



Freedom of Information Act 1982

Instrument of Authorisation

I, Gordon de Brouwer, Secretary of the Department of the Environment and Energy under sections 10A and 23(1) of the *Freedom of Information Act 1982*, hereby:

- (1) revoke all existing authorisations under these provisions of the Act in respect of this Department and its predecessors; and
- (2) authorise each officer who from time to time holds, or occupies or performs the duties of a position in an authorisation group listed in Schedule 1 to this instrument to exercise my powers and functions that are specified in Schedule 2, subject to any limitation specified in this instrument.

Gordon de Brouwer

Gordon de Brouwer

Dated: 17/5/17

Schedule 1 – FOI authorisation groups

Group	Local Description	Classification
1	Deputy Secretary First Assistant Secretary	SES B3 SES B2 and equivalent
2	Assistant Secretary	SES B1 and equivalent
3	Principal Legal Officer, General Counsel Branch, with functional responsibility for Freedom of Information	PLO
4	Senior Legal Officer, General Counsel Branch, with functional responsibility for Freedom of Information	SLO
5	Legal Officer and APS5/6 staff in General Counsel Branch with functional responsibility for Freedom of Information	LO/APS5/APS6

Schedule 2 – FOI Authorisations

Power or function	Authorisation group				
	1	2	3	4	5
Information publication					
Sections 8 and 8D – Determine and authorise publication of information under Department’s Information Publication Scheme obligations and make any associated decisions.	X	X			
Primary requests for access to documents					
Parts III and IV - Make all decisions and discharge all functions in relation to primary requests for access to documents <i>Limitation: Officers who are acting in a position falling in authorisation group 2 for a period less than twelve weeks must not make access grant or access refusal decisions.</i>	X	X			
Section 15(2) and 15(2A) - Decide to refuse a primary request that does not meet the validity requirements of the Act.			X	X	
Section 15(5)(a) - Acknowledge receipt of a primary request			X	X	X
Sections 15AA, 15AB and 15AC(4) - Request that processing time be extended			X	X	
Section 16 – Decide to seek transfer of a primary request			X		
Internal review					
Part VI – Make all decisions and discharge all functions in relation to internal review requests	X				
Section 54B(1)(b)(i) - Grant to applicant extension of time for making an internal review application		X			
Section 54D(3) - Apply to the Information Commissioner for an extension of time to deal with an internal review application		X	X	X	
Information Commissioner and Administrative Appeals Tribunal reviews					
Parts VII and VIIA - Make all decisions and discharge all functions in relation to Information Commissioner and AAT applications	X				
Section 55E - Provide statement of reasons to the Information Commissioner		X			
Section 55G(1) - Vary an access refusal decision during an Information Commissioner review process		X			

Power or function	Authorisation group				
	1	2	3	4	5
<i>Amendment and annotation of records</i>					
Sections 49 and 51A - <i>Make decisions on validity of requests for amendment or annotation of records</i>	X	X	X	X	
Section 51C - <i>Make decisions in relation to transfer of requests for amendment or annotation of records</i>	X	X	X	X	
Sections 50, 51, 51B, 51D and 51DA - <i>Make decisions requests for amendment or annotation of records</i>	X	X			
<i>Miscellaneous</i>					
Sections 89K(3) and 89M(3) - <i>Apply to the Information Commissioner for a vexatious applicant decision and notify the applicant of the decision</i>	X				
Various provisions – <i>Implement decisions made by authorised officers and provide notifications specified in the Act</i>			X	X	X



PROCESSING FOI REQUESTS

- The FOI Act gives the public rights to access records held by departments, agencies and ministers' offices.
- In the Department, the General Counsel Branch coordinates the processing of FOI requests. Branches are responsible for locating documents, identifying sensitivities and staff details on the documents, and supporting their SES to make FOI decisions.
- The General Counsel Branch can assist and advise you on all aspects of FOI.
- This FOI guidance note sets out how we handle FOI requests in the Department. The flowchart below provides an overview of the process.

How we allocate requests

- All FOI requests must first go to the FOI Contact Officer.
- Only an authorised officer can make a decision on access.

The FOI Contact Officer usually receives FOI requests. If you receive a request directly, please send it to the FOI Contact Officer immediately at FOI@environment.gov.au.

The FOI Contact Officer will allocate requests and will consult with relevant line areas if the responsible area is not clear.

Decisions on access must be made by staff authorised to do so by the Secretary under subsection 23(1) of the FOI Act. A copy of this is available on the GCB intranet page: [FOI Instrument of Authorisation](#).

The authorised decision-maker will be at the SES Band 1 or above and is generally part of the Branch or Division which has subject-matter responsibility for the requested documents.

The FOI Contact Officer will acknowledge receipt of the request by sending an acknowledgement letter or email to the applicant within 14 calendar days of receipt of the request confirming the scope of the applicant's request.

What is a valid request?

- The FOI Contact Officer will consider the validity of a request.
- A decision on a valid request must be made within 30 calendar days.

The FOI Contact Officer will consider whether the FOI request is valid under section 15 of the FOI Act. A valid request must:

- be in writing;

- state that the request is an application for the purposes of the FOI Act;
- provide sufficient information concerning the document(s) to enable the Department to identify the document(s); and
- give details of how notices may be sent.

If the request is valid, the Department has **30 calendar days** in which to process and to make a decision on access in relation to the requested documents (the day a request is received is day zero). If the request received is invalid the FOI Contact Officer is obliged to take reasonable steps to assist the applicant to make a valid FOI request.

Should the request be transferred?

In some cases, the Department receives valid requests that are more appropriately dealt the by other agencies (including a Minister's office). This will be considered by the FOI Contact Officer in the first instance, but sometimes they will require guidance from line areas.

If you think a request falls within another agency's responsibilities, you should consult the FOI Contact Officer as early as possible, as there is no allowance of further processing time even if the request is transferred to another agency.

Can the applicant revise the scope of the request?

The applicant may revise the scope of their request at any time.

The Department will often contact applicants early in the process to seek clarification of requests, or to negotiate about scope in order to assist with efficient and timely processing. This contact must only be undertaken through the FOI Contact Officer or the Legal Officers allocated to the FOI request.

Can valid FOI requests be rejected?

No. Even if all the documents are exempt from release or there are no relevant documents a valid request must be processed.

However, for unclear and voluminous requests the Department may, in certain circumstances, trigger a process that can lead to refusal of the request on the basis it is impractical to process (see below). You must consult the FOI Contact Officer before seeking to use this process.

How we contact you about an FOI request

- The FOI Contact Officer will identify the most relevant line area and send the request to the First Assistant Secretary of the relevant division.
- The First Assistant Secretary will nominate a decision-maker.
- The decision-maker will receive guidance information from the FOI Contact Officer.
- Where multiple divisions are involved, one division will need to lead in processing the request, including coordinating search and retrieval across divisions, and consulting internally on sensitivities.

The FOI Contact Officer will email the relevant First Assistant Secretary seeking nomination of a decision-maker, with a copy of the FOI request attached. The Secretary and his EO, relevant Deputy Secretary, General Counsel and Media team are copied into the email.

- The email will set out the initial timeline for the request.
- If a nomination of decision-maker is not received after two days, the FOI Contact Officer will follow up with another email or phone call.
- Sometimes a request may contain sensitive information or have political ramifications. It is the responsibility of the Divisional SES to contact the Minister's Office regarding such requests. For further information see [FOI Guidance – FOI requests for Ministerial documents](#).

Once a decision-maker is nominated, the FOI Contact Officer will email them with a copy of the FOI request and guidance information, including the *Search, Retrieval and Sensitivity Analysis Minute*. The minute sets out what you need to do and the timeline to provide results of document searches.

Practical refusal reason – section 24AB process

- Unclear and voluminous requests can be refused.
- Contact the FOI Team if the request is unclear and/or likely to be voluminous.
- The applicant must be consulted before refusing a request as unclear or voluminous.

A practical refusal reason (see section 24AA of the FOI Act) can be used for a request for a document if:

- the work involved in processing the request would substantially and unreasonably divert the resources of the Department; and/or
- the document cannot be identified from the request.

If a practical refusal reason exists, you must undertake a *request consultation process* (see section 24AB of the FOI Act). On request, the FOI Contact Officer will prepare a written notice to the applicant providing 14 days in which the applicant can contact the Department and, in writing, revise the request, withdraw the request, or indicate that they do not wish to revise the request.

The request will be deemed withdrawn if the applicant does not contact the Department during the consultation period.

If you believe a practical refusal reason exists, you must seek advice from the relevant Legal Officers in GCB to ensure the FOI Act requirements are met.

If a section 24AB process has been initiated, and the applicant contacts the Department to revise the scope of the request, the Department must take reasonable steps to assist the applicant to revise the scope of the request so that the practical refusal reason no longer exists.

Note that issuing a 24AB notice does not necessarily mean that the request will end. Rather, the FOI timeframe will be *paused* until it is refined to a manageable size. If the request is

subsequently refined within 14 days, the FOI timeframe will re-commence at the point at which it paused. For this reason, it is important to identify if a request is too large to process as early as possible, because you may not receive extra time to process it.

Search and Retrieval of documents

- Line areas are responsible for document search and retrieval, including ensuring that documents held by other divisions are captured.
- Line areas must let the FOI Contact Officer know by Day 3 if the scope of the request is unclear or if the request is likely to be voluminous.
- Once documents have been retrieved and sensitivity analysis conducted, the Line Area Contact Officer must meet with decision-maker and Legal Officers managing the request. This will ensure there is early agreement on the best approach.

Document search and retrieval is carried out by relevant line areas. The line area must:

- search for and retrieve the documents subject to the request;
- prepare the documents consistent with the processes in the *FOI Guidance – FOI documentation and Management* (including removing duplicates, converting the documents to PDF and providing them with appropriate filenames);
- identify sensitivities and staff names / details on the documents, preferably by highlighting in Adobe (or on hardcopies and scanned); and
- complete the FOI Document Schedule, which includes advising on any potential sensitivities within the documents (and consultation, if required).

In order to make sure that the decision maker is happy with the direction of the request, the Line Area Contact Officer, decision-maker and Legal Officers managing the request will have a short meeting to confirm the documents within scope and potential sensitivities. This ensures there is early agreement on the best approach and to deal with any initial questions.

The Line Area Contact Officer must complete the *Search, Retrieval and Sensitivity Analysis Minute* and Document Schedule to verify the search and retrieval process. The documents should be provided to the FOI Contact Officer.

Recommendations to decision-maker

Once the documents are received, the relevant Legal Officers will assess and make recommendations to the decision-maker in relation to:

- charges;
- whether the sensitivities identified by the line area give rise to an exemption; and
- consultation with third parties.

The Legal Officers will redact exempt information from the documents and provide the proposed documents for release for consideration by the decision-maker and Line Area Contact Officer.

The decision-maker must confirm whether they agree with the recommendations.

Upon receipt of the decision-maker's response, the Legal Officers will prepare decisions on charges and consultation (if applicable) for decision-maker's approval.

Once the decision-maker has approved, the FOI Contact Officer will:

- inform the applicant of any charges and third party consultations; and
- seek comments from third parties on the release of the documents in accordance with the relevant consultation provision of the FOI Act.

The Legal Officers will make recommendations to the decision-maker and Line Area Contact Officer on the release of documents subject to consultation once responses have been received from third parties.

The FOI decision

- The Legal Officers will prepare a draft decision letter.
- The decision-maker makes the decision.
- The FOI Contact Officer will notify the applicant of the decision.

The Legal Officers will prepare a draft decision for the decision-maker setting out the exemptions identified during processing and explaining how they apply to the relevant documents.

The decision-maker provides the Legal Officer and FOI Contact Officer with a copy of the signed decision letter.

The FOI Contact Officer will email the decision letter and documents to the applicant.

FOI contact info:

s22 [redacted] FOI Contact Officer (02) 6274 2098

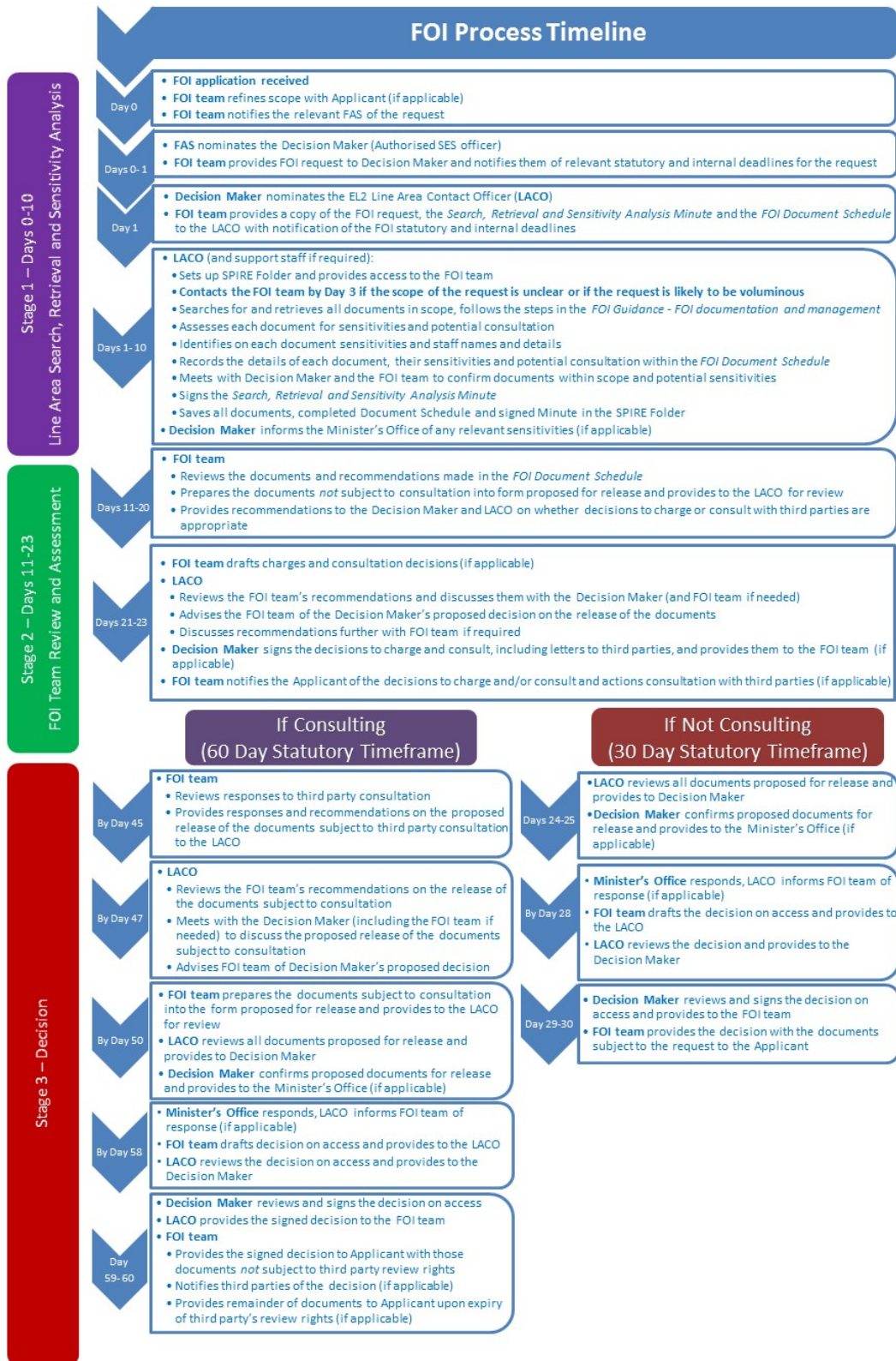
FOI@environment.gov.au

You can find related FOI guidance on the General Counsel Branch FOI [intranet page](#).

Please note that the information contained in this FOI Guidance is provided to Departmental staff for general information only. It is not legal advice and should not be relied upon as if it was legal advice. If you require specific legal advice about an issue, please contact the General Counsel Branch.

Last updated on **30 November 2018**.

Flowchart



FOI Process Timeline

Stage 1 – Days 0-10
Line Area Search, Retrieval and Sensitivity Analysis

- Day 0**
 - FOI application received
 - FOI team refines scope with applicant (if applicable)
 - FOI Contact Officer notifies the relevant FAS of the request and requesting a decision-maker be nominated
- Days 0-1**
 - FAS nominates the decision-maker (authorised SES officer)
 - FOI Contact Officer notifies decision-maker of FOI request, the relevant statutory and internal deadlines for the request, and provides the *Search, Retrieval and Sensitivity Analysis Minute* and the *FOI Document Schedule*
- Days 1-10**
 - Decision-maker nominates the Line Area Contact Officer (LACO) (usually EL2)
 - FOI team discusses scope with LACO. If practical refusal reason exists, draft notice for decision-maker and action request consultation process (if any).
 - LACO (and support staff if required):
 - Sets up SPIRE Folder and provides access to the FOI team
 - Contacts the FOI team by Day 3 if the scope of the request is unclear or if the request is likely to be voluminous
 - Confirms scope with decision-maker before commencing searches
 - Searches for and retrieves all documents in scope, follows the steps in the *FOI Guidance - FOI documentation and management*
 - Assesses each document for sensitivities and potential consultation
 - Identifies on each document sensitivities and staff names and details
 - Records the details of each document, their sensitivities and potential consultation within the *FOI Document Schedule*
 - Signs the *Search, Retrieval and Sensitivity Analysis Minute*
 - Saves all documents, completed Document Schedule and signed Minute in the SPIRE Folder and provides to FOI team
 - Decision-maker meets with the LACO and the FOI team to confirm documents within scope and potential sensitivities
 - Decision-maker informs the Minister's Office of any relevant sensitivities (if applicable)

Stage 2 – Days 11-23
FOI Team Review and Assessment

- Days 11-20**
 - FOI team
 - Reviews the documents and recommendations made in the *FOI Document Schedule*
 - Actions consultation with PM&C on Cabinet documents (if required)
 - Provides recommendations to the decision-maker and LACO on whether decisions to charge or consult with third parties are appropriate, along with draft decisions to charge and / or consult (as required)
- Days 21-23**
 - Decision-maker, if applicable, signs decision to charge and consult, including letters to third parties, and provides to FOI team
 - FOI team notifies applicant of decisions to charge and / or consult and actions third party consultation (if applicable)
 - FOI team, if not consulting, prepares documents into form proposed for release and provides recommendations and documents to LACO to review
 - LACO, if not consulting:
 - Reviews the FOI team's recommendations and discusses them with decision-maker (and FOI team, if needed)
 - Advises FOI team of the decision-maker's proposed decision on the release of documents not subject to consultation

**If Consulting
(60 Day Statutory Timeframe)**

**If Not Consulting
(30 Day Statutory Timeframe)**

Stage 3 – Decision

- By Day 45**
 - FOI team
 - Reviews responses to third party consultation
 - Prepares all documents into form proposed for release
 - Provides responses and recommendations on the proposed release of the documents to the LACO to review
- By Day 47**
 - LACO
 - Reviews the FOI team's recommendations on the release of the documents
 - Meets with the decision-maker (including the FOI team if needed) to discuss the proposed release of the documents
 - Advises FOI team of decision-maker's proposed decision
- By Day 50**
 - FOI team drafts decisions on access and provides to the LACO along with documents proposed for release and provides to the LACO for review
 - LACO reviews all documents proposed for release and provides to decision-maker
 - Decision-maker confirms proposed documents for release and provides to the Minister's Office (if applicable)
- By Day 58**
 - Minister's Office responds, LACO informs FOI team of response (if applicable)
 - LACO reviews the decision on access and provides to the decision-maker
- Day 59-60**
 - Decision-maker reviews and signs the decision on access
 - LACO provides the signed decision to the FOI team
 - FOI team
 - Provides the signed decision to applicant with those documents not subject to third party review rights
 - Notifies third parties of the decision (if applicable)
 - Provides remainder of documents to applicant upon expiry of third party's review rights (if applicable)



FOI EXEMPTIONS - CABINET DOCUMENTS AND DELIBERATIVE MATTER

Cabinet documents and deliberative matter are exempt from production under FOI.

Cabinet documents include documents submitted to Cabinet, ministerial briefs on Cabinet matters, and other documents that would reveal Cabinet deliberations.

Deliberative matter is information relating to opinion, advice, recommendation, consultation or deliberation which has been created as part of the deliberative processes of Government. To be exempt from release under FOI, the information must not only be deliberative but it must also be contrary to the public interest to release it.

A decision-maker must consider the [FOI Guidelines](#) in applying an exemption.

In preparing advice to Government or preparing related documents for internal use, it is important to have appropriate regard to whether that material is appropriately exempt from release under the *Freedom of Information Act 1982*. Understanding the scope of the Cabinet documents and deliberative matter exemptions can assist you in this process.

Cabinet documents exemption (section 34 of the FOI Act)

This exemption allows agencies not to produce Cabinet documents. It is a complete exemption, and does not require the decision-maker to show that the exemption is in the public interest.

What are Cabinet documents?

Cabinet documents include originals, drafts, copies or extracts of:

- documents submitted to Cabinet, or brought into existence for the purpose of submission, and ministerial briefs about the issues covered by the relevant Cabinet process;
- Cabinet records;
- documents that would reveal Cabinet deliberations that have not already been disclosed, including copies of extracts of Cabinet documents; and
- Cabinet committee documents.

Even if a document falls into these classes, it is not exempt if the information consists of **purely factual material**, unless the disclosure of the information would reveal a Cabinet deliberation or decision that has not been officially disclosed.

A document is not an exempt Cabinet document merely because it is attached to these kinds of documents. However, the attachment itself may be an exempt document. For example, an attachment not prepared for the purpose of being provided to Cabinet may not be exempt.

Sensitive documents that canvass policy options that might be taken to Cabinet may not be exempt using this exemption, but they may be exempt under the **deliberative matter exemption** (see below).

The Department must consult the Department of the Prime Minister and Cabinet before applying the Cabinet documents exemption. It will check whether the documents relate to an actual Cabinet process, which can include processes where no Cabinet discussion or decision eventuated. If the documents do not relate to such a process, then it will not agree to the exemption being used.

Deliberative matter exemption (section 47C of the FOI Act)

This exemption allows agencies not to produce material containing deliberative matter. It is not a complete exemption, and the decision-maker must show that the exemption is in the public interest.

What is 'deliberative matter'?

Deliberative matter is information which is, or relates to, opinion, advice recommendation, consultation or deliberation, and which has been created as part of the deliberative (or 'thinking') processes of the Department, the Minister or the Government more broadly.

Deliberative matter does not include:

- purely factual information;
- finalised reports of internal or external scientific or technical experts; or
- the record of an administrative decision or a formal statement of the reasons for an administrative decision.

The public interest test

To be exempt from release as deliberative matter, information must not only be deliberative but it must also be contrary to the public interest to release it. This is called a 'conditional exemption'.

It is not enough for the decision-maker to simply decide that there is no public interest in releasing the document: for it to be exempt it must be against the public interest to disclose the information. This requires the decision-maker to decide where the balance of the public interest lies.

The FOI Act is premised in favour of the release of Government information. If the deliberative matter exemption is to be applied, then the decision-maker must identify a clear and valid public interest basis for withholding the document in question from release.

To apply the public interest test, the decision-maker must first take into account the factors in the FOI Act that suggest that release is required. These are whether disclosure would:

- promote the objects of the FOI Act, which are that release of information is done to promote Australia's representative democracy by contributing towards the following:
 - increasing public participation in Government processes, with a view to promoting better-informed decision-making; and
 - increasing scrutiny, discussion, comment and review of the Government's activities.
- inform debate on a matter of public importance;

- promote effective oversight of public spending; and
- allow a person to access his or her own personal information.

The decision-maker must then consider whether there are public interest factors that outweigh these considerations.

In doing that, the decision-maker must not take into account the following:

- access to the document could result in embarrassment to the Australian Government or the Norfolk Island Government, or cause a loss of confidence in the Australian Government or the Norfolk Island Government;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- access to the document could result in confusion or unnecessary debate.

Examples of documents containing deliberative matter

Deliberative matter is typically contained in the following types of documents, to the extent that they provide contain that deliberative matter:

- documents, including briefings, setting out policy ideas and options for consideration by the Government;
- incoming government briefs;
- documents, including reports, file notes and draft meeting minutes, setting out analysis, ratings and recommendations about whether to make a particular decision on agency activity;
- documents containing analysis of regulatory requirements;
- draft documents and reports;
- other documents (including email and text exchanges) that discuss possible ways to deal with agency responsibilities.

Examples of documents unlikely to contain deliberative matter

The following documents will typically not contain deliberative matter:

- published general information or previously public information;
- information required to be published by statute or required to support a specific statutory decision;
- general descriptions of programmes and factual information about programmes;
- the decision or conclusion reached at the end of a deliberative process; and
- documents recording decisions.

What other exemptions might be relevant?

In framing documents, you should consider the full range of exemptions that may be relevant, depending on the issue being covered. Conditionally exempt information is subject to the public interest test.

International relations (section 33 of the FOI Act): exempt where release would reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth or would divulge information or matters communicated to the Commonwealth in confidence by or on behalf of a foreign government or international body.

Law and safety (section 37 of the FOI Act): exempt where release would prejudice current investigation or proper administration of the law or would reveal information about confidential informants, endanger life or physical safety, prejudice a fair trial, disclose methods of law enforcement or prejudice methods of protection of the public.

Legal professional privilege (section 42 of the FOI Act): exempt where specific information in a document sets out confidential legal advice or is otherwise privileged from production in court proceedings. General Counsel Branch should be consulted about any potential disclosure of legal advice.

Commonwealth-State relations (section 47B of the FOI Act): conditionally exempt where release would, or could reasonably be expected to, damage relations between the Commonwealth and a State or Territory or would divulge information communicated by the Commonwealth in confidence to a State or Territory.

Operations of an agency (section 47E of the FOI Act): information about the operations of an agency is conditionally exempt if release would, or could, reasonably be expected to:

- prejudice the effectiveness of procedures or methods for the conduct of tests or prejudice the attainment of the objects of particular tests; or
- have a substantial adverse effect on the management or assessment of personnel or on the proper and efficient conduct of the operations of the agency.

Trade secrets and business affairs (sections 47 and 47G of the FOI Act): exempt if the information is a trade secret or has commercial value which would be destroyed or diminished by release. Information about business affairs is conditionally exempt if release would:

- have an unreasonable adverse effect on business or professional affairs; and
- prejudice future supply of information to the Government.

To be applied, the business affairs exemption requires consultation with the relevant business, which has review rights.

Personal information (section 47F of the FOI Act): personal information is conditionally exempt if release would involve an unreasonable disclosure of personal information. To be applied, this exemption requires consultation with the affected person, who has review rights.

For more detail on how these exemptions are to be applied, see the [FOI Guidelines](#) or consult the FOI Team in General Counsel Branch.

Key contacts:

§22 (Senior Legal Officer - FOI)	6274 §22
§22 (FOI Coordinator)	6274 2098

FOIcontactofficer@environment.gov.au

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Last updated on **4 August 2016**.



FOI ACT PROVISIONS

Section 34 – Cabinet documents

General rules

- (1) A document is an exempt document if:
- (a) both of the following are satisfied:
 - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
 - (b) it is an official record of the Cabinet; or
 - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
 - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.
- Note:** *However, the attachment itself may be an exempt document.*
- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
- (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed.

Section 47C – Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth; or
 - (d) the Government of Norfolk Island.

Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
 - (b) purely factual material.
- Note:** *An agency must publish its operational information (see section 8).*
- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.
- Note:** *Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).*

Section 11B – Public interest exemptions - factors

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.