



Australian Government

Department of Health, Disability and Ageing

Commissioner Alice Linacre PSM
Office of the Australian Information Commissioner

By email: guidenceandpublications@oaic.gov.au

Dear Commissioner Linacre,

Consultation on Part 13 of the Freedom of Information Guidelines

Thank you for the opportunity to comment on the consultation draft of Part 13 of the Freedom of Information (FOI) Guidelines (**Guidelines**) released by the Office of the Australian Information Commissioner (**OAIC**).

The Department of Health, Disability and Ageing (**the Department**) welcomes the opportunity to comment on the consultation draft. Our comments are below for your consideration.

The department is generally supportive of the proposed changes to Part 13 of the Guidelines. The department is committed to the proactive disclosure of government-held information through an effective Information Publication Scheme (**IPS**).

The department has recently updated its [IPS Agency Plan](#). Aligned with our commitment to the IPS, we have also uplifted our internal guidance material and training material for departmental officials and decision makers.

IPS Register

The department notes the proposed recommendation that agencies develop and maintain an IPS information register. The department agrees that there is value in careful monitoring of the material it publishes, including material published under the IPS requirements.

In our respectful submission, the Guidelines would benefit from clarifying whether OAIC is seeking to mandate an IPS Register in the suggested form, or whether the OAIC more broadly recommends an IPS Register. The department notes the ability for agencies to incorporate the IPS information register into existing information asset management frameworks remains (13.44).

The department otherwise notes the inclusion of a sample IPS Register at Annexure B. The Annexure is not currently referenced elsewhere in the Part, and we suggest that it would be helpful if Annexure B was referenced in the body of the Part (for example, at paragraph 13.45) to guide agencies on its use.

Operational information

The department notes the definitions of 'operational information' as articulated in paragraphs 13.112 and 13.115.

The definition of 'operational documents' provided by paragraph 13.115 could be interpreted to include *any* working documents or guidance material produced by the department.

A large agency, such as this department, holds many working documents and templates which assist individual business areas to manage the policies and programs they deliver. The department would not, for example, assess all of these documents as 'operational information' for the purposes of ss 8 and 8A of the FOI Act. These materials would be of limited value or interest to members of the Australian community, in addition to placing a burden on the department's website capacity and usability.

The OAIC may wish to further amend the draft updated Guidelines to clarify its expectations for agencies in interpreting s 8A of the FOI Act. This may include examples of enterprise documents such as an agency's AI Transparency Statement, FOI Operational Manual, or other enterprise wide operational and policy documents which guide the 'how' and 'why' of government policy and decision making.

Refining the guidance would reduce the potential for a high volume of operational material with limited value being captured for publication on agency websites. This would also guide agencies in making IPS documents more relevant and searchable for members of the public.

Artificial intelligence and Automated Decision Making

The department notes the inclusion of artificial intelligence tools (AI) and automated decision-making (ADM) systems that support decision making and/or recommendations, including the rules and procedures that agencies apply in making decisions in the definition of 'operational information'.

The department has published its [AI Transparency Statement](#) on its website in accordance with the Policy for the responsible use of AI in government.¹ It is amongst a number of documents published to our website by existing government policy requirements.

The department respectfully submits that the Guidelines should be amended to clarify the kinds of documents the OAIC expects should be published under the IPS. This may include, for example, an agency's AI or ADM policies, use case governance documents and/or other assurance frameworks or guiding documents which govern the use of AI or ADM in that agency.

The Guidelines would also benefit from clarifying that technical information (such as AI codes, prompts, text, and commands) of individual AI function might not be considered as 'the rules and procedures' that agencies apply in making decisions. We note that publication of such technical information may create an information security issue for agencies.

Please contact me via foi@health.gov.au if you wish to discuss the department's submissions to the consultation draft.

Yours sincerely

Emma White
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Commercial and Information Law

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¹ <https://www.digital.gov.au/ai/ai-in-government-policy>