



OMBUDSMAN AN OFFICER OF  
THE ACT LEGISLATIVE ASSEMBLY 

# Freedom of Information Guidelines

INFORMAL REQUESTS FOR GOVERNMENT INFORMATION

JUNE 2019

Guideline Number. **2 of 6**

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## Disclaimer

Under s 66 of the *Freedom of Information Act 2016* (FOI Act), the ACT Ombudsman has the function of issuing guidelines about freedom of information ('FOI').

The information in this guideline is not legal advice and additional factors may be relevant in your specific circumstances. Any views expressed in this guideline are general in nature and the ACT Ombudsman remains open to all arguments and evidence on a case by case basis. For detailed guidance legal advice should be sought.

The FOI Act is amended from time to time and you should always read the relevant provisions of the Act to check the current wording. All ACT legislation, including the FOI Act, is freely available online at: <https://www.legislation.act.gov.au>.

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## 1. Purpose

The ACT *Freedom of Information Act 2016* (FOI Act) authorises the release of government information by agencies in response to an informal request from the public, as an alternative to making a formal access application.

This guideline explains how agencies can deal with informal requests for government information, and when it is appropriate for a person to make an access application under the FOI Act. It also sets out how agencies can identify and establish mechanisms for dealing with informal requests for government information, including through administrative access arrangements.

## 2. Introduction

Agencies regularly receive requests for government information from the public. The FOI Act allows agencies to deal with such requests, regardless of whether they are made informally or through a formal access application:

- Section 8(1) of the FOI Act authorises the release of government information held by an agency to a person in response to an *informal request* by the person.
- Section 10 provides that the FOI Act is not intended to prevent, or discourage, agencies or Ministers from giving access to government information otherwise than under the FOI Act.
- Part 5 outlines how formal access applications are required to be managed.<sup>1</sup>

This means requests that do **not** take the form of an access application under s 30 of the FOI Act can continue to be dealt with outside of the FOI Act, providing members of the public with the information they are seeking quickly and with the least formality possible.

Increasingly, FOI legislation and formal FOI processes for accessing government information have, become more well-known and utilised in the ACT. As a result, the public often attempt to access government information through an access application in the first instance.

Whilst this may be appropriate in some cases, in others, the information requested may have been able to be provided to the person more quickly and informally outside of the access application process. This poses several issues, the most obvious being the time and resources required to process an access application which may have been avoided if the request had been dealt with informally.

There is also a risk that requests for access to government information result in different outcomes, and that applicants have different experiences dealing with Government, depending on who they spoke to and whether they requested information informally or through an access application.

As a result, agencies are encouraged to consider the different sorts of requests for information they receive, and to identify:

- where it is useful and appropriate to establish streamlined administrative arrangements, so they can deal efficiently with common requests for information outside of the access application process
- where other ad hoc, informal arrangements for information release remain appropriate
- which sorts of information requests it is preferable to manage via formal access application processes.

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<sup>1</sup> A separate Ombudsman Guideline is being prepared to provide guidance on these processes and requirements.

While agencies are encouraged to take a pro-disclosure approach and utilise 'informal' release pathways where possible, it is recognised that not all information will be suitable to be dealt with outside of formal access application processes. This is particularly the case in situations where documentation requested includes:

- the sensitive personal information of multiple parties, or
- information subject to secrecy laws.

Agencies should be aware that trying to manage complex requests for information through informal channels may also prove counter-productive, and negatively impact broader strategies to ensure they have a speedy and efficient channel available to action common, simple requests for information from the ACT community.

Importantly, where information can be released informally, agencies should take proactive steps to inform the public about any arrangements for releasing that information and promote those as a quicker alternative to making an access application under the FOI Act. This will ensure they get the most benefit from such arrangements.

Along with information published in accordance with the Open Access Information scheme (see *Guideline 1 of 6: Open Access Information*), promoting informal release arrangements may help:

- reduce the number of access applications made to an agency
- improve the experience of applicants in their dealings with government
- reduce complaints made about the agency
- build trust with the ACT Community by demonstrating a commitment to transparency and the right of the community to access government information.

**Note:**

- Although the FOI Act does not explicitly authorise Ministers to release government information in response to an informal request, s 10 of the FOI Act confirms that there is no specific impediment to Ministers releasing information in response to an informal request.
- This guideline sets out best practice approaches which can be considered by Ministers. Where relevant, this guideline will highlight areas where Ministers should consider their particular circumstances, and where necessary seek further legal advice.

### 3. Guiding principles

In dealing with informal requests for government information, agencies should be guided by the following principles:

- Every person has an enforceable right to government information, unless access to the information is contrary to the public interest.
- The FOI Act is not intended to promote a formal process for accessing government information over options for providing information by other means and under other legislation.
- Access to government information should be facilitated promptly and at the lowest reasonable cost, with formal access applications being a 'last resort'.
- Where possible, agencies should consider alternative arrangements for fast-tracking provision of government information to members of the ACT community—particularly categories of information that are regularly requested.

- Flexibility to manage ad hoc, informal requests should also be maintained where practicable, with agencies able to derive significant efficiency benefits from releasing information without the need for a formal decision.
- Agencies should take a transparent and helpful approach:
  - negotiating with members of the public as to what information they are actually seeking
  - explaining options for providing the information, including referring individuals to formal access application channels where appropriate and assisting them to lodge such applications consistent with their obligations under the FOI Act.
- Where an access application has been made, an agency must continue to process a formal access application unless the person withdraws their access application and agrees to have the information dealt with informally.

#### 4. What is an informal request for government information and how is it received?

The term *informal request* is not defined in the FOI Act. For the purposes of these guidelines, an informal request is considered to be any request for government information received **other than by an access application** made under s 30 of the FOI Act.

This could include requests for a wide range of information, including but, not limited to, personal information, statistical information, copies of applications, reports or answers to specific questions. There is no requirement for such requests to:

- comply with any particular form or requirements in the FOI Act, or
- reference the FOI Act, or identify they are an informal request.

Informal requests for government information can be made in a variety of ways, including by email, letter, phone or in person.

There is no requirement for such requests to be made to a particular person or area. Requests for government information are regularly made to agencies other than via their FOI team or contact person. Most commonly informal requests for government information are made by a person seeking access to government held information that concerns them. In many cases, such requests are made directly to a case officer or decision maker within an agency.

**Important:** Agencies should be alert to the different ways, and business areas, through which the public might request access to government information. It is important that the approach to dealing with informal requests is consistent across an agency, compliant with legislative requirements, and does not disadvantage a person for:

- making an informal request as opposed to a formal access application, or
- approaching the 'wrong' part of an organisation to request government information.

### Difference between informal requests and access applications

There are some key differences between informal requests for government information, and access applications dealt with under Part 5 of the FOI Act:

- **Consultation and notice**—unlike a formal access application, there is no obligation on an agency to consult with an applicant on the information they are seeking, the fees they may wish to apply, or their intention to refuse to deal with a request. The FOI Act is also silent on any requirements to consult concerned third parties in dealing with an informal request for information. Therefore, caution should be exercised in dealing with informal requests for information that includes sensitive or third party information, or where access to the information is likely to be refused (see s 7. *When an access application is more appropriate*).
- **Review rights**—unlike a decision made on a formal access application, a decision made by an agency in response to an informal request for government information is not reviewable under the FOI Act. Where an agency is only agreeing to provide partial access to requested information informally, it is important that an applicant understands they will not have access to review rights unless they proceed with a formal access application (see s 10. *Dealing with access applications 'informally'* ).
- **Timeframes**—unlike formal access applications, there are no legislative timeframes for an agency dealing with an informal request for government information. However, as discussed below (see s 12. *What timeframes apply?*), informal requests should be dealt with immediately and quicker than an access application.
- **Delegation authority**—the FOI Act is silent on who can make decisions on releasing information in response to an informal request, unlike an access application, which can only be decided by an agency's information officer<sup>2</sup> (see s 8. *Who is authorised to release information?*).
- **Civil/criminal protections for Ministers**—the FOI Act provides for immunity from civil and criminal liability for acts or omissions done honestly and without recklessness in the exercise of a function under the Act, or in the reasonable belief that the conduct was in the exercise of a function under the Act.<sup>3</sup> Information released in response to an informal request by an **agency** is authorised by s 8 of the FOI Act therefore the civil and criminal protections afforded apply to agency staff. However, Ministers are not granted the same authorisation under s 8, therefore responses to informal requests for information made to **Ministers** are **not** covered by the civil and criminal protections in the FOI Act (see s 17. *Managing potential risks*).<sup>4</sup>

## 5. What is government information?

Government information is defined in s 14 of the FOI ACT as information 'held' by an agency or Minister excluding information related to a Minister's personal or political activities, or created or received by a Minister in the Minister's capacity as a member of the Legislative Assembly.

<sup>2</sup> See section 33 of the FOI Act.

<sup>3</sup> See section 103 of the FOI Act.

<sup>4</sup> These guidelines are **not** intended to be relied upon as legal advice. Agencies and ministers may need to seek independent legal advice prior to disclosing information in the event they intend to rely on immunity from civil and criminal liability.

This includes information contained in a 'record' that is held by the agency or the agency is entitled to access.

Record is defined broadly to mean any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means, or a copy of such a record.<sup>5</sup> Consequently, the FOI Act covers not just written documents, but a wide range of materials, including emails, electronic recordings, photographs, videos and post-it notes.

Examples of government information an agency might hold includes person information about individuals, information relating to policy and public programs, and financial information.

The FOI Act does not apply to information in a health record under the *Health Records (Privacy and Access) Act 1997*,<sup>6</sup> or a record of an agency if a person is entitled to access the record under the *Territory Records Act 2002*<sup>7</sup> or an accessible executive record (as defined in Part 3A of that Act).

## 6. What government information can be dealt with by informal request?

There are no restrictions on what information can be released in response to an informal request—subject to any specific legislative restrictions on the disclosure of particular types of information under ACT or Commonwealth law. Agencies can elect to release government information this way, including government information that would be considered contrary to the public interest information under the FOI Act.

It is, however, recognised that not all information is suitable to be released informally. It is up to an agency to consider, having regard for their functions and governing legislation, what type of government information is suitable to be dealt with by an informal request. The following categories of information are, however, considered the most likely to be suitable to be dealt with informally:

- information that is already publicly available or was previously publicly available
- information that an agency is required, or authorised to release, under specific legislation
- information that is already routinely made available by an agency
- requests by an individual for their own personal information including copies of correspondence they have previously provided to an agency
- information that would otherwise have been released in full if it had been processed as an access application under Part 5 of the FOI Act
- information that can be provided in another format, or in a summarised version, rather than being heavily redacted through a formal FOI process.

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<sup>5</sup> See FOI Act s 3 and the Dictionary.

<sup>6</sup> See FOI Act s 12. A 'health record' is defined in the Dictionary to the *Health Records (Privacy and Access) Act 1997* as a record held by a health service provider and containing personal information or containing personal information.

<sup>7</sup> Section 26 of the *Territory Records Act 2002* provides that a record of an agency under that Act is open to public access on the next Canberra Day after the end of 20 years after the record, or the original of which it is a copy, came into existence.



**Requesting amendment of personal information**

It is important to note that the FOI Act provides a formal process for requesting the amendment of personal information. Under s 59, a person can seek amendment of government information if they consider the information contains:

- personal information about themselves
- is incomplete, incorrect, out-of-date or misleading
- is used or has been used or is available for use by the agency or Minister.

Where a person is seeking amendment of government information in these circumstances, an agency must make a decision to amend or refuse to amend the government information within certain timeframes.<sup>8</sup> There is also a requirement to deal with requests for amendment to personal information under the *Information Privacy Act 2014*.<sup>9</sup> A separate FOI Ombudsman guideline on dealing with requests to amend personal information is being prepared.

**7. When an access application is more appropriate**

In certain circumstances, it may not be appropriate to deal with an informal request for government information, and the individual should be asked to lodge a formal access application instead. This includes where:

- the requested information includes the personal information of a third party which cannot easily be redacted, and a reduced scope has not been able to be negotiated<sup>10</sup>
- disclosure would be otherwise restricted or subject to specific exceptions under other legislation or secrecy laws<sup>11</sup>
- a third party may object to release of requested information which cannot be easily redacted
- more than minor redactions are likely to be made to the information
- the request is substantial and would cost the agency significant resources to process, or
- the applicant may want to apply for external review of the decision.

**Important:** A formal access application would also be appropriate where an agency has discussed alternative options for release with the individual concerned, and they have indicated they would prefer to make a formal access application. Where this is the case, the agency must assist the person to make an access application under s 30. They are also obliged to take reasonable steps to assist the applicant make their access application comply with the requirements in the FOI Act.<sup>12</sup>

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<sup>8</sup> See ss 61 and 62 of the FOI Act. See also Territory Privacy Principles 12 and 13.

<sup>9</sup> See part 1.5 of the Territory Privacy Principles in schedule 1 of the *Information Privacy Act 2014*.

<sup>10</sup> Personal information must not be disclosed except in accordance with the *Information Privacy Act 2014* or *Health Records (Privacy and Access) Act 1997*.

<sup>11</sup> See s 1.3 of schedule 1 of the FOI Act. Laws that prohibit or restrict the disclosure of information include, for example, *Health Act 1993*, section 125; *Crimes (Surveillance Devices) Act 2010*, s 34; and *Electoral Act 1992*, s 69.

<sup>12</sup> See s 31 of the FOI Act.

**Tip: considering privacy and secrecy**

- Personal information about a third party must not be disclosed in response to an informal request for information unless permitted by the *Information Privacy Act 2014* or *Health Records (Privacy and Access) Act 1997*.
- Even where a person is requesting copies of their own personal information from an agency, disclosure of that information may be restricted under specific legislation (see for example s 529L of the *Children and Young Persons Act 2008* which requires the disclosure to be in the person's 'best interests').
- Careful consideration should also be given to any relevant secrecy provisions which might affect the release of information, including the provisions identified in s 1.3 of Schedule 1 of the FOI Act.

## 8. Who is authorised to release information?

The FOI Act is silent on who is authorised to release the information in response to an informal request and, unlike decisions on access applications, there is no requirement for the information officer to be the decision maker.<sup>13</sup> An Agency's principal officer or information officer may, however, wish to authorise in writing specific staff or business areas to release particular information, consistent with agency internal practices and any existing legal frameworks (for example, delegations instruments).

## 9. How to deal with an informal request for government information

An agency must decide how it will deal with informal requests for government information they hold. The recommended steps for consideration are outlined below.

### Step one—clarify the scope of the request

The first step should be to clarify the scope of the request for information.

How a person expresses their informal request for information will vary and it is not always clear exactly what information the person is seeking. It is important that agencies dealing with informal requests seek to clarify with the person what information they are seeking before proceeding to deal with the request.

Assistance should be afforded to a person to help them understand what information an agency holds which might be relevant to their request, and to understand what information can be provided quickly and informally without needing to make a formal access application under s 30.

This approach is in keeping with the objects of the FOI Act, and the requirement under s 31 to take reasonable steps to assist a person make an access application that complies with the FOI Act. Importantly, it will also improve the likelihood of resolving the request informally in one transaction with the person, saving the agency and the person involved time and money.

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<sup>13</sup> See functions of an information officer at s 19 of the FOI Act.

The benefit of receiving an informal request is that it often facilitates a discussion with the person seeking the information as to what they really want, and enables them to negotiate what they actually need.

The public may not know how to explain in writing what they are actually seeking access to. Often they will not be aware of what information can be easily released by the agency, as opposed to information that may take significant resources to collate or develop. This is particularly the case with data requests.

Early communication on what information the person is seeking is critical in terms of good customer service, but also reducing unnecessary burdens on agencies dealing with requests.

### **Step two—assess the options for responding to the request**

Once the scope of the request for information is clear, agency staff then need to consider the most appropriate way for managing the request for information.

Depending on the circumstances, there are several ways to deal with an informal request for government information:

1. Referring to publicly available information, including information published through the open access information scheme.
2. Providing access through an existing administrative access arrangement for a particular type of information.
3. Negotiating to release the information on an ad hoc basis.
4. Providing access under specific legislation which requires or authorises an agency to disclose government information.
5. Referring a person to make a formal access application under the FOI Act.

These are discussed in detail below.

#### **9.1 Referring to publicly available information**

Once it is clear what government information a person is seeking through their informal request, the first consideration is whether the information is already publicly available.

- Publicly available information is routinely provided by agencies to the public every day, including by frontline staff providing copies of leaflets and handouts, information provided by call centre staff directly over the phone responding to general enquiries, and information published on an agency's website.
- Under the FOI Act, agencies are also required to proactively publish certain information, including functional information, policies and procedures on their website or on the ACT Government's Open Access Portal (refer to *Guideline 1 of 6: Open Access Information*).

Where a person is informally requesting government information that is publicly available, they should be advised where to find the information and assisted if they are having difficulty finding the information.

In this situation, there is no need to make a formal decision or formally document this disclosure. Agencies should, however, consider feedback received in terms of possible website improvements to ensure community members can 'self-serve' in future.

**Note:**

- If information that is already publicly available was requested in the first instance through an access application, an agency may refuse to deal with the application on that ground under s 45(a) of the FOI Act (See '9. Dealing with access applications 'informally').

## 9.2 Providing access through existing administrative access arrangements

If information is **not** publicly available, consideration should be given to whether the information can be provided through an existing administrative access arrangement.

Administrative access is a discretionary option available to an agency to deal with informal requests for government information. An administrative access arrangement generally involves an established process for access to a particular type of information commonly requested from the agency.

Administrative access arrangements are most commonly used to give members of the public access to their personal information, unless there are specific restrictions on that information being released. For example, the *Children and Young Person Act 2008* restricts the disclosure of personal information relating to children.

Where administrative access arrangements exist, agencies should provide the public with information on how they may be used and what information can be released. This information should be made available on an agency's website, and well understood by all staff likely to receive requests for relevant information.

A model website template, which promotes both Open Access Information and Administrative Access arrangements, is published with the Ombudsman's Guideline on Open Access Information (See *Guideline 1 of 6: Open Access Information*).

**Important:** Where administrative access arrangements are used for personal information, agencies must establish appropriate processes for verifying proof of identity as is expected if a person makes a formal access application.<sup>14</sup>

Examples of administrative access arrangements are provided below. For further advice on establishing administrative access arrangements, see *18. Establishing administrative access schemes*.

### Examples of administrative access arrangements

- Routine release of development applications held by the ACT's planning authority which were previously publicly available.
- Routine release of a staff member's own HR file or leave balance when requested by a current or former staff member.
- Routine release of student records by schools upon request from the student's parent or guardian.

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<sup>14</sup> See s 30(3) of the FOI Act.

### 9.3 Negotiating to release the information on an ad hoc basis

Where a request for government information is received, and the information is not publicly available or suitable for release under an existing administrative access arrangement, agencies might consider releasing the information on an ad hoc basis.

In deciding whether to release the information on an ad hoc basis, consideration should be given to whether the information is suitable to be dealt with informally (see 5. *What government information can be dealt with by informal request*). A checklist is also available at **Attachment A** which may assist officers in determining whether to release information informally.

Agencies are encouraged to release information this way to deliver efficiencies for both themselves and the requestor where appropriate. That decision must be made having regard to the nature of the information and the relevant context (see 16. *Managing potential risks*).

Agencies should also make a written record of decisions to release information in this way, with reference to any relevant legislation, policy or processes.

### 9.4 Access under specific legislation

In addition to administrative access arrangements, agencies may also provide information under specific legislation. In some cases, agencies have established specific processes to facilitate access under particular legislation and fees may apply.

Agencies should be aware of their obligations to provide access to personal information under the *Information Privacy Act 2014*. Under the Territory Privacy Principle (TPP) 12 (access to personal information):

- If an agency holds the personal information of an individual, the agency must, on request by the individual, give them access to that information (TPP 12.1).
- The agency cannot charge the individual for making the request or for giving access to the personal information (TPP 12.7).
- Agencies can only refuse access to personal information where access can be refused under the FOI Act or under another law in the ACT (TPP 12.2). Where refused, the agency must provide written reasons and advise the individual how they might complain (TPP 12.9).
- Requests for access must be responded to within 30 days after the day the request is made, and access is to be given in the way requested by the individual if it is reasonable and practicable to do so (TPP 12.4).

As discussed above in s 5, there is also a requirement to deal with requests for amendment to personal information under the *Information Privacy Act 2014*. A separate FOI Ombudsman guideline on dealing with requests to amend personal information is being prepared.

For more information about how to deal with a request for access or amendment to personal information under the *Information Privacy Act 2014*, the Office of the Australian Information Commissioner (OAIC) publishes guidance on their website.<sup>15</sup>

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<sup>15</sup> See <https://www.oaic.gov.au/privacy-law/other-legislation/australian-capital-territory-privacy#resources>

Examples of other information that may be released under specific legislation include:

- certain information held by ACT Land Titles under the *Land Titles Act 1925*<sup>16</sup>
- certain information about births, deaths and marriages in the ACT under the *Births, Deaths and Marriages Registration Act 1997*<sup>17</sup>
- documents lodged with the registrar-general under the *Associations Incorporation Act 1991* or the since repealed *Associations Incorporation Act 1953*<sup>18</sup>
- certain information held by the Environment Protection Authority<sup>19</sup>
- public register and associated documents, as well as consultation comments on draft plan variations and draft special variations, under the *Planning and Development Act 2007*<sup>20</sup>
- documents relating to utility licences and industry codes held by the Independent Competition and Regulatory Commission<sup>21</sup>
- certain information and documents held by the ACT Electoral Commission.<sup>22</sup>

Records that are more than 20 years old, which are held by an agency, are also open to public access under the *Territory Records Act 2002*.<sup>23</sup>

As with other administrative access arrangements, agencies should publish information on their website clearly explaining how the public can access government information under specific legislation and what processes and fees apply.

## 9.5 Formal access application

Matters that start as an informal request might be more appropriately dealt with by an access application and processing under Part 5 of the FOI Act. Therefore, it is always open to an agency to require a person to make a formal access application in particular circumstances—see 6. *When an access application is more appropriate.*

Where a person has made an informal request, but an access application is considered more appropriate, the agency must:

- clearly explain to the applicant how to make an access application
- provide reasonable assistance to them to make their access application comply with the FOI Act<sup>24</sup>
- as provided for in Part 5, comply with any relevant consultation requirements with respect to the scope of the access application and any intention to apply fees.<sup>25</sup>

<sup>16</sup> Refer to the ACT Land Information System website: <https://actlis.act.gov.au/>

<sup>17</sup> Refer to Access Canberra's website: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/18/~/apply-for-a-birth%2C-death-or-marriage-certificate](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/18/~/apply-for-a-birth%2C-death-or-marriage-certificate)

<sup>18</sup> See further Access Canberra's website: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/1504#!tabs-2](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1504#!tabs-2)

<sup>19</sup> See further Access Canberra's website: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/3149/~/environment-protection#!tabs-4](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3149/~/environment-protection#!tabs-4)

<sup>20</sup> Refer to the Environment, Planning and Sustainable Development Directorate – Planning: <https://www.planning.act.gov.au/>

<sup>21</sup> See further ICRC website: <https://www.icrc.act.gov.au/>

<sup>22</sup> For further information, see: [https://www.elections.act.gov.au/about\\_us/freedom\\_of\\_information](https://www.elections.act.gov.au/about_us/freedom_of_information)

<sup>23</sup> See Part 3 of the *Territory Records Act 2002*.

<sup>24</sup> See section 31 of the FOI Act.

<sup>25</sup> See Part 5 and s 106 of the FOI Act.

## 10. Dealing with access applications ‘informally’

An agency, after receiving an access application, may realise the information can be provided immediately outside of the formal FOI processes. Where this occurs, in order to ensure the applicant can get access to the information quickly and at no cost, an agency can still negotiate with the applicant:

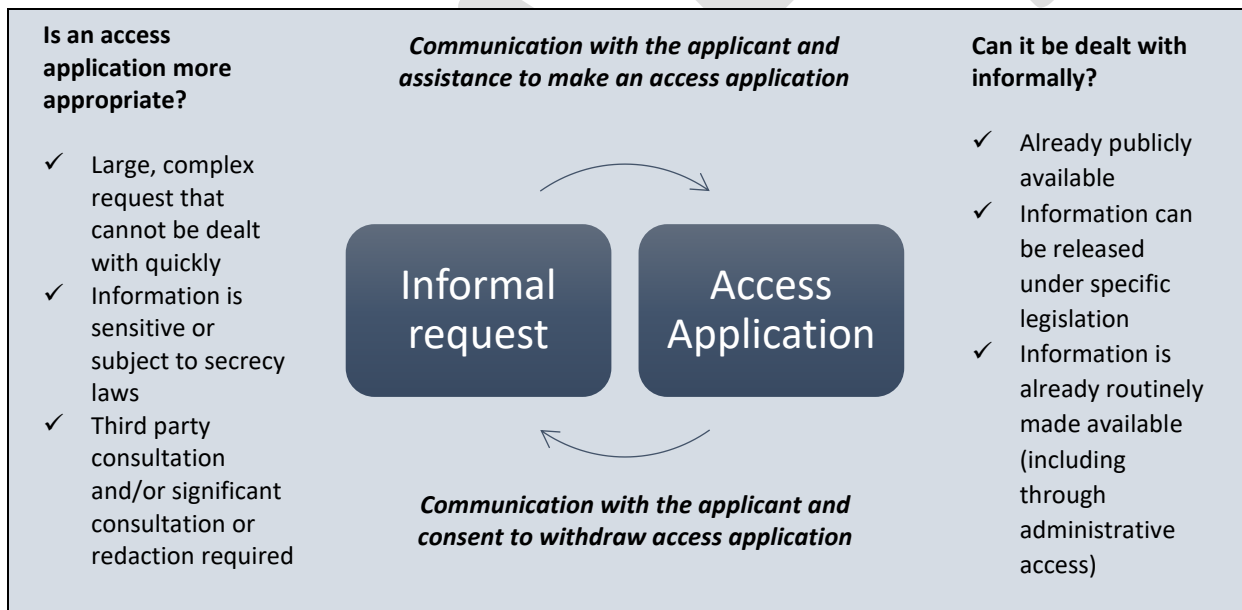
- to provide access to the information requested via informal channels
- for them to withdraw their application.

It is also important that the agency effectively explains:

- the benefits of dealing with the matter informally—i.e. that the information can be provided quickly and informally without processing their access application
- that at any time, the applicant can make a further access application under the FOI Act for information
- review rights are only available under the FOI Act where a decision is made on an access application to refuse access.

**Important:** An access application will remain on foot until such time as the applicant withdraws the application. If an applicant refuses to withdraw their formal access application, an agency must continue to process that access application in accordance with Part 5 of the FOI Act.

### Transitioning between ‘formal’ and ‘informal’ processes



## 11. Can access be refused?

Agencies can refuse to process a request for information made informally, and suggest the formal access application pathway be used—see section 7. *When an access application is more appropriate.*

Where an agency is only prepared to release information in part in response to an informal request, they should consider whether the person will agree to:

- negotiate the scope of the request for information to remove information likely to be refused, or
- receive a summary or alternative document, to avoid the need for extensive redactions—see 12. *How is access to be given.*

If the agency cannot get agreement, they should explain to the person requesting the information:

- that particular parts of the document will need to be redacted (even though a formal decision or decision record is not required as with formal access applications)
- if the person is not comfortable with this approach, that it may be preferable for them to lodge a formal access application which will provide them with review rights in the event that only partial access to the information is granted—see transitioning between ‘formal’ and ‘informal’ processes in s 10. Dealing with access applications ‘informally’ above.

## 12. What timeframes apply?

The FOI Act is silent on the timeframes which apply when dealing with an informal request for government information. A reasonable timeframe would, however, enable the information to be accessed quickly and with as little formality as possible, as a more efficient alternative to the formal access application process.

Timeframes associated with established administrative access schemes should be published on the agency website and generally equivalent to or less than FOI timeframes.

Ad hoc informal requests should generally only be actioned where significantly quicker timeframes (for example, no longer than two weeks), can be met.

## 13. How is access to be given?

Section 47 of the FOI Act, which sets out the forms of access that may be given in relation to access applications, does not apply to informal requests for government information.

In practice, there are a broad range of ways in which access can be given, which goes beyond that provided for in s 47. This includes, but is not limited to, the following:

- providing links to publicly available information with any relevant explanation or context
- providing a printed or electronic copy of an existing record
- preparing a summary of information or information in a different format, as an alternative to redactions
- offering an oral explanation of a decision or action, or
- assembling statistics or data.

### **Placing conditions on access to information**

As a general principle, access should not be provided on less favourable terms than would be provided in a formal access application. However, agencies may make special access arrangements in particular circumstances, for example, agreeing to provide information but delaying release until the release of a public report or government announcements. Any decision to delay release should be made consistent with s 49 of the FOI Act, which provides that access to information may be deferred for a reasonable period not longer than three months in certain circumstances, including where the information was prepared for presentation to the Assembly or a committee of the Assembly, or for release to the media



## 14. Applying charges

Fees should not be imposed for processing an informal request **unless** charges apply to information provided under specific legislation—see *8.4 Access under specific legislation*.

Where an agency is considering applying a charge, an applicant should be advised of the option to make a formal access application which allows for fee waivers in particular circumstances.<sup>26</sup>

## 15. Publishing documents released through informal requests

There is no requirement to routinely publish information released under administrative access arrangements. Unless the information contains personal information, it is, however, open to agencies to proactively publish that information as open access information. See *Guideline 1 of 6: Open Access Information*.

## 16. Review rights

Where access to government information is considered outside of the formal access application process there are no review rights under the FOI Act.<sup>27</sup>

This is not generally problematic as access to information should be facilitated, and not refused, in response to an informal request for information. Where access is to be refused, or only partial access is provided, agencies must explain their decision and offer the option to make an access application in appropriate circumstances (see *section 11. Can access be refused?*).

It remains open to a person to make a complaint to the agency, or the Ombudsman, about the way in which their informal request for information was handled and the outcome. Again, it is important that agencies inform people about complaint avenues, and ideally, provide an option for internal review of the decision.

## 17. Managing potential risks

In dealing with informal requests for government information, agencies must actively manage all potential risks, including the risk of:

- breaching statutory provisions including secrecy provisions
- disclosure of a third party's personal information contrary to the Territory Privacy Principles in the *Information Privacy Act 2014*
- breaching contractual terms affecting the release of information
- disclosing information which could compromise government or private interests
- breaching copyright and issues relating to intellectual property.

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<sup>26</sup> See s 107 of the FOI Act.

<sup>27</sup> See reviewable decisions in Schedule 3 of the FOI Act.

Agencies should have robust processes in place for dealing with informal requests for information and ensuring staff are aware of the ways in which they can deal with an informal request for government information, that they are appropriately trained, and there is an appropriate quality assurance process in place.

Agencies should undertake an appropriate, risk based assessment of the suitability of mechanisms for dealing with informal requests for information—including suitability of setting up administrative access arrangements for particular information (see **Attachment B** ‘Setting up administrative access arrangements’).

As set out above, the FOI Act provides for immunity from civil and criminal liability for acts or omissions done honestly and without recklessness in the exercise of a function under the Act, or in the reasonable belief that the conduct was in the exercise of a function under the Act.<sup>28</sup> The release of information by Ministers in response to an informal request is not authorised by under s 8 of the FOI Act and is therefore done outside of the FOI Act, with the consequence that the protections from civil and criminal liability afforded to agency staff do **not** apply to Ministers or Ministerial staff.<sup>29</sup>

## 18. Recording informal requests

There is no obligation under the FOI Act for agencies to report on informal requests received or the resulting outcomes. This is because formal reporting requirements would potentially add to the administrative burden of such arrangements, and reduce the efficiency of informal processes.

It is, however, recommended that agencies keep track of the kinds of informal requests they receive to guide their operations. Understanding the types of information commonly sought, and access facilitated, in response to an informal request, can:

- inform decisions regarding the prioritisation of the release of information under the open access information scheme
- highlight opportunities to expand administrative access arrangements to deal with frequently requested information.

## 19. Establishing administrative access schemes

Agencies are encouraged to consider:

- how access to additional categories of information could be facilitated via additional administrative access arrangements
- whether additional steps need to be taken to clarify the protocols for release
- promoting existing administrative access arrangements to members of the public.

More information on establishing an administrative access arrangement is at **Attachment A**.

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<sup>28</sup> See section 103 of the FOI Act.

<sup>29</sup> These guidelines are not intended to be relied upon as legal advice. Agencies and ministers may need to seek independent legal advice prior to disclosing information in the event they intend to rely on immunity from civil and criminal liability.

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
- clear timelines and an efficient process for referral of requests to the formal FOI process where a formal access application is more appropriate or where the applicant would prefer to apply under the FOI Act
- 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 review administrative access arrangements
- 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 correction of an individual's own personal information, arrangements that comply with Part 6 of the FOI Act.

Administrative access arrangements should be published on an agency's website.

**Note:**

- A model website template, which promotes both Open Access Information and Administrative Access arrangements, is published with the Ombudsman's Guideline on Open Access Information (See *Guideline 1 of 6: Open Access Information*).

## Attachment A—Assessment checklist—informal release

### Suitability for informal release

Factors indicating information is <i>not</i> suitable for informal release	If checked, <i>not</i> suitable for informal release
Release is restricted by statute (including secrecy provisions) <i>If restricted, refer person to make an access application under s 30</i>	<input type="checkbox"/>
Information concerns a third party (or includes third party information that cannot be easily redacted) <i>If extensive redactions need to be made consider referring a person to make an access application under s 30, or offering a summary of the information which removes third party information.</i>	<input type="checkbox"/>
Release is restricted by contractual terms, copyright or intellectual property laws <i>If restricted, refer person to make an access application under s 30</i>	<input type="checkbox"/>
Release could possibly compromise government or private interests <i>Where this applies, or if unsure, refer person to make an access application under s 30</i>	<input type="checkbox"/>
Processing would be administratively burdensome (more than minor redactions are likely to be made, or request is substantial and would cost agency significant resources to process) or would involve a fee <i>Where this applies, or if unsure, refer person to make an access application under s 30</i>	<input type="checkbox"/>
Applicant may wish to apply for external review of the decision <i>Where this applies, refer person to make a formal access application under s 30</i>	<input type="checkbox"/>

### Where suitable for informal release—available options

Options	Action
<i>Information is already publicly available</i>	<input type="checkbox"/> consider publicly available information, including Open Access Information <input type="checkbox"/> consider options for providing the information to applicant, or to assist them to locate information <input type="checkbox"/> consider any feedback on ability to access information
<i>Information can be released under an existing administrative access arrangement</i>	<input type="checkbox"/> consider all relevant administrative access arrangements and requirements <input type="checkbox"/> consider any relevant internal delegations and processes <input type="checkbox"/> where relevant, undertake appropriate identity check <input type="checkbox"/> make a record of the decision
<i>Information is suitable for ad hoc release</i>	<input type="checkbox"/> consider relevant legislation (and any restrictions on release) <input type="checkbox"/> consider any relevant internal delegations and processes <input type="checkbox"/> where relevant, undertake appropriate identity check <input type="checkbox"/> make a record of the decision
<i>Information can be released under specific legislation</i>	<input type="checkbox"/> consider relevant legislation and any protocols or processes for release requirements <input type="checkbox"/> consider any relevant internal delegations and processes <input type="checkbox"/> where relevant, undertake appropriate identity check <input type="checkbox"/> make a record of the decision

## Attachment B—Setting up administrative access arrangements

### Assess suitability for administrative access arrangements

This template can be used by agencies to identify information commonly subject to informal requests and formal access applications and consider whether the information is suitable for an administrative access arrangement.

In completing the template, it is important that FOI staff, relevant line areas and shopfront officers are consulted as possible ‘touchpoints’ for the public making informal requests and who can advise on:

- the types of information regularly requested—either through informal requests for information or via access applications
- the possible risks in dealing with those requests having regard to secrecy provisions, the extent to which information is complex or which personal or sensitive information might be intertwined with information that might otherwise be released administratively
- whether that information is suitable for an administrative access arrangement and what further action might need to happen to effectively implement that arrangement.

Type of information	Location/responsible line area	Possible risks (and explanation)	Recommendation (and further steps needed)
<i>e.g. Personal information</i>	<i>e.g. Human Resources</i>	<i>Low</i>	<i>Suitable / Not suitable</i>
<i>Correspondence</i>	<i>Shop front staff</i>	<i>Medium</i>	<i>Guidance to be provided on website</i>
<i>Applications</i>	<i>Policy Team</i>	<i>High</i>	<i>Delegation instrument to be updated</i>
<i>Reports</i>	<i>Media Unit</i>		<i>Referral protocol required (between FOI and line areas)</i>
<i>Requests for data/statistics</i>	<i>Executive</i>		<i>Staff training to be delivered</i>
			<i>Identity check process to be established</i>

### Document and promote administrative access arrangements

Where an agency has identified the categories of information that are suitable for administrative access, any arrangements or protocols for dealing with those requests **must** be documented and agreed to by the relevant areas within the agency.

Agencies should:

- obtain appropriate support for administrative access and a culture of openness and transparency across the agency from senior management and all relevant line areas
- develop and promote clear instructions on what information can be considered via an informal request, versus information that must be considered through a formal access application—and make these instructions clear to agency staff **and** the public

**Note:** it is important that members of the public can logically navigate to where information about administrative access arrangements is located on the agency website—ideally this information should be published with Open Access Information and information about how to make an access application (see the model website included in *Guideline 1: Open Access Information*).

- develop and promote clear guidance to relevant staff members across the agency (including line areas, shop front staff and FOI teams) on how to deal with requests for particular information so that decision making is consistent and defensible.

### Continuously review and maintain administrative access arrangements

Finally, it is important that administrative access arrangements are maintained and routinely reviewed with a view to improving their effectiveness, highlighting opportunities and identifying risks relating to the release of the government held information.

To ensure administrative access arrangements continue to be relevant and useful to the community, agencies should consider feedback from stakeholder meetings and community engagement, and analyse commonly requested information received by frontline staff and FOI teams. Administrative access arrangements should be updated or expanded accordingly.