



# Freedom of Information Business Rules

## PURPOSE

This document sets out the key roles, responsibilities and procedures the Department of the Prime Minister and Cabinet (PM&C) will follow in managing and responding to requests made to the Department under the *Freedom of Information Act 1982* (Cth) (FOI Act).

## WHAT IS FREEDOM OF INFORMATION?

The FOI Act provides a legally enforceable right of access to government documents subject to certain exemptions. It applies to Australian Government ministers and most agencies (including PM&C).

Complying with the FOI Act is a statutory obligation with enforceable timeframes. An FOI applicant who is dissatisfied with a PM&C decision can ask for the decision to be reviewed internally; by the Office of the Australian Information Commissioner or by the Administrative Appeals Tribunal. FOI decisions can also receive scrutiny by Parliament, parliamentary committees, the media and the general public.

## ROLES AND RESPONSIBILITIES

### Decision Maker

This is a PM&C employee who is authorised by the Secretary of PM&C to make decisions on PM&C FOI requests.

The Secretary has authorised all SES officers to make decisions under the FOI Act. Usually, the decision maker for an individual request is identified by the FOI team as the SES officer with the closest connection or interest in the subject matter of the FOI request.

The Decision Maker's responsibilities include (with the assistance of the FOI Case Officer and the Decision Maker's Contact Officer):

- making key decisions under the FOI Act about how PM&C will handle and respond to the request (e.g., is the request too large to process, should charges be issued or should documents be released);
- ensuring that reasonable searches for documents have been conducted across the department;
- deciding whether other agencies and third parties should be consulted;
- ensuring relevant areas of the Department, the Prime Minister's Office and other portfolio Minister's offices are kept informed as appropriate.

### Contact Officer

This is the person in the Decision Maker's branch who supports the Decision Maker for a particular FOI request. The Contact Officer will usually be an officer in the Decision Maker's branch.

The Contact Officer's responsibilities include:

- supporting (together with the FOI Case Officer) the Decision Maker in responding to the request;
- assisting the Decision Maker to monitor and meet statutory timeframes for processing the FOI request;
- conducting reasonable searches for documents across the Department;
- keeping records of the searches undertaken including time spent on searches;
- assisting the Decision Maker to complete the Assessment Stage and the Final Stage Checklists;
- in consultation with the Decision Maker and the FOI Case Officer, identifying any internal and external parties that may need to be consulted;
- in consultation with the Decision Maker and the FOI Case Officer, assessing documents for possible release; and
- consulting internally within PM&C on the handling of the request.

### FOI Case Officers

The FOI Case Officer is an officer in the FOI and Privacy Section, Legal Policy Branch, Government Division.

The FOI Case Officer works with the Decision Maker and the Contact Officer to respond to the FOI request in accordance with the Department's statutory obligations under the FOI Act.

The FOI Case Officer's responsibilities include:

- supporting (together with the Contact Officer) the Decision Maker in responding to the request;
- providing specialised advice to the Decision Maker and the Contact Officer on how the FOI Act applies to the request and documents, including
  - the conduct of reasonable searches
  - whether a practical refusal reason exists
  - whether charges are appropriate
  - drafting a statement of reasons
  - preparing the schedule of documents and
  - redacting documents;
- managing consultations with agencies and identified third parties;
- communicating with the FOI applicant about how the request is being processed (including any clarification of the scope of the request, providing updates on progress of the request, and managing any queries that the FOI applicant may have);
- providing regular progress reports to the PM&C Executive (Deputy Secretary Governance);
- managing the following request types:
  - internal reviews
  - Information Commissioner reviews
  - Administrative Appeals Tribunal reviews
  - FOI-related court appeals/proceedings

## KEEPING FOI APPLICANTS INFORMED

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The FOI Act requires PM&C to contact an FOI applicant about their request at certain times (eg acknowledge receipt of the request or advise transfer of the request to another agency). The Act also requires PM&C to take reasonable steps to assist a person to:

- make a valid FOI request, and
- take reasonable steps to assist a person to direct their request to the appropriate agency or minister (for example, if the document requested is not in the possession of the agency but is known or likely to be in the possession of another agency or minister).

Taking account of the 'Guidelines issued by the Office of the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*' (the FOI Guidelines) and, as a matter of good administrative practice, the Department (through the FOI team) will contact the applicant to discuss their request as soon as practicable after receiving the request especially if the scope of the request is not clear or the formal requirements of the FOI Act have not been met.

The Department will also contact the applicant as soon as practicable if a preliminary assessment of the request indicates that:

- there may be a practical refusal reason—for example, the request is too large to process or the terms of the request are not clear;
- the estimated charges for processing the request may be high; or
- the Department may not have the documents sought or another agency or minister may be more appropriate for the processing of request.

## PROCESSING FOI REQUESTS

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The processing of FOI requests in PM&C typically comprises three stages:

- Stage 1 – Determining validity and tasking
- Stage 2 – Consultation and assessment
- Stage 3 – Finalising the decision.

These stages are described in more detail on the following pages.

[Attachment A](#) sets out key timeframes and responsibilities.

**STAGE ONE—Determining validity and tasking**

WHO	WHAT
FOI and Privacy Section	<ul style="list-style-type: none"> <li>• Determines if request is a valid FOI request (may require consultation with the SES officer likely to be the decision maker).</li> <li>• If valid, identifies the appropriate decision maker by consulting the SES officer likely to be the decision maker.</li> <li>• If a decision maker cannot be identified, the First Assistant Secretary (FAS) Government Division will decide who the decision maker will be.</li> <li>• Notifies FAS Government Division of the FOI request, copying in the decision-maker, Deputy Secretary Governance, the decision maker's Deputy Secretary, decision maker's FAS, PMO, relevant PM&amp;C portfolio Minister's office, Assistant Secretary Legal Policy Branch, Director Public Affairs and Media, <a href="mailto:media@pmc.gov.au">media@pmc.gov.au</a>, and <a href="mailto:foi@pmc.gov.au">foi@pmc.gov.au</a>.</li> </ul>
FOI Case Officer	<ul style="list-style-type: none"> <li>• Send meeting request to the approved Decision Maker and Contact Officer (if known). The following information is to be included in the meeting request: <ul style="list-style-type: none"> <li>○ A copy of the FOI request</li> <li>○ The FOI Business Rules</li> <li>○ The Decision Maker's Assessment Stage Checklist</li> </ul> </li> </ul>
FOI Case Officer Contact Officer Decision maker	<ul style="list-style-type: none"> <li>• Meet to discuss: <ul style="list-style-type: none"> <li>○ Overview of the FOI process, including roles and responsibilities</li> <li>○ Terms of the FOI request, including whether the terms are clear</li> <li>○ Key timeframes for managing the request</li> <li>○ The conduct of reasonable searches for documents</li> <li>○ Whether the FOI request should be transferred to another agency or Minister.</li> </ul> </li> </ul>
Contact Officer Decision Maker	<ul style="list-style-type: none"> <li>• Commission and coordinate reasonable searches for documents, ensuring that search requests and responses are copied to <a href="mailto:foi@pmc.gov.au">foi@pmc.gov.au</a>.</li> </ul>
Contact Officer Decision Maker	<ul style="list-style-type: none"> <li>• After reasonable searches for documents have been completed, provide to the FOI Case Officer the following: <ul style="list-style-type: none"> <li>○ completed Decision Maker's Assessment Stage Checklist</li> <li>○ if a practical refusal reason does not exist (i.e, processing would not constitute a substantial and unreasonable diversion of resources, and</li> </ul> </li> </ul>

	<p>the terms of the request are clear)—copies of the documents and a schedule of documents that are within the scope of the FOI request.</p>
FOI Case Officer	<ul style="list-style-type: none"> <li>• Based on the outcomes of the initial searches, advice from the Decision Maker’s (including within the Assessment Stage Checklist) and any other relevant material and discussions, prepare an estimate of the work required to process the FOI request.</li> <li>• Following discussion with the Senior Adviser, FOI and Privacy Section, make a recommendation to the Decision Maker on whether the applicant should be <ul style="list-style-type: none"> <li>○ charged for processing the FOI request, or</li> <li>○ notified of the existence of a practical refusal reason.</li> </ul> </li> </ul>
Decision Maker	<ul style="list-style-type: none"> <li>• Decide whether the applicant should be charged for processing the FOI request or notified of the existence of a practical refusal reason.</li> </ul>
FOI Case Officer Decision Maker	<ul style="list-style-type: none"> <li>• FOI Case Officer to prepare notice of estimated charges or practical refusal reason consultation notice.</li> <li>• Decision Maker to approve draft notice of estimated charges or practical refusal reason consultation notice.</li> <li>• Once approved by the Decision Maker, the FOI Case Officer sends to applicant notice of estimated charges or practical refusal reason consultation notice</li> </ul>
FOI Case Officer Contact Officer Decision maker	<ul style="list-style-type: none"> <li>• If the applicant has been sent a notice of estimated charges, consider what work, if any, can be undertaken while waiting for the FOI applicant to respond (see <b>Stage Two – Consultation, Assessment and Drafting</b>). <ul style="list-style-type: none"> <li>○ Subject to any agreed extension of time, the FOI applicant must respond to the notice of estimated charges within 30 days of receipt, or to the practical refusal reason consultation notice within 14 days of receipt.</li> <li>○ If a response is not received from the FOI applicant within the required statutory timeframes, the FOI request is deemed withdrawn and no further action is required from PM&amp;C.</li> </ul> </li> </ul>
FOI Case Officer Contact Officer Decision Maker	<ul style="list-style-type: none"> <li>• Monitor whether processing of the FOI request is on track to finalise by the due date for the FOI request. <ul style="list-style-type: none"> <li>○ The FOI Case Officer is to seek an appropriate extension of time if needed.</li> </ul> </li> </ul>

**STAGE TWO—Consultation, Assessment and Drafting**

WHO	WHAT
FOI Case Officer Contact Officer Decision Maker	<ul style="list-style-type: none"> <li>• Monitor whether processing of the FOI request is on track to be finalised by the due date for the FOI request – in doing so considers issues such as progress of document searches; drafting of the decision and status of third party consultations.               <ul style="list-style-type: none"> <li>○ The FOI Case Officer is to seek an appropriate extension of time if needed.</li> <li>○ The FOI Case Officer to keep the applicant updated on the progress of their request.</li> </ul> </li> </ul>
FOI Case Officer Contact Officer	<ul style="list-style-type: none"> <li>• FOI Case Officer undertakes any external consultations regarding possible release of the documents identified within the scope the scope of the FOI request.</li> <li>• Contact Officer undertakes any internal consultations regarding possible release of the documents identified within the scope the scope of the FOI request.               <ul style="list-style-type: none"> <li>○ In appropriate cases, the FOI Case Officer may undertake any internal consultations (e.g. Cabinet Division).</li> </ul> </li> </ul>
FOI Case Officer Contact Officer Decision Maker	<ul style="list-style-type: none"> <li>• Consider whether the documents can be released under the FOI Act, having regard to the FOI Guidelines, responses to external and internal consultations, and any other relevant material/information.</li> </ul>
FOI Case Officer	<ul style="list-style-type: none"> <li>• Based on instructions from the Decision Maker, prepares a draft access decision, schedule of documents and a proposed set of the documents, if any.</li> <li>• Seeks clearance of the draft access decision from the Senior Adviser, FOI and Privacy Section before providing the decision to the Decision Maker.</li> </ul>
Decision maker Contact Officer	<ul style="list-style-type: none"> <li>• Manages notification of relevant stakeholders in the Department (may include the Secretary, relevant Deputy Secretary, Deputy Secretary Governance and FAS Government Division), the PM&amp;C media team, the PMO and other agencies or Minister’s offices, including informing of developments and sensitivities with the FOI request               <ul style="list-style-type: none"> <li>○ Communications should be copied to <a href="mailto:foi@pmc.gov.au">foi@pmc.gov.au</a>, or the FOI Case Officer otherwise informed of such developments.</li> </ul> </li> </ul>

**STAGE THREE—Finalising the Decision**

WHO	WHAT
FOI Case Officer Contact Officer Decision Maker	<ul style="list-style-type: none"> <li>• Monitor whether processing of the FOI request is on track to be finalised by the due date for the FOI request – in doing so considers issues such as progress of document searches; drafting of the decision and status of third party consultations. The FOI Case Officer is to seek an appropriate extension of time if needed.</li> <li>• If required, consults with decision maker regarding timeframes and any remedial action required—such as extensions of time (from applicant or OAIC).</li> <li>• If an extension is instructed, the FOI team will contact the applicant or the OAIC on the decision-maker’s behalf</li> </ul>
Decision Maker	<ul style="list-style-type: none"> <li>• Consider the draft decision, schedule of documents and proposed documents and consult the FOI Case Officer regarding any proposed changes.</li> <li>• Discuss the intended decision with the Decision Maker’s FAS and/or Deputy Secretary including whether any talking points, PM&amp;C media team advice or additional briefings are required.</li> <li>• Brief the First Assistant Secretary Government Division on the decision: <ul style="list-style-type: none"> <li>○ FAS Government Division must be briefed on all proposed PM&amp;C FOI decisions (e.g. decisions to release documents, or exempt documents, or refusing a request because there are ‘no documents’ or for a practical refusal reason).</li> <li>○ If the intended decision is not considered sensitive, an email notifying FAS Government Division of the intended decision is satisfactory.</li> </ul> <p><i>If there is any doubt about any possible sensitivities, the FAS Government Division and the Assistant Secretary Legal Policy Branch should be briefed as soon as practicable as per the protocol below:</i></p> <ul style="list-style-type: none"> <li>○ If the intended decision is considered sensitive, a meeting should be organised by the Decision Maker with FAS Government Division, the Assistant Secretary Legal Policy Branch, and the Senior Adviser FOI and Privacy Section, to provide an overview of the intended decision, decision making process, and any possible sensitivities.</li> </ul> <p><i>FAS Government Division may refer intended decisions to Deputy Secretary Governance for noting.</i></p> </li> </ul>

FOI and Privacy Section	<ul style="list-style-type: none"> <li>• After FAS Government Division has noted the decision, the FOI and Privacy Section briefs the PMO on the intended decision.</li> </ul>
Decision maker	<ul style="list-style-type: none"> <li>• After FAS Government Division and the PMO have noted the decision, signs the decision and completes Decision Maker's <u>Final Stage Checklist</u>.</li> </ul>
FOI Case Officer	<ul style="list-style-type: none"> <li>• Packages signed decision, schedule of documents and copies of documents (redacted where necessary) for sending to the FOI applicant.</li> <li>• Arranges for another member of the FOI and Privacy Section to undertake the 'Safe Eyes' process by completing the 'Safe Eyes' checklist before sending the decision package to the FOI applicant.</li> <li>• After completion of the 'Safe Eyes' process, sends the decision package to the FOI applicant.</li> <li>• Arranges for any documents released to the applicant to be published on PM&amp;C's FOI disclosure log (within 10 days) unless exempt from publication under the FOI Act.</li> </ul>



## ATTACHMENT A – KEY TIMEFRAMES AND RESPONSIBILITIES

Day	FOI Case Officer	Decision Maker (DM)	Decision Maker's Contact Officer (CO)
<b>Day 0</b> Request Received	<ul style="list-style-type: none"> <li>Determine validity of FOI request.</li> <li>Determine decision maker.</li> </ul>		
<b>By day 2</b> Request Assigned	<ul style="list-style-type: none"> <li>Meet with DM and CO to discuss management of the FOI request.</li> <li>Acknowledge receipt of the FOI request.</li> </ul>	<ul style="list-style-type: none"> <li>Meet with FOI Case Officer to discuss management of the FOI request (including scope of the request).</li> <li>Appoint Contact Officer in Decision Maker's business area.</li> </ul>	<ul style="list-style-type: none"> <li>Meet with FOI Case Officer to discuss management of the FOI request (including scope of the request).</li> <li>Commission and coordinate reasonable searches for documents.</li> </ul>
<b>By day 7</b> Complete Assessment Stage Checklist and notify charges or practical refusal reason	<ul style="list-style-type: none"> <li>If relevant: Prepare and send to the FOI applicant either a charges notice or a practical refusal consultation notice.</li> </ul>	<ul style="list-style-type: none"> <li>Decide whether the FOI applicant should either be charged for the FOI request or notified of the existence of a practical refusal reason.</li> </ul>	<ul style="list-style-type: none"> <li>Complete reasonable searches for documents.</li> <li>Provide to FOI Contact Officer completed Decision Maker's Assessment Stage Checklist, and if required, a schedule of documents and copies of documents.</li> </ul>
<b>By day 8-25</b> Assessment and Drafting	<ul style="list-style-type: none"> <li>Consult with external parties.</li> <li>In consultation with DM and CO, assess whether documents can be released under the FOI Act.</li> <li>Draft decision for consideration by DM.</li> </ul>	<ul style="list-style-type: none"> <li>Make any decisions about who should be consulted (internal and external).</li> <li>In consultation with FOI Case Officer and CO, assess whether documents can be released under the FOI Act.</li> <li>Instruct the FOI Case Officer on proposed decision.</li> </ul>	<ul style="list-style-type: none"> <li>Consult internal parties.</li> <li>In consultation with DM and FOI Case Officer, assess whether documents can be released under the FOI Act.</li> </ul>
<b>By day 25-29</b> Finalise intended decision and undertake briefings	<ul style="list-style-type: none"> <li>Provide draft decision to DM for consideration.</li> <li>Briefs PMO on intended decision.</li> </ul>	<ul style="list-style-type: none"> <li>Consider draft decision and consult FOI Case Officer on any proposed changes.</li> <li>Brief DM's FAS and/or Deputy Secretary, and FAS Government Division.</li> <li>Discuss any talking points with PM&amp;C's media team and provide to PMO/Minister's office as necessary.</li> </ul>	<ul style="list-style-type: none"> <li>Provide assistance and support to DM to finalise decision.</li> </ul>
<b>By day 30</b> Sign decision and complete Final Stage Checklist and send decision	<ul style="list-style-type: none"> <li>Package decision, schedule of documents and documents for release.</li> <li>Send decision package to the FOI applicant.</li> </ul>	<ul style="list-style-type: none"> <li>Signs decision and complete Final Stage Checklist.</li> </ul>	<ul style="list-style-type: none"> <li>Provide sign decision and completed Final Stage Checklist to the FOI Case Officer.</li> </ul>
<b>By day 40</b> Disclosure Log	<ul style="list-style-type: none"> <li>Publish documents on PMC's FOI disclosure log.</li> </ul>		