



Australian Government
Australian Taxation Office

ATO feedback on updates to Part 14 of the FOI Guidelines – Disclosure Log

Paragraph #	ATO feedback
General comments	<u>Distinguishing obligations from better practice recommendations</u> It is important that the guidelines clearly distinguish between: • requirements under the FOI Act; • administrative practices that agencies may choose to adopt to support compliance; and • the OAIC's preferred 'better practice' approach to disclosure log administration. Clear separation of mandatory requirements from optional guidance will help agencies assess implementation impacts (including any system, platform, process and administrative modifications) and compliance obligations. This has the added benefit of assisting applicants who often rely on the FOI Guidelines to understand what is optional and what is mandatory for agencies to comply with. This could be achieved by using: • 'must' where the FOI Act imposes a legal obligation; • 'the Information Commissioner recommends' where the OAIC is identifying a preferred practice; • 'agencies may wish to consider' or 'agencies could consider' where a measure is optional or dependent on operational circumstances; and • expressly identify where examples are illustrative only and not intended to represent minimum compliance requirements. By clearly distinguishing between statutory requirements and better-practice guidance, the Guidelines would reduce the risk of misunderstandings and assist agencies in meeting their obligations under the Act. <u>Other legislative obligations</u> The guidelines would also benefit from acknowledging that agencies also need to consider other legislative obligations, such as secrecy provisions, when administering disclosure logs.

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14.1-14.5 Key Messages	The ATO supports including key messages. The key messages currently emphasise the benefits of disclosure logs, but do not also emphasise the actions expected of agencies and ministers. Recommendation: The key messages could also: • provide practical direction on obligations, • distinguish between mandatory requirements and better-practice suggestions, • explain the purpose of better-practice suggestions, and • align with the structure and terminology used throughout Part 14.
14.11	The way this paragraph is worded suggests that compliance with section 11C may be optional. Recommendation: Reword this paragraph to align with the legislative framework. The guidelines should distinguish the mandatory requirements of section 11C from the OAIC's preferred 'better practice' approach of publishing the released documents themselves, rather than only information about them. For example, the draft uses the terms 'publish documents' and 'publish information' interchangeably. While publishing released documents is often the most practical approach and is the OAIC's preferred method, the guidelines should make clear that this is a recommended practice rather than a requirement.
14.49 and 14.93 foot note	<u>Access and retention</u> The recommendation to provide access within five working days, where information is not directly downloadable, is shorter than the statutory timeframe in section 11C for publishing information on the disclosure log. The guidelines do not explain the basis for this. Consider aligning this timeframe with the ten working day publication requirement to ensure consistency and reflect the legislative framework. Suggest clarifying that agencies retain flexibility to adopt retention and archiving arrangements appropriate to their operational requirements, for example many agencies do not use Trove.