

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 information management](#).

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the conduct expected of AFP appointees. 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. Guideline authority

This guideline was issued by Chief Counsel using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of that Act.

3. Introduction

This guideline advises AFP appointees of the obligations and processes in responding to requests for information under the [Freedom of Information Act 1982](#) (Cth) and the processes in responding to requests for information outside that Act.

4. General right to access information

The AFP is an 'agency' within the terms of the [Freedom of Information Act 1982](#) (Cth) (the Act), 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.

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Section 11 of the Act provides that every person has a legally enforceable right to obtain access to documents under the Act, other than exempt documents, irrespective of their motivations for access.

Decisions made under the Act must have regard to the Act's objectives, which include exercising powers to facilitate and promote public access to information, promoting democracy by increasing participation in government processes and increasing scrutiny and discussion of government activities.

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5. Exemptions to releasing documents

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

- exemptions
- conditional exemptions.

A public interest test applies to all conditional exemptions and an agency must give access to the document unless access 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 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
- 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 Cabinet documents
- reveal confidential Parliamentary Budget Office documents
- disclose trade secrets or commercially valuable information
- disclose electoral roll information.

Conditional exemptions apply only if 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
- research being undertaken by an agency.

Application of the public interest test requires decision makers to compare factors for and against disclosure of the documents. For further information regarding the public interest test and factors for and against disclosure, see the [Guidelines](#) provided by the Office of the Australian Information Commissioner, particularly Part 6.

Even where a document is exempt, a decision maker has discretion to permit access to a document. The Guidelines encourage decision makers to give access to exempt documents if they can be released without causing significant harm (see Part 6 of the Guidelines).

6. Handling Freedom of Information (FOI) requests within the AFP

AFP appointees who receive an FOI request must forward the request to the FOI Team as soon as possible:

Freedom of Information Team
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AFP National Headquarters
GPO Box 401
PUBLISHED PURSUANT TO THE
Canberra City, ACT 2601

Or via email: FOI@afp.gov.au.
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7. Role of FOI Team

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The FOI Team coordinates all AFP responses to FOI requests within the statutory requirements and timeframes.
Senior members of the team hold a delegation as an initial decision maker under the Act.

On receipt of an FOI request, the FOI Team will identify business areas that potentially hold relevant documents, and request those documents.

8. Role of AFP appointees

An AFP appointee who receives an FOI request from the FOI Team should within 10 working days:

- find and forward to the FOI Team a copy (not originals) of all relevant documents (including emails, diaries, notebooks and field books) relating to the request in the format requested by the FOI Team
- advise the FOI Team whether:
 - any documents cannot be found
 - releasing the documents would cause any real harm, including harm to the AFP's operations, security, capability or budget
 - releasing the documents could attract media attention or have political implications.

AFP appointees must take all reasonable steps to comply with an FOI request in a timely manner and to conduct all reasonable searches for documents in the AFP's possession. AFP appointees are also to return the 'Searches Checklist & Recommendation' form to the FOI Team.

AFP appointees must immediately notify the FOI Team if there may be delays in providing documents. There is no automatic right to extend deadlines, but it may be possible to:

- negotiate an extension with the applicant
- seek an extension of time from the Office of the Australian Information Commissioner where the request is complex or voluminous
- in certain cases, refuse a request that would be an unreasonable diversion of AFP resources.

The FOI decision maker must consider all documents relevant to the request. AFP appointees must not withhold, destroy or alter any documents, even if they consider them exempt. AFP appointees are not permitted to redact any document before they have been considered by the FOI Team. 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 harm which may occur if released, given to the FOI Team. The FOI decision maker relies on that advice in responding to the request. Failure to identify a concern may result in the information or document being released.

Advice provided to the FOI Team should be cleared by an AFP appointee from the relevant business area, at an appropriate level, depending on the sensitivity of the information. Routine matters are normally at superintendent/coordinator level. AFP appointees responding to an FOI request that involves significant issues should notify:

- their relevant commander/manager and Assistant Commissioner/National Manager.
- the FOI Team as soon as possible so that it can consider whether the AFP Executive, Minister or other Commonwealth agencies need to be advised.

9. Role of the decision maker

The decision maker may grant or refuse access under the Act to any document held by the AFP. Section 21 of this guideline contains a link to the current delegates for decision making.

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INFORMATION PUBLICATION SCHEME TEST

If a document is considered to be exempt under the Act, either in full or in part, each exemption stands in its own right and must be considered separately. If a document appears to be exempt under multiple exemptions, then each exemption should be recommended by the business area to the decision maker. The decision maker will determine which exemptions can be applied.

If the decision maker believes that sensitive issues are likely to be raised by releasing documents under a request, they must advise the Minister's office and the AFP National Media team before communicating the decision to the applicant.

10. Conflict resolution

If the FOI decision maker and the business 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 business area at the most appropriate level. This escalation must continue until an agreement is reached and the matter can be finalised in compliance with the Act. Legal advice may be sought if required.

11. Processing fees and charges

Charges for processing a request may be imposed in accordance with the [Freedom of Information \(Charges\) Regulations 1982](#) (Cth).

The Act stipulates that decision makers consider whether:

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

The decision maker may decide:

- not to impose a charge
- to reduce a charge
- to waive a charge.

There is no charge for giving access to a person's own personal information or for providing documents outside the statutory period (including as extended).

12. Disclosure Log

The Disclosure Log includes information which has been released in response to an FOI request.

The Disclosure Log requirement does not apply to:

- personal information about any person if publication of that information would be unreasonable
- information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable
- other information covered by a determination made by the Information Commissioner if publication of that information would be unreasonable
- any information not reasonably practicable to publish due to the extent of modifications required by the above dot points.

Documents which are to be published must be published on the Disclosure Log within 10 working days after release to the applicant, in accordance with the Act.

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13. Review of original decision

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Applicants may seek a review by the AFP (internal review) or the Information Commissioner.

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13.1 Internal review

An applicant may seek an internal review of the FOI decision by applying within 30 days of being notified of the initial decision, or within a further period as the AFP allows. The applicant is informed of this process in the decision letter accompanying their application.

Internal reviewers may be drawn from any area of the AFP. A schedule of authorised persons for internal reviews is at section 21 below.

The decision on an internal review application must be made within 30 days of the application being received by the AFP unless an extension is granted by the Information Commissioner. The Act allows an applicant a right of appeal to the Information Commissioner 30 days after the applicant requested the review if the internal review decision has not been received.

13.2 Review by the Information Commissioner

The Act allows an applicant to seek the Information Commissioner's review of the original decision.

14. Avenues to appeal a decision

Applicants may appeal decisions under the Act to the:

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

15. Avenues of complaint

Applicants may complain about AFP Freedom of Information responses to the **Information Commissioner** who may under the *Freedom of Information Act 1982* (Cth) investigate action taken by the AFP.

The Commonwealth Ombudsman retains powers to investigate a complaint about action taken under the FOI Act if it is considered more appropriate for them to do so following consultation with the Information Commissioner.

16. Requests for access to personnel records

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

AFP appointees should not process requests for access to personnel records as FOI requests unless the applicant has previously applied outside the FOI process and:

- is unsatisfied with the outcome
- has not been notified of the outcome within 30 days.

Current and former AFP appointees seeking to access their personnel records should initially request them from the HR Advisory Team for HR records, or Security Vetting for records contained within their Personnel Security Vetting file. Any such disclosure is not part of the FOI process, but is subject to the *AFP National Guideline on information management*.

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17. Annotating or amending information

Applicants may, under s. 48 of the Act, request in writing that the AFP amend or annotate personal records where information is:

- incorrect
- incomplete
- misleading

- out of date.

The FOI Team is responsible for adhering to the relevant processes in relation to the amendment or annotation of personal records under Part V of the Act.

18. Requests outside the Freedom of Information Act

Documents may be requested and released outside of the Act, and legislation dealing with privacy and security provides advice to AFP appointees on the management of that information (e.g. the *Privacy Act 1988* (Cth) 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 Archives Act should be made directly to the **National Archives of Australia**. The *Freedom of Information Amendment (Reform) Act 2010* (Cth) will reduce this period to 20 years in a phased approach across 10 years commencing 2011.

AFP appointees may also direct information requests to the AFP Media Team per the [Standard Operating Procedure on media and public engagement](#).

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

- accident reports
- reports of crimes against the person, and property offences such as theft and burglary
- character checks.

Type of report	Refer request to:
ACT Policing reports dealing with people-related incidents such as assaults, sexual assaults, neighbourhood disputes and child welfare	Information Access City Station, ACT 162 592 ACT-Information-Access@afp.gov.au
ACT motor vehicle accident reports ACT Policing reports dealing with all property-related matters such as theft, burglary, armed robbery, stolen motor vehicles, fires, criminal damage, property damage, etc.	Accident Records City Station, ACT 162 592 AccidentRecords@afp.gov.au
ACT reports of lost property	
National Police Checks ACT criminal and traffic conviction reports	Locked Bag 8550 Canberra City ACT 2601 1300 363 992 AFP- NationalPoliceChecks@mail2.converga.com.au

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19. Information Publication Scheme

The Act provides a statutory framework for proactive 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. For further information please refer to the [National Guideline on the Information Publication Scheme](#).

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INFORMATION PUBLICATION SCHEME (IPS)

20. Further advice

Any queries relevant to the content of this guideline should be emailed to [FOI](#).

21. 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 (Charges) Regulations 1982* (Cth)
- *Privacy Act 1988* (Cth)
- *Ombudsman Act 1976* (Cth).

AFP governance instruments

- *AFP National Guideline on information management.*

Delegations and authorisations

- Authorisation under s. 23(1) of the *Freedom of Information Act 1982* (Cth) to make original decisions
- Authorisation under s. 23(1) of the *Freedom of Information Act 1982* (Cth) to review original decisions.

Other

- *Information Commissioner's FOI Guidelines.*

22. Shortened forms

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
FOI	Freedom of Information

23. Definitions

Act means the *Freedom of Information Act 1982* (Cth).

AFP appointee means a Deputy Commissioner, AFP employee, special member or special protective service officer and includes a person:

- engaged overseas under s. 69A of the *Australian Federal Police Act 1979* (AFP Act) to perform duties as an AFP employee
- seconded to the AFP under s. 69D of the AFP Act
- engaged under s. 35 of the AFP Act as a consultant or contractor to perform services for the AFP and determined under s. 35(2) of the AFP Act to be an AFP appointee.

(See s. 4 of the AFP Act).

FREEDOM OF INFORMATION ACT 1982

Agency means a government department, a prescribed authority or a Norfolk Island authority.

Applicant means a person seeking access to documents under s. 15 of the *Freedom of Information Act 1982* (Cth).

Decision maker means a person authorised by the Commissioner under s. 23(1) of the *Freedom of Information Act 1982* (Cth) (see paragraph 23 below).

Disclosure log means a publically available online collection of documents released under certain FOI requests so as to provide more efficient access to AFP material without the need for repetitious requests.

Document means anything in written form, as well as photographs, audio and video recordings and computer records. See s. 4 of the *Freedom of Information Act 1982* (Cth) for the complete definition.

Internal review means a complete reconsideration of a request, and is conducted by an AFP delegate who is 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 as outlined in s. 11B(3) of the *Freedom of Information Act 1982* (Cth) includes documents that 'promote the object of the Act', 'inform debate on a matter of public importance', 'promote effective oversight of public expenditure' and 'allow a person to access his or her own personal information'.

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