



ATO feedback on updates to Part 13 of the FOI Guidelines: Information Publication Scheme

Paragraph #	ATO feedback
[13.22]	<p>In practice, large agencies that hold a lot of operational information may find it impractical to maintain a single central register of all IPS material. Requiring one mandatory IPS register could limit agencies' ability to use more efficient ways to manage their IPS obligations under the FOI Act. Allowing agencies flexibility in how they meet these obligations would support more effective implementation.</p> <p>Recommendation: Reword this paragraph slightly to make clear that creating and maintaining a central register is a recommendation and not a mandatory requirement.</p>
[13.83]	<p>Recommendation: Delete the word 'procedures' to remove any doubt that this section is explaining the intended scope of s8(2)(f).</p>
[13.117]	<p>The phrase "information held by the agency to assist the agency", as used in s 8A(1), suggests a direct connection between the information and its role in assisting the agency. This is a narrower construction than the broader concept of "information that can assist the agency" used in paragraph 13.117, which could encompass information that may only potentially or indirectly be of assistance.</p> <p>Recommendation: replace "information that can assist the agency" with "information held by the agency to assist the agency". This will make clear the guidance is accurately reflecting the Act.</p>
[13.118] and [13.120]	<p><u>Interactions with other reforms</u></p> <p>The Attorney-General's Department (AGD) is developing an automated decision-making (ADM) framework (as recommended by the RoboDebt Royal Commission Report), which is expected to include publication requirements relating to the use of ADM.</p> <p>Recent amendments to the Privacy Act will require (from 10 December 2026) privacy policies to specify the kinds of significant decisions that are</p>

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	<p>substantially automated, as well as the kinds of personal information used in making those decisions.</p> <p>Together with these updated guidelines, this will result in three separate publication requirements, across three different Acts, relating to the ATO's use of ADM.</p> <p>Recommendation: we encourage the OAIC to align its approach with the ADM and Privacy Act reforms to reduce administrative burden and avoid duplication.</p> <p><u>Level of detail required</u></p> <p>Mandating the disclosure of detailed operational-level information would be inappropriate in some cases, as not all ATO activities are suitable for publication, for example, those relating to identity theft prevention and fraud detection. Also, the ATO relies on a vast number of routine uncontroversial computational tools, public disclosure of which would provide limited additional transparency or value but would likely impose significant cost to do so.</p> <p>Recommendation: publication requirements for AI and ADM operational information be limited to high-level information similar to an AI Transparency Statement.</p> <p><u>General comments</u></p> <p>The OAIC's ADM report indicated that Part 13 of the FOI Guidelines would be reviewed and updated to expressly include ADM as an example of 'operational information', with further detail to assist the public to understand how ADM is used and how it may impact them. The OAIC also noted that this would assist agencies to understand their obligations under s 8(2) of the FOI Act.</p> <p>Issue A</p> <p>While paragraph 13.118 outlines principles relating to generative AI and ADM, it lacks examples of ADM or generative AI that would not be "operational information" for IPS purposes. This could be interpreted as treating ADM and generative AI as operational information by default, rather than as subject to the same thresholds that apply to other agency processes.</p> <p>Recommendation: include examples of ADM or generative AI that would not be "operational information" for IPS purposes.</p> <p>Issue B</p> <p>As currently drafted, the guidance may be interpreted as introducing separate requirements, rather than clarifying how ADM fits within the existing IPS framework.</p>

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	<p>Recommendations:</p> <ul style="list-style-type: none"> • Clearer links between the principles in paragraph 13.118 and the statutory definition of ‘operational information’ would improve clarity and support consistent application. • Structure this content under a dedicated sub-heading on ADM and generative AI, consistent with the OAIC’s commitment in the ADM Report to provide additional material. Positioning this discussion after the general explanation of operational information may better reflect the OAIC’s intention to provide supplementary guidance while making clear that all existing requirements continue to apply.
[13.119]	<p>The current wording “because generative AI use is operational information” is too broad. It suggests that every use of generative AI will automatically be operational information, which is not the case.</p> <p>A more accurate approach would recognise that generative AI use can be operational information, depending on the circumstances. Whether generative AI use amounts to operational information should be considered in the wider context of the Guidelines. The OAIC guidance already makes clear that there are limitations around what constitutes operational information in this context. For example, paragraph 13.127 explains that the phrase “affecting members of the public or a class of people” are words of limitation. Paragraph 13.128 also recognises that not all government decision-making amounts to operational information.</p> <p>The guidance would therefore benefit from explaining how these existing limits apply to generative AI. Without that clarification, there is a risk that the reference to generative AI could be interpreted too broadly, as though any use of generative AI by an agency must be treated as operational information.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> • amend the wording to replace “is” with “can be” operational information • clarify how existing limitations on what constitutes operational information apply in the context of generative AI.
[13.122] – [13.124]	<p>Recommendation: clarify whether this requirement is limited to decisions concerning administrative work, or whether it extends to the publication of internal governance instruments, such as the ATO Commissioner’s Instrument of Financial Delegations (which includes sensitive information).</p>