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PART 3 — PROCESSING REQUESTS FOR ACCESS

3.1 The FOI Act closely regulates the way that agencies and ministers must process requests for access to documents. In addition to the detailed rules discussed in this Part, agencies and ministers should have regard to central principles that underpin the right to obtain access to documents held by government (see Part 1 of these Guidelines). These include the following:

- the functions and powers given by the FOI Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4))
- a person’s reasons for seeking access to a document, or an agency or minister’s belief about a person’s reasons for access, are not relevant (s 11(2))
- the Act does not limit any power to give access to information under other legislative or administrative schemes (s 3A(2)).

3.2 Agencies are encouraged to develop policies and processes that facilitate the disclosure of information to the public outside the FOI Act. (See paragraphs 3.3–3.5 below.)

Access to government information — administrative access schemes

3.3 An agency may choose to establish an administrative access scheme to facilitate release of information outside the FOI Act. Establishing an administrative access scheme offers benefits to agencies and members of the public seeking information and documents. Some advantages of an administrative access scheme include that it advances the objects of the FOI Act and encourages flexibility and engagement with the public.

3.4 An administrative access scheme should be tailored to the size of an agency, its work, the requests it typically receives for information or documents, and its regular procedures for public contact and access. Australian Government agencies are diverse in nature, function and methods, and this is reflected in the access procedures they adopt. An agency may, for example, limit an administrative access scheme to only some of its documents (such as personal records) or establish more than one scheme to cater for the different types of records it holds.

3.5 Agencies that establish an administrative access scheme should make sure that they establish an efficient process for referral of requests to the formal FOI process where FOI is more appropriate or where the requester would prefer to apply under the FOI Act.¹

Right of access

3.6 Any person has the right to apply for access to a document of an agency or an official document of a minister (s 11(1)). An applicant does not have to reside in Australia or be an

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¹ For more information see OAIC, Agency resource 14: Access to government information — administrative access schemes, September 2012, at www.oaic.gov.au.
Australian citizen.\(^2\) The term ‘person’ also includes a body politic or body corporate, such as a company.\(^3\)

3.7 A request may be made by one person on behalf of another person (who may be a natural person or a body corporate) or by an organisation (such as a law firm or non-government organisation) on behalf of a natural person or body corporate. This is acknowledged in s 29(5)(a), which refers to payment of an FOI charge causing financial hardship ‘to a person on whose behalf the application was made’. A similar principle, noted at paragraph 3.28, is that a request can be made by a natural person using a pseudonym. A logical consequence is that a request can be made by a group of people or corporations or by an unincorporated association.\(^4\) This is consistent with the *Acts Interpretation Act 1901* s 23, which provides that ‘words in the singular number include the plural’.

3.8 There may nevertheless be a need for an agency or minister — or, on review, the Information Commissioner — to elicit information about the identity or legal personality of an applicant when a request is made by an agent or representative, by a person using a pseudonym or by an organisation or group of people. Similarly, it may be problematic to continue processing a request or deciding a review application that is made by an organisation or group of people unless an agency or Minister or the Information Commissioner can communicate with a contact person who has authority to represent the organisation or group. These matters are discussed below at paragraphs 3.34–3.41.

### What a document is

3.9 A ‘document’ is defined in s 4(1) to include any or any part of the following:

- any paper or other material on which there is writing
- a map, plan, drawing or photograph
- any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them
- any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device
- any article on which information has been stored or recorded, either mechanically or electronically
- any other record of information

\(^2\) *Re Lordsvale Finance Ltd and Department of the Treasury* [1985] AATA 174.

\(^3\) See s 2C of the *Acts Interpretation Act 1901*.

\(^4\) The Administrative Appeals Tribunal reached a contrary view in *Re Apache Energy Pty Ltd and National Offshore Petroleum Safety and Environmental Management Authority* [2012] AATA 296. The Tribunal ruled that the reference in FOI Act s 15 to a request from ‘a person’ was confined to the singular and that a request could not validly be made by a partnership. A similar view, that a person may not act in concert with others to make a single FOI request, was adopted by the Tribunal in *CKI Transmission Finance (Australia) Pty Ltd; HEI Transmission (Australia) Pty Ltd and Australian Taxation Office* [2011] AATA 654. The Information Commissioner’s reasons for disagreeing with that AAT ruling are explained in the following statement: ‘Who qualifies as a “person” eligible to make a request under s 15 of the *Freedom of Information Act 1982*?’ (January 2013), available at [www.oaic.gov.au](http://www.oaic.gov.au).
• any copy, including any part of any copy, of a reproduction or duplicate of a thing listed above.

Material maintained for reference purposes that is otherwise publicly available (such as library reference material) and Cabinet notebooks are not ‘documents’ (s 4(1)).

3.10 The definition of ‘document’ is broadly stated and is not exhaustive. It includes sound recordings, films, video footage, microfilm, and information stored on computer tapes, disks, DVDs and portable hard drives and devices. It can also include information held on or transmitted between computer servers, backup tapes, mobile phones and mobile computing devices (see paragraph 3.12 below). The term would also cover forms of recorded information that are three-dimensional, such as a land use planning model.

3.11 Because the definition includes ‘any part of’ a document, an agency can deal with a request for a specific portion of a larger document, such as an appendix to a paper or a chapter of a report, without having to examine the entire document for exempt material.

Documents in existence

3.12 The right of access is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format (see Part 8 of these Guidelines) or where the information is stored in an agency computer system rather than in discrete form. Section 17(1) provides that if it does not appear that the applicant wants to be given a computer tape or disk and an agency could produce a written document containing the information in discrete form by using a computer or other equipment that is ordinarily available for retrieving or collating stored information, or by making a transcript of a sound recording, the request is to be dealt with as if it were a request for access to a written document containing that information. An agency is not required to comply with this provision if to do so would substantially and unreasonably divert the agency’s resources from its other operations (s 17(2)) (see also paragraphs 3.57–3.74 below).

3.13 The right of access applies to documents that exist at the time the FOI request was made. An applicant cannot insist that their request cover documents created after the request is received. However, the agency or minister should consider whether to include documents that were created after the request was received. This could be more administratively efficient because the applicant might otherwise submit a new request for the later documents.

Documents available for access under the FOI access request process

3.14 The right of access applies to:

• a document of an Australian Government agency that is subject to the FOI Act

• an official document of an Australian Government minister,

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unless the document is an exempt document (s 11(1)). Agencies that are subject to the FOI Act are outlined in Part 2 of these Guidelines.

**Documents of an agency**

3.15 A ‘document of an agency’ is defined in s 4(1) as:

- a document in the agency’s possession, whether created or received in the agency, or
- a document in relation to which an agency has taken contractual measures under s 6C in order to ensure that it receives the document from a contractor or subcontractor providing services to the public on the agency’s behalf (see Part 2 of these Guidelines and the OAIC guidance on s 6C).

3.16 ‘Possession’ of a document is not limited to actual or physical possession, but can include constructive possession where an agency has the right and power to deal with a document, regardless of where and by whom it is stored. Any record of information which an agency has downloaded from a shared database or any other database and stored on hard disks or file servers in its physical possession should be treated as a ‘document’ of that agency.7

**Documents in certain institutions**

3.17 If an agency transfers:

- a document to the memorial collection within the meaning of the *Australian War Memorial Act 1980*
- a document to the collection of library materials maintained by the National Library of Australia
- material to the historical material in the possession of the Museum of Australia
- a document to the care of the National Archives of Australia (other than as a document relating to the administration of the National Archives), or
- a program or related material in the collection of the National Film and Sound Archive of Australia,

the document is deemed to be in the possession of the agency (s 13(2)). If the agency that transferred the document no longer exists, the document is deemed to be in the possession of the agency with functions to which the documents are most closely related. A person seeking access to the document can make an FOI request to the relevant agency, which must retrieve the document from the institution to meet the request.

3.18 A document is not deemed to be a ‘document of an agency’ by reason of its being in one of the collections outlined above if a person (including a minister) other than an agency placed the document in the care or custody of the relevant institution (s 13(1)).

3.19 Documents that are in the custody of the National Archives and are within the open access period are discussed below at paragraph 3.24.

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Records of commissions of inquiry

3.20 Records of certain commissions of inquiry are also deemed to be ‘documents of an agency’ and within the possession of the relevant agency, as follows:

- records of a Royal Commission that are in the care of the National Archives are taken to be documents of an agency and in the possession of the department responsible for the Royal Commissions Act 1902 (currently the Department of the Prime Minister and Cabinet) (s 13(3)(a))
- records of the Commission of Inquiry under the Quarantine Act 1908 that are in the care of the National Archives are taken to be documents of an agency and in the possession of the department responsible for the Quarantine Act 1908 (s 13(3)(b))
- records of the Commission of Inquiry under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 that are in the care of the National Archives are taken to be documents of an agency and in the possession of the department responsible for the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (s 13(3)(c)).

Official documents of a minister

3.21 For information about what constitute official documents of a minister, see Part 2 of these Guidelines. A minister will be deemed to be in possession of a document that has passed from their possession if they are entitled to access to the document and the document is not a ‘document of an agency’ (s 4(1)).

Documents that are not available under the FOI access request process

3.22 The right to seek access under the FOI Act applies only to documents that relate to ‘matters of an administrative nature’ in the case of courts, the Official Secretary to the Governor-General and certain tribunals (see Part 2 of these Guidelines).

3.23 The right to seek access to documents also does not apply where s 12 specifies an alternative framework for gaining access, or where there are established procedures for access to personnel records, as discussed below at paragraphs 3.24–3.25.

Documents open to public access

3.24 A person is not entitled to obtain access to a document under the FOI Act if:

- the document or a copy of it is within the open access period as defined in the Archives Act, unless the document contains personal information, including personal information about a deceased person (s 12(1)(a) — see Part 1 of these Guidelines for information about the open access period)
- the document is already publicly available, as part of a public register or in accordance with an enactment where a fee or other charge may apply (s 12(1)(b)). An example of a public register is a register of births, deaths and marriages, and a consumer protection register is an example of a register created under an enactment
- the document, under a State or Territory law, is open to public access as part of a land title register subject to a fee or charge (s 12(1)(ba))
• the document is made available for purchase by the public in accordance with arrangements made by an agency (s 12(1)(c)).

**Personnel records**

3.25 If an agency has established procedures for access to personnel records, an employee or former employee may only apply for access to their records under the FOI Act in limited circumstances (s 15A). A personnel record means those documents containing personal information about an employee or former employee that an agency has kept for personnel management purposes (s 15A(1)). An application under the FOI Act for access to those records may only be made where the employee or former employee has made a request under those agency procedures and is either not satisfied with the outcome, or has not been notified of the outcome within 30 days (s 15A(2)).

**Exempt documents**

3.26 An agency or a minister is not required to give a person access to a document at a particular time if at that time the document is an ‘exempt document’ (s 11A(4)). An ‘exempt document’ is:

- a document that is exempt, or conditionally exempt where disclosure would be contrary to the public interest, under Part IV of the Act (see Parts 5 and 6 of these Guidelines)
- a document in respect of which an agency, person or body is exempt from the operation of the Act under s 7 (see Part 2 of these Guidelines)
- an official document of a minister that contains some matter that does not relate to the affairs of an agency or of a department of state (s 4(1)).

3.27 The FOI Act does not prevent the release of an exempt document (s 3A); an agency or minister might choose to disclose it, subject to any other law.

**The formal requirements of an FOI access request**

3.28 A request must be in writing (s 15(2)(a)) and must be sent to the agency or minister (s 15(2A)). A request may be sent or delivered in any of the following ways:

- in person or by pre-paid post to an address of any central or regional office of the agency or minister specified in a current telephone directory
- by electronic communication to an email or fax address specified by the agency or minister (s 15(2A)).

3.29 The request must state that it is a request for the purposes of the FOI Act (s 15(2)(aa)). This requirement distinguishes an FOI request from a simple enquiry. Agencies and ministers should take a flexible approach when assessing whether an applicant has met this requirement. Where the applicant’s intention has not been made clear, the agency or minister should contact them to confirm whether the request was intended to be made under the FOI Act (see paragraph 3.53 below).

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3.30 Requests by email or fax must be sent to the FOI address or number specified by the agency or minister. A request will not meet the requirements of the FOI Act if it is sent to another address or number (for example, the email address of an agency staff member). If the agency or minister has not specified an email address or fax number for FOI requests, then the request may be sent to the general email address or fax number of the agency or minister.

3.31 The processing period for emailed or faxed requests begins on the day after the day when the request is received at the specified FOI address or, if there is no specific FOI address, at the general email address or fax number. Section 14A of the Electronic Transactions Act 1999 provides that an email or similar electronic communication is received at the time the email is capable of being retrieved by the addressee, which is presumed to be the time it reaches the addressee’s designated electronic address.

3.32 The applicant is not required to provide a physical or postal address but must provide details of how notices under the FOI Act can be sent to them, such as an email address (s 15(2)(c)).

3.33 Agencies are encouraged to develop procedures, and regularly review their existing procedures, to ensure that these are flexible and facilitate rather than hinder access.

*The applicant’s identity*

3.34 The FOI Act does not require an applicant who is a natural person to disclose or provide proof of their identity, nor require a body corporate or politic to establish that it is a legal entity. The Act does not prevent a natural person using a pseudonym. This principle will be reflected in amendments to the Privacy Act 1988 (Cth) that commence operation in March 2014. A new Australian Privacy Principle 2 (APP 2) provides that an individual has the option when dealing with an entity to which the Privacy Act applies ‘of not identifying themselves, or of using a pseudonym’. Two exceptions to APP 2 are when an entity is required or authorised by a law or court or tribunal order to deal with an identified individual or it is not practicable to deal with an individual who is not identified. Those exceptions may apply to some FOI requests, but not in all instances. Both at present and after March 2014, agencies may have a duty to accept a request that does not identify an applicant who is a natural person.

3.35 An applicant’s identity can nevertheless be relevant in deciding if requested documents are exempt. Where a person has submitted an FOI request for their own personal information or documents relating to their business affairs, an agency or minister’s office should be satisfied of the applicant’s identity before giving the applicant access to the documents (see the discussion of ss 47F and 47G in Part 6 of these Guidelines). The protections under ss 90–92 of the FOI Act for officers disclosing documents in good faith may not apply if an agency or minister’s office has been negligent in failing to make appropriate enquiries (see Part 8 of these Guidelines).

3.36 An agency has a duty to manage an applicant’s personal information in a manner that is consistent with the Privacy Act. Accordingly, the applicant’s identity should not be provided to any third party without consulting the applicant or seeking their agreement. This applies if there is a request consultation process under ss 26A, 26AA, 27 or 27A or if
another agency is consulted. As agencies are encouraged to contact an applicant upon receipt of a request, this would be the appropriate time to discuss with the applicant the possibility of consulting with a third party and obtaining their agreement to disclose their identity. Knowing the applicant’s identity may help the third party to decide more easily whether to object to disclosure and to frame any specific objections (see paragraphs 3.90–3.98 below).

**Requests by agents and groups**

3.37 As noted at paragraphs 3.7–3.8, the Information Commissioner’s view is that an FOI request may be made by one person on behalf of another person, by an organisation on behalf of a client, by a person as the agent or representative of a group of individuals or corporate bodies, or by a group of individuals or corporate bodies or an unincorporated association. It may nevertheless be problematic to process (or continue processing) a request that is not made singly by an individual or body corporate unless the agency or Minister can obtain further information or the name of a contact person. The following is a non-exhaustive summary of those circumstances.

3.38 First, as discussed at paragraph 3.35, the identity of an applicant can be relevant when the documents that have been requested contain personal or business affairs information or are subject to secrecy provisions that prohibit release except to certain persons or in certain circumstances. It may therefore be necessary to obtain the agreement or consent of a person to the release of this information under the FOI Act when the request is made by another person or by a group or to confirm their right to an exception from a secrecy restriction.

3.39 Secondly, an FOI applicant can apply under s 29(5) of the Act for payment of a charge to be reduced or not imposed for the reason that payment of the charge would cause financial hardship to the applicant or to a person on whose behalf the application is made. If an FOI application is made by a group of people, it may be difficult for an agency or minister to decide that issue without receiving more information about the members of the group or the nature of the FOI application.

3.40 Thirdly, where the FOI applicant has an affiliation with an organisation but leaves that organisation while the request is being processed (for example, a journalist who leaves a media organisation), it may be necessary to ascertain whether the request was made in a personal or a representative capacity, and whether the FOI applicant wishes the processing of the request to continue. This issue may become more important if an access charge is payable, the request has reached the stage of internal or IC review, or a third party objects to disclosure under ss 26A, 26AA, 27 or 27A.

3.41 Fourthly, in IC review of access refusal and access grant decisions, the OAIC is frequently in contact with FOI applicants to discuss procedural steps and options for resolving matters. The integrity of this process can depend on the OAIC being able to communicate on a continuing basis with a person who has authority to represent an organisation or group.
Reasons for a request

3.42 A person’s right of access is not affected by any reasons they give for seeking access or any belief the agency or minister may have as to the reasons for seeking access (s 11(2)). In general, any use an applicant might make of the documents is not relevant to the decision whether to grant them access.

3.43 Nothing in the FOI Act limits what an applicant may do with the released documents (although other legal restrictions such as copyright will still apply). A decision to give a person access should therefore be made on the assumption that the content of any document that is released is disclosed to the world at large. In addition, the disclosure log provisions require general publication of information released to individual applicants, subject to limited exceptions for personal, business and other information (see Part 14 of these Guidelines).

Sufficient information

3.44 An applicant must provide information that is ‘reasonably necessary’ to enable the agency or minister to identify the document that is requested (s 15(2)(b)). A request can be described quite broadly and must be read fairly by an agency or minister, being mindful not to take a narrow or pedantic approach to its construction.

3.45 The request will extend to any document that might reasonably be taken to be included within the description the applicant has used. An applicant may not know exactly what documents exist and may describe a class of documents, for example:

- all documents relating to a particular person or subject matter
- all documents of a specified class that contain information of a particular kind
- all documents relating to a subject or person held in a particular place.

3.46 The request does not need to quote a file or folio number. A request for a ‘file’ is to be construed as a request for all of the documents contained in the file, including the file cover. A request for all documents relating to a particular subject would also include any document or print-out which lists the names of all of the files the agency may consider relevant to the request. An agency will need to exercise care in relation to any sensitive material, such as personal names, that may appear on the list. If in doubt, the agency or minister should consult the applicant to discuss exactly what documents are being requested.

3.47 It can be difficult for a member of the public to identify the agency or minister most relevant to their enquiry, as the Australian Government comprises many agencies. If an agency knows that the relevant document is in the possession of another agency or minister or is more closely connected with the functions of another agency or minister, the first agency has a duty to take reasonable steps to assist the applicant to direct their request to the appropriate agency or minister (s 15(4)), or to transfer the request or part of the request to that agency or minister (see paragraphs 3.76–3.89 below).

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3.48 On receiving a request the agency or minister must, as soon as practicable, and within 14 days, take all reasonable steps to enable the applicant to be notified that the request has been received (s 15(5)(a)). This requirement will be met by sending a notice of receipt to the contact details the applicant provided. The 14-day timeframe commences on the day after the day the request is received in an agency or minister’s office and not from the time it is received in the area where the request is processed (for example, the FOI team).

Assisting an applicant

3.49 Agencies must take reasonable steps to assist a person to make a request that complies with the formal requirements of the FOI Act (s 15(3)). The duty under this section applies both when a person wishes to make a request and when they have made a request that does not meet the formal requirements. While the Act places an obligation only on agencies, the Information Commissioner urges ministers’ offices to adopt a similar approach to assisting applicants.

3.50 The duty to assist at s 15(3) requires ‘reasonable steps’ to be taken. What are reasonable steps depends on the circumstances. Factors such as the nature of the request and the extent of detail required to clarify the scope of a request will determine what an agency needs to do to assist. An applicant may need special assistance because of language or literacy issues or a disability.

3.51 If a person has not yet made a request and contacts an agency or minister’s office to enquire whether they hold particular information, it is appropriate to explain the agency’s functions and the type of information that is held. If the request relates to information that the agency or minister’s office has already published in its disclosure log or as part of an agency Information Publication Scheme, they should advise the person where the information can be found (see Parts 13 and 14 of these Guidelines).

3.52 If a request lacks sufficient information to enable the documents to be identified, an agency or minister’s office can usually help the applicant to fulfil the requirements by telephone if those contact details have been provided. This contact can be made either before or after a request is formally acknowledged. It should rarely be necessary to require the submission of a fresh written request if only a minor detail, such as a date relevant to a particular document, has been omitted from the access request. Once the further information is provided, the agency or minister’s office should inform the applicant that their request meets the statutory requirements and that the timeframe for deciding the request has commenced (see Part 8 of these Guidelines).

3.53 It is important to keep good records of contact with applicants, such as file notes of conversations, so that an agency can demonstrate if required that it has taken reasonable steps in accordance with s 15(3).

Identifying, locating and collating documents

3.54 The FOI Act is silent about what an agency or minister must do in terms of searching for documents that may be relevant to a request. Agencies should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What
constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s environment. At a minimum, an agency or minister should take comprehensive steps to locate a document, having regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents
- the record management systems in place
- the individuals within an agency who may be able to assist with the location of documents, and
- the age of the documents.

3.55 Agencies are responsible for managing and storing their records in a way that facilitates finding them for the purposes of an FOI request. Whether it is necessary for an agency to conduct a search of its backup systems for documents will depend on the circumstances. For example, if the agency is aware that its backup system merely duplicates documents that are easily retrievable from its main records system, a search of the backup system would be unnecessary. On the other hand, if an agency suspected that its backup system contained relevant documents not otherwise available or if the applicant clearly included backup systems in their request, the agency would need to search that backup system (provided that it was not a substantial and unreasonable diversion of its resources – see paragraphs 3.57–3.74 below).

3.56 The Information Commissioner considers that, as a minimum, an agency should conduct a search by using existing technology and infrastructure to conduct an electronic search of documents, as well as making enquiries of those who may be able to help locate the documents.

Refusal on resource grounds — a practical refusal reason

3.57 An agency or minister may refuse an FOI request if satisfied that the work involved in processing it would substantially and unreasonably divert the agency’s resources or substantially and unreasonably interfere with the performance of the minister’s functions or if the request does not sufficiently identify the desired documents (ss 24 and 24AA).

3.58 This is an important power aimed at ensuring that the capacity of agencies and ministers to discharge their normal functions is not undermined by processing FOI requests that are unreasonably burdensome. However, the power applies only in strictly limited circumstances. Given the objectives in the FOI Act that information held by government is a

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12 Chu v Telstra Corporation Limited (2005) FCA 1730 at 35, Finn J: ‘Taking the steps necessary to do this may in some circumstances require the agency or Minister to confront and overcome inadequacies in its investigatory processes’.


national resource and that public access to information should be facilitated, agencies must ensure that appropriate resources are allocated to dealing with FOI matters. This may include assigning additional temporary resources to handle a peak in the number or complexity of requests or to overcome inadequate administrative procedures. Poor record keeping or an inefficient filing system would not of themselves provide grounds for a claim that identifying or locating documents would be a substantial and unreasonable diversion of resources. Nor would the fact that a large number of documents lay within the scope of a request be determinative if the documents could be easily identified, collated and assessed.

**Determining a practical refusal reason**

3.59 A ‘practical refusal reason’ exists if:

- in the case of an agency — the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations (s 24AA(1)(a)(i))
- in the case of a minister — the work involved would substantially and unreasonably interfere with the performance of the minister’s functions (s 24AA(1)(a)(ii))
- the request does not provide information that is reasonably necessary for a responsible officer of the agency, or the minister, to be able to identify the documents (s 24AA(1)(b)).

3.60 Agencies and ministers’ offices should have procedures in place to enable them to assess the resources that would be required to process a request. When assessing whether a practical refusal reason exists, the agency or minister can have regard to any relevant matter, but must have regard to the resources required to perform the following activities:

- the identification, location or collation of the documents within the filing system of the agency or minister (s 24AA(2)(a))
- the decision making process (s 24AA(2)(b)), including such activities as:
  - examination of the document
  - consultations
- the preparation of the decision and documents (s 24AA(2)(c)), including:
  - editing of exempt material to grant access to the remainder of a document
  - copying documents
- notifying the applicant of any interim or final decision on the request (s 24AA(2)(d)).

3.61 In deciding whether a practical refusal reason exists, the agency or minister must not have regard to:

- any reasons that the applicant gives for requesting access
- the agency’s or minister’s belief as to what the applicant’s reasons are for requesting access
- any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind (s 24AA(3)).
**Multiple requests**

3.62 Two or more requests from the same applicant may be treated as a single request where the agency or minister is satisfied that:

- the requests relate to the same document or documents (s 24(2)(a))
- the subject matter is substantially the same for the requests (s 24(2)(b)).

3.63 For example, one request may be for folios 1–100 of a file, and a second request may be for folios 101–200 on the same file. Alternatively, three requests from the same applicant may relate to three different chapters of one report. In both examples, the requests may be treated as one request for the purposes of s 24.

**Assessing or sampling for the purposes of determining a practical refusal reason**

3.64 An accurate estimate could be obtained through sampling a reasonable selection of the relevant files as an indication of the time that may be required for the decision-making process. A person with appropriate knowledge or expertise should assess the sample of the documents, looking at each document as if they were making a decision on access, including indicating the number of documents that could be released in an edited form. The availability of the appropriately qualified person, or the adverse effect of the diversion from their usual work, would be one element in assessing the resources of the agency required to process the request.

3.65 The assessment of the sample would provide an indication of the complexity of the potential decision, that is, the number of exemptions required, the topic and content of the documents. The number of consultations required, including the effort required to ensure current contact details of the third parties, would also need to be included in the calculation of the estimate.

3.66 An agency needs to identify the resources it has available to process the request, including any resources that could reasonably be diverted to enable the processing of the request (such as by way of assisting in collating and copying documents), not just those identified as usual FOI resources. The test of diversion from other operations will include whether a line area is substantially impaired in its capacity to deal with its ordinary functions. Diversion of resources to the point where serious delay could be caused to other programs could be ‘substantial and unreasonable’, particularly where the project or program is a significant agency function.

**Request consultation process**

3.67 Where an agency or minister is satisfied that a practical refusal reason exists, they cannot decide to refuse an access request without undertaking a request consultation process with the applicant (s 24AB).

3.68 Before commencing a formal request consultation process, agencies and ministers’ offices are encouraged to discuss the request with the applicant. This is often a more efficient way of obtaining further information from the applicant and helping them to refine a request that is too large or vague. However, if the applicant cannot be contacted promptly, or the discussion does not elicit information that allows relevant documents to be identified, the request consultation process should be commenced.
3.69 The agency or minister must give the applicant a written notice that states:

- an intention to refuse access to a document in accordance with a request
- the practical refusal reason
- the name and contact details of an officer with whom the applicant may consult during the process, and details of how the applicant may contact them
- that the consultation period during which the applicant may consult the contact person is 14 days after the day the applicant is given the notice (s 24AB(2)).

3.70 An agency or minister may wish to state how an applicant is to consult with the contact person, such as by telephone. However it would be unreasonable not to provide a flexible approach. The consultation period may be extended by agreement between the contact officer and applicant, in which case the contact officer must give the applicant written notice of the extension (s 24AB(5)). The request consultation process period is disregarded in calculating the timeframe for making a decision on the request (s 24AB(8)), that is, the process ‘stops the clock’.

3.71 Agencies and ministers are only obliged to undertake a request consultation process once for any particular request (s 24AB(9)), but they may choose to continue discussions with an applicant in order to refine a request that is still too large or vague.

Assisting the applicant

3.72 If an applicant contacts a contact officer during the consultation period, the contact officer must take reasonable steps to help them revise the request so that the practical refusal reason no longer exists (s 24AB(3)). For example, a contact officer could provide a breakdown of the time estimated for each step of the process, explain the difficulties the agency will have in dealing with the request and suggest what would be a reasonable request in the circumstances.

Consultation outcome

3.73 Before the end of the consultation period the applicant must by written notice to the agency or minister:

- withdraw the request
- revise the request, or
- indicate that they do not wish to revise the request (s 24AB(6)).

3.74 The request is taken to have been withdrawn if the applicant did not consult the contact person or provide the required written notice as required during the consultation period (s 24AB(7)). This includes where a verbal agreement is reached with the applicant to revise the request but the applicant does not do so.

Timeframe for dealing with a request

3.75 The Act sets out timeframes for dealing with FOI requests. These are discussed in Part 8 of these guidelines.
Transferring requests to other agencies

3.76 Section 16 provides for the transfer of FOI requests between agencies and ministers. The transfer provisions facilitate access by avoiding the need for the applicant to make a new request to another agency or minister and by providing a whole of government approach to making information accessible by the public. Transfer of a request also allows the decision to be made by the agency or minister best placed to make an informed assessment about disclosure of relevant documents.

3.77 As the transfer of an FOI request affects the obligations of agencies and ministers, consultation between them is essential. Informal consultation is particularly critical in the case of complex requests or requests where an applicant has requested the same documents from numerous agencies or ministers. Agencies and ministers’ offices are encouraged to consult each other as soon as possible and, where a request may contain more than one part, agree promptly as to who will be responsible for which part.

3.78 The agency or minister who first receives an FOI request is referred to in the following paragraphs as the ‘transferring agency’, and the agency or minister who receives the transferred FOI request is referred to as the ‘receiving agency’.

3.79 Some transfers under the FOI Act are by agreement and others are mandatory (see paragraphs 3.84–3.88 below). Agencies and ministers should give early consideration to whether a request should be transferred. This will enable the notices to the applicant under s 15(5)(a) (acknowledgement of receipt) and s 16(4) (transfer of request) to be combined and ensure that the receiving agency or minister is not disadvantaged by delay.

3.80 Requests should not be transferred as a matter of administrative convenience. The transferring agency or minister should take whatever reasonable steps are necessary to ascertain whether they have the documents that may meet the description in the FOI request.16

3.81 An agency or minister may partially or wholly transfer a request (s 16(3A)). When an agency or minister receives a request for documents, some of which are in the possession of different agencies, the request is notionally divided into different requests. Each agency or minister then has obligations to make their own response to the request in accordance with the Act.

Timeframe

3.82 A transferred request is deemed to have been received by the second agency or minister at the time it was received by the first agency or minister (s 16(5)(b)). In other words, the decision making period commences when the request was originally received, and the receiving agency or minister is not given extra time.

Notifying the applicant

3.83 The transferring agency must advise the applicant that the request has been transferred (s 16(4)). The notification should state when the request was transferred and why, and the name and contact details of the agency or minister to whom the request was

transferred. Particular care needs to be taken in relation to certain documents whose existence should neither be confirmed nor denied (see paragraph 3.89 below and Part 8 of these Guidelines). Where it is necessary to enable the receiving agency to deal with the request, the transferring agency should also send a copy of the relevant document to the receiving agency (s 16(4)).

**Transfer of requests with agreement**

3.84 An agency or minister who receives a request may transfer the request, or part of the request, to another agency or minister with their agreement if:

- the document is not in the first agency or minister’s possession but is to their knowledge in the possession of another agency or minister, or

- the subject matter of the document is more closely connected with the functions of another agency or minister (s 16(1)).

3.85 The fact that an agency produced a document does not necessarily make it more closely connected with that agency.

3.86 Documents generated by the joint activities of a number of agencies (such as an interdepartmental committee) might be ‘more closely connected’ with the agency which chaired the committee or which initiated the production of the document.

**Mandatory transfer of requests**

3.87 Requests for documents of certain agencies or agency activities must be transferred as follows. Where an agency or minister receives a request for access to a document which:

- originates from the bodies or agencies listed in Parts I and II of Schedule 2 to the FOI Act or from a body corporate established under the legislation listed in Part 3 of Schedule 2, and

- is more closely connected with the functions of that other body or agency,

the transferring agency must transfer the request to the responsible department of state (s 16(2)) or specified receiving agency (s 16(3)).

3.88 Part I of Schedule 2 lists certain agencies and those parts of the Department of Defence that are exempt from the operation of the FOI Act in respect of all documents in their possession. Part II of Schedule 2 lists agencies that are exempt from the operation of the FOI Act only in respect of specified types of documents, such as those relating to agency commercial activities (see Part 2 of these Guidelines).

**Transfer of requests without revealing existence of documents**

3.89 The transferring agency should in an appropriate case consult the receiving agency about the possible application of s 25 before completing a transfer. Section 25 makes it clear that an agency or minister does not have to confirm or deny the existence and characteristics of certain documents, that is, documents that are exempt under ss 33 (national security, defence or international relations), 37(1) (law enforcement or public safety) or 45A (Parliamentary Budget Office documents) (see Part 8 of these Guidelines). Consultation is particularly important to prevent inadvertently confirming to an applicant
the existence of such a document before the decision maker has had the chance to consider whether to rely on s 25.

**Consultation**

3.90 Prompt and effective consultation with relevant parties involved in dealing with an FOI access request is essential to good administration.

**Consultation with agencies**

3.91 Each agency or minister is required to make their own decision in relation to a request for access under the FOI Act. However, before making a decision about release of a document it is good practice to consult with other relevant agencies, even when the FOI Act does not require consultation and when the agency does not intend to disclose the document. Through consultation the decision maker may discover that another agency has already disclosed the document in response to an access request or made it publicly available. Consulting with other agencies will also assist in managing requests where an FOI applicant has requested access to the same or similar documents from several agencies.

3.92 In some cases more than one agency will be involved in creating a document, such as through an inter-agency working group. In such circumstances, agencies should ensure that there are procedures in place to determine at the time a document is created whether it will be published under the IPS (see Part 13 of these Guidelines) or released in response to FOI requests. If those procedures are in place, consultation between agencies in response to a later request for access will not be necessary. However, where no procedures were put in place, consultation with the relevant agencies may be necessary. The Information Commissioner draws agencies’ attention to previous advice issued by the Department of the Prime Minister and Cabinet in suggesting consultation in the following specific circumstances:

- For documents involving State premiers, agencies should consult the FOI Coordinator of the Department of the Prime Minister and Cabinet.
- For documents involving cables, agencies should consult the FOI Coordinator of the Department of Foreign Affairs and Trade.
- For documents of intelligence organisations, agencies should consult the FOI Coordinator of the relevant agency overseeing the intelligence organisation.

3.93 For documents involving legal advice originating from the Attorney-General’s Department or the Australian Government Solicitor, agencies can seek advice from the FOI Coordinator of the Attorney-General’s Department (see also Part 5 regarding legal professional privilege and the sharing of legal advices between agencies, and in relation to Cabinet documents).

**Consultation with the applicant**

3.94 Various provisions of the FOI Act require contact with an applicant, as noted above. However, agencies and ministers’ offices are encouraged, as a matter of good administrative practice, to contact an applicant to discuss their request as soon as

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practicable after receiving the request. This contact provides an early opportunity to assist the applicant to address any formal requirements that have not been met (see paragraphs 3.28–3.32 above). Early consultation can also lead to greater efficiency in the process. The agency or minister can discuss with the applicant the scope of their request, particularly if a preliminary assessment indicates there may be a practical refusal reason or estimated charges may be high (see paragraph 3.57–3.74 above and Part 4 of these guidelines). In many cases an applicant may not be aware of the nature and volume of the agency’s records, and, as a result, their request will be expressed in wider terms than is necessary.

3.95 An agency or minister may also wish to seek the applicant’s agreement to an extended period of time to deal with a large or complex request (see Part 8 of these Guidelines).

Consultation with third parties

3.96 An agency or minister may need to consult a third party where documents subject to a request affect Commonwealth-State relations (s 26A) or Norfolk Island intergovernmental relations (s 26AA), are business documents (s 27) or are documents affecting another person’s privacy (s 27A).

3.97 Where an agency or minister is required to consult with a third party:

- the timeframe for making a decision is extended by 30 days
- any submissions by the third party must be considered
- the third party must be given notice of the decision and their review rights, and
- the applicant will only be given access to a document when the third party’s opportunities for review have run out.

3.98 More information on consultation with third parties is in Part 6 and Part 8 of these guidelines. The third party should also be made aware that the agency or minister may be required to publish the documents that are released in response to an access request more generally under the disclosure log provisions (see Part 14 of these Guidelines).