



Processing FOI requests: taking all reasonable steps to find documents

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Introduction

The Office of the Australian Information Commissioner (OAIC) has developed this resource to assist agencies meet their obligations under the *Freedom of Information Act 1982* (Cth) (FOI Act) when processing requests for information.

This resource will help your agency identify the steps it should take to meet its obligations under s 24A of the FOI Act when processing requests for information to ensure that all reasonable steps are taken to find documents within the scope of an FOI request.

If an FOI applicant subsequently applies for Information Commissioner review (IC review) of an agency's decision to refuse access to documents, it is the agency who bears the onus of establishing that all reasonable steps have been taken to find a requested document before refusing access to it on the basis that it cannot be found or does not exist (s 55D of the FOI Act).

The OAIC considers it best practice to keep a record of the steps taken to search for documents when processing an FOI request. A record of searches to plan and keep track of the steps taken to search for a document will be useful, particularly when managing complex requests for many documents or in later explaining the search that was undertaken.

The OAIC has developed a [search minute template](#) that agencies can use to ensure that all reasonable steps are taken when responding to a FOI request. Agencies may find this search minute a useful resource if required to ask other internal line areas to undertake searches for documents.

What constitutes 'all reasonable steps'?

The FOI Act is silent on what constitutes all reasonable steps.

The FOI Guidelines at [3.89] relevantly provide that agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents
- the record management systems in place
- the individuals and line areas within an agency or minister's office who may be able to assist with the location of documents, and
- the age of the documents.

It may be necessary for an agency to conduct a search of its backup systems for documents. This will depend on the circumstances of each case. The FOI Guidelines at [3.90] – [3.93] provide useful guidance of circumstances where this may be a necessary step in responding to an FOI request.

Section 6C of the FOI Act applies to an agency if a service is, or is to be, provided under a Commonwealth contract in connection with the performance of the functions or the exercise of the powers of the agency.

An agency must take contractual measures to ensure that the agency receives a document if the document is created by, or is in the possession of a contracted service provider for the Commonwealth contract or a subcontractor for the Commonwealth contract; the document relates to the performance of the Commonwealth contract; and the agency receives a request for access to the document (s 6C(2)).

Reasonable steps checklist

This checklist sets out the steps an agency should follow to ensure that all reasonable steps are taken to find documents within the scope of an FOI request:

- An FOI request should be interpreted as extending to any document that might reasonably be taken to be included within the description the FOI applicant has used.
- All possible locations where documents may be located should be searched by an agency. This will include the following (if applicable):
 - Case Management System
 - Records Management System
 - Electronic documents saved on computers, electronic devices such as iPads, smartphones and apps (for example emails on Outlook, text messages etc)
 - Electronic documents saved on portable media devices
 - Hardcopy files stored in safes, compactus, tambours, desk drawers, etc
 - If applicable, backup systems
 - If applicable, consider whether the scope of the FOI requests requires an agency to ask a contracted service provider to provide documents that were created by or in the possession of the contractor or sub-contractor to an agency
- Records of the above searches should be taken and retained. Records may include search minutes, internal emails, file notes kept by individuals. These records should identify:
 - The date searches were undertaken
 - The person/s who undertook the searches
 - The locations searched
 - The search terms used
 - The outcomes of the searches undertaken
 - If applicable, reasons as to why no documents have been found
- An agency's decision letter should demonstrate in detail the steps taken to find documents within the scope of the FOI request and should include the following:
 - The date searches were undertaken
 - The person/s who undertook the searches
 - The locations searched
 - The search terms used
 - The time taken to conduct the searches
 - The outcomes of the searches undertaken
 - If applicable, reasons as to why no documents have been found
 - If searching an agency's backup system is necessary, reasons as to why it would be a substantial and unreasonable diversion of agency resources to search the agency's backup systems
 - If applicable, the details of the contracted service providers in possession of documents within the scope of the request
 - Limitations of the search