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Australian Government  
Department of Education

Office of the Australian Information Commissioner

By email only: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Dear OAIC

**Response to the 'Part 13 – Information Publication Scheme Version 1.5 Consultation Draft, December 2022'**

Thank you for the opportunity to provide a response to the 'Part 13 – Information Publication Scheme Version 1.5 Consultation Draft, December 2022' (**Consultation Paper**).

The Department of Education (**department**) has set out its response to the Consultation Paper below. The department understands the Office of the Australian Information Commissioner (**OAIC**) will not publish this response.

While the department understands many of the proposed amendments to the IPS Guidelines are recommendations only rather than mandatory obligations, the department considers that some of the proposed amendments go beyond, or otherwise do not accurately reflect, the obligations and requirements on agencies contained in Part II of the *Freedom of Information Act 1982* (**the FOI Act**). For example, the proposed amendment in paragraph 13.12 that states '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' appears to go beyond the requirements in section 8(2) of the FOI Act, which sets out the information that must be published. While section 8(4) of the FOI Act provides a broad reference to an agency publishing other information it holds, there is no specific obligation to consider what information is of value to the public and to make that available through the IPS, beyond the specific categories of documents set out in section 8 of the FOI Act. Of course, agencies might choose to publish such documents in the absence of a specific obligation under the IPS and the department regularly publishes documents that it considers to be of value to the public on its website.

Additionally, while the department appreciates that making documents publicly available through the IPS might reduce the number of FOI requests received by some agencies, the department considers that some of the proposed amendments may have significant resource implications for agencies and may become an administrative burden. As OAIC is aware, many agencies are already experiencing resourcing

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constraints in complying with their statutory obligations under the FOI Act and it is not clear that these proposed amendments to the IPS Guidelines will reduce the workload associated with compliance with FOI obligations, including the IPS. The department would like to raise the following paragraphs for further consideration from a resourcing perspective:

1. **Paragraph 13.23:** this paragraph states '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.' This suggests that such information published elsewhere will also need to be published or linked to the agency's IPS page. This may result in extra administrative work both to review existing publications to check whether they have been linked to the agency's IPS page and also to ensure that when new documents are published, they are appropriately linked to the IPS page as well. This might place an additional administrative burden on agencies, particularly if agencies are required to adopt a starting position that all corporate, policy and procedural documents should be published as in 13.39 discussed below.
2. **Paragraph 13.39:** this paragraph states that '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.' While the department appreciates the pro-disclosure objects of the FOI Act, the proposed new requirement to have 'all corporate, policy and procedural documents' published and 'clear and documented reasons' for not publishing those documents is likely to substantially increase the administrative burden of complying with the IPS and appears to go beyond the obligations in section 8 of the FOI Act.

The department notes the recommendation in paragraph 13.90 to undertake a quarterly review of the FOI requests received by an agency to identify trends and topics of interest and to make this information publicly available through the IPS. The department also notes the comments in paragraph 13.91 in relation to commonly requested categories of personal information and the consideration of using digital means to make this information available to members of the public. The department agrees with these concepts and considers this has the potential to reduce the number of FOI requests received by agencies. The department also accepts that publication of such documents would be consistent with the obligations in section 8(4) of the FOI Act. However, the department's FOI requests are usually related to departmental policies and announcements at a particular time (and are not usually requests for personal information), therefore, it is unlikely that trends would emerge over a quarterly period. While this proposed amendment is framed as a best practice approach with a suggestion of a quarterly review, it might be sufficient for paragraph 13.90 to simply refer to a 'regular review' to allow some greater flexibility in the regularity of these recommended reviews to reflect the differing FOI profiles of agencies.

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Please contact me on [REDACTED] or [REDACTED] on [REDACTED] if you would like to discuss.

Yours sincerely

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[REDACTED]

[REDACTED]

Corporate and Information Law Team

24 February 2023

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