



Australian Government
Department of Veterans' Affairs

Alice Linacre PSM
Freedom of Information Commissioner
Office of the Australian Information Commissioner

By email only: guidanceandpublications@oaic.gov.au

Dear Commissioner Linacre

Submission on draft revisions to Part 14 of the Freedom of Information Guidelines – Disclosure Log

The Department of Veterans' Affairs (Department) welcomes the opportunity to provide the Office of the Australian Information Commissioner (OAIC) with comments on the consultation draft of Part 14 of the Freedom of Information (FOI) Guidelines.

The Department confirms that this submission is suitable for publication on the OAIC's website, or sharing with stakeholders through other means, at the OAIC's discretion.

Outline of submissions

The Department acknowledges and supports the intent of draft Part 14 and the important role disclosure logs play in promoting public access to government information and reducing duplication of FOI requests. The Department particularly welcomes the emphasis on accessibility, discoverability and proactive publication of information released under the FOI Act.

The Department has three suggestions on matters of detail which may assist agencies in implementing the draft Guidelines:

- (1) Clarifying the legal status of the proposed expectation that agencies provide access within 5 working days where information is described on a disclosure log but is not available for download. (**Paragraph 14.49**)
- (2) More clearly distinguishing legislative requirements in provisions of the FOI Act from the OAIC's assessment of best practice, which agencies are required to take into consideration under s 93A. In particular, it may be helpful to clarify that the guidance to agencies on the application of the discretion in s 11C(3) is the OAIC's assessment of better practice which must be taken into consideration under

s 93A, rather than a legislative rule about how the statutory discretion under s 11C(3) must be exercised. (**Paragraphs 14.11 and 14.15.**)

- (3) Acknowledging the practical and resource implications associated with accessibility remediation of some records published on disclosure logs. (**Paragraphs 14.66–14.71.**)

Paragraph 14.49: access within 5 working days where information is not published online

The draft Guidelines provide that if an agency has released a document under the FOI Act and has described but not published that document for download on the agency's disclosure log, and another person seeks access to that document, the agency must provide access as soon as reasonably practicable, which should be no more than 5 working days after that request.

Suggestion

The Department supports the objective of ensuring prompt access to information on disclosure logs and agrees that 5 working days is a reasonable benchmark for most cases. The Department suggests that the Guidelines could be clearer that:

- (a) 5 working days is the OAIC's general expectation of agencies, and this timeframe should be applied unless there are circumstances in specific cases which make a longer period the soonest reasonably practicable time to provide access; and
- (b) the source of this timeframe is the Guidelines, which agencies are obliged to take into account under s 93A, and not a direct obligation in the provisions of the FOI Act.

Explanation

The Department agrees that agencies should endeavour to provide prompt access to information listed on a disclosure log where the information is not available for direct download. It is a reasonable assumption that, in many cases, the relevant document or documents, as released to an applicant under s 11A, should be readily retrievable by the agency. In such cases, a timeframe of no more than 5 working days will likely be the soonest reasonably practicable period within which the agency can provide access.

However, there may be circumstances in which compliance with a 5 working day expectation is not reasonably practicable, and a longer period is required in those cases. The Department suggests that some flexibility could be incorporated into this provision of the Guidelines.

This could be by way of an exception to the five-day benchmark for exceptional circumstances, and an expectation that agencies will keep auditable records of reasons as to why a longer period was the earliest reasonably practicable opportunity to provide access.

For example, exceptional circumstances may arise if records are archived, stored in specialist formats, comprise very large volumes of material, require accessibility remediation before provision, or if the agency is experiencing an operational incident at the time of the request that requires the temporary diversion of information access resources (for example,

responding to a critical incident such as a data breach, or meeting a significant surge in service demand).

It may also assist agencies and the public if paragraph 14.49 indicated that the 5 working day timeframe is the OAIC's expectation or assessment of better practice, which agencies must take into account under s 93A and against which the OAIC can monitor agencies' performance, rather than a direct statutory obligation under the FOI Act. This might help to promote clarity and transparency to regulated entities and the public about the source and legal character of the 5 working day timeframe.

Paragraphs 14.11 and 14.15: operation of section 11C(3)

Subsection 11C(3) of the FOI Act provides that agencies have a discretion between three mechanisms for web publishing information that has been released under section 11A, namely:

(

- (a) making the information available for downloading from the website; or
- (b) publishing on the website a link to another website, from which the information can be downloaded; or
- (c) publishing on the website other details of how the information may be obtained.

Subsection 11C(3) does not impose statutory conditions or limitations on agencies' exercise of discretion from among the three options in paragraphs (a)-(c).

The draft Guidelines set out the OAIC's views on better practice in exercising the discretion under s 11C(3). Paragraph 14.11 identifies that, having regard to the objects of the FOI Act, it is better practice to make documents available for download under s 11C(3)(a) or (b) and to rely only on s 11C(3)(c) where it is not possible to apply ss 11C(3)(a) or (b) (for example, due to technical impediments such as file size or specialist software requirements).

Suggestion

The Department supports encouraging agencies to publish documents wherever practicable and agrees with the assessment at paragraph 14.11 that it is better practice to rely on ss 11C(3)(a) or (b) in preference to (c) wherever this is possible. The Department also agrees that it is appropriate to have regard to the objects of the FOI Act when considering how to exercise a statutory discretion from among three prescribed alternatives.

The Department suggests that the subsequent reference to s 11C(3) in paragraph 14.15 is amended to make clear that the statement "*s 11C(3)(c)) should only be used if it is not possible to upload documents to a website so they can be directly accessed by members of the public*" is OAIC's position on better practice, having regard to the objects of the FOI Act, rather than an explicit statutory condition or limitation on the exercise of discretion under s 11C(3).

Explanation

The Department observes that some passages of the draft Guidelines on s 11C(3) could be interpreted as treating s 11C(3)(c) as an exceptional mechanism available only where

publication is technically impossible. It would aid transparency if the Guidelines could be clearer about the distinction between legislative requirements and better administrative practice in the exercise of a statutory discretion from among several prescribed options, where the relevant provision does not expressly impose a hierarchy or other conditions or limitations on an entity's choice from among those options.

Paragraphs 14.66–14.71: accessibility obligations

The draft Guidelines contain detailed guidance regarding the accessibility of documents published on a disclosure log. This reflects the obligation under s 11C(3) to publish disclosure logs to “members of the public generally” (who include those members of the public with accessibility requirements by reason of disability, age or other conditions or circumstances).

Paragraph 14.67 also notes that “challenges associated with publishing documents in an accessible manner do not diminish the need to comply with the publication requirements in s 11C” although paragraph 14.70 acknowledges that “it may not be straightforward to public some documents in an accessible manner on a disclosure log”.

Paragraph 14.71 provides guidance about options to strengthen accessibility, including the use of original electronic documents wherever possible (rather than scanned hard copies), the application of optical character recognition (OCR), accessibility optimisation and providing alternative access arrangements where documents cannot be published in fully accessible formats (as also noted at paragraph 14.67).

Suggestion

The Department supports the objective of ensuring information published on disclosure logs is accessible. The Department notes that paragraph 14.70 provides some acknowledgement of the practical and operational challenges associated with accessibility remediation of some records, and suggests that it would be useful if OAIC's better practice guidance could more clearly and specifically recognise these challenges.

Explanation

The Department agrees that agencies should maximise the accessibility of information published on disclosure logs, consistent with their obligations under applicable laws and policies.

However, in some cases, records may require substantial remediation work before they can be made available in a fully accessible format. For example, some agencies hold significant volumes of historical records that exist only in hard copy or as scanned hard copies in non-OCR format.

Where significant remediation work is required to meet accessibility standards, the necessary time to complete it may exceed the 10-day requirement in s 11C(6) for the publication of documents on disclosure logs, or OAIC's suggested 5 working day requirement for providing copies of documents described on disclosure logs (per paragraph 14.11 of the draft Guidelines).

Delaying any publication of information on the disclosure log until all accessibility-related remediation is completed may not be consistent with the interests of the public or one of the objects of the FOI Act under s 3(4) to facilitate prompt public access to information.

The Department suggests that the Guidelines could acknowledge these practical considerations and recognise that agencies may need to adopt proportionate approaches to accessibility remediation while continuing to meet their obligations under relevant accessibility frameworks. This could include recognising that agencies might elect to publish documents in their native format as soon as reasonably practicable, while concurrently undertaking accessibility remediation work and later updating their disclosure logs to replace downloadable files with fully accessible documents when they become available.

In light of these practical considerations, the Department also suggests that consideration could be given to the OAIC including some further better practice guidance in future editions of Part 14 about how the accessibility resources cited at 14.68 and footnote 15 should be applied to the specific context of documents published on agencies' FOI disclosure logs. (The referenced resources are the Web Content Accessibility Guidelines, which are identified as requirements for Australian Government agencies in the footnoted Australian Government Style Manual and the Australian Government Digital Inclusion Standard – Criterion 4.)

The Department notes that these resources do not appear to explicitly address their intended application to the unique circumstances of documents which are released under FOI. That is, documents which were created at a particular point in time, for a particular purpose which is often internal to government rather than dissemination to the wider community, copies of which are later released in response to an individual's request, and which are then required to be published on a disclosure log within prescribed statutory timeframes.

The accessibility resources cited at paragraph 14.68 and footnote 15 appear to primarily contemplate applying accessibility standards to documents or other content that an agency has created for public dissemination and has discretion to update from time-to-time, such as webpages, fact sheets, forms or other official publications. While the Department agrees that these resources are capable of application to other contexts involving the publication of information, more detailed guidance about their application to an FOI-specific context could be beneficial in promoting a consistent and proportionate approach.

Further information

Thank you again for the opportunity to comment on the draft Guidelines. Should you require further information or wish to discuss any aspect of the Department's comments, please contact the Department's Information Law Branch by email at information.law@dva.gov.au.

Yours sincerely

Christina Raymond
General Counsel
Information Law Branch
Department of Veterans' Affairs

4 September 2026