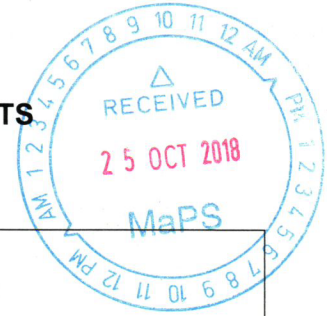


PDR: MS18-001318

To: Minister for Energy (For Decision)

FREEDOM OF INFORMATION – DECISION-MAKING ARRANGEMENTS

Timing: 29 October 2018 (to ensure any requests can be actioned)



Recommendations:

1. That you sign the instrument of authorisation at **Attachment A**.

Signed / Not signed

2. That you agree to the Department providing support to you and your office for FOI processing and related matters.

Agreed / Not agreed

Minister:

Date:

18/10/18

Comments:

Clearing Officer: Sent 17/10/2018	s22	A/g General Counsel	Ph: 02 6274 s22 Mob: s22
Contact Officer:	s22	A/g Deputy General Counsel	Ph: 02 6274 s22 Mob: s22

Key Points:

1. Under the *Freedom of Information Act 1982* requests can be made for access to 'documents of a Minister'.
 - a. These are documents that are in your possession in your Ministerial capacity that relate to the affairs of the portfolio. The definition of documents is very broad.
 - b. There have been 17 FOI requests for Ministerial documents in the financial year to date (2017/18: 11 requests in total). In addition, the office is regularly consulted in relation to Ministerial documents covered by FOI requests which are directed to the Department and other agencies.
2. You are the primary decision-maker under the FOI Act for requests directed to you or your office. However, it is customary for Ministers not to personally undertake FOI decision-making and related actions, but instead to authorise a member of their staff to act as their agent.
 - a. Usually the Chief of Staff is authorised to decide FOI requests directed to a Minister or their office.

- i. FOI access decisions that are usually covered by authorisation include decisions on validity of requests, request transfer, charging, consultation, exemptions and access, and publication of FOI decisions.
 - ii. There are a range of other decisions and actions under the FOI Act that are also usually covered, including participating in reviews of FOI decisions, deciding requests for amendment of records and reporting FOI statistics.
 - b. The draft instrument of authorisation at **Attachment A** would authorise your Chief of Staff, Tim Roy, to carry out all relevant actions that would otherwise fall to you under the FOI Act.
 - i. The draft authorisation is in very broad terms. You could issue a more limited authorisation (for example, limited to making access decisions only), but this may lead to your having to make various minor decisions personally or issue further authorisations for other FOI Act matters as and when a need arises.
 - ii. We will supply a template authorisation instrument to your office in case you wish to authorise other staff members.
 - c. If you do issue an authorisation, the person you authorise will be acting on your behalf. Accordingly, you may wish to discuss with them your expectations about how it will be exercised and what reporting and consultation you would expect to occur.
3. The Department can provide all relevant processing support to assist your office in handling requests and making FOI decisions, and we did so for Minister Frydenberg.
 - a. The Department's current procedures for dealing with Ministerial document requests are described in **Attachment B**.
 - b. We have proposed a briefing for your office about FOI handling and will schedule it shortly.
 - c. We would be happy to discuss with you or your office any other changes to the process we have proposed.

Consultation: NIL

ATTACHMENTS

- A:** Draft instrument of authorisation
B: Guidance note on handling of Minister office requests



FREEDOM OF INFORMATION ACT 1982

INSTRUMENT OF AUTHORISATION

I, ANGUS TAYLOR MP, Minister for Energy, hereby authorise Tim Roy, Chief of Staff of my ministerial office, to act on my behalf in relation to all decisions and related actions under the *Freedom of Information Act 1982* that arise from my ministerial capacity.

Dated:

A handwritten signature in blue ink that reads 'Angus Taylor'.

Angus Taylor MP
Minister for Energy

Department of the Environment and Energy
General Counsel Branch
LEGAL GUIDANCE NOTE



FOI REQUESTS FOR MINISTERIAL DOCUMENTS

This guidance note sets out the Department's approach to processing requests that seek documents held by the Minister or the Minister's office.

How requests are made on the Minister or the Minister's office

Under the FOI Act, the Department and the Minister are treated as separate agencies. In applying the Act, the Minister includes the Minister's office.

Requests for ministerial documents can be made directly to the office or through the Department.

If an FOI request is received by the Department, it is taken to be seeking Departmental documents only unless it explicitly identifies that it seeks documents held by the Minister or office.

Processing of ministerial FOI requests

The Minister and their Chief of Staff (and any other staff authorised by the Minister) make decisions under the FOI Act for ministerial FOI requests.

The Department's General Counsel Branch is usually asked to assist in processing a ministerial FOI request.

FOI requests made upon the Department that seek ministerial documents

If a request is made on the Department that, in part or full:

- seeks documents that would likely be held exclusively by the Minister; or
- relates to a subject matter more closely connected with the functions of the Minister;

the Department may ask the Minister's office to accept a full or partial transfer of the request.

If accepted, the transferred request will then be processed as if it had been made directly on the Minister's office. If the request was only partially transferred to the Minister's Office, the Department will continue to process the part that was not transferred.

What ministerial documents can be requested?

Under the FOI Act, 'document' is defined very broadly and includes all paper records as well as electronic communications and various other non-paper records.

However, not every document held by the Minister or their office can be the subject of an FOI request. Requests may only be made for an 'official document of a Minister' as defined in the FOI Act. This means a document *held in the Minister's capacity as a Minister* and which *relates to the affairs of an agency or Department*.

The following are not official documents of a Minister:

- personal documents of a Minister or their staff
- documents of a party political nature, and
- documents held in the Minister's capacity as a local member of parliament not dealing with the Minister's portfolio responsibility.

To be covered by the FOI Act the ministerial document must be in the possession of the current Minister or office. This means:

- If the Minister has received and returned a document such as a briefing from the Department, and has not retained a copy of it, the document is no longer an official document of the Minister.
- Requests for documents that are held by a former Minister at the time the request is lodged are not covered by the FOI Act.

Key contacts:

s22 (02) 6274 s22

s22 (02) 6274 2098

FOI@environment.gov.au

Please note that the information contained in this Legal Guidance Note 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 **9 October 2018**.