



Australian Government

Comcare

FOI PROCEDURE MANUAL

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Key information

The Statutory Oversight team in the Legal Group is responsible for processing freedom of information (FOI) requests.

As there are strict timeframes around the processing of FOI requests, any new request received in any format must be forwarded directly to foi@comcare.gov.au for action.

What is Freedom of Information?

The [Freedom of Information Act 1982](#) (FOI Act) is legislation which provides members of the public with a right of access to documents held by Commonwealth Government agencies and ministers.

The FOI Act promotes government accountability and transparency by providing a legal framework for individuals to request access to government documents. This includes documents containing personal or other information, such as information about policy-making, administrative decision-making and government service delivery. Individuals can also request that ministers or agencies amend or annotate any information held about them.

Individuals have a right of access under the FOI Act to a document held by government unless the document:

- is held by an agency exempt from the FOI Act
- falls under one of the exemptions in the FOI Act
- falls under one of the conditional exemptions in the FOI Act, and releasing the document would be contrary to the public interest.

The FOI Act is also supplemented by the [Freedom of Information \(Charges\) Regulations 2019](#), and the [Guidelines issued by the Australian Information Commissioner](#) (Information Commissioner Guidelines).

Service Expectations

You should endeavour to keep the Applicant informed across the life of the FOI process. Where an Applicant is exercising their right to request access to information, you must ensure you assist them and throughout the process, provide updates as necessary, including responding to queries promptly and providing updates to timeframes on decisions as required.

Purpose

The purpose of this Procedure Manual is to provide guidance for Comcare employees around the procedural steps for processing FOI requests.

The Procedure Manual must be read in conjunction with the FOI Act and the Information Commissioner Guidelines.

How does Comcare receive FOI requests?

Comcare receives FOI requests in a number of ways. The main ways are:

FOI Procedure Manual

- Email: foi@comcare.gov.au or general.enquiries@comcare.gov.au
- Post: GPO Box 9905
CANBERRA ACT 2601

Comcare may also receive a request as a transfer from another agency. These are usually received by email.

Overview of Comcare's FOI process

Task		Responsible officer	Details
Day 1 – 14			
1.	Allocate	Director or Assistant Director	Review and allocate request to a Statutory Oversight Officer (SOO).
2.	Register	SOO	Create new HP TRIM file and record the matter in LEX.
3.	Review for validity	SOO	Determine whether request is valid. If invalid, advise applicant.
4.	Determine whether request should be transferred	SOO	Consider whether request should be transferred to another Commonwealth agency.
5.	Notify Business Areas (non-personal documents)	SOO	If the request is for non-personal documents, SOO should notify the General Manager of the relevant Business Area and Media of receipt of the request.
6.	Acknowledge request	SOO	Send acknowledgment letter within 14 days of receipt of the request.
7.	Determine whether to consult with applicant	SOO	Assess whether the request sufficiently identifies the documents sought or would require an unreasonable diversion of resources. Consult with applicant informally or formally.
8.	Send search/time estimate minute	SOO	Identify relevant Business Area which would hold requested documents.
9.	Retrieve documents	Business Area	Locate and send requested documents to SOO. Advise on any sensitivities in located documents.

Task		Responsible officer	Details
			Advise SOO if large number of documents are located.
Day 15 – 19			
10.	Determine whether to consult with applicant	SOO	Assess whether processing the retrieved documents would require an unreasonable diversion of resources. Consult with applicant informally or formally.
11.	Consider processing charges	SOO	Consider whether to issue FOI processing charges.
12.	Determine whether to consult with third-parties	SOO	Review documents to identify third-parties (including other Commonwealth agencies). If necessary, consult with third-parties.
13.	Prepare decision	SOO	Prepare FOI decision and mark documents with redactions.
Day 20 – 30			
14.	Submit decision for quality assurance (QA)	SOO	Submit draft FOI decision and documents for QA via email to foi@comcare.gov.au .
		Assistant Director/Director	Review and provide feedback to SOO.
		SOO	Review QA feedback and make any necessary updates.
15.	Consult with Business Area	SOO	Provide documents proposed for release (i.e. with any relevant redactions applied) to Business Area for comment.
		Business Area	Confirm that there are no residual sensitivities in the documents proposed for release. For personal documents, EL1 level confirmation required. For non-personal documents, EL2 level confirmation required.

Task		Responsible officer	Details
		SOO	For non-personal documents, notify relevant General Manager and Media Contact.
16.	Notify decision	SOO	Send final version of decision and documents to applicant.
Day 30 – 44			
17.	Update FOI disclosure log	SOO	If necessary, update FOI disclosure log within 10 days of notification of decision. Director of Statutory Oversight approval is required.
18.	Close record	SOO	Complete filing of documents in HP TRIM and update FOI Matter register.

Privacy considerations

Comcare takes its obligations under the *Privacy Act 1988* (Cth) very seriously. The SOO must be conscious of Comcare's privacy obligations during the entirety of the FOI decision-making lifecycle. This includes taking reasonable steps to confirm that any personal information used or disclosed is accurate, up-to-date, complete and relevant for the purposes for which it is being used or disclosed.

Process steps

Note: Refer to HP TRIM file [SC15/90](#) for previous FOI matters and examples to consider, including templates of emails and decisions that may assist you. Always ensure to discuss matters with supervisors for any assistance.

1. Allocation

The Director or Assistant Director reviews a new request and allocates it to a Statutory Oversight Officer (**SOO**) by sending an email to the SOO.

Under Comcare's [Freedom of Information Authorisations](#), decision-makers must be in the Statutory Oversight team and be at the APS 4 or above. The General Manager of Legal Group is also authorised to make FOI decisions.

The Director or Assistant Director may provide preliminary advice about how the request should be processed.

2. Registering requests

Once allocated, the SOO will register the request by:

- Creating a new file in HP TRIM:
 - Location: SC15/90
 - Naming convention: Freedom Of Information – [LAST NAME, First name] – summary of request. (E.g. “Freedom Of Information - DOE, Jane – investigation report into XYZ”).
- Record the matter in LEX.
- Saving a copy of the request into the newly created HP TRIM file.

3. Assess for validity

The SOO must assess the request to determine whether it is valid for the purposes of the FOI Act. Under section 15(2) of the FOI Act, valid request must be:

- in writing
- state that it is an application for the purposes of the FOI Act
- provide enough information about the requested document to reasonably identify it
- give details about how notices can be sent to the applicant (e.g., an email address or postal address).

Importantly, the applicant does not need to give any reasons why they are requesting the information.

If the request is not valid, the SOO must contact the applicant to advise them that the request is not valid and provide reasonable assistance to make it valid.

You should take a flexible approach to determining whether a request is valid, remembering the duty to assist the Applicant (ss 15(3b) of the FOI Act)). Where a request is made and is missing minor details such as that it is for “the purposes of the FOI Act”, you should contact the Applicant and determine what they are seeking access to and whether access can be facilitated administratively noting Comcare’s broad statutory administrative access arrangements. Otherwise, you must assist them to make their request valid. Steps that may be necessary to assist an Applicant to make their request valid may include but are not limited to:

- Contacting the Applicant and determining what documents they seek
- Drafting the scope of a request and having the Applicant confirm the scope.

Staff requests

Under section 15A of the FOI Act, a current or former Comcare employee cannot request personnel documents relating to their employment unless they have first requested them through the People Team.

If the employee or former employee has not received a response from the People Team within 30 days or they are not satisfied with the outcome of their request from the People Team, then they can make an FOI request.

Accordingly, if a current or former Comcare employee makes an FOI request seeking personnel documents, they should be referred to helpdesk.payroll@comcare.gov.au at first instance.

4. Transfer to another agency

If the request is for documents more closely related to the functions of another agency, the SOO should consider transferring the request to the other agency under section 16 of the FOI Act.

This should occur in consultation with the possible receiving agency:

- at first instance, phone the agency to discuss the matter and enquire whether they would be willing to accept transfer of the request
- send the agency a formal email seeking confirmation that they accept transfer of the request
- contact the applicant in writing to advise the matter is being transferred
- email the receiving agency with a copy of the:
 - original request
 - the notice advising of transfer that was sent to the applicant.

Transfers should be actioned within 2 business days, as the accepting agency must still process the request based on the date the original agency received the request.

5. Notify Business Area

If the request is for non-personal documents (such as procedure manuals or policy documents), the SOO should send a courtesy email notification to the relevant General Manager (copying in their Executive Assistant) advising them of receipt of the request. On a case by case basis, the SOO may also need to be sent to the Office of the Chief Executive Officer.

A courtesy notification should also be sent to the Media Team.

These notifications should be sent within 2 business days of the request being allocated to the SOO.

6. Acknowledging the FOI request

The SOO must acknowledge the FOI request within 14 days of the day the request was received by Comcare (section 15(5)(a) of the FOI Act). However, the acknowledgment letter should be sent as early as possible.

The acknowledgement sets out the scope of the applicant's request, provides information on timeframes, and advises the applicant that, unless they contact otherwise, Comcare will consider Comcare staff details to be out of scope of the request.

7. Preliminary consultation with applicant

The SOO should review the scope of the request to determine whether preliminary informal consultations with the applicant should be undertaken. The purpose of the consultation is to efficiently assist the applicant to resolve issues with their request, as they may not be aware of the nature and volume of Comcare's records.

Examples where this may be appropriate include where, on the face of it, the request:

- captures a large number of documents
- is not clear.

Preliminary consultations can be made by phone or by email. If the applicant does not respond to the preliminary consultation within a reasonable period of time (e.g., 2 days), then the SOO should proceed with processing the request based on the original scope.

If the applicant agrees to revise the scope of their request, the SOO must confirm the revised scope in writing.

If the applicant does not engage with the preliminary consultation or if the consultation does not resolve the issues with the request, the SOO should:

- in the case where a large number of documents would be captured, proceed to Step 8 and request that the Business Area complete a time estimate minute
- in the case where the request is not clear, proceed immediately to Step 10.

8. Requesting documents

Note: If request does not provide sufficient information to identify the requested documents, proceed to Step 10.

Identification of Business Area

The SOO should identify the Business Area which would likely hold the requested documents. Common documents and Business Areas include:

Document	Business Area
Claims documents	Claims Management Group
Work Health and Safety Investigations	Regulatory Operations Group
AAT Documents	Claims and Litigation Services, Legal Group
Claims Manual and Guidance	Claims Management Group
Surveillance footage or reports	Fraud, Corporate Management Group

The SOO should use Comcare's [Organisational Chart](#) and intranet to help identify relevant Business Areas.

Once a Business Area has been identified, the SOO should contact an appropriate officer in the relevant team (e.g. an Assistant Director) by phone to discuss the request, advise on the FOI process, and obtain a positional email address for the SOO to send correspondence to.

Search email

The SOO should send an email to the Business Area providing:

- a copy of the request
- a search minute or time estimate minute as appropriate
- a timeframe for response (5 business days).

Search minutes and time estimate minutes

The SOO must determine whether to provide a search minute or a time estimate minute to the Business Area:

- **search minutes** provide information about steps taken by the Business Area to locate documents and to identify any sensitivities with the potential release of the documents. They are used where the request identifies the documents and would not be unreasonable to process.
- **time estimate minutes** provide details about the number of documents, pages and possible sensitivities with the potential release of the documents. They are used where the request would likely capture a large number of documents and would require an unreasonable diversion of resources to process.

The SOO should determine which minute to send following preliminary discussions with the Business Area about the possible size and complexity of the request.

9. Retrieving documents

The Business Area is responsible for identifying and retrieving the requested documents. The Business Area should also ensure that it has completed the search minute to identify any sensitivities in releasing the documents. The Business Area does not need to describe their concerns with reference to the FOI Act.

It is important that search and time estimates are completed as they may be used to support Comcare's decisions in the course of an internal or external review.

Certification of searches

The Business Area must certify that they have taken all reasonable steps to locate the requested documents.

What constitutes 'all reasonable steps' to locate documents will depend on the terms of the request and may include searches of:

- Electronic records, including:
 - PRACSYS
 - HPE Trim
 - Emails
 - Shared drives
- Paper files.

Certification of searches should be completed at the EL1 level, and can be recorded electronically (such as by email) or by certifying the search minute.

Identifying sensitivities

Using the search minute, the Business Area must describe any sensitivities in the potential release of the documents located.

Whilst the Business Area does not need to describe their concerns with reference to the FOI Act, they should explain what harm, if any, could result in releasing information contained in the document.

Confirmation that sensitivities have been identified should be completed at the EL1 level, and can be recorded electronically (such as by email) or by certifying the search minute.

Large volume of documents identified

If a large number of documents are identified by the Business Area, the SOO should be contacted within 2 business days to discuss completing a time estimate minute and the possibility of consulting with the applicant to revise the scope of their request.

No documents found

If the Business Area does not locate the requested documents, the search minute should be completed setting out what steps were taken to locate the documents and advising why the documents could not be located or do not exist (e.g. "Comcare did not investigate that matter and therefore no inspection report exists").

10. Formal consultation with applicant (Section 24AB of the FOI Act)

If the request is unclear or after the Business Area has provided a time estimate minute, the SOO must determine whether to undertake a formal consultation with the applicant under section 24AB of the FOI Act. A consultation is required where a 'practical refusal reason' exists in relation to the request.

A practical refusal reason exists where the request:

- does not provide sufficient information to identify the documents requested; or
- would require a substantial and unreasonable diversion of resources to process.

The purpose of the consultation is to assist the applicant to resolve issues with their request.

If the applicant has made multiple requests for the same document or documents, or the subject matter of the requests is substantially the same, the requests may be combined for the purposes of issuing a consultation under section 24AB of the FOI Act (section 24(2) of the FOI Act).

Where a consultation notice is issued under section 24AB of the FOI Act, the applicant must, within 14 days from the day after the notice is issued:

- revise the scope of their request
- refuse to revise the scope of their request, or
- withdraw their request.

Requirements of a consultation notice

A consultation must set out the following information (section 24AB(2) of the FOI Act):

- that the decision maker intends to refuse access to the request
- which practical refusal reason exists

- the name and contact details of the SOO (the SOO should not provide their direct phone number or email address)
- that the consultation period during which the applicant may consult the contact person is 14 days after the day the applicant is given the notice.

Timeframes

If the applicant does not revise or refuse to revise their request within the 14 day consultation period, then their request is taken to be withdrawn (section 24AB(7) of the FOI Act). If the applicant requires further time to revise their request, the consultation period may be extended with the applicant's agreement.

The consultation period, beginning from the day after the applicant is notified of the consultation and ending on the day the applicant revises or refuses to revise their request, is disregarded for the purposes of the processing timeframe (i.e. the 'processing clock' is paused during the consultation period).

Reasonable assistance

The SOO must provide the applicant with reasonable assistance to revise the scope of their request. Examples of reasonable assistance include:

- providing a breakdown or description of documents
- explaining Comcare's functions
- suggesting a scope of request that might be able to be processed
- suggesting other ways the applicant could revise their request (e.g. by specifying a specific timeframe, excluding draft document, etc.).

The SOO may need to contact the relevant Business Area to discuss the request and Comcare's operating environment so that the SOO can provide information and assistance to the applicant.

Cannot identify

A request must provide sufficient information as is reasonably necessary to enable a responsible officer of Comcare to identify the documents the applicant is seeking.

In determining whether the request provides sufficient detail, the SOO should read the request fairly and not take a pedantic approach to interpretation, recognising that applicants may not be aware of Comcare's operating environment.

Unreasonable diversion of resources

If the scope of the request captures a large number or significantly complex documents, the SOO should consider whether processing the request would require a substantial and unreasonable diversion of Comcare's resources.

In determining whether processing a request would be substantial and unreasonable, SOOs must consider the time that would be required:

- identifying, locating or collating documents
- examining the documents
- deciding whether to grant, refuse or defer access
- consulting with other parties

- redacting exempt material from the documents
- making copies of documents
- notifying an interim or final decision to the applicant.

SOOs should use the Charges Calculator to estimate the time that would be required to process the request in full. However, SOOs must amend the Charges Calculator to reflect the time that would be required to review and redact the documents, having regard to complexity of the documents under consideration. In general, the SOO will consider a range between 0.5 – 5 minutes to review and redact each page.

For example, it may be appropriate to allocate 0.5 minutes per page to review and redact each page for simple documents, such as letters previously sent to the applicant. For other material, such as investigation reports, material covered by legal professional privilege, or complex medical documents, it may be appropriate to allocate 3 minutes per page to review and redact each page.

Refusal to revise

If the applicant refuses to revise the scope of their request, the SOO should proceed to make a decision based on the scope of request that was used for the purposes of the consultation.

11. Charges

After receiving the documents from the Business Area, the SOO must consider whether to issue FOI processing charges under section 29 of the FOI Act and in accordance with the [Freedom of Information \(Charges\) Regulations 2019](#) (Charges Regulations).

FOI charges are discretionary and are used to recover some of the costs associated with processing the request. However, as a guiding principle in assessing costs, SOOs should consider the ‘lowest reasonable cost’ objective set out in section 3(4) of the FOI Act – that is, where the cost of calculating and collecting a charge might exceed the cost to Comcare in processing a request, it would generally be inappropriate to impose a charge.

Under the Charges Regulations, Comcare can impose a charge for the work already completed in relation to processing an FOI request or may charge based on an estimate of the work that would be required to process the request. In practice, Comcare will generally issue charges based on an estimate (which is then reviewed when the final decision is made).

You must refer to Comcare’s [FOI Charges Policy](#) when considering whether to impose a charge.

Exceptions to charges

A charge cannot be imposed:

- for documents containing the applicant’s own personal information
- where the request has not been processed within the statutory timeframe, including any relevant extensions.

Timeframes

Once notified of a preliminary assessment of charge, the applicant must respond in writing within 30 days either:

- agreeing to pay the charge (in full or the required deposit)
- contending that the charge:
 - has been wrongly assessed, or
 - should be reduced or not imposed, or
 - both
- withdrawing the request.

If no written response is received, the request is taken to have been withdrawn by operation of the FOI Act.

The period beginning from the day after the applicant is notified of the charge and ending on the day the applicant pays the charge (in full or the required deposit), is disregarded for the purposes of the processing timeframe (i.e. the 'processing clock' is paused during the consultation period).

Calculating a preliminary estimate of charge

Charges must be assessed in accordance with Part 1 or Part 2 to the Schedule 1 of the Charges Regulations, which contain tables showing the rates charged for each action undertaken whilst processing an FOI request.

Part 1 contains the rates for when a document is required to be produced to satisfy the request in accordance with section 17 of the FOI Act. When charging under Part 1, the SOO must obtain an estimate from the relevant Business Area of the actual costs associated with producing the document, calculated on a cost recovery basis.

Part 2 contains the rates for circumstances where documents have been located. The SOO estimates the time that would be required to process the request in full, taking into account time required for searching and retrieving the documents, reviewing the documents, applying any redactions, and writing a decision. SOOs should use the Charges Calculator to assist them in estimating the relevant charge. However, SOOs must amend the Charges Calculator to more accurately reflect the time that would be required to review and redact the documents, having regard to complexity of the documents under consideration.

Comcare cannot charge for the first 5 hours of decision-making time, accordingly this time must be disregarded for the purposes of the calculating charge.

Reconsideration of charges

The SOO must provide a reconsideration of charge decision within 30 days of the day after an applicant responds to the preliminary assessment in writing contending that:

- the charge has been wrongly assessed
- should be reduce or not imposed, or
- both.

A reconsideration of charge decision requires that the SOO review the preliminary assessment of charge. In addition to any matters raised by the applicant, the SOO must consider (section 29(5) of the FOI Act):

- whether giving access to the documents in the general public interest or in the interest of a substantial section of the public
- whether paying the charge would cause the applicant financial hardship.

The public interest test in relation to a charges reconsideration requires the SOO to consider whether the general public interest, or in the interests of a substantial section of the public, in relation to the hypothetical release of documents (that is, if the documents were released in full) and whether it outweighs the assessed charge. Relevant public interest considerations could include whether the documents relate to a matter of public debate or significant public spending.

If the applicant contends that paying a charge would cause them financial hardship, they can be expected to provide evidence of that hardship. Relevant evidence could include evidence that the applicant receives a pension or income support payment or other evidence about their financial circumstances.

For the purposes of FOI charges, financial hardship is defined as where payment of the charge would leave the applicant unable to provide food, accommodation, clothing, medical treatment, education or other necessities for themselves or their family, or other people for whom they are responsible.

12. Third party Consultations

Where a document within scope of the request contains material relating to a third party, the SOO should consider whether it is appropriate to undertake a consultation.

Consultations may be undertaken where the documents contain material obtained from or relating to:

- other Commonwealth agencies (courtesy consultations)
- businesses or other organisations (section 27 of the FOI Act)
- persons other than the applicant (section 27A of the FOI Act)
- State agencies (section 26A of the FOI Act).

Consultations provide the third party with an opportunity to comment on the potential release of the documents under the FOI Act. The third-party may provide further information to the SOO to assist in making a decision about the release of documents.

Importantly, whilst the SOO must consider any submissions provided by a third party, the final decision about the release of the documents rests with the SOO.

Where the SOO decides to release documents where a third party (other than other Commonwealth agencies) has contended that they should be exempt from release, the third party will retain internal and external review rights in relation to Comcare's decision. This means that the documents that the third party objected to cannot be released until the third party's review rights have expired (including internal review and external review rights).

General information

When engaging in a consultation, SOOs must be mindful of not disclosing the identity of the applicant unless they have consented the disclosure of their personal information. SOOs may consider asking the applicant for their consent to disclose their identity.

SOOs must also ensure that they do not provide the third party with information that is not relevant to the consultation. The SOO may be required to prepare a new copy of the document for the purposes of the consultation with irrelevant material redacted.

Commonwealth agencies

The SOO should consult with another Commonwealth agency's FOI Team where the requested documents contain material that originated from or relates to that agency.

Any consultation with another agency does not add additional processing time.

As a courtesy, the SOO should advise the consulted agency of the outcome of their decision on the release of documents, particularly in circumstances where the SOO has made a decision contrary to the agency's submissions.

Documents containing business information

Where a request captures a document containing business information of a third party and the third party would reasonably wish to contend that the information is exempt from release, the SOO must provide the third party with an opportunity to provide submissions about the release of the information.

The relevant third party may contend that the information is exempt under:

- section 47 of the FOI Act – the information is a trade secret or other commercially valuable information
- section 47G of the FOI Act – release of the information would, or could reasonably be expected to, unreasonably affect the business in respect of their lawful business, commercial or financial affairs or prejudice the future supply of information to the Commonwealth.

In determining whether the third party would reasonably wish to contend that the information is exempt, the SOO must consider:

- the extent to which the information is well known
- whether the business is known to be associated with the matters dealt with in the information
- the availability of the information from publicly accessible sources
- any other matters the SOO considers relevant.

A consultation in relation to business information, under section 27 of the FOI Act, adds 30 days to the processing time.

Documents containing personal information

Where a request captures a document containing personal information of a third party and the third party would reasonably wish to contend that the information is exempt from release, the SOO must provide the third party with an opportunity to provide submissions about the release of the information.

The relevant third party may contend that the information is exempt under section 47F of the FOI Act – release of the material would be an unreasonable disclosure of their personal information.

In determining whether the third party would reasonably wish to contend that the information is exempt, the SOO must consider:

- the extent to which the information is well known
- whether the person is known to be associated with the matters dealt with in the information

- the availability of the information from publicly accessible sources
- any other matters the SOO considers relevant.

A consultation in relation to personal information, under section 27A of the FOI Act, adds 30 days to the processing time.

Documents containing information obtained from a State

Where a request captures a document containing information that originated with, or was received from, a State or authority of the State, the SOO must provide the State or authority of the State an opportunity to provide submissions about the release of the information.

Before commencing a consultation, the SOO must be satisfied that arrangements exist between the Commonwealth and the State regarding consultations under the FOI Act. The SOO should contact the relevant State authority FOI Team to discuss the arrangements.

The relevant State may contend that the information is exempt under section 47B of the FOI Act, where disclosure:

- would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State
- would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth
- would divulge information or matter communicated in confidence by or on behalf of an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth
- would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to an authority of Norfolk Island or to a person receiving the communication on behalf of an authority of Norfolk Island

A consultation in relation to information obtained from a State, under section 26A of the FOI Act, adds 30 days to the processing time.

13. Making a decision

Once the SOO has obtained the documents, received any applicable processing charges, and considered any consultation responses, they must make a decision about the release of the documents. The SOO must give a person access to a document unless it is:

- an exempt document, or
- a conditionally exempt document and release would be contrary to the public interest.

If the SOO determines that parts of the document are exempt, they must consider whether it possible to prepare an edited copy of the document with the exempt material redacted.

In cases where a practical refusal reason exists or the requested document could not be located or does not exist, the SOO will make a decision without reviewing a document.

Common types of information held by Comcare

Type of information	Decision-maker should consider...
Third-party personal information	Section 47F of the FOI Act
Third-party business information	Section 47G of the FOI Act
Draft documents	Section 47C of the FOI Act
Opinions or recommendations	Section 47C of the FOI Act
Medical information that, if released, may harm the applicant	Section 47F of the FOI Act
Details of investigations	Section 37 of the FOI Act Section 47E(d) of the FOI Act
Witness statements	Section 37 of the FOI Act Section 47F of the FOI Act
Information obtained in confidence	Section 45 of the FOI Act
Legal advice or requests for legal advice	Section 42 of the FOI Act
Information obtained from other agencies	Section 47E(d) of the FOI Act
Information describing detailed Comcare processes	Section 47E(d) of the FOI Act
Details of staff management action	Section 47E(c) of the FOI Act
Comcare employee details (names, direct phone numbers, email addresses)	Section 47E(d) of the FOI Act Section 47F of the FOI Act
Out of scope or irrelevant material	Section 22 of the FOI Act

Exemptions

Exempt documents in Division 2 of Part IV of the FOI Act which are relevant to Comcare include:

- documents affecting enforcement of law and protection of public safety (section 37 of the FOI Act)
- documents subject to legal professional privilege (section 42 of the FOI Act)
- documents containing material obtained in confidence (section 45 of the FOI Act)
- documents disclosing trade secrets or commercially valuable information (section 47 of the FOI Act).

The exemptions in Division 2 of Part IV of the FOI Act are not subject to an overriding public interest test. In other words, if a document meets the criteria to establish a particular exemption, it is exempt. There is no additional obligation to weigh competing public interests to determine if the document should be released.

Conditional exemptions

Conditionally exempt documents in Division 3 of Part IV of the FOI Act which are relevant to Comcare include:

- Commonwealth-State relations (section 47B of the FOI Act)
- deliberative processes (section 47C of the FOI Act)
- certain operations of agencies (section 47E of the FOI Act)
- personal privacy (section 47F of the FOI Act)
- business (other than documents to which section 47 of the FOI Act applies) (section 47G of the FOI Act).

Where a document is conditionally exempt, the SOO must grant access to the document unless giving access would, on balance, be contrary to the public interest.

In considering the public interest, the SOO must weigh the factors favouring access to the documents against the factors against providing access to the document. Section 11B(3) of the FOI Act sets out four factors which favour access to documents and must be considered if relevant. These factors are whether disclosure would:

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

Section 11B(4) of FOI Act also sets out factors that must not be taken into account when weighing the public interest. The irrelevant factors are whether:

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth 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 which the request for access to the document was made
- access to the document could result in confusion or unnecessary debate.

It is not sufficient to list the factors considered, the SOO must weigh the factors and come to a conclusion about where the public interest lies in a particular matter.

Section 22 – Edited copy of requested documents

Comcare is not required to provide fully redacted copies of documents to applicants. It is not reasonably practicable for Comcare to prepare an edited copy of documents where the modifications would result in the whole of the documents being redacted. This is consistent with section 22 of the FOI Act.

The FOI Guidelines supports this position:

[3.98] ...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

[5.165] ...In considering whether it is reasonably practicable to prepare an edited copy of a privileged document under s 22 of the FOI Act so the edited document does not disclose exempt material, the decision maker should consider whether editing will leave only a skeleton of the former document that would convey little content or substance. In which case, the purpose of the FOI Act may not be served by disclosing an edited copy and the document should be exempt in full (see Part 3).

Section 17 – Producing documents

Section 17 requires Comcare to produce a written document of information that is stored electronically and not in a discrete written form. The obligation to produce a written document arises if:

- Comcare could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to Comcare for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- producing a written document would not substantially and unreasonably divert the resources of Comcare from its other operations (s 17(2)).

Paragraph 3.212 of the FOI Guidelines refers to *Collection Point Pty Ltd v Commissioner of Taxation*, where the Full Federal Court held that the two conditions are distinct and to be applied sequentially. That is, a computer may not be ordinarily available to an agency even though it could be obtained without an unreasonable diversion of agency resources; and, conversely, an agency may encounter an unreasonable diversion of resources to produce a written document using a computer that is ordinarily available.

Steps to take

If you receive a request for information that may be stored electronically and not in a discrete written form (e.g., data or figures), ensure to consult with the relevant area early. They may be able to provide the requested information in first instance, or it may not be possible. If this is the case, ensure the relevant area provides sufficient evidence on why the information cannot be produced, or the resources and time it will take for Comcare to produce it. Keep your supervisor up to date and discuss if there are any issues or assistance required.

Low figures may be considered personal information (s47F)

If you receive a FOI request for specific data, and the reported figures are a low number, this may be considered personal information, as low figures may easily identify an individual.

The publication of low numbers may potentially disclose personal information of the relevant individuals, especially when it is combined with other factors, such as their employment with a specific agency, particularly if they worked in a small agency. Also, if additional information is known by the applicant or others.

If this is relevant to a request you are processing, you may need to consider section 47F of the FOI Act. Discuss with your supervisor if assistance is required.

Practical refusal reasons

A request should be refused where a practical refusal reason continues to exist following a consultation processes under section 24AB of the FOI Act (see Step 9 for information regarding consultations under section 24AB of the FOI Act).

A practical refusal reason will exist if following a consultation process under section 24AB of the FOI Act, the request:

- does not provide sufficient information as is reasonably necessary to enable a responsible officer of Comcare to identify the documents the applicant is seeking, or
- would require a substantial and unreasonable diversion of resources to process.

Where an SOO refuses a request on the basis that the processing a request would require a substantial and unreasonable diversion of resources, the SOO must obtain a representative sample of approximately 10% of the documents that are captured by the scope of the request. The SOO should obtain the sample of documents from the relevant Business Area.

Documents do not exist or cannot be found

The SOO may refuse access to a document if they are satisfied that all reasonable steps have been taken to locate the document and they are satisfied that the document cannot be found or does not exist.

The SOO relies on the Business Area to confirm what searches were conducted and to advise on the reasons why the document cannot be located or does not exist. An explanation of the searches undertaken and any reasons for why the document could not be located should be included in the decision letter sent to the applicant.

In determining whether all reasonable steps have been taken to locate the documents, the SOO should consider:

- the subject matter of the documents
- the normal arrangements for processing and storage of the documents
- any information to establish the existence of the document
- the age of the documents.

Writing a decision

Section 26 of the FOI Act sets out the formal requirements of an FOI decision letter. The SOO must prepare a decision letter which explains to the applicant:

- what exemptions were applied to documents (if any)
- the reasons why those exemptions were applied (including relevant public interest considerations)
- what the applicant's review rights are.

In addition, if the applicant paid a processing charge, the SOO must make a decision fixing the charge based on the actual time taken to process the request. If the actual time taken to process the request is less than the estimated time, the SOO must refund the difference in the charge. However,

if the actual processing time is greater than the estimated time, no additional charge can be levied against the applicant.

SOOs should use the templates available as a base for their decision letters, however the templates must be amended to reflect the particular circumstances of the request.

Preparing documents

The SOO should combine all relevant documents into a single PDF document and add a header and page numbers to the document. The header should be in the format “FOI: 2025/XXXX” or SOLEX####, which indicates from where the applicant obtained the documents.

Exemptions applied to the document should be marked using the redaction function in Adobe Pro and must use overlay text showing the relevant exemption applied to the material.

Comcare’s decision makers

Comcare FOI decision makers must understand the principles of administrative decision making in all aspects of the FOI process, such as reasonableness and procedural fairness. You should ensure to always act in good faith and apply best practice to provide applicants with access to information promptly within the statutory timeframe, in keeping with the objects of the FOI Act s 3(4) and FOI Guidelines.

14. QA

All formal letters (including section 24AB consultations and decision letters) and documents processed under the FOI Act must be quality assured (QA) by an Assistant Director or the Director of the Statutory Oversight Team.

The SOO must refer the letter or document for QA by sending a QA referral template email to FOI@comcare.gov.au.

A decision should be submitted for QA at least 10 business days prior to the due date.

The QAer may provide feedback and refer the letter or document back to the SOO for further action.

15. Business Area notification

After QA, the SOO must provide the relevant Business Area with a copy of the documents in the form proposed for release with any relevant redactions applied (i.e. in the form proposed to be provided to the applicant), and seek the Business Area’s advice as to whether there are any residual sensitivities with the release of the document.

The SOO should provide the Business Area with 5 business days for their response.

Personal documents

Where the requested documents are documents containing the applicant’s personal information (such as material from their compensation claim file), EL1 certification is sufficient.

Non-personal documents

Where the requested documents are documents that do not contain the applicant's personal information (such as Comcare policy documents), EL2 certification is required.

Once EL2 certification is received, the SOO must also notify, 5 business days prior to issuing the decision:

- the Business Area's General Manager
- the Media Adviser
- if the documents relate to significant issue, the Office of the CEO.

16. Notifying the decision

Following Business Area notifications, the SOO must send the decision letter, together with any relevant documents, to the applicant. The decision letter must be provided to the applicant prior to the due date.

Prior to releasing the decision and documents to the applicant, the SOO must:

- convert and save the decision letter in a PDF format
- ensure that redactions have been correctly applied to documents for release
- remove metadata from the documents before release
- ensure that third-party documents will not be released until the third-party's review rights expire.

The SOO should send a courtesy email to the relevant Business Area within 5 business days of notifying the applicant, to advise that the matter has been completed and that no further action is required from them.

If a decision due date falls on a weekend or public holiday, then the decision can be notified on the following business day.

17. Disclosure Log

Following release of a document under the FOI Act, the SOO must consider whether the document is required to be published on Comcare's FOI Disclosure Log.

Section 11C of the FOI Act requires that documents released under the FOI Act be published on the agency's disclosure log, except if the document contains:

- personal information about any person, if it would be unreasonable to publish the information
- information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information.

Documents must be published on the Disclosure Log within 10 business days after the person is given access to the document.

Where the SOO determines that a document should be published on the Disclosure Log, they must:

- complete a Disclosure Log Determination, to be cleared by the Director of the Statutory Oversight Team
- email Communications@comcare.gov.au with a request that the Comcare's Disclosure Log website page be updated with the details of the relevant document.

18. Finalising the matter

Following notification of the decision letter and documents and, if relevant, updates to the Disclosure Log are made, the SOO must finalise the FOI matter.

To finalise the matter, the SOO must:

- File all documents (including draft letters and marked up versions of decision documents) and correspondence in the relevant TRIM folder
- Update LEX with all relevant information to reflect the outcome of the request.

FOI timeframes

An FOI request must be processed within 30 calendar days from the day after it is received (section 15(5)(b) of the FOI Act).

The processing timeframe is extended in certain circumstances, including:

- by written agreement with the applicant (section 15AA of the FOI Act)
- by agreement of the Information Commissioner where the request is complex or voluminous (section 15AB of the FOI Act)
- for consultations under sections 26A, 27 and 27A of the FOI Act with third parties (sections 15(6) and 15(7) of the FOI Act)

The processing timeframe is disregarded during:

- consultations with the applicant under section 24AB of the FOI Act
- the period between the applicant being notified of a charge under section 29 of the FOI Act and the charge or deposit being paid by the applicant.

If a decision is not made within the processing timeframe, the request is considered to have been refused by the principal officer of the agency. The SOO should still proceed to issue a decision, however, an internal review will not be available to the applicant.

Section 15AA

The SOO may wish to consider seeking an extension with the agreement of the applicant under section 15AA. The request for extension can be up to 30 days, as either a single extension or a series of shorter extensions. This may be in addition to any time extensions that apply for third party consultation. The SOO must seek written agreement of the applicant. In order for the extension to be valid, the SOO must give written notice of the extension to the Information Commissioner as soon as practicable (within 1 business day) through [OAIC's online form](#). This must be completed before the expiration of the processing period.

Section 15AB

The SOO can apply to the Information Commissioner for an extension of time under section 15AB. The request must explain why the applicant's request is complex or voluminous. The SOO must include the scope of the request and the range of documents covered, work already undertaken on the request, any consultation with the applicant concerning length of time, and measures taken to ensure a decision is made within the extended time period, and to keep the applicant informed about progress. The Information Commissioner may share your submission with the applicant.

The SOO should only seek an extension of time under s 15AB after they first obtained, or attempted to obtain, the applicant's agreement for an extension under s 15AA. The application must be made before the expiration of the processing period. Applications must be made through [OAIC's online form](#).

Communication with applicants

There is an expectation of clear communication with Applicants regarding timeframes, particularly in circumstance where the timeframe varies on multiple occasions. Where the timeframe for the notification of a decision changes from the original due date the Applicant should be notified of the change, why the change has occurred (i.e. what mechanism under the FOI Act extended the timeframe) and the new due date. This should occur as soon as practicable either at the time an extension is notified or within 2 business days after it has been agreed.

Review of FOI Decisions

An applicant or an affected third party can seek internal and external review of FOI decisions made by Comcare. Applicants and affected third parties can seek review of:

- a decision refusing to give access to a document in accordance with a request
- a decision giving access to a document but not giving access to all documents to which the request relates
- 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
- a decision under s 29 relating to imposition of a charge or the amount of a charge
- a decision to give access to a document to a qualified person under s 47F(5)

Internal Reviews

A request for internal review must be made within 30 days from the date the applicant receives the original decision.

An internal review decision must be made by a decision maker other than the original decision maker and will generally be a more senior member of the Statutory Oversight Team.

The internal review decision maker will consider the request afresh, taking into account submissions made by the applicant. If necessary, the decision maker may conduct fresh searches for documents or may rely on the documents already retrieved.

Information Commissioner Reviews

An applicant or affected third party may seek Information Commissioner review of Comcare's decisions and the applicant does not need to have first sought internal review of the decision.

The applicant or affected third party must notify the Office of the Australian Information Commissioner (OAIC) of their request for Information Commissioner review within 60 days of receiving the reviewable decision.

An Information Commissioner review is a merits-based review and is non-adversarial. The OAIC will ask Comcare to provide relevant documents together with submissions in support of its decision.

The Information Commissioner can make a decision to:

- not review the matter
- affirm Comcare's decision, or
- vary Comcare's decision.

During the Information Commissioner review process, Comcare may:

- enter into an agreement with the applicant, under section 55F of the FOI Act, to process a new request and finalise the Information Commissioner review, or
- issue a decision under section 55G of the FOI Act, granting access to a document under review.

Administrative Appeals Tribunal Reviews

If an applicant, affected third party, or agency is not satisfied with the decision made by the Information Commissioner, they can seek a review of the decision by the Administrative Appeals Tribunal (AAT).

The applicant, affected third party, or agency must lodge their application for AAT review within 28 days after the day of receiving the Information Commissioner's decision.

Updates to Procedure Manual

This procedure manual must be updated in accordance with any legislative changes. The Statutory Oversight team monitors legislative changes through subscriptions to the Federal Register of Legislation.

The Assistant Director, Statutory Oversight, is responsible for updating the procedure manual.

Every time Comcare's Procedure Manual is updated, it is circulated to staff in Comcare's Statutory Oversight Team, which manages FOI matters for Comcare.