file27
Internal reviews28
Information Commissioner Reviews.....29

s 22

S 22

S 22

s 22

s 22

S 22

S 22

s 22

S 22

S 22

s 22

S 22

S 22

S 22

S 22

S 22

s 22

s 22

S 22

s 22

S 22

s 22

Disclosure log

119. The FOI disclosure log lists documents that have been released to an applicant through the FOI process. Documents must be uploaded within **10 working days (public holidays not included)** of the documents being released to the applicant.
120. The disclosure log requirement does NOT apply to documents that would be unreasonable to publish:
- a. **personal information** about any person if publication of that information would be 'unreasonable' (s 11C(1)(a))
 - b. information about the **business, commercial, financial or professional affairs** of any person if publication of that information would be 'unreasonable' (s11C(1)(b))
 - c. other information, covered by a determination made by the Australian Information Commissioner, if publication of that information would be 'unreasonable' (s 11C(1)(c)), and
 - d. any information that is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete the information listed in the above points (s 11C(1)(d)).
121. In general, we do not publish individual complaint or public interest disclosure information.

How to publish and FOI decision on the Ombudsman disclosure log

122. As part of the clearance process, decision makers should raise disclosure log decisions with the Director at the time the decision is being cleared.
123. Care needs to be taken to separate personal Information from non-personal Information. Non-personal information should be released if it can be separated from the personal information.
124. 4FOI decision maker to prepare the following entry for material that is required to be published under s 11C:

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FOI Reference number	Date of access	FOI request	Information published	Other information	Link to file
<i>Resolve FOI number</i>	<i>Date of decision</i>	<i>Scope of request – <u>do not include applicant name</u></i>	<i>FOI document 1-12 (attached)</i>	<i>Exemptions used</i>	<i>Documents for publication should be saved to the relevant objective folder (fA148116) and linked so they can be published by the Comms team</i>

125. A running log of all entries on the disclosure log is at Objective- A2385708. The table should be updated with the fresh entry.

126. Once the decision is finalised, the case officer should then save the documents for release to Objective (fA148116) update the cleared disclosure log entry into the running log (Objective file- A2385708) then email **s 47E(d)** and ask that the material is uploaded to the website and the deadline for doing so.

S 22

s 22

Closing the Resolve file

134. **Note:** from the date of the primary decision, the applicant has 30 days to request an internal review of the decision and 60 days to seek an external review by OAIC.

- a. In Resolve, choose the Admin tab – ensure the Disclosure Log determination is selected;
- b. Under the 'Reports' tab – fill in the relevant drop down answers in both Report 1 and Report 2 tabs. This is for statistical purposes.
- c. Ensure ALL actions under the 'Actions' tab are finalised;
- d. Ensure ALL relevant outgoing documents are updated in the 'Documents' tab;
- e. Ensure ALL records are up to date and finalised in Objective;
- f. On the top left hand side of the FOI entry screen – select 'Close FOI'.

Internal reviews

135. An applicant generally has 30 days to request an Internal Review of the decision (see 9.17 Guidelines), though that period may be extended by the agency (s 54B(2)). There is no requirement for an applicant to seek Internal Review before they go to the Information Commissioner.
136. There are two categories of decision for which a person can seek review:
- a. an access refusal decision (s 53A)- the FOI applicant may do so
 - b. an access grant decision (s 53B)- an affected third party may do so.
137. When you receive a request for an internal review, you should assess the matter to determine if in fact the applicant has a right to seek review of the decision. Internal review decisions must be made within 30 days, or the Ombudsman is taken to personally have affirmed the decision (s 54D(2)(a)).
138. Internal review is not available where a decision was made outside the statutory timeframe, where the decision was made by a minister or made personally by the principal officer of an agency- though the latter two are not likely to apply to the Office.
139. The Guidelines suggest that an Internal Review Officer should be at a higher level than the original decision maker. In practice, where the Directors are in a job-share position, rather than the Director who approved the decision at first Instance make the internal review decision, it will be appropriate that the

other Director reviews the decision. It is not necessary that the internal reviewer be a Senior Assistant Ombudsman.

140. If an internal review is lodged, **all correspondence and material is to be saved to the original file**. The FOI spreadsheet is to be updated recording the date of request for internal review, and an internal review task created on the Legal Team Planner.
141. For further information around Internal Reviews, consult the Guidelines.

Information Commissioner Reviews

142. An applicant has 60 days to request an OAIC review of the decision (whether or not they have sought internal review first). A third party has 30 days.
143. IC reviews are merit reviews- that is, the IC makes a decision that is, in their view, the correct or preferable decision at the time of the decision being made.
144. The IC can review the following:
- a. an 'access refusal decision' (s 54L(2)(a))
 - b. an 'access grant decision' (s 54M(2)(a))
 - c. a refusal to extend the period for applying for internal review under s 54B (s 54L(2)(c))
 - d. an agency internal review decision made under s 54C (ss 54L(2)(b) and 54M(2)(b)).
 - e. Where decisions are deemed (s 51DA and 54D).
145. Consider the Guidelines at [10.9] for who can seek review.
146. **If an OAIC review is received in relation to an FOI matter, create a new OMBFOI approach and link the original FOI file**. The spreadsheet should also be updated to record the relevant information for the IC review, and the IC review added to the Legal Planner.
147. In general, you will be prompted by the IC to provide specific information and documents to them, as well as submissions. Submissions in IC matters should be cleared at Director level.

148. Sometimes, matters are not dealt with by the IC and instead the matter is referred to the AAT (s 54W(b)). Whenever this is suggested by the IC, you should engage with the Legal Director.

s 22

s 22

S 22

S 22

s 22

S 22