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Agency Resource 14

Access to government information – administrative access

This agency resource explains administrative access, why it may be beneficial for agencies to release information outside the formal FOI request process and how agencies can set up an administrative access arrangement.

Key points

- It is open to agencies to consider administrative access as an option to release information outside of the *Freedom of Information Act 1982* (FOI Act).
- Where a request is received under the FOI Act it is open to the agency to discuss with the individual providing access on an administrative basis. However, it is important to keep in mind that the agency's obligations under the FOI Act continue unless and until the individual confirms their withdrawal of the FOI request.
- Administrative access may be most readily used for release of personal information to the individual about themselves, statistics or data relating to the agency's key functions and activities, information available on the agency's website that the applicant would like to access in a different format and documents that would be released in full if the request were made under the FOI Act. Where disclosure of the information sought would likely impact third parties, or would result in information from the documents being heavily redacted prior to disclosure, it may be more appropriate to deal with the request through the FOI process.
- Disclosure of information through an administrative access arrangement may be advantageous to both agencies and individuals seeking access to information, as it provides an informal avenue for provision of government information, and may offer resource benefits to the agency and quicker processing times for applicants compared to processing requests under the FOI Act.

Background

This resource aims to promote open government in line with Australia’s commitments in its Open Government Partnership National Action Plan by encouraging additional avenues for information release and greater flexibility in managing access requests. Administrative access can provide a quicker, more flexible and inexpensive alternative to providing access to government information through the FOI Act request process. The resource also advances the objects of the FOI Act, which include:

- increasing public participation in Government processes, with a view to promoting better-informed decision-making
- increasing scrutiny, discussion, comment and review of the Government’s activities
- increasing recognition that information held by the Government is to be managed for public purposes, and is a national resource, and
- facilitating and promoting public access to information, promptly and at the lowest reasonable cost.

In addition, it is consistent with the Productivity Commissioner’s *Data Availability and Use Inquiry* to improve access to data.

What is administrative access?

Administrative access means release of government information, in response to a specific request, outside the processes in the FOI Act.

Administrative access may involve:

- providing information or documents when requested by a member of the public
- collating and releasing data or statistics following a specific request
- allowing clients to access and update their personal information through an online portal
- designating an access arrangement for information or documents the agency is commonly asked for
- establishing a formal access arrangement for staff seeking their own personnel records.

This agency resource aims to help agencies facilitate administrative access to agency information upon request, including through an administrative access arrangement that can complement the FOI Act. This can be a simpler and more efficient process than responding more formally to requests for documents under the FOI Act.

Providing access to an individual’s own personal information under an administrative access arrangement can also meet the requirements in the *Privacy Act 1988* (Privacy Act) in relation to access to personal information. Australian Privacy Principle (APP) 12 sets out minimum access requirements that must be met when an agency receives a request from an individual for access to their personal information (for further information, see below [‘Is administrative access to personal information permitted under the Privacy Act?’](#)).

Why foster administrative access requests?

Dealing with requests for information and documents on an administrative basis can offer benefits to agencies and members of the public that include:

- advancing the objects of the FOI Act through the promotion of open government
- encouraging flexibility and engagement with the public
- taking advantage of advances in technology that facilitate fast and easy collation, integration and distribution of information
- offering a lead-in to the FOI process, allowing the public to engage with agencies and refine the scope of the documents they seek before pursuing a formal FOI request
- reflecting the broader movement in public administration towards greater emphasis on dialogue and negotiation between agencies and the public rather than automatic deferral to formal legal processes (such as the FOI request process)
- potentially offering cost benefits and quicker processing times (for example, less time spent on formal FOI notice requirements; and information requests handled by the customer liaison section of the agency rather than a specialist FOI unit).

Is administrative access permitted by the FOI Act?

Release of information outside the FOI Act

The FOI Act does not restrict the circumstances in which government information can be released. Section 3A(2) states that it is not the intention of the Parliament in enacting the FOI Act to limit the power of agencies to publish information or give access to documents, or to prevent or discourage agencies from doing so. An agency may disclose information without a formal FOI request, including information which would be exempt under the Act. See Part 1 of the FOI Guidelines for more information.

It is open to an agency, after receiving an FOI request, to discuss with the applicant providing access on an administrative basis. This may benefit the applicant by providing information as well as documents, more quickly and without charge. In its discussions with the applicant, the agency should inform the applicant about the key differences between processing a request under the FOI Act and providing access through administrative access arrangements, including the fact that it is not open to the applicant to seek merits review of a decision to refuse access to information or documents under an administrative access arrangement except in relation to the individual's own personal information (for further information, see below '[Is administrative access to personal information permitted under the Privacy Act?](#)'). The agency will also need to seek the applicant's agreement to withdraw the FOI request if the applicant is satisfied with the administrative release option.

Administrative access arrangements and personnel records

The FOI Act requires agencies to direct current or former employees to access their personnel records through administrative arrangements before seeking documents through the FOI Act. Section 15A states that where there is an established procedure in place in the agency, a current or former employee must use this procedure to access their personnel records. A person who is not satisfied with the outcome or who is not notified of the outcome within 30 days may then make an FOI access request (s 15A(2)).

Administrative access arrangements and the Information Publication Scheme

Section 8 of the FOI Act requires agencies to proactively publish certain types of information under the Information Publication Scheme (IPS). Section 8(2) sets out the categories of information that agencies must publish, including information in documents to which the agency routinely gives access in response to FOI requests (s 8(2)(g)). This does not include information routinely released under administrative access arrangements. However, it is open to agencies to proactively publish information released under administrative access arrangements, where appropriate, under s 8(4), which allows agencies to publish other types of information under the IPS. For more information about ‘other information held by an agency’ that can be published under s 8(4), please see Part 13 of the FOI Guidelines.

What is the difference between FOI requests and administrative access?

FOI request	Administrative access
<p>A request for access to documents made under the FOI Act must meet certain requirements (for example, it must be in writing).</p>	<p>A request to an agency for information or documents may not need to meet any specific requirements, though an agency may choose to establish a particular process that involves (for example) the applicant filling out a request form or entering information in an online portal.</p> <p>If the request is for the individual’s own personal information, agencies should be mindful of the requirements of APP12 which sets out minimum access requirements that must be met when an agency receives a request from an individual for access to their personal information.</p>
<p>A request must be acknowledged within 14 days and a decision made in 30 days or a longer period if particular circumstances apply, e.g. third party consultation.</p>	<p>The Information Commissioner recommends that requests for information and documents that are handled under administrative arrangements be processed within 30 days. If this cannot be done, and the request could alternately be made as an FOI request, the applicant should be advised of this option. However, it is open to the applicant and the agency or minister to agree to a longer period to provide administrative access to documents as long as the applicant is made aware of their right to make a request under the FOI Act where relevant timeframes apply.</p> <p>Under s 15A of the FOI Act, if a request for access to personnel records under an administrative arrangement is not processed within 30 days, the applicant may apply under the FOI Act for access to their personnel records.</p> <p>Note however, that under the Privacy Act, an agency must respond to a request by an individual for their own personal information within 30 days.</p>
<p>A request for access to documents under the FOI Act is to existing documents. An agency is not strictly required under the FOI Act to create a new document to satisfy a request.</p>	<p>Administrative access requests can be answered in different ways, by discussion between the applicant and the agency. For example, the agency may offer to provide an oral explanation of a decision or action; create a new document rather than provide a redacted version of existing documents; or assemble data or statistics for the applicant.</p>

FOI request	Administrative access
<p>An agency must provide a statement of reasons explaining a decision to refuse an FOI request and the agency’s findings on any material questions of fact. It would also be appropriate for a schedule of exempt documents to be provided to the applicant.</p>	<p>Agencies are not obliged to provide a statement of reasons for a decision not to release information administratively (unless the information is the applicant’s own personal information, in which case the agency is obliged under APP 12 to give a written notice of refusal). It is good administrative practice to explain why a request has been refused, and the applicant should be advised of their right to make an FOI request for agency documents.</p>
<p>Applicants have review rights. An applicant may apply for either an internal review or Information Commissioner review of an access refusal decision made under the FOI Act.</p>	<p>There is no right to merit review of a decision to refuse access to information or documents under an administrative access arrangement. Complaint options that may be open to the applicant include: complaining under the agency’s standard complaint handling processes; complaining to the Ombudsman about how the request was handled; or, if the person requested access to their own personal information, making a privacy complaint to the Office of the Australian Information Commissioner (OAIC).</p>
<p>An agency must publish information released in response to FOI requests in a disclosure log on its website (subject to certain exceptions).</p>	<p>Agencies are not obliged to publish information they release administratively. However, agencies should adopt a proactive publication stance. If there is no legal need to protect the information it should be open to public access.</p>
<p>An agency cannot place any conditions or restrictions on an applicant’s use or further publication of the document (although the applicant does not gain protection from ss 90-92 of the FOI Act, discussed below).</p>	<p>Administrative access should not be provided on less favourable terms than FOI access (where that would be available). That is not to say that agencies cannot make special access arrangements for particular purposes: for example, it is common to impose a temporary embargo on public reporting of government announcements or news releases; and researchers are sometimes given conditional access to confidential or privileged information.</p>

Administrative access arrangements and protection against civil liability and criminal prosecutions

The FOI Act provides protection against civil action (ss 90–91) and criminal prosecution (s 92) for agencies and officers who publish or give access to documents under the FOI Act.

Section 90 provides that no action for defamation, breach of confidence or infringement of copyright lies against an agency or an agency officer solely on the ground of having given or authorised access to a document. The main qualification is that the agency or officer must have acted in good faith in the belief that publication or giving access under the FOI Act was required or permitted. Section 92 operates in a similar way to s 90 in providing immunity from criminal prosecution.

Given that administrative access involves the release of information outside the formal FOI processes, the protections against civil liability and criminal prosecutions under the FOI Act would not be available to disclosures through an administrative access arrangement.

However, any release of the individual's own personal information, where the administrative access arrangements meet the minimum requirements of the Privacy Act, would likely attract the similar protections under that Act.

Agencies should consider any risks in providing access to information through an administrative access arrangement.

Types of information and documents appropriate for release through administrative access

The types of information and documents that may be appropriate for administrative access will depend on the nature of the information and the functions and activities of the agency. Some types of information that may suit release under administrative access arrangements include:

- documents containing the personal information of the applicant (for example, correspondence to the applicant, applications made by the applicant, agency assessment of those applications, documents supplied by the applicant and records of contact with the applicant)
- documents containing the personal information of an applicant who is a current or former employee of the agency (for example, performance appraisals, remuneration information, group certificates, workplace health and safety assessments, incident reports involving the employee may be released through administrative access arrangements, which can be considered as 'an established procedure in an agency' for the purposes of s 15A(2) of the FOI Act)
- statistics or data relating to the agency's key functions and activities, excluding data containing personal information and sensitive unit level data about individuals (for more information on publishing sensitive unit record level data, refer to the OAIC's publication [*De-identification and the Privacy Act*](#))
- information available on the agency's website that the applicant would like to access in a different format (for example, where the document is an audio recording and the applicant wishes to receive the document as a transcript)
- documents that would be released in full if the request were made under the FOI Act
- information that can be provided more simply and efficiently than through an FOI request, such as information from documents that would be heavily redacted if released under the FOI Act, and information about the process followed or issues considered in reaching or preparing for a particular decision. In such circumstances, a summary could be provided
- information that may promote the principles of open government.

Limitations on administrative release

Where an applicant has requested information under the FOI Act, but an agency or minister is of the view that the request can be appropriately dealt with by administrative access, an agency or minister needs to obtain the applicant's consent, prior to dealing with the request by way of administrative access, and confirm withdrawal of the FOI request.

Agencies and ministers should make sure that the applicant is adequately informed of the implications of consenting to the request being dealt with by way of administrative access, given there is no right to merit review of a decision to refuse access to documents under administrative access. If the applicant's consent is not obtained, the agency's or minister's obligation to process the FOI request remains and the relevant statutory processing period still applies.

Release of information or documents under administrative access arrangements may not be appropriate where:

- statutory secrecy provisions prevent release of the information
- release may breach the Privacy Act, for example, a dataset containing personal information that has had identifiers such as names and addresses removed but still has the potential to be re-identified in whole or in part (for advice about de-identification, refer to the OAIC's publication *De-identification and the Privacy Act*)
- a third party may object to the release of the information, and the request is better handled under the third party consultation procedures in the FOI Act
- more than minor redactions are likely to be made to the documents, or
- the applicant has indicated that they wish to have the opportunity, if refused information, to apply for independent review of the agency's decision under the FOI Act.

Is administrative access to personal information permitted by the Privacy Act?

The APPs in the Privacy Act set out standards, rights and obligations in relation to the collection, handling, holding, accessing and correcting of an individual's own personal information. APP 12 provides that an agency must, on request, give an individual access to the personal information it holds about the individual, subject to some exceptions.

This can be done on an administrative basis, as long as the minimum access requirements set out in APP 12 are met. These include that an agency must respond to the request within 30 days, give access free of charge and, if practicable, in the manner requested by the individual, and explain in writing any refusal to provide access.

APP 13, which deals with correction of incorrect personal information, is similar in approach. An agency can handle an individual's request to correct personal information about them on an administrative basis, as long as the minimum procedural requirements set out in APP 13 are met.

For detailed information about the APPs, see the Information Commissioner's [APP Guidelines](#). A key principle stated in the APP Guidelines (in Part 12) is that agencies should endeavour to provide access to an individual's own personal information in a manner that is as prompt, uncomplicated and inexpensive as possible.

Requests for amendments or annotations to personal information

The FOI Act and the Privacy Act both generally allow individuals to seek access to their personal information and to have that information corrected or annotated. For a detailed comparison between the procedures under the FOI Act and APP 13, please see Part 7 of the FOI Guidelines.

If an individual makes a request to amend or annotate their personal information under the FOI Act, it is not open to agencies and ministers to treat that request as being made under the Privacy Act or administrative access without first seeking written confirmation that the applicant agrees to withdrawal of their request under the FOI Act. Before an agency or minister proposes to the applicant that the request for amendment or annotation is made through the Privacy Act or administrative access rather than the FOI Act, the agency or minister should inform the applicant of the review options available to the applicant under the FOI Act and the Privacy Act.

Setting up administrative access arrangements

Many requests for information or documents can be handled on an administrative basis in an informal and flexible manner — a discussion with the applicant may be all that is required. It can also be advantageous for an agency to set up an administrative access arrangement that is explained on the agency's website. This may encourage applicants to use this path for accessing information before opting to make a formal FOI request for an agency document. The following is advice on matters to consider when setting up an administrative access arrangement.

An administrative access arrangement will necessarily 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 will be reflected in the access arrangements they adopt. An agency may establish different arrangements to cater for the different types of records it holds.

Assessing the need for administrative access arrangements

In identifying information or documents that may suit administrative release, consider whether administrative access arrangements would:

- allow your agency to deal more efficiently with access requests (in comparison to dealing with requests under FOI)
- allow your agency to process requests at a lower cost than if the documents were made available under the FOI Act

- comply with any other laws that may have a bearing on the handling of the information, such as the minimum access requirements set out in the Privacy Act when an individual is seeking access to their personal information
- advance the object of the FOI Act to ‘facilitate and promote public access to information, promptly and at the lowest reasonable cost’ (s 3(4)).

Cost of providing access

The FOI Act requires agencies to facilitate public access to information at the lowest reasonable cost (s 3(4)). Accordingly, unless exceptional circumstances exist (for example, where there is a need to integrate data or compile statistics, as distinct from simply giving access to existing documents), agencies should not impose an access fee for documents provided under an administrative access arrangement. In deciding whether to impose a charge, agencies should consider whether the documents relate to matters of particular public interest or importance. With respect to administrative access to an individual’s own personal information, the Privacy Act prohibits agencies from charging an individual for giving access to or correcting their own personal information.

Transparency of process

Having decided to use administrative access arrangements, an agency should ensure those arrangements involve:

- a clear description of the types of information or documents that may be accessed through the arrangement
- processing requests within 30 days of receiving the request
- an efficient process for referral of requests to the formal FOI process where FOI is more appropriate or where the applicant would prefer to apply under the FOI Act (ie, the applicant is directed straight to the FOI process rather than after 30 days)
- a standard approach to establishing proof of identity (for requests for an individual’s own personal information)
- a process for dealing with complaints about how a request is dealt with under the arrangements
- a process for recording requests and collecting statistics to help with future review and refinement of the administration of the arrangement
- a link to information about the FOI Act request process and an explanation about how the administrative access arrangements supplement and do not detract from a person’s rights under that Act
- if a request involves access to or correction of an individual’s own personal information, arrangements that comply with the minimum requirements of the APPs in the Privacy Act.

Publishing administrative access arrangements

To manage client expectations, agencies should publish their administrative access arrangements on their website. The Information Commissioner recommends that an ‘Access to Information’ link on an agency’s website homepage will provide a single point of access and can helpfully provide consolidated information about access to information through the FOI and Privacy Acts, administrative arrangements and the IPS.

Administrative access checklist

<input type="checkbox"/>	<p>Administrative access arrangements prominent on website</p> <p>Details of your administrative access arrangements are set out on your agency's website (including on your FOI or Access to Information page).</p>
<input type="checkbox"/>	<p>Types of information available through administrative access</p> <p>You have clearly explained on your website what sorts of information or documents are available on an administrative basis and what sorts of documents should be pursued through the standard FOI request process.</p>
<input type="checkbox"/>	<p>Arrangement for requesting documents</p> <p>You have clearly explained the arrangement for requesting information or documents through administrative access (where requests should be sent, what contact details should be given, how quickly the person can expect a response, the likely form access will be given in).</p>
<input type="checkbox"/>	<p>Interaction with the FOI Act</p> <p>You have clearly explained how the administrative access arrangements interact with the FOI Act (including when an applicant may be directed to make a formal FOI access request). It should also be made clear to the public that they may go straight to the FOI process if they prefer.</p>
<input type="checkbox"/>	<p>Administrative access to an individual's own personal information complies with the Privacy Act</p> <p>If the administrative access arrangements cover access to or correction of an individual's own personal information in your agency, you have ensured that the arrangement complies with the minimum requirements of the APP 12 and 13 in the Privacy Act.</p>
<input type="checkbox"/>	<p>Proof of identity</p> <p>You have set out the proof of identity requirements for requests for an individual's own personal information or where a third party has a legal right to access an individual's personal information.</p>
<input type="checkbox"/>	<p>Thirty day turnaround</p> <p>Your internal processes ensure that requests are acknowledged promptly and resolved in 30 days.</p> <p>For non-personal information requests likely to take longer than 30 days, applicants are made aware at the time of the request of their right to make a request under the FOI Act, advised of the rights accruing under an FOI request and agreement sought to continue as an administrative request.</p> <p>For requests for an individual's own personal information that are likely to take longer than 30 days, applicants are made aware at the time of making the request of their right to make a request under either the FOI Act or the Privacy Act, advised of the rights accruing under each Act and that continuing under administrative access will be taken to be a Privacy Act request.</p>

<input type="checkbox"/>	<p>Complaint handling</p> <p>You have clearly explained how applicants can complain about how you handled their request under administrative access arrangements (including to the Commonwealth Ombudsman or, for requests for an individual’s own personal information, to the OAIC generally after first complaining to the agency).</p>
<input type="checkbox"/>	<p>Record keeping</p> <p>Standard agency record keeping processes apply to documents released in response to an administrative access request (and statistics are kept, if appropriate).</p>
<input type="checkbox"/>	<p>Review</p> <p>You carry out regular reviews to ensure that administrative access is operating effectively and to identify any information that is routinely requested and could be published on your IPS under s 8(4).</p>

For further information

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Or visit our website www.oaic.gov.au

The information provided in this resource is of a general nature. It is not a substitute for legal advice.

