



## AFP National Guideline on Freedom of Information releases

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### 1. Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on disclosure of information](#).

#### Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

## 2. Acronyms

<b>AAT</b>	Administrative Appeals Tribunal
<b>AFP</b>	Australian Federal Police
<b>FOI</b>	Freedom of Information
<b>HRA</b>	Human Resources Area
<b>IC</b>	Information Commissioner
<b>LWOP</b>	Leave without pay
<b>PROMIS</b>	Police Real-time Online Management Information System

## 3. Definitions

**Agency** - means a government department, a prescribed authority or an eligible case manager.

**Document** - means anything in written form, as well as photographs, audio and video recordings and computer records.

**Internal review** - means a complete reconsideration of request, and is conducted by an AFP appointee independent from the initial decision-maker.

**Personnel records** - is defined in the [Freedom of Information Act 1982](#) (Cth) as documents containing personal information about an employee or former employee that are or were kept by the agency for personnel management purposes.

**Public interest** - means something that is of serious concern or benefit to the public.

## 4. Authority

This guideline was issued by the National Manager Policy and Governance using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

## 5. Introduction

This National Guideline advises appointees of the obligations and processes to respond to requests for information under the [Freedom of Information Act 1982](#) (Cth) and how to access their personal information.

## 6. General right to access information

The AFP is an 'agency' within the terms of the [Freedom of Information Act 1982](#) (Cth), and therefore is subject to requests for access to documents in its possession. An applicant may request access to, or a copy of, any document held by the AFP whether or not it relates to the applicant.

All decisions made under the Act must have regard to the Act's objectives, particularly the public interest in favour of disclosure and open government.

The *Freedom of Information Amendment (Reform) Act 2010* (Cth) commences on 1 November 2010 and expands the objectives of the FOI Act by:

- requiring agencies to publish certain information
- increasing the public participation in Government processes with a view to promoting better-informed decision making
- increasing scrutiny, discussion, comment and review government activities
- increasing recognition that information held by the government must be managed for public purposes and is a national resource and
- stating the intention that the functions and powers of the Act must be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Appointees must note that a person making a request for access only has a right to a document which is not an exempt document.

## 7. Exemptions to releasing documents

The [Freedom of Information Act 1982](#) (Cth) contains exemptions to releasing documents, grouped in 2 broad categories:

- exemptions
- public interest conditional exemptions.

A public interest test applies to all conditional exemptions and an agency must give access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Exemptions to releasing documents seek to balance the rights of applicants to access government-held documents with the need to protect the legitimate interests of government and third parties who deal with government. The exemptions are based on the premise that disclosing the particular information would:

- or could reasonably be expected to, harm national security, defence or international relations, the enforcement of the law and protection of public safety or
- reveal information communicated in confidence, or documents subject to legal professional privilege
- release information subject to a secrecy provision
- constitute contempt of Parliament or contempt of court
- reveal certain Cabinet documents.

Conditional exemptions are premised on releasing the document would be contrary to the public interest. Conditional exemptions apply to documents containing information relating to:

- Commonwealth/state relations
- deliberative processes of an agency
- financial or property interests of the Commonwealth
- certain operations of agencies
- personal information
- business affairs
- the national economy.

Application of the public interest test requires decision makers to compare factors for and against disclosure of the documents. Certain factors are not permitted to be taken into account.

Government policy requires that exemptions be claimed only where the relevant information is genuinely sensitive and real harm would be caused by its disclosure. Exemptions should not be claimed only because they are technically available.

## 8. Handling FOI requests within the AFP

All requests for documents under the [Freedom of Information Act 1982](#) (Cth) must be promptly forwarded to:

Information Access  
Government Relations  
AFP National Headquarters  
GPO Box 401  
Canberra City, ACT 2601

A member of the public may forward a request for documents under the Act to various work places. All requests should be directed to Information Access for processing.

## 9. Role of Information Access, Government Relations

Information Access must coordinate all AFP responses to requests.

A valid Freedom of Information request requires that the applicant provides:

- a request in writing
- sufficient information that will enable identification of the document(s)
- details of how notices may be sent to the applicant.

On receipt of an FOI request, Information Access must acknowledge the application and task the areas thought to hold or own the documents sought. The AFP must under the legislation acknowledge the initial request within 14 days of receipt and notify the applicant of a decision within 30 days (or 60 days where consultation with certain third parties is required).

## 10. Role of line areas

Where an appointee receives notification of a Freedom of Information (FOI) request from

Information Access they should:

- within 10 working days, find and forward to Information Access (using PROMIS where appropriate) a copy of all relevant documents (including emails, diaries, notebooks and field books) relating to the request
- advise Information Access whether:
  - any documents cannot be found
  - releasing the documents would cause any real harm
  - releasing the documents could attract media attention or have political implications.

If forwarding documents to Information Access may be delayed, immediate advice must be given to Information Access. There is no legal right to extend that time, but it may be possible to:

- negotiate agreement with an applicant or
- seek an extension of time from the Information Commissioner where the request is complex or voluminous.

The FOI decision maker must consider all documents relevant to the request. Appointees outside Information Access must not withhold, destroy or alter any documents, even if they consider them exempt. Where there is any concern about releasing all or part of a document, the relevant sections/pages should be marked using a yellow highlighter and advice on the concerns given to the FOI decision maker. Information Access depends upon that advice in responding to the request. Failure to identify a concern may result in the document being released.

Advice provided to Information Access should be cleared by the appointee at an appropriate level within relevant areas, depending on the sensitivity of the information. Line areas responding to a FOI request which involve significant issues should notify:

- their relevant Managers and National Managers
- Information Access as soon as possible so it can consider whether the AFP executive, Minister for Home Affairs or other Commonwealth agencies need to be advised of the request.

## 11. Role of FOI decision maker

The AFP Commissioner can grant or refuse access under the [Freedom of Information Act 1982](#) (Cth) to any document held by the AFP, and has authorised the following positions to make original decisions:

- Manager Government Relations
- Coordinator Information Access (FOI)
- Team Leader Information Access (FOI)
- Senior Team Member Information Access (FOI).

The original decision maker must form their own view on whether to release or refuse access to documents, but should also seek advice from relevant AFP and external sources to have regard to all relevant facts and to comply with the Act. The original decision maker should, if necessary, also obtain legal advice.

If a document is considered to be exempt, either fully or partially, each exemption stands in its

own right and should be considered separately. If a document appears to be exempt under multiple exemptions, then each exemption may and should be recommended.

If the original decision maker believes that sensitive issues are likely to be raised by releasing documents under an FOI request they must advise the AFP Executive and the Minister for Home Affairs before communicating the decision to the applicant.

## 12. Conflict resolution when finalising FOI responses

If the decision maker and the line area cannot resolve a dispute on the exemptions claimed the matter must be raised with the next most senior decision maker. The next decision maker must then review the matter and consult further with the line area at the most appropriate level. This escalation will continue until agreement is reached and the matter can be finalised to comply with the *Freedom of Information Act 1982* (Cth).

## 13. Processing fees and charges

From 1 November 2010, no fee is chargeable for making a request under the [Freedom of Information Act 1982](#) (Cth). Charges for processing a request may be imposed in accordance with the [Freedom of Information \(Fees and Charges\) Regulations](#). This is a discretionary power and the imposition of charges should be fully transparent.

The original decision makers have discretion to:

- not impose a charge
- lower a charge
- waive a charge.

The Act stipulates that decisions makers must consider:

- whether paying the charges would cause financial hardship to the applicant (or the person on whose behalf the application was made) or
- if releasing the documents is in the general public interest or in the interest of a substantial section of the public.

## 14. Review of original decision

Applicants may seek a review of the original decision via internal AFP review or by the Information Commissioner (IC).

### Internal review

An applicant aggrieved by a decision of the original decision maker may seek an internal review by applying for it within 30 days after being notified of the initial decision, or within a further period as the AFP allows.

Internal reviewers are drawn from any area, but must:

- be at SES Band 1
- be independent from the initial decision maker

- completely reconsider the request.

The decision on an internal review application must be made within 30 days of the application being received by the AFP. The Act allows an applicant an automatic right of appeal to the IC after 30 days since the applicant requested the review and if the internal review decision has not been received. The Act allows the AFP to ask the IC for further time to deal with the internal review request.

## Review by the Information Commissioner

Sections 54L and 54M of the Act allow an applicant to seek the IC's review of the original decision.

## 15. Avenues to appeal a decision

Applicants may appeal decisions under the [Freedom of Information Act 1982](#) (Cth) from the:

- **Administrative Appeals Tribunal (AAT)** per s.57A of the Act to review decisions made by the Information Commissioner
- **Federal Court of Australia** on appeal from on appeal from the AAT on a point of law or directly under the [Administrative Decisions \(Judicial Review\) Act 1977](#) (Cth).

## 16. Avenues of complaint for FOI applicants

Applicants may complain about AFP FOI responses to the:

- **Commonwealth Ombudsman** who may under the *Freedom of Information Act 1982* (Cth) exercise powers and functions under the *Ombudsman Act 1976* (Cth)
- **Information Commissioner** who may under the *Freedom of Information Act 1982* (Cth) investigate action taken by an agency to perform functions or exercise of powers under the Act on a complaint from a person or on the commissioner's initiative.

## 17. Requests for access to personnel records

Requests to access personnel records need not be formally made under the [Freedom of Information Act 1982](#) (Cth). Per s. 15A of the Act an employee/former employee seeking access to their personnel records must do so outside of the Act if there are established procedures for such access.

AFP appointees and former appointees can request access to their personnel records outside the FOI process. The AFP will consider each request on its merits and may edit documents before releasing them, consistent with the [Privacy Act 1988](#) (Cth).

Appointees should not process requests to access to personnel records as FOI requests unless the appointee/former appointee has applied outside the FOI process and is either:

- unsatisfied with the request outcome or
- has not been notified of the request outcome within 30 days after making it.

AFP appointees seeking to access their personnel records should initially request it from their

current Human Resources Area (HRA).

Appointees should advise former appointees to access their personal AFP information by initially approaching the HRA of the last AFP area/team they were in.

Appointees on extended leave without pay (LWOP), or in an inoperative pool, should approach the HRA of the area they were in before starting LWOP or placement in an inoperative pool.

Appointees in areas outside the relevant HRA who receive a request for access to personnel records must forward it to the appropriate HRA for consideration. The appropriate HRA must then consider and respond to the request.

If a HRA receiving a request for access to personnel records does not hold the documents sought, it should try to find it by inquiring with:

- People Strategies
- AFP Archives
- other relevant areas.

The HRA need not consider the request in the FOI context, but must apply the AFP policy, consulting with appropriate areas as required. Any such disclosure is not part of the FOI process, but is subject to the [AFP National Guideline on the disclosure of information](#).

If the HRA decides not to grant access it must inform the applicant in writing, including advice that the applicant may apply for access s. 15 of the [Freedom of Information Act 1982](#) (Cth).

## 18. Annotating or amending information

Applicants may under per s. 48 of the [Freedom of Information Act 1982](#) request the AFP amend or annotate personal records where information is:

- misleading
- inaccurate
- out of date.

Such requests are dealt with as if they were for access to information under the Act and are subject to the same appeal processes.

## 19. Requests outside the FOI Act

Documents may be requested and released outside the [Freedom of Information Act 1982](#) (Cth). Appointees must comply with the [AFP National Guideline on the Disclosure of Information](#) and legislation and legislation dealing with privacy and security (e.g. the [Privacy Act 1988](#) (Cth) etc. gives a right to access documents held by Commonwealth agencies).

Access to information may be made under the [Archives Act 1983](#) (Cth) for Commonwealth records in the open access period (over 30 years old). Requests for records under this Act should be made directly to the [National Archives of Australia](#). The *Freedom of Information Amendment (Reform) Act 2010* will reduce this period to 20 years in a phased approach across 10 years commencing 2011.

Appointees may also direct information requests to AFP Media and Marketing per the:

- [AFP National Guideline on media issues](#)
- [AFP Practical Guide on media and marketing \(ACT Policing\)](#)
- [AFP Practical Guide \(Aviation\) Media](#).

In the ACT a range of reports must be provided on payment of a fee under the *Privacy Act 1988* (Cth):

- accident reports
- reports of physical crimes, theft, burglary and traffic offences
- character checks.

Requests for such information should be referred to:

ACT Police reports dealing with physical crimes against the person (e.g. assault)	Information Access City Station, ACT 162 435
ACT motor vehicle accident reports ACT Police reports dealing with theft, burglary and criminal damage ACT reports of lost/found property	Accident Records Woden, ACT 151 243
Character checks ACT criminal and traffic conviction reports	Criminal History Woden, ACT 151 333

## 20. Information Publication Scheme

From 1 May 2011, the [Freedom of Information Act 1982](#) (Cth) provides a statutory framework for pro-active publication of information by agencies. This scheme allows the Act to evolve as a legislative framework to give access to information via agency driven disclosure rather than as a scheme primarily reactive to requests for documents. Further advice on the obligations under the Information Publication Scheme will be provided in due course.

## 21. Further advice

Any queries relevant to the content of this guideline should be emailed to [FreedomOfInformation@afp.gov.au](mailto:FreedomOfInformation@afp.gov.au).

## 22. References

### Legislation

- [Administrative Decisions \(Judicial Review\) Act 1977](#) (Cth)
- [Archives Act 1983](#) (Cth)
- [Australian Federal Police Act 1979](#) (Cth)
- [Freedom of Information Act 1982](#) (Cth)

- [Freedom of Information Amendment \(Reform\) Act 2010](#) (Cth)
- [Freedom of Information \(Fees and Charges\) Regulations](#) (Cth)
- [Privacy Act 1988](#) (Cth).

## AFP governance instruments

- [AFP National Guideline on media issues](#)
- [AFP National Guideline on the disclosure of information](#)
- [AFP Practical Guide \(Aviation\) Media](#)
- [AFP Practical Guide on media and marketing \(ACT Policing\)](#).