



OFFICIAL

## Consultation on draft revisions to Part 3 of the Freedom of Information Guidelines: Processing and deciding FOI requests

Submission from the Department of the Prime Minister and Cabinet

Ms Elizabeth Tydd  
Australian Information Commissioner  
Office of the Australian Information Commissioner

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

Dear Commissioner Tydd

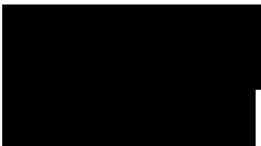
The Department of the Prime Minister and Cabinet (the Department) welcomes the opportunity provide the Office and the Australian Information Commissioner (OAIC) with comments on the consultation draft of the Freedom of Information (FOI) Guidelines Part 3 – processing and deciding FOI requests.

Paragraph	Comments
3.18	The Department recommends that the OAIC explicitly state that an FOI request must be submitted by a human, including a human on behalf of non-natural persons.
3.41	<p>The Department recommends that the following be removed:</p> <p><i>For the purposes of the FOI Act, an FOI request should be treated as valid upon receipt even if it does not comply with the formal requirements of s 15(2) or 15(2A). This view arises as a result of the duty agencies have to assist applicants make FOI requests that comply with the formal requirements of the FOI Act. As a result, the processing period under s 15(5) commences on the day after the FOI request is received.</i></p> <p>We consider the correct view is that the agency has a duty to assist the applicant to make a valid request which meets the formal requirements, at which point the processing period begins.</p> <p>Confirming this position is likely to assist applicants in receiving in-time decisions preserving their internal review rights and alleviating unnecessary IC review matters.</p>

3.49	<p>The Department recommends this paragraph be revised. Section 22 of the FOI Act provides that an agency or Minister may decide what information is reasonably regarded as irrelevant to the request. Generally, irrelevant information will be information which is not information that the applicant has sought in their request.</p> <p>The Department suggests that the OAIC endorse the position that agencies may advise applicants that non-SES officers will be treated as irrelevant unless explicitly sought.</p> <p>In furtherance of the objects of the FOI Act, the logical basis that only SES names are routinely relevant is that those officers are the senior leadership of the agency. For example, SES officers regularly make significant decisions on behalf of agency heads, or responsible Ministers, and attend Senate Estimates as the accountable departmental officials.</p>
3.53	<p>The Department recommends the following text be set out as its own paragraph to provide better clarity around reviewable decisions:</p> <p><i>A decision to transfer an FOI request under s 16 is not open to external review because it is neither an access refusal nor an access grant decision.</i></p>
3.65	<p>The Department recommends that this paragraph be changed to reflect that agreement should be sought from the receiving agency before sending documents with the request.</p>
3.137	<p>The Department recommends that this paragraph be revised to reflect that 'all reasonable steps' does not mean searching all possible locations, even if it is unlikely any documents would be found there. Searching locations where documents would ordinarily be kept is consistent with the object of the FOI Act to process requests promptly and at the lowest reasonable cost.</p>

Should you require further information please contact the FOI team by email [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

Yours sincerely



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