

Australian Capital Territory

# Freedom of Information (Volume 1 - Open Access Information) Guidelines 2020

Notifiable instrument NI2020-368

made under the

Freedom of Information Act 2016, s66 (Guidelines for Act)

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## 1 Name of instrument

This instrument is the *Freedom of Information (Volume 1 - Open Access Information) Guidelines 2020*.

## 2 Commencement

This instrument commences on the day after notification.

## 3 Guidance material

I make the guidelines for the *Freedom of Information Act 2016* set out in schedule 1 to this instrument.

Michael Manthorpe PSM  
ACT Ombudsman  
26 June 2020



OMBUDSMAN AN OFFICER OF  
THE ACT LEGISLATIVE ASSEMBLY 

# Freedom of Information Guidelines

OPEN ACCESS INFORMATION

OCTOBER 2019

Guideline Number. **1 of 6**

## **Disclaimer**

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

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

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

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## 1. Purpose

This guideline explains the open access information obligations of agencies and Ministers under the *ACT Freedom of Information Act 2016* (FOI Act)—that is, obligations to pro-actively release Government information without the need for a formal access application to be made by a member of the public.

## 2. Introduction

The FOI Act, which has been in effect in the ACT since 1 January 2018, is designed to make information held by the Government more accessible. The intention of this scheme is that formal access applications for information under the FOI Act should become a last resort, with a much greater focus placed on the **pro-active** disclosure of information<sup>1</sup>.

While access applications must be processed in a timely manner in accordance with legislative requirements, it is equally important that agencies comply with the ‘Open access information’ scheme (OAIS) provided for under the FOI Act.

The OAIS is designed to increase government accountability, and together with the other features of the FOI Act, to promote a culture of openness and transparency in government. If this ‘push model’ for access to information is working effectively, formal requests for access to some government information will reduce. The ACT community will also be able to access government information promptly and at the lowest reasonable cost.

The strategy for our Office is [available on our website](#). The ACT Ombudsman is happy to provide feedback on any such strategies. They can be sent through to us by email at: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au).

### Note:

- This guideline should be read in conjunction with Volume [2 of 6: Informal requests for information](#), which similarly encourages ACT Government agencies to put in place pro-disclosure policies that can minimise formal access applications which can be more costly, and take longer to process.
- In total six guidelines on the FOI Act have been prepared by the Office of the ACT Ombudsman (ACT Ombudsman). Questions or feedback on these guidelines can be directed to [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au).

## 3. Guiding principles

- The OAIS scheme is designed to:
  - complement existing voluntary arrangements for releasing information to the public, and disclosure requirements under other ACT legislation<sup>2</sup>
  - encourage a pro-disclosure approach.<sup>3</sup>
- Agencies and Ministers are expected to continually consider what information they can make pro-actively available, and should adopt a **pro-disclosure** bias when deciding what to publish.<sup>4</sup>

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<sup>1</sup> See page 3 of the Explanatory Statement to the *Freedom of Information Bill 2016* at [https://www.legislation.act.gov.au/View/es/db\\_53834/20160505-63422/PDF/db\\_53834.PDF#page=3](https://www.legislation.act.gov.au/View/es/db_53834/20160505-63422/PDF/db_53834.PDF#page=3)

<sup>2</sup> See ss [10](#) and [11](#) of the FOI Act.

<sup>3</sup> See s [9](#) of the FOI Act.

<sup>4</sup> Ibid.

- Government information that falls within the scope of s 23 must be made available to the ACT community, unless it has been assessed as contrary to the public interest to release the information.<sup>5</sup>
- Agencies are encouraged to publish additional information voluntarily in accordance with the objects of the FOI Act,<sup>6</sup> and take steps to make this information easily accessible to all members of the ACT community, for example by publishing the information in a way that complies with the web content accessibility guidelines, level AA.<sup>7</sup>
- An assessment of whether disclosure of the information would be contrary to the public interest is only required where agencies are considering **not** publishing information which falls within one of the categories of open access information that is required to be published under the FOI Act.
- Published information should be accurate, up-to-date and complete.<sup>8</sup> The ACT Ombudsman encourages agencies to develop an OAIS strategy that outlines their plan for meeting their OAIS obligations, including how published information will be reviewed and how they intend to evaluate their compliance.
- Agencies should consider how they can promote the OAIS arrangements they have in place across their organisation, and clarify the information they already have publicly available to reduce the need for formal access requests.

## 4. Requirements

OAIS requirements are set out under Part 4 of the FOI Act and outlined in detail below. Guidance is also provided regarding recommended approaches for agencies to ensure they are complying with their requirements under this part of the FOI Act, as well as the spirit of the legislation.

### Important:

- The OAIS **complements** existing arrangements for releasing information, as reflected in the flow chart at [Appendix A](#). It is not intended to replace existing processes or decision-making regarding the publication of government information in an organisation's ordinary course of business.
- Agencies are reminded that s 10 of the FOI Act specifies that nothing in the FOI Act is intended to prevent or discourage agencies or Ministers from publishing or giving access to government information.

### 4.1 Who do these requirements apply to?

The OAIS requirements in the FOI Act, and these guidelines, apply to:

- any **agency** in the ACT<sup>9</sup>
- any **Minister** of the ACT Government.

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<sup>5</sup> See s [24\(1\)](#) of the FOI Act.

<sup>6</sup> See s [6](#) of the FOI Act. See also ss 10, 19(e) and 29.

<sup>7</sup> The guidelines are available at [www.w3.org](http://www.w3.org).

<sup>8</sup> See s [25](#) of the FOI Act.

<sup>9</sup> Agency is defined in s [15\(1\)](#) of the FOI Act and includes administrative units, statutory office-holders and their staff, territory authorities and instrumentalities (further defined in s 15(2)), territory-owned corporations and their subsidiaries, the Office of the Legislative Assembly and officers of the Assembly, courts, the ACAT and certain other boards and commissions.

## 4.2 What is open access information?

Open access information in relation to both an agency and a Minister is defined in s 23 of the FOI Act. It is ‘government information’ which agencies and Ministers must routinely publish under the FOI Act, outside of the access application process.<sup>10</sup> It can also include additional information that agencies choose to publish in accordance with the pro-disclosure objectives of the FOI Act.

*Government information* is defined in s 14 of the FOI ACT as information ‘held’ by an agency or Minister, excluding information related to a Minister’s personal or political activities, or created or received by a Minister in the Minister’s capacity as a member of the Legislative Assembly. This includes information contained in a ‘record’ that is held by the agency or Minister, or that the agency or Minister is entitled to access.

*Record* is defined broadly to mean any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means. It can also include a reference to a copy of a record.<sup>11</sup> Consequently, the FOI Act covers not just written documents, but a wide range of materials, including emails, electronic recordings, photographs, videos, social media posts, electronic diaries and post-it notes.

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

## 4.3 What information needs to be published?

Section 23 of the FOI Act lists the categories of open access information that **must** be published by:

- agencies—see [s 4.4 Types of information that must be published by agencies](#) below
- Ministers—see [s 4.5 Types of information that must be published by Ministers](#) below.

As outlined in the Explanatory Statement for the FOI Act,<sup>12</sup> these categories are designed to cover categories of information that are **useful to the public** and hence, avoid the need for access applications to be made.

Section 24(1) of the FOI Act requires open access information of an agency or a Minister to be publicly available **unless** the information is ‘contrary to the public interest information’—see [s 4.6.1 Contrary to the public interest information](#) below. For information on where the information must be published—see [s 4.9 Publication requirements](#)

Agencies may also choose to reference relevant website links on the [ACT Open Access Information website](#), which is designed to provide a central, searchable interface to access government information. See [s 4.9 Publication requirements](#) below for more information.

### Note:

- Only information that came into existence **on or after 1 January 2018** must be published as open access information.<sup>13</sup> Agencies are, however, encouraged to consider publishing information created **before** this date as appropriate and where still relevant. Agencies should take a pro-disclosure approach and consider publishing useful information even where not required under the FOI Act – see [s 4.13 The benefits of a proactive pro-disclosure approach](#) below.

<sup>10</sup> See s 24 of the FOI Act.

<sup>11</sup> See s 3 and the Dictionary of the FOI Act.

<sup>12</sup> See page 16 of the Explanatory Statement for the FOI Bill, at [https://www.legislation.act.gov.au/View/es/db\\_53834/20160505-63422/PDF/db\\_53834.PDF#page=16](https://www.legislation.act.gov.au/View/es/db_53834/20160505-63422/PDF/db_53834.PDF#page=16)

<sup>13</sup> See s 23(1) of the FOI Act.



## 4.4 Types of information that must be published by agencies

The types of open access information that agencies **must** publish include policy documents, budgetary papers and information about government grants. Details about each mandatory information type, specified in s 23 of the FOI Act, is provided below (see ss 4.4.1 to 4.4.12).

### 4.4.1. *Functional information – s 23(1)(a)*

Agencies must publish **functional information** ‘including a statement setting out particulars of the agency, including agency structure, functions, kinds of government information held and how requests for information may be made’.

Functional information is information about the administrative arrangements of an agency, which outlines why and how an agency operates. Examples of such information could include organisational structure diagrams, enterprise agreements, strategic plans, mission statements, contact details and values statements.

Such documents would generally **not** be contrary to the public interest to disclose, as this information would be publicly available already and include basic factual information about an agency. Any descriptions of information held by an agency would be provided at a high level, and would not reveal any sensitive information.

Most agencies would meet their obligations by publishing information in the ‘About us’ section of their website and in their annual report.

Where possible, agencies should ensure they:

- publish a top-level organisational structure chart
- describe their functions in simple terms that enable the ACT community to understand the range and scope of those functions.

It is also good practice for agencies to provide the contact details for each functional area within their organisation, and explain any situations where functions are shared between agencies.

#### **Note:**

- Agencies are not required to publish details about incidental functions they undertake (for example, corporate, HR or public relations functions). The aim of these requirements is to provide the ACT community with a clear understanding of the functions undertaken by an agency and the decisions they are required to make under legislation/policy.

Agencies should also provide information about the kinds of government information they hold, and how to request this information on their website.

Agencies are encouraged to develop a page on their website which summarises the significant categories of information they hold. It is recommended this summary page also provide links to the different categories of information available as required under s 23 of the Act, and explains what information can be accessed via the ACT Government Open Access Information website and/or the ACT Legislation Register.<sup>14</sup>

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<sup>14</sup> See <https://www.act.gov.au/open-access>

Agencies are encouraged to ensure this information does not just focus on how to make a formal access application under the FOI Act, but explains:

- what information is already available
- how informal requests for information can be made to the agency
- the types of information for which an informal request is recommended to save time and money for both the agency and the applicant.

At **Appendix B** is a model web page approach that may be used in developing or reviewing website information.

**Note:**

- Where websites only highlight formal access application pathways, members of the public are likely to take this approach even when they wish to make a simple information request or seek copies of their own information.
- Brochures are available from the ACT Ombudsman, which can help agencies to promote seeking information available via the OAS, as opposed to utilising formal access applications.<sup>15</sup> We recommend agencies provide a link to the brochure from their website.
- For more information about informal request pathways, see: ACT Ombudsman FOI Guidelines, [Volume 2 of 6: Informal requests for information](#).

#### 4.4.2. Tabled documents – s 23(1)(b)

Agencies must publish information about the agency or its work which are contained in documents that have been tabled in the Legislative Assembly—for example, annual reports and other formal reports.

Such documents would not be contrary to the public interest to disclose as they should already be publicly available. Indeed, they are published on the Legislative Assembly website.<sup>16</sup>

Agencies are, however, encouraged to ensure these documents are readily accessible to the ACT Community—see discussion at [s 4.9 Publication requirements](#).

#### 4.4.3. Policy documents – s 23(1)(c)

Agencies must publish their policy documents. ‘Policy document’ is defined at s 23(2) as including any of the following **final** documents (i.e. not drafts):

- (i) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents
- (ii) a document containing a statement about how an Act or administrative scheme is to be administered
- (iii) a document describing the procedures to be followed in investigating a contravention or possible contravention of an Act or administrative scheme
- (iv) another document of a similar kind used to assist the agency to exercise its functions.

As outlined in the Explanatory Statement for the FOI Act, it is the intention of the Act that this category of documents is defined **broadly**.<sup>17</sup> This category is designed to ensure the ACT Community is able to access information to help them understand the operations of an agency and **how the functions of an agency are exercised**.

<sup>15</sup> See <https://www.ombudsman.act.gov.au/publications/brochures>

<sup>16</sup> See [https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/tailed\\_papers?result\\_1159321\\_result\\_page=13](https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/tailed_papers?result_1159321_result_page=13)

<sup>17</sup> See page 17 of the Explanatory Statement to the *Freedom of Information Bill 2016* at [https://www.legislation.act.gov.au/View/es/db\\_53834/20160505-63422/PDF/db\\_53834.PDF#page=17](https://www.legislation.act.gov.au/View/es/db_53834/20160505-63422/PDF/db_53834.PDF#page=17)

Policy documents disclosed should be sufficient for the ACT Community to understand **how decisions will be made that impact them**—that is:

- what are the rules/considerations that agency staff take into account when making a decision or recommendation
- how is legislation and/or administrative schemes that an agency is responsible for applied/enforced.

Documents considered relevant by the ACT Ombudsman are those that **inform decision-making** in the agency.

Documents likely to fall into this category include those that outline the **application of policy** by the agency regardless of their title—for example, policy advice manuals, procedural manuals, procedural instructions, guidelines, standard operating procedures and financial instructions.

When assessing which information is relevant in this context, agencies are encouraged to consider the functions of their agencies, what information will be of concern to community members in relation to the agencies functions and key services it delivers.

Each of the document types outlined in the above definition of policy document are discussed in more detail below.

***i) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents***

Examples of documents likely to fall within the scope of this requirement include those that outline:

- how a particular government program is expected to be managed by staff in the agency
- considerations that decision-makers in the agency take into account when deciding to exercise a particular discretion(s) under legislation
- processes that will be followed in terms of engaging with clients who have applied to access a government service
- complaint-handling policies
- privacy policies.<sup>18</sup>

Some of the above documents will in fact be notifiable instruments which are already available via the ACT Legislation Register.

Agencies are however, encouraged to ensure these documents are readily accessible to the ACT Community—see discussion at [s 4.9 Publication requirements](#)

***ii) a document containing a statement about how an Act or administrative scheme is to be administered***

Examples of documents likely to fall within the scope of this requirement include policy statements, as well as factsheets or website information that summarise particular government programs.

The ACT Ombudsman considers that this does **not** include factsheets providing general information to the public about a topic, as opposed to those that summarise particular government programs/services available. See [s 4.9.2 What shouldn't you publish on the open access portals](#) below for more information.

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<sup>18</sup> As required by [Territory Privacy Principle 1.3](#) of the *Information Privacy Act 2014 (ACT)*

***iii) a document describing the procedures to be followed in investigating a contravention or possible contravention of an Act or administrative scheme***

Examples of documents likely to fall within the scope of this requirement include policy advice manuals or standard operating procedures that outline **how** legislative compliance activities are undertaken in an agency—for example, how an agency conducts an investigation, how warnings or infringement notices are issued, how monitoring of compliance is undertaken and how sanctions are imposed.

***iv) another document of a similar kind used to assist the agency to exercise its functions***

This category could include additional documents that outline the application of policy as it impacts members of the ACT community.

*What about high level policy papers?*

Agencies may also have other documents available that internally would be considered ‘policy documents’, such as policy discussion papers, evaluation reports and documents which discuss policy options and/or possible policy responses to a particular issue.

Such documents are certainly encouraged to be published pro-actively as they will contribute to open discussion in the ACT and transparency of government processes. They are not, however, considered mandatory to publish in accordance with s 23(2) of the FOI Act. This is because while they form part of the policy development process, they do not outline current policy that is ‘in effect’ and directly impacts the ACT community.

*What about contrary to the public interest policy documents?*

Some operational policy documents which fall within the scope of s 23(2) may be contrary to the public interest to release, but agencies are reminded they should adopt a pro-disclosure approach where possible.

Policy documents should **not** be withheld from publication in full, simply because certain parts of the document are contrary to the public interest to release. These parts of the document should simply be redacted—see [s 4.7.3. Redactions of contrary to the public interest information](#).

- For example, a policy regarding prison arrangements could contain sensitive information that would facilitate a person’s escape from lawful custody or prejudice procedures for protecting public safety at the prison. This information may be contrary to the public interest to disclose, but other more factual information on procedures in place to ensure the welfare of detainees might be disclosed to inform the ACT community.
- Agencies are encouraged to apply an ‘FOI lens’ when developing new policy documents and structure the documents to ensure that information contrary to the public interest is easily identifiable and separate where possible. This will make the future task of redacting and publishing such documents simpler.

**Note:**

- Agencies should be aware that s 27 of the FOI Act provides for policy **not** to be applied in certain circumstances where a required policy document was not publicly available as required under the FOI Act and the person would suffer prejudice because they were not aware of the provisions of the policy document—see below at [s 4.7.2. Effect of policy documents not being available](#).
- Given this provision and the pro-disclosure objectives of the FOI Act, while agencies are only required to publish information created on or after 1 January 2018, agencies are encouraged to consider publishing earlier policy documents that still influence current agency decision-making.

#### **4.4.4. Budget papers – s 23(1)(d)**

Agencies must publish budget papers and Appropriation Acts presented to the Legislative Assembly under the *Financial Management Act 1996*. ACT agency Budget Statements are, however, published each year on the Treasury website, and Appropriation Acts are published on the ACT legislation website. The ACT Ombudsman considers this to be sufficient to meet this requirement.

#### **4.4.5. Information about government grants – s 23(1)(e)**

Agencies must publish information about government grants made, or administered by, the agency. This would usually be done via publication on the agency website of information about agency grant programs and successful grants awarded, with such information unlikely to be contrary to the public interest to disclose.

Grants administration is the process that an agency undertakes to achieve ACT Government policy outcomes through grants. It includes planning and design, selection and decision-making, the making of a grant, the management of grant agreements, and the ongoing relationship with recipients of grants, reporting, review and evaluation.

Government grants are considered to be ‘administered by’ an agency if the agency has an arrangement in place to provide financial assistance by or on behalf of the ACT Government to the non-government sector.

#### **4.4.6. The agency’s disclosure log – s 23(1)(f)**

All agencies must publish a disclosure log of all information released in response to access applications—see [s 4.10 Disclosure log requirements](#) below.

#### **4.4.7. Statements regarding bodies that advise the agency or its Minister—s 23(1)(g)**

Agencies must publish a statement listing all boards, councils, committees, panels and other bodies established by the agency to advise them, or their responsible Minister.

This requirement applies to bodies that provide **advice** to an agency or its responsible Minister. Bodies likely to fall within scope of this requirement include external advisory panels of experts or community groups (for example, ACT Curriculum Advisory Committee, ACT Mental Health Advisory Council, ACT Bicycle Advisory Group).

The ACT Ombudsman considers that internal boards or committees that are responsible for administrative or recruitment matters, and/or decision-making on policy issues based on advice received (for example, management committees, audit committees, steering committees, executive committees) would **not** generally be considered mandatory to include in such a published statement. Agencies may, however, wish to consider including such bodies to increase the transparency of their operations.

#### **Note:**

- This requirement is not limited to permanent bodies only, or those that provide formal reports or recommendations to the agency or Minister. The statement should also include temporary bodies in existence at that time that are created to advise the Government on policy matters.
- Agencies would generally not need to include in the statement advisory boards who are required to comply with the FOI Act in their own right.

#### **4.4.8. Reports or recommendations made by advisory bodies**

Agencies must publish any report, or recommendations, prepared by one of the above bodies. Minutes are not required to be published.

Such documents would generally **not** be contrary to the public interest to disclose, as in many cases this information will be factual information provided by members of the public, external to an agency.

It is, however, recognised that, consistent with access application provisions under s 49 of the FOI Act, agencies may wish to delay publication of such reports/recommendations for up to three months in situations where they are prepared specifically for public release and/or presentation to the Legislative Assembly or one of its committees—for example, where an official launch is planned and will be accompanied by additional communications to explain the relevance of the report/recommendations and any related changes in government policy/activities.

Consistent with the above, this requirement would **not** be considered to apply to reports or recommendations made by internal boards or committees that are responsible for administrative, management or recruitment matters (for example, management committees, audit committees, steering committees, executive committees). Agencies may, however, wish to consider publishing such information where it would be of interest to the broader ACT community and provide greater transparency in terms of the policy operations of the organisation.

#### **4.4.9. Ministerial briefs that are five or more years old.**

Agencies must publish incoming ministerial briefs, parliamentary estimates briefs, annual report briefs and question time briefs that are prepared for their responsible Minister once they are at least five years old. Noting that only documents that were created on, or after, 1 January 2018 need to be published, the practical obligation arising from this provision will likely commence in 2023.

Agencies are, however, encouraged to consider the OAIS and apply an ‘FOI lens’ in the preparation of these documents and to take a pro-active approach to publication of these documents—noting that:

- during the five year period, community members may still lodge access applications for Ministerial briefs
- briefing material, including purely factual information and any talking points drafted for Ministers or senior executive staff, will generally be expected to be disclosed—given it is information the agency has cleared to be provided in a public hearing
- the formatting of briefing templates may not be web-accessible as in the past they were not intended for public release.

Agencies should also ensure that briefing material prepared from 1 January 2018 onwards is:

- web accessible
- stored correctly and readily accessible in agency file management systems so it can be located by staff responsible for meeting open access obligations from 2023 onwards, and assessed for release in a timely manner
- the structure of briefing materials is designed to facilitate contrary to the public interest information being redacted where necessary.

#### **4.4.10. Agency publication undertakings**

Agencies are required to publish information that falls within a category of information that is not otherwise described as open access information under s 23 of the FOI Act, but the agency has themselves declared it will publish—see [s 4.11 Agency publication undertakings](#) below. The Office is not aware of any such undertakings being published at the date of publication of this guideline.

#### **4.4.11. Information declared by the ACT Ombudsman to be open access information**

Agencies must publish information the ACT Ombudsman has declared to be open access information. It is noted that no such declarations have been made at the date of publication of this guideline that agencies would be required to comply with.

#### **4.4.12. Information prescribed by regulation**

No such information has been prescribed at the time of publication of this guideline.

### **4.5 Types of information that must be published by Ministers**

The information that all Ministers must publish is set out below, as well as additional responsibilities imposed on the Chief Minister.

#### *The Minister's disclosure log*

Ministers must publish a disclosure log of all information that is released in response to an access application—[s 4.10 Disclosure log requirements](#) below.

#### *Information about travel and hospitality expenses*

Ministers must publish information about ministerial and ministerial staff travel and hospitality expenses.

This information is currently available on the ACT Government Open Access website at:

<https://www.act.gov.au/open-access/ministers-information/ministerial-travel-expenses-disclosure>.

Ministers are encouraged to ensure the most recent information published on this page is no more than six months old.

#### *A copy of the Minister's diary*

A copy of the Minister's diary that sets out all meetings, events and functions attended by the Minister that relate to the Minister's responsibilities must also be published. Personal events or meetings need not be included.

Ministerial diaries are currently published as required on the ACT Government Open Access website at:

<https://www.act.gov.au/open-access/ministers-information/ministerial-diaries-disclosure>

Ministers are encouraged to ensure the most recent information published on this page is no more than six months old.

#### *Information declared by the ACT Ombudsman to be open access information*

Ministers must publish information the ACT Ombudsman has declared to be open access information. It is noted that no such declarations have been made as at the date of publication of this guideline that agencies would be required to comply with.

#### *Information prescribed by regulation*

Ministers must publish information prescribed by regulation. No such information has been prescribed at the time of publication of this guideline.



### *Chief Minister to publish Cabinet decision information*

The Chief Minister is also required to publish information about **decisions** made by Cabinet or a Cabinet Committee on or after 1 January 2018. The following must be published:

- (i) *a summary of the decision*
- (ii) *the decision reference number*
- (iii) *the date when the decision was made*
- (iv) *the triple bottom line assessment for the decision.*

The 'triple bottom line assessment' framework is a framework for identifying and integrating social, environmental and economic factors into the policy development cycle and the decision-making process by ensuring that decisions are informed by principles of sustainability.<sup>19</sup>

This information is currently published on the ACT Government Open Access website at:

[https://www.cmtedd.act.gov.au/open\\_government/inform/cabinet-decisions](https://www.cmtedd.act.gov.au/open_government/inform/cabinet-decisions)

#### **Note:**

The Chief Minister is not required to publish information about a decision made by Cabinet or a Cabinet Committee in relation to a proposed budget, if the proposed budget has not been presented to the Legislative Assembly under the *Financial Management Act 1996*.<sup>20</sup>

## **4.6 What information does not need to be published**

### **4.6.1. Information that is contrary to the public interest**

Information does not need to be published where it is *contrary to the public interest information* as defined in s 16 of the FOI Act. That is, information:

- which is taken to be contrary to the public interest to disclose under Schedule 1 of the FOI Act, or
- the disclosure of which would, on balance, be contrary to the public interest under the test set out in s 17 of the FOI Act.

As noted in the guiding principles above and reflected in the flow chart at [Appendix A](#), the OAIS should complement existing arrangements for releasing information. Consequently, an assessment of whether disclosure of the information would be contrary to the public interest is **not** required for every document that an agency publishes.

It is anticipated that line areas will publish documents as normal where the agency has no concerns about releasing them. Additional processes should only be put in place, for implementation by a line area or central processing team, where an agency is considering **not** publishing a document. This must occur for the types of information outlined in s 23 of the FOI Act.

Once their open access strategy matures, agencies may wish to apply these additional processes more broadly to other types of documents, to ensure they are also complying with the spirit of the FOI Act and taking a pro-disclosure approach.

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<sup>19</sup> See ACT Government, *Triple Bottom Line Assessment for the ACT Government: Framework and templates* (July 2012), available at [https://www.cmtedd.act.gov.au/\\_data/assets/pdf\\_file/0020/331373/TBL\\_Assessment\\_Framework.pdf](https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0020/331373/TBL_Assessment_Framework.pdf)

<sup>20</sup> See s 23(1), definition of *open access information*, of a Minister, paragraph 23(1)(b)(ii) of the FOI Act.



**Note:**

- A separate guideline is being prepared by the ACT Ombudsman to assist agencies in making an assessment as to whether information is contrary to the public interest information—some preliminary commentary has, however, been provided above in relation to particular categories of documents to assist agency staff in making these assessments in the interim.

## 4.7 The impacts of decisions not to publish

### 4.7.1. *Description of the information to be published instead*

Agencies should be aware that where a decision is made **not** to publish information under the above categories because it is contrary to the public interest information there is still a requirement, under s 24 of the FOI Act, to publish:

- a description of the information—except in certain limited circumstances outlined below
- the ground under Schedule 1, if applicable, that the information was not disclosed and the findings on any material questions of fact, or the reasons for the agency's decision under the test set out in s 17 that the information is contrary to the public interest information
- a statement outlining review rights in relation to the decision not to publish the relevant information, including that the person may apply to the ACT Ombudsman for review of the decision and explaining how to make such an application.

A template that agencies can use to record a decision not to publish information is at [Appendix C](#). A list of such decisions taken should be included on an agency website as per the draft model web page at [Appendix B](#).

The ACT Ombudsman considers that where a document is updated as part of a regular review process, and the document has been previously withheld from access on the basis of a ground under Schedule 1 of the FOI Act, a revised statement outlining the above matters would **not** be required to be published, **unless**:

- the factual basis for Schedule 1 applying is no longer correct (for example, the document was expected to prejudice a particular investigation which has now been finalised), or
- more than minor changes are made to the document.

In these situations, the ACT Ombudsman considers a new assessment of whether disclosure of the information would be contrary to the public interest should be undertaken. Line areas are also encouraged to consider any potential changes in circumstances that would warrant a revised assessment being undertaken, as part of the agency's regular review of published open access information.

**Note:**

- A description of the information is not required to be published where it would, or would reasonably be expected to:
  - i) endanger the life or physical safety of a person,*
  - ii) be an unreasonable limitation on a person's rights under the Human Rights Act 2004, or*
  - iii) significantly prejudice an ongoing criminal investigation<sup>21</sup>.*
- If an agency or Minister decides **not** to publish a description of the information for one of the above reasons, the agency or Minister must tell the ACT Ombudsman about the decision and the reason for it under s 24(3).

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<sup>21</sup> See s [24\(2\)\(a\)](#) of the FOI Act.

- To date, no agency has told the ACT Ombudsman that this has occurred. As a result, a description of the information should be available in all relevant cases.

#### **4.7.2. Effect of information not being available**

Agencies should be aware that where policy documents are **not** made available as required, s 27 of the FOI Act provides that a person must not be subjected to any prejudice because of the application of the provisions of the relevant policy document if the person was not aware of the relevant provisions and could lawfully have avoided the prejudice if they had been aware of these provisions. As stated in the Explanatory Statement, *'a person cannot be left worse off when they could otherwise have used the information that should have been published to act differently'*.

Agencies that are still progressively publishing documents in order to comply with their OAIS obligations should remind line areas of the effect of s 27.

#### **4.7.3. Redactions of contrary to public interest information**

Section 26 of the FOI Act provides that where a record contains both open access information and contrary to the public interest information, an agency or Minister must if practicable make a copy of the record publicly available with any contrary to the public interest information deleted. Where this occurs, the agency or Minister must publish a statement that the original record contained contrary to the public interest information that has been deleted from the copy. The requirements under ss 24(2) and (3) should also be met in terms of explaining why particular information has been redacted.

A template that agencies can use to record this decision is at [Appendix D](#).

### **4.8 Quality of the information published**

Agencies and Ministers must as far as practicable keep open access information accurate, up-to-date and complete.<sup>22</sup>

#### **4.8.1. Timeliness and accuracy**

While there is no specified timeframe for releasing OAIS information, agencies and Ministers are encouraged to do so as soon as possible to ensure that information available is up-to-date and of use to the ACT community, and to avoid the need for members of the community to lodge formal access applications.

The ACT Ombudsman's Office is aware that some agencies have regular processes and timeframes in place where they, for example, update all available OAIS information every one to three months.

This is considered an acceptable approach. Agencies and Ministers are, however, encouraged to publish additional information outside of these regular timeframes where, for example:

- significant changes are made to the senior staff, functions or the structure of an agency
- a new report has been tabled before the Legislative Assembly
- there has been a significant development in relation to a high profile issue of clear interest to the community
- a new policy has been finalised and implemented, rendering existing policies redundant, or
- the agency or Minister has been contacted and asked informally for the relevant information.

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<sup>22</sup> See s 25 of the FOI Act.

**Note:**

- Community members may be disadvantaged if they access out-of-date policy documents.
- Redundant or incorrect material should be removed as soon as possible, particularly where it includes operational information that directly impacts clients of the agency.
- Where certain information is considered contrary to the public interest, agencies and Ministers are also encouraged to consider what additional summary information could be provided to the general public on the agency website or via newly created documentation to ensure the ACT Community can still get a ‘complete’ picture, at least at a high level, of particular government functions and processes.

**4.8.2. Completeness**

The Explanatory Statement for the FOI Act clarifies that the ‘completeness’ requirement means not only that the entirety of the prescribed information must be published, but also that agencies and Ministers need to continue to monitor whether information withheld from access is *‘no longer contrary to the public interest to release and if so to publish the information’*. This is reflective of the fact that the passing of time may impact whether or not information can be considered contrary to the public interest. See [s 4.7.1 Description of the information to be published instead](#) above for more information.

**4.9 Publication requirements****4.9.1 Where must the information be published**

Section 97 of the FOI Act outlines how government information must be published.

This provision states that the agency or Minister must:

- publish the information on a website **under its control**, or include on the website **a link** to another website where the information is published
- make a hard copy of the information available on request and without charge during ordinary work hours at the agency’s or Minister’s place of business.<sup>23</sup>

The ACT Ombudsman considers this provision to mean government information must be published on:

- the website of the relevant ACT Government agency and/or
- the ACT [Open Access Information website](#)

or links be provided on these websites to the information if published elsewhere (for example, ACT Legislation register or website of the ACT Legislative Assembly).

**Note:**

- The ACT Open Access Information website provides links to particular categories of government information to assist the community to find relevant documents—for example, budget papers or tabled documents. The Ombudsman generally considers this sufficient to meet open access requirements.
- Where such documents are of particular interest or use to the ACT community in relation to a specific issue, agencies are encouraged to also provide links to individual documents on their website. This is considered good practice where the documents also fall within one of the other categories of Open Access Information under the FOI Act (for example, policy documents that have been tabled that outline how an agency performs a regulatory function).

<sup>23</sup> See s [97\(1\)\(b\)](#) of the FOI Act.

#### 4.9.2 *What shouldn't you publish on the open access portal?*

While agencies are encouraged to take a pro-disclosure approach, they are encouraged not to publish excessive documents under the banner of 'policy documents' on the OAIS website—that will in fact make it difficult for the ACT Community members to find the documents they are looking for.

Examples of documents that are **not** considered likely to fall within the scope of the requirement to publish policy documents include those that outline:

- factsheets that provide general information or advice to the public, as opposed to outlining how the government makes decisions under a particular legislative program
- system training manuals
- process/system tip sheets
- detailed internal HR policies (for example, first aid, studies assistance).

This is because these documents either outline administrative procedures rather than policy arrangements, and/or would not guide decisions that agency staff make which impact the ACT community directly.

#### 4.9.3 *Accessibility requirements*

To comply with s 97(2), as no additional regulations are prescribed at this time, government information must as far as practicable be published in:

- a way that complies with the web content accessibility guidelines, level AA (see: [www.w3.org](http://www.w3.org))
- a form that provides: '*at least the same range of functions to the user of the information as was available to the agency or Minister before the information was published*'.
  - The Act provides the examples of the published document being electronically searchable and/or allowing a user to copy and paste from the document.

#### 4.10 Disclosure log requirements

Section 28 requires agencies and Ministers to keep a record of access applications made to the agency or Minister in the form of a *disclosure log*, except for access applications which are requesting access to:

- personal information, or
- information about the applicant's business, commercial, financial or professional affairs, where publication would be unreasonable in the circumstances.

This is to ensure that information obtained by a particular person in response to an access application is also available to the public more generally, whilst also balancing privacy considerations and impacts on business affairs.

This section also outlines the information the log must contain. The amount of information required by the FOI Act to be included is significant. Consequently, agencies and Ministers are encouraged to carefully consider the format of their disclosure log to ensure it meets the legislative requirements, but also the policy intention of ensuring that information obtained by one person via a formal access application is available to the community more generally.

At **Appendix D** is a template the ACT Ombudsman recommends agencies and Ministers use for their disclosure logs.

Information must be published on the disclosure log no earlier than three and no later than 10 working days after the day the decision notice is given to the applicant.<sup>24</sup> The three day delay is designed so the applicant has the opportunity to use the information first before it is available to everyone else.

**Note:**

- It should, however, be noted that the s 28(6)(b) exemption to publication on the disclosure log only applies where the applicant has applied for access to their own business information, not where they are seeking commercial information of another business. Where this does occur, what is unreasonable will depend on the circumstance – for example, it could be considered unreasonable to publish unsubstantiated allegations about the applicant’s business on the disclosure log.
- Agencies and Ministers may also choose to publish additional information on their disclosure log, including information released following an informal request for information. This may not, however, be the best way of ensuring this information is accessible to interested parties. Publication on relevant parts of an agency website may be more useful in this regard.
- It is recognised that smaller agencies who meet the definition of ‘agency’ in their own right, but are administered by a Directorate, may have their access application decisions published on the disclosure log of their ‘parent agency’.

#### 4.11 Agency publication undertakings

Section 29(1) of the FOI Act provides that an agency may publish an undertaking setting out additional government information (not covered under the categories discussed in this section) that it holds and will make publicly available. This is designed to cater for particular classes of information that are unique to a particular agency.

Where an undertaking is made, agencies are required to publish such information—that is, they must comply with their own undertaking, as such information will now be considered open access information—see [s 4.4.10 Agency publication undertakings](#) above.

The ACT Ombudsman is not aware of any such undertakings being published at the date of publication of this guideline.

#### 4.12 Reporting obligations

Section 96 outlines agencies’ and Ministers’ reporting obligations to the Legislative Assembly. The majority of these obligations relate to access application statistics that must be included in an agency’s or Minister’s annual report.<sup>25</sup>

Agencies are also required to publish open access information statistics, specifically, the number of decisions to:

- publish open access information under s 24(1)—see s 96(3)(a)(i)
- not publish open access information under s 24(2) – see s 96(3)(a)(ii).

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<sup>24</sup> See s 28(4) of the FOI Act. Section 151 of the *Legislation Act 2001* makes clear that for the purpose of calculating this three to 10 day period, the period would not include the day on which the decision notice was given to the applicant.

<sup>25</sup> The Explanatory Statement states that it is anticipated that agencies’ and Ministers’ reports under s 96 will be included within the existing annual reports.

The ACT Ombudsman is of the view that s 96(3)(a)(i) should not be interpreted to impose unnecessary reporting obligations on agencies or Ministers which, contrary to s 10 of the FOI Act would, discourage or significantly delay agencies or Ministers publishing government information.

This provision should be interpreted to include documents:

- published on the agency disclosure log
- registered on the ACT Open Access Information website (which can be used to capture statistics for reporting purposes)
- any other documents where a formal assessment of whether it would be contrary to the public interest to release the information was made—i.e. in situations where there are possible factors against disclosure to be considered.

In their annual reporting, agencies are, however, encouraged to provide commentary about the other types of information they regularly publish as a matter of course and any administrative schemes for release of documents that they have in place—see: ACT Ombudsman FOI Guidelines, *Volume 2 of 6: Informal requests for information*.

#### 4.13 The benefits of a proactive pro-disclosure approach

Whilst the FOI Act sets out very specific requirements in terms of the OAIS, agencies are encouraged to adopt a pro-disclosure approach that considers at all times what information created by the agency can be published—as opposed to limiting disclosure to the specific categories of documents specified as open access information by the FOI Act. As the Chief Minister has indicated recently:

*The aim of the Open Access Information scheme is to make the publication of government information, largely **routine**, and to reduce the need for community members to seek access to information through formal Freedom of Information channels.<sup>26</sup>*

Such a pro-active disclosure campaign can result in reduced formal access applications and/or complaints being made about an agency. While some ACT agencies have not realised these benefits yet, this may be achieved if agencies consider how, not just what, documents that they make available for publication. Further initiatives to publish ‘open access’ arrangements, as opposed to simply ‘FOI applications’ should also assist.

When deciding what additional information to publish, agencies are encouraged to ask themselves the following questions:

- What information is of interest to the clients and stakeholders of the agency?
- What information is of interest to the general public?
- Will publication of particular information assist the ACT community in dealing with the agency or commenting on programs/policies that the agency is responsible for?
- Will publication promote greater agency accountability?

Agencies should also ‘mainstream’ OAIS considerations where possible, ensuring that business units/line areas assess new documents created and/or modified documents on an ongoing basis to determine whether publication is appropriate. It is recommended that corporate areas generally only be required to be involved where concerns arise about publication and an assessment of whether disclosure of the information would be contrary to the public interest is determined necessary.

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<sup>26</sup> See statement by the ACT Chief Minister at <https://www.legislation.act.gov.au/View/ni/2019-271/current/PDF/2019-271.PDF>.

Agencies are also encouraged to consider carefully how the information they are releasing is presented to ensure that:

- it can easily be accessed by the ACT Community and hence, may reduce the need for informal requests or access applications to be lodged
  - In particular, agencies should take note of any repeated requests for the same type of information and ensure this is made easily accessible.
- agency staff can easily determine what information is already publicly available, rather than undertaking resource intensive searches to determine this and/or processing a formal access request in relation to information that is already available, leading to unnecessary additional use of resources and/or the risk of inconsistent decisions.

#### 4.14 Preparing an OAIS strategy

Agencies and Ministers are encouraged to ensure they prepare an OAIS strategy to ensure they:

- make the most of open access information arrangements to help reduce the processing costs of access applications
- comply with both the strict requirements and the spirit of the FOI Act
- apply a consistent approach to OAIS
- can adapt their practices where new technology solutions and/or whole of Government approaches are available for adoption.

The ACT Ombudsman is happy to provide feedback on any such strategies. They can be sent through to us by email at: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au).

An OAIS strategy should outline:

- what information the agency or Minister plans to publish (at a minimum documents that fall within the mandatory categories of information outlined in the FOI Act, where **not** contrary to the public interest)
- how the agency or Minister intends to promote the availability of open access information
- how the agency or Minister intends to ensure this information is kept up-to-date
- strategies for ensuring the ACT Community can easily find and access this information on the agency's or Minister's website and/or the ACT Government open access website
- how and when the agency or Minister intends to evaluate the strategy, and to evaluate performance under the OAIS.

#### Note:

- Effective record management systems will be critical for an agency or Minister to support an effective OAIS plan/strategy. It is recommended that agencies coordinate their approaches to record management and OAIS, taking into account existing ACT Government initiatives to extend the availability of electronic documents.<sup>27</sup>

#### 4.15 The role of the ACT Ombudsman and compliance activities

The ACT Ombudsman is required to monitor the operation of the FOI Act, including the publication of open access information by agencies and Ministers.<sup>28</sup> We are also able to:

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<sup>27</sup> See discussion of EDRMS initiative at <https://www.legislation.act.gov.au/View/ni/2019-271/current/PDF/2019-271.PDF>

<sup>28</sup> See s 64(1)(c) of the FOI Act.



- make these guidelines, including specifying how open access information is to be kept accurate, up-to-date and complete<sup>29</sup>
- declare government information, which came into existence on or after 1 January 2018, to be open access information.<sup>30</sup>

Following the publication of these guidelines, it is intended the ACT Ombudsman will audit individual agencies, and their compliance with the OAIS legislative framework and these guidelines.

These audits will not be designed to ‘catch agencies out’, but rather for the ACT Ombudsman to work with agencies to ensure they are meeting their obligations. This guideline will be updated where required on the basis of information gained during these audits, and practical lessons learnt by agencies in terms of best practice in the area.

The ACT Ombudsman will be looking to ensure each agency:

- has published information in the various categories specified in the FOI Act and/or explained their reason not to publish
- has published required information in an easily accessible manner
- has kept their published information accurate, up-to-date and complete.

A self-assessment checklist has also been provided at [Appendix E](#) to enable agencies to pro-actively evaluate their own performance.

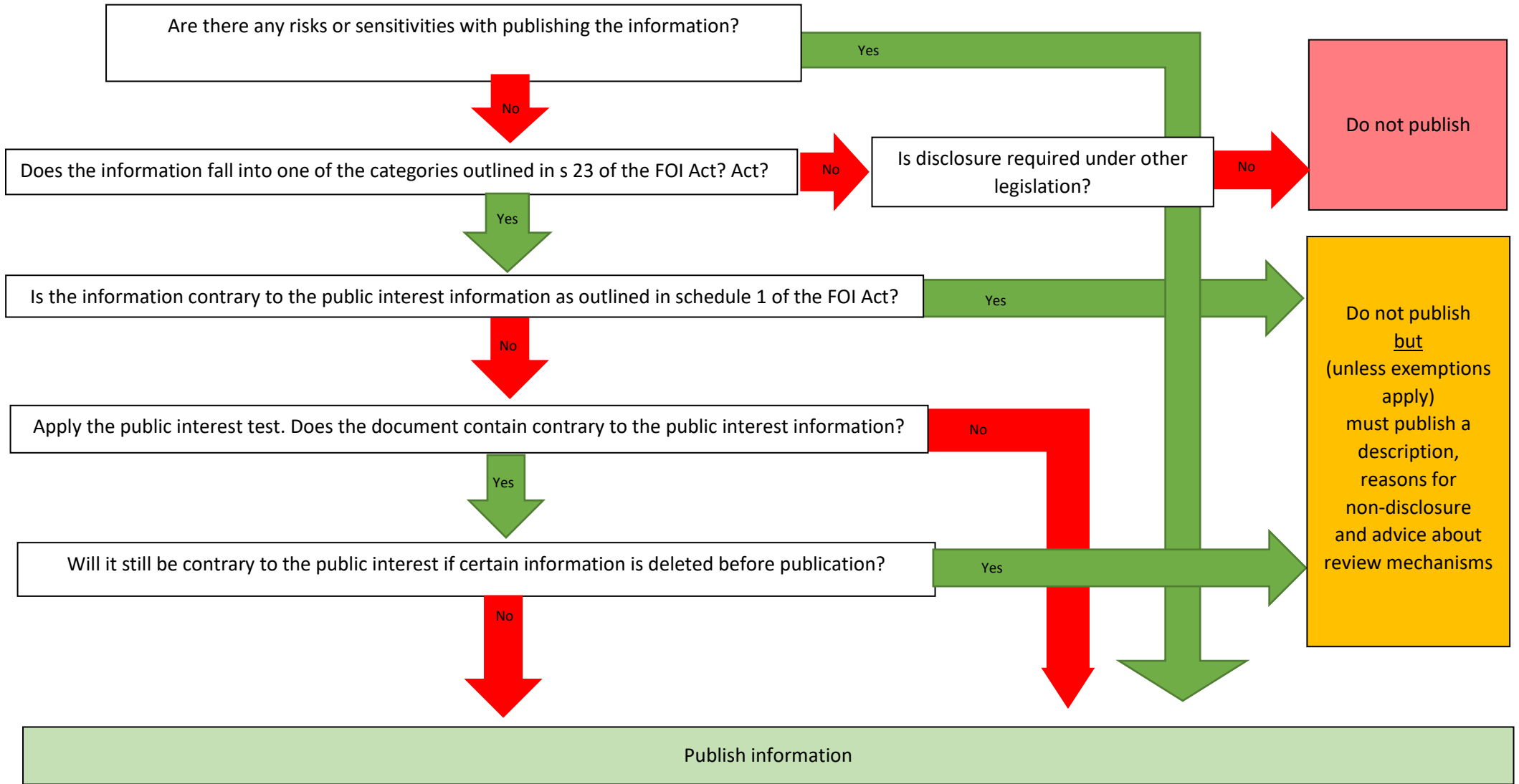
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<sup>29</sup> See s [66](#) of the FOI Act, and in particular s [66\(2\)\(c\)](#).

<sup>30</sup> See s [65\(1\)](#) of the FOI ACT.



Appendix A—Providing access to information



## Appendix B—Proposed model website approach

Below is template text agencies may wish to use to explain the types of information they hold and how to access it.

**Note:** It is suggested that information be collapsed under the various headings, so that less information is displayed initially upon viewing the page – as is evident on the similar page on the [ACT Ombudsman website](#).

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### Accessing information

*We are committed to your right to access government information*

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Every person has a legal right to access ACT Government information. This means our agency proactively releases government information. There are also a number of ways you can request access to information that we have not published. Below we explain what sort of information our agency holds, what we already publish and how you can access other information.

This [ACT Ombudsman brochure](#) also explains how you can access government information in the ACT.

### What information do we hold

As the Directorate responsible for [\[summarise functions\]](#), we hold information related to these functions including [\[summarise key information holdings\]](#).

### What information is already published

We make a range of information available for access on our website. We recommend you search our website first to see if you can find what you are looking for. You can also check the [Open Access Portal](#).

This includes information we are required to publish under the ACT Open Access Information Scheme - such as:

- functional information about our agency
- documents tabled in the Legislative Assembly
- policy documents
- budgetary papers
- information about government grants
- our disclosure log—which lists information we have released since 1 January 2018 in response to access applications
- a statement about bodies established to advise our agency or Minister, and copies of their reports and recommendations

Information people often look for on our website includes:

- [X](#)
- [X](#)

## Requests for information

If you can't find what you are looking for, you can contact us to ask if you can have the information. We have listed below some categories of information and the best process for requesting the information.

<i>Information requested</i>	<i>Process</i>
Access to personal documents we hold about you (for example, copies of application forms previously submitted)	Complete form available at X and submit to <a href="mailto:X@act.gov.au">X@act.gov.au</a>
Access to your employment record (if you are a current or former agency employees)	Complete form available at X and submit to <a href="mailto:X@act.gov.au">X@act.gov.au</a>
XXXX	XXXX

Where the information you are looking for is not listed above, you can still contact us to request this information informally at [X@act.gov.au](mailto:X@act.gov.au). Most requests for information, or copies of documents, can be dealt with informally and quickly—a phone call or email may be all that is required.

### Note:

- If you are applying for copies of personal information, evidence of identity must be provided.
- If you are seeking information listed below, it is, however, recommended you lodge a formal access application under the *Freedom of Information Act 2016* (FOI Act), as our agency is likely to need to undertake a formal assessment to determine whether or not the release of this information is contrary to the public interest, and/or restrictions under other legislation may apply.

### Lodging a formal access application under the ACT *Freedom of Information Act 2016*

If you have spoken to us and still can't find what you are after, you can make a formal access application directly to our agency under the FOI Act. Your request must include:

- enough detail to enable us to identify what information you are looking for
- an email or postal address via which we can contact you
- evidence of your identity (if you are seeking your personal information)
- authority for an agent to act for you (if you have engaged a lawyer or other third party to represent you)

We are generally required to process your request within 20 working days. To ensure timely processing, please:

- provide as much information as you can regarding the information you are looking for
- use our access application [request form](#).

Alternatively, you can send a written request to [X@act.gov.au](mailto:X@act.gov.au) or by post to:

FOI Contact Officer  
Branch  
Department  
Address

### Processing of your application

We will tell you within 10 working days after we receive your application that we have received your request and the date it was received. We will also give you an estimate of any charges that apply to your request.

We will give you our decision within 20 working days from the date your application was received, unless that time has been extended.

- If a document contains information about a third party, we will need to consult them and may need to extend the time to give you our decision by another 15 working days.
- We may also seek your agreement to extend the time if your request is complex.
- We can also seek a further extension of 15 working days from the ACT Ombudsman.

### Will I have to pay?

There is no application fee for an FOI request. There are no processing charges for requests for access to documents containing only personal information about you. However, processing charges may apply to other requests. We will tell you if this is the case. Where this occurs, you can ask for the charge to be waived or reduced for any reason, including financial hardship or on the grounds of public interest. If you do so, you should explain your reasons and you may need to provide some evidence.

### Seeking an amendment to personal information

If you believe our agency holds information about you that is incomplete, incorrect or out-of-date, under the FOI Act, you can also seek to have this information amended.

You can send a written request for amendment to [X@act.gov.au](mailto:X@act.gov.au) or by post to:

FOI Contact Officer  
Branch  
Department  
Address

Your request must:

- include enough detail so we can identify the information to be amended
- state how it is incomplete, incorrect, out-of-date or misleading
- state the amendments considered necessary
- include an email or postal address via which we can contact you.

We will process your request within 20 working days. If we are going to refuse your request, we will contact you and give you the opportunity to comment and/or provide further information before we do.

### ACT Ombudsman review and complaints investigations

When we have made a decision about your access application or a request to amend your personal information, we will send you a letter explaining our decision and your review and appeal rights. If you are not satisfied with our decision, you can ask the ACT Ombudsman to review it.

You can also make a complaint to the ACT Ombudsman about our actions, or failure to take action, in relation to any of our functions under the FOI Act.

More information is available on the website of the [ACT Ombudsman](#).

## Appendix C—template decision for access refused

### Open Access Information release outcome decision: Access Refused

**Document Category:** Choose an item.

**Title of document:** [insert name of document]

**Description of the information:** [insert brief description of the document]

**Grounds for decision to refuse access:**

It was decided that access to this information would **not** be made available because it is taken to be contrary to the public interest information under Schedule 1 of the *Freedom of Information Act 2016* (the FOI Act).

The relevant grounds under Schedule 1 of the FOI Act and the reasons why they were applicable in this case are outlined below:

- The information is considered to be [insert type of information] under Schedule 1.X because [insert short summary of reasons why the decision-maker found this ground relevant].

OR

It was decided this information would not be disclosed because, on balance, it would be contrary to the public interest test set out in s 17 of the FOI Act.

Factors favouring disclosure of this information, as outlined in Schedule 2 included:

- [reference relevant factor and reason **why** relevant]

Factors favouring non-disclosure of this information, as outlined in Schedule 2 included:

- [reference relevant factor and reason **why** relevant]

On balance, I consider the information to be contrary to the public interest information, because [insert reasons why the decision-maker has made this assessment, including how the factors were balanced].

If disclosed, I consider the harm to the public interest that can reasonably be expected to occur could include: [insert harm the decision-maker has assessed as likely to occur].

**Review rights:**

*Ombudsman review*

The decision to withhold this information is a reviewable decision as identified in Schedule 3 of the FOI Act.

You have the right to seek Ombudsman review of this decision. Under s 74 of the FOI Act, an application for Ombudsman review must be made within 20 working days from the day this decision was published on the agency's website, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the ACT Ombudsman at:

The ACT Ombudsman  
Attention: ACT Strategy and FOI Section  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

*ACT Civil and Administrative Tribunal (ACAT) review*

Under s 84 of the FOI Act, if a decision is made under s 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<https://www.acat.act.gov.au/>

**Authorised by:** [insert name of decision-maker]

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**Appendix D—template decision for access granted****Open Access Information release outcome decision:  
Partial access granted****Document Category:** Choose an item.**Title of document:** [insert name of document]**Description of the information:** [insert brief description of the document]

The original record of this document contained information the release of which would be contrary to the public interest. This information has been deleted from this publicly available copy of the document for the reasons outlined below.

**Grounds for decision to withhold disclosure:**

Certain information has been redacted before the publication of this document, as marked, because it is taken to be contrary to the public interest information under Schedule 1 of the *Freedom of Information Act 2016* (FOI Act).

The relevant grounds under Schedule 1 of the FOI Act and the reasons why they were applicable in this case are outlined below:

- The information is considered to be [insert type of information] under Schedule 1.X because [insert short summary of reasons why the decision-maker found this ground relevant].

OR

It was decided this information would not be disclosed because, on balance, it would be contrary to the public interest test set out in s 17 of the FOI Act.

Factors favouring disclosure of this information, as outlined in Schedule 2 included:

- [reference relevant factor and reason **why** relevant]

Factors favouring non-disclosure of this information, as outlined in Schedule 2 included:

- [reference relevant factor and reason **why** relevant]

On balance, I consider the information to be contrary to the public interest information, because [insert reasons why the decision-maker has made this assessment, including how the factors were balanced].

If disclosed, I consider the harm to the public interest that can reasonably be expected to occur could include: [insert harm the decision-maker has assessed as likely to occur].

**Review rights:***Ombudsman review*

The decision to withhold this information is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this decision. Under s 74 of the FOI Act, an application for Ombudsman review must be made within 20 working days from the day this decision was published on the agency's website, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the ACT Ombudsman at:

The ACT Ombudsman  
Attention: ACT Strategy and FOI Section  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

*ACT Civil and Administrative Tribunal (ACAT) review*

Under s 84 of the FOI Act, if a decision is made under s 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<https://www.acat.act.gov.au/>

**Authorised by:** [insert name of decision-maker]



**Appendix E—Suggested template for disclosure log**

Date of publication	Access application	Information requested	Decision	Information released	Fees (paid or waived)	Time (hours) spent on application	Person(s) who may apply to the Ombudsman for review	Review status
X/X/2019	<i>[insert agency reference number of access application with link to application – note: personal details or applicant should be removed]</i>	<i>[insert high level summary of type of information requested]</i>	Choose an item.  <i>[insert link to decision notice]</i>	<i>[insert links to the information that was released – including any information that was provided subsequently under s 36 or as a result of a review decision]</i>	Choose an item.  <i>[if fees paid/waived details of amount must also be provided]</i>	X hours.	Choose an item.	Choose an item.  <i>[links to Ombudsman/ ACAT decision should be provided where relevant]</i>
X/X/2019								

Application for review of decisions on access applications may be made in writing to the ACT Ombudsman. To do so, applicants or affected persons should write to the Ombudsman requesting a review:

- by email to: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)
- by post to: GPO Box 442, Canberra ACT 2601.

**Note:** In most cases, you must apply for an Ombudsman review within 20 working days after the day that notice of the decision was published on the above disclosure log.

A further option for review of decisions on access applications may be available under the *Administrative Decisions (Judicial Review) Act 1989*. Advice about pursuing this option may be obtained from a qualified legal practitioner.

**Appendix F—Open Access Information Scheme (OAIS) self-assessment checklist**

**PART A: MANDATORY FOI ACT REQUIREMENTS (CHECK BOX WHERE IT APPLIES TO YOUR AGENCY)**

Information Type	Documents published?	Documents are easy to locate & meet accessibility requirements?	Reviewed for accuracy within the last three months?	Public interest assessment completed where access withheld?	Reasons for withholding access published?
Functional information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Policy documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Budgetary papers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grant information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disclosure log	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Statement regarding advisory bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reports/recommendations by bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Briefs that are 5+ years old	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**PART B: COMPLYING WITH THE SPIRIT OF THE FOI ACT**

**(CHECK BOX WHERE APPLIES TO YOUR AGENCY)**

- My agency has a published OAIS strategy in place which has been approved and has buy-in from our senior leadership
- Our strategy is reviewed annually with improvements made based on lessons learnt
- Records management arrangements and/or an information management framework is in place to support this strategy
- My agency publishes additional (non-mandatory) information on its website/the OAIS website
- My agency takes a pro-disclosure approach
- Our staff are trained in open access requirements 
  - This includes staff outside of corporate areas
- Staff are encouraged to consider open access considerations when creating documents
- Our website makes it clear what information can be requested from the agency without a formal access application
- We have a process in place to ensure that information that is unnecessary/of insignificant interest is not published on the OAIS website
- We have a compliance process in place to monitor the implementation of our OAIS strategy.