



Office of the Australian Information Commissioner's Consultation on Part 13 of the FOI Guidelines – Information Publication Scheme

Attorney-General's Department Submission

Introduction

The Attorney-General's Department (the department) welcomes the opportunity to make a submission to the Office of the Australian Information Commissioner (OAIC) consultation on draft revisions to Part 13 of the Freedom of Information Guidelines (consultation draft).

The department's submission focuses on the proposed revisions regarding use of Automated Decision-Making (ADM), and how this intersects with ADM obligations under the *Privacy Act 1988* (Privacy Act) and the current consideration of a consistent framework for the use of ADM in the delivery of government services.¹

The department also notes the importance of ensuring Commonwealth agencies can efficiently and effectively meet their ADM obligations. The department considers clarity about how ADM obligations across different legislative frameworks intersect and may be practically implemented is key to supporting transparency of the use of ADM and compliance by agencies.

Transparency obligations with intersections with ADM

Agencies are subject to transparency obligations with intersections with ADM, including:

- Part II of the *Freedom of Information Act 1982* (FOI Act) mandates that agencies must proactively publish information through the Information Publication Scheme (IPS). This includes information about an agency's functions and operational information, which may require disclosure of ADM use. The department understands the OAIC's proposed revisions to the consultation draft seek to provide guidance to agencies on publishing information about ADM use, following the Information Commissioner's report *Automated decision-making and public reporting under the Freedom of Information Act*.²
- The *Privacy and Other Legislation Amendment Act 2024* introduced requirements under Australian Privacy Principle (APP) 1 for APP entities to include ADM related information in their privacy policies from 10 December 2026.

¹ Attorney-General's Department, 'Automated Decision-Making Reform' (Web page) <<https://consultations.ag.gov.au/integrity/adm>>.

² Australian Information Commissioner, *Automated decision-making and public reporting under the Freedom of Information Act*, Report, January 2026 <<https://www.oaic.gov.au/freedom-of-information/information-commissioner-decisions-and-reports/foi-reports/Automated-decision-making-and-public-reporting-under-the-Freedom-of-Information-Act>>.

Intersections with the Privacy Act

From 10 December 2026, APP 1.7–1.9 will require agencies to publish information about decisions that affect the rights or interests of individuals, made solely or substantially by ADM.

As recognised in the *Automated decision-making and public reporting under the Freedom of Information Act* report, there is a distinction between ADM related obligations under the Privacy Act, which only relate to personal information, and obligations under the IPS, which may apply more broadly. However, these obligations will overlap where the ADM information relates to personal information.

The consultation draft would therefore benefit from clarifying the distinction between ADM obligations under the IPS and APPs 1.7–1.9, and explaining how agencies may comply with both obligations in a manner that is not administratively burdensome. For example, paragraphs 13.25 and 13.119 of the consultation draft highlight that it may be appropriate for the IPS to include links to an agency website in cases where the required information is already published. Similarly, the consultation draft could clarify that agencies can acquit ADM obligations under APPs 1.7–1.9 and the IPS without duplicating effort by including a link to the agency’s privacy policy in its IPS.

The department is aware that the OAIC is currently undertaking public consultation on the obligations under APPs 1.7–1.9 to inform development of OAIC guidance to assist APP entities (including Commonwealth agencies) to comply. The department considers this guidance should similarly address how agencies subject to the IPS can acquit their ADM obligations under APPs 1.7–1.9 without duplicating effort.

Consideration of ADM framework

The Government has accepted Recommendation 17.1 of the Royal Commission into the Robodebt Scheme, which calls for consideration of legislative reform to introduce a consistent legal framework for use of ADM to deliver government services.³

In this context, the department undertook public consultation on government’s use of ADM between 13 November 2024 and 15 January 2025. The consultation found stakeholders care about transparency, fairness and accountability, awareness of ADM use, and access to timely, adequate and clear explanations of decisions.⁴ This feedback is informing the development of an ADM framework.

The department notes this work may have intersections with the IPS requirements. The department will continue to engage with OAIC as this work progresses.

Specific feedback on the consultation draft

Paragraph 13.119 – Generative AI and operational information

The department understands that not all generative AI use will necessarily be within scope of the definition of ‘operational information’ – it will be dependent on the circumstances of the generative AI use. The department therefore recommends that paragraph 13.119 be amended to clarify that use of generative AI *may* be operational information.

³ Australian Government (2023), *Government response to Royal Commission into the Robodebt Scheme*, <<https://www.pmc.gov.au/sites/default/files/resource/download/gov-response-royal-commission-robodebt-scheme.pdf>>, at 21.

⁴ Attorney-General’s Department, ‘Automated Decision-Making Reform: Public Consultation Summary’, <https://consultations.ag.gov.au/integrity/adm/user_uploads/automated-decision-making_summary-of-the-public-consultation-process.pdf>.

Paragraph 13.120 – actions agencies should take in relation to ADM use

Paragraph 13.120 contains four dot points that outline actions agencies ‘should’ take in relation to ADM use. The department recommends that paragraph 13.120 be amended to be more explicit regarding whether the dot points are best practice in the context of ADM use or are requirements under the IPS.

To the extent possible and where practical, the consultation draft should also be clear on what information agencies should disclose and the goal of publication – whether it is intended to provide technical detail, or plain language information to assist members of the public. We therefore recommend clarifying some of the guidance in paragraph 13.120 in relation to dot points 2 and 3.

Second dot point: ‘Agencies should clearly state the types of ADM they use to make automated decisions.’

The department proposes further clarification be provided on the scope and level of detail that should be published. It would be useful to make clear whether this suggests agencies publish, for example, the general type of ADM (e.g. a rules-based system, or a machine learning system), the specific names of ADM systems (e.g. the XYZ machine learning system), or the rules and algorithms that the ADM system relies upon. Guidance which recommends publishing technical details or algorithms may raise intellectual property, national security or fraud concerns, as well as requiring practical management of privacy, cyber security and data governance considerations.

Third dot point: ‘Agencies that use ADM should also publish both a list of decisions they use ADM for, as well as relevant and easy to understand examples, so the public can better understand how ADM is being used to make decisions that affect them.’

The department recommends clarifying what a ‘list of decisions’ comprises in this context. That is, does it include:

- the Act name and/or provisions that may be automated to be listed, or
- a high-level explanation of the kinds of decisions that may be made (e.g., decisions to grant, revoke, or vary a licence under an Act).

This dot point also overlaps with requirements to publish ADM information under APPs 1.7–1.9. The department recommends the FOI Guidelines:

- explicitly acknowledge this overlap, and
- provide examples to demonstrate how agencies may acquit both obligations through a single publication mechanism – such as including a link to an agency’s privacy policy in the IPS.

Conclusion

Given the ADM regulatory landscape, the department suggests:

- that the consultation draft be further updated to clarify the interaction of ADM obligations across the different frameworks, including to be clearer as to how they may be practically complied with, and
- continuing to engage with us on revisions to the FOI Guidelines, noting the department’s responsibility for administering freedom of information and privacy laws, and given broader consideration of ADM by Government.

The department appreciates the opportunity to provide these comments and looks forward to continued engagement with the OAIC on these matters to support clear and consistent ADM regulation.