

PART 14 — DISCLOSURE LOG

Version 1.6, January 2019

	PAGE
Introduction	1
Nature and content of the disclosure log	1
Disclosure log decision making	2
Disclosure log exceptions — determinations by the Information Commissioner....	3
Disclosure log exceptions — when publication would be ‘unreasonable’	3
Making information publicly available.....	4
Time of publication	4
Design and contents of the disclosure log.....	6
Copyright.....	8
Retaining and archiving information	8
Routinely accessed information	9
Facilitating access.....	10
Accessibility.....	11
Charges	13
Information Commissioner’s functions and powers	13
Legal protection for disclosure log publication.....	14
Annexure A — Template disclosure log	15

PART 14 — DISCLOSURE LOG

Introduction

14.1 Agencies and ministers must publish information that has been released in response to each FOI access request, subject to certain exceptions (s 11C). This publication is known as a ‘disclosure log’.

14.2 The requirement to publish a disclosure log complements the establishment of the Information Publication Scheme (IPS) (see Part 13 of these Guidelines). Together, these reforms require agencies and, for the disclosure log, ministers, to publish a greater range of government information.

14.3 The disclosure log facilitates publication to the world at large of information released under FOI to individual applicants. This reinforces the objective of the FOI Act to promote a pro-disclosure culture across government and to increase recognition that information held by government is a national resource (s 3(3)).

14.4 In time, disclosure log publication may reduce the resources required by agencies and ministers to deal with multiple requests for access to the same documents. It will also improve access to government resources that are of interest to the community.

Nature and content of the disclosure log

14.5 A disclosure log lists information that has been released in response to an FOI access request for documents held by the agency or minister (s 11C(1)). Three options for publishing information are specified in s 11C(3):

- making the information available for downloading from the agency’s or minister’s website
- linking to another website where the information can be downloaded, or
- giving details of how the information may be obtained.

14.6 Agencies and ministers must publish this information within ten working days of giving the FOI applicant access to the information (s 11C(6)) (see [14.22] below).

14.7 The disclosure log requirement does not apply to:

- personal information about any person, if it would be ‘unreasonable’ to publish the information (s 11C(1)(a))
- information about the business, commercial, financial or professional affairs of any person, if publication of that information would be ‘unreasonable’ (s 11C(1)(b))
- other information of a kind determined by the Information Commissioner if publication of that information would be ‘unreasonable’ (ss 11C(1)(c) and 11C(2))
- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete information listed in one of the above dot points (s 11C(1)(d)).

Guidance on when it may be ‘unreasonable’ to publish information on a disclosure log is given at [14.16] below.

Disclosure log decision making

14.8 The decisions to grant access to documents under the FOI Act, and to publish information in a disclosure log, are separate decisions. There are two important differences in the FOI Act procedures applying to both decisions.

14.9 First, only a person ‘authorised’ under s 23 can decide to grant or refuse access in response to a request. By contrast, the FOI Act does not specify who is to make a decision concerning notification of a decision on the disclosure log (including whether to delete material that would be unreasonable to publish). It is nevertheless advisable that agencies and ministers adopt processes for making decisions under s 11C.

14.10 Secondly, no consultation procedure in the FOI Act applies to s 11C, by contrast with the consultation requirements that apply before a decision can be made under s 11A to release documents affecting Commonwealth-State relations, documents affecting Norfolk Island intergovernmental relations, business documents or documents affecting personal privacy (ss 26A, 26AA, 27, 27A). It is open to an agency or minister to consult a person as to whether publication of personal, business or other information may be unreasonable. If so, the agency or minister must complete that consultation in time to comply with their obligation to publish information within ten working days of giving access to the FOI applicant (s 11C(6)).

14.11 A more suitable alternative may be for agencies and ministers in appropriate cases to provide advance notice to FOI applicants and third parties that information released under the FOI Act may later be published in a disclosure log (subject to certain exceptions). This advance notice could be given to FOI applicants in the notice under s 15(5) that their request has been received, and to affected third parties during a consultation process under ss 26A, 26AA, 27 or 27A (see Part 6 of these Guidelines).¹ The applicant or third party may choose to express a view on this issue and to identify personal or business information that in their view would be unreasonable to publish. However, it is important that applicants and third parties are also made aware of the pro-disclosure policy of the FOI Act embodied in s 11C.

Cases where access was only granted to some of the requested documents

14.12 If an FOI applicant is given access to some only of the documents requested (or to part only of a requested document), the disclosure log requirement applies at that time to the documents given to the applicant. If access is later given to additional documents as a result of the applicant seeking internal or IC review of the agency's access refusal decision, the disclosure log requirement will apply at that time to the additional documents.

¹ The OAIC has published sample FOI notices that agencies and ministers can use for their own purposes. The sample notices are available as an agency resource at www.oaic.gov.au.

Disclosure log exceptions — determinations by the Information Commissioner

14.13 The Information Commissioner may make a determination that the requirement to publish information in a disclosure log under s 11C does not apply to information specified in the determination (s 11C(2)). A determination of this kind is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. A determination may apply to information of a general kind that is held by many agencies or ministers, or to information of a specific kind held by a particular agency or minister.

14.14 There is currently one determination in force: *Freedom of Information (Disclosure Log – Exempt Documents) Determination 2018*.² This determination covers:

- a) information in a document that was an exempt document at the time that access was given by the agency or minister to the applicant
- b) information in a document that the agency or minister would have decided was an exempt document at the time that access was given to the applicant, if the request for that document had been received from a person other than the applicant.

14.15 The determination has effect for five years from 1 December 2018. Further information about applying for a determination is provided in *Disclosure log determinations policy and procedure*, available on the OAIC website.³

Disclosure log exceptions — when publication would be ‘unreasonable’

14.16 As noted at [14.7] and [14.14], the requirement to publish in a disclosure log information that was released to an FOI applicant does not apply to information of three kinds if publication would be ‘unreasonable’: personal information, information about a business, or information covered by the Information Commissioner’s *Freedom of Information (Disclosure Log – Exempt Documents) Determination 2018*. There is overlap between the information in those three categories. The following guidance as to when an agency or minister may decide that publication would be unreasonable is not exhaustive.

14.17 It is open to an agency or minister to decide that it is unreasonable to include in the disclosure log information about an individual or business that was released in response to an FOI request from that individual or business. The same applies to information about a person or business that was released to another FOI applicant, where the person or business was consulted under ss 27 or 27A of the FOI Act and did not object to the release to that particular FOI applicant but would object if the information was to become publicly available.⁴

14.18 The Explanatory Statement accompanying the Information Commissioner’s Determination gives the following as an example of where publication may be unreasonable under category a) in the Determination (information that was exempt at the time that access was granted):

² Available at the [Federal Register of Legislation](#).

³ Available at www.oaic.gov.au.

⁴ Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009, p 14.

[A]n agency may have released an exempt document to a particular applicant in connection with a research project, in connection with legal proceedings in which the applicant is involved, or because the confidential nature of information in a document would not be jeopardised by selective release to a particular FOI applicant. In these circumstances, the agency or Minister may decide that it is unreasonable to publish this information more widely in a disclosure log.

14.19 Whether it would be unreasonable to publish in the disclosure log personal information about an Australian Government officer will depend on a number of factors that should be considered on a case by case basis. The factors include the nature of the information, the seniority of the officer, and whether the officer has made out a special case against disclosure. As a general guide, it would be open to a decision maker to decide in a particular instance that it is unreasonable to publish in a disclosure log the direct line work telephone number of an officer, or the signature of an officer. On the other hand, it is commonplace that published documents contain the names of officers (particularly senior officers) who were involved in an individual agency action. A decision that publication of the name of a junior agency officer is unreasonable might more easily be reached. An agency may wish to consult affected staff as to whether potential harm could arise from publishing their names.

14.20 An agency or minister should indicate when material is deleted from a document published on the disclosure log because of an exception in s 11C(1). This includes personal information about an agency officer. The indication could be provided within the published document or in an accompanying statement. It is then open to a member of the public who is interested in inspecting that information to make a request to the agency, including an FOI access request.

Making information publicly available

14.21 Once the decision has been made to publish information in a disclosure log, agencies and ministers will have to consider a range of operational matters in making the information available and, more generally, in maintaining the disclosure log over time.

Time of publication

14.22 Agencies and ministers must publish information in a disclosure log within ten working days after the FOI applicant was 'given access' to a document (s 11C(6)).

14.23 The date on which an FOI applicant is given access may be later than the date of the decision to grant access (see Part 3 of these Guidelines). Before giving access, an agency or minister can require that a charge be paid (s 11A(1)(b) and Charges Regulations reg 11(1)). The agency or minister must also be satisfied that all opportunities for review by third parties have run out and that the decision to grant access still stands or was confirmed (ss 26A(4), 26AA(4), 27(7) and 27A(6)).

14.24 The date on which an FOI applicant is given access may vary according to the method by which access is given. For example, it is probable that a document sent by email to an FOI applicant was received on the same day. If a document is instead sent by post it is presumed

(unless the contrary is known) to have been received on the day it would be delivered in the ordinary course of post (*Acts Interpretation Act 1901 s 29*).

14.25 It is open to an agency or minister to publish information on a disclosure log earlier than the period of ten days stipulated in s 11C(6). Independently of the FOI Act an agency or minister may (subject to applicable secrecy provisions) publish information at any time and by any method. The FOI Act does not erode that discretion. It follows, accordingly, that an agency or minister may publish information that is to be provided to an FOI applicant on the same day that access is provided. This is consistent with the principle of equal public access rather than exclusive individual access, which is inherent in the disclosure log mechanism and the IPS.

14.26 It is for each agency and minister to decide, generally and in individual cases, the particular day (within the ten day period stipulated in s 11C(6)) on which information will be published on a disclosure log. The general practice of the agency or minister (if one has been adopted) should be made known publicly on the agency website and drawn to an FOI applicant's attention.

14.27 A contested issue in the operation of the FOI Act is that of 'same day publication' (that is, publication of information on the disclosure log within 24 hours of when it is provided to the FOI applicant). With an eye to lessening dispute about this issue, an agency or minister may consider the following issues when choosing the date of publication in an individual case:

- The FOI Act does not preclude same day publication, but nor does it require or promote it as a preferred publication practice.
- An FOI applicant may have a special interest in being granted access prior to publication on the disclosure log. The applicant may have a unique interest in the documents, or have expended time and money on the FOI request, and may want an opportunity to consider the contents of the documents before they enter general public circulation via the disclosure log. This is particularly the case if the documents are large in number or contain complex information.
- A practice of same day publication, if widely adopted or practised across government, may discourage journalists from using the FOI Act. This may work against the objects of the FOI Act by discouraging FOI requests from a particular section of the community who are experienced in accessing government information and making it available to the community.
- The FOI Act works more smoothly and effectively if there is cooperation and trust between agencies and FOI applicants as to the time of publication. This is more likely if agencies and ministers are prepared to discuss and agree on the date of publication with FOI applicants. There is an associated risk that disputes about the timing of publication will impair future relations between an agency or minister and an FOI applicant, either in FOI matters or more generally.
- The FOI applicant should be told in advance of the proposed date of publication on the disclosure log. The agency or minister should ensure that the applicant receives the

documents on that day by means other than publication on the disclosure log (unless the applicant agrees to that method of access).

- In a case of same day publication the agency or minister should consider reducing or waiving any charges they may otherwise have imposed under s 29 (see Part 4 of these Guidelines). The reason for so doing is that the applicant will not have been given any different or greater access than the community.

14.28 The Information Commissioner's function of investigating complaints about agency FOI administration (s 70) can include complaints about the timing of disclosure log publication. For more information, see [14.71] and Part 11 of these Guidelines).

Design and contents of the disclosure log

14.29 The FOI Act does not prescribe the form of a disclosure log. The community may benefit if agencies and ministers adopt a common approach, so that disclosure logs have a consistent appearance across government and can be easily understood by the community. A disclosure log template is annexed to this document (see Annexure A). Modification of the headings in the template may be appropriate, depending on the nature of FOI requests an agency handles and its IT systems and information platforms.

14.30 A disclosure log has essentially three parts:

- the log (or table) published on an agency's or minister's website, listing the information that is available for public access
- that information, which may be accessible in different ways — for example, directly through the log as an attachment that can be downloaded, from another website, or upon request
- a search facility applying to both the log and any attached information.

14.31 Section 11C requires the publication of information contained in documents to which access was granted under the FOI Act, rather than publication of the documents themselves. Publication where practicable of the actual documents that were released (subject to deletion of material under s 11C) is consistent with the character of the FOI Act, as an Act that provides access to documents. Publication of the documents released can also avoid doubts about whether the disclosure log accurately publishes information released under the FOI Act.

14.32 Publication of documents directly through the disclosure log, rather than providing a description of the documents and how they can be obtained upon request from the agency or minister, is consistent with the FOI Act object of facilitating public access to government information.⁵ Publication of documents efficiently facilitates public access and avoids payment of copying and postage costs. If the disclosure log contains only a description of the documents that were released, the description should be sufficient to allow the public

⁵ See Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009, p 14, which states that information is to be published to the public generally on a website, and if it cannot readily be published in that way, the website should give details of how the information may be obtained.

to understand what those documents contain, so that a person may make an informed decision as to whether to request a copy.

14.33 It will sometimes be more practical for an agency to publish the content of a document on the disclosure log in a different form, rather than publishing the document itself. For example, if the FOI applicant inspected a document or viewed a video it may be necessary to make a different publication arrangement in the disclosure log. Similarly, if a document provided to an applicant would be difficult to publish online in an accessible fashion (see [14.61]–[14.66] below), publishing the information contained in the document in a different accessible form may be a more efficient use of agency resources.

14.34 It is also open to an agency or minister to supplement the information they are required to make available under s 11C, in particular by publishing the following additional information:

- the terms of the FOI request that prompted the release of the information (this could be provided in a summary form, rather than as a copy of the FOI request)
- whether the FOI applicant was given access to all documents that were requested, and if not, the exemption or other basis on which partial access was granted
- whether all the information provided to the FOI applicant has been made publicly available under s 11C, and if not, the nature of the information that has not been made available.

14.35 Those details will assist the public to understand the information made available by an agency or minister in its disclosure log. For example, the topic or theme that unites a collection of papers may not be readily apparent unless the terms of the FOI request and the scope of the FOI disclosure is explained.

14.36 A practical design issue that arises is whether additional information of the kind described above should be listed in the disclosure log, or provided as an attachment or as a preface to the information made available under the disclosure log. The template disclosure log at Annexure A contains a column for summarising the relevant FOI request, so that all relevant information is provided in a single table. However, this will increase the size of the table, and agencies may prefer to include this information elsewhere on their disclosure log webpage.

14.37 It is also open to an agency or minister to supplement the disclosure log in other ways. For example, an agency may wish to point out that information in a document published on the disclosure log has been revised and published by the agency in a different form; that the information provides only a partial picture of an issue; or that the information is taken from an internal working paper or other document that does not necessarily reflect the views of the agency, minister or the Government. Any supplementation of this kind should be distinct from the information published in the disclosure log. The disclosure log should provide an accurate historical record of information in documents released by an agency or minister under the FOI Act.

Copyright

14.38 Agencies and ministers should clearly state on their website, either on a dedicated copyright page or in a statement on or attached to the disclosure log, the extent to which the public can reuse material in which the agency or minister (or the Commonwealth) holds copyright.

14.39 Agencies and ministers should consider making information published in a disclosure log available on open licensing terms wherever possible (see [14.53], dot point four below). In deciding on the appropriate licensing, agencies and ministers should consider the *Australian Government Intellectual Property Manual and Guidelines on Publishing Public Sector Information*.⁶

14.40 While most of the information an agency or minister publishes in its disclosure log will have been created by government, there may be documents in the agency's or minister's possession where a third party (such as the author or publisher of the material) owns the copyright.

14.41 No action lies against the Commonwealth, a minister, an agency or an officer of any agency for breach of copyright, amongst other things, if the minister or an agency officer publishes a document in good faith, in the belief that publication is required or permitted under the disclosure log provisions (s 90(1)(a)). However, this provision does not constitute authorisation or approval for reuse of the material, including by members of the public.

14.42 Where a third party owns copyright in material an agency or minister publishes as part of its disclosure log, the agency or minister should include a clear statement on their website advising the public that they may need to seek permission from the copyright owner in order to reuse the material. A statement such as the following could be used:

To the extent that copyright in some of this material is owned by a third party, you may need to seek their permission before you can reuse that material.

14.43 If an agency or minister knows the details of third party ownership of copyright in material it has published in its disclosure log, the agency or minister should, with the copyright owner's consent, provide contact details on its website, in order to help the public.

Retaining and archiving information

14.44 The FOI Act does not specifically require information attached or referred to in a disclosure log to be made available indefinitely. However, the information listed in a disclosure log should be retained even if a document or information attached to a listed item has been removed. It is likely that the log will grow in length over time and provide an historical as well as a current record of information released by an agency or minister under the FOI Act. Where an agency ceases to exist or is restructured, or a minister ceases to hold office, an adjustment may be necessary in accordance with change of government procedures applying at that time.

⁶ See www.ag.gov.au/RightsAndProtections/IntellectualProperty/Pages/AustralianGovernmentIPrules.aspx.

14.45 In the course of routine maintenance or updating of a website an agency may decide to withdraw some disclosure log content and make the information available in another form, for example, on request. Similarly, an agency may decide that it is inappropriate to publish particular information on its website following a change of government or a ministerial or portfolio reshuffle. Conversely, an agency may find that information listed in the disclosure log that is available only on request should instead be published on the agency website because of frequent requests for that information. Before agencies destroy or transfer documents or information in the course of removing content from their website, they must seek approval from the National Archives of Australia (*Archives Act 1983* s 24). Approval is granted through the issuing of general records authorities, agency-specific records authorities and normal administrative practice.

14.46 Routine monitoring by agencies and ministers of disclosure log activity will assist them in deciding the best measures to adopt in furtherance of the FOI Act objective of facilitating public access to government information.

14.47 Agencies and ministers should indicate if documents or information attached to a disclosure log listing are earmarked for removal at a future date. For example, it may be appropriate that information attached to a disclosure log listing is removed after 12 months unless the information has enduring public value. Details should be provided if information is made available after that date in some other manner, or if it is no longer available (for example, if it has been archived).

Routinely accessed information

14.48 Agencies are obliged under the IPS to publish information to which they routinely give access, subject to similar exceptions to those applying to the disclosure log. Under the IPS, agencies must publish information in documents to which the agency routinely gives access in response to FOI access requests (s 8(2)(g)), except:

- personal information about any individual, if it would be ‘unreasonable’ to publish the information (s 8(2)(g)(i))
- information about the business, commercial, financial or professional affairs of any person, if publication of that information would be ‘unreasonable’ (s 8(2)(g)(ii))
- other information of a kind determined by the Information Commissioner under s 8(3), if publication of that information would be ‘unreasonable’ (s 8(2)(g)(iii)).

14.49 Publication of information in a disclosure log will, in many instances, satisfy this IPS publication requirement. The IPS should nevertheless contain a clear link to the disclosure log and an explanation that it contains information to which the agency has routinely given access in response to FOI requests.

14.50 On the other hand, an agency may decide that it is preferable, in complying with s 8(2)(g), for the IPS to contain either an extract from the disclosure log or a separate summary of information that is routinely released by the agency in response to FOI requests. Whichever approach is adopted, agencies must observe the additional requirement in s 8(2)(g) that the IPS entry identify items of information that are ‘routinely’ disclosed by the agency in response to FOI requests.

14.51 For more information on s 8(2)(g) and the IPS generally see Part 13 of these Guidelines.

Facilitating access

14.52 The disclosure log is intended to facilitate public access to government information where there has been a demonstrated FOI interest in that information. To fulfil this objective it is important that the disclosure log and attached documents are easy to find on an agency's or minister's website.

14.53 More generally, agencies and ministers are encouraged to ensure that the disclosure log (including attached documents) is:

- easily discoverable and understandable
- machine-readable and, for the disclosure log itself, in tabular form
- accessible — in particular, it must meet agency online accessibility obligations (see [14.61]–[14.66] below)
- so far as possible, made available for reuse on open licensing terms, so as to enhance the economic and social value of the information.⁷

These requirements can be met if the following six features are integrated into the design and ongoing administration of the disclosure log.

14.54 First, the disclosure log will be more easily discoverable if an agency or minister uses the disclosure log icon recommended by the Information Commissioner to link through to the disclosure log from a prominent webpage (for example, the homepage or an IPS or Access to information/FOI webpage as applicable). Information about how to use the OAIC-developed icon is available in the OAIC's *Guidance for agency websites: 'Access to information' webpage*.⁸

14.55 Second, agencies and ministers should clearly but briefly explain the purpose of the disclosure log — for example 'publicly available information, released after an FOI access request'.

14.56 Third, agencies and ministers are encouraged to build appropriate search facilities (or where possible, utilise existing search facilities) to enable information in the log to be searched — for example by reference to particular words, categories or subject matter.⁹

14.57 Fourth, in administering their disclosure log, agencies and ministers should use RSS (Really Simple Syndication) technology, which can automatically distribute relevant news

⁷ See the *Australian Government Intellectual Property Manual and Guidelines on Publishing Public Sector Information* at www.ag.gov.au/RightsAndProtections/IntellectualProperty/Pages/AustralianGovernmentIPrules.aspx. See also the Information Commissioner's *Principles on open public sector information* at www.oaic.gov.au.

⁸ Available as an agency resource at www.oaic.gov.au.

⁹ See the Australian Government *Web Guide*, <http://webguide.gov.au/finding-content/search-2/>.

and announcements over the internet, and deliver content directly to subscribers.¹⁰ A disclosure log RSS feed could be structured around the same content used on the website version of their disclosure log. Use of RSS content has the additional benefit of being highly machine-readable. If used in concert with appropriate open licences, RSS is a potentially useful technology for making disclosure log content available for reuse in other services and applications, such as public-made applications which track agency FOI disclosures.

14.58 Fifth, to enhance discoverability of information published in the disclosure log, agencies and ministers should adopt a controlled vocabulary, especially when titling documents. Agencies and ministers may have regard to the Australian Government Interactive Functions Thesaurus (AGIFT) for this purpose.¹¹

14.59 Sixth, it will be important for agencies and ministers to generate appropriate metadata. This will improve the visibility and accessibility of their web services and linked data applications. Agencies and ministers should have regard to the *AGLS Metadata Standard* and the *Australian Government Implementation Manual for AGLS Metadata*.¹²

14.60 It is important that all disclosure logs are clearly identified and contain the features discussed in these Guidelines. As noted at [14.37] above, agencies may also wish to publish other information alongside the disclosure log, such as links to historical or other relevant information. This publication can fall under an agency's general discretion to publish information outside of the FOI Act, where no other legal restrictions apply (s 3A). It can also fall under the explicit provision in s 8(4) allowing agencies to proactively publish information through the IPS.

Accessibility

14.61 The disclosure log must be published to 'members of the public generally' (s 11C(3)) and must be done in accordance with an agency's accessibility obligations.¹³ Accessibility of published information by all members of the community is therefore an important issue for agencies and ministers to consider when managing a disclosure log.

14.62 The Department of Finance advises agencies and ministers¹⁴ that, when publishing information on their websites, they must give consideration to the Web Content Accessibility Guidelines version 2.0 (WCAG 2.0).¹⁵

14.63 The Australian Human Rights Commission has published *World Wide Web Access: Disability Discrimination Act Advisory Notes* (Version 4.0) which supports conformance to WCAG 2.0.¹⁶

¹⁰ Available at <http://webguide.gov.au/finding-content/rss-2/>.

¹¹ Available at www.naa.gov.au/records-management/publications/agift.aspx.

¹² Available at www.naa.gov.au/records-management/agency/create-capture-describe/describe/agls.aspx.

¹³ See <http://webguide.gov.au/accessibility-usability/accessibility/>.

¹⁴ Generally, ministerial sites managed by departments or agencies need to conform to WCAG 2.0, but this requirement does not apply to ministers' personal sites and party political sites.

¹⁵ Available at www.finance.gov.au/publications/wcag-2-implementation/index.html.

¹⁶ Available at www.humanrights.gov.au/disability_rights/standards/www_3/www_3.html.

14.64 It may not be a straightforward matter for an agency or minister to publish some documents in an accessible manner in a disclosure log. This may be an issue, for example, if information has been redacted from the document or the agency or minister only holds the document in hard copy form. The template disclosure log at Annexure A suggests that, if a document published in the disclosure log is not available in HTML, the agency or minister should provide an alternative means to access the information that is both timely and responsive to the needs of the user. The agency or minister must respond promptly to requests for alternative access. Other options that an agency or minister should consider to strengthen accessibility include:

- Working from original electronic documents wherever possible. Agencies and ministers should not adopt a practice of publishing scanned hard copies of electronic documents on their disclosure log. Instead, the original electronic document should be used wherever possible. Electronic redaction tools enable publication of electronic documents edited under s 22 (see [14.65]–[14.66] below).
- Applying optical character recognition (OCR) and associated accessibility optimisation to scanned hard copy documents in cases where an original electronic document is not available. If it is necessary to publish a scanned document on the disclosure log, the agency or minister should use a multi-function printer or other device that can capture scans at a high enough resolution to produce good-quality OCR. Agencies and ministers should also apply OCR to electronic documents containing images of text (such as image files, or PDF files not optimised for accessibility) in cases where it is not reasonably practical to transcribe the content of the document in HTML.
- Including a description of the accessibility status of information in the disclosure log where the information is only presented in a format other than HTML. For example, consider stating that the information was created via OCR and is an approximation of the document provided to the FOI applicant. This description could form part of the ‘Other information’ listing in the template disclosure log at Annexure A. Alternatively, accessibility information could be provided on an HTML document cover page linked to from the disclosure log.

Electronic redaction

14.65 The process of permanently editing material from a document is known as redaction. Agencies and ministers are encouraged to use electronic rather than manual redaction. One reason agencies and ministers may prefer publishing scanned documents on the disclosure log is to preserve manual redactions made to the document given to the FOI applicant. However, effective redaction software exists that can be applied directly to electronic documents, enabling publication of more accessible information. Provided that appropriate tools and adequately-trained staff are available, electronic redaction is:

- more efficient than manual redaction
- equally capable of completely and irrevocably deleting the required information from the document, and
- able to preserve existing accessibility features of the document that would be lost if it was printed, manually redacted and then scanned.

14.66 For example, the redaction tools in Adobe Acrobat Pro were tested by the Defence Signals Directorate in 2011 and found to permanently delete the required information so that it was not present in any form in the redacted PDF file when used properly.¹⁷ This shows that correctly applied electronic redaction is as effective and reliable as manual processes.

Charges

14.67 The intention of s 11C is that information published or made available under a disclosure log should be freely accessible by the community (s 11C(4)). An agency may charge to provide information in another form if the charge is to reimburse the agency for a specific reproduction or incidental cost in doing so (s 11C(4)(b)).

14.68 In determining whether or not to charge members of the public for information made available in another format, agencies and ministers should take account of the 'lowest reasonable cost' objective in the FOI Act (s 3(4)).

14.69 Details of any charges that an agency or minister will apply must be published on their website (s 11C(5)).¹⁸ This should include the categories of information to which a charge may apply, the scale of the charge and an explanation for the charge.

Information Commissioner's functions and powers

14.70 The Information Commissioner has a role in monitoring the administration of disclosure logs by agencies and ministers.

14.71 The Commissioner's function of investigating complaints about agency FOI administration extends to complaints about an agency's disclosure log (s 70). The Commissioner can also undertake an own motion investigation into an agency's FOI actions (s 69(2)). These complaint and investigation functions do not extend to the actions of ministers. Nor can disclosure log actions of an agency or minister be the subject of a review by the Information Commissioner under Part VII of the Act.

14.72 To facilitate Information Commissioner oversight of agency disclosure log actions, agencies are encouraged to keep an internal register which lists, in respect of every FOI request:

- whether documents requested by the FOI applicant were released
- whether any such documents, or the information contained within them, are listed in the agency disclosure log, in full or in part

¹⁷ Available at www.asd.gov.au/publications/adobe_acrobat_redaction_capability.pdf. For detailed discussion of this examination, see the *Redaction and freedom of information* agency resource at www.oaic.gov.au.

¹⁸ This is similar to the requirement to publish information about charges and information under the IPS, see ss 11C(5) and 8D(5).

- if there is a listing, whether the information can be downloaded from the agency's website (s 11C(3)(a)) or from another linked website (s 11C(3)(b)), or whether details are instead given as to how the information may be obtained (s 11C(3)(c)).

14.73 The Information Commissioner is also required to prepare an annual report on the operations of the OAIC during the year (see *Australian Information Commissioner Act 2010* s 30 and Part 15 of these Guidelines). The Commissioner's annual report includes information on the following aspects of the administration of each agency's and minister's disclosure log:

- the number of FOI requests where access was granted that are listed in the agency's or minister's disclosure log
- the number of listings on the agency's or minister's disclosure log that have been published under ss 11C(3)(a), (b) and (c) respectively
- if the agency or minister collects the figures, the number of unique visitors and page views for webpages that are part of the disclosure log.¹⁹

Agencies and ministers will be required to provide that information to the Information Commissioner under s 93 of the FOI Act (see Part 15 of these Guidelines).

Legal protection for disclosure log publication

14.74 The FOI Act provides legal protection where information has been published in good faith in the belief that publication was either required or permitted by an agency or minister in a disclosure log (ss 90 and 92). The protection applies to the Commonwealth, a minister, an agency or an officer of an agency. The scope of the protection is that no action lies for defamation, breach of confidence or infringement of copyright and no minister or agency officers will be criminally liable.

14.75 These protections complement the policy objective of the Act, of providing a secure framework for publication of Australian Government information to the public. The protections are conditional, and apply only where a minister or agency officer publishes a document in good faith in the belief that the publication was required or permitted under the Act.

14.76 The legal protections provided by ss 90 and 92 apply also to the release of information in response to an FOI request, and to publication apart from the FOI Act where a minister or agency officer believes in good faith that publication is required or permitted. For more information about these protections see Part 3 of these Guidelines.

¹⁹ For guidance about website monitoring see *Better Practice Checklist — Website Usage Monitoring and Evaluation* available at www.finance.gov.au/policy-guides-procurement/better-practice-checklists-guidance/bpc-website-monitoring/. Agencies and ministers should also be mindful of the privacy implications of using cookies on websites (a common aspect of many web analytics applications), and have regard to advice about the Privacy Act at www.oaic.gov.au. Finally, in collecting web analytics figures from agencies the OAIC would take into consideration that different web analytics applications may calculate the figures on a different basis.

ANNEXURE A — TEMPLATE DISCLOSURE LOG***Freedom of information disclosure log*****Publicly available information released following an FOI access request**

The [agency/minister] is required by the *Freedom of Information Act 1982* to publish a disclosure log on its website. The disclosure log lists information which has been released in response to an FOI access request. This requirement has applied since 1 May 2011.

The disclosure log requirement does not apply to:

- personal information about any person if publication of that information would be ‘unreasonable’
- information about the business, commercial, financial or professional affairs of any person if publication of that information would be ‘unreasonable’
- other information covered by a determination made by the Australian Information Commissioner if publication of that information would be ‘unreasonable’
- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete the information listed in the above dot points.

The information described in this disclosure log has been released by [agency/minister] under the *Freedom of Information Act 1982* and is available for public access.

A link is provided if the information can be downloaded from this website or another website.

Information that is not available on a website may be obtained by writing to [address]. A charge may be imposed to reimburse the [agency/minister] for the cost incurred in copying or reproducing the information or sending it to you. There will be no charge for the time spent by the [agency/minister] in processing the FOI request that led to this information being made available. You will be notified if any charge is payable and required to pay the charge before the information is provided.

There may be documents in the disclosure log that are currently not available in HTML format. If you are unable to read the format provided please contact [insert FOI contact details] for assistance.

Information attached to, or referred to, in the [agency/minister’s] disclosure log will generally be removed after 12 months, unless the information has enduring public value.

FOI reference number	Date of access ⁽¹⁾	FOI request ⁽²⁾	Information published in the disclosure log ⁽³⁾	Other information ⁽⁴⁾

⁽¹⁾ Agencies and ministers should note the date that the FOI applicant was given access to a document under s 11A.

⁽²⁾ Agencies and ministers should provide a short summary of the FOI access request.

⁽³⁾ Agencies and ministers should provide a short summary of information provided under s 11A.

⁽⁴⁾ Agencies and ministers may note here, for example, that information is no longer available or that it has been revised by the agency or minister. They may also describe the accessibility status of a document only presented in a format other than HTML.