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Office of the Australian Information Commissioner

Part 13 – Information Publication Scheme

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DRAFT

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Part 13 — Information publication scheme

Introduction

- 13.1 Part II of the FOI Act establishes an Information Publication Scheme (IPS) for Australian Government agencies subject to the FOI Act. The IPS requires agencies to publish a broad range of information on their website and authorises agencies to proactively publish other information. Agencies must also publish a plan that explains how they intend to implement and administer the IPS (an agency plan).
- 13.2 The IPS underpins a pro-disclosure culture across government and is one of a number of mechanisms through which government-held information is made available to the public. Other mechanisms that reflect the pro-disclosure goals of the FOI Act include the ability of agencies to release information administratively,¹ the publication of information released through an FOI request on agencies' disclosure logs² and self-service options which allow people to access their own personal information (for example, MyGov).
- 13.3 The IPS requires agencies to regularly consider and publish information that is of value to the public. The IPS requirements also reflect the object of the FOI Act: that information held by government is a national resource to be managed for public purposes (s 3(3)).
- 13.4 Publication of government information can stimulate innovation and economic prosperity. It can also enhance participatory democracy by assisting the public to better understand how government makes decisions and administers programs. An informed community can participate more effectively in government processes and contribute to better policy and decisions. Transparency in government can also lessen the risk that people will be disadvantaged in dealings with government through lack of knowledge or a misunderstanding of government processes.
- 13.5 The IPS sets minimum requirements for publication of information and supports publication of a wide range of information (s 8(4)). Agencies are encouraged to identify and publish additional information, beyond the minimum requirements of s 8(2) of the FOI Act. Further, agencies can take steps to make existing information more accessible to members of the public.
- 13.6 The IPS requirements are intended to facilitate and promote public access to information promptly and at the lowest reasonable cost. Strong commitment to proactive disclosure through the IPS is not only consistent with the objects of the FOI Act and supports Australia's democratic values; it may also reduce the need for applicants to seek formal release of documents through FOI requests.

¹ See s 3A(2)(b) of the FOI Act and Parts [3.2] – [3.5] of the FOI Guidelines (Access to government information – administrative release).

² Section 11C of the FOI Act and Part 14 of the FOI Guidelines.

Elements of the IPS

13.7 The IPS requires Australian Government agencies to which the FOI Act applies to:

- publish an agency plan (ss 8(1) and 8(2)(a))
- publish specified categories of information (s 8(2))
- consider proactively publishing other government information (s 8(4)).

Together, these 3 elements are referred to in these Guidelines as an agency's IPS entry. Individual agencies' IPS entries constitute the IPS.

13.8 Agencies must have regard to the objects of the FOI Act and these Guidelines in complying with the IPS requirements (ss 9A and 93A). These Guidelines provide information about the IPS requirements applying to agencies. They also include recommendations and guidance to encourage better practice.

13.9 Agencies are also required to keep their IPS entry accurate, up-to-date and complete.

13.10 The IPS does not apply to ministers' offices. However, ministers are subject to other FOI Act requirements, including the obligation to give access to documents on request under Part III of the FOI Act and the obligation to publish a disclosure log under s 11C (see Part 14 of these Guidelines). As noted above (at [13.6]), proactive disclosure of documents is likely to reduce reliance on formal access requests under the FOI Act.

The IPS and disclosure log requirements

13.11 The FOI Act requires agencies to have both an IPS entry and a disclosure log. These are distinct and separate requirements under the FOI Act.

13.12 The purpose of the IPS is to make more information available to the public by mandating the publication of specified categories of information and authorising other information to be published. The IPS requires agencies to actively and regularly consider what information is of value to the public and make that information publicly available on their website. As noted above ([13.1]–[13.3]) the requirement for agencies to have an IPS entry is contained in Part II of the FOI Act.

13.13 If an agency gives access to a document in response to an FOI request, it is required to publish that information to the public on a website (the **disclosure log**) within 10 days of giving access to the information (subject to certain exceptions for personal and business information that it would be unreasonable to publish – see Part 14 of these Guidelines). The disclosure log is therefore a list of all the information in documents that the agency has released in response to FOI requests, unless an exception applies. The rationale for the disclosure log requirement is that if certain information is of interest to an individual, it may also be of interest to others. Publication of information released in response to an FOI request is therefore likely to enhance transparency and accountability and to reduce the need for agencies to respond to individual FOI requests because the information is publicly available. The requirement for agencies to have a disclosure log is contained in s 11C of the FOI Act.

Guiding principles

13.14 The FOI Act contains 6 principles that should guide agencies in meeting their IPS obligations:

- agency plans and IPS compliance should further the objects of the FOI Act
- information published by an agency under the IPS should be easily discoverable, understandable and machine-readable
- published information should be accessible — in particular, it should comply with an agency’s obligation to meet the Web Content Accessibility Guidelines version 2.0 Level AA (WCAG 2.0) (see [13.155]–[13.156] below)
- agencies are encouraged to adopt the publication framework set out in these Guidelines, to enhance accessibility through a consistent look and feel to IPS entries across all agencies
- published information should, so far as it is reasonable and practicable, be made available for reuse on open licensing terms, to enhance the economic and social value of the information
- published information should be reviewed regularly for accuracy, currency and completeness.

13.15 Agencies are also encouraged to have regard to the 8 principles on open public sector information published by the Australian Information Commissioner.³ The principles are:

Principle 1: Open access to information — a default position

Principle 2: Engaging the community

Principle 3: Effective information governance

Principle 4: Robust information asset management

Principle 5: Discoverable and useable information

Principle 6: Clear reuse rights

Principle 7: Appropriate charging for access

Principle 8: Transparent enquiry and complaints processes

Open by design

13.16 The proactive disclosure of government-held information promotes open government and advances our system of representative democracy.⁴ Australian Government agencies are strongly encouraged to commit to being ‘Open by Design’ by embedding a culture of

³ See: <https://www.oaic.gov.au/information-policy/information-policy-resources/principles-on-open-public-sector-information>.

⁴ See s 3(2) of the FOI Act.

transparency within their agency and by prioritising, promoting and resourcing proactive disclosure of information they hold which is of value to the public.

- 13.17 To build a culture of transparency, agencies should continually consider what documents they can make pro-actively available and adopt a pro-disclosure approach when deciding what information to publish. It is recommended that documents be published if they are of value and interest to the public.
- 13.18 Agencies should be attuned to what is of interest to the community and make that information available. Agencies can demonstrate transparency by proactively publishing information with current relevance. This may also reduce the number of FOI requests made for that information.
- 13.19 Agencies may decide not to publish a document that is otherwise required to be published under s 8(2) if ss 8C(1) or (2) apply. In those circumstances, agencies are strongly encouraged to record the reasons for the decision not to publish the document on an IPS information register (see [13.38]–[13.43] for more information about maintaining an IPS information register), and regularly review the decision to ensure that ss 8C(1) or (2) continue to apply.
- 13.20 Information published on an agency’s IPS entry must be accurate, up-to-date, complete and accessible to the public.
- 13.21 Agencies should consider how they can promote proactive publication arrangements across their organisation and clarify documents they already have publicly available, to reduce the need for formal access requests.

Overlapping publication requirements

- 13.22 The requirement to publish certain government-held information may arise from more than one source, including the IPS requirements in Part II of the FOI Act. For example, agencies are required to publish their annual reports on the Transparency Portal after the annual report has been tabled in Parliament, and also to publish the annual report as part of the agency’s IPS (s 8(2)(e) of the FOI Act).
- 13.23 The requirement to publish information arising under a different legislative scheme or policy does not override the requirement to publish the same information on an agency’s IPS entry if publication is also required under Part II of the FOI Act.
- 13.24 However, it may be appropriate to provide a link to a document from the IPS if it is already published on another website, rather than creating multiple copies of the same document. Providing multiple access points to information increases accessibility and searchability.
- 13.25 It is recognised that many agencies publish a wide range of corporate information. Where this information is already available on the agency’s website in a way that complies with the requirements under Part II of the FOI Act, it will be sufficient for the purpose of IPS compliance to provide a link to that information from the agency’s IPS page.

Agency plan

13.26 Section 8(1) of the FOI Act requires agencies to prepare a plan showing:

- (a) the information the agency proposes to publish under the IPS (its IPS entry)
- (b) how, and to whom, the agency proposes to publish that information
- (c) other steps the agency will take to comply with IPS requirements.

The purpose of an agency plan is to explain how an agency will comply with the IPS requirements.

13.27 Section 8B requires agencies to ensure that all information the agency publishes under the IPS, including the agency plan, is ‘accurate, up-to-date and complete’. Agencies should therefore ensure that the agency plan is regularly reviewed and updated where necessary. This review could be undertaken as part of an agency’s annual strategic planning.

13.28 An agency plan and IPS entry can be strengthened by inviting public comment on them. Agencies should explain in their plan how they will evaluate and act on any comments received.

Structure and contents of the agency plan

13.29 Agencies should consider adopting the following headings in their agency plan, to promote consistency across government and make it easier for the public to access agency information:

- establishing and administering the agency’s IPS entry
- IPS information architecture
- information required to be published under the IPS (s 8(2))
- other information to be published (s 8(4))
- IPS compliance review (s 8F).

13.30 Each of these headings is discussed in more detail below. In addition, an agency plan template is available at **Annexure A — Model Agency plan** .

13.31 The agency plan should explain how the agency will facilitate public access to the information published in an agency’s IPS entry. Matters that can be addressed include:

- whether information will be published on the agency’s website, or on another website, for example, the website of the portfolio department (where applicable), legislation.gov.au or data.gov.au
- the headings under which information will be published (see [13.151]–[13.152] below for a suggested heading structure)

- how the IPS entry will be clearly identified on the agency website (for example, by using the IPS icon recommended by the Information Commissioner in the Guidance for agency websites: ‘Access to information’ webpage)⁵
- whether a sitemap and search function will be provided
- whether an alert service will be provided for changes or additions to the IPS and how a member of the public can subscribe to the alert service
- how the agency will comply with its WCAG 2.0 Level AA obligations in establishing and maintaining its IPS entry⁶
- the mechanism(s) that will be adopted by the agency for inviting community feedback on its IPS entry and compliance, and how the agency will evaluate and respond to comments received.

Establishing and administering the agency’s IPS entry

13.32 The agency plan should explain the steps the agency will take to prepare its IPS entry and to manage the entry on an ongoing basis. The following matters could be addressed:

- who (within the senior executive) is responsible for leading the agency’s work on IPS compliance
- the resources allocated to establishing and administering the agency’s IPS entry
- the processes and timetable for identifying information required to be published under s 8(2), for publishing additional information under s 8(4), and for adding to or revising the agency’s IPS entry
- measures being taken to ensure that the agency’s IPS entry is accurate, up-to-date and complete (discussed below at [13.153]–[13.154])
- measures (if any) being taken to improve an agency’s information asset management framework, to support its IPS compliance (see [13.34]–[13.37] below)
- whether the agency has developed an internal IPS information register to assist it to efficiently identify documents for publication, record decisions made in relation to publication and systematically review IPS information for accuracy, currency and completeness (see [13.38]–[13.43] below)
- provide details of access charges (if any) that the agency may impose for accessing information published under the IPS, and how charges will be calculated (ss 8D(4) and(5)) (see [13.157]–[13.159] below).

⁵ Available as an agency resource at www.oaic.gov.au.

⁶ The Digital Transformation Agency strongly encourages agencies to meet WCAG 2.1 Level AA which provides a more accessible experience. See: <https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible>.

13.33 The details of the agency plan are likely to reflect the agency's size, functions and reporting obligations, and its resources and skills in information and communications technology, and information management. The agency plan could elaborate on those matters.

Information asset management framework

13.34 An information asset management framework brings together key corporate planning activities and information asset management.

13.35 An information asset is 'a body of information, defined and managed as a single unit so it can be understood, shared, protected and exploited efficiently'.⁷

13.36 Information asset management involves developing a process to manage, develop and guide the acquisition, use and disposal of information assets. This process is intended to maximise service delivery potential and manage risks and costs over an information asset's lifecycle.

13.37 An information asset management framework is a subset of an agency's wider asset management framework and deals specifically with information assets.⁸ It would ideally be linked to an agency's records management system and IPS information register.

IPS information register

13.38 It is recommended that agencies build IPS publication considerations into clearance processes when developing or reviewing all new corporate, policy and procedural documents.

13.39 The pro-disclosure objects of the FOI Act support agencies in adopting a starting position that all corporate, policy and procedural documents will be published on an agency's IPS unless there are clear and documented reasons for not doing so.⁹ Further consideration should also be given to whether other documents created by the agency (see s 8(4) and [13.130]–[13.138]) can be published if they meet the criteria identified at [13.40] below.

13.40 In deciding whether a document will be published following clearance an agency should consider:

- whether the document contains information of interest to the public or information of public value
- whether the document contains information that may assist members of the public understand the work of the agency or understand the decisions it makes
- whether the document would be released if access was requested under the FOI Act

⁷ For further information about information assets see 'What is an information asset' published by the National Archives of Australia at <https://cdn.nationalarchives.gov.uk/documents/information-management/information-assets-factsheet.pdf>.

⁸ For further discussion about information asset management frameworks, see the OAIC issues paper, *Towards an Australian Government Information Policy* (November 2010), at www.oaic.gov.au.

⁹ Section 8C(1) of the FOI Act provides that an agency is not required to publish exempt matter. Section 8C(2) provides that publication of particular information is not required if an enactment restricts or prohibits publication.

- whether, if the document contains exempt matter, limited redactions can be made to create a version that is suitable for publication.

13.41 A decision should be made, and that decision recorded, whether the document will be published on the IPS when finalised and the reasons for not doing so (if a decision is made not to publish the document). Where a decision is taken not to publish a document on the IPS, agencies are encouraged to regularly review that decision, to check whether the reasons for non-publication continue to apply, and to publish the document when those reasons are no longer applicable.

13.42 Section 8B of the FOI Act requires agencies to ensure that the information published on the IPS is 'accurate, up-to-date and complete'. The OAIC encourages agencies to develop and maintain an IPS information register to assist agencies ensure compliance with this requirement. The IPS information register can be incorporated into existing information asset management frameworks.

13.43 An IPS information register could include the following information:

- the business area within the agency that is responsible for a particular document
- the date the document was created, and its revision history (including dates)
- the date the document was published on the IPS
- if a decision is made not to publish the document on the agency's IPS:
 - the date that decision was made
 - the name and/or position of the person who made the decision
 - the reason(s) for the decision not to publish the document
 - the date(s) the decision not to publish the document has been reviewed, the outcome of that review(s) and the name and/or position of the person who reviewed the decision
- the formats in which the document is available
- if the document is not published online, who may be contacted within the agency to arrange public access and the number of requests received.

Information required to be published under the IPS

13.44 The agency plan should describe the information an agency will publish as required by s 8(2). Those requirements are described in more detail below. A series of headings that agencies can use to enhance public access to government information published under the IPS is suggested below at [13.152].

Other information to be published under the IPS

13.45 The agency plan should describe the information an agency will publish under s 8(4) (discussed further below at [13.130]–[13.138]). The plan should specify how the agency has or will identify other information to be published. The timetable for publishing the information should also be included.

IPS compliance review

- 13.46 Agencies are required to complete a review of their IPS compliance at least once every 5 years, in conjunction with the Information Commissioner (ss 8F(a) and 9(1)). The OAIC's compliance review program is described at [13.162]–[13.164].
- 13.47 The OAIC encourages agencies to undertake more regular reviews, and to regularly review the individual elements of its IPS, noting the requirement in s 8B that an agency must ensure that information published as required or permitted by Part II is accurate, up-to-date and complete. The agency plan should indicate when and how the agency will undertake its compliance reviews. The plans should also explain whether the public will be invited to comment on the agency's IPS entry as part of the compliance review.

Information required to be published under the IPS

- 13.48 Agencies are required by s 8(2) of the FOI Act to publish the following information:
- the agency plan (discussed above at [13.29]–[13.33])
 - details of the structure of the agency's organisation (for example, in the form of an organisation chart) ([13.51]–[13.59] below)
 - details of the agency's functions, including its decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities) ([13.60]–[13.71] below)
 - details of appointments of officers of the agency that are made under Acts (other than Australian Public Service employees within the meaning of the *Public Service Act 1999* — such as appointments of statutory office holders ([13.72]–[13.75] below)
 - the agency's annual reports ([13.76]–[13.79] below)
 - details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made ([13.80]–[13.84])
 - information in documents to which the agency routinely gives access in response to requests under Part III (access to documents) of the FOI Act, except information that is otherwise exempt ([13.85]–[13.100])
 - information that the agency routinely provides to the Parliament in response to requests and orders from the Parliament ([13.101]–[13.105])
 - details of an officer (or officers) who can be contacted about access to the agency's information or documents under the FOI Act ([13.106]–[13.108])
 - the agency's operational information (information held by the agency to assist it to perform or exercise its functions or powers in making decisions or recommendations affecting members of the public — or any particular person or entity, or class of persons or entities — for example the agency's rules, guidelines, practices and precedents relating to those decisions and recommendations) ([13.109]–[13.127]).

13.49 Each of these categories of information is discussed below.

Agency plan

13.50 Agencies must publish an agency plan. This requirement was discussed above at [13.29]–[13.33].

Agency organisation structure

13.51 Agencies must publish details of their organisational structure (s 8(2)(b)). This requirement is designed to make the details of an agency’s organisation structure easily accessible and discoverable by the public on the agency’s website. In meeting this requirement, agencies should consider their main audience — the general public — as well as particular classes of people or entities that are likely to visit the agency website.

13.52 Organisational information may be presented as a chart and supported by other information about the agency. It is important that any abbreviation, acronym or specialist description or term that is used in the organisation chart is explained. If this explanation is given in a separate document on the website, a clear link should be provided.

13.53 Agencies already publish organisational information in various locations, including the agency website, the agency annual report, and on directory.gov.au. Agencies may achieve compliance with their IPS obligations by linking to another webpage where the organisational information is already published.

Level of detail required

13.54 The level of detail an agency provides about its organisational structure may depend on the agency’s particular characteristics, such as its size and functions.

13.55 For smaller agencies, or those with a limited number of functions, it may be appropriate to identify each business line or unit that is managed by an officer in the Senior Executive Service responsible for carrying out one of the agency’s functions or powers. The lines of accountability from the manager of the business unit through to the agency’s chief executive officer could be specified. The nature of the agency function or power, and the role of the business unit, could also be explained.

13.56 For larger agencies, providing comprehensive organisational information could make the IPS entry unhelpfully long. If so, an agency should consider limiting its organisational information to the responsibilities of key Senior Executive Service officers. The nature of the agency function or power that officer supervises, and the key business units that carry out the function, could be explained. If this approach is taken, details should be given of how a person may obtain further information about the agency’s organisational structure.

13.57 Where an agency is responsible for a statutory committee, the agency should provide information about the committee and committee members.

13.58 Although not expressly required by s 8(2)(b), it is good practice to provide the name and position title for each manager of a business unit.

Organisational change

13.59 Information about an agency's organisational structure must be accurate, up-to-date and complete ([13.153]–[13.154]). An agency's IPS entry should be updated at the earliest opportunity following an internal agency reorganisation or a reallocation of responsibilities between agencies. It may assist the public to explain any key organisational changes, and to provide a link to other relevant agencies.

Functions and powers

13.60 Agencies must publish details of their functions. This includes an agency's decision-making and other powers that affect members of the public (or any particular person or entity, or class of persons or entities) (s 8(2)(c)). This requirement extends to functions and powers that derive from an enactment or an executive scheme (s 8(5)).

13.61 Agencies are not required to publish details of the activities they undertake that are incidental to their designated functions. See [13.69]–[13.171] below for more detail about incidental powers and functions.

13.62 Where agencies share responsibility for a function or power, the relationship between the agencies should be explained. For example, one agency may develop policy about a particular issue while another agency delivers a service based on that policy.

13.63 Agencies already provide details of their functions and powers in annual reports, and at other locations such as www.australia.gov.au. It may be appropriate to provide a link to this source, if the information provided there is comprehensive or presented in a way that will better assist the public to understand the agency's function.

Functions

13.64 An agency's functions should be described in terms that enable the public to ascertain the range and scope of those functions. Agency functions derive from many sources:

- The Administrative Arrangements Order (AAO) made by the Governor-General specifies the functions of departments of state. The AAO describes the responsibilities of each department and the legislation administered by the ministers responsible for each department.
- Decisions of the Government, often in the form of a ministerial announcement, may require an agency to administer a new policy or program. The activity may be sufficiently significant to be listed separately in an IPS entry as a function of the agency.
- The functions of a body or office holder established by legislation (a 'statutory authority') will be specified in the enabling legislation. Other legislation may also confer functions on the agency. The description of these functions in an IPS entry may need to go beyond the legislative definition of the function to convey a full picture of the agency's role.

- The functions of a body established by executive action — for example, by the Governor-General under s 65 of the *Public Service Act 1999* or by Cabinet or a minister — are likely to be described in the order or instrument establishing the body. The description of the function that is published may need to be more detailed than the description given in that order or instrument.
- Agencies sometimes develop other functions that should be described in an IPS entry. For example, a function may be developed with the assistance of funding received from a government funding or grant agency.

13.65 It may assist the public to provide a link to the legislation, instrument or government announcement that provides the source for the agency function.

Powers

13.66 Powers can be conferred on an agency either by an Act of Parliament, a legislative instrument (including subordinate legislation), or an executive instrument. An executive instrument may, for example, establish a grant program and confer power to award a grant to a member of the public, impose conditions on a grant, and revoke a grant.

13.67 An agency's powers can be described in their IPS entry separately, or as part of the description of the agency's functions. Either way, the description should be adequate to enable the public to understand the range and scope of the agency's powers that can affect them. It is not necessary to refer separately or in detail to each specific power conferred by legislation or otherwise. A general description of an agency's powers and their source will be adequate. Nor is it necessary to refer to the particular section of an Act or clause of an instrument that confers a power, unless that will better assist a person to understand the agency's functions.

13.68 There is a risk that too much detail in describing the functions or powers of an agency may unnecessarily lengthen or complicate the description and make it harder for the public to understand the agency's role.

Incidental powers and functions

13.69 Agencies have incidental powers and functions to complement those expressly conferred on the agency. These incidental powers and functions enable an agency to carry on its business and administer the affairs of government. Examples are the corporate functions of an agency, such as its human resources, public relations and property management activities. Other incidental activities of government agencies include administering FOI requests and complying with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

13.70 It is not necessary for an IPS entry to include these incidental functions and related powers that are common to all agencies. An exception would apply where the function is a core or designated function of a particular agency — for example, if the agency is established to provide training to other agencies, to administer the FOI Act or to manage Australian Government property.

13.71 An agency can include additional information in its IPS entry (s 8(4)), and it is therefore open to an agency to include information about functions and powers that are incidental, implied

or not enumerated. This should be considered where the function is a distinct agency activity or the agency exercises a significant power. An example is the work an agency undertakes, or the powers it exercises, to ensure compliance with its directions or program conditions.

Statutory appointments

- 13.72 Agencies must publish details of appointments of agency officers that are made under Acts, other than the appointment of APS employees within the meaning of the *Public Service Act 1999* (s 8(2)(d)).
- 13.73 This requirement applies to officers who are appointed under statute to a position or role in an agency – for example, the Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* s 4, or the Chief Executive of Centrelink appointed under the *Human Services (Centrelink) Act 1997* s 7 (and who is also an Associate Secretary in the Department of Human Services). An officer who is appointed to a statutory position in another agency should be listed under the IPS entry of both agencies – for example, an officer of a department appointed to the Administrative Review Council under the *Administrative Appeals Tribunal Act 1975* s 49.
- 13.74 An agency is not required to list staff appointed under statute to a position with a generic designation, such as ‘investigator’. Nor are agencies that employ staff other than under the *Public Service Act 1999* required to list staff they appoint under a general statutory authority.
- 13.75 Each appointment required to be listed in the IPS entry should include the following details:
- the name of the person appointed
 - the length or term of appointment
 - the position to which the person is appointed (and particulars of the position)
 - the provision of the Act under which the person is appointed.

Annual reports

- 13.76 Agencies are required to publish the full text of their most recent annual report as laid before the Parliament (s 8(2)(e)). Agencies may also include the annual reports for earlier years, many of which are already published on the internet.
- 13.77 This requirement applies to annual reports of the following kind:
- the annual report prepared by each Commonwealth entity on their activities during the preceding financial year, as required by the PGPA Act s 46
 - the annual report prepared by the directors of a Commonwealth company, as required by the PGPA Act s 97
 - the annual report that a statutory agency is required to prepare on its operations during the year – for example, see the Ombudsman Act s 19

- the annual report that an officer is required to prepare on the operation of a particular statute during the year — for example, the *Environment Protection and Biodiversity Conservation Act 1999* s 516, which requires the Secretary to prepare a report on the operation of that Act; the *Bankruptcy Act 1966* s 12(1)(d) which imposes a similar obligation on the Inspector-General in Bankruptcy; and the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* which requires the Commissioner of Taxation to prepare quarterly (s 54(1)) and annual (s 54(2)) reports on the working of that Act
- a report prepared by an agency to enable a minister to satisfy an obligation to present an annual report to the Parliament — for example, the *Aged Care Act 1997* s 63.2.

13.78 Many other agency reports are laid before the Parliament, as requested by government or as the result of a specific agency inquiry. Publication of these reports is not required by s 8(2)(e), but publication is open to an agency under s 8(4).

13.79 To avoid duplicating information, if an agency is aware that its reports are published elsewhere (for example, on transparency.gov.au) a link can be provided to that website rather than publishing the reports twice.

Consultation arrangements

13.80 Agencies that undertake public consultation on specific policy proposals for which they are responsible are required to publish details of how and to whom comments may be made (s 8(2)(f)). This requirement applies whenever an agency administers or establishes a public consultation arrangement in the course of developing a specific policy proposal.

13.81 Section 8(2)(f) applies to public consultation arrangements of a broad kind, including consultation:

- undertaken by an agency when making a legislative instrument, as required by the *Legislative Instruments Act 2003* s 17
- undertaken by an agency in preparing a regulatory impact statement, in accordance with the Australian Government Guide to Regulation¹⁰
- that an agency has decided to undertake for a specific policy development purpose
- under an arrangement that an agency has established to enable members of the public to provide ongoing comment on an existing policy or program that is administered by the agency.

13.82 Because s 8(2)(f) applies to policy development activity ‘for which the agency is responsible’, it can apply even if the obligation to consult is formally imposed by statute upon a minister or statutory officer. For example, the *Gene Technology Act 2000* s 22 provides that the Ministerial Council in developing policy principles may consult with ‘such industry groups ... and such environmental, consumer and other groups as the Ministerial Council considers appropriate’.

¹⁰ Available at <policyhub.gov.au/resources/Australian-government-guide-regulation>.

The Australian Government agency that is carrying out that consultation for the Ministerial Council may need to publish details of that consultation.

- 13.83 There is no requirement to publish details of consultation that does not contribute to policy development. For example, s 8(2)(f) would not ordinarily apply to consultation undertaken by the Australian Heritage Council pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* s 14, which requires the Council to consult a State before a property within that State is declared to be a World Heritage property.
- 13.84 If an agency has established an online consultation process for a specific policy proposal, the agency's IPS entry should link to this process.

Information routinely given through FOI access requests

- 13.85 Agencies are required to publish information in documents to which the agency routinely gives access in response to FOI requests (s 8(2)(g)).
- 13.86 Section 8(2)(g) does not apply to:
- personal information about any individual, if it would be unreasonable to publish the information (s 8(2)(g)(i)); as a general rule, this does not prevent publication of the names of Australian Government agency staff in connection with their official duties,¹¹ although agencies may wish to consult relevant staff in cases where potential harm could arise from publishing their names (see also Part 14 of these Guidelines)
 - information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information (s 8(2)(g)(ii))
 - other information that the Information Commissioner has determined it would be unreasonable to publish under s 8(3) (s 8(g)(iii)) (see [13.97]–[13.100] below).
- 13.87 These exceptions indicate that agencies are generally not expected to publish information given to an individual or business in response to an FOI request that is personal to that individual or business.
- 13.88 In deciding what information is 'routinely' accessed, agencies should have regard to the similar requirement in s 11C to publish a disclosure log of information released in response to FOI requests (see Part 14 of these Guidelines). The purpose of the IPS is also relevant to deciding what is routine. It forms part of an approach to information disclosure that recognises information held by government is a national resource, and that agencies should proactively publish information that may be of public interest. The IPS is also designed to lessen the number of individual requests for documents made to agencies. Agencies should therefore take an expansive rather than a narrow view of what information is 'routinely' accessed. In particular, agencies should consider whether publishing the information would:
- promote the objects of the FOI Act

¹¹ Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009, p 7.

- be in the public interest
- reduce the likelihood of further requests for the information.

- 13.89 While the disclosure log will contain information an agency has released in response to individual requests, an IPS entry is to contain information that is ‘routinely’ released. That is, agencies are required to include in their IPS entry information that has been requested on multiple occasions. The information that was released may not have been identical on each occasion: it may have been revised or updated between requests, or the information may reflect a later development on the same topic. For example, an IPS entry could include statistical information about an agency’s service delivery performance that is regularly requested by the media or other members of the public. Another example would be the minutes of meetings that are regularly sought under the FOI Act.
- 13.90 To ensure an agency’s IPS entry contains current information of interest to the public, it is recommended that agencies regularly (for example, on a quarterly basis) review the FOI requests the agency receives to identify trends and topics of interest and make this information publicly available through their IPS.
- 13.91 Regular quarterly review of FOI requests will also assist agencies to identify commonly requested categories of personal information and to consider how the agency can use digital means, for example - self-service portals, to increase the accessibility and availability of this information to members of the public. In these cases, access to information can be provided without the need for an FOI request to be made under the FOI Act.
- 13.92 Publication of information in a disclosure log will sometimes satisfy the requirement in s 8(2)(g) to publish that information under the IPS. To avoid dual publication, an agency’s IPS entry may contain a link to the disclosure log and a reference to the information to which the agency has routinely given access. Alternatively, an agency may decide that it is preferable, in complying with s 8(2)(g), for the IPS entry to contain either an extract from the disclosure log or a separate summary of information that is routinely released by the agency in response to FOI requests.
- 13.93 Whichever approach is adopted, agencies must ensure that the information is accurate, up-to-date and complete (s 8B). Consequently, if information in the disclosure log has been revised or replaced, an IPS entry which links to the disclosure log will also need to be amended.

Exceptions — personal and business information

- 13.94 As with the disclosure log requirements, an agency is not required to publish personal or business information as part of its IPS entry if it would be unreasonable to publish that information (ss 8(2)(g)(i) and (ii)). As noted above at [13.86], agencies will generally not publish information given to an individual or business in response to an FOI request that is personal to that applicant.
- 13.95 The third-party consultation requirements that apply before a decision can be made under Part III of the FOI Act to release business documents or documents affecting personal privacy in response to an FOI request (ss 27 and 27A) do not apply to IPS and disclosure log publication decisions. It is nevertheless open to an agency to develop procedures to ensure

that it has considered the views or interests of an FOI applicant or third party before publishing information under the IPS or disclosure log.

- 13.96 Where information is not published because an exception applies, agencies may record this in an IPS information register, including the title of the document to which an exception applies and the reason it was not published under the IPS (see [13.38]–[13.43]) above on information registers). Capturing this information may help an agency if it needs to respond to any complaints to the Information Commissioner about its IPS compliance.

Exceptions – Information Commissioner determinations

- 13.97 The Information Commissioner may make a determination that the requirement to publish routinely accessed information under s 8(2)(g) does not apply to information specified in the determination (s 8(2)(g)(iii)). A determination of this kind is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (s 8(3)). A determination may apply to information of a general kind that is held by many agencies, or to a specific kind of information held by a particular agency. A similar exemption applies to the requirement to publish information in a disclosure log (s 11C(2)) (see Part 14 of these Guidelines).
- 13.98 In deciding whether to make a determination, the Information Commissioner will have regard to:
- the extent to which publication of the information in question would further the objects of the FOI Act
 - whether there is an established and reasonable public demand for the information
 - the estimated resource requirement for an agency to publish the information and whether this would impose an unreasonable burden on the agency.
- 13.99 For further information about determinations under s 8(3), see the Information publication scheme and disclosure log determinations policy and procedure (available at www.oaic.gov.au).
- 13.100 The Information Commissioner has not yet made a determination under s 8(3) of the FOI Act.

Parliamentary information

- 13.101 Agencies are required to publish information they hold that is routinely provided to the Parliament in response to requests and orders from the Parliament (s 8(2)(h)). This includes:
- Senate Order No 8: Production of departmental file lists
 - Senate Order No 9: List of departmental contracts (\$100,000 or more)
 - Senate Order No 10: List of advertising/public information projects (\$100,000 or more)
 - Information of a kind that is routinely requested from an agency by Parliament through a parliamentary committee.

13.102 Section 8(2)(h) does not apply to an answer provided to a Question on Notice in the Parliament, unless the Question is of a recurring nature for information of a similar kind (including a Question requesting an update or revision of information earlier provided in response to a Question). Nor does s 8(2)(h) apply to an agency submission to a parliamentary committee. It is nevertheless open to an agency to publish that information in the IPS under s 8(4) of the FOI Act (other information). Agencies should also note that s 8(2)(h) operates alongside another guideline that requires online publication of information presented to the Parliament — see Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament* (including Government Documents, Government Responses to Committee Reports, Ministerial Statements, Annual Reports and Other Instruments).¹²

13.103 In applying s 8(2)(h), agencies should adopt a similar approach to that for s 8(2)(g) (documents to which access is routinely given). In particular, an agency should consider including in its IPS entry information that was provided to the Parliament, if:

- this would promote the objects of the FOI Act
- the information is of public interest
- further requests or orders from the Parliament for the information are likely.

13.104 Agencies should establish internal procedures for ensuring that information routinely provided to the Parliament is identified as such and published under the IPS.

13.105 If an agency is aware that information provided to Parliament has been published elsewhere (for example, on the Parliament's website¹³), it may be appropriate to provide a link to that website.

Contact officers

13.106 Agencies must publish contact details of an officer (or officers) who can be contacted about access to the agency's information or documents under the FOI Act (s 8(2)(i)).

13.107 To meet this requirement, agencies should publish the name (or position title), telephone number and email address of the FOI contact officer or officers. Agencies should establish generic telephone numbers and email addresses (for example, foi@agency.gov.au) that will not change with staff movements.¹⁴

¹² See [4.35] at <https://www.pmc.gov.au/sites/default/files/publications/pmc-tabling-guidelines.pdf>.

¹³ Agencies are advised to check what information is accessible and where it can be located on the Parliament's website before providing links (for example, the majority of submissions to committees are published on the inquiry webpages of the committees).

¹⁴ See the model FOI page included in the Information Commissioner's *Guidance for agency websites: 'Access to information' webpage*, available as an agency resource at www.oaic.gov.au.

13.108 Where it is not appropriate to include the name and contact details for each FOI contact officer (for example, due to regular staff changes) the agency should provide contact details for the position.

Operational information

13.109 An agency's operational information must be published as part of an agency's IPS entry (s 8(2)(j)). 'Operational information' is defined in s 8A(1) as:

... information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).

13.110 The publication of operational information ensures that members of the public are adequately informed about the rules, policies, principles and procedures that agencies apply in making decisions or recommendations that affect members of the public.

13.111 Publication of that information is important in its own right but is also necessary to ensure that members of the public are not disadvantaged by a lack of awareness of the information used by agencies to make decisions. Section 10 of the FOI Act reinforces that objective by providing that a person must not be subjected to any prejudice that could have been avoided by the person had they been aware of operational information that should have been but was not published in the IPS. For more information about s 10 see [13.126]–[13.127].

13.112 Operational information is all information an agency holds, whether generated by the agency or not, that assists it to perform or exercise its functions or powers in making decisions or recommendations that affect members of the public (or any particular person or entity, or class of persons or entities). The person affected by an agency decision may be an individual, an organisation or a business entity. Examples of operational information include rules, guidelines, practices and precedents relating to decisions and recommendations affecting members of the public (s 8A).

13.113 Four terms in the definition of 'operational information' in s 8A(1) reflect the breadth of the concept:

- information held by an agency to 'assist' it
- in performing or exercising its 'functions or powers'
- in making 'decisions or recommendations'
- 'affecting members of the public (or any particular person or entity, or class of persons or entities)'.

13.114 Those terms are discussed below.

Information that can assist the agency

13.115 Information that can assist the agency to make decisions and recommendations is deliberately broad. It is not confined to rules or precedents that can be applied directly to

reach a decision, but includes other documents that facilitate good decision making — such as policy guidance, procedures, decision templates, model letters, training packages and checklists. If an agency has multiple versions of the same document with minor variations, publication is only required of a contemporary single or representative document.

- 13.116 Information held by a contracted service provider that assists it to provide services to the public on the agency's behalf may be operational information which an agency must publish in its IPS entry. This will apply if the agency holds a copy of the information (whether generated by the agency or the contracted service provider) and the information otherwise falls within the definition of operational information in s 8A(1). If the agency does not have a copy of the information held by the contracted service provider, the agency can nevertheless arrange for that information to be published under s 8(4) (optional information). This will advance the IPS objective of ensuring that the public has easy and direct access to information that is used by or on behalf of government agencies in making decisions about rights, privileges, benefits, obligations and penalties.

Functions or powers of an agency

- 13.117 An agency's functions and powers must be published in the IPS under s 8(2)(c). As described above at [13.60]–[13.71], functions or power may be assigned to an agency by legislation, an executive instrument or in some other manner.

- 13.118 There may be overlap in the documents that are required to be published under s 8(2)(c) and s 8(2)(j). Nevertheless, s 8(2)(c) provides a reliable starting point in identifying operational information that is required to be published under s 8(2)(j).

Making decisions or recommendations

- 13.119 The term 'decision' is to be understood broadly. For example, the *Administrative Decisions (Judicial Review) Act 1977* s 4(2) defines 'making a decision' to include making, suspending, revoking or refusing to make an order, award or determination; giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; imposing a condition or restriction; making a declaration, demand or requirement; retaining, or refusing to deliver up, an article; and doing or refusing to do any other act or thing.

- 13.120 The term 'recommendation' in s 8(2)(j) should be construed in a similarly broad manner.

Affecting members of the public or a class of people

- 13.121 These are words of limitation. They confine the concept of 'operational information' to decision making that affects members of the public in an individual manner or as members of a particular group or class (including an organisation or business entity). Examples are decisions or recommendations that concern a right, privilege or benefit of a member of the public or a class of people, or an obligation or penalty to which a person or class of people may be subject.

What is not operational information?

13.122 The concept of operational information does not encompass all government decision making that directly or indirectly affects the public. The following categories of information are examples that would not ordinarily fall within the definition of operational information, even though the information may influence government decision making:

- policy analysis and decisions occurring within government about legislation, budgets and programs
- discussions within government about the operation of a program or legislation
- case studies and capability reports that discuss an agency response to an actual or foreshadowed event
- audit and evaluation reports on the operation of a government program or compliance with legislative requirements
- agency case management procedures for recording the handling of an individual matter or the making of a decision.

13.123 Such documents that are not operational information can nevertheless be published by an agency under s 8(4) (other information).

13.124 The reference in the definition of operational information in s 8A(1) to information that assists an agency to make decisions or recommendations ‘affecting members of the public’ means that the definition does not extend to agency manuals and rules relating to personnel management and staff conditions of employment. Those manuals and rules relate to employees in their employment capacity and not as members of the public. Nor, for the same reason, does the definition extend to information held by the Australian Public Service Commission relating to the review of decisions about APS employees. However, as noted at [13.128] such information can nevertheless be published by an agency under s 8(4) (other information).

13.125 Section 8A(2) provides that ‘[a]n agency’s operational information does not include information that is available to members of the public otherwise than by being published by (or on behalf of) the agency’. This exclusion applies to information such as law reports, books, guides and standards that are published by another body and that are used by agency officers in making decisions that affect members of the public.

Failure to publish operational information

13.126 Section 10 provides that a person must not be subjected to any prejudice, stemming from an agency’s performance of a function or exercise of a power, that the person could have avoided if they had had access to unpublished operational information. This rule applies, for example, where the eligibility requirements for a benefit or allowance (such as a closing date) are specified only in an agency publication, and should have been, but were not, published under the IPS. The rule applies only if the person could lawfully have avoided the prejudice if they had been aware of the unpublished information.

13.127 The rule does not apply to the agency's performance of a function or the exercise of a power unless the agency had existed for more than 12 months. The agency is nevertheless expected to publish operational information under the IPS as soon as reasonably practicable after it creates that information.

Exceptions to publication under the IPS

13.128 Section 8C(1) provides that an agency is not required to publish exempt matter in their IPS entry. Exempt matter is matter the inclusion of which in a document causes a document to be an exempt document (s 4(1)). An exempt document is:

- a document of an agency that is exempt under an exemption provision in Part IV of the Act; if a document contains exempt and non-exempt material the agency should prepare an edited copy (see Parts 5 and 6 of these Guidelines)
- an official document of a minister that contains information not relating to the affairs of an agency or a department of state (see Part 2 of these Guidelines), or
- a document in respect of which an agency, person or body is exempt under s 7 of the Act, such as an intelligence agency document or a document relating to the commercial activities of a specified body (see Part 2 of these Guidelines).

13.129 Section 8C(2) provides that an agency is not required to publish information that is restricted or prohibited from publication by an enactment. That is, an agency is not required to publish information contrary to a legislative secrecy provision.

Other information to be published under the IPS

13.130 The FOI Act does not limit or restrict what information an agency publishes, including information that is exempt from disclosure under the FOI Act (s 3A).

13.131 Section 8(4) of the FOI Act authorises agencies to publish 'other' information. The power to publish other information under s 8(4) is in addition to any other power an agency has to publish information.

13.132 Agencies and staff are protected against civil and criminal liability if they publish documents in good faith, believing publication is either required or permitted under the IPS (ss 90 and 92 see [13.177]–[13.179] below). However, if a document is subject to a secrecy provision, the protections in the FOI Act may not apply.

13.133 Agencies are generally best placed to identify other information that should be published under s 8(4). In doing so, agencies should strive to implement the objects of the FOI Act, which declare that information held by government is a national resource that should be managed for public purposes, and that the Parliament intends to increase scrutiny, discussion, comment and review of the Government's activities (s 3). Agencies should also consider:

- open by design principles by prioritising, promoting and resourcing proactive disclosure of information held that is of value to the public¹⁵
- the Information Commissioner's *Principles on open public sector information*, which encourage agencies to ensure government information is accessible without charge, based on open standards, easily discoverable, understandable, machine-readable, and freely reusable and transformable¹⁶
- the OAIC's Information policy agency resource, *Open data quick wins – getting the most out of agency publications*, which explains how agencies can transform data they already publish in reports, websites and mobile apps into machine-readable formats that support reuse by others¹⁷
- advice about technical and other relevant matters that should be taken into account when publishing government information online.¹⁸

13.134 The term 'other information' can include a wide range of information, which will vary from agency to agency. The following are examples of information required to be published in other Australian jurisdictions that Australian Government agencies should consider making available:

- A record of open access information that is not made publicly available because there is an overriding public interest against disclosure – Australian Capital Territory and New South Wales
- Register of cabinet decisions – Victoria
- A statement listing all boards, councils, committees, panels and other bodies that have been established by the agency (whether under an Act or otherwise) for the purpose of advising the agency or a Minister responsible for the agency – Australian Capital Territory
- Statement of advice, recommendations or reports held by an agency – Australian Capital Territory and Victoria
- Budget papers and Appropriation Acts – Australian Capital Territory
- Information about government grants made or administered by the agency – Australian Capital Territory
- Ministerial briefs – Australian Capital Territory

¹⁵ See for example: https://www.informationcommissioners.org/wp-content/uploads/2021/09/ADOPTED_ICIC-Resolution-Proactive-publication-of-information-relating-to-the-COVID-19-pandemic.pdf; <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/statement-of-principles-to-support-proactive-disclosure-of-government-held-information> and <https://www.oaic.gov.au/updates/news-and-media/information-access-commissioners-and-ombudsmen-make-recommendations-to-support-open-by-design-principles>.

¹⁶ Available at www.oaic.gov.au.

¹⁷ Available at www.oaic.gov.au.

¹⁸ Available at <https://www.dta.gov.au/help-and-advice/about-digital-service-standard>.

- Information an agency undertakes to make publicly available – Australian Capital Territory.

13.135 As recommended earlier in these Guidelines (see [13.32] above), agencies should explain in their agency plan the steps the agency will take to review their information holdings and identify information that may be suitable for publication. This information should be described in the agency plan. To the greatest extent possible, information that is suitable for publication should be identified as such from early in its lifecycle and published as soon as reasonably practicable. The agency plan should also provide a timetable of when information will be published or updated.

13.136 Agencies should review whether they hold any datasets that can be published for reuse.¹⁹ Publication of datasets on data.gov.au should be considered.²⁰ The agency website can link to that website to avoid duplication in publication. Agencies should ensure that published information is described according to the appropriate metadata standards to enable users to find it easily.

13.137 Agencies should have regard to the following in deciding what information to publish:

- What information is of interest to members of the public and external stakeholders?
- Is there a public demand for categories of information held by the agency?
- Will publication of particular information assist the public in dealing with the agency or in commenting on programs or policies for which the agency is responsible?
- Will publication of particular information promote greater agency accountability, or better public understanding of agency decisions?
- Is information considered for publication in an appropriate format to make it accessible and reusable by the public?
- Will published information require revision or updating, or is it part of the historical record of agency activity?
- Are there privacy or security concerns that require information to be de-identified or aggregated before it is published?²¹

13.138 Publication of information under s 8(4) should not be a burdensome task for agencies. Agencies may consider releasing data in ‘beta’ form²² and with appropriate caveats on its

¹⁹ See Australian Government Public Data Policy Statement which requires Australian Government entities to make non-sensitive data open by default. The Policy Statement is available at: https://www.pmc.gov.au/sites/default/files/publications/aust_govt_public_data_policy_statement_1.pdf.

²⁰ For guidance about preparing open data and publishing datasets on data.gov.au, see <https://toolkit.data.gov.au>.

²¹ For guidance about de-identifying data before publication, see *De-identification and the Privacy Act* at <https://www.oaic.gov.au/privacy/guidance-and-advice/de-identification-and-the-privacy-act>.

²² Beta testing provides an opportunity for users to use a product in a production environment to identify issues before general release. Beta testing is the final round of testing before releasing a product to a wide audience.

limitations. Engagement with stakeholders prior to publication may help agencies identify the data and formats for which there is the greatest demand.

Managing an agency IPS entry

13.139 This section discusses the principles agencies should observe in managing their IPS entry. Some of the principles are expressly required by the FOI Act, while some others are implicit in the objects of the FOI Act (s 3) and in Part II establishing the IPS.

Performance of agency functions

13.140 Section 10A provides that a function or power given to an agency under Part II of the Act can be performed or exercised by the principal officer of the agency or by an agency officer in accordance with arrangements approved by the principal officer. This is an equivalent provision to s 23, which provides that a decision on a request to an agency for access to a document can be made on behalf of the agency by an authorised person.

13.141 Unless the principal officer of an agency intends to exercise all functions and powers under Part II of the Act, he or she must approve arrangements under s 10A nominating the authorised persons in the agency and the scope of their authority. The functions and powers to be exercised under Part II include:

- preparation of an agency plan under s 8(1)
- publication of information required to be published by the agency under s 8(2), including deciding whether information is exempt from publication under s 8(2)(g)
- publication of other information by the agency under s 8(4)
- ensuring that information published by the agency is accurate, up-to-date and complete as required by s 8B
- ensuring that information published by the agency is published on a website in accordance with ss 8D(2),(3)
- deciding whether the agency will impose a charge for accessing information published by the agency (s 8D(4)), and publishing details of any charges the agency may impose (s 8D(5))
- arranging for regular review (at least once every 5 years) of the agency's IPS (s 9)
- if the need arises, taking appropriate action under s 10 to ensure that a person is not subjected to any prejudice as a result of not having access to operational information that was not published as required by s 8(2)(j).

Governance arrangements

13.142 Leadership at a senior level is critical in establishing a culture within an agency for full compliance with the IPS requirements in Part II of the FOI Act. Agencies should consider appointing an Information Champion, or establishing an information access governance

board, to provide the leadership, oversight and accountability necessary to promote and operationalise proactive publication.

13.143 Staff in the Senior Executive Service (SES) are well placed to fulfill the important role that an Information Champion has in leading their agency to develop a culture that gives full effect to the pro-disclosure objects of the FOI Act, and the IPS in particular.²³

13.144 Information Champions are responsible for ensuring the agency has appropriate governance mechanisms in place to ensure compliance with IPS obligations.

13.145 Information Champions can improve IPS practices by:

- informing staff of their responsibilities under the IPS
- publishing a broad range of documents on the agency's website at the time of their creation
- establishing governance regarding the publication of new and revised operational documents
- ensuring there is a process for regular review of documents not considered suitable for publication on the agency's IPS at a particular time, to consider whether those reasons continue to apply
- making the IPS a priority when developing corporate plans
- analysing the FOI requests received by the agency to assist in identifying information of interest to members of the public, and proactively publishing those documents
- ensuring that an agency's IPS entry is accurate, up-to-date and complete
- considering compliance with the IPS as a performance indicator for agency employees.

Publication on a website

13.146 Information published under the IPS must be published on a website (s 8D(3)). The information may be published on the agency website, on another website to which a link is provided, or by some other accessible means that are described on the website.²⁴

13.147 Many agencies maintain their own website and will publish their IPS entry on that website. As stated in the guiding principles to these Guidelines (see [13.14] above), the IPS entry should be easily discoverable by the public, consistent with the object of the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)). Adopting the following practices will assist in facilitating public access:

²³ For agencies without SES level staff, the most appropriate senior staff member may be appointed as the Information Champion.

²⁴ For guidance about accessible publication on the agency disclosure log see [14.62] Part 14 (Disclosure Log) of the FOI Guidelines

- Agencies should consider using the IPS icon published by the Information Commissioner to link to their IPS entry. Options include using the IPS icon on the agency homepage or including the icon on a dedicated ‘Access to information’ webpage. The Information Commissioner’s intention in publishing the icon is to aid the discoverability of agency IPS entries by encouraging a consistent approach across government. For more details see *Icons for agency websites – ‘Access to information’, Information Publication Scheme and FOI Disclosure Log*.²⁵
- An agency IPS entry can contain links to other pages on the agency website or other websites where the required information is available. This may be particularly useful in cases where an agency has already published information falling under the IPS requirements.
- The sitemap for the agency website should list information that the agency is required to publish under s 8(2) or has decided to publish under s 8(4).
- The search function on the agency website should facilitate access to information published in the agency’s IPS entry through key terms and descriptive metadata. To aid that search function, online content should be published in a format that can be searched.
- The agency should provide an alert service, such as an email notification service or RSS feed, to notify subscribers of new publications under the IPS or other developments in relation to the agency’s compliance with the IPS. If the alert service provided by the agency involves the collection of personal information, the agency must also consider its obligations under the *Privacy Act 1988* and the *Australian Government Agencies Privacy Code*.²⁶

13.148 Guidance on publishing information on the web is available at the following places:

- the Digital Service Standard, which encourages agencies to consider appropriate tools and systems already used by government (Criterion 4), contains advice on using open standards and common platforms (Criterion 7), and advice about making online material accessible (Criterion 9)²⁷
- the Australian Human Rights Commission, World Wide Web Access: Disability Discrimination Act Advisory Notes (Version 4.1),²⁸ discussed below at [13.156]
- technical guidance on implementing the AGLS Metadata Standard (AS 5044-2010) to improve visibility and availability of online resources²⁹

²⁵ Available as an agency resource at <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/icons-for-agency-websites-access-to-information-information-publication-scheme-and-foi-disclosure-log>.

²⁶ See <https://www.oaic.gov.au/privacy/privacy-for-government-agencies/australian-government-agencies-privacy-code>.

²⁷ See <https://www.dta.gov.au/help-and-advice/about-digital-service-standard>.

²⁸ See www.humanrights.gov.au/disability_rights/standards/www_3/www_3.html.

²⁹ See <https://agls.gov.au/>.

- the Australian Government Design System which helps agencies create accessible online content and demonstrates implementation of the AGLS Metadata Standard.³⁰

13.149 Some smaller agencies may not maintain their own website but have a homepage on the website of another agency, usually the portfolio department.

13.150 Agencies can also publish information that is part of their IPS entry on another website (s 8D(3)(b)). One such website is www.data.gov.au, which has been established to facilitate the publication of datasets for use by the commercial, research and community sectors. Other websites that publish information from across government are www.legislation.gov.au (a compilation of Australian Government legislation), www.directory.gov.au (the Government Online Directory), and <https://www.australia.gov.au/> (gateway to government information).

Structure of agency IPS entry

13.151 The FOI Act specifies the information an agency must publish under the IPS, but not the format of publication. The FOI Act does not require that agencies use the headings or language specified in s 8(2). It will however be easier for the public to locate information published by each agency under the IPS if there is a consistent presentation of information on agency websites.

13.152 Agencies may consider using the following headings in their publication framework. The information provided under those headings may extend beyond the categories of information described in s 8(2).

- Agency plan
The agency plan as required by s 8(2)(a)
- Who we are
The organisation and structure of the agency, the location of offices, governance arrangements, senior management team and statutory appointments referred to in s 8(2)(d)
- What we do
A description of the functions and powers of the agency, and the rules, guidelines, practices and precedents relating to those functions and powers (that is, operational information)
- Our reports and responses to Parliament
Annual reports laid before the Parliament, and other information routinely provided to the Parliament
- Routinely requested information and disclosure log
Information to which the agency routinely gives access in response to FOI requests and the disclosure log of information that has been released under the FOI Act

³⁰ See <https://designsystem.gov.au/>.

- Consultation arrangements
Consultation arrangements that enable members of the public to comment on specific policy proposals for which the agency is responsible
- Our priorities
For example, the corporate and strategic plans of the agency, and assessments and reviews undertaken of agency programs
- Our finances
For example, financial information relating to pay and grading structures in the agency, procurement procedures, tendering and contracts
- Our lists
For example, agency contracts, grants and appointments, links to datasets published by the agency, information held in registers required by law, and other lists and registers relating to the agency's functions
- Contact us
The contact details of an officer (or officers) who can be contacted about access to the agency's information under the FOI Act.

Accuracy and currency of published information

13.153 Each agency IPS entry is required to be 'accurate, up-to-date and complete' (s 8B).

13.154 The action an agency should take to comply with that requirement may vary according to the nature of the information in the IPS entry. The following is given as a general guide for agencies, but does not diminish the obligation of agencies to ensure compliance with s 8B:

- Some categories of information should be updated as soon as reasonably practicable after any change to that information — for example, information about the structure of the agency, senior officers, statutory appointments, contact arrangements and reports that have been laid before the Parliament.
- Operational information should be updated in the IPS at the same time that a revised or updated version of the information is provided to agency officers.
- Other categories of information can be updated on a periodic basis, following a scheduled agency review of the accuracy, currency and completeness of the information — for example, the agency plan, and information that is routinely provided to the Parliament or in response to FOI requests. It is advisable to include a notation on the document that is published under the IPS indicating when it was last published or updated. It is also advisable when creating a document that is published to consider when it would be appropriate to review the content.
- Consultation arrangements should be updated as soon as a new or varied arrangement is established.

- Any change to an agency's functions or powers, especially a change resulting from a legislative amendment or alteration of an executive scheme, should be updated as soon as reasonably practicable.
- Agencies should bear in mind that other FOI Act provisions are relevant to the agency's publishing obligations: specifically, information must be published on a disclosure log within 10 days of release under the FOI Act (s 11C(6)), and a person cannot be subjected to any prejudice as a result of not having access to unpublished operational information (s 10).
- If an agency has multiple versions of a document that contain minor and insignificant variations (for example, training materials), it will be sufficient compliance with s 8(2) for the agency to publish one representative and current version of the document.
- Information published on a website can later be removed from the website and archived, provided that details are published of how the information can be obtained if the agency is still required to publish that information under s 8(2).

Accessibility

13.155 Information that forms part of the IPS must be published 'to members of the public generally' (s 8D(2)(a)) and, if an agency considers it appropriate to do so, 'to particular classes of persons or entities' (s 8D(2)(b)).

13.156 Accessibility of published information by all members of the community is an important principle underlying the IPS. Three requirements reinforce this principle:

- The *Disability Discrimination Act 1992* s 24 provides that it is unlawful for a person (including a government agency) to provide services to a person with a disability less favourably than to a person without that disability.
- Government agencies are required to conform to WCAG 2.0 Level AA.³¹ New web content needs to conform to these standards as far as possible.
- The Australian Human Rights Commission has also published *World Wide Web Access: Disability Discrimination Act Advisory Notes (Version 4.1)* which echoes the obligation on agencies to conform to WCAG 2.0 Level AA.³²

Charges

13.157 Subject to a limited exception, information published under the IPS must be available free of charge. An agency can charge for information under the IPS only where the information cannot be downloaded from a website and the agency has incurred specific reproduction or

³¹ See <https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible>. However the Digital Transformation Agency strongly encourages agencies to meet WCAG 2.1 Level AA which will provide a more accessible experience.

³² Available at www.humanrights.gov.au/disability_rights/standards/www_3/www_3.html.

incidental costs in giving a person access to that information under the IPS (s 8D(4)). The details of the charge must be published under the IPS before any charge is imposed (s 8D(5)).

13.158 For example, information may be contained in a recording that cannot be readily converted to electronic format for publication on and downloading from a website.³³ The agency can instead publish details of how the information may be obtained, including the charge that would be imposed for making it available in a suitable format (s 8D(3)(c)).

13.159 A charge for IPS access is separate from the charges that can be imposed for processing FOI requests under the Charges Regulations.³⁴ The Charges Regulations may, however, provide useful guidance to an agency in calculating or imposing a charge for access under the IPS. The Charges Regulations are discussed in Part 4 of these Guidelines.

Information Commissioner's IPS functions and powers

13.160 The FOI Act confers 3 specific functions on the Information Commissioner for reviewing the operation of the IPS (s 8F):

- reviewing the operation of the IPS in each agency, in conjunction with the agency
- investigating an agency's compliance with IPS requirements, either upon receipt of a complaint or at the Information Commissioner's initiative
- otherwise monitoring, investigating and reporting on the operation of the IPS.

13.161 Each of those functions is described in more detail below.

Review of agency IPS compliance

13.162 Each agency must complete a review of its IPS compliance at least once every 5 years (s 9(1)). The review must be undertaken in conjunction with the Information Commissioner. The OAIC encourages agencies to undertake more regular reviews, preferably annually.

13.163 The OAIC conducted major surveys of IPS compliance in 2012 and 2018.³⁵ Agencies can use the survey results to help improve their IPS performance.

13.164 In undertaking a review, agencies should focus on the following 5 key elements of IPS compliance when undertaking the s 9 review:

1. *Agency plan* — has the agency published a comprehensive plan for its IPS compliance?

³³ Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2010, p 8.

³⁴ Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2010, p 8.

³⁵ The survey reports are available at <https://www.oaic.gov.au/freedom-of-information/information-publication-scheme/information-publication-scheme-survey-2012> and <https://www.oaic.gov.au/freedom-of-information/information-publication-scheme/information-publication-scheme-survey-2018>.

2. *Governance and administration* — does the agency have appropriate governance mechanisms in place to meet its IPS obligations, including an information management framework?
3. *IPS document holdings* — has the agency reviewed its document holdings to decide what information must be published under s 8(2) and further information that can be published under s 8(4)? Is the agency IPS entry accurate, up-to-date and complete?
4. *IPS information architecture* — does the agency have a publication framework in place and has it taken the necessary steps to ensure that information in its IPS entry is easily discoverable and accessible to the Australian community?
5. *Agency compliance review* — does the agency have appropriate processes, systems and resources in place to monitor and review its IPS compliance and to make necessary improvement in the agency's IPS implementation?

Investigations and complaints

13.165 The Information Commissioner can investigate complaints about an agency's IPS compliance (s 70). The Information Commissioner publishes summaries of investigation outcomes, including the outcomes of investigations into complaints about agency compliance with the IPS requirements.³⁶

13.166 The Information Commissioner can also undertake a Commissioner initiated investigation into an agency's performance of functions or exercise of powers under the FOI Act (s 69(2)). For more information see Part 11 of these Guidelines.

13.167 An agency's IPS obligations are not subject to IC review under Part VII of the FOI Act.

Monitoring and reporting

13.168 The Information Commissioner is required to prepare an annual report on the OAIC's operations (*Australian Information Commissioner Act 2010* s 30). The Information Commissioner will include in the annual report information on the administration of the IPS by agencies.

13.169 Section 93 of the FOI Act requires agencies to provide the Information Commissioner with information required to prepare an annual report.³⁷ From July 2011, agencies have been required to provide information about staff resources assigned to managing the IPS.

13.170 For more information about reporting requirements see Part 15 of these Guidelines.

³⁶ See https://www.oaic.gov.au/_data/assets/pdf_file/0014/11723/20211122-Outcomes-of-investigations-summary-table.pdf.

³⁷ See *FOIstats Guide* (June 2019), available at <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/foistats-guide/>.

Copyright

- 13.171 As noted in the guiding principles to these Guidelines (see [13.14] dot point 5 above), the Information Commissioner encourages agencies to make information they publish under the IPS available for reuse on open licensing terms, as far as that is reasonable and practicable to do. Agencies should have a clear statement on their websites, on their homepage or on their IPS entry page about the extent to which the public can reuse material in which they hold copyright.
- 13.172 In deciding on the appropriate licensing, agencies should consider the Australian Government Intellectual Property Manual³⁸ and the Guidelines on licensing public sector information for Australian Government entities.³⁹
- 13.173 While most of the information an agency publishes in its IPS entry will have been created by government, there may be documents in the agency's possession where a third party (such as the author or publisher of the material) owns the copyright.
- 13.174 No action lies against the Commonwealth, a minister, an agency or an officer of any agency for breach of copyright, among other things, if the minister or an agency officer publishes a document in good faith, in the belief that publication is required or permitted under the IPS or the disclosure log provisions (s 90(1)(a)). However, this provision does not constitute authorisation or approval for reuse of the material, including by members of the public.
- 13.175 Where a third party owns copyright in material an agency publishes as part of its IPS entry, the agency should include a clear statement on its website advising the public that they may need to seek permission from the copyright owner to reuse the material. A statement such as the following could be used:
- To the extent that copyright in some of this material is owned by a third party, you may need to seek their permission before you can reuse that material.
- 13.176 If an agency knows the details of third party ownership of copyright in material it has published under the IPS, the agency should, with the copyright owner's consent, provide contact details on its website, to help members of the public.

Legal protection for discretionary/good faith publication

- 13.177 The FOI Act provides legal protection where information has been published in good faith in the belief that publication was either required or permitted under the IPS (ss 90 and 92). The protection applies to the Commonwealth, a minister, an agency or an officer of an agency.

³⁸ Available at <https://www.infrastructure.gov.au/media-centre/publications/australian-government-intellectual-property-manual>.

³⁹ Available at <https://www.infrastructure.gov.au/media-centre/publications/guidelines-licensing-public-sector-information-australian-government-entities>.

The scope of the protection is that no action lies for defamation, breach of confidence or infringement of copyright or (as to ministers and agency officers) criminal liability.

- 13.178 These protections complement the policy objective of the FOI Act to provide a secure framework for publication of Australian Government information. These protections are conditional and apply only where a minister or agency officer publishes a document in good faith in the belief that publication was required or permitted under the FOI Act.
- 13.179 The legal protection provided by ss 90 and 92 also applies to the release of information in response to an FOI request, and to publication apart from the FOI Act where a minister or agency officer believes in good faith that publication is required or permitted. For more information about these protections see Part 3 of these Guidelines.

Annexure A — Model Agency plan

Introduction

Outline why the agency has prepared the plan.

Purpose

Describe the purpose of the plan.

Objectives

Describe the agency's objectives in relation to the plan.

Establishing and administering the agency's IPS entry

Describe how the agency will prepare its IPS entry and manage the IPS entry on a continuing basis. This may include describing:

- who (within the senior executive) is responsible for leading the agency's work on IPS compliance
- the resources allocated to establishing and administering the agency's IPS entry
- the processes and timetable for identifying information required to be published under s 8(2), for publishing additional information under s 8(4), and for adding to or revising the agency's IPS entry
- measures being taken to ensure the agency's IPS entry is accurate, up-to-date and complete
- measures (if any) being taken to improve the agency's information asset management framework to support IPS compliance
- details of the agency's internal IPS information register to assist it to efficiently identify documents for publication, record decisions made in relation to publication and systematically review IPS information for accuracy, currency and completeness
- access charges (if any) that the agency may impose for accessing information published under the IPS and how charges will be calculated. Where no charges will be imposed, that should be stated.

Structure of the IPS

Describe how the agency will facilitate public access to the information published in an agency's IPS entry. This may include describing:

- whether information will be published on the agency's website, or on another website such as the website of the portfolio department, www.legislation.gov.au or www.data.gov.au
- the headings under which information will be published

- how the IPS entry will be identified on the agency website (for example, by using the IPS icon recommended by the Information Commissioner on the agency homepage or 'Access to information' page as described in the *Guidance for agency websites: 'Access to information' webpage* available at www.oaic.gov.au)
- whether a sitemap and search function will be provided
- whether an alert service will be provided for changes or additions to the IPS entry and how a member of the public can subscribe to the alert service
- how the agency will conform with WCAG 2.0 Level AA in establishing and maintaining its IPS entry
- the mechanism that will be adopted by the agency for inviting community feedback on its IPS entry and compliance, and how the agency will evaluate and respond to comments received.

Information required to be published under the IPS

Clearly identify the types of information (including datasets) the agency will publish under ss 8(2)(a) to 8(2)(j).

Describe any timeframes the agency proposes to follow to publish these documents.

Other information to be published under the IPS

Clearly identify the types of optional information (including datasets) the agency will publish under s 8(4) and the timeframes in which new or revised information will be published.

IPS compliance review

Identify when the agency proposes to review their agency plan.

Identify when the agency will review its IPS entry and compliance, in conjunction with the Information Commissioner.

Outline the criteria the agency will adopt to measure its performance in complying with IPS requirements.