



RENEWAL OF DISCLOSURE LOG DETERMINATION NO. 2011-1 (EXEMPT DOCUMENTS)

CONSULTATION INFORMATION FROM THE ATO – SEPTEMBER 2013

1. The ATO welcomes the opportunity to provide comment in response to the Information Commissioner's discussion paper on *Renewal of Disclosure Log Determination No. 2011-1 (Exempt Documents) Consultation information – September 2013*.

QUESTION 1 *Do you think the determination has been effective? If not, how could it be made more effective?*

2. The ATO has no comment at this time

QUESTION 2 *Do you think the determination had any unintended consequences? Is there a way to mitigate those consequences?*

3. The ATO has no comment at this time

QUESTION 3 *Should the determination be expanded or narrowed in any way? Please explain how and why you think it should be expanded or narrowed.*

4. The ATO has no comment at this time

QUESTION 4 *[For agencies and ministers] Have you had regard to the determination when publishing or deciding not to publish documents to your disclosure log? How often has the determination been relevant to your publication decisions?*

5. The ATO has regard to the determination in the sense that all of subsection 11C(1), including the determination, works for us. We have found so far that we can rely on paragraphs 11C(1)(a) and (b). That said, we favour having the determination in existence because it would put the question beyond doubt should it arise.
6. Only a very few of the 800 to 1000 FOI requests actioned by the ATO each year are published to the disclosure log. That is because a very high proportion of our FOI matters relate to the personal or business affairs of taxpayers. It would be unlawful to disclose such information in any way that would contravene the taxpayer confidentiality provisions in Division 355 of the *Taxation Administration Act 1953*.

QUESTION 5 [For agencies and ministers] The OAIC Annual Report 2012-13, Chapter 8, will include statistics collected from agencies and ministers on disclosure log activity, for example, the number of documents accessible from disclosure logs, and the number of website visits to disclosure logs. The OAIC invites agencies and ministers, as part of this consultation, to comment on their disclosure log record keeping – for example, is an internal register maintained of all disclosure log decisions, does the agency record decisions not to publish a document on the disclosure log and the reasons for that decision, should additional information about disclosure log activity be collected by the OAIC? There is a discussion of these issues in paragraphs [14.67-71] of the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

7. The ATO does not keep an internal register of its decisions to except documents from publication in accordance with subsection 11C(1) of the FOI Act. The ATO observes that a decision to except under subsection 11C does not encroach upon any statutory or common law right.
8. The ATO does record, in the log itself, the basis for any further redaction of a document that is published to the disclosure log.
9. The ATO cannot at this time justify the additional cost of keeping a record of section 11C decisions beyond what is on the face of the disclosure log itself (see paragraphs 6 and 8 above). The ATO would not be in favour of the OAIC collecting additional information about disclosure log activity.

QUESTION 6 - Please provide any other comments you have about the determination

10. The ATO strongly supports Recommendation 36 in the Hawke review report that agencies should publish to a centralised APS disclosure log.

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