



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

Policies, Plans and Procedures

Freedom of Information (FOI) Guidelines

March 2023

All IGTO employees, secondees and contractors are required to review and comply with the IGTO Policies, Plans and Procedures

Table of Contents

Where to find the IGTO policies, plans and procedures	3
Policy information summary	3
Part 1 – General principles	4
Objectives of the <i>Freedom of Information Act 1982</i>	4
Right of Access	4
Administrative release of documents to be preferred	4
Confidentiality	5
Tax file numbers	6
Part 2 – Responding to an FOI application	7
Authorisation	7
Receiving an FOI request	7
Charges	9
Identifying requested documents or information	9
Exempt documents	11
Guidance about the exemptions and conditional exemptions	13
Responding to the applicant	14
Releasing the documents	14
Application for amendment or annotation of personal records	14
Part 3 – Internal review and other challenges	16
Internal review	16
Information Commissioner review	17
Administrative Appeals Tribunal	17
Federal Court of Australia	18

Where to find the IGTO policies, plans and procedures

All Policies, Plans and Procedures and Related Registers can be located:

Hard Copy: in the office of the Inspector General of Taxation and Taxation Ombudsman; with the Executive Assistant to the Inspector General of Taxation and Taxation Ombudsman, in the office of the Deputy Inspector General of Taxation and Taxation Ombudsman, with the Risk Manager and in the Library.

Electronic Copy: On the IGTO Home Page

Policy information summary

DESCRIPTION	DETAILS
Commencement Date	1 March 2023
Approved By	Duy Dam
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Accountable Officer	Principal FOI Officer
Relevant Legislation	<i>Freedom of Information Act 1982</i>
Related Policies	Nil
Related Procedures	FOI Authorisations OAIC FOI Guidelines Release of documents instructions
Key Terms	Link to a Glossary of Terms

Signature redacted

Duy Dam
Principal FOI Officer
March 2023

Part 1 – General principles

This Part sets out the general principles of the FOI Act, the overarching principle in relation to rights of access as well as confidentiality requirements including those related to Tax File Numbers (TFN).

Objectives of the *Freedom of Information Act 1982*

The *Freedom of Information Act 1982* (FOI Act) sets out the Government framework for FOI. All legislative references in these Guidelines are to the FOI Act unless otherwise stated.

The FOI Act realises a number of Government objectives. These include:

- provide access to information held by the Government of the Commonwealth or the Government of Norfolk Island by requiring agencies to publish the information and providing a right of access to documents;¹
- promote Australia’s representative democracy by contributing to increased public participation in Government processes with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comments and review of the Government’s activities;² and
- increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.³

The Government intends that the functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.⁴

Right of Access

Every citizen has a legally enforceable right to obtain access to a document of an agency or an official document of a Minister, other than exempt documents.⁵

This right of access is not affected by the person’s reasons for seeking access or the agency’s or Minister’s belief as to the reasons for seeking access.⁶

Administrative release of documents to be preferred

In many cases, information may be released administratively to the applicant without resorting to FOI. “Administrative access” to information held by the agency is encouraged by the Australian Information Commissioner as a way of furthering the objects of the FOI Act to promote transparency

¹ Sub-s 3(1).

² Sub-s 3(2).

³ Sub-s 3(3).

⁴ Sub-s 3(4).

⁵ Sub-s 11(1).

⁶ Sub-s 11(2).

and open government, while minimising unnecessary resource commitments and time associated with undertaking a formal FOI processes. The Information Commissioner has provided a [guide about administrative access](#).

When a complainant or other member of the public seeks access to information either initially through FOI or in conversation, officers should consider whether administrative access may be provided. Examples of what may be provided administratively includes:

- communications passing between the IGTO and the applicant only (e.g., copies of emails to or from the complainant, or finalisation letters)
- telephone call recordings between the applicant and our agency
- information that the applicant initially provided to us (e.g., a complainant requests a copy of their initial complaint letter to our office)
- copies of reports or other publications we have published to our website
- is delivered to the IGTO, the IGTO office or an officer of the IGTO.

When in doubt, advice should be sought from the Principal FOI Officer.

Confidentiality

The IGTO office receives a large amount of confidential information in the course of discharging the functions of his or her office.

Section 37 of the *Inspector-General of Act 2003* (IGT Act) imposes strict secrecy requirements on the Inspector-General of Taxation (IGT) and his or her staff.

All documents and information received by the IGTO, or a member of his or her staff, in the course of or because of their functions, powers or duties under the IGT Act are considered protected documents and protected information.⁷

The IGT Act forbids the IGTO or his or her staff from copying or other records of protected information or documents and disclosing these or any part of these to another person or court or tribunal unless it is in the course performing or exercising functions, powers or duties under or in relation to the IGT Act.⁸

In addition to the secrecy requirements under the IGT Act, all information or documents received from the Australian Taxation Office (ATO) or any other government agency attract the same secrecy and confidentiality conditions as would apply to the ATO or those other agencies.

⁷ Sub-s 37(1) of the IGT Act 2003.

⁸ Sub-s 37(2) of the IGT Act 2003.

Tax file numbers

Section 37B of the IGT Act empowers the IGTO to request that a person lodging a dispute to provide the person's TFN to the IGTO.⁹

The IGTO is empowered to provide the person's TFN to the Commissioner for the purposes of an investigation of the dispute by the IGTO.¹⁰

The IGTO manages all TFNs received in accordance with the *Privacy (Tax File Number) Rule 2015*.¹¹

Due to the legal restraints on the use and collection of TFNs, the IGTO will generally redact these from documents which are released under FOI.

If the applicant has lost their TFN and is seeking to retrieve it, the IGTO will refer the applicant to the ATO which is empowered to provide taxpayers with their TFNs, subject to proof of record ownership requirements being satisfied, without the need for the time and cost associated with an FOI application.

⁹ Sub-s 37B(1) of the IGT Act 2003.

¹⁰ Sub-s 37B(2) of the IGT Act 2003.

¹¹ Issued under the *Privacy Act 1988*.

Part 2 – Responding to an FOI application

This part sets out the general process, and statutory timeframes, for the management of all FOI requests made to the IGTO.

Subject to any extensions which may be obtained either by consent or by application under the FOI Act, the overall timeframe for responding to FOI requests is 30 days from the date of receipt.¹²

Authorisation

The FOI Act requires that decisions under the Act only be made by the Minister, the principal officer of the agency or an officer who is duly authorised by the principal officer to make a decision under the FOI Act.¹³

You should ensure that you are properly authorised before you commence work on any FOI matters. The Principal FOI Officer will ensure that FOI cases are only allocated to officers who are authorised to deal with them.

The relevant authorisations are set out in Appendix 1 to this policy. Generally, all FOI decisions are to be made by an officer at the EL1 classification or above. An APS officer may be allocated to assist the EL1 officer throughout the FOI process.

Officers who are allocated FOI cases should ensure that they work with their managers to oversee the actioning of the case and ensure consistency of decision making. Having two people working on the case will also allow for continuity of actions in the event of unforeseen absences.

Receiving an FOI request

A person seeking access to documents from the IGTO must lodge a valid request.¹⁴

Acknowledging receipt

If you are allocated a case you must, within 14 days of receiving an FOI request, take all reasonable steps to enable the applicant to be notified that their request has been received.¹⁵

As a matter of practicality, you should first assess the validity of the request before acknowledging receipt so that any defects in the request may be brought to the applicant's attention.

¹² Paragraph 15(5)(b).

¹³ Sub-section 23(1).

¹⁴ Sub-s 15(1).

¹⁵ Sub-section 5(a).

Assessing validity of the request

A request is valid if it:¹⁶

- is in writing;
- states that the request is made pursuant to the FOI Act;
- provides sufficient information to enable the agency or the responsible officer to identify it; and
- is delivered to the IGTO, the IGTO office or an officer of the IGTO.

Taxpayers may lodge an FOI request by email at foi@igt.gov.au or by post to GPO Box 551, Sydney NSW 2001.

A request may also be delivered personally to the IGTO or the IGTO's staff at the IGTO office or sent by fax.

If the request is invalid

If the request is not valid, you must issue a response to the applicant clearly stating that:¹⁷

- the request is not valid; and
- the specific reason why the request is not valid.

As noted above, it is preferable for you to notify the applicant of any defects in the application in the same communication which acknowledges receipt of the request.

Assisting the applicant

The FOI Act requires that we take reasonable steps to assist the applicant to make a request which complies with the Act.¹⁸ This may include contacting the complainant directly to discuss their application.

Ordinarily, it would be sufficient to identify the defect in our response to the applicant to enable them to rectify it. However, there may be occasions where the applicant may seek further assistance. In these circumstances, you should provide appropriate feedback to enable the applicant to lodge a valid request including referring them to another agency which may be better placed to handle their request.¹⁹

¹⁶ Sub-s 15(2).

¹⁷ Sub-s 15(3).

¹⁸ Sub-s 15(3).

¹⁹ Sub-s 15(4).

Charges

There are no charges with lodging an application under the FOI Act, seeking internal review of an FOI decision or seeking review with OAIC. However, the FOI Act does provide for the imposition of certain charges.²⁰

As a general rule, the IGT does not charge for access under FOI. However, there may be occasions where it may be necessary to impose a charge. When you are considering whether a charge should be imposed, you should be mindful that:

- charges must not be used to discourage the exercise of a right under the FOI Act;
- charges cannot be imposed where the applicant is seeking access to their personal information;
- charges cannot be imposed where the document is provided outside of the 30-day period, unless that period has been extended;
- the calculation of costs must be in accordance with the Schedule to the *Freedom of Information (Charges) and Regulations 1982*; and
- you should consider the ‘lowest reasonable cost’ objective of the FOI Act.²¹

The decision to impose a charge should be transparent and made as early as possible. You should prepare a letter informing the applicant of the charge which provides a full and clear explanation to justify the charge imposed. This letter should be approved by your manager before it is issued.

Identifying requested documents or information

If you consider that the FOI request is valid, you must commence identifying and locating the requested documents or information as soon as possible.

There may be multiple sources of information which are required to be searched in order to comply with the request. These sources include:

- Resolve;
- IGT shared network drives;
- IGT shared email inboxes;
- Hard copy correspondence folders; and
- in the possession of other officers of the IGT.

²⁰ Section 29.

²¹ Sub-section 3(4).

The above is not an exhaustive list as each request will focus on different types of information. When in doubt, you should consult the Principal FOI Officer for further guidance.

Extensions of time

As set out above, the IGTO is required to issue a response to the applicant within 30 days of receiving the request.²² The 30 days includes weekends, public holidays or other periods where the office may be shut.

If, upon reviewing the application you consider that you will not be able to respond to the applicant with the 30-day period, you should seek an extension of time.

Extensions by consent

You may seek an extension of no more than an additional 30 days by consent of the applicant.²³

If the applicant consents to the extension, you should obtain this consent in writing, such as by return email. Once you have the written consent, you must inform the OAIC of the extension of time.²⁴

The OAIC may be informed by email to FOIExtensions@oaic.gov.au. A template email to OAIC is provided at the following [OAIC webpage](#).

Application for extension

If the applicant does not consent to an extension of time, you will need to prepare an application to the OAIC for the extension of time.²⁵

The process as well as templates for how to apply for an extension of time with OAIC is available at the following [OAIC webpage](#).

Informing the ATO and the TPB

If on your assessment, the request concerns any documents which were previously provided to the IGTO by the Australian Taxation Office (ATO) or Tax Practitioners Board (TPB), you must send a copy of the FOI request to the ATO or the TPB, as appropriate, by email. The relevant email addresses are:

ATO FOI: foi@ato.gov.au

TPB FOI: foi@tpb.gov.au

The ATO and TPB will allocate an FOI officer as a liaison to assist you in determining whether any documents provided by the ATO or TPB may be exempt and the reasons why the ATO or TPB considers the document to be exempt.

²² Paragraph 15(5)(2).

²³ Section 15AA.

²⁴ Sub-s 15AA(b).

²⁵ Section 15AB.

You should consider these possible exemptions carefully and, if you disagree with them, discuss it with your manager as well as with the relevant ATO or TPB officers and escalate to the Principal FOI Officer for resolution, if necessary.

Transfer of requests

If, upon reviewing the request, you are of the view that the IGTO does not possess the requested document but that another agency does or that the subject-matter of the request is more closely connected with the functions of another agency, you may transfer the request to the other agency with the other agency's agreement.²⁶

Typically, this will occur where the FOI request relates to information or documents that have been provided by the ATO or the TPB as part of a dispute investigation.

You may seek consent of the ATO or the TPB to transfer the request fully or partially after informing them of the FOI request and discussing the nature of the information or documents being sought.

In respect of any other agencies with whom the IGTO does not have an agreement for transfer, you should consult the Principal FOI Officer on the most appropriate course of action.

Before you formally transfer an FOI request, you should also inform the applicant of your intention to transfer the request, explain the reasons for your proposed transfer and give the applicant the opportunity to withdraw the application made to the IGTO and make the application directly to the other agency.

Exempt documents

Documents or information relating to a complainant

Documents or information relating to a particular individual or entity are generally exempt from release under FOI, unless the applicant is seeking access to their own information.²⁷

Section 37 of the IGT Act imposes strict secrecy requirements on all documents or information received by the IGTO in the course of exercising powers or carrying out functions under the IGT Act.

Where the document was provided by another agency such as the ATO or the TPB, there may also be exemptions applicable pursuant to the legislation administered by those agencies. It is therefore important to ensure that you advise them of the FOI request and provide them with an opportunity to comment on any exemptions.

It may also be appropriate to transfer all or part of the FOI request to the ATO or the TPB.

Other documents or information

Specific exemptions and conditional exemptions exist in relation to FOI requests.

²⁶ Sub-s 16(1).

²⁷ Section 38.

There are ten categories of exemptions. The IGTO can refuse access to documents or information which meet the criteria under any of these categories. The ten exemption categories are:

- Documents affecting national security, defence or international relations;²⁸
- cabinet documents;²⁹
- documents affecting enforcement of law and protection of public safety;³⁰
- documents to which secrecy provisions in other legislation apply;³¹
- documents subject to legal professional privilege;³²
- documents containing material obtained in confidence;³³
- Parliament Budget Office documents;³⁴
- documents whose disclosure would be in contempt of Parliament or contempt of court;³⁵
- documents disclosing trade secrets or commercially valuable information;³⁶ and
- electoral rolls and related documents.³⁷

There are eight categories for conditional exemption. These are documents which relate to:

- Commonwealth-State relations;³⁸
- deliberative processes relating to agencies' or ministers' functions;³⁹
- the Commonwealth's financial and property interests;⁴⁰
- certain operations of agencies (such as audits, examinations and personnel management);⁴¹
- personal privacy;⁴²

²⁸ Section 33

²⁹ Section 34

³⁰ Section 37

³¹ Section 38

³² Section 42

³³ Section 45

³⁴ Section 45A

³⁵ Section 46

³⁶ Section 47

³⁷ Section 47A

³⁸ Section 47B

³⁹ Section 47C

⁴⁰ Section 47D

⁴¹ Section 47E

⁴² Section 47F

- a person's business or professional affairs or the business, commercial or financial affairs of an organisation or undertaking;⁴³
- research (by the CSIRO or the Australian National University);⁴⁴ and
- Australia's economy.⁴⁵

You cannot refuse access solely on the basis that a document is conditionally exempt. You must consider whether, in the circumstances, giving access to the document would be contrary to the public interest. In doing so, you must weigh the factors favouring access against those favouring non-disclosure.

Public Interest Test

The FOI Act sets out some factors favouring disclosure. These factors include:⁴⁶

- promoting the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; or
- allow a person to access his or her own personal information.

Factors which are irrelevant and must not be considered include:⁴⁷

- access to the document could result in embarrassment or loss of confidence in the Commonwealth Government;
- access could result in any person misinterpreting or misunderstanding the document;
- the seniority of the author of the document (usually in instances where the author is of high seniority); or
- access to the document could result in confusion or unnecessary debate.

If you are in doubt in relation to disclosing a potentially exempt document, you should consult the Principal FOI Officer.

Guidance about the exemptions and conditional exemptions

The Australian Information Commissioner has issued [a comprehensive guide](#) on managing FOI applications and it contains extensive discussion about what the Information Commissioner

⁴³ Section 47G

⁴⁴ Section 47H

⁴⁵ Section 47J

⁴⁶ Sub-s 11B(3)

⁴⁷ Sub-s 11B(4)

considers each exemption or conditional exemption would encompass. You should consult the guidance, in the first instance, to better understand the exemption and conditional exemption and whether they might apply to the particular document you are considering,

Responding to the applicant

Once you have identified all documents which may be disclosed under the FOI Act and those which have been requested but are exempt from disclosure, you should prepare a letter to the applicant which should set out:

- the documents provided (either fully or partially);
- a list of requested documents which have not been provided and the reasons why they have not been provided (e.g., the relevant exemption provisions under the FOI Act); and
- a statement advising the applicant that they may seek internal review of the decision within 30 days of receipt of our response⁴⁸ and further subsequent rights of review and appeal to the Office of the Australian Information Commissioner,⁴⁹ the Administrative Appeals Tribunal⁵⁰ or the Federal Court of Australia.

Releasing the documents

Depending on the size of documents that are to be released, you may be able to issue them by email (or emails). Where the total size of documents is very large and it is impractical or undesirable to send emails, you may wish to consider posting physical copies or using the IGTO's file sharing facility through Citrix ShareFile.

You should consult the [release of documents instructions](#) for further guidance on using Citrix ShareFile, and what you need to communicate with the applicant.

Application for amendment or annotation of personal records

Where an applicant believes that a document or record maintained by the IGTO about them is incomplete, incorrect, out of date or misleading, they may apply to the IGTO for an amendment or annotation of that document or record.⁵¹

As a matter of practice and efficiency, the IGTO will always correct a document or record that is proven to be incomplete, incorrect, out of date or misleading without requiring the applicant to lodge a formal application under the FOI Act.

⁴⁸ Part VI.

⁴⁹ Part VII – note, the Government has announced an intention to disband the Office of the Australian Information Commissioner. As such, this provision may not be relevant after legislation giving effect to that change is passed.

⁵⁰ Part VIIA.

⁵¹ Section 48.

Part 2 – Responding to an FOI application

Where a complainant or other stakeholder indicates that they may be seeking such an amendment or annotation, you should engage with them to identify the most efficient way to do this while minimising cost for both the IGTO and the complainant.

Part 3 – Internal review and other challenges

The IGTO will generally seek to facilitate access to documents or information in the IGT's possession or under the IGT's control wherever possible. However, it may be that some documents (or parts of documents) or information cannot be disclosed.

An applicant has a right to seek internal and external review of the IGT's decision not to disclose certain information or documents (or parts of documents).

Internal review

A person may apply for internal review in respect of an 'access refusal decision'⁵² or 'access grant decision'⁵³. These are specific defined terms within the FOI Act.

For the IGT's purposes, 'access refusal decisions' are more relevant. These decisions include:

- a decision refusing access to a document in the request;
- a decision giving access to a document but not all documents to which the request relates;
- a decision purporting to give access to all documents but not actually giving access;
- a decision to defer provision of access to a document;
- a decision in relation to the imposition of a charge or the amount of the charge pursuant to section 29;
- a decision to give access to a qualified person pursuant to section 47F(5);
- a decision refusing to amend a record of personal information in accordance with an application made under section 48; or
- a decision refusing to annotate a record of personal information in accordance with an application under section 48.

⁵² Section 53A

⁵³ Section 53B

How an internal review request is made

An application for internal review must be made in writing and must be made:⁵⁴

- within 30 days of the applicant being informed of our original decision; or
- in relation to an access refusal decision under sub-sections 53A(b)⁵⁵, (c)⁵⁶ or (f)⁵⁷, the longer of 30 days or 15 days after the access was given (or purported to be given).

The IGTO, at his or her discretion, may extend the time for making an internal review application.⁵⁸

How an internal review request is managed

Upon receipt of an application for internal review, you should immediately advise the Principal FOI Officer who will allocate the matter to an officer (who has not previously been involved in the matter) to review the decision.

The reviewing officer will make a fresh decision in respect of the applicant's request and will provide a response within 30 days, or such further time as has been granted under the FOI Act, of receiving that review request.

For the purposes of discharging the internal review function, the reviewing officer will treat the matter as if it were a fresh FOI request and consider it in accordance with the process set out in Part 2.

Information Commissioner review

Part VII provides that an applicant may seek review by the Information Commissioner (IC Review).

IC Review matters may be externally managed.

If you receive notice of an IC review, you must bring it to the attention of the Principal FOI Officer. The Principal FOI Officer, in discussions with SES officers, will determine whether provisions need to be made for the Australian Government Solicitor or another external legal service provider to be engaged.

Administrative Appeals Tribunal

Part VIIA provides that a taxpayer may apply to the Administrative Appeals Tribunal (AAT) for review of a decision of the Information Commissioner.

⁵⁴ Section 54B.

⁵⁵ A decision giving access to a document but not giving, in accordance with the request, access to all documents to which the request relates.

⁵⁶ A decision purporting to give, in accordance with a request, access to all documents to which the request relates, but not actually giving that access.

⁵⁷ A decision to give access to a document to a qualified person pursuant to sub-section 47F(5).

⁵⁸ Sub-s 54B(2).

All litigation matters in the AAT will be externally managed and you must bring any AAT applications to Principal FOI Officer's attention who will, in consultation with SES officers, make provisions for the Australian Government Solicitor or another external legal service provider to be engaged.

Federal Court of Australia

An applicant may appeal to the Federal Court of Australia from a decision in an IC Review on a question of law.⁵⁹

An applicant may appeal a decision of the AAT to the Federal Court of Australia on a question of law.⁶⁰

All litigation matters in the Federal Court of Australia will be externally managed and you must bring any Federal Court applications to the Principal FOI Officer's attention who will, in consultation with SES officers, make provisions for the Australian Government Solicitor or another external legal service provider to be engaged.

⁵⁹ Section 56.

⁶⁰ Section 44 of the *Administrative Appeals Tribunal Act 1975*.