

Good afternoon

Services Australia is grateful for the opportunity to comment on the proposed updates to Part 3 of the FOI Guidelines.

We provide the below comments on specific paragraphs of the proposed FOI guidelines:

Paragraph	comment
[3.18] – [3.19]	<p>Generally, the agency has noticed FOI requests written by AI/ChatGP. However, the agency will continue with the usual practice of requiring proper authentication / use of document upload to verify a person’s identity to establish authority to receive personal information, this practice is consistent with AAP3 in the Privacy Act.</p> <p>Further, given the rise of AI/bots the agency strongly suggests that the OAIC leads a whole of government approach to ensure greater consistency across the Commonwealth and provide greater clarity for FOI applicants.</p>
[3.30] – [3.42]	<p>The agency notes inconsistency between 3.39 and 3.41 and seeks clarity regarding the valid date (clock start date) or when an Agency needs to seek information from an applicant to identify documents.</p> <p>3.39 states “Once the further information is provided, the agency...should inform the FOI applicant...that the timeframe for deciding the FOI request has commenced.” And later “It should rarely be necessary to require the submission of a fresh written FOI request if only a minor detail, such as a date relevant to a particular document or the applicant’s return address, has been omitted from the request”.</p> <p>whereas</p> <p>3.41 states “...the request should be treated as valid upon receipt even if it does not comply with the formal requirements of s 15(1) or 15 (2A).”</p> <p>A possible scenario that arises, from the above paragraphs, a case where no contact phone number and no address (email or physical/postal) is provided at the time of the FOI request. Given the lack of contact details is the agency then able to determine the request as invalid, and will the OAIC accept this approach? Additional clarity on validity and particularly on date of treating a request as valid should be included in these guidelines.</p>
[3.43] – [3.49]	<p>In relation to “Interpreting the scope of the request” we draw your attention to the revised Part 3 [3.43] – [3.49] and comment that the revision considerably expands on the current [3.54] – [3.56].</p> <p>[3.46] states: “<i>An FOI request should be interpreted as extending to any document that might reasonably be taken to be included within the description the FOI applicant has used. An FOI request for a ‘file’, including a historical or archived file, should be read as a request for all the documents contained in that file, including the inside and outside of a file cover in the case of a physical document.</i>”</p>

	<p>In a practical sense this guidance may become unworkable, request for a ‘full file’ does not identify the documents that applicant is actually seeking access to. It is also against the key principles as articulated at [3.2] and in line with section 3(4) of the FOI Act. This section of the guidance could be better framed to assist applicants and agencies to identify the document the applicant is seeking.</p>
[3.100]	<p>This overstates section 23 of the FOI Act. While the agency maintains instruments of delegations, it remains the decision of the responsible minister or principal officer of the agency whether these documents are published.</p> <p>The wording of this paragraph should be amended to state a preferred position and guidance by the OAIC. We refer to the OAIC suggestion that agencies consider publishing instruments of delegation. Depending on the method of drafting of the delegations these may be subject to exemptions under the FOI Act.</p>
[3.137] – [3.144]	<p>The agency will consider updating various templates and other FOI related documents in relation to ‘Taking all reasonable steps to find documents in a freedom of information request’. However, we make the comment that this part of this guidance requires an agency to include comprehensive search information within the decision letter to the FOI Applicant. This adds a level of technicality and detail that is likely to be confusing and increase the complexity and length of the decision. It could be stated that this produces a result that is not client or customer friendly or focused. This may lead to an increase in subsequent correspondence that relates to how to read or understand the information within the decision letter.</p> <p>Further, it is likely that the release of some of this material, i.e. system names, document locations, etc. would likely pose a risk to agency operations particularly in the current cyber security environment. It is possible the information of these records that may contain documents may attract exemptions from release. In relation to inclusion of the search date, this seems irrelevant as the FOI request is made in a point of time, therefore any searches can only be made after the request was made and before the decision provided.</p>
[3.148] and [3.151]	<p>These paragraphs relate to the use of section 22 of the FOI Act. Section 22 allows for the exemption of material that is irrelevant. However, we draw your attention to the provisions and request consideration to make these consistent.</p>
[3.176]	<p>Introduces a new term in relation to government decision making. We believe this is aimed at attempting to provide guidance on the burden of proof. However, this term is not used elsewhere in the commonwealth or within procedural fairness principles or the common law. The agency strongly suggests using terms that are commonly used in commonwealth discretionary decision making and within the principles of procedural fairness and common law principles of burden of proof. Further, it should be raised that a decision maker is to properly and carefully carry out their obligations as a discretionary decision maker.</p>
[3.193]	<p><i>States: some versions of charges calculators contain a number of predetermined parameters based on assumptions as to how long an FOI request should take to process. Agencies should be mindful that the use of a ‘charges calculator’ with these predetermined parameters only provides a rough estimate of how long FOI decision-making will take and is not suitable for estimating the processing time for the purposes of a practical refusal decision.</i></p>

	<p>It is unclear what this means and how an agency is to consider how to implement this. Further context and guidance is suggested and would be welcome.</p>
[3.230]	<p>We suggest this is amended to take into account national, and state/territory public holidays as these may vary. Therefore, this requires clarification that the applicable public holiday is the public holiday relevant to the state/territory in which the decision-maker resides.</p>
[3.288]	<p>In response to the commentary that agencies consider how a FOI applicant wants the documents provided to them and section 20(3) of the FOI Act, it remains for an agency to determine what is or isn't unreasonable and determine how documents are to be provided. An Agency may refuse the preferred form of the FOI applicant and choose another where providing the documents in that preferred form is unreasonable, unavailable or not secure.</p> <p>In relation to the comments on the use of SIGBOX, it is unclear why an agency would seek a FOI applicants' agreement in relation to the agency's use of secure file sharing. Each agency would have undertaken the necessary checks and balances determining to use the file sharing that provides a broad range of access and limits the risk to the agency. In relation to SIGBOX, specifically, this filesharing system does conform to the Australian Privacy Principles. This remains the agency preferred file sharing system.</p>
[3.239]	<p>Point 15 in the summary of changes incorrectly refers to point 3.329. The correct reference is 3.240.</p>
[3.269]	<p>Hyperlink - Reference source not found.</p>
[3.279]	<p>Hyperlink - Reference source not found.</p>