



Australian Government
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Consultation on revisions to part 13 of the FOI Guidelines- Information Publication Scheme

Thank you for the opportunity to comment on the updated draft of Part 13 of the FOI Guidelines (Information Publication Scheme) (updated Guidelines).

The updated Guidelines significantly change the kinds of information that agencies otherwise publish as part of their Information Publication Scheme (IPS) entry. We understand and acknowledge the importance of transparency to facilitate public understanding and trust, including in relation to the use of automated decision making across government. However, changes to the IPS publication requirements should be carefully considered to ensure the additional administrative burden on agencies is appropriate and well-targeted.

We make the following particular comments with regard to some of proposed amendments in the updated Guidelines.

Automated decision making as operational information

We note the updated Guidelines refer to OAIC's report 'Automated decision-making and public reporting under the Freedom of Information Act' of 21 January 2026 (OAIC report), which states that ADM is "the use of technology commonly referred to in Commonwealth legislation as a 'computer program', to automate a decision-making process". We understand this draws upon the Commonwealth Ombudsman's Better Practice Guide on Automated Decision Making (Ombudsman's Guide) and the Attorney-General Department's use of ADM by government consultation paper (AGD paper).

Because of the specific language used in paragraphs 13.118 to 13.120 of the updated Guidelines, there may be some confusion in identifying what ADM is in the context of publishing operational information on the IPS. It may assist agencies if the updated Guidelines include a definition of ADM and then link the new requirements in paragraphs 13.118 to 13.120 to that definition. Specifically, OAIC may wish to adopt the definition in the *Privacy Act 1988*¹ (Privacy Act), which states that automated decisions are where the entity has arranged for a computer program to make, or do a thing that is substantially and directly related to making a decision, and that decision could significantly affect the rights or

¹ New clause 1.7 of Schedule 1, due to commence on 10 December 2026.

interests of an individual. Adopting the same definition as in the Privacy Act would avoid confusion, foster consistency and ease administrative burden for agencies.

Paragraph 13.118 of the updated Guidelines states that operational information should be interpreted “to include information about the use of generative artificial intelligence tools (AI) and automated decision-making (ADM) systems that support decision making and/or recommendations”. The reference to ‘recommendations’ in this context suggests agencies should also publish information about the use of AI and ADM systems used to support recommendations separately to the decision-making process. We suggest consideration be given to removing the reference to ‘recommendations’, as the wording ‘support decision making’ appears broad enough to meet the objective.

Paragraph 13.120 provides that agencies “should clearly state the types of ADM they use to make automated decisions, not just AI (for example, from simple calculators to machine learning).” We suggest consideration be given to removing the reference to ‘simple calculators’ as these do not appear to fall within the definition of automated decisions in the Privacy Act.

Publication of authorisation instruments

Paragraph 13.124 in the updated Guidelines states that “instruments authorising officers within an agency to make certain decisions or take certain actions fall within the definition of ‘operational information’ section 8A(1) of the FOI Act and so should be included on an agency’s IPS entry.”

The updated Guidelines include a reference to the requirement in paragraph 3.112 of the FOI Guidelines that FOI instruments authorising staff to make decisions under section 23 of the FOI Act must be published on an agency’s website because they fall within the definition of ‘operational information’ and should be included on an agency’s IPS entry. For completeness, the department has published its FOI authorisation instrument on its website.

It appears the proposed requirement in paragraph 13.124 is intended to extend to other instruments authorising officers within an agency to make certain decisions, beyond decisions made under section 23 of the FOI Act. Noting the number of authorisation instruments agencies may have in place, further guidance on the types of instruments covered by this requirement might be beneficial.