



## Australian Government

### Department of Health, Disability and Ageing

19 June 2025

Office of the Australian Information Commissioner  
By email to: [guidanceandpublications@oaic.gov.au](mailto:guidanceandpublications@oaic.gov.au)

Dear Commissioner Tydd,

Thank you for providing the Department of Health, Disability and Ageing with the opportunity to comment on the consultation draft by the Office of the Australian Information Commissioner (**OAIC**) to Part 3 of the Freedom of Information (**FOI**) Guidelines (**Guidelines**). Our comments are provided below.

#### Artificial Intelligence

1. Draft revisions made to paragraphs [3.18 – 3.19] relating to artificial intelligence generated requests recognise the evolving nature and impact of the digital world on FOI processing. We suggest there would be benefit in further guidance that sets out the steps agencies may take should a request be identified as being submitted by artificial intelligence. It would also be helpful to understand how this intersects with s 15 of the *Freedom of Information Act 1982* (**FOI Act**) in cases where the request otherwise meets the requirements of s 15.

#### Assisting an applicant

2. Noting the proposed expansion of paragraph [3.37] in relation to accessibility considerations, we suggest that further expansion is necessary to clarify that agencies and ministers are not required to provide applicants with written translations of statements of reasons, notices, and/or documents for release.
3. The proposed changes at paragraph [3.41] introduce ambiguity and may create inconsistency in how agencies determine the validity of FOI requests. Notably, the suggested wording ‘an FOI request should be treated as valid upon receipt even if it does not comply with the formal requirements in s 15(2) or s 15(2A) of the FOI Act’, is concerning. This approach conflicts with the FOI Act and could lead to any communication being interpreted as a valid FOI request, increasing the administrative burden on agencies and the OAIC due to potential complaints from applicants.
4. The minimum ‘formal requirements’ in s 15(2) and s 15(2A), as described at paragraph [3.29] of the Guidelines, would benefit from clarification. For example, the minimum ‘formal requirements’ could be that s 15(2)(a) and s 15(2)(c) must be met for the request to be ‘valid’. It would also be helpful to clarify the circumstances in which s 15(2)(aa) could be considered to have been met. For instance, where a request for access to documents that are not specified to be for the purposes of the FOI Act are sent to an FOI mailbox.

### **Interpreting the scope of a request**

5. Paragraph [3.46] states that although 'a request under the FOI Act must be for 'documents' rather than for 'information', 'a request may be phrased with reference to the information that a document contains'. The proposed wording is contrary to the intent of s 11 of the FOI Act which provides a right of access to documents. If this change is incorporated, it will make scope interpretation and the process of undertaking reasonable searches more difficult for FOI practitioners, as the parameters of the request are likely to be ill-defined or too broad to enable reasonable searches.
6. Additionally, when read in conjunction with the proposed changes at paragraph [3.41], agencies and ministers may need to address enquiries, questions, and incomplete or poorly formed requests for information, rather than document requests, within statutory timeframes. This will increase the administrative burden on agencies as more time and resources will need to be spent on informal consultation, scope clarification, and issuing s 24AB notices. This may also increase the administrative burden on the OAIC dealing with complaints arising from applicants.

### **Advising the FOI applicant of the steps taken to find documents**

7. Paragraph [3.145] states that 'in their decision, agencies and ministers should explain the steps taken to find documents within the scope of the FOI request, including the dates the searches were conducted, the search parameters used, the time taken to conduct the search and whether any backup databases were examined'. The operational impact of providing this level of detail in every statement of reason will significantly increase the administrative burden of decision making. This level of detail is likely to be of interest to a small cohort of applicants who do not accept that reasonable searches have been undertaken. It would be of benefit if this paragraph suggests that agencies and ministers confirm that search and retrieval has occurred as per paragraph [3.136] of the Guidelines.

### **Deleting exempt or irrelevant content from a document**

8. We note the inclusion at paragraph [3.151] that 'it will only be appropriate to delete public servants' names and contact details as irrelevant under s 22 of the FOI Act if the FOI applicant clearly and explicitly states that they do not require this information'.
9. Noting that FOI applicants are generally interested in the documents requested, it is unclear what the underpinning reason for this change is. Staff names that become part of documents as a by-product of the search and retrieval process, (i.e. by converting an email to an editable format) should be able to be redacted under s 22 as irrelevant material. Additionally, we raise serious concerns about the appropriateness and utility of requiring the disclosure of non-SES public servants' names and contact details by default. Processing requests with this requirement will require additional engagement with applicants and potentially third parties, which may increase processing times.

### **Refusing to confirm or deny existence of a document**

10. In relation to paragraph [3.174], it may be helpful to include examples of where and how s 26(2) may apply. For example, where confirming the existence or non-existence of documents about a third party would of itself unreasonably reveal personal or business information about that third party. It would also be helpful to include further information about how to apply the public interest test.

**Resource impact of processing a request would be substantial and unreasonable**

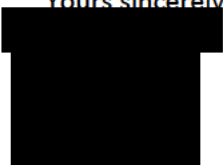
11. Paragraph [3.194] states that 'agencies and ministers need to ensure that their estimates of processing time reflect the actual processing time, based on the actual documents within scope of the request.' Where a substantial number of documents are located as part of search and retrieval, the work effort involved in determining the 'actual documents' within scope of the request can, of itself, require a substantial and unreasonable diversion of resources, as each document identified must be reviewed for relevance. It would be useful if the Guidelines were amended to encourage agencies and ministers to provide a detailed and fulsome explanation of the calculation of work effort undertaken to support the practical refusal reason in the s 24AB notice rather than determining the calculation on the number of actual documents.

**Request consultation process**

12. The proposed wording at paragraph [3.209] states that 'an FOI request should not be treated as withdrawn in circumstances where the applicant has responded to the request consultation notice during the consultation period, regardless of whether the applicant revises the request or not.' This is contrary to s 24AB(6) which provides that the FOI applicant is required to respond to a s 24AB Notice by written notice in one of the three ways by the end of the consultation period. Accepting *any* written communication as a 'response' that meets the requirements of s 24AB(6) is contrary to the clearly articulated wording and intention of the Act, and is inconsistent with the Guidelines at paragraphs [3.215] and [3.216].
13. These proposed changes will increase the administrative burden on agencies, since agencies will be required to provide a decision/statement of reasons on requests that would be more appropriately be considered to have been deemed to be withdrawn.

We appreciate the opportunity to provide our comments.

Yours sincerely



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