



**Australian Government**

# PRIVACY AWARENESS

Government agencies are committed to ensuring personnel receive adequate training and information on the Australian Privacy Principles (APPs) and other requirements under Australian privacy law. The Privacy Awareness eLearning program describes the APPs and related key concepts under the Privacy Act which govern how personal information is collected, used, disclosed and managed.

This program contains seven topics (with a quiz at the end of each) and is required training for all new employees and as an annual refresher for staff who have access to personal information in the course of performing their duties.

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# Table of Contents

Topic 1 - Introduction to Australian Privacy Law.....	4
The Privacy Act.....	4
Powers of the Commissioner .....	4
Personal Information.....	5
Australian Privacy Principles .....	5
Australian Privacy Principles - a summary for APP entities.....	5
Privacy breaches .....	7
Example of privacy breaches .....	7
Topic 1 - Knowledge check.....	7
Key points to remember .....	9
Summary.....	9
Topic 2 – Open and transparent management of personal information.....	9
APP 1 - Open and transparent management of personal information.....	9
APP 2 - Anonymity and pseudonymity .....	10
Scenarios.....	10
Key points to remember .....	11
Summary.....	11
Topic 3 – Collection of personal information.....	11
Consent.....	12
Definitions.....	12
Consent Cont.....	14
APP 3 - Collection of solicited personal information .....	15
Identifying the functions or activities of an APP entity .....	15
APP 4 - Collection of unsolicited personal information .....	17
APP 5 - Notification of the collection of personal information .....	17
Privacy notices.....	17
Scenarios.....	18
Key Points to remember .....	19
Summary.....	19
Topic 4 – Dealing with personal information.....	20
APP 6 - Use or disclosure of personal information.....	20
APP 7 - Direct marketing.....	21
APP 8 - Cross-border disclosure of personal information.....	21
APP 9 - Adoption, use or disclosure of government related identifiers.....	21

Scenarios.....	22
Key points to remember .....	23
Summary.....	24
Topic 5 – Integrity of personal information .....	24
APP 10 - Quality of personal information .....	24
APP 11 - Security of personal information.....	24
Scenario .....	25
Key points to remember .....	25
Summary.....	25
Topic 6 – Access to, and correction of, personal information .....	26
Learning Objectives .....	26
APP 12 - Access to personal information.....	26
APP 13 - Correction of personal information .....	26
Scenarios.....	27
Key points to remember .....	27
Summary.....	28
Topic 7 – Code Requirements .....	28
Learning Objectives .....	28
Australian Government Agencies Privacy Code .....	28
Privacy Impact Assessments (PIA) .....	29
Topic 7 - Knowledge check.....	30
Key points to remember .....	30
Summary.....	31
Topic 8 – Notifiable Data Breaches scheme.....	31
Learning Objectives .....	31
eligible data breaches.....	31
Suspected Eligible Data Breaches.....	32
Scenarios.....	32
Key points to remember .....	33
Summary.....	33
Module complete.....	33

## TOPIC 1 - INTRODUCTION TO AUSTRALIAN PRIVACY LAW

### Overview

This topic provides information regarding the *Privacy Act 1988* (Privacy Act), the Australian Privacy Principles and what 'personal' and 'sensitive information' is.

### Objectives

By the end of this topic, you should be able to:

- describe what 'personal information' and 'sensitive information' is
- outline the powers of the Australian Information Commissioner
- summarise the APPs.

[Return to Table of Contents](#)

## THE PRIVACY ACT

The *Privacy Act 1988* (Privacy Act) protects the personal information that government and those private sector organisations covered by the Privacy Act (entities) collect about individuals.

The Privacy Act defines personal information and sets down minimum standards for the management of personal information by entities, set out in the Australian Privacy Principles (APPs).

The Privacy Act gives the Australian Information Commissioner (Commissioner) broad powers to assist and require entities to adopt policies and practices for handling personal information which comply with the Privacy Act and the APPs.

The APPs regulate how entities collect, store, provide access to, use and disclose the personal information of all individuals, including customers and staff. They also allow individuals to access their own information, and request correction if the information is incorrect.

Compliance with the APPs is a legal requirement.

The areas of privacy regulated by the Privacy Act is just one aspect of information management. Confidentiality, secrecy, intellectual property and freedom of information are not regulated by the Privacy Act.

[Return to Table of Contents](#)

## POWERS OF THE COMMISSIONER

The Office of the Australian Information Commissioner (OAIC) has responsibility for regulating and providing advice on the operation of the Privacy Act. The powers of the Commissioner include powers:

- to work with entities covered by the Privacy Act to facilitate compliance and best practice, such as directing an agency to undertake a Privacy Impact Assessment (PIA), directing an entity to notify affected individuals and inform the Commissioner about 'eligible privacy breaches' and conducting an assessment of whether personal information is being handled lawfully
- to investigate potential privacy breaches on the Commissioner's own motion or in response to complaints (including by requiring a person to produce information or a document, or to attend and answer questions under oath), make determinations about whether there has been a breach and require entities to take action in response, including paying financial compensation
- to take various enforcement actions, including accepting an enforceable undertaking and bringing proceedings to enforce it, bringing court proceedings to enforce a determination, reporting to the Minister and applying to a court for a civil penalty (up to \$1.7 million) for significant and/or repeated breaches of privacy.

[Return to Table of Contents](#)

## PERSONAL INFORMATION

**Personal information** is defined in the Privacy Act to mean information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, or recorded in a material form or not.

**Sensitive information** is a subset of personal information. It includes information or opinions about racial or ethnic origin, political opinions, membership of political, professional or trade associations or trade unions, religious beliefs or affiliations, philosophical beliefs, sexual orientation or practices and criminal records. Sensitive information also includes health and any other genetic information about an individual, as well as biometric information and templates.

**Health information** includes information or an opinion about the health, illness, disability or injury (at any time) of an individual as well as information regarding health services provided or to be provided to an individual and a person's expressed wishes about future provision of health services.

**Biometrics** is the identification of people based on their unique traits or characteristics. Biometric information refers to measurements of human body characteristics, such as DNA, fingerprints, eye retinas and irises, voice patterns, facial patterns and hand measurements, for authentication purposes. Biometric templates are a digital representation of an individual's distinct characteristics, representing information taken from a biometric sample. It is the biometric template that is actually compared in a biometric recognition system.

Many agencies will also encounter other types of information, for example, 'protected information' under the *Social Security Act 1991* or agencies may have access to tax file numbers. Additional protections apply to the use of this information and these are dealt with separately in Social Security and Taxation legislation, respectively.

What is considered personal information can change depending on the context of the situation, including (for example) number of people in a relevant group and what additional information may be available from other sources. For instance, an individual or small number of people with rare or very unusual characteristics from the same small regional town may be identifiable if their unusual characteristics and the town they are from is disclosed/known.

Video: <https://www.oaic.gov.au/updates/videos/privacy-in-the-australian-public-service/>

[Return to Table of Contents](#)

## AUSTRALIAN PRIVACY PRINCIPLES

The Australian Privacy Principles (APPs) regulate the handling of personal information by both Australian government agencies and those businesses covered by the Privacy Act.

There are 13 APPs structured to reflect the information life cycle, from ensuring transparency in information collection, through to use and disclosure, quality and security, access and correction.

Under the APPs, private sector organisations and government agencies are collectively 'APP entities' or 'entities'. Where an APP only applies to government agencies, they are referred to as 'agencies' and where an APP only applies to private sector organisations, they are referred to as 'organisations'.

[Return to Table of Contents](#)

## AUSTRALIAN PRIVACY PRINCIPLES - A SUMMARY FOR APP ENTITIES

### APP 1 — Open and transparent management of personal information

Ensures APP entities manage personal information in an open and transparent way, including having a clearly expressed and up to date APP privacy policy.

## **APP 2 — Anonymity and pseudonymity**

Requires APP entities to give individuals the option of not identifying themselves, or of using a pseudonym. Limited exceptions apply.

## **APP 3 — Collection of solicited personal information**

Outlines when an APP entity can collect personal information that is solicited. Higher standards apply to the collection of 'sensitive' information.

## **APP 4 — Dealing with unsolicited personal information**

Outlines how APP entities must deal with unsolicited personal information.

## **APP 5 — Notification of the collection of personal information**

Outlines when and in what circumstances an APP entity that collects personal information must notify an individual of certain matters.

## **APP 6 — Use or disclosure of personal information**

Outlines the circumstances in which an APP entity may use or disclose personal information that it holds.

## **APP 7 — Direct marketing**

An organisation may only use or disclose personal information for direct marketing purposes if certain conditions are met.

## **APP 8 — Cross-border disclosure of personal information**

Outlines the steps an APP entity must take to protect personal information before it is disclosed overseas.

## **APP 9 — Adoption, use or disclosure of government related identifiers**

Outlines the limited circumstances when an organisation may adopt a government related identifier of an individual as its own identifier, or use or disclose a government related identifier of an individual.

## **APP 10 — Quality of personal information**

An APP entity must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.

## **APP 11 — Security of personal information**

An APP entity must take reasonable steps to protect personal information it holds from misuse, interference and loss, and from unauthorised access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances.

## **APP 12 — Access to personal information**

Outlines an APP entity's obligations when an individual requests access to personal information held about them by the entity. This includes a requirement to provide access unless a specific exception applies.

## **APP 13 — Correction of personal information**

Outlines an APP entity's obligations in relation to correcting the personal information it holds about individuals where it is inaccurate, out of date, incomplete, irrelevant or misleading, having regard to the purpose for which the information is held.

[Return to Table of Contents](#)

## PRIVACY BREACHES

An interference with privacy occurs where an act or practice of an entity breaches one of the APPs.

Departments or agencies are responsible for ensuring practices and procedures comply with the APPs.

Where a potential breach of privacy has been identified, you need to report the matter to your supervisor and your agency's Privacy Officer as soon as practicable.

Where a privacy breach is an **eligible data breach**, the Office of the Australian Information Commissioner (OAIC) and the affected individual(s) must be notified.

An '**eligible data breach**' is an unauthorised access to or disclosure of, or loss of personal information that is likely to result in serious harm to the affected individuals.

Information regarding eligible data breaches is discussed in more detail in Topic 8.

Failure to report a privacy incident in a timely manner can result in serious consequences such as the risk of harm to the person whose privacy has been breached, adverse media or Parliamentary attention.

Under the Privacy Act there are no penalties for the individual who breaches privacy, however, a staff member may be subject to disciplinary action under the *Public Service Act 1999*.

[Return to Table of Contents](#)

## EXAMPLE OF PRIVACY BREACHES

Examples of privacy incidents include, but are not limited to:

- "I have left personal information on my desk unsecured at the end of the day".
- "I disclosed a customer's personal information (address, phone number and employer) to another party".
- "I collected a letter from the printer, but accidentally picked up a different customer's statement and posted it with the customer letter".
- "I left customer details in a public place while transporting them".
- "I accidentally sent an email to a group of people but I used the 'to' field instead of the 'bcc', so everyone who received it can see everyone else's email addresses".
- "I sent an email containing personal information to the wrong recipient when Outlook AutoCompleted the email address".
- "I accidentally published a dataset online which contains personal information".

[Return to Table of Contents](#)

## TOPIC 1 - KNOWLEDGE CHECK

To test your knowledge of the information presented in this topic, answer the following questions.

### QUESTION 1

Select the correct answer to finish the sentence.

#### The Privacy Act...

- a. Protects government agencies from prosecution if they mishandle personal information.
- b. Protects the personal information that government and businesses collect about individuals.
- c. Regulates confidentiality, secrecy, intellectual property and freedom of information.

**Enter your answer(s):**

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## QUESTION 2

Select the correct answer.

### Who needs to comply with the APPs?

- a. All legal entities in Australia.
- b. Agencies can opt in or out as they choose.
- c. Compliance with the APPs is a legal requirement for APP entities that are agencies including Australian Government agencies and some private sector organisations as defined in the *Privacy Act 1988*.

Enter your answer(s):

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## QUESTION 3

Select the correct answer.

### Who has responsibility for regulating and providing advice on the operation of the Privacy Act?

- a. The Federal or State Minister responsible for each Government agency.
- b. The Office of the Australian Information Commissioner (OAIC).
- c. No one is responsible, each Government agency regulates the Privacy Act themselves.

Enter your answer(s):

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## QUESTION 4

Select the correct answer.

### Who is responsible for ensuring practices and procedures comply with the APPs?

- a. Departments or agencies.
- b. The Office of the Australian Information Commissioner (OAIC).
- c. Individuals who deal with the Australian Government.

Enter your answer(s):

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## QUESTION 5

Select the correct answer.

### Which of the following is 'personal information'?

- a. A person's name.
- b. A person's phone number.
- c. A person's email address.
- d. A person's photograph.
- e. All of the above.

Enter your answer(s):

[Return to Table of Contents](#)



## KEY POINTS TO REMEMBER

- Compliance with the APPs is a legal requirement.
- The Office of the Australian Information Commissioner (OAIC) is responsible for regulating compliance with the Privacy Act.
- Personal information is information or an opinion about an identified person, or a person who is reasonably identifiable. The information or opinion may, or may not, be true and may, or may not, be recorded in a material form.
- We must consider sensitive information, a subset of personal information, which includes certain types of information (for example, health information) listed in the Privacy Act.
- The APPs apply to 'APP entities' that are 'agencies' (including our department) or private sector 'organisations' as defined in the Privacy Act.
- Potential breaches of privacy need to be reported as soon as practicable to your supervisor and the agency's Privacy Officer.

[Return to Table of Contents](#)

## SUMMARY

Great! You should be able to:

- describe what personal information and sensitive information is
- summarise the APPs
- outline the powers for the Australian Information Commissioner.

Click the **Additional Links** button below, to further explore this module:

- [Office of the Australian Information Commissioner](#)
- [Privacy Act 1988](#)

[Return to Table of Contents](#)

## TOPIC 2 – OPEN AND TRANSPARENT MANAGEMENT OF PERSONAL INFORMATION

### Overview

This topic provides information on open and transparent management of personal information.

### Objectives

By the end of this topic, you should be able to:

- summarise APP 1 and APP 2
- identify work situations where APP 1 and/or APP 2 will apply.

[Return to Table of Contents](#)

## APP 1 - OPEN AND TRANSPARENT MANAGEMENT OF PERSONAL INFORMATION

APP 1 outlines the requirement for APP entities to have a clearly expressed and up to date privacy policy. The privacy policy must set out:

- the kinds of personal information we collect and hold
- how we collect and hold personal information
- the reason we collect, hold, use and disclose this information
- how people access and amend their information.

Entities must take reasonable steps to implement processes that will ensure we comply with the APPs and enable us to deal with enquiries or complaints. Reasonable steps may include:

- training staff about our policies and procedures
- establishing procedures to receive and respond to complaints and enquiries
- establishing procedures to identify and manage privacy risks.

**Note 1:** The privacy policy must be made available free of charge and in an appropriate form. An appropriate form includes making it available on the entity's website.

If a person requests a copy of the privacy policy in a particular form (for example, printed) we must take reasonable steps to give the person a copy in that form.

**Note 2:** The policy will also need to outline whether personal information will be disclosed to overseas recipients, how a person can make privacy complaints, and how complaints will be dealt with.

[Return to Table of Contents](#)

## APP 2 - ANONYMITY AND PSEUDONYMITY

APP 2 imposes obligations for APP entities to allow people to deal with us anonymously, or by using a pseudonym, if they want to, unless:

- the entity is required or authorised by or under an Australian law, or an order of a court/tribunal, to deal with people who have identified themselves
- it is impracticable for the entity to deal with people who have not identified themselves or used a pseudonym.

What amounts to 'impracticable' will depend on the circumstances. For example, where a person applies for a benefit to be paid to them, the service delivery agency cannot deal with that person without knowing their identity.

That agency will need to confirm who they are paying the benefit to, so will be unable to deal with the person anonymously on that particular matter.

[Return to Table of Contents](#)

## SCENARIOS

### SCENARIO QUESTION 1

Select one or more as appropriate (please note there may be more than one correct answer).

**Jane, a customer of the department, is filling out a form that requests her personal information. Jane wants to know more about what the department will do with her personal information.**

**What can Jane do?**

- Read the privacy notice on the form, and then read the privacy policy on the internet.
- Contact the department and ask for a printed copy of the privacy policy.
- Nothing, as the department can do whatever it wants with Jane's personal information.

**Enter your answer(s):**

### SCENARIO QUESTION 2:

Select one or more as appropriate (please note there may be more than one correct answer).

Mary wants to know what services or assistance the department can provide to her, but she doesn't want to be identified because her ex-husband works for the department.

What can Mary do?

- a. The department will not deal with Mary, either face-to-face or over the phone, unless she identifies herself.
- b. Mary can visit the department in person and ask for general information about the department's services without giving her name.
- c. Mary can call the department and ask for general information about the department's services without giving her name.

Enter your answer(s):

## KEY POINTS TO REMEMBER

### APP 1 - OPEN AND TRANSPARENT MANAGEMENT OF PERSONAL INFORMATION

- We must have a clear and current privacy policy that sets out the kinds of personal information we collect and hold, and how we manage that information.
- The policy must be free of charge and in an appropriate form.
- We must set up processes to ensure we comply with the APPs and deal appropriately with enquiries or complaints.

[Return to Table of Contents](#)

### APP 2 - ANONYMITY AND PSEUDONYMITY

- We must allow people to deal with us anonymously or with a pseudonym if they want to, unless it is impracticable to do so, or identification is required by Australian law or an order of a court/tribunal.

[Return to Table of Contents](#)

## SUMMARY

Great! You should be able to:

- summarise APP 1 and APP 2
- identify work situations where APP 1 and/or APP 2 will apply.

[Return to Table of Contents](#)

## TOPIC 3 - COLLECTION OF PERSONAL INFORMATION

### Overview

This topic provides information on the collection of personal information.

### Objectives

At the end of this topic you should be able to:

- discuss the term 'consent'
- outline how to identify entity functions or activities
- discuss the term 'reasonably necessary'
- outline what a privacy notice is and why it is used

- summarise APP 3, APP 4 and APP 5
- identify work situations where APP 3, APP 4 and/or APP 5 will apply.

[Return to Table of Contents](#)

## CONSENT

When consent is needed to collect, use or disclose information, the APP entity should implement procedures and systems to obtain and record consent.

There should be no doubt that consent has been given, either expressly or clearly implied from the conduct of the person.

Consent means **express consent** or **implied consent**. Four key elements of consent are:

- it must be provided **voluntarily**
- the individual must be adequately **informed** of what they are consenting to
- it must be **current and specific**
- the individual must have the **capacity** to understand and communicate their consent.

**Note 1:** Where a person cannot consent, they should be involved, as far as is practical, in any decision-making process. If possible, ensure privacy issues are discussed in a way that is understandable and comprehensible.

**Note 2:** The Privacy Act does not specify an age after which people can make their own privacy decisions. An APP entity will need to determine whether a young person has the capacity to consent on a case-by-case basis. As a general principle, a young person has capacity to consent when they have sufficient maturity to understand what is being proposed. In some circumstances, it may be appropriate for a parent or guardian to consent on behalf of a young person.

[Return to Table of Contents](#)

## DEFINITIONS

### EXPRESS CONSENT

Express consent is given explicitly, either verbally or in writing, which could include a signature or a spoken statement to signify agreement.

[Return to Table of Contents](#)

### IMPLIED CONSENT

Implied consent arises where consent may reasonably be inferred from the conduct of the person and the APP entity.

[Return to Table of Contents](#)

### VOLUNTARY

Consent is voluntary if a person has a genuine opportunity to provide or withhold their consent. Consent is not voluntary where there is duress, coercion or extreme pressure.

Factors relevant to deciding whether consent is voluntary include:

- the alternatives open to the person, if they choose not to consent
- the seriousness of any consequences if a person refuses to consent

- any adverse consequences for family members or associates of the person if the person refuses to consent.

[Return to Table of Contents](#)

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## INFORMED

A person must be aware of the implications of providing or withholding consent. For example, whether the person is able to access a service if they do not consent to an APP entity collecting a specific piece of personal information.

An APP entity should give information directly to the person about how their personal information will be handled, in a way that the person understands.

The information should be written in plain English, without legal or industry jargon.

[Return to Table of Contents](#)

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## CURRENT AND SPECIFIC

An APP entity should seek consent from a person at the time it wants to collect, use or disclose that person's personal information. You should not seek a broader consent than is required for that purpose. For example, consent for undefined future uses, or consent to 'all legitimate uses or disclosures'.

A person may withdraw their consent at any time. If they do, an APP entity would no longer be able to rely on consent having been given when dealing with that person's personal information.

[Return to Table of Contents](#)

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## CAPACITY

A person must be able to understand the issues relating to the decision to consent. This includes the effect of giving or withholding consent, forming a view based on reasoned judgement and communicating their decision. An entity should not rely on any statement of consent given by a person if it is unsure they have the capacity to consent. Issues that could affect a person's ability to consent include:

- age
- physical (e.g. vision impairment which affects reading ability) or mental disability or impairment
- temporary incapacity
- limited understanding of English.

An entity should consider providing support to enable the person to exercise their capacity. If a person does not have capacity to consent and consent is required, an entity should consider who can act on the person's behalf. Options include:

- a guardian
- someone with an enduring power of attorney
- a person recognised by other relevant laws, such as a person's spouse, partner, carer, family member or close friend
- a person who has been nominated in writing by the person while they were capable of giving consent.

[Return to Table of Contents](#)

### OPT OUT CONSENT MECHANISMS

It is unreliable to assume implied consent based on a person's failure to opt out. However, opt out consent models may be appropriate where the following factors are met:

- the option to opt out was clearly presented
- it is likely the person received and read the information about the proposed collection, use or disclosure, and the offer to opt out
- the person was aware of the implications of not opting out
- the choice to opt out is freely available and not bundled with other purposes
- opting out is easy to take up. That is, it involves little or no financial cost to, or effort from, the person
- the consequences of failing to opt out are not serious
- if the person opts out later, they are fully restored to the position they would have been in if they had opted out earlier.

[Return to Table of Contents](#)

### IMPLIED CONSENT

Where consent may reasonably be inferred from the conduct of the individual and the APP entity.

It should not be assumed that a person has consented to collection, use or disclosure just because the collection, use or disclosure appears to benefit that person.

It should not be assumed that a person has given consent because they have not objected to a proposal to handle personal information in a particular way.

Implied consent may not be relied upon where there is reasonable doubt about the person's intention.

[Return to Table of Contents](#)

### EXPRESS CONSENT

Express consent is given fully and clearly, either verbally or in writing. This could be a signature or a spoken statement to signify agreement.

An APP entity should seek express consent where it proposes to handle a person's sensitive information (unless one of the exceptions in APP 3.4 applies).

[Return to Table of Contents](#)

### BUNDLED CONSENT

Bundled consent is where an individual is requested to agree to a wide range of collections, uses and disclosures at the same time. Not allowing the individual the ability to opt out of some of the collections, uses or disclosures of personal information within the bundle can undermine the voluntary nature of consent.

[Return to Table of Contents](#)

## APP 3 - COLLECTION OF SOLICITED PERSONAL INFORMATION

APP 3 outlines when and how an entity may collect the personal and sensitive information it **solicits** from a person or another entity.

An entity '**solicits**' personal information if the entity requests another entity to provide the personal information, or to provide a kind of information in which that personal information is included.

We can only collect personal information if it is reasonably necessary for, or directly related to, one or more of our functions or activities.

Collection of personal information must be by lawful and fair means. Personal information must be collected from the individual concerned unless:

- the individual consents to collection from someone other than the individual
- the agency is required or authorised by or under an Australian law, or a court/tribunal order, to collect the information from someone other than the individual
- it is unreasonable or impracticable to do so or an exception applies.

The APPs impose more restrictive obligations when collecting sensitive information. Sensitive information can be collected:

- if the person consents and the information is reasonably necessary for, or directly related to, one of the entity's functions or activities
- if the collection is required or authorised by law
- in permitted general situations.

Some examples of permitted general situations are:

- where collection, use or disclosure is required to lessen or prevent a serious threat to life, health or safety of a person or to public health and safety
- to locate a missing person
- where there is reason to suspect unlawful activity of a serious nature may be, or is being, engaged in relating to an agency's functions
- to establish, exercise or defend a legal or equitable claim
- for the purposes of a confidential alternative dispute resolution.

[Return to Table of Contents](#)

## IDENTIFYING THE FUNCTIONS OR ACTIVITIES OF AN APP ENTITY

To determine whether a particular collection of personal information is permitted involves a two-step process:

1. identifying your agency's functions or activities
2. determining whether the collection of personal information is **reasonably necessary** for, or **directly related** to, one of those functions or activities.

[Return to Table of Contents](#)

## DIRECTLY RELATED

A clear and direct connection must exist between the personal information being collected and an agency function or activity.

An agency's functions will be conferred either by legislation or an executive scheme or arrangement established by government. Identifying your agency's functions involves examining the legal instruments that confer or describe the agency's functions, including:

- Acts and subordinate legislative instruments
- the Administrative Arrangements Order made by the Governor-General
- government decisions or ministerial statements that announce a new government function.

**Note:** The activities of an agency will be related to its functions and include incidental and support activities, such as human resources, corporate administration, property management and public relations activities.

[Return to Table of Contents](#)

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## REASONABLY NECESSARY

The 'reasonably necessary' test is an objective test. It is whether a reasonable person who is properly informed would agree that the personal information being collected is reasonably required for one of the entity's functions or activities.

Factors to consider when determining whether a collection of personal information is reasonably necessary for a function or activity include:

- what is the primary purpose of collection?
- how will the information be used in undertaking the function or activity? For example, collection because the information may be needed for future activities would not be reasonably necessary.
- could you undertake the function or activity without that information, or by collecting a lesser amount of personal information?

We need to be able to explain how the 'reasonably necessary' test is met.

[Return to Table of Contents](#)

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## NOT REASONABLY NECESSARY

The Information Commissioner has previously ruled that collection of personal information was not reasonably necessary for an entity's function or activity in the following situations:

- a job applicant being asked if they had suffered a work-related injury or illness, when this was not relevant to the position being advertised
- a person applying to open a bank account being asked to complete an application form that included a question about marital status, when this had no bearing on the applicant's eligibility to open an account
- a medical practitioner photographing a patient for the patient's medical file, when this was not necessary to provide a health service.

[Return to Table of Contents](#)

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## OTHER EXAMPLES OF PERSONAL INFORMATION COLLECTION

Other examples of personal information collection that may not be reasonably necessary for an entity's functions or activities include:

- collecting all information on a person's drivers licence to establish if the person is aged 18 years or over
- collecting personal information about a group of people, when information is only required for some of those people.

[Return to Table of Contents](#)



## APP 4 - COLLECTION OF UNSOLICITED PERSONAL INFORMATION

APP 4 imposes obligations in relation to receiving personal information which is not solicited by the entity.

Where an entity receives information it did not intend to collect, the entity must determine whether or not it could have collected the information under APP 3.

If we determine we **could not have** collected the information, we must destroy or de-identify the information as soon as practicable, but only if lawful and reasonable to do so and only if the information is **not** contained in a Commonwealth record. If the information can't be destroyed, APPs 5 to 13 apply.

If we determine we **could have** collected the information, then APPs 5 to 13 apply in relation to the information as if it had been solicited under APP 3.

**Note:** Unsolicited personal information which is kept by the receiving agency must be given the same privacy protection as solicited personal information.

[Return to Table of Contents](#)

## APP 5 - NOTIFICATION OF THE COLLECTION OF PERSONAL INFORMATION

APP 5 requires that such steps (if any) as are reasonable in the circumstances must be taken to notify a person at, before, or as soon as practicable after, collection of their personal information. Specific matters we need to make people aware of under APP 5 requirements include:

- who the entity is and how to contact it
- any collection from a person other than the individual or without the individual's knowledge
- if collection of the information is required or authorised under Australian law
- the purpose for collecting the personal information
- the consequences if all or some of the information is not collected
- any other APP entity, body or person the information may be disclosed to
- information about the entity's privacy policy, including how the person can access their personal information and seek correction of that information, and the complaint handling process
- whether the entity is likely to disclose the information to overseas recipients and, if so, the countries in which these recipients are likely to be located.

[Return to Table of Contents](#)

## PRIVACY NOTICES

A privacy notice is used to notify people when personal information is collected about them. Privacy notices must comply with APP 5.

The notice tells people what their information is being collected for, and how it may be used or disclosed.

A privacy notice should be included on all forms (including online), letters or products that collect personal information about a person.

[Return to Table of Contents](#)

## GENERIC APP 5 PRIVACY NOTICE

Your personal information is protected by law, including the *Privacy Act 1988*, and is collected by (*Agency name*) for the assessment and administration of payments and services. This information is required to process your application or claim.

Your information may be used by the department or given to other parties for the purposes of research, investigation or where you have agreed or it is required or authorised by law.

You can get more information about the way in which (*Agency name*) will manage your personal information, including our privacy policy at (*Agency website*) or by requesting a copy from the department.

In some circumstances, it may be reasonable not to take any steps at all. For example, where an entity collects personal information from an individual on a recurring basis over a short period in relation to the same matter, and the individual is aware (or reasonably ought to be aware) that a separate notice will not be issued for each instance of collection.

If the form is collecting information about more than one person, it needs to be clear that the privacy notice applies to any person whose personal information is collected. This may mean more than one privacy notice needs to be included on the form, or references to the location of a privacy notice need to be made in different sections of the form.

[Return to Table of Contents](#)

## SCENARIOS

### SCENARIO QUESTION 1

Select the correct answer.

**Marcus is a customer of the department. The department wants to collect information about the ethnic origin of its customers. This information will be used to provide targeted services to areas where there are high numbers of culturally and ethnically diverse customers.**

**What do we need to do when asking Marcus for this information?**

- Seek consent from Marcus to collect this information, and provide Marcus with a privacy notice referring him to the department's privacy policy.
- Nothing, we can collect this information without consent, as it is related to our business.
- We cannot collect this information from Marcus, even if he consents.

**Enter your answer(s):**

[Return to Table of Contents](#)

### SCENARIO QUESTION 2

Select the correct answer.

**Ava has contacted the department to apply for a payment. She has sent in extra documents (that contain personal information) with her application even though the department does not need this information to process her application.**

**What do we need to do with this information?**

- We are required to destroy it.
- We are not required to destroy or de-identify it.
- We are required to de-identify it.

**Enter your answer(s):**

[Return to Table of Contents](#)

### SCENARIO QUESTION 3

Select the correct answer.

**Tim's manager has asked him to draft a new form for collecting personal information from members of the public.**

**Does Tim need to include a privacy notice on the form?**

- No, it is not necessary to advise members of the public about their privacy rights.
- No, the department's privacy policy is available on the internet, so there is no need to put a notice on the form.
- Yes, Tim should ensure a privacy notice which complies with APP 5 is included on the form.

Enter your answer(s):

[Return to Table of Contents](#)

### KEY POINTS TO REMEMBER

#### APP 3 - COLLECTION OF SOLICITED PERSONAL INFORMATION

- We can only collect personal information if it is reasonably necessary for, or directly related to, our functions or activities.
- Higher standards are applied to the collection of sensitive information.
- Personal information can be collected from a third party if certain conditions are met.

[Return to Table of Contents](#)

#### APP 4 - COLLECTION OF UNSOLICITED PERSONAL INFORMATION

- If we determine we **could not have** collected the unsolicited personal information, we must destroy or de-identify the information if lawful and reasonable, and it is not contained in a Commonwealth record.
- If the unsolicited personal information is contained in a Commonwealth record, we are not required to destroy or de-identify the personal information, even if it is determined that we could not have collected the information under APP 3. We must handle the information the same way we handle solicited information.
- If we determine we **could have** collected the unsolicited personal information, then we must handle the information the same way we handle solicited information.

[Return to Table of Contents](#)

#### APP 5 - NOTIFICATION OF THE COLLECTION OF PERSONAL INFORMATION

- When we collect personal information, or as soon as practicable after we collect the information, we must notify the person of specific matters regarding who we are and how we deal with their information.

[Return to Table of Contents](#)

### SUMMARY

Great! You should be able to:

- discuss the term 'consent'
- outline how to identify entity functions or activities

- discuss the term 'reasonably necessary'
- outline what a privacy notice is and why it is used
- summarise APP 3, APP 4 and APP 5
- identify work situations where APP 3, APP 4 and/or APP 5 will apply.

[Return to Table of Contents](#)

## TOPIC 4 – DEALING WITH PERSONAL INFORMATION

### Overview

This topic provides information on dealing with personal information.

### Objectives

By the end of this topic, you should be able to:

- summarise APP 6, APP 7, APP 8 and APP 9
- identify work situations where APP 6, APP 7, APP 8 and/or APP 9 will apply.

[Return to Table of Contents](#)

## APP 6 - USE OR DISCLOSURE OF PERSONAL INFORMATION

APP 6 outlines when we can use and/or disclose personal information for secondary purposes. Personal information can be used for the purpose for which it was collected (the primary purpose), but where it is to be used for a secondary purpose we will generally require the individual's consent unless the use or disclosure falls under one of these exceptions:

- the person would reasonably expect the use or disclosure for the secondary purpose, and the secondary purpose is **related** to the primary purpose (for personal information) or **directly related** to the primary purpose (for sensitive information)
- the use or disclosure is required or authorised by law
- the use or disclosure is reasonably necessary for the enforcement related activities conducted by, or on behalf of, an enforcement body (if an entity uses or discloses personal information for enforcement related activities, it must make a written note of the use or disclosure).
- the agency provides an enforcement body with biometric information or templates in accordance with guidelines made by the Commissioner
- a permitted general situation exists.

Some examples of permitted general situations are:

- where collection, use or disclosure is required to lessen or prevent a serious threat to life, health or safety of a person or to public health and safety
- to locate a missing person
- if there is reason to suspect unlawful activity of a serious nature may be, or is being, engaged in relating to an agency's functions
- to establish, exercise or defend a legal or equitable claim
- for the purposes of a confidential alternative dispute resolution.

[Return to Table of Contents](#)

## APP 7 - DIRECT MARKETING

APP 7 regulates the use and disclosure of personal information by private sector organisations for the purpose of direct marketing.

Generally, private sector organisations may only use or disclose personal information for direct marketing purposes where the individual has either consented to their personal information being used for direct marketing, or has a reasonable expectation that their personal information will be used for this purpose, and conditions relating to opt-out mechanisms are met.

The provision relates to private sector organisations, not agencies. However, it is worth noting that APP 7 permits contracted service providers for Commonwealth contracts to use or disclose personal information for the purpose of direct marketing if:

- the organisation collected the information for the purpose of meeting (directly or indirectly) an obligation under the contract, and
- the use or disclosure is necessary to meet (directly or indirectly) such an obligation.

[Return to Table of Contents](#)

## APP 8 - CROSS-BORDER DISCLOSURE OF PERSONAL INFORMATION

APP 8 necessitates an accountability approach to cross-border disclosure of personal information.

Before we disclose personal information to an overseas recipient, we must take reasonable steps to ensure that the overseas recipient does not breach the APPs in relation to that information. In some circumstances an act done, or a practice engaged in, by the overseas recipient that would breach the APPs, is taken to be a breach of the APPs by the entity. There are only limited circumstances in which cross-border disclosure is permitted without taking reasonable steps to ensure that the overseas recipient does not breach the APPs (for example, where the disclosure is required or authorised under an international agreement).

This is of particular relevance when contemplating storage solutions used which may rely on technology solutions storing information overseas (cloud servers).

[Return to Table of Contents](#)

## APP 9 - ADOPTION, USE OR DISCLOSURE OF GOVERNMENT RELATED IDENTIFIERS

APP 9 generally only applies to private sector organisations, prohibiting them from adopting, using or disclosing a government related identifier unless an exception applies. This can include use of drivers licence numbers, Medicare numbers and other similar identifiers for purposes of identification.

[Return to Table of Contents](#)

## GOVERNMENT RELATED IDENTIFIER

An identifier of an individual that has been assigned by:

- an agency
- a State or Territory authority
- an agent of an agency, or a State or Territory authority, acting in its capacity as agent
- a contracted service provider for a Commonwealth contract, or a State contract, acting in its capacity as contracted service provider for that contract.

An 'identifier' is anything other than the person's name or ABN, and can include a number, letter or symbol that is used to identify a person or to verify the identity of a person.

[Return to Table of Contents](#)

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## ADOPTION OF GOVERNMENT RELATED IDENTIFIERS

A private sector organisation cannot adopt the government related identifier of a person as its own identifier, unless required or authorised by law.

[Return to Table of Contents](#)

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## USE OR DISCLOSURE OF GOVERNMENT RELATED IDENTIFIERS

A private sector organisation cannot use or disclose a government related identifier of a person unless the use or disclosure is required or authorised by law, a permitted general situation exists, or the use or disclosure is reasonably necessary:

- to verify the identity of the person
- to fulfil obligations to an agency or State or Territory authority
- for one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

Some examples of permitted general situations are:

- where collection, use or disclosure is required to lessen or prevent a serious threat to life, health or safety of a person or to public health and safety
- to locate a missing person
- if there is reason to suspect unlawful activity of a serious nature may be, or is being, engaged in relating to an agency's functions
- to establish, exercise or defend a legal or equitable claim
- for the purpose of a confidential alternative dispute resolution.

[Return to Table of Contents](#)

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## SCENARIOS

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### SCENARIO QUESTION 1

Select the correct answer.

**Rajesh is a customer of the department who has been involved in a motor vehicle accident. He has suffered significant physical injuries and his insurer is taking legal action against the driver of the vehicle.**

**The department receives a request from Rajesh's insurer for copies of his personal information from the last six months.**

**Can the department disclose this information to the insurer?**

- a. The department needs to get consent from Rajesh to disclose this information.
- b. The department can provide this information to the insurer without Rajesh's consent because it is a permitted general situation under the Privacy Act.
- c. The department cannot disclose this information to the insurer under any circumstances.

**Enter your answer(s):**

[Return to Table of Contents](#)

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## SCENARIO QUESTION 2

Select one or more as appropriate (please note there may be more than one correct answer).

**Bob is a customer of the department. He is currently travelling and is in Vienna, Austria. Bob has access to the internet and logs on from Vienna. The information he accesses is routed through servers located in Istanbul.**

**Does APP 8 apply in this case?**

Select all that apply, there may be more than one correct answer:

- No, Bob is accessing his own information. APP 8 only applies if Bob is not the person to whom the information relates.
- No, information being routed through an overseas server does not constitute a disclosure and so APP 8 does not apply.
- The department cannot provide access to online services from overseas locations in any circumstances.

**Enter your answer(s):**

[Return to Table of Contents](#)

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## KEY POINTS TO REMEMBER

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### APP 6 - USE OR DISCLOSURE OF PERSONAL INFORMATION

- Personal information can be used or disclosed for a secondary purpose (i.e. purpose different from the purpose it was collected for) in certain circumstances, including where the use or disclosure is authorised or required by law.
- We generally require the individual's consent where personal information is used or disclosed for a purpose unrelated to the reason it was collected (secondary purpose) unless an exception applies.

[Return to Table of Contents](#)

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### APP 7 - DIRECT MARKETING

- Private sector organisations may only use or disclose personal information for direct marketing purposes if the person consents, or has a reasonable expectation their personal information will be used for this purpose.

[Return to Table of Contents](#)

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### APP 8 - CROSS-BORDER DISCLOSURE OF PERSONAL INFORMATION

- Before disclosing personal information overseas, we need to take reasonable steps to ensure the overseas recipient does not breach the APPs, unless an exception applies.

[Return to Table of Contents](#)

## APP 9 - GOVERNMENT RELATED IDENTIFIERS

- Private sector organisations are prohibited from adopting, using or disclosing a government related identifier, such as a drivers licence number or a Medicare number, unless an exception applies.

[Return to Table of Contents](#)

### SUMMARY

Great! You should be able to:

- summarise APP 6, APP 7, APP 8 and APP 9
- identify work situations where APP 6, APP 7, APP 8 and/or APP 9 will apply.

[Return to Table of Contents](#)

## TOPIC 5 - INTEGRITY OF PERSONAL INFORMATION

### Overview

This topic provides information on the integrity of personal information.

### Objectives

By the end of this topic, you should be able to:

- summarise APP 10 and APP 11
- identify work situations where APP 10 and/or APP 11 will apply.

[Return to Table of Contents](#)

## APP 10 - QUALITY OF PERSONAL INFORMATION

APP 10 requires an entity to take reasonable steps to ensure the personal information it collects is accurate, up to date and complete.

We must also ensure the personal information we use or disclose is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.

[Return to Table of Contents](#)

## APP 11 - SECURITY OF PERSONAL INFORMATION

APP 11 requires an entity to take reasonable steps to ensure personal information it holds is protected from misuse, interference, loss, unauthorised access, modification or disclosure.

The inclusion of 'interference' recognises that attacks on personal information may not be limited to misuse or loss and may include interference that does not amount to modification of the information.

Preventing interference may require additional measures to be taken to protect against computer attacks and other interferences of this nature.

[Return to Table of Contents](#)

APP 11 imposes a requirement on entities to take reasonable steps to destroy or de-identify personal information we no longer need for any authorised purpose, unless:



- it is contained in a Commonwealth record (noting that this will cover most personal information held by agencies)
- we are required by or under an Australian law or a court/tribunal order to retain the information.

[Return to Table of Contents](#)

## SCENARIO

### SCENARIO QUESTION 1

Select the correct answer.

**The hacker group, Anonymous, has hacked into the department's IT system and published the personal information of all its customers. During the course of an internal investigation, it is discovered that the security software the department has been using is out of date and has not been updated for seven years.**

**Is the department in breach of APP 11?**

- No, because the department has security software in place it has met the obligations of APP 11 and no APP breach has occurred.
- Yes, the department must take reasonable steps to protect information, and as the security software is significantly out of date the Information Commissioner may find a breach of APP 11 has occurred.
- No, APP 11 does not apply to cyber-attacks.

**Enter your answer(s):**

[Return to Table of Contents](#)

## KEY POINTS TO REMEMBER

### APP 10 - QUALITY OF PERSONAL INFORMATION

- We must ensure the personal information we collect, use or disclose is accurate, up to date, complete and relevant.

[Return to Table of Contents](#)

### APP 11 - SECURITY OF PERSONAL INFORMATION

- We are required to ensure the personal information we hold is protected from misuse, interference, loss, unauthorised access, modification or disclosure.

[Return to Table of Contents](#)

## SUMMARY

Great! You should be able to:

- summarise APP 10 and APP 11
- identify work situations where APP 10 and/or APP 11 will apply.

[Return to Table of Contents](#)

## TOPIC 6 – ACCESS TO, AND CORRECTION OF, PERSONAL INFORMATION

### LEARNING OBJECTIVES

#### Overview

This topic provides information on the access and correction of personal information.

#### Objectives

At the end of this topic, you should be able to:

- summarise APP 12 and APP 13
- identify work situations where APP 12 and/or APP 13 will apply.

[Return to Table of Contents](#)

### APP 12 - ACCESS TO PERSONAL INFORMATION

APP 12 requires an entity to give a person access to the personal information it holds about that person, unless refusal is required or authorised under the *Freedom of Information Act 1982* (FOI Act) or any other Commonwealth or Norfolk Island law that provides for access to documents.

APP 12 imposes a requirement for agencies to respond to requests for access within 30 days. We must give access in the manner requested by the person if it is reasonable and practicable to do so. We must not charge the person for making the request or giving access to the personal information.

If an entity refuses to give access, or to give access in the manner requested, we must take reasonable steps to give access to the personal information in an alternative way, for example, using a mutually agreed intermediary.

If an entity refuses to give access to the personal information we must give the person a written notice with the reasons for refusal and include information on how the person may complain about the refusal.

**The APPs do not provide for an extension to the 30-day timeframe to respond to requests for access to personal information.**

[Return to Table of Contents](#)

### APP 13 - CORRECTION OF PERSONAL INFORMATION

APP 13 requires an entity to take reasonable steps to correct personal information to ensure it is accurate, up to date, complete, relevant and not misleading at the request of the person, or where the entity is satisfied the information needs to be corrected.

This applies when individuals request correction and where the need for correction is identified by a third party or the department.

Similar to APP 12, correction requests by the individual must be responded to within 30 days, must not be charged for, and when refusing a person's correction request we must provide the person with written reasons for the refusal and notify them of available complaint procedures.

APP 13 imposes obligations where personal information has been corrected and that personal information has been previously disclosed to another APP entity. We must take reasonable steps to notify that other entity of the correction if requested by the person, unless it is impracticable or unlawful to do so.

If an entity refuses to correct personal information, the person can request a statement stating the information is inaccurate, out of date, incomplete, irrelevant, or misleading. The statement must be attached to the information so it is clear to users of the information.

## SCENARIOS

### SCENARIO QUESTION 1

Select one or more as appropriate (please note there may be more than one correct answer).

**Zara is a customer of the department. One day she receives a letter from the department and notices her name is misspelled. She contacts the department the next day and asks for a copy of her record to check the spelling of her name.**

**What are our obligations to Zara?**

- To provide Zara with her record within 30 days of her making the request.
- Zara has the right to ask us to correct the spelling of her name and we are required to do this within 30 days of her making the request.
- We have no obligation under the Privacy Act to provide Zara with this information. She should make her request under the *Freedom of Information Act 1982*.
- We are not required to amend Zara's record to reflect the correct spelling of her name.
- Zara needs to put her request in writing before we will consider providing her with access to her record or amending her record.

**Enter your answer(s):**

[Return to Table of Contents](#)

### SCENARIO QUESTION 2

Select one or more as appropriate (please note there may be more than one correct answer).

**Alex is a departmental staff member. One day he is assisting Mike, a customer, and notices that some of the information on Mike's record does not belong to him.**

**Alex investigates further and finds the information belongs to another customer with the same name as Mike. Alex also notices the incorrect information has been provided to another department.**

**What are we required to do?**

- Amend Mike's record to remove the incorrect information as soon as practicable.
- Take action to amend Mike's record to remove the incorrect information within 30 days.
- Contact the other department to advise them of the error, if Mike asks us to do so.
- We do not have to do anything as Mike is not aware of the error.

**Enter your answer(s):**

[Return to Table of Contents](#)

## KEY POINTS TO REMEMBER

### APP 12 - ACCESS TO PERSONAL INFORMATION

- We must give a person access to their own personal information unless a specific exception applies.

- We must respond to requests for access to personal information within 30 days, free of charge, and provide written reasons if refusing the request for access.

[Return to Table of Contents](#)

## APP 13 - CORRECTION OF PERSONAL INFORMATION

- We must take certain steps to correct personal information where that information is inaccurate, out of date, incomplete, irrelevant or misleading.
- We must respond to requests from an individual for correction of their personal information within 30 days, free of charge, and provide written reasons if refusing the correction request.

[Return to Table of Contents](#)

## SUMMARY

Great! You should be able to:

- summarise APP 12 and APP 13
- identify work situations where APP 12 and/or APP 13 will apply.

[Return to Table of Contents](#)

## TOPIC 7 – CODE REQUIREMENTS

### LEARNING OBJECTIVES

#### Overview

This topic provides information regarding requirements under the *Australian Government Agencies Privacy Code* ('the Code') which affect all government agencies.

#### Objectives

At the end of this topic, you should be able to:

- summarise requirements under the Code
- know what a Privacy Impact Assessment is, and when to do one
- know where to go to obtain further information regarding privacy.

[Return to Table of Contents](#)

## AUSTRALIAN GOVERNMENT AGENCIES PRIVACY CODE

The *Privacy (Australian Government Agencies – Governance) APP Code 2017* ('the Code') took effect from 1 July 2018 and imposes mandatory requirements for the handling of personal information by government agencies.

The aim of the Code is to promote a 'privacy by design' approach to ensure that privacy compliance is included in the design of information systems and practices from their inception. It does this by requiring agencies to take reasonable steps to implement practices, procedures and systems to ensure compliance with the APPs and any binding registered APP code.

What's required under the Code?

The following key requirements for agencies to adopt under the Code are to:

- have a **privacy management plan**

This is a plan which outlines how the agency will meet its APP compliance obligations.

- have a designated **Privacy Officer**

The Privacy Officer is the primary point of contact for advice on privacy matters in the agency, and must perform a number of functions under the Code.

- have a designated **Privacy Champion** (who is a senior official within the agency)

The Privacy Champion must promote a culture of privacy within the agency that values and protects personal information, as well as performing a number of other functions.

- undertake **privacy impact assessments** (PIAs) for all 'high privacy risk' projects, maintain a register for those PIAs, and publish the register

This is an assessment of the privacy impacts of a project or changed way of handling personal information. Further information regarding PIAs is below.

- provide appropriate **privacy education or training** to agency staff at induction and annually thereafter for staff with access to personal information.

## PRIVACY IMPACT ASSESSMENTS (PIA)

The Code directs that all agencies must conduct a PIA for all **high privacy risk** projects, and states that a project may be high privacy risk if:

The agency reasonably considers that the project involves any new or changed ways of **handling personal information** that are likely to have a significant impact on the privacy of individuals.

'**Handling personal information**' means dealing with personal information in any way, including managing, collecting, holding, using or disclosing personal information.

The first step to determine whether a PIA is required under the Code is to conduct a 'threshold assessment'. This involves answering the following three questions:

1. Will any personal information be collected, stored, used or disclosed in the project?
2. Does the project involve any new or changed ways of handling personal information?
3. Is the project likely to have a **significant impact** on the privacy of individuals?

A '**significant impact**' can be assessed by taking into account:

- the number of individuals whose personal information will be handled (is it 50 or 5000?)
- the type of personal information involved, and whether it includes sensitive information such as a person's racial or ethnic origin, criminal record or health information
- the number of third parties who will have access to the personal information.

If the answer to all three questions is 'yes', a PIA will be required under the Code. If a threshold assessment decision is made not to proceed with a PIA, a written copy of the threshold assessment should be retained.

'**Privacy impact assessment**' is defined in the Privacy Act (s 33D) as:

a written assessment of an activity or function that:

- a) identifies the impact that the activity or function might have on the privacy of individuals; and
- b) sets out recommendations for managing, minimising or eliminating that impact.

Video: <https://www.oaic.gov.au/elearning/pia/topic1.html>

The Office of the Australian Information Commissioner (OAIC) has further information regarding how to conduct a PIA. If you require additional information or assistance, please visit the OAIC website or contact your agency's Privacy Officer.

Your agency is required to maintain a register of PIAs it conducts, and must publish the register, or a version of the register, on its website. The Privacy Officer has responsibility to ensure the agency complies with this obligation.

## TOPIC 7 - KNOWLEDGE CHECK

To test your knowledge of the information presented in this topic, answer the following questions.

### QUESTION 1

Select one or more as appropriate (please note there may be more than one correct answer).

**Dave's agency is considering changing IT infrastructure and engaging with other agencies to better share information to improve service delivery and assurance activities, which will impact the way in which customers' personal information is used and stored.**

**What does Dave need to do?**

- There may be some privacy implications so Dave should report these to the Office of the Australian Information Commissioner.
- It is likely the project involves new or changed ways of handling personal information that are likely to have a significant impact on the privacy of individuals, therefore Dave needs to conduct a privacy impact assessment.
- Nothing. The agency got people's permission at the time their personal information was collected, so it can do anything with that information.

**Enter your answer(s):**

### QUESTION 2

Select one or more as appropriate (please note there may be more than one correct answer).

**Alison works in a compliance role within her department and, as such, has access to complete client records to allow her to actively monitor service delivery and compliance.**

**How often should Alison complete privacy training?**

- Alison should have completed privacy training as part of her induction.
- As someone who has access to personal information, Alison should refresh her privacy training every 6 months.
- As someone who has access to personal information, Alison should refresh her privacy training annually.
- Alison doesn't need to complete any privacy training.

**Enter your answer(s):**

## KEY POINTS TO REMEMBER

### AUSTRALIAN GOVERNMENT AGENCIES PRIVACY CODE

- The Code promotes a 'privacy by design' approach to ensure that privacy compliance is included in the design of information systems and practices from their inception.
- Every agency must have a Privacy Officer and Privacy Champion, who have specific functions under the Code.
- Privacy impact assessments (PIAs) must be completed for all high privacy risk projects.
- All staff should complete appropriate privacy training at induction and annually thereafter for those with access to personal information.

[Return to Table of Contents](#)

## PRIVACY IMPACT ASSESSMENTS

- A privacy impact assessment (PIA) must be undertaken for projects involving any new or changed ways of handling personal information that are likely to have a significant impact on the privacy of individuals.
- A PIA (or threshold decision not to undertake a PIA) must be recorded in writing.
- The Privacy Officer must maintain a register of PIAs.

[Return to Table of Contents](#)

## SUMMARY

Great! You should be able to:

- summarise requirements under the Code
- know what a privacy impact assessment (PIA) is, and when to do one
- know where to go to obtain further information regarding privacy.

[Return to Table of Contents](#)

## TOPIC 8 – NOTIFIABLE DATA BREACHES SCHEME

### LEARNING OBJECTIVES

#### Overview

This topic provides information regarding the Notifiable Data Breaches Scheme (NDB Scheme) in Part IIIC of the Privacy Act, which affects all government agencies and relevant private sector organisations.

#### Objectives

At the end of this topic, you should be able to:

- summarise requirements of the NDB Scheme
- know what actions are required to be taken under the NDB Scheme
- know where to go to obtain further information regarding the assessment of suspected eligible data breaches.

[Return to Table of Contents](#)

### ELIGIBLE DATA BREACHES

Prior to commencement of the Notifiable Data Breaches (NDB) Scheme on 22 February 2018, notification of privacy breaches to the Office of the Australian Information Commissioner (OAIC) and affected individuals was voluntary.

The NDB Scheme mandates the notification of **eligible data breaches** to the OAIC and affected individuals.

An '**eligible data breach**' is an unauthorised access to or disclosure of, or loss of personal information that is likely to result in serious harm to the affected individuals.

The notification is required to include the following matters:

- the identity and contact details of the entity notifying of the eligible data breach
- a description of the breach
- the kind or kinds of information involved in the breach
- recommendations about the steps that affected individuals should take in response to the breach.

## SUSPECTED ELIGIBLE DATA BREACHES

In some cases, it will not be clear at first whether a privacy breach amounts to an eligible data breach.

Under the NDB Scheme, agencies and relevant private sector organisations are required to assess a suspected eligible data breach to determine whether it amounts to an eligible data breach. Agencies and relevant private sector organisations have 30 days to conduct the assessment.

Assessments should be conducted in accordance with your agency's Data Breach Response Plan.

The steps required in handling suspected eligible data breaches are:

- contain the breach and do a preliminary assessment
- evaluate the risks associated with the breach
- consider notification
- prevent future breaches.

The following questions are relevant in assessing whether a privacy breach is likely to result in serious harm such that it is an eligible data breach:

- How likely is the harm?
- How sensitive is the information?
- Does the information have security protection?
- How likely is a breach of the security protection?
- Who has obtained, or could obtain, the information?
- What is the nature of the harm – physical (e.g. stalking), psychological (e.g. harassment), financial, reputational?

## SCENARIOS

### SCENARIO QUESTION 1

Select one or more as appropriate (please note there may be more than one correct answer).

**The department's system is breached such that records relating to individuals involved in a program have been accessed. The records contain health and financial information about those individuals.**

**What are our obligations?**

- a. Notify the incident to the Office of the Australian Information Commissioner.
- b. Notify the individuals whose information has been breached.
- c. Do not tell anyone. Keep the incident within the department.

**Enter your answer(s):**

[Return to Table of Contents](#)

### SCENARIO QUESTION 2

Select one or more as appropriate (please note there may be more than one correct answer).

**The department becomes aware that records relating to individuals participating in a program administered by the department may be missing. It is not yet clear how many records are missing or what kinds of information are contained in those records.**

**What are our obligations?**



- a. Conduct an assessment to clarify the situation as soon as possible.
- b. Do nothing. Wait until the situation becomes clearer.
- c. Assume no records are missing and proceed as normal.

**Enter your answer(s):**

[Return to Table of Contents](#)

## KEY POINTS TO REMEMBER

### ELIGIBLE DATA BREACHES

- Eligible data breaches are required to be notified to the Office of the Australian Information Commissioner and affected individuals.
- Notification should be in accordance with the Privacy Act.

[Return to Table of Contents](#)

### SUSPECTED ELIGIBLE DATA BREACHES

- Agencies and relevant private sector organisations have 30 days to assess suspected eligible data breaches.
- Assessments should be conducted in accordance with your agency's Data Breach Response Plan.

[Return to Table of Contents](#)

## SUMMARY

Great! You should be able to:

- summarise requirements of the NDB Scheme
- know what actions are required to be taken under the NDB Scheme
- know where to go to obtain further information regarding the assessment of suspected eligible data breaches.

[Return to Table of Contents](#)

## MODULE COMPLETE

Well done! You have now completed the Privacy Awareness module.

[Return to Table of Contents](#)



**Australian Government**

# FREEDOM OF INFORMATION MODULE

This Module will explain agencies obligations under the *Freedom of Information Act 1982* (FOI Act) and what this means for you. This Module also covers what the Information Publication Scheme (IPS) is and its purpose.

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024



# Table of Contents

Topic 1 – Introduction.....	3
What is FOI?.....	3
The objective .....	3
Who can request access?.....	4
Exemptions and conditional exemptions under the FOI Act .....	4
Documents accessible to the public under other arrangements.....	4
How to recognise an FOI request.....	5
Who decides what is released .....	5
is there a fee or charge? .....	5
What will be released? .....	5
How a decision is made .....	6
Factors favouring access to documents.....	6
Requests for information outside the FOI Act .....	7
The Office of the Australian Information Commissioner .....	7
Review of decision .....	7
FOI DISCLOSURE LOG .....	8
Topic 1 - Knowledge check.....	8
Topic 2 - Information Publication Scheme.....	9
The Information Publication Scheme .....	10
Purpose of the IPS.....	10
Topic 2 - Check your knowledge .....	11
Further Resources.....	12
Module complete .....	13

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## TOPIC 1 – INTRODUCTION

### Overview

This topic will explain agencies obligations under the *Freedom of Information Act 1982* (FOI Act) and what this means for you.

This topic explains what FOI is, when to refer the request and the general process of a request. This topic also covers what the Information Publication Scheme (IPS) is and its purpose.

### Objectives

On completion of the module, you should be able to:

- explain Freedom of Information (FOI);
- recognise an FOI and when to refer a request;
- explain what information will be released;
- explain what the IPS is and its purpose; and
- explain the impact on Agency if staff do not comply with the IPS.

[Return to Table of Contents](#)

## WHAT IS FOI?

The *Freedom of Information Act 1982* (FOI Act) provides a legally enforceable right for a person to access documents held by the Australian Government. The definition of 'document' is broad and includes more than just paper files.

The FOI Act promotes government accountability and transparency by providing a legal framework for individuals to request access to government documents. This includes documents containing personal or other information, such as information about policy-making, administrative decision-making and government service delivery.

[Return to Table of Contents](#)

## THE OBJECTIVE

The objective of the FOI Act is to give the Australian community access to information held by the Government of the Commonwealth, by requiring agencies to publish certain information and by providing a right of access to documents.

FOI is important as it:

- allows individuals to see what information government holds about them, and to seek correction of the information if they consider it wrong or misleading
- enhances the transparency of policy making, administrative decision making and government service delivery
- allows for a community that is better informed and can participate more effectively in the nation's democratic processes.
- increase public participation in Government processes to promote better informed decision making
- increase scrutiny, discussion, comment and review of the Government's activities
- increase recognition that Government information is to be managed for public purposes and that it is a national resource
- as far as possible, facilitate and promote public access to information, promptly and at the lowest reasonable cost.

[Return to Table of Contents](#)

## WHO CAN REQUEST ACCESS?

Every person has a right under the FOI Act to seek access to documents in the possession of the Australian Government. An individual who wants to gain access to documents held by the agency may make an FOI request. The agency is required to manage the request, including where relevant, making a decision and provide reasons for the decision if access is refused. All documents in the possession of the agency (either physically or by constructive possession) are potentially subject to release to the public.

The FOI Act:

- allows you to request access to documents held by Australian Government ministers and most agencies
- allows you to request that ministers or agencies amend or annotate any information they hold about you
- establishes an information publication scheme requiring agencies to publish online details about their functions and structure
- allows agencies and ministers to release documents that would be exempt under the FOI Act, unless prevented by a secrecy requirement in another law.

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

- is held by an agency exempt from the FOI Act
- falls under one of the exemptions in the FOI Act
- falls under one of the conditional exemptions in the FOI Act, and releasing the document would be contrary to the public interest
- is accessible to the public under other arrangements, whether at no cost or for a fee or charge.

[Return to Table of Contents](#)

## EXEMPTIONS AND CONDITIONAL EXEMPTIONS UNDER THE FOI ACT

If a document falls under one of the FOI Act's ten exemptions, an agency or minister can refuse to release it. Some of these exemptions include documents affecting national security, defence or international relations, documents affecting law enforcement and public safety, and Cabinet documents.

The FOI Act also contains eight conditional exemptions. Documents falling under a conditional exemption must be released, unless it would be contrary to the public interest to do so. Some of these conditional exemptions cover documents containing information that affects personal privacy, business information and certain operations of agencies (such as audits, examinations and personnel management).

For more information about exemptions and conditional exemptions, see [Exemptions and conditional exemptions under the Freedom of Information Act 1982](#).

[Return to Table of Contents](#)

## DOCUMENTS ACCESSIBLE TO THE PUBLIC UNDER OTHER ARRANGEMENTS

The FOI Act does not cover documents that are otherwise accessible to the public. This includes:

- documents available for access under the Archives Act 1983 (Cth)
- documents open to public access subject to a fee or charge
- the library, historical and museum collections of the Australian War Memorial, National Library of Australia, National Museum of Australia, National Archives of Australia and the National Film and Sound Archive.

The FOI Act only applies to information held in the form of a document. However, the definition of a 'document' in the FOI Act is very broad, and includes:

- any paper or other material on which there is writing or a mark, figure or symbol

- electronically-stored information
- maps, plans, drawings and photographs
- any article from which sounds, images or writing are capable of being produced.

Ministers and agencies are not required to create a new document containing the information that is sought.

[Return to Table of Contents](#)

## HOW TO RECOGNISE AN FOI REQUEST

There are five requirements of an FOI request. The FOI request must:

- be in writing (this may be an email)
- state that it is an application under the FOI Act
- describe the document or documents sought
- provide a return address (this may be an email address)
- be sent to a minister or agency (either by post, personal delivery or electronically)

If you receive something that looks like a request for access to documents (even if it does not meet all the requirements) it may be a request under the FOI Act and you need to refer it to the FOI contact officer in your agency.

Timeliness is important. If you receive an FOI request it should be referred immediately because statutory timeframes apply. Failure to meet these timeframes may result in review of the matter by the Office of the Australian Information Commissioner, reputational damage and loss of the agency's ability to issue a processing charge to the applicant.

Once an FOI request is received, the agency must decide what to release and tell the applicant what has been decided within 30 days. Where the agency is required to consult with a third party before making a decision, this 30 day timeframe is extended by a further 30 days.

[Return to Table of Contents](#)

## WHO DECIDES WHAT IS RELEASED

Decisions under the FOI Act can only be made by the agency head or an authorised decision-maker in the agency.

A decision made on a request to a minister may be made by the minister personally or by someone the minister has authorised to act on their behalf, either a member of their staff or an officer of an agency.

Your agency's FOI team will be able to give you more information about who is authorised to make FOI decision.

## IS THERE A FEE OR CHARGE?

There is no application fee for an FOI request to be made. A charge for processing an FOI request may apply, however, not in cases where an applicant is seeking his or her own personal information or where the decision to release documents is not made within the statutory timeframe.

[Return to Table of Contents](#)

## WHAT WILL BE RELEASED?

Documents that are relevant to the request need to be searched for and collated before a decision is made as to what information is released. That is, that each document that falls within the scope of the request needs to be collected, so an FOI decision can be made on each document. It may also be helpful to mention that parts of documents should be released where possible – and edited (i.e. redacted) versions of documents can be provided to applicant.

[Agency Resource 6](#) sets out a checklist of the FOI process.

## HOW A DECISION IS MADE

A person has a legally enforceable right of access to a government document unless the document is exempt or conditionally exempt.

In considering whether a document is exempt under the FOI Act, the decision maker must have regard to the content and context of that document, and identify any harm that may arise from its release.

In considering whether a document is conditionally exempt under the FOI Act, the decision maker must have regard to the above, as well as weighing up of the factors in favour of disclosure against those factors indicating disclosure would be contrary to the public interest.

Exempt documents include:

- documents, the disclosure of which, could damage national security, defence or international relations
- Cabinet documents
- documents, the disclosure of which, would be likely to affect the enforcement of law or public safety
- documents to which secrecy provisions apply
- documents subject to legal professional privilege
- documents containing material obtained in confidence
- Parliamentary Budget Office documents
- documents whose disclosure would be in contempt of court or infringe the privileges of the Parliament
- documents disclosing trade secrets or commercially valuable information
- electoral rolls and related documents.

Conditionally exempt documents relate to the following categories if their disclosure could affect and/or disclose:

- Commonwealth-State relations
- deliberative processes
- financial or property interests of the Commonwealth or Norfolk Island
- certain operations of agencies
- personal information
- business or professional affairs
- research
- the economy

## FACTORS FAVOURING ACCESS TO DOCUMENTS

Factors favouring access to documents in the public interest include whether access to the document would do the following:

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

When deciding whether there are any factors which, on balance, make disclosure contrary to the public interest, the FOI Act specifies that the following factors must not be taken into consideration:

- Access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government.

- Access to the document could result in any person misinterpreting or misunderstanding the document.
- The author of the document was (or is) of high seniority in the agency to which the request for access to the document was made.
- Access to the document could result in confusion or unnecessary debate.

[Return to Table of Contents](#)

## REQUESTS FOR INFORMATION OUTSIDE THE FOI ACT

A person may request access to documents outside the FOI Act which will often be faster and easier than making a formal FOI request for documents. This can be done by asking the minister or agency if they are willing to provide the information they want, outside of the FOI Act. This does not affect the person's ability to later make a formal FOI request for documents containing the information.

[Return to Table of Contents](#)

## THE OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

The Office of the Australian Information Commissioner (OAIC) was established by the *Australian Information Commissioner Act 2010 (Cth)* which commenced on 1 November 2010.

OAIC functions include:

- reporting to the Minister on matters relating to the Government's information management policies and practices
- granting extensions of time for FOI requests
- determining an applicant to be a vexatious applicant
- issuing guidelines and collecting data on matters relating to FOI practice and decision making
- conducting merit review of decisions made under the FOI Act.

[Return to Table of Contents](#)

## REVIEW OF DECISION

After an agency has made a decision about whether or not to release a document, an FOI applicant has a right to have that decision reviewed. It is also possible for a third party who has made a submission against a document being released to seek review of a decision to release the document.

There are four avenues of review, after the initial decision by the agency:

1. Agency internal review
2. Information Commissioner (IC) review
3. Administrative Appeals Tribunal (AAT) (merits review)
4. Federal Court (judicial review)

Applicants have a choice of seeking internal review or Information Commissioner review after the initial decision by the agency. Note, however, that internal review is not available if a minister or the chief officer of the agency made the decision personally. Additionally, an applicant can only go to the AAT after they have sought IC review.

[Return to Table of Contents](#)



## FOI DISCLOSURE LOG

Agencies and ministers must publish information that has been released in response to each FOI access request, subject to certain exceptions. This publication is known as a 'disclosure log'. The disclosure log facilitates wider publication of information released under FOI to individual applicants. This reinforces the objective of the FOI Act to promote a pro-disclosure culture across government and to increase recognition that information held by government is a national resource.

When an FOI applicant is given access to documents, the agency or minister must publish the released information within 10 working days unless:

- the information is personal information, information about the business, commercial, financial or professional affairs of any person; or other information of a kind determined by the Information Commissioner
- it would be unreasonable to publish that information, or
- if modifications necessary to delete that information are too extensive.

The information must be published in the disclosure log and it must be made available at no charge other than reimbursement of reproduction costs.

[Return to Table of Contents](#)

## TOPIC 1 - KNOWLEDGE CHECK

To test your knowledge of the information presented in this topic, answer the following questions.

### QUESTION 1

Select the correct answer.

**What is FOI?**

- FOI is the legislative basis by which a person may obtain access to information held by the Australian Government.
- FOI are guidelines on requesting information.
- FOI is the policy for Public Servants to obtain access to information held by the Australian Government.

**Enter your answer(s):**

### QUESTION 2

Select the correct answer.

**Statutory timeframes apply to FOI requests. Is this statement true or false?**

- True
- False

**Enter your answer(s):**

### QUESTION 3

Select the correct answer.

**A journalist has approached an Agency staff member for a copy of the Agency's internal social media policy. What should the staff member do?**

- a. Seek guidance from the FOI contact officer
- b. Nothing – the journalists request should be ignored
- c. Tell the journalist they can't have the information as it is classified

Enter your answer(s):

---

#### QUESTION 4

Select one or more as appropriate (please note there may be more than one correct answer).

**Dean, an agency employee, is the nominated contact officer for an FOI request. The FOI Team has requested that all documents falling within the scope of the request be provided to them. Dean has located the following types of documents that relate to the request.**

**Which types of documents is Dean required to provide to the FOI Team?**

- a. Ministerial briefs
- b. Research papers
- c. Emails
- d. Outlook diary entries
- e. Handwritten meeting notes
- f. Voicemail messages
- g. Electronic spreadsheets

Enter your answer(s):

---

#### QUESTION 5

Select one or more as appropriate (please note there may be more than one correct answer).

**What information is exempt from publication in the disclosure log?**

- a. The information is personal information
- b. It would be unreasonable to publish that information
- c. if modifications necessary to delete that information are too extensive
- d. Information that will promote effective oversight of public expenditure

Enter your answer(s):

[Return to Table of contents](#)

## TOPIC 2 - INFORMATION PUBLICATION SCHEME

### Overview

This topic provides information on the IPS and the amendments to the *Freedom of Information Act 1982*. We also look at the purpose of the IPS and the impact on the Agency if the requirements of the IPS are not complied with.

### Objectives

On completion of the topic, you should be able to:

- Explain what the IPS is
- Explain the purpose of the IPS

- Explain the impact on Agency if staffs do not comply with the IPS.

[Return to Table of Contents](#)

## THE INFORMATION PUBLICATION SCHEME

The FOI Act establishes an Information Publication Scheme (IPS) for Australian Government agencies subject to the Act. The IPS requires agencies to publish a broad range of information on their website and provides a means for agencies to proactively publish other information.

The IPS:

- requires Australian Government agencies to publish information publication plans
- specifies ten categories of information that must be published
- provides a means for agencies to proactively publish other government information

The scheme does not apply to Minister's offices and a small number of security and intelligence agencies that are exempt from the FOI Act.

[Return to Table of Contents](#)

## PURPOSE OF THE IPS

The IPS is intended to form the basis for a more open and transparent culture across government, with agencies encouraged to take a proactive approach to publishing the information they hold, and to consider publishing over and above what they are obliged to publish.

The principle underlying the IPS is that government information is a national resource to be managed for public purposes. The purpose of the IPS is to change the nature of the FOI regime from one that is reactive to requests for access to documents to one that proactively provides access to a wide range of government information. The IPS requirements are intended to facilitate and promote public access to information promptly and at the lowest reasonable cost.

Agencies are required to publish information on their website where the general public can find more information about how to access published information or make an FOI request.

[Return to Table of Contents](#)

## THE IMPACT OF NOT COMPLYING WITH THE IPS

Agencies have an obligation under the FOI Act to provide access to information under the IPS and may be subject to complaint if access is not provided. Anyone can make a complaint to the Office of the Australian Information Commissioner about an agency's performance in relation to the IPS.

Each Agency is responsible for publishing an information publication plan that explains how the IPS is managed. The details of an agency plan are likely to reflect the agency's size, functions and reporting obligations, and its resources and skills in information and communications technology, and information management. Refer to your agency's IPS plan to see who is responsible for the IPS in your workplace.

## INFORMATION TO BE PUBLISHED UNDER THE IPS

The following categories of information must be published under the IPS:

1. **Agency's publication plan** – outlines how the department intends to comply with the IPS. This should be reviewed annually.

2. **Organisational structure**
3. **Agency's functions**, including its decision-making powers and other powers affecting members of the public
4. **Statutory Appointments**
5. **Annual Reports**
6. **Consultation arrangements** – details of arrangements for the public to comment on policy proposals
7. **Disclosure Log** – information that has been released in response to an FOI request
8. **Information routinely provided to Parliament** in response to requests and orders from Parliament
9. **Operational information** – information held by an agency to assist it to perform its powers and functions,
10. **Details of FOI Officers** – details of an officer who can be contacted about access to agency information of documents under the FOI Act.

---

## THE DIFFERENCE BETWEEN IPS AND FOI REQUESTS

There are some key differences between the IPS and FOI. They do however share the same principle of making information publicly available.

An agency can only charge for information under the IPS if the information cannot be downloaded from a website, and the agency has incurred specific reproduction or incidental costs in giving a person access to that information under the IPS.

[Return to Table of Contents](#)

## TOPIC 2 - CHECK YOUR KNOWLEDGE

To test your knowledge of the information presented in this topic, answer the following questions.

---

### QUESTION 1

Select one or more as appropriate (please note there may be more than one correct answer).

**Select from the following all the statement which correctly describe the IPS.**

- a. IPS stands for 'Information Publication Scheme'.
- b. The underlying principle of the IPS is that government information is a national resource to be managed for public purposes.
- c. The IPS requires agencies to publish ten categories of information for the public to access.
- d. The IPS requires agencies to publish exempt and conditionally exempt information for the public to access.

**Enter your answer(s):**

---

### QUESTION 2

Select the correct answer.

**How do you find out who is responsible for the IPS in your agency?**

- a. The Agency's Publication Plan
- b. Annual Reports
- c. Operation Information

**Enter your answer(s):**

---

### QUESTION 3

Select one or more as appropriate (please note there may be more than one correct answer).

**Which of the following are categories of information agencies are required to publish?**

- a. The agency's organisational structure
- b. The agency's publication plan outlining how it intends to comply with the IPS
- c. Annual Reports
- d. Details about Statutory Appointments
- e. Operational information
- f. Details of OHS Officers.

**Enter your answer(s):**

---

### QUESTION 4

Select the correct answer.

**Exempt documents are documents where access must be given to those documents when requested in writing by a member of the public.**

- a. True
- b. False.

**Enter your answer(s):**

---

### QUESTION 5

Select the correct answer.

**What is the impact of not complying with the IPS?**

- a. An agency may be subject to a fine up to \$10 000
- b. Staff who work in the FOI area of the agency may be fined individually up to \$2000 each
- c. An agency may be subject to complaint

**Enter your answer(s):**

[Return to Table of Contents](#)

## FURTHER RESOURCES

Office of the Australian Information Commissioner:

- [FOI agency resources](#)
- [Exemptions and conditional exemptions under the Freedom of Information Act 1982](#)
- [Freedom of Information Act 1982](#)
- [Information Publication Scheme](#)

[Return to Table of Contents](#)

## MODULE COMPLETE

Well done! You have now completed the Freedom of Information module.

[Return to Table of Contents](#)

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Australian Government

Australian Transaction Reports  
and Analysis Centre

# Freedom of Information Standard Operating Procedures

Released by AUSTRAC under the FOI Act 1982 on 22 August 2023



Policy version control sheet

Revision	Date issued	Revision description	Revision author
0	17/06/2014	Initial Release	s 22(1)(a)(ii)
1	18/09/2014		
2	24/01/2017	Reflect changes to template, policy and procedures	
3	22/12/2017	Changes to processing documents and moving to JIRA reporting	
4	22/12/2021	Review and update of standard operating procedures in its entirety	
5	04/08/2023	Review and update of standard operating procedures in its entirety	

This document should be reviewed annually and updated to reflect any changes in legislated processing of FOI requests or AUSTRAC administration procedures.

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024



# Contents

---

<b>1. Overview</b>	<b>4</b>
1.1. Purpose	4
1.2. What is FOI	4
1.3. What is captured by FOI?	5
1.4. Spirit of the Act	6
1.5. Overseeing FOI	6
<b>2. Initial processing</b>	<b>7</b>
2.1. Receiving a new request	7
2.2. Register the request	8
2.3. Acknowledging the request	11
2.4. Transfers under section 16	12
2.5. Time limits	14
<b>3. Administration</b>	<b>17</b>
3.1. General FOI process timeline	17
3.2. Weekly Executive FOI report	17
3.3. Records Management	18
3.4. AUSTRAC FOI contact details	19
3.5. MASCOT	21
<b>4. Searching for documents</b>	<b>23</b>
4.1. Transaction reports	23
4.2. Preparing a schedule of documents	25
4.3. Practical refusal	26
<b>5. Charges</b>	<b>27</b>
<b>6. Consultation</b>	<b>29</b>
6.1. Third party consultation	29
6.2. Third party review rights	30
6.3. Internal consultation	31
6.4. Consultation with State and Territories	31
6.5. Inter-agency consultation	32
6.6. Protocols for handling consultations	34
<b>7. The decision</b>	<b>35</b>
7.1. Decision maker to do list	36

7.2.	Making the decision .....	37
7.3.	Notifying the decision .....	42
7.4.	Making redactions using Adobe Acrobat DC .....	<b>Error! Bookmark not defined.</b>
7.5.	Preparing the spreadsheet for release .....	43
7.6.	Reverse FOI review .....	45
<b>8.</b>	<b>Finalising the request .....</b>	<b>47</b>
8.1.	Disclosure log .....	47
8.2.	Recordkeeping .....	48
8.3.	Outlook folder .....	49
8.4.	Finalising JIRA .....	50
<b>9.</b>	<b>Review process .....</b>	<b>52</b>
9.1.	Internal reviews .....	52
9.2.	Inspector-General of intelligence and security .....	50
<b>10.</b>	<b>Subpoenas .....</b>	<b>54</b>
<b>11.</b>	<b>Statistical returns .....</b>	<b>55</b>
<b>12.</b>	<b>Sensitive FOI requests .....</b>	<b>Error! Bookmark not defined.</b>
<b>13.</b>	<b>Resources .....</b>	<b>61</b>
13.1.	Example letters .....	61
13.2.	Quick reference guides .....	62
13.3.	Legislation and guidelines .....	63

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024

# 1. Overview

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## 1.1. Purpose

The purpose of the Freedom of Information (FOI) standard operating procedures (SOP) is to provide staff with guidance on steps for handling FOI requests. This SOP is for the internal use of AUSTRAC Privacy and Information Access Team (PIAT) officers and promotes a consistent approach to processing FOI requests under the *Freedom of Information Act 1982* (FOI Act) for access to documents held by Australian Transaction Reports and Analysis Centre (AUSTRAC).

It is important that this manual is read in its entirety and in conjunction with the FOI guidelines issued by the Office of the Australian Information Commissioner (OAIC). It may be appropriate, in certain circumstances, to diverge from the procedures in this manual. This should only be done following discussions with the Manager of the PIAT or consultation with the Director of Legal. AUSTRAC recognises the statutory requirements of the FOI Act are paramount and PIAT officers are expected to act accordingly when carrying out their FOI responsibilities.

## 1.2. What is FOI

The Australian Parliament first considered introducing FOI legislation in the 1970s. In 1979, a Senate committee report outlined three reasons why FOI is important:

1. FOI allows individuals to see what information government holds about them, and to seek correction of that information if they consider it wrong or misleading.
2. FOI enhances the transparency of policy making, administrative decision making and government service delivery.
3. A community that is better informed can participate more effectively in the nation's democratic process.

These reasons are still valid today.

The FOI Act was finally introduced in 1982 enabling a person either in Australia or overseas (the applicant) a legally enforceable right to obtain access to a document of an Agency or an official document of a minister (other than exempt documents).

The FOI Act promotes government accountability and transparency by providing a legal framework for individuals to request access to government documents. This includes requesting documents containing personal or other information, some examples include documents about policy-making, administrative decision-making and government service delivery. Requestors may also apply for amendment to their personal information under the FOI Act however this scenario will be extremely unlikely to be encountered within AUSTRAC.

There's no obligation for the FOI applicant to provide a reason for making a FOI request as the reason does not affect the applicant's right of access to documents<sup>1</sup>.

In 2010 the FOI Act underwent major reforms with the objective of increasing pro-disclosure culture across the government and to build a stronger foundation for additional openness in government. The changes came into effect on 1 November 2010. Some examples of the changes included:

- the establishment of the OAIC as an oversight body to all FOI processing in Commonwealth agencies;
- changes to requirements to making a valid request to include electronic lodgement/communication and for requests to be made by persons outside Australia;
- abolishment of fees for lodging an initial request or internal review application;
- changes to FOI charges;
- changes to processing timeframes;
- changes to review processes (including review by the OAIC);
- changes to the public interest test<sup>2</sup> in relation to the exemption provisions (sections 47B through 47H); and
- the introduction of an Information Publication Scheme to make Commonwealth information more publicly available.

### 1.3. What is captured by FOI?

The FOI Act:

- allows applicants to request access to documents held by Australian Government ministers and most agencies
- allows applicants to request that ministers or agencies amend or annotate personal information they hold about the FOI applicant<sup>3</sup>
- establishes an information publication scheme requiring agencies to publish online details about their functions and structure

Most (but definitely not all) of the FOI requests processed by AUSTRAC relate to matters concerning the affairs of the applicant or those affairs closely connected with the applicant, particularly seeking access to financial transaction reports.

The FOI Act places legally binding obligations upon AUSTRAC in relation to documents held by AUSTRAC. Failure to comply with these obligations can lead to:

- FOI decisions being overturned by the OAIC, together with any criticisms the OAIC may make;
- FOI decisions being overturned by the Administrative Appeals Tribunal, together with any criticisms the Tribunal may make;

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1 Sub-section 11(2) of the FOI Act.  
2 Section 11B of the FOI Act.  
3 Part V of the FOI Act.

- adverse comments from the OAIC, Commonwealth Ombudsman, as well as reports to the Minister, to the Parliament and to the Prime Minister if AUSTRAC fails to comply with the recommendations of the OAIC or Commonwealth Ombudsman; and
- legal action against AUSTRAC under the *Administrative Decisions (Judicial Review) Act 1977*.

## 1.4. Spirit of the Act

When interpreting or applying the provisions of the FOI Act, staff must seek to uphold the philosophy behind the FOI Act and promote its objectives as set out in section 3.

The objects are focussed on promoting a pro-disclosure culture across government and building a strong foundation for openness in government. This focus is aimed at providing the Australian community with a comprehensive right of access to government documents under the FOI Act, which is limited only where an identified exemption applies.

The Parliament intended the FOI Act to contribute to an increase in public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities. It also intended that the functions and powers given by the FOI Act facilitate and promote public access to information promptly and at the lowest reasonable cost.

## 1.5. Overseeing FOI

The OAIC is an independent statutory agency within the Attorney General's Portfolio and is headed by the Australian Information Commissioner. The OAIC's functions include oversight of the operation of the FOI Act and review of decisions made by agencies and ministers.

The OAIC's responsibilities include:

- Review decisions made by agencies under the FOI Act;
- Process complaints, conduct investigations and monitor agency administration into the processing of FOI requests.
- Provide advice to the public, government agencies and businesses; and
- Considering the potential grant of an extension of time to process FOI requests where the statutory timeframes may not be met

The OAIC issued guidelines which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act.<sup>4</sup> These guidelines are not legislative instruments.

AUSTRAC must also comply with any requests from the OAIC to provide information as set out in section 93 of the FOI Act.

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4 Section 93A of the FOI Act

## 2. Initial processing

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### 2.1. Receiving a new request

AUSTRAC's website (<http://www.austrac.gov.au/freedom-information>) provides guidance on AUSTRAC's FOI process.

AUSTRAC prefers applicants use the *Freedom of information request for documentation form* available on the website. The form is not mandatory; however, it has been structured to assist applicants to submit a valid request and provide identifying information such as a driver's licence, passport and account information to assist AUSTRAC when processing applications for transaction reports. AUSTRAC's website also provides valid postal and electronic addresses the FOI application can be sent to.

Where a FOI request is received by AUSTRAC staff outside the PIAT, those staff should redirect the correspondence to the PIAT team at [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au) immediately to enable AUSTRAC sufficient time process the matter within the legislative timeframes.

If an AUSTRAC staff member receives an FOI related matter via mail they must:

- stamp the document (if received via mail) with the date it was received visible on the request being mindful not to interfere with any other text on the document;
- scan the documents (including envelope)
- email the scanned document to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au)

If an AUSTRAC staff member receives an FOI related matter via email they must:

- forward the email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au)

Most requests for information are received via the [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au) mailbox and all members of the PIAT have access to this communal mailbox.

#### 2.1.1. Is the request valid

The PIAT will review the FOI request to ensure it meets the requirements of Section 15(2) which sets out the requirements of a valid FOI request.

To be a valid request, the application must:

- be in writing;
- state that the request is an application for the purposes of the FOI Act;
- provide such information concerning the documents as is reasonably necessary to enable AUSTRAC, or the Minister, to identify the documents; this is sometimes referred to as 'the scope of the request'; and
- provide an address for reply

If AUSTRAC receives a FOI request that is not valid, it is the duty of the agency to take reasonable steps to assist the person to make a valid request, a requirement set out within section 15(3).

Any communication with an applicant must be documented and stored in the relevant SAFE folder once the request is deemed valid and registered.

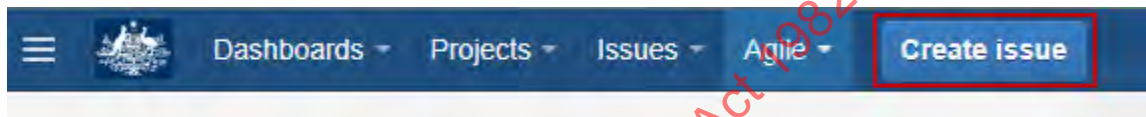
## 2.2. Register the request

As the PIAT work in a fully digital environment, if a FOI request is received via post the request must be scanned to create an electronic version. Once the post mail FOI request has been scanned it should be emailed to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au) and the post mail version may then be destroyed.

### 2.2.1. Create a JIRA task

Each new FOI request must be registered in JIRA where it is allocated a system generated unique FOI identifier. This unique reference number should be used for all internal and external correspondence.

Open JIRA and click 'Create'.



Complete all the relevant sections in the JIRA issue by using the drop down list options or manual entry where required. The red \* indicates a compulsory entry and this field cannot be left blank.

A screenshot of the JIRA 'Create Issue' form. The form is light gray with a white background. At the top left, it says 'Create Issue' and at the top right, there is a 'Configure Fields' button. Below this, there are two dropdown menus: 'Project' with a red asterisk and 'Issue Type' with a red asterisk. The 'Project' dropdown is set to 'Privacy and Information Access' and the 'Issue Type' dropdown is set to 'FOI request'. Below these is a note: 'Some issue types are unavailable due to incompatible field configuration and/or workflow associations.' Further down, there are two text input fields: 'Summary' with the text 'Legal Firm - Jane Doe - Bankrupt estate' and 'Description' with the text 'All transaction reports fr'. A large red watermark is overlaid diagonally across the form, reading 'Released by AUSTRAC under the FOI Act 282 on 22 August 2024'.

- The Project\* field defaults to **Privacy and Information Access Team** and should not be changed. This field provides the first half of the FOI request's unique identifier (**PIAT-0000**) and once the registration process is complete the automatically generated number provides the second part of the unique identifier (**PIAT-0000**).
- Using the drop down list change the Issue Type\* to **FOI request**. JIRA supports identifying particular fields necessary for reporting FOI requests to the OAIC or other

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forums such as Senate Estimates. If these reporting data fields are not complete or are incorrect they will adversely impact the statistical reporting.

- The Summary\* section is a free text field and should display the name you are allocating to the request as shown in the above example.
- The Description field is a general text area and the scope of the request should be entered into this field as well as a hyperlink to the SAFE container relevant to this request once it is created.
- The **Sensitive Matter** box must be ticked for Sensitive FOI requests (*Point 12 (Sensitive FOI requests)*) of this guide.
- Change the **Assignee** of the FOI Request to the PIAT officer conducting searches for documents so they may commence the identification of documents steps.



Once all the appropriate fields have been completed, click **Create**. JIRA will assign a unique identifier number at this point in the process and include the FOI Summary previously entered (for example: PIAT-0000 Law Firm – Jane Doe – Bankrupt estate).

### 2.2.2. Create an outlook folder

Once the unique FOI identifier has been created, you need to create a new subfolder in the INFO\_ACCESS mailbox under **Current Requests**.

To create a new subfolder, right click on **Current Requests** and select **New Folder....** In the Name: field, enter the new reference for the FOI that was created in JIRA, for example PIAT-0000 Jane Doe, and click **OK**.



Creating individual folders for each FOI request enables emails to be moved into their respective folder with the goal of maintaining the inbox clear of newly received emails. Emails relating to the individual requests can easily be accessed by PIAT staff and they can easily be saved into their relevant SAFE container from this folder.

### 2.2.3. Create a SAFE container

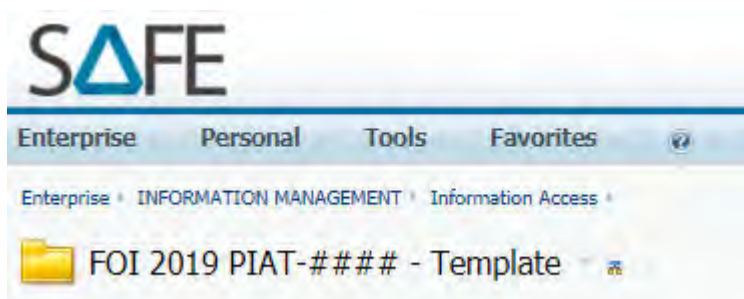
Open SAFE via OnTrac and navigate to **Enterprise>INFORMATION MANAGEMENT>Information ACCESS>FOI 2023 (or respective calendar year) PIAT-####**



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- **Template**. This folder is an empty SAFE container providing a shell that is available to copy when creating new containers. Making a copy of this shell automatically assigns the correct permissions to the container saving time and mouse clicks when saving documents and emails to it.

Click the down arrow on the template folder to reveal a sub menu of options and click **Copy**.



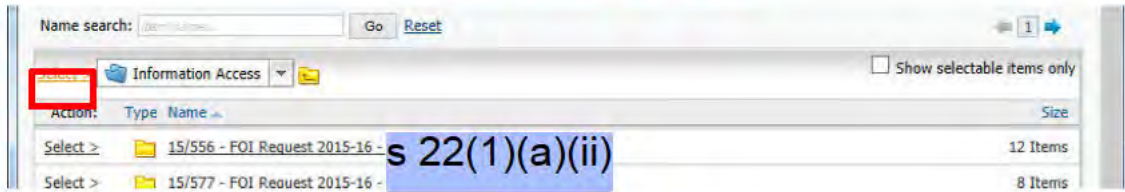
In the **Items:** section, rename the container to reflect a title appropriate for its contents. All FOI Containers use the format – **FOI PIAT-### – Applicant Name** (for example FOI PIAT-000 – Lawyer Firm – Jane Doe).

A screenshot of the 'Copy to' dialog box in the SAFE interface. The 'Items:' section shows a folder named 'FOI 2019 PIAT-0000 - Jane Doe'. The 'Copy to:' section has a text input field and a 'Browse Content Server...' button. The 'Inherit RM Classification:' section has radio buttons for 'Yes' and 'No'. The 'Inherit Supplemental Markings and Security Level:' section has dropdown menus for 'Supplemental Markings' and 'Security Level', both set to 'Ignore'. The 'Categories:' section has radio buttons for 'Original', 'Destination', and 'Merged', with 'Original' selected. At the bottom, there is a text input field with '90 - Naming: 01 - All[!]; 50 - File' and an 'Edit...' button. Buttons for 'Copy', 'Reset', and 'Cancel' are at the bottom right. A large red watermark 'Released by AUSTIAC under the FOI Act 1982 of 22 August 2024' is overlaid diagonally across the image.

You need to specify where you want the container to sit in the **Copy to:** section. All FOI requests are located under Information Access. Click **Browse Content Server ...** to reveal the list of locations available to save the container.

A screenshot of the 'Copy to' dialog box in the SAFE interface, similar to the previous one. The 'Copy to:' section is highlighted with a red rectangular box. The 'Items:' section shows a folder named 'FOI Request - Template Folder'. The 'Inherit RM Classification:' section has radio buttons for 'Yes' and 'No'. The 'Inherit Supplemental Markings and Security Level:' section has dropdown menus for 'Supplemental Markings' and 'Security Level', both set to 'Ignore'. The 'Categories:' section has radio buttons for 'Original', 'Destination', and 'Merged', with 'Original' selected. At the bottom, there is a text input field with '90 - Naming: 01 - All[!]; 50 - File' and an 'Edit...' button. Buttons for 'Copy', 'Reset', and 'Cancel' are at the bottom right. A large red watermark 'Released by AUSTIAC under the FOI Act 1982 of 22 August 2024' is overlaid diagonally across the image.

Navigate to Information Access and click **Select**.



Click **Copy**. When the dialogue box appears, click **OK**.

Self Service Portal is the place to request a new folder when the current calendar year is approaching expiry.

## 2.3. Acknowledging the request

The [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au) inbox has an auto response activated.

*This is an automated response to your email which has been received by the Privacy and Information Access team at AUSTRAC. A team member will be in contact with you shortly.*

*If you would like to talk to us about your email, please phone 02 6120 2631.*

However, a member of the PIAT must contact the applicant in writing as soon as practicable (within 14 days of receipt) once a request is received. Where the FOI request is unclear, a telephone call is encouraged to confirm the scope and ensure AUSTRAC are processing the request in accordance with what is being requested from the FOI applicant's perspective. By contacting the applicant early AUSTRAC increases the potential of ensuring we have interpreted the scope of request correctly.

The acknowledgement also enables both parties to be clear on the scope of the request as it clearly defines scope itself. This is particularly important where a telephone call takes place and AUSTRAC is able to confirm the revised terms of the scope within our acknowledgement process.

The below paragraphs should also be included in any email acknowledgement response to the applicant if they are relevant to the request. For example you would not send a charges paragraph to an applicant requesting access to their own information as charges are not applicable to that request. But you would include it if the request was for business information or if the applicant is requesting information of another individual.

### Charges

*AUSTRAC may impose a charge for the work involved in providing access to the documents in accordance with the Freedom of Information (Charges) Regulations. If your request for access to documents attracts a charge, you will be notified in writing. Note: There is no charge for documents that contain the personal information of the applicant.*

### Exclusion of non-SES staff details, and SES staff contact details

*AUSTRAC's policy is to exclude the details (name, position title, telephone and/or mobile number, and email address) of officers not in the Senior Executive Service (SES), as well as the contact details (telephone and/or mobile number and email address) of SES staff, contained in documents that fall within scope of an FOI request. If you require names,*

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*position titles and contact details of non-SES officers, or the contact details of SES staff, please inform us so that the decision maker may consider your request. Otherwise, we will take it that you agree to the information being excluded from the scope of your request.*

Third party consent and photographic identification

*AUSTRAC recognises you are seeking access to third party «Option: Individual or Business» information without supporting consent. Please consider providing third party consent if practicable for you to do so in support of your FOI application. Consent should be accompanied with a form of photographic identification. If obtaining third party consent is not practicable in the circumstances, please consider submitting a statement detailing why providing a third party's information to you without consent would be reasonable in the circumstances. AUSTRAC will have regard to any consent or statement you may wish to provide in determining if disclosure would be reasonable in the circumstances. If you wish to provide either third party consent or a statement, please do so within 14 days of this correspondence*

Providing your own identification

*I have examined your FOI request and note you have not provided photographic identification to support your request. Although providing identification is not required under the FOI Act, providing identification will satisfy AUSTRAC that we are corresponding with the correct individual to whom has lodged the FOI request. AUSTRAC are committed to protecting your personal information from any unreasonable disclosure to unauthorised third party individuals, so your contribution in identifying yourself as part of this request where you seek your own personal information is appreciated. Please provide this requested information within 14 days from the date of this correspondence.*

When corresponding with the applicant PIAT officers shall include the unique identifier in the subject line. Using this identifier allows correspondence to be easily identified and it enables clear definition of requests that are similar in nature or have the same applicant.

## 2.4. Transfers under section 16

The FOI Act provides that an agency may transfer a request where the document(s) requested is held by another agency or the subject matter of the FOI request is more closely connected to the functions of another agency, subject to the agreement of the other agency.<sup>5</sup>

Agencies listed under Part I of Schedule 2 of the FOI Act are exempt from the operation of the FOI Act. If a request is received by AUSTRAC that relates to an agency listed under Part I of Schedule 2, the related documents must be transferred to the department/agency.

Agencies and bodies listed under Part II of Schedule 2 are exempt from the FOI Act with respect to certain prescribed documents. Bodies which fall under Part III of Schedule 2 are exempt from the FOI Act with respect to their commercial activities. If AUSTRAC receives a request for a document that relates to the functions of the agencies and bodies listed under Part II of Schedule 2, the related documents must be transferred to the department/agency.

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5 Subsection 16(1) of the FOI Act.

### 2.4.1. Sending a transfer

Before processing a request we must consider whether part or the entire request should be transferred to another agency or department or to the Minister's Office. You need to consider the following:

- Does the request relate to a document that you know is not in the possession of AUSTRAC but would be in the possession of another department?
- Is the subject matter of the document more closely connected with the functions of another department?
- Have you conducted some initial searches or consultations to establish the department does not have the document requested or the request would be better dealt with by another department due to the subject matter?
- Will the other department accept a transfer in part or in full?
- Are you required under the FOI Act to transfer documents to another department due to Part I, II or III of Schedule 2?

It is important that all transfers be undertaken as soon as possible as the FOI request will be deemed to have been received by the agency accepting the transfer on the same day AUSTRAC received it.

When transferring a request you need to:

- register the request if it is deemed valid;
- contact the agency to discuss the request;
- forward copies of the scope of the request, date received and relevant documents to the agency for them to consider acceptance of the partial or full transfer;
- contact the applicant advising them of the partial or full transfer and the reason why AUSTRAC has transferred their request and the date it was transferred which will also be considered as the FOI acknowledgement;
- ensure you create a file note of telephone conversations and file all correspondence in the relevant SAFE container.

### 2.4.2. Receiving a transfer

Agencies are expected to [consult](#) with AUSTRAC on AUSTRAC information. If any of the documents contain Suspicious Transaction Reports (SUSTR) or Suspicious Matter Reports (SMR), which includes any aggregated SUSTR/SMR data, AUSTRAC requires those documents to be transferred so we may protect those documents pursuant to Section 7(2). Where documents contain sensitive intelligence information agencies may conduct a courtesy consultation to seek AUSTRAC's views on the document in scope.

If AUSTRAC seeks a part or full transfer of a request, the agency should provide a copy of the FOI application including the date it was received in that agency to ensure the statutory processing timeframes are identified. The date the agency received the request is deemed the date AUSTRAC received the request for the purposes of the FOI Act.

If the initial statutory timeframe has expired and the agency transferring the documents has been granted an extension it will apply to AUSTRAC. It is a good practice to obtain a copy of the extension approval for AUSTRAC's records.

Once the sending Agency has notified the applicant of the transfer and sent the paperwork to AUSTRAC, you need to follow the relevant initial processing steps to register and process the request as a request to AUSTRAC.

### 2.4.3. Transfer of section 25 documents

If it is necessary to neither confirm nor deny the existence of documents<sup>6</sup> (which originated from a confidential source or a security agency, or confirms an investigation exists (and so forth)), consultation with the relevant agency should be undertaken before organising the transfer in the circumstance documents exist within scope.

Communication with the agency is important because if an applicant is advised to the existence of documents when AUSTRAC notifies them of the transfer then a refusal under section 25, neither confirming nor denying existence of documents, cannot be made later by the receiving agency where AUSTRAC have confirmed documents exist. Given the sensitivity of this scenario, the FOI manager should be involved in this process.

## 2.5. Time limits

The FOI Act imposes stringent time limits in respect to processing requests for access<sup>7</sup>. If the request is [valid](#), AUSTRAC has 30 calendar days in which to process and notify an access decision to the applicant. The day the request is received is counted as day zero.

AUSTRAC strives toward exceptionally high legislative compliance for processing FOI requests. In some limited circumstances where the FOI processing time is anticipated to exceed our legislative timeframe, the timeframes for processing FOI requests may be extended, for example, with the agreement of the applicant or with the approval of the Information Commissioner.

### 2.5.1. Significant tasks timeframe

Day	Event
0	Day valid request received
14	Acknowledgement is due to applicant
30	Decision is due to be received by applicant if no third party consultation required
60	Decision is due to be received by applicant if notified third party consultation will be undertaken

<sup>6</sup> Section 25 of the FOI Act.

<sup>7</sup> Subsection 15(5) of the FOI Act.

If the decision due day happens to fall on a weekend or public holiday, the decision may be sent on the next available work day as outlined in section 36 Calculating time in the *Acts Interpretation Act 1901*.

*Subsection 36(2) If:*

*(a) an Act requires or allows a thing to be done; and*

*(b) the last day for doing the thing is a Saturday, a Sunday or a holiday;*

*then the thing may be done on the next day that is not a Saturday, a Sunday or a holiday.*

*Example: If a person has until 31 March to make an application and 31 March is a Saturday, the application may be made on Monday 2 April.*

Suspension of time	<p>Clock stops on day applicant is notified of an estimate of charges until payment is received in AUSTRAC account or agreement charges will be waived.</p> <p>Clock stops (up to 14 days) during the section 24AB consultation period as well.</p>
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## 2.5.2. Extensions of time

PIAT officers should have regard to the matters set out in subsection 15(5) to 15(8) and sections 15AA, 15AB and 15AC of the FOI Act, as well as the guidance set out in the Guidelines<sup>8</sup> issued by the OAIC when considering extending the timeframe for dealing with a request. Although the standard timeframe to process FOI request is 30 days and 60 if third party consultation is undertaken, there are five extension types that the OAIC need to be advised depending on the circumstance:

- Extension with the applicant's agreement (s15AA)
- Extension to process complex or voluminous requests (s15AB)
- Extensions after the legislative processing period expires (s15AC)
- Extension where internal review decision not made within legislative time (s54D)
- Extension where request for amendment or annotation not made within time (s51DA)

**15AA Extension:** AUSTRAC may extend the processing period by up to 30 days if the applicant agrees in writing. The PIAT must give written notice of the extension to the OAIC as soon as practicable after the agreement is made. If it is not sent to the OAIC, the extension is invalid.

**15AB Extension:** AUSTRAC may apply to the OAIC for an extension if the FOI request is complex or voluminous. The agency must justify why the extension is necessary and the OAIC are able to extend the processing period by 30 days or longer or shorter period, as appropriate.

**15AC Extension:** A request automatically becomes a deemed refusal where the statutory timeframe has not been met. An application for further time can be made to the OAIC. If granted, the further time is allowed for AUSTRAC to finalise a decision on the request.

**54D Extension:** A review request automatically becomes a deemed refusal where the statutory timeframe has not been met. An application for further time can be made to the OAIC. If granted, the further time is allowed for AUSTRAC to finalise a review decision on the request

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8 <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>

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51DA Extension: An amendment request automatically becomes a deemed refusal where the statutory timeframe has not been met. An application for further time can be made to the OAIC. If granted, the further time is allowed for AUSTRAC to finalise a decision on the amendment request.

When applying for any extension of time, it is best practice to:

- Give early consideration to the need for an extension
- Ensure that the extension of time application is right the first time
- Explain how you will use the extra time
- Assess options for a staged release of documents if practicable in the circumstances

The OAIC have an online smart form<sup>9</sup> available when applying for an extension of time. Complete the appropriate fields in the online form and submit.

NOTE: The OAIC's final 15AA Extension Request page will provide confirmation that the extension has been received.

It is important to make note of this confirmation within JIRA to ensure there's a connection between the extension of time associated with the FOI request as it's not based upon email, but the OAIC's automated system.

If for any reason the Smart form is not available to submit your extension, the OAIC will also accept email communication at [s.22\(1\)\(a\)\(ii\)@oaic.gov.au](mailto:s.22(1)(a)(ii)@oaic.gov.au) and there are examples of what information to include in that email on their [website](#).

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9 [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICRF\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICRF_1)

## 3. Administration

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### 3.1. General FOI process timeline

- Request received = Check validity and assist applicant if necessary
  - = Register in JIRA and create SAFE and Outlook folders
- Interpret = Interpret the scope of the request and seek clarification from the applicant if necessary
- Consider = Consider whether to transfer, impose charges or refuse to process on resource grounds
- Manage time = Keep a close eye on the legislative calendar
  - Identify = Identify all relevant documents and liaise with business areas to search if applicable
- Charges = Consider charges and prepare estimate letter if appropriate
- Consult = Consult internally and/or with other government agencies
  - = Consult with third party individuals and business as appropriate
- Examine = Examine each document for possible grounds for exemption
- Reasoning = Write up your reasoning for exemptions or relevance of scope on the documents and save in SAFE
- Decide and Notify = Write a decision on access and notify the party, give clear statement of reasons and provide relevant review rights
  - = Have all external correspondence reviewed for quality assurance and accuracy before release
- Provide access = Provide access to documents  
(subject to charges paid and any 3<sup>rd</sup> party review rights)
- Publish = Publish the released documents on the disclosure log unless an 'unreasonable to publish' exemption applies

### 3.2. Weekly Executive FOI report

A summary of current FOI requests is emailed to a range of individuals on Wednesday as the information forms part of the content to the weekly report to the Minister and senior management within AUSTRAC. This report primarily focuses upon providing detail in respect to ongoing Sensitive FOI requests, however includes aggregate numbers of routine requests to satisfy recipient needs to obtain a holistic picture of our ongoing FOI caseload.



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One benefit to recipients is any additional information that may have been provided with sensitive FOI requests or details known about the applicant. Any supporting or additional information we have in relation to a sensitive FOI request could include:

- Relevant information we may have obtained after speaking with the applicant;
- If the FOI requestor has volunteered why they have submitted the request;
- Information that is sensitive or contentious;
- Information that may be relevant to other areas of AUSTRAC;
- Current news reports or articles concerning the subject matter or FOI requestor; and
- The current status of the request (due date changes or inter agency consultations for example).

The report is broken up into four sections. The sections are:

- Sensitive requests received within last 7 days
- Other sensitive requests currently on hand
- Overdue sensitive requests
- Other FOI information (aggregated data on sensitive and routine FOI requests)

When preparing the report it's important to ensure sensitive FOI requests are marked in red within the Sensitive column with a reason for the sensitivity. Examples of these formatting expectations can be found within previous distributed FOI Weekly Reports.

Once the weekly report has been distributed, save the email in SAFE (each respective calendar year has its own SAFE location) with a reverse date (example: 220617 FOI Update email).

Once you have sent and saved the email, return to the SAFE folder and finalise the report and email for that week so the information cannot be accidentally overridden.

After the report is finalised, a new report is created for the coming week.

The FOI Weekly Report Template which includes not only the weekly report content, but also the relevant JIRA reports to obtain the information required for inclusion within the weekly report is within SAFE as follows:

<https://safe.hq.austrac.gov.au/OTCS/llisapi.dll/link/16355248>

Distribution of the FOI weekly report is conducted by email. The FOI weekly report email template is within SAFE as follows:

<https://safe.hq.austrac.gov.au/OTCS/llisapi.dll/link/16355722>

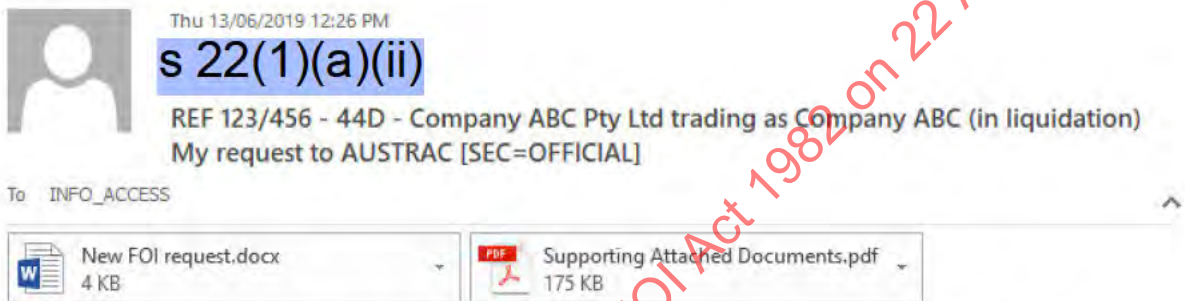
### 3.3. *Records Management*

We have an obligation to manage and protect records created or received in the course of business. The onus is on PIAT officers to ensure all records are retained, classified, and filed according to the provisions of the [AUSTRAC Information Management Policy](#) and Archives Act 1983. You need to ensure all significant activities are contained in the relevant SAFE container.

Good recordkeeping is essential for good government and can reduce the time considerably if the FOI request is subject to a review. When a FOI request is being finalised, it's the responsibility of the PIAT officer finalising the request to ensure all correspondence associated with the request are saved within the appropriate SAFE container. Throughout the lifespan of a FOI request correspondence is generally moved to the PIAT folder noted within 2.2.2 of this FOI guide. These records are vital to not only records management but also support AUSTRAC's management of the FOI request which may become subject to OAIC review.

### 3.3.1. Naming conventions

When saving emails or documents to SAFE it is recommended you name the file to correctly reflect the nature of the information. This often requires you to change the title of the file from the subject line.



When a new request is received, the subject line has a relevant meaning to the sender; however, it has no relevance to what the email means to AUSTRAC. (In the above example the email is the initial request.)

Therefore the above email should be saved in SAFE using a descriptive title and the date it was received.



The backwards date will assist in maintaining the structure of documents within the respective SAFE folder. The structure of documents shall appear in date order which assists the reader to identify which tasks took place on which dates.

All drafting of official correspondence that will be sent out and relevant to the FOI request should be completed in the SAFE container (some examples include a s 24AB notice, a s 29 Charges Notice, FOI Decision Notice). Working in SAFE enables access to the document for the entire team and accurately records changes to the document giving you access to the previous versions.

## 3.4. AUSTRAC FOI contact details

AUSTRAC has an external facing telephone enquiry line and email address displayed on its [website](#) for any person who wishes to make contact with AUSTRAC's Freedom of Information Officer.

### 3.4.1. Telephone

The external line is a separate enquiry line and not attached to staff individual extensions. The APS6 and EL1 of the PIAT monitors the calls and provide advice or transfer the call as appropriate.

The website encourages all applicants to call the enquiry line (02 6120 2631) in the first instance before submitting a request. This enables the PIAT Officer to ensure the applicant submits the appropriate paperwork and is seeking documents from the correct agency. Applicants often need guidance with writing the scope of their request so they can target the documents/information they are seeking.

### 3.4.2. Contact via the info\_access inbox & telephone

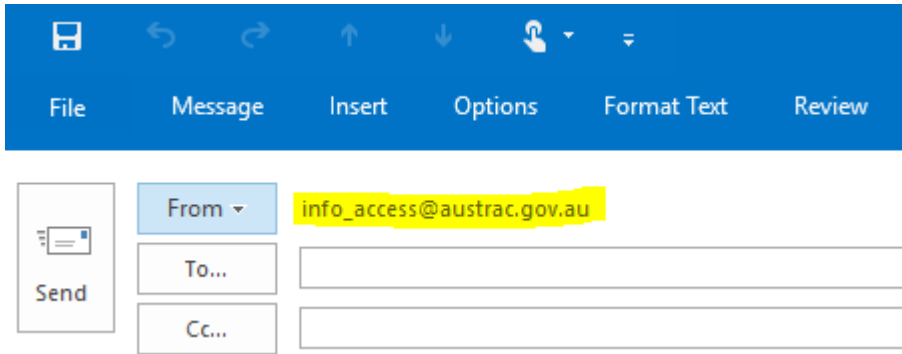
On occasion, the telephone line receives contact from callers that ask to be transferred directly to specific staff members within AUSTRAC. Given the PIAT are unable to verify callers, we remind callers the telephone line facilitates answers to FOI and Privacy enquiries only and we're unable to transfer callers internally.

If a caller claims to be from law enforcement, we encourage the caller to take advantage of any existing AUSTRAC contacts they have within their respective control. Alternatively, they may email the info\_access@austrac.gov.au mailbox to verify their position and the background of their enquiry so we may forward their correspondence on to the relevant area within AUSTRAC.

The info\_access@austrac.gov.au email address is used for both internal and external correspondence in relation to FOI requests. This is a shared mailbox and is routinely monitored by the PIAT.

Emails received in the inbox should be actioned in a timely manner to maintain a reasonably clear inbox status. As non-FOI related correspondence also finds its way into the inbox from time to time, any non-FOI related or non-routine correspondence received through the info\_access@austrac.gov.au inbox addressed to the CEO, a DCEO or NM, particularly those that come from the CEO of an organisation or the head of another government department or agency must be forwarded to the Director of Legal who will make a determination upon how that correspondence is handled and provide PIAT advice on next steps.

Both Legal and PIAT have access to send and receive emails from this address. PIAT officers are required to send all external correspondence from the info\_access email address rather than the email address that identifies direct contact details.



Most recipients of email correspondence directly reply to emails they receive without reading where the email should go to that is stated in the body. If a reply is sent as a response to outgoing correspondence, and the sender happens to be away, one of the other team members can action the reply.

Using Categories to communicate status in a shared inbox is important. The FOI team will mark an email that has been saved in SAFE (and kept in the Outlook folder for easy reference) with a GREEN category. This indicates to the team what has already been retained and what still needs to be filed in case the PIAT officer handling the request changes through the FOI process.

Marking emails in categories is conducted as follows:

Select email in FOI inbox > Right click on email > Categorize > Select Colour

### 3.5. MASCOT

One requirement pursuant to Section 15 of the FOI Act is FOI applicants must provide such information concerning a document as is reasonably necessary to enable an AUSTRAC staff member (or Minister) to identify it.

When AUSTRAC conduct searches for documents captured within scope we utilise the supporting information provided to us as part of the FOI request. In some cases, results of our searches reveal multiple names and locations of entities which do not appear to share a common connection. However, Mascot searches can reveal detailed company information, including change of business name, ACN's, business addresses, Director names and so forth.

Therefore, on a case by case basis, PIAT may adopt an approach of conducting a Mascot search to determine if the search results yielded from our FOI searches have accurately identified the documents in scope, and to separate the documents not in scope.

To gain access to Mascot you need to complete a Mascot application form and send it through the IT Self Service Portal.

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Information about what is required can be found as follows:

<http://ontrac.austrac.gov.au/resources/systems-and-databases/access-extrinsic-data/australian-securities-and-investments>

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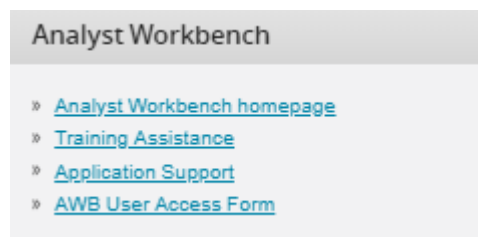
## 4. Searching for documents

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The majority of AUSTRAC requests are for information or documents relating to financial transaction reports. However, AUSTRAC occasionally receives requests for documents relating to business and personal affairs of members within the community, as well as AUSTRAC operational information.

If a request is for financial transaction reports it is the responsibility of the PIAT to conduct searches in AUSTRAC's Palantir system, using the Financial Forensics workbench tool.

Palantir can be accessed from the home page on OnTrac within the Analyst Workbench homepage.



There is no log in requirement to access Financial Forensics as it is based on your profile. Once you have completed your searches you should log out. When using this system, users are recommended to access Help Screens as the first point of call when requiring assistance with features.

There are also Analyst Work Bench (AWB) Financial Forensics guidance tools ( <https://ontrac.austrac.gov.au/awb-financial-forensics-how-videos-5696> ), online training and PIAT staff member assistance available to assist the conduct of searches.

When a request for other government documents is received it's likely you will need to send the request for documents directly to the most relevant business area to conduct the document searches. When communicating with the business area it is important they are made aware of and understand the scope of the request and the timeframe for release.

### 4.1. Transaction reports

The majority of AUSTRAC's FOI requests are received from Liquidators and Trustees seeking access to transaction reports of the entity subject to liquidation / bankrupt. The below is an overview of general considerations that relate to the various transaction reports, which are located by conducting searches within Palantir (financial forensics).

International Funds Transfer Instruction (IFTI)

- This report relates to money transmitted out of or in to Australia.

Threshold Transaction Reports (TTR)

- This report relates to the transfer of currency, where the transfer is \$10,000 or more.

#### Cross Border Movement (CBM)

- These reports relate to any person departing or entering Australia or any person who sends or receives currency by ship or mail in to or out of Australia of at least \$10,000.
- The Australian Border Force normally send the completed CBM forms to AUSTRAC within five days from the day a person entered or left Australia. CBM's are identifiable within Palantir, the physical copies of the CBM's are to be requested from Capability Section, Regulatory Operations Branch by the following email address [s 22\(1\)\(a\)\(ii\)@austrac.gov.au](mailto:s22(1)(a)(ii)@austrac.gov.au)

#### Significant Cash Transaction Report (SCTR)

- This report involves a cash transaction involving the transfer of currency of \$10,000 or more in value.

#### Suspicious Matter Report and Suspect Transaction Report (SMR/SUSTR)

- A reporting entity, including financial institutions, must submit these reports to AUSTRAC if they consider any financial activity to be suspicious in nature.
- EVERY SMR or SUSTR (including SMR/SUSTR aggregated data) is exempt from the operations of the FOI Act under section 7 and must not be released.

#### 4.1.1. Ordering customer

The ordering customer is the person who has ordered the transaction to occur. In many circumstances the subject of the FOI request may appear within this field.

#### 4.1.2. Customers

The customers are separate to both Ordering customers & Beneficiary customers and appear only in Threshold Transaction Reports (TTR). Customers appear within the Customer role + name field and represent all associated account holders to the TTR.

#### 4.1.3. Beneficiary customer and/or Recipient

The beneficiary customer is the person to whom is the beneficiary of the transaction. In many circumstances the subject of the FOI request may appear within this field.

#### 4.1.4. Reporting Entity

Transaction reports may also include reporting entities details.

The information extracted from the PIAT document search have been configured not to extract personal reporting entity details;

#### 4.1.5. Consideration of exemptions in certain circumstances

When considering how to decide if release of the Ordering Customer, Beneficiary Customer and any other Customer details is reasonable, will be an assessment undertaken based upon the circumstances of the FOI request. More information in how these assessments shall be undertaken is demonstrated within Part 7 of this standard operating procedure.

#### 4.1.6. ASIC searches available within Palantir

AUSTRAC are under no obligation to conduct ASIC searches for the purposes of assisting the FOI applicant's requirement to meet section 15(2)(b), which essentially states the obligation to reasonably identify the documents rests with the FOI applicant.

However, if staff decide they wish to conduct an ASIC search on a case by case basis to assist identify documents, this opportunity is available within Palantir.

To utilise this function, staff would need to conduct the following actions within Palantir:

1. Add Data Set
2. Select ASIC organisation
3. Select Organisation ID

Once selected, staff may enter the ACN absent of any spaces which may assist identifying appropriate financial transaction reports.

## 4.2. *Preparing a schedule of documents*

AUSTRAC provide details and reasons for our decisions within the Statement of Reasons. In some specific circumstances, multiple documents and/or redactions may be involved in the decision making process. This situation may arise where processing requests outside financial transaction reports.

In the event a request attracts multiple documents and/or redactions, a schedule of documents is a useful tool for inclusion within the decision and should be considered for adoption. The schedule of documents supports clarity in identifying which particular documents have been considered and which page numbers are affected by particular exemptions.

Once the documents have been retrieved from the relevant line areas and considerations are made in respect to which documents may attract exemptions, it will become clearer if a schedule of documents is required.

The schedule of documents should consist of the following:

- Reference number to identify the document – AUSTRAC uses both document number and page number to identify the documents.
- A brief description of the document



- Relevant exemption applied under the FOI Act. If the document is released in full this field will remain blank.
- A brief reason why the exemption has been applied. If the document is released in full this field will remain blank.

### 4.3. *Section 24 Practical refusal notices*

Section 24AA defines when a practical refusal reason exists. This more commonly involves either the FOI request being significantly large in volume of documents requested, or where the requirements of section 15(2)(b) has not been met by the FOI applicant.

Where a s 24AA practical refusal reason exists, a s 24AB consultation process should be issued. Prior to conducting the s 24AB consultation process, PIAT officers should make attempts to contact the FOI requestor to convey the issues of scope and reduce or define the scope by telephone or email. This avenue promotes an informal engagement strategy aiming to avoid the requirement of a written 24AB notice being issued to the FOI applicant. Where the FOI applicant agrees by telephone to a refined scope of request the PIAT officer will send the FOI applicant the revised scope of request with advice that the FOI request will now be processed upon the basis of the new scope.

Where PIAT officers yield no success in obtaining a revised or defined scope, a section 24AB consultation process should be conducted. This consultation process provides the FOI applicant particular options to consider which includes continuing with the request, revising the request or withdrawing the request. AUSTRAC's legislative timeframe is frozen during the time AUSTRAC issues the 24AB notice until the FOI applicant responds (which must be within 14 days). Where the FOI applicant does not respond within 14 days the FOI request is deemed withdrawn in accordance with s 24AB(7).

Where the FOI applicant elects to continue with the request without amending scope, a PIAT officer will consider if a s 24 practical refusal notice should be issued as a response to the request. Section 24 refusal notices may only be issued once a s 24AB consultation process has taken place.

## 5. Charges

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Section 29 of the FOI Act provides a legislative basis to apply charges in respect to the processing of particular FOI requests. Charges do not apply to a request for access to a document that contains personal information of the applicant in accordance with s 7(1) of the *Freedom of Information (Charges) Regulations 2019*. Where the applicant requests other information, including information of another person, or non-personal information, charges should be considered for the portion of their request that is not for their own personal information.

Once a search for documents has been completed, an estimate of charge should be calculated using the AGS charges calculator ([SAFE 5301596](#)). When entering figures into the charges calculator it is important to look at the documents and consider the sensitivities and the amount of time you anticipate will be spent to ensure the appropriate limits are applied. For example; if part of the documents caught by the request are the applicant's own personal information, the charge should be reduced proportionally as access to a person's personal information is free.

All charges should be calculated in accordance with the *Freedom of Information (Charges) Regulations 2019*. The regulations outline charges applicable in respect of a request for access to documents. The PIAT protocol for charging is in line with the regulations and the spirit of the FOI Act to promote public access to information at the lowest reasonable cost. When considering charges, you should:

- consider reducing charges wherever possible
- waive any administration costs
- reduce consultation costs where possible, particularly if there is a large number of third parties involved

The s 29 charges template letter is used to draft and issue the charge to the applicant. The charges letter should identify what the charge is, the deposit payable, how the payment can be made and a mechanism for the applicant to contest that the charge was wrongly assessed or should not apply due to financial hardship or any public interest factors.

It is AUSTRAC's preference to receive all charges by electronic funds transfer.

When advising the applicant of the bank details it is important to advise the applicant to reference the FOI number on the transaction so it can be identified easily. Bank details are:

Bank	Reserve Bank of Australia
A/c Name	AUSTRAC Official Departmental Receipts & Payments Account
BSB	092-002
Account	110086
Ref	FOI reference number (for example FOI PIAT-0000)

AUSTRAC also accept payments via bank cheque, money order, or personal/business cheque and can be sent to:

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Freedom of Information Officer  
Australian Transaction Reports & Analysis Centre  
PO Box 5516  
West Chatswood NSW 1515

The 30 day time period for processing the FOI request stops the day the applicant receives the charges notification. The applicant has 30 days to respond to the charge by either: paying the charge in full, paying the deposit or contending the charge. If no response is received from the applicant in that time, the request is deemed to be withdrawn. Alternatively, the time period for processing the request recommences on the day AUSTRAC receives payment in full or a deposit for the charge or decides the processing charge to be waived.

All charges calculations and documents created throughout the process of conducting charges should be saved within the relevant SAFE folder for each FOI request.. Summaries of how the charge has been calculated and the reason why particular modifiers have been applied to the charge cost (such as a reduction of charge) should be maintained as records to support how AUSTRAC calculated the charge. This supports proper recordkeeping and AUSTRAC's ability to either conduct an adequate review of the charge where required, or demonstrate to the OAIC how the charges have been calculated.

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## 6. Consultation

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When an applicant seeks documents pertaining to a third party, there are a number of circumstances where consultation should be considered before making a decision and they are where the documents sought:

- contain records of consultation with another agency;
- were jointly prepared by two or more agencies;
- contains information received from another agency; or
- formal consultations are required under the FOI Act.

AUSTRAC's view on consultation is that it will take a conservative approach when processing a FOI request. In some circumstances it may not be practical to consult, for example when the third party is under investigation, is a party of interest, the international business cannot be located or the company has been deregistered.

For the purposes of formal consultation, once it is evident that the documents being requested contain third party information, (for example information that reasonably identifies an individual or business)) the applicant should be notified of the additional time required to allow s 27 and s27A consultation. Consultation with the third party should commence at the same time as the applicant is notified of the additional time.

It is important to be mindful when undertaking consultations to not reveal the identity of the FOI applicant to an affected third party where the applicant has indicated against this on AUSTRAC's FOI application form.

### 6.1. Section 27 and s 27A Third party consultation

AUSTRAC's approach to conducting s 27 and 27A consultation involves PIAT staff inviting the FOI applicant to provide third party consent to release their information to the FOI requestor, where it is practicable to do so, as a first step.

PIAT officers should be mindful some FOI applicants and third parties may not be in cohesive relationships (for example where domestic violence has taken place, or where the FOI requestor is estranged from a business or third party individual). AUSTRAC's approach to inviting FOI applicants to provide third party consent is carefully worded within a standard template, which makes it specific FOI applicants should only seek to provide third party consent where it is practicable in the circumstances to do so.

This provides an opportunity for the FOI applicant to contribute to the FOI process by providing evidence that release of the document would not be unreasonable in the circumstances. The FOI applicant may conduct this exercise by utilising any up to date contact details of the third party that is available, which AUSTRAC are likely not to possess on the basis community members are not required to update AUSTRAC with their most up to date contact details.

Attention must be paid to any authority or consent from a company, partnership or other legal entity, ensuring the consent or authority letter is signed by the authorised persons and complies with the requirements of the Corporations Act. For example, in relation to consent from a company, you need to ensure that the letter contains a company logo or is on company letterhead and that the signature is one of a current director of the company.

Where dealing with consent from an individual, PIAT officers will consider the definitions of consent provided within the OAIC Australian Privacy Principal Guidelines (point B.34). Although these guidelines define what constitutes a valid consent for the purposes of the Privacy Act 1988, the guidelines are a useful tool to guide AUSTRAC in obtaining an acceptable consent throughout the FOI process.

If a third party provides written consent for AUSTRAC to disclose their information to the applicant at the time the request is lodged by the applicant, consultation is not required.

The PIAT may accept evidence of a third party's consent to the release of their information via a court order or Certificate of Appointment that has been validated. The decision maker may accept such documents as long as they are satisfied the document is official and current.

When undertaking consultation with third parties you should use the relevant consultation letter and provide the documents subject to the request. This ensures the third party can make an informed decision upon if they wish to contend the documents should be exempt.

If the third party is in Australia and postage is required for the purposes of consultation, it is important to allow at minimum of one week for their response. For overseas consultations requiring postage you should extend the response time to three weeks however these situations should be extremely unlikely.

When considering s 27 and s 27A consultations PIAT staff members should be mindful AUSTRAC do not possess up to date contact details of third parties. Although Reporting Entities often provide AUSTRAC residential or business addresses for the purposes of financial transaction reports, AUSTRAC cannot verify if that address belongs to the third party, or if the address is currently up to date for the purposes of a consultation process.

Special consideration must be taken prior to conducting any third party consultations to ensure the FOI consultation letters and documents subject to the FOI request are being sent to an address that is reasonably regarded as belonging to the third party and is up to date.

## 6.2 *Third party review rights*

When making a decision about whether to apply exemptions to third party information, it should be noted that third parties possess review rights in respect to a decision to release their information. The decision maker should take into account the submissions made by a third party when making a decision to release their information.

If a third party objects to the release, and the decision maker nevertheless decides to release those documents, the third party has review rights that can be exercised which affect when the documents are released.

Once the decision has been sent to the applicant (without the documents to which the third party objected), PIAT officers will send a letter to the third party providing a statement of reasons for the decision to release and give them information about their rights of review.

PIAT officers will set a reminder to reflect the response due date which is 30 days from the date of receipt of the correspondence). Once the period has expired, contact the OAIC to ensure the third party has not sought an IC Review of the decision. If they have, the document should not be released until the Information Commissioner Review process is exhausted, If no response is received from the third party and there is no pending Information Commissioner review, the documents can be released to the applicant.

### 6.3. *Internal consultation*

If the scope of an FOI request relates to transaction reports, the PIAT should not need to consult with other business areas as the reports can be extracted directly from Palantir and wouldn't impact any internal business areas if released.

These particular requests are routine and do not typically attract sensitivities unless the financial transaction reports concern an individual or business that is widely known or recognised by the public.

Some Sensitive FOI requests can also involve a request for financial transaction reports. FOI requests that are not for financial transaction reports typically attract heightened sensitivity and require internal consultation. Where these Sensitive FOI requests are identified which seek financial transaction reports, the PIAT should request the relevant business area identify the documents in scope and provide any objections to release of the documents.

The internal consultation email to the relevant business unit/s should be sent within the first few days of receiving the request and originate from the [INFO\\_ACCESS@austrac.gov.au](mailto:INFO_ACCESS@austrac.gov.au) inbox. There is a standard template prepared for the purposes of contacting internal stakeholders in respect to these requests which should be completed as part of this process.

This type of information will enable the FOI decision maker to make an informed decision on what should be released under the FOI Act and any exemptions that may apply to the documents.

### 6.4. *Section 26A - Consultation with State and Territories*

Consultation may be appropriate with State or Territory government where the documents being considered for release contain information relevant to them. Similar to s 27 and s 27A

consultations, s 26A consultations include a 30 day extension of time to process the request in addition to review rights being afforded to the State.

Where the information relates to an Australian State or Territory government and it appears to AUSTRAC that the State or Territory may reasonably wish to contend that the document is exempt, AUSTRAC must not decide to give the applicant access to the document unless consultation<sup>10</sup> has taken place between AUSTRAC and the State or Territory.

## 6.5. *Outgoing Inter-agency consultation*

Consultation may be appropriate with other Commonwealth entities where the documents being considered for release contain information relevant to them. This particular consultation process differs to s 26A, s 27 and s 27A consultations as there are no third party review rights or extensions of time when consulting other Commonwealth entities.

PIAT officers should undertake an assessment of the documents identified in scope and determine if a s 16 transfer may be appropriate in the circumstances. Where s 16 transfer has been considered and is not appropriate, PIAT officers should then consider if the Commonwealth entity would reasonably wish to be consulted or alternatively, reasonably contend the documents should be exempt.

Where in doubt the PIAT officers shall conduct the consultation.

Also, some AUSTRAC memorandums of understanding's (MOU's) may state AUSTRAC are required to liaise with other agencies in respect to document that concern their function. We're aware of the following agencies requiring consultation in connection with either their MOU with AUSTRAC or historically expressed interest in consultation:

Agency	Contact Details	Consultation reason
Commissioner of the Corruption and Crime Commission of Western Australia	s 22(1)(a)(ii)	Relates to information sharing Draft MOU created 2023
Attorney Generals Department	foi@ag.gov.au	Relates to activities of the Australian Government Solicitor (AGS) where s42(1) (or other exemption) doesn't apply
Australian Competition & Consumer Commission	foi@acc.gov.au and s 22(1)(a)(ii)	

10 Subsection 26A(2) of the FOI Act.

## 6.6. Incoming Inter-agency consultation

Circumstances will arise where particular Commonwealth and State based agencies processing FOI requests under their respective FOI legislation seek AUSTRAC's views in regards to the possible release of AUSTRAC information within their possession.

The following table provides a guide as to what matters AUSTRAC may be typically consulted upon and when AUSTRAC would request the specific part of the request relating to AUSTRAC's information or function be transferred to us for FOI processing:

Acronym	Report name	Protocol
CBM-BNI	Cross Border Movement Bearer Negotiable Instrument (Carrying)	Consult
CBM-PC	Cross Boarder Movement Physical Currency (Carrying)	Consult
CBM-PC-MS	Cross Border Movement Physical Currency (Mail or Shipping)	Consult
ICTR	International Currency Transfer Report Carrying and/or Mailing/Shipping	Consult
IFTI	International Funds Transaction Instruction	Consult
SBTR	Significant Cash Transaction Report Betting	Consult
SCTR	Significant Cash Transaction Report Cash dealers	Consult
SCTR-Casino	Significant Cash Transaction Report Casinos	Consult
SOLTR	Significant Cash Transaction Report Solicitors	Consult
SMR	Suspicious Matter Report (including aggregated data)	Transfer
SUSTR	Suspect Transaction Report (including aggregated data)	Transfer

*Note: All requests for consultation will be addressed on a case by case basis.*

A standard email consultation response is provided to the agency where the request contains information other than a Suspicious Transaction Report (SUSTR) or Suspicious Matter Report (SMR). However, if there is any reference to a SUSTR or SMR (including aggregated data) you must request the document/s be transferred to AUSTRAC under section 16 of the FOI Act.

AUSTRAC may also be consulted in regards to our operational or policy based documents. Where this situation arises, careful consideration should be invested to determine if AUSTRAC should request transfer of those particular documents in the circumstances.

When responding to a consultation with other agencies please ensure your response includes the following statement:



### **Publication of AUSTRAC information under the Information Publication Scheme**

*Section 8C(2) of the FOI Act prohibits the publication of particular information under the Information Publication Scheme (IPS) if an enactment prohibits the publication of particular information. Both the Financial Transaction Reports Act 1988 and the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 prohibit the release of AUSTRAC reports. Therefore, AUSTRAC reports must not be published on the IPS. If you are considering publishing, please consult AUSTRAC's FOI officer prior to publication.*

## **6.7. Protocols for handling consultations**

It is unlikely third party consultation will take place in respect to financial transaction reports on the basis AUSTRAC does not possess up to date details of personal or business information. AUSTRAC possess addresses and other details provided by reporting entities which does not constitute reliable address details for the purposes of formal FOI consultation.

Where a consultation letter is sent domestically and is returned to AUSTRAC via 'return to sender', you should consider exempting the third party information under the relevant provisions of the FOI Act. This is because the third party has not had an opportunity to consider whether they have any view on release of their information to the applicant and release of the information may cause real harm.

If AUSTRAC does not receive a response from an overseas third party, the decision maker has to also consider exempting the third party information under the relevant provisions of the FOI Act. Factors that should be taken into consideration are:

- the third party may not be familiar with Australia's FOI Act and the importance of their involvement in the FOI process;
- the third party may not be able to read or write English; or
- it could be possible that the third party did not receive the consult letter if physical mail services were used.

If AUSTRAC does not receive a response from a third party the PIAT staff member must make a decision upon the evidence on hand. In these circumstances the PIAT staff member should be particularly mindful that releasing the information may still have an unreasonable effect upon the third party. If the PIAT staff member decides release of the information would be reasonable in the circumstances this scenario should be referred to the Manager of the PIAT for consideration.

Where the FOI applicant seeks a review of AUSTRAC's decision with the OAIC, AUSTRAC is required to notify any affected third parties of the review<sup>11</sup> and provide a copy of the notification to the OAIC as soon as practicable.

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11 Section 54P of the FOI Act.

## 7. The decision

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Once the documents within scope of the request have been retrieved and any applicable third party consultations have been completed, the matter is ready for a decision. Decisions relating to a FOI request can only be made by an authorised decision maker, as per the instrument authorised by the Chief Executive Officer. This instrument identifies officers of AUSTRAC that are authorised decision makers for the purpose of the FOI Act.

As previously outlined, the FOI Act gives every person a legally enforceable right of access to government documents however there are various exemptions a decision maker must consider that may be applicable in the circumstances. These exemption provisions are located within Part 4 of the FOI Act. PIAT officers should also note there are additional provisions outside Part 4 that are designed to refuse access to particular documents (s 7, s 12, s 24A and so forth).

In these certain circumstances where legitimate Commonwealth interests would be adversely impacted an exemption (or multiple exemptions) could potentially apply. Section 93A of the FOI Act additionally states that regard must be had to the Information Commissioner's FOI Guidelines when making decisions or exercising powers under the FOI Act. The Information Commissioner's FOI guidelines is a very useful tool particularly in respect to exemptions as the guidelines set out examples of times where an exemption may or may not apply.

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## 7.1. Decision maker to do list

Step	Description
1	Ensure that you have a clear understanding of the scope of the request <i>Liaise with the PIAT or contact the applicant if you have any concerns</i>
2	Consider whether documents could be released outside the FOI Act.
3	Consider whether there is any reason why you should not be the decision maker for this request <i>Liaise with the PIAT if you have any concerns</i>
4	Satisfy yourself that the request (or part thereof) should not be transferred to another agency
5	Satisfy yourself that adequate searches have been conducted to locate all documents potentially within the scope of the request <i>If in doubt, organise further searches to be conducted</i>
6	Check that all the documents provided are within scope of the request 'and identifiable' and provide reasoning for any documents that are 'out of scope'
7	Consider whether charges are applicable and prepare the estimate using <a href="#">AGS Calculator (5301596)</a> <i>Liaise with the PIAT if you are unsure</i>
8	Determine whether there are any third parties that need to be consulted and if so, consult as soon as possible <i>Check with the PIAT if you are unsure about consultation or need further information on the consultation process</i>
9	If relevant, liaise internally to determine whether there is any potential sensitivity regarding the release of any of the documents <i>This is particularly important for requests for documents originating from journalists, members of Parliament or sensitive documents such as Intelligence Assessments and Compliance reports</i>
10	When making your decision, ensure that you have: <ul style="list-style-type: none"> <li>• considered any comments from third parties</li> <li>• considered any concerns from AUSTRAC business areas</li> <li>• had regard to the objects of the FOI Act</li> <li>• had regard to the Information Commissioner guidelines</li> </ul> clearly mark-up documents to indicate exemptions
11	<ul style="list-style-type: none"> <li>• Ensure you clearly articulate your reasons for decisions.</li> </ul>
12	Prepare a schedule of documents if applicable and check exemption accuracy and completeness
13	Have your decision reviewed for quality control and PDF where applicable.
14	Provide SAFE links of the documents to the FOI Team and they will prepare release and BCC you into the release email for filing
15	Conduct relevant JIRA steps for closure of the request and consider if documents released require publication as required by the FOI publication scheme (s 8(g) of the FOI Act)

Ensure all documents and emails are clearly labelled and saved in SAFE as you progress through your decision  
It is recommended to prefix each entry with a backwards date so the events will display chronologically for easy reference

## 7.2. Making the decision

When making a decision it must be considered whether the content of the requested documents is of a sensitive nature and whether disclosure could reasonably cause harm to legitimate Commonwealth interests.

All documents must be read, page by page and line by line. Consider all the facts and the evidence in line with the FOI Act and the OAIC guidelines. Where consultation was required, you need to reflect upon any third party objections raised. When making a decision PIAT officers shall consider if release of the information may attract any relevant FOI exemptions.

Documents may be released in full, in part, or may be fully exempt from disclosure. When writing your decision you need to provide a statement of reasons to the applicant of your decision. Always provide a summary of decision on disclosure (release in full, release in part, exempt in full).

Below are the most commonly exercised FOI exemptions for AUSTRAC, noting other exemptions do exist and could be applicable when making an FOI decision.

### 7.2.1. Subsection 7(2) – SMR/SUSTR information

Section 7(2) refers to Part II of Schedule 2 of the Act which applies to documents communicated to AUSTRAC under section 16 of the FTR Act or section 41 and/or 49 of the AML/CTF Act, however does also include aggregated SUSTR/SMR data.

The same information communicated to another body (such as the AFP) would not be excluded by operation of these provisions as they apply only to AUSTRAC. In the circumstances a government agency holds SMR information described above which is subject to a FOI request, it's expected those agencies will transfer those documents to AUSTRAC in accordance with s 16. This is also consistent with point 6.6 of this FOI SOP.

Where SMR/SUSTR information is identified in scope of a request, AUSTRAC statement of reasons should have a paragraph that states:

*Section 7(2) read in conjunction with Part II of Schedule 2 have the effect of exempting AUSTRAC from the operations of the FOI Act in relation to documents concerning information communicated to it under s 16 of the Financial Transaction Reports Act 1988 or s 41 or s 49 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.*

*The documents you have requested are subject to the exemption specified in Part II of Schedule 2 to the FOI Act, on this basis these documents are not subject to the operations of the FOI Act.*

### 7.2.2. Section 22 – irrelevant information

Where part of a document is out of scope of the request you should consider preparing an edited copy of the document by deleting information that would reasonably be regarded as irrelevant to the request and redact the information as being out of scope reflecting a s 22 decision. Where s 22 is applied the PIAT staff member will classify the decision outcome in

JIRA as release in part. Where s 22 is applied among other exemptions which results in the protection of all documents in scope the decision outcome will be exempt in full.

### 7.2.3. Section 24A – no documents exist

AUSTRAC are required to conduct all reasonable steps to locate documents identified by FOI requestors as part of their scope of request. In circumstances where these searches result in confirming the documents are within AUSTRAC's possession but can't be found or alternatively, the documents do not exist, s 24A may be applicable.

PIAT officers should be diligent to ensure all reasonable steps have been taken to locate documents prior to application of this exemption as s 24A(1)(a) places focus upon the reasonableness of searches.

Financial transactions reported to AUSTRAC require careful scrutiny in relation to determining if the transactions identified within our possession do in fact relate to the FOI requestor. Some Palantir searches reveal financial transactions that may relate to the applicant but there is insufficient evidence to satisfactorily identify them. This is based upon the fact reporting entities are required to report specific types of identity information to AUSTRAC and the details provided by the reporting entities may differ from the information provided within the FOI application.

Careful scrutiny should take place to ensure a FOI requestor does not receive financial transactions of a third party that possess similar name, date of birth and/or address details.

Occasionally AUSTRAC receives requests for Cross Border Movement of Physical Currency (CBM) forms that cannot be found on Palantir that reflects a section 24A decision. If this situation arises we shall contact the Digital Servicing team through both the following email address:

s 22(1)(a)(ii) [\\_\\_\\_\\_\\_@austrac.gov.au](mailto:_____@austrac.gov.au)

The Digital Servicing team will need to request a physical search for the CBM form as AUSTRAC may hold the physical document that is waiting to be entered electronically. Once the physical check has been completed we can reasonably refuse access to the document in accordance with the standard s 24A template statement of reasons.

### 7.2.4. Use of section 22/47F to redact personal information

To streamline our FOI decision-making for financial transactions, AUSTRAC protects third party information by applying s22 instead of s47F, except for third party names. This approach should be applied to all FOI requests for financial transactions where the FOI requestor has not produced consent from the third party to provide their full transaction details to the FOI requestor.

The rationale for using section 22 in this way is that in circumstances where applicants have requested 'transaction details' relating to a particular person or entity, we are entitled to interpret the scope of the request as a request for names, dates and transaction amounts or

any other relevant details to what may constitute a 'transaction report'. Where personal information has been provided by the applicant in relation to the subject of the FOI request, that personal information can be considered within scope of the request.

Disclosure of the name alone would not constitute unreasonable disclosure of personal information). Other personal information of third parties such as passport / licence numbers, dates of birth, addresses and bank account information for example should be redacted under s22.

The use of section 22 to redact third party personal information means that it is unnecessary to consider whether to apply the exemption in section 47F (unreasonable disclosure of personal information).

Relying on s22 would also avoid the need to undertake public interest assessment.

We consider that this is a reasonable approach given the relatively low risk to AUSTRAC, particularly as the applicant liquidator/ trustee will continue to obtain the names of the third parties who have transacted with the liquidated company/ bankrupt so they can use that information to make their own separate inquiries as well as the fact it's unlikely a FOI requestor would be seeking specific access to third party details such as passport numbers and addresses, particularly where those details have not been specifically outlined or requested as part of the FOI request.

Where the applicant has requested access to their own personal information, all of the person's personal information can be disclosed. We consider that the applicant's own personal information is within scope of the request. Therefore it is unnecessary to apply section 22 to the spreadsheet of search results.

In terms of the subject of the FOI request (the bankrupt or the applicant, as the case may be), we consider that the following details to be in scope of the request – name, addresses, date of birth, bank account numbers, transactional details.

In respect of requests from Trustees, we would redact personal information that is unreasonable unless we know that the trustee already knows that information. What is deemed to be unreasonable would depend on the particular transaction report field and what supporting information has been supplied supporting the FOI request.

### **Bankruptcy cases**

It's generally deemed reasonable to release a Bankrupt's financial transactions to an appointed Trustee where the Trustee can produce evidence they have been appointed Trustee to the Bankrupt. The Bankrupt has an obligation under Bankruptcy Act to assist the trustee and for that reason disclosure of their personal information is not unreasonable disclosure that would be contrary to the public interest and the Bankrupt is unlikely to reasonably wish to make an exemption claim.

In circumstances where a Trustee requests transactions that don't relate to the Bankrupt (for example transactions of the spouse, family members or businesses) the obligation rests with the Trustee to produce consent from the affected third party so AUSTRAC can be satisfied the affected third party does not object to their information being released. Consent would contribute to the reasonableness of releasing the requested information.

### **Liquidated companies**

The principals outlined above for Bankruptcy cases equally apply for Liquidated companies. AUSTRAC considers a company has an obligation to assist an appointed Liquidator and for that reason disclosure of their business related financial transaction reports is not unreasonable and would not be contrary to the public interest.

In circumstances where a liquidator seeks transactions that don't relate to the Liquidated company (for example transactions of the Director(s), employees or other companies associated with particular Director(s)) the obligation rests with the Liquidator to provide consent(s) from those affected third parties for the same reasons outlined above for Bankruptcy cases.

Company directors' name, address and other details that are in public domain or provided by the FOI requestor is not covered by section 47F and may be released.

Sensitive personal information such as driver's licence or passport numbers should have the section 47F exemption applied to it where it has been specifically requested. This is on the assumption that disclosure is contrary to public interest due to privacy consideration. We can nevertheless apply section 22 to redact section 47F exempt material where those details haven't specifically been requested within the FOI application. .

### **Third parties in bankruptcy and liquidated company cases**

The same approach should be taken as for directors of liquidated companies. Names and suburb/city of the address (but not the actual street address) are not covered by section 47F because disclosure would not be unreasonable. Everything else (the 'sensitive' personal information such as actual street address, bank account number, date of birth, passport / licence numbers etc) attracts the section 47F exemption and may be redacted. No consultation is necessary in these cases for the same reasons raised within the dot point above.

### **Family law matters**

Due to the personal and emotional nature of family law matters, the default position in relation to processing these requests is we invite the FOI requestor to consider providing third party consent where practicable to do so.

AUSTRAC make specific mention of 'where practicable to do so' as we're vigilant domestic violence or other traumatic occurrences may have been experienced by the requestor. Therefore it would be unethical and problematic for AUSTRAC to encourage or expect victims of abuse approach a perpetrator (or vice versa) for their written consent as a qualifier in obtaining the information requested.

Family law matters indicate some form of dispute between particular parties and for that reason AUSTRAC should take caution in deciding to provide third party transaction details without obtaining consent first.

Where the FOI requestor is not able to provide third party consent, AUSTRAC suggest the FOI applicant provide us reasons why release would be reasonable in the circumstances so we may consider these situations on a case by case basis.

Where the FOI requestor is not involved in the transactions of the subject of the request, PIAT officers should consider any consent or statements provided in support of the FOI request to determine if release of the third party's information would be reasonable in the circumstances.

Where no consent or supporting statement has been provided there is a presumption the third party may reasonably wish to make a contention their personal information should be protected. In these circumstances PIAT officers should explore protection of the transactions requested to ensure AUSTRAC are appropriately considering the provisions of s47F and the associated public interest test.

Section 47G – business information

### **Bankruptcy and liquidation cases**

There is no issue with release of business information, whether the business information belongs to the bankrupt, the liquidated company or third parties. Most of the business information captured in TTRs and IFTIs that are found within scope are business name, address, account number and the like. As this information is generally in the public domain and unlikely to adversely affect the relevant person's business or commercial activities, the section 47G exemption does not apply.

PIAT officers should be mindful that in some circumstances a business address may in fact be the home address of the Director or other business staff member. This situation arises where the Director provides their home address to the reporting entity which is information provided to AUSTRAC as per the reporting entity's reporting requirement.

In these circumstances s47F should be considered where the business address has not been provided in support of the FOI application.

## **7.2.5. OAIC Guidelines**

### **Guidance for PIAT officers making FOI decisions**

Section 93A of the FOI Act states agencies *must* have regard to any guidelines issued by the IC. AUSTRAC recognise any guidelines issued by the IC as an important tool that shall be used to provide clarity and guidance during various stages of the FOI processes which are as follows:

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>

Parts 5 and 6 are particularly useful for PIAT officers when considering if any exemptions



should apply in respect to access requests. The guidelines provide a useful overview of the types of considerations that should be made, steps that should be taken when considering when to apply an exemption and general principles that should be considered when assessing documents captured within scope of an access request.

Where the FOI guidelines do not provide sufficient information in respect to a specific circumstance facing PIAT officers, supervisor assistance should be pursued to discuss the precise circumstances of the FOI request and if an exemption should be applied in the circumstances. PIAT officers are expected to have an understanding of the guidelines and will have regard to these guidelines when making a decision.

### 7.3. *Notifying the decision*

When making a decision as to whether to grant the applicant access or exempt in full or in part to the FOI requested documents, the decision maker must decide whether the content of the requested document is of a sensitive nature and that disclosure could reasonably cause harm to legitimate Commonwealth interests. These are normally referred to as exempted information.

Section 26 of the FOI Act requires the authorised decision maker to provide a written notice which demonstrates their reasoning behind disclosing or not disclosing the document or part document to the FOI applicant.

The written notice should include:

- A statement of the findings on any material question of fact. That is it should include evidence/finding to substantiate the claim for exemption and explain any public interest considerations
- A reference to the material on which those findings are based such as a list of evidence/materials on which your findings were based. For example FOI Act, searches/research and designation of the decision maker
- A statement of reasons for the decision to refuse, partly refuse or defer access. This includes an explanation of why a particular exemption has been relied on and addresses any public interest considerations
- Appropriate information about the applicants rights of review

When providing an explanation on the relevant exemption(s) it is not sufficient to state 'access to this document has been refused under section 47F because it relates to personal information'. You must explain how the decision was made and why the exemption applied to the document.

Each decision is unique and notices should be prepared on a case by case basis. Brief and clearly expressed reasons possess advantages. Over developed or unnecessarily lengthy reasoning can attract confusion and a reduced understanding of the key reasons and points outlining why the exemption applies which should be taken into consideration.

When drafting a decision letter you need to consider the following:

- Is the decision letter legally defensible?
- Is the decision letter easy to read?
- If the decision letter written to target the knowledge of the applicant?
- Have the findings been properly explained?
- Has all evidence in support of the decision been included?
- Is it factual?
- Have the references to the Act been properly explained?
- Can anything be misinterpreted?

### 7.3.1. Public interest test

In deciding where on balance the public interest lies, the decision maker must weigh factors favouring access and those favouring non-disclosure. The public interest factors will differ from case to case and will be influenced by the criteria in the conditional exemption that applies.

## 7.4. Preparing the spreadsheet for release

AUSTRAC financial transaction information is exported from AUSTRAC's database to an excel spreadsheet and released to the applicant in the same format. The following steps are required to be undertaken when releasing such transactions:

- **Add the Commonwealth crest and release text.** A template of the spreadsheet holding the Crest and text to copy is held in the FOI templates folder ([7126985](#))

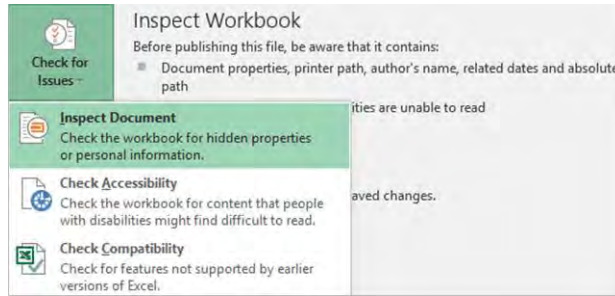


Australian Government  
Australian Transaction Reports  
and Analysis Centre

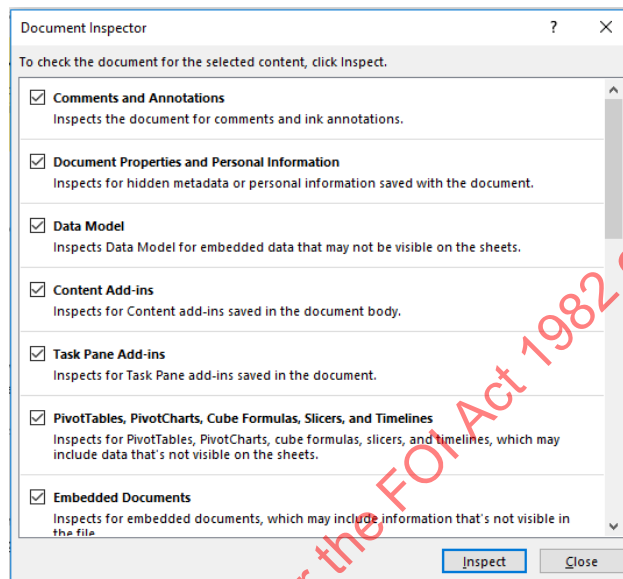
The following information has been released in response to a request for access under the *Freedom of Information Act 1982*

- a. Insert eight (8) lines above the first header row in the document.
  - b. A copy of the Crest should be placed at 1:A in the spreadsheet. Once inserted it will take up rows 1 through 5.
  - c. The text should be entered at row seven (7) leaving row eight (8) blank with the transaction headings starting at row nine (9).
- **Remove all properties.** Once the document has the crest and release text you need to remove all properties and mark the document as final.
    - d. Go to **File / Info /** and click the function arrow on **Check for Issues**. On the drop down menu select **Inspect Document** (the Inspect button should be highlighted).

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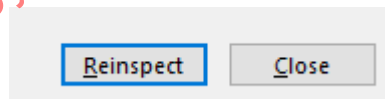


- e. The **Document Inspector** menu should have all the items checked. If not please ensure all items are checked.



If any exclamation marks (!) appear you need to read the issue on the item and decide next steps in each case.

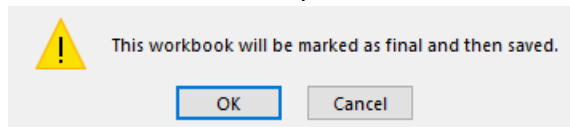
- f. There should be an exclamation mark against **! Document Properties and Personal Information**. You need click to **Remove all**.
- g. The Document Inspector will now have all items ticked and the selections available will now be to Reinspect or Close with Reinspect highlighted. If no further action is required, Click **Close** to return to the Info screen.



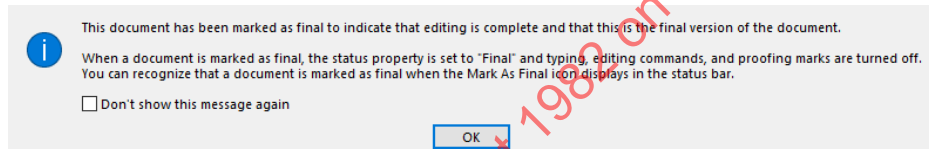
- **Mark the Spreadsheet as Final.** Before releasing the spreadsheet it is preferred you mark the Spreadsheet as Final which forces the document to open as Read Only. Note: the documents is still able to be edited if the owner clicks the Edit Anyway button.
  - a. Go to **File / Info /** and click the function arrow on **Protect Workbook**. On the drop down menu select **Mark as Final** (Let readers know the workbook is final and make it read-only).



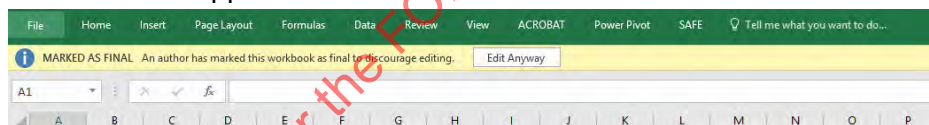
- b. Click OK to mark the spreadsheet as final.



- c. A dialogue stating the document has been marked as final may pop up if it has not been disregarded previously. If this appears, click OK to close the prompt.



- d. The Spreadsheet should now be MARKED AS FINAL and is ready for release to the applicant



## 7.5. Reverse FOI review

What is a reverse FOI?

This is the situation where a person requests documents under FOI, but they refer to a third party. Where AUSTRAC find it practical to consult an affected third party, the third party may wish to object to the release of its information and seek to stop or reduce the release of the information under the original FOI request.

A decision to release a document by AUSTRAC, despite a third party objection, may be reviewed by:

- an internal review conducted by AUSTRAC and/or the Australian Information Commissioner
- the Administrative Appeals Tribunal where the Australian Information Commissioner has declined to proceed with an internal review

These reviews are known as reverse FOI reviews. The affected third party has 30 days in which to apply for an internal review with AUSTRAC or apply to the Australian Information Commissioner. In the event of a reverse FOI, the applicant must be adequately kept informed of the progress of their request.

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Access to the documents that are in contention are not to be disclosed until the review process has been completed.

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## 8. Finalising the request

### 8.1. Disclosure log

AUSTRAC publishes information on its [disclosure log](#), subject to certain exemptions, within 10 working days after the FOI applicant was given access to a document.



The vast majority of AUSTRAC released documents fall under one or more of the exemption listings in section 11C of the FOI Act so they are not required to be published<sup>12</sup>. However, if no exemption is applicable and the documents released must be published, notification should be sent to the [S 22\(1\)\(a\)\(ii\)](#) [@austrac.gov.au](#) inbox along with the document/s to be uploaded on the website, along with a Website Change Request.

The FOI decision notice is NOT uploaded on the disclosure log. An example of a typical email to Strategic Communications is:

AUSTRAC released a document under the *Freedom of Information Act 1982* on DD Month YYYY which is required to be placed on AUSTRAC's disclosure log <http://www.austrac.gov.au/information-publication-scheme-disclosure-log> on or before DD Month YYYY (being the legislated 10 working days after release).

I would be grateful if you could please upload the attached document with the title '**State title to be displayed on website**'. I have obtained my NM 's approval for this website change which is attached.

Documents released are published within our FOI disclosure log and a link is available for interested users to examine the documents released. A total of three publications do not provide links and rather invite any interested user to request the documents direct from [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). Those three publications can be found within the FOI Procedures and Guidelines SAFE folder (2013/924). The documents are also located within the info\_access communal inbox folders, within Info\_Access>General Correspondence>FOI Disclosure Log Publications

12 The disclosure log requirement does not apply to personal information about any person, or information about a business, commercial, financial or professional affairs of any person if that information would be 'unreasonable' to publish.

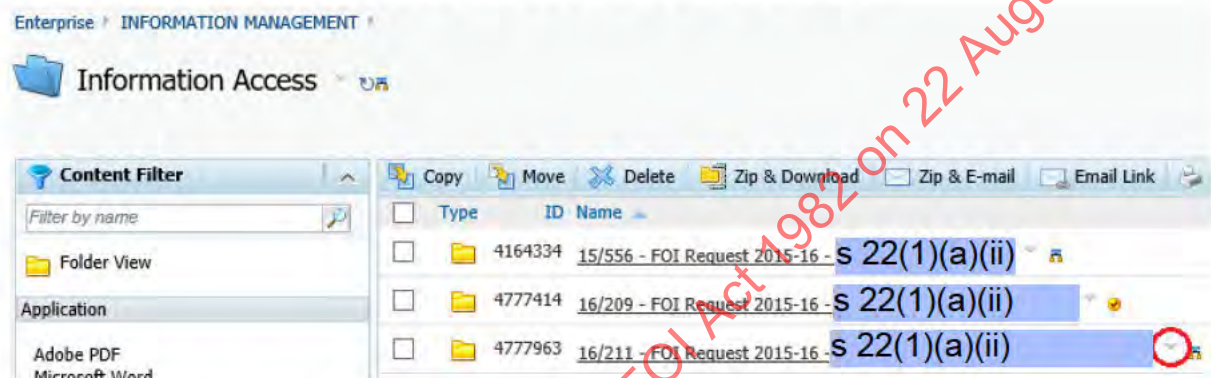
## 8.2. Recordkeeping

Once a FOI request is complete it is important to complete the filing so the SAFE folder can be closed and acquitted by Information Management appropriately in a timely manner.

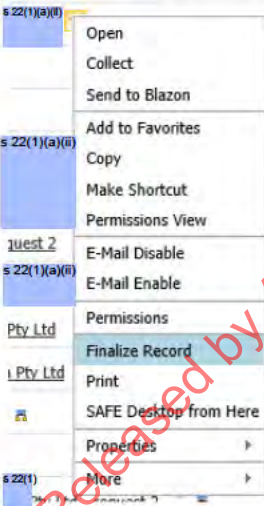
All corporate emails and documents should be saved in the appropriate SAFE folder and 'non-corporate' or 'duplicate' emails or documents that may be stored within the INFO\_ACCESS inbox or within your own desktop should be moved to the appropriate FOI folder within the INFO\_ACCESS inbox on finalisation of the request.

When you are satisfied all emails and correspondence are in SAFE you should finalise all records along with the container.

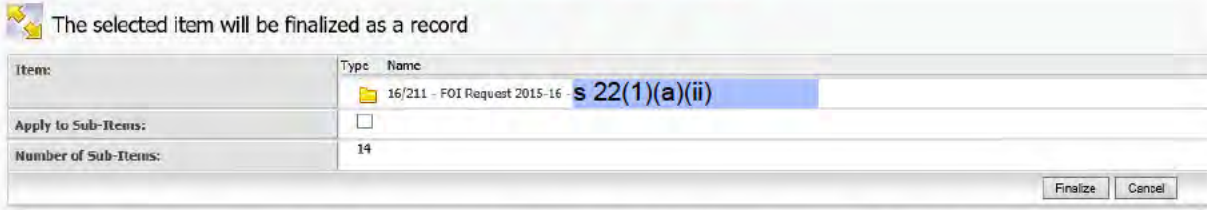
Click the Functions button alongside the Folder you wish to finalise.



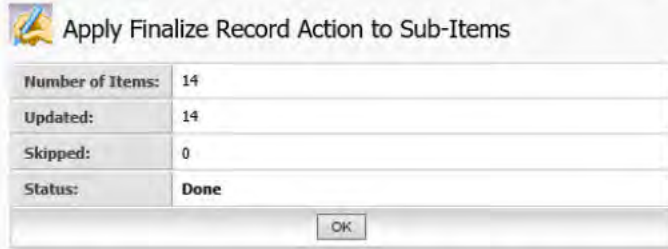
Navigate to Finalize Record.



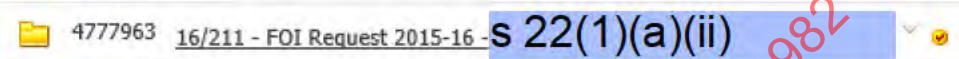
Make sure to check the Apply to Sub-Items: box and click Finalize. Doing this will finalise all the contained records and the Folder in the one process.



When the below dialogue box appears click OK to complete the finalising process.



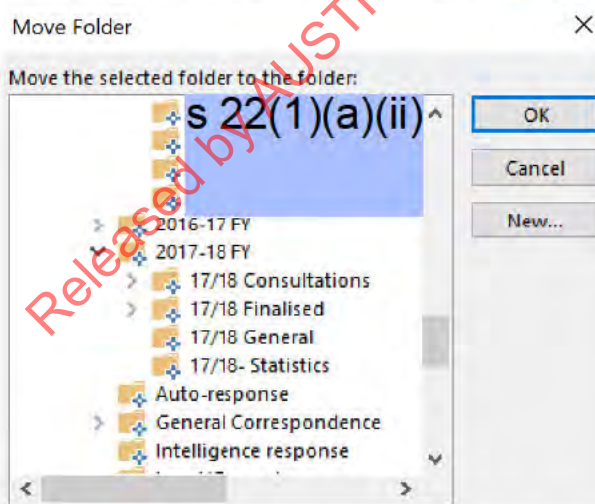
An orange tick beyond the function arrow will appear indicating the Folder and all the contained records are now finalised.



As part of Information Management processing, they will run a report of finalised FOI folders and proceed to close them once the appropriate time for retention has elapsed.

### 8.3. Outlook folder

After the FOI request is finalised the Outlook folder that was originally created to easily access emails relating to the request should be moved to a finalised folder. The easiest and safest way to do this right click on the folder and select Move Folder. Navigate to the appropriate financial year Finalised folder (example, 17/18 Finalised) and click OK.



There is handy to keep the current and last financial year available for easy access when dealing with calls from the public. Once a new financial year starts the older folder and all its



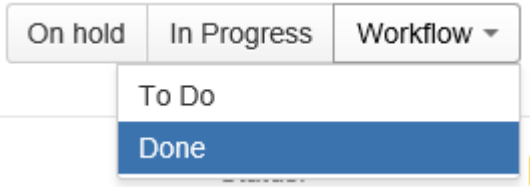
contents should be deleted. All emails should be retained in SAFE so deleting them at this point will not be an issue.

## 8.4. Finalising JIRA

One of the last administration steps to complete after an FOI request is finalised is to close the JIRA entry and log the hours that were spent on the request.

The OAIC requires various information relating to FOI requests for their quarterly and annual statistical reporting. It is important to be diligent in documenting as much information as relevant for each request such as consultations and the outcome of the request (ie exemptions applied). However, for the purposes of closing a JIRA entry there are only nine compulsory fields that require information before you can close the JIRA entry.

Click on the drop down arrow of the Workflow button and select Done.

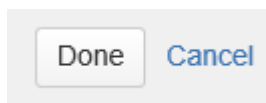


The below prompt will pop up and all the data fields are required to be completed. If any of these fields are blank, closing the JIRA entry will not be possible.

Fill all fields below to complete this FOI request.

FOI request type	<input type="text" value="Personal"/>
Date received	<input type="text" value="22/Nov/17"/>
Date acknowledged	<input type="text"/>
Due Date	<input type="text"/>
Date sent	<input type="text"/>
Release action	<input type="text" value="None"/>
Main exemption	<input type="text" value="None"/>
Number of relevant pages	<input type="text"/>
Number of pages released	<input type="text"/>

If all these fields have data in them before you select Done, the prompt will still pop up allowing you the option to check the accuracy of the information before selecting Done.



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Once this last button has been activated the JIRA entry will be closed. Note: editing of the JIRA entry is still available after it has been closed.

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## 9. Review process

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### 9.1. Internal Reviews

Internal review requests must be lodged by FOI applicants within 30 days of the primary decision notification (s 54B(1)(a)). Important to note is AUSTRAC may extend the internal review application period beyond 30 days even after the 30 days has expired, outlined within s 54B(2).

In the event AUSTRAC receives an internal review it shall be registered within JIRA as a *FOI Review* rather than the typical category of *FOI Request*. This allows AUSTRAC to appropriately report Primary and Internal Review requests to the OAIC.

Internal reviews are received for varying reasons, the most common being the FOI requestor asserts certain information subject to exemption should be released or alternatively, it's believed not all documents relevant to the scope were identified. It's preferred the internal reviewer should be at least 1 APS classification above the original FOI decision maker (9.31 of the OAIC's internal review guidelines) noting this is not a legislative requirement however is consistent with AUSTRAC's preferred approach.

Unlike primary FOI decisions, no opportunity exists to extend the legislative processing timeframe of 30 days direct with the FOI applicant. There is potential to extend the processing timeframe beyond 30 days however that would require OAIC approval (s 54D(3)). It's unlikely AUSTRAC would engage this process but rather pursue finalisation of an overdue internal review as a matter of urgency.

The FOI internal reviewer shall carefully consider the internal review request which typically outlines the particular issues identified by the FOI applicant in relation to the primary request outcome. This grants the internal reviewer opportunity to closely inspect and consider the issues raised and factor those issues into their decision which may involve searching for further documents or closer inspection of if exemptions were legitimately applied.

Its encouraged internal reviewers discuss the primary decision with the primary decision maker as there may be factors or information not expressed within the FOI notice of decision (by cause of s 26(2)), or other discreet details expanding upon why the primary decision was made in a particular way. This may result in opportunities to conduct further searches for documents, or highlight further evidence is required to support an exemption claim.

The basic principles governing the processing of a primary decision equally apply to processing an internal review. Internal review decision makers shall assess materials of fact and apply sound judgement to determine if the internal review shall result in an affirmed decision or alternatively, a varied decision. Finalising an internal review follows the same administrative protocols as finalising a primary decision.

## 9.2. *Inspector-General of Intelligence and Security*

The Inspector-General of Intelligence and Security (IGIS) must be advised if a section 33 exemption decision progresses to external review by the OAIC as outlined in section 55ZB or the Tribunal as outlined in section 60A of the FOI Act.

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## 10. Subpoenas

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AUSTRAC's Freedom of Information client page on its website advises the public to make inquiries with the Privacy and Information Access team regarding subpoenas. Advice should be given to the inquirer to make a FOI request with AUSTRAC rather than trying to obtain the information as a result of a subpoena. Due to the secrecy provisions under section 134 of the *Anti-Money Laundering/Counter Finance Terrorism Act 2006* AUSTRAC is not required to comply with a subpoena request. Consequently, it is likely that AUSTRAC will claim an objection to meeting the requirements of a subpoena served on it that is requesting AUSTRAC information.

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# 11. Statistical returns

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Under section 93 of the FOI Act each agency listed in Schedule 1 is required to report both quarterly and annually statistics within the statutory timeframe.

Reporting deadlines are established by section 5 of the Freedom of Information (Miscellaneous Provisions) Regulations 1982. The deadlines for submitting returns are:

For quarterly returns about FOI requests and outcomes:

- **21 October** for 1 July to 30 September
- **21 January** for 1 October to 31 December
- **21 April** for 1 January to 31 March
- **21 July** for 1 April to 30 June

For the annual return about staff resources and other costs and comparisons with previous years:

- **31 July** for each year ending 30 June

The statistics for the quarterly and annual return are submitted [online](#). The Manager of the Privacy and Information Access team will have the password to access the database.

A summary of the information from the returns are included in the OAIC's Annual Report and the full data set from agency returns, including agency comments, is now published separately on [www.data.gov.au](http://www.data.gov.au).

The types of information required to complete the quarterly statistics are:

- The number of valid requests the Agency received during the quarter;
- What decisions were made on the requests, for example full or partial release;
- The number of section 24AB consultation notifications and which cases were subsequently processed and not withdrawn or refused under section 24;
- What the Agency's response times were;
- The total amount of processing charges notified and received during the quarter;
- The number of applications received for internal review and administrative appeals tribunal and the decisions made from these reviews;
- Details of any amendments to personal records.

The types of information required to complete the annual statistics are:

- Number of staffing resources involved in FOI work. This is broken down into staff members spending 0-75% of time on FOI work and staff members spending over 75% of time on FOI work;
- Calculating the total number of hours the business areas spent on FOI work;
- Costs associated with FOI. This includes the cost of photocopying, postage, telephone, purchase of FOI material, FOI training, printing, travel, solicitor's fees, legal counsel fees and any other cost spent on FOI work.

## 12. Sensitive FOI Requests

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### 12.1. Receipt and Assessment of FOI Request

1. On receipt of an FOI request, the Privacy and Information Access Team (PIAT), in consultation with the Principal Legal Officer, will assess whether the FOI request is of a sensitive nature or otherwise outside the routine category of FOI requests that AUSTRAC receive.

#### 12.1.1. Routine FOI requests

2. An FOI request would be considered to fall within the routine category received by AUSTRAC if it involves requests for transaction reports in the following circumstances:
  - (a) a request by the applicant (or their agent or legal representative) for their own personal information;
  - (b) a request by the applicant in their capacity as the trustee in bankruptcy or liquidator of the subject of the transactional reports;
  - (c) a request by the applicant for a third party's information (e.g. a former spouse) in relation to a family law matter.

#### 12.1.2. Sensitive or routine FOI requests

3. An FOI request would be considered sensitive or outside the routine category if it has one or more of the following features:
  - (a) the request is about a matter that relates to, or is likely to generate, public interest or media attention;
  - (b) the request is about, or relates to, an AUSTRAC employee;
  - (c) the request comes from a media organisation, the office of a member of Parliament (whether Commonwealth, State or Territory), or a political party;
  - (d) the request seeks access to documents (usually created by AUSTRAC) such as reports (that are not transaction reports), correspondence, or notices that relate to or reveal AUSTRAC's intelligence or regulatory functions;
  - (e) the request seeks access to documents relating to a matter before a court or tribunal in which AUSTRAC is a party or is otherwise involved.

## 12.2. Reporting of FOI Request

4. All valid FOI requests received by AUSTRAC, regardless of whether they are assessed as sensitive or non-routine, must be entered in the weekly FOI report.
5. Sensitive or non-routine FOI requests will be appropriately identified as 'Sensitive' in the weekly FOI report and accompanied by a brief explanation of the reason for the sensitivity marker (see **Template A**):
6. Sensitive FOI requests are decided by an appropriate National Manager. The Principal Legal Officer will immediately notify the relevant National Manager of the request received and cc. National Manager Legal and Enforcement, the Chief of Staff and the CEO's Executive Officer, and Director Strategic Communications (i.e. not wait for the weekly FOI reporting cycle). Depending on the nature of the sensitive FOI request, other National Managers, DCEOs and Executive & Ministerial team may also be cc'ed as required.
7. The weekly FOI report is disseminated by COB each Thursday. The Principal Legal Officer is responsible for reviewing and clearing the weekly FOI report. Once the weekly FOI report is cleared for dissemination, PIAT will:
  - (a) email the weekly FOI report to the CEO, all DCEOs, the Chief of Staff and the CEO's Executive Officer (s 22(1)(a)(ii) @austrac.gov.au), the National Manager Legal and Enforcement, and the Director Strategic Communications; and
  - (b) copy the email to the Principal Legal Officer, all National Managers, Executive & Ministerial, Strategic Communications / Media, and all Executive Officers to the DCEOs.
8. The Executive & Ministerial Section will send the weekly FOI report to the Minister's office for visibility (s 22(1)(a)(ii) ), copying in the Departmental Liaison Officers at s 22(1)(a)(ii) the Chief of Staff and the CEO's Executive Officer, and PIAT.
9. If Strategic Communications identify any additional FOI request from the weekly FOI report that they consider will require media strategy (i.e. in addition to the sensitive FOI requests already identified and notified pursuant to paragraph 6), Strategic Communications will notify PIAT of this so PIAT can make appropriate arrangements later for pre-decision consultation – see also paragraph 16.

## 12.3. Deciding FOI Requests

### 12.3.1. Routine FOI requests

10. Decisions in relation to the routine category of FOI requests received by AUSTRAC will be made by a member of PIAT, including, where appropriate, QA review and input by a more senior staff member or the Manager of PIAT, a Senior Legal Officer, or the Principal Legal Officer, as the case may require.



11. A draft decision for QA review and input must be prepared no later than **three (3) days before the due date**.

### 12.3.2. Sensitive FOI requests

12. Sensitive FOI requests are decided at the National Manager level. Upon receipt of a sensitive FOI request and allocation to the appropriate National Manager, the Manager PIAT will conduct a 'planning discussion' with the National Manager to ensure clarity and consensus on interpretation of the scope of the FOI request. The discussion should include the National Manager's Executive Officer where possible/ appropriate (at the National Manager's discretion) so that once the scope of the sensitive FOI request is agreed on, the Executive Officer can immediately commence search (or coordinate the search) for documents in scope on behalf of the National Manager.
13. Once all the documents in scope have been identified, then, unless the documents are so voluminous that the Manager PIAT recommends pursuing a 'practical refusal reason' (on the basis of unreasonable diversion of Commonwealth resources), the National Manager should conduct a preliminary assessment of the documents and identify any content in relation to which exemptions should be applied, using the [FOI Exemptions Quick Reference Guide](#) for guidance. The Manager PIAT will provide additional guidance and assistance to the National Manager (e.g. respond to queries on application of specific exemptions) as required.
14. During the preliminary assessment, the National Manager should also engage early with the relevant DCEO to sense check the National Manager's thinking. Whilst the decision on the sensitive FOI request is still the National Manager's to make, this early engagement with the relevant DCEO provides an opportunity to ensure that any additional sensitivities in the content of the document that the DCEO may be aware of are drawn to the attention of the National Manager for consideration in developing the proposed decision.
15. Once a proposed decision has been made, PIAT (usually the Manager PIAT) will prepare a draft notice of decision and statement of reasons reflecting the proposed decision for the National Manager's review. This should be done no later than **seven (7) days before the due date** to enable sufficient time for any necessary adjustments and internal consultation.
16. Where there is particular sensitivity associated with the sensitive FOI request (e.g. Senate Estimates coinciding with the timing of a sensitive FOI request which relates to documents of likely Senate Committee interest), PIAT should err on the side of caution and confirm with the National Manager that the FOI decision is okay to hand down, even if the decision has otherwise been made.
17. Once the National Manager indicates their preferred FOI position, the Manager of PIAT will elevate the FOI decision and any documents prepared for release (in PDF form) to the 'Office of the CEO' and 'Executive and Ministerial' Outlook Express mail groups. The recipients (Chief of Staff in particular) will contemplate elevating the FOI decision to the

Minister's Office which supports appropriate MO awareness of AUSTRAC's forthcoming FOI decisions.

## 12.4. *Internal review of Sensitive FOI decisions*

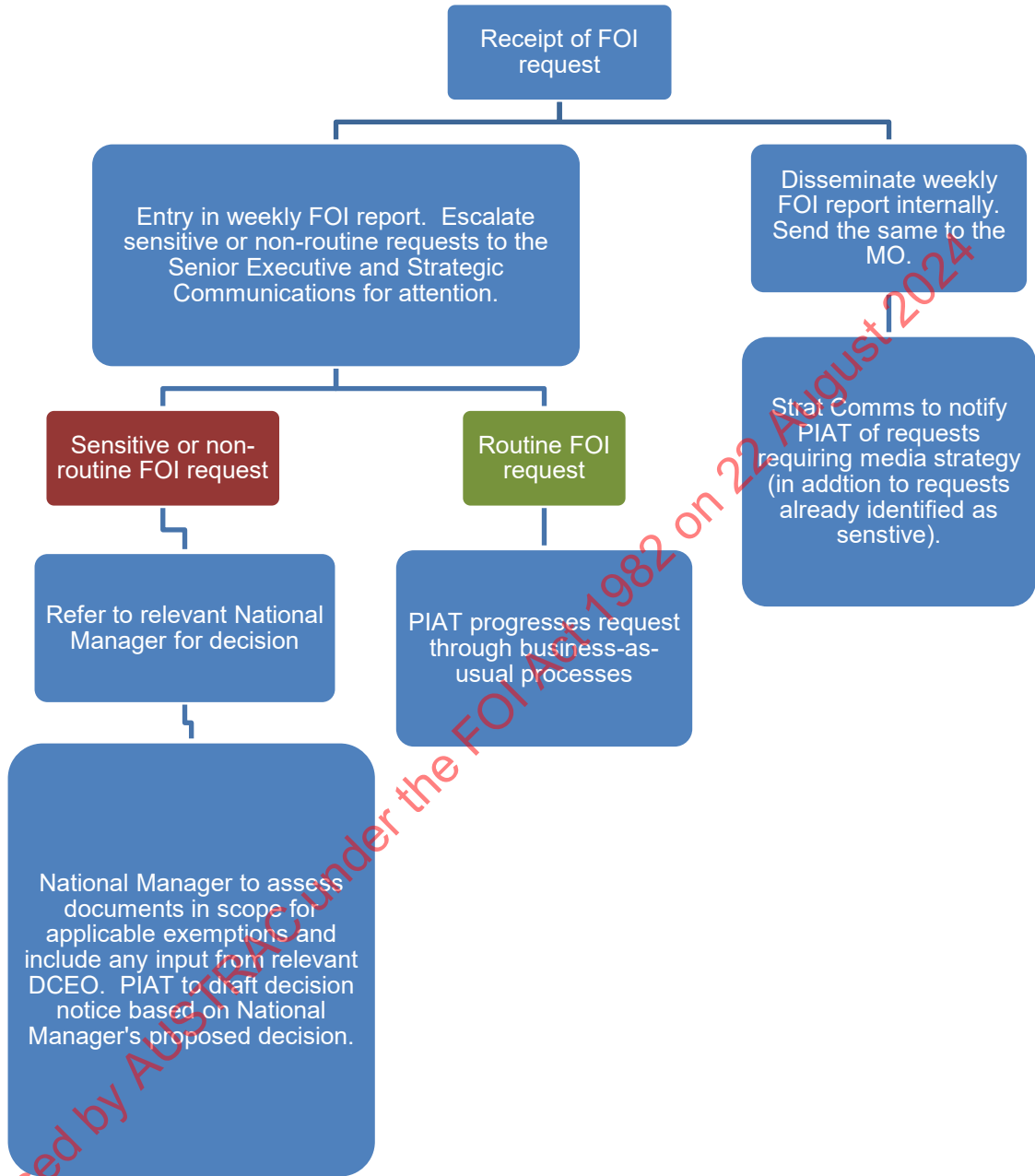
### 12.4.1. **Internal review of sensitive or unusual FOI decision**

18. If a request for internal review of a sensitive or non-routine FOI decision is received, the Principal Legal Officer will immediately inform the National Manager Legal and Policy, who will determine the appropriate internal reviewer.

Consistent with the primary decision-making process, any internal review decision that has to be made by the business area or at the National Manager level or above will be supported by the PIAT, including assistance in preparing the draft internal review decision.

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## 12.5. Flowchart of FOI process



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## 13. Resources

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### 13.1. Example letters

The below list of example letters are available for the Privacy and Information Access team to use as a starting point when drafting correspondence in relation to FOI requests. This is not a comprehensive list. The examples are of the more common types of communication used by the Privacy and Information Access team and each letter should be amended to suit the unique situation of each request.

The below list communication documents can be found in SAFE / Enterprise / INFORMATION MANAGEMENT / Procedures / 2011/310 – FOI Templates

- Business Unit - Consultation form - AUSTRAC - 5226716  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5226716>
- Business Unit - Overview of FOI - AUSTRAC - 5228516  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5228516>
- Charges - Calculator - AUSTRAC - 5301596  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5301596>
- Charges - Estimate of charges letter - AUSTRAC - 5227893  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5227893>
- Consultation - Schedule of documents - AUSTRAC - 5264645  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5264645>
- Consultation letter - Business affairs - AUSTRAC - 5263196  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5263196>
- Consultation letter - Personal Privacy - AUSTRAC - 5264430  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5264430>
- EMAIL - Acknowledgement - AUSTRAC - 5233354  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5233354>
- EMAIL - Correspondence - AUSTRAC - 5267724  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5267724>
- EMAIL - Third party - AUSTRAC - 5281323  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5281323>
- FOI update to Executive - AUSTRAC - 5765253  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5765253>
- Letterhead - AUSTRAC - 5230499  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5230499>
- Notice of decision - release in full - AUSTRAC - 5225957  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5225957>
- Notice of decision - section 24A - no docs exist - AUSTRAC - 5229323  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5229323>
- Notice of decision - section 7 - AUSTRAC - 5227894  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5227894>
- Notice of decision - section 7 transferred document - AUSTRAC - 5543282  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5543282>
- Notice of decision - sections 47F and 47G - AUSTRAC - 5224749  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5224749>

- Schedule of documents - WORD - AUSTRAC - 5228927  
<https://safe.hq.austrac.gov.au/OTCS/cs.exe/link/5228927>

## 13.2. Quick reference guides

### 13.2.1. Registering a new request

As the Privacy and Information Access team are fully digital processing, there is a [link](#) to the quick reference guide for when a new FOI requests is received at AUSTRAC.

### 13.2.2. SAFE Workflows

A core feature of SAFE is the ability to manage business processes using workflows. Workflows are used in the attempt to automate and streamline processes such as document approval and document review. Workflows are designed to:

- ensure that business processes are followed
- ensure that all steps in a business process including actions and decisions are traceable
- facilitate the flow of work from one user or group to another user or group
- provide the ability to track the progress of a work item
- remind a user when work is overdue

As the Privacy and Information Access team are working in an electronic environment we use the SAFE document workflows to keep a record of a review and/or approval of any correspondence before it is digitally signed and sent to an applicant or external client. It is imperative you gain the approval of the signee before adding their electronic signature. Using the document workflow in SAFE captures the comments of the reviewer/approver and includes it in the Metadata of the document.

This is a [link](#) to the quick reference guide on how to use workflows.

### 13.2.3. Digital signatures

Digital signatures are like electronic fingerprints. The signature is a digital code (generated and authenticated by public key encryption) which is attached to an electronically transmitted document to verify its contents and the sender's identity.

The Privacy and Information Access Team transferred to digital FOI processing in 2016. To alleviate the printing and processing of final correspondence and to streamline the digital processing, digital signatures are introduced. Using a digital signature allows the final correspondence (such as decision letter) to be locked down, preventing any alteration to that information by anyone other than the signatory. This allows the letter to be finalised electronically and submitted to the applicant by email.

Digital signatures can only be used in PDF documents once the document has been approved or reviewed by the signatory during the SAFE Workflow process.

This is a [link](#) to the quick reference guide on digital signatures. It was created for a different version of Adobe but the QRG has been tested and used for creating and inserting signatures in Adobe Acrobat Pro DC (AUSTRAC's current Adobe version).

### 13.3. *Legislation and guidelines*

[Freedom of information Act 1982](#)

[Office of the Australian Information Commissioner](#)

[Office of the Australian Information Commissioner Guidelines](#)

[Privacy Act 1988](#)

[Financial Transaction Reports Act 1988](#)

[Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#)

Add Index of 'Step by Step Guides'

Make reference to FOI Procedures and Guidelines SAFE link and what the title of each Step by Step guide is called. The guides themselves can then be updated and this document does not require update.

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## FOI EXEMPTION QUICK REFERENCE GUIDE

- = exemptions most commonly used in AUSTRAC. Blue text denotes limbs of the exemption most relevant to AUSTRAC.
- = exemption that are not commonly used in AUSTRAC, but may in rare circumstances apply.
- = exemptions that are not relevant to AUSTRAC – included for awareness and completeness only.

### Exemptions

Section	Description	When to use	Things to consider
33	Documents affecting national security, defence or international relations	<ul style="list-style-type: none"> <li>• Disclosure would, or could reasonably be expected to, cause damage to the Commonwealth's security, defence or international relations; or</li> <li>• Disclosure would divulge information communicated in confidence to the Commonwealth by a foreign government, an agency of a foreign government or an international organisation.</li> </ul>	<ul style="list-style-type: none"> <li>• Can cover information that on its own would not cause harmful, but in combination with other known information could cause harm.</li> <li>• There must be real and substantial grounds for the anticipated harm. Mere allegation or possibility of harm is insufficient.</li> <li>• Classification markings (such as secret or confidential) can inform, but are not determinative, of applicability of the exemption.</li> </ul>
34	Cabinet documents	<ul style="list-style-type: none"> <li>• Exempt documents include:                             <ul style="list-style-type: none"> <li>(a) Document submitted, or proposed to be submitted, to Cabinet, and which was brought into existence for the dominant purpose of submitting to Cabinet for consideration.</li> <li>(b) Document brought into existence for the dominant purpose of briefing Minister about a document mentioned in (a).</li> <li>(c) Draft of (a) and (b).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• "Cabinet" includes Cabinet committees.</li> <li>• Document that comprises of purely factual information, e.g. statistics, is <u>not</u> exempt.</li> <li>• "Dominant purpose" is a question of fact determined by reference to when the document was created.</li> </ul>

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		<ul style="list-style-type: none"> <li>• Document which is a copy or a part of, or includes extract from, (a), (b) or (c).</li> <li>• Document containing information disclosure of which would reveal Cabinet decision or deliberation (unless already made public officially).</li> </ul>	
37	Documents affecting enforcement of law and protection of public safety	<ul style="list-style-type: none"> <li>• Disclosure would, or could reasonably be expected to: <ul style="list-style-type: none"> <li>(a) prejudice investigation into breach or possible breach of law, or prejudice enforcement and proper administration of law in a particular instance;</li> <li>(b) disclose existence (or non-existence) or identity of confidential source of information in relation to enforcement or administration of law;</li> <li>(c) endanger the life or safety of a person.</li> </ul> </li> <li>• Disclosure would, or could reasonably be expected to: <ul style="list-style-type: none"> <li>(a) prejudice fair trial of a person;</li> <li>(b) disclose lawful methods or procedures for preventing, detecting, investigating or dealing with matters relating to breaches of law, where the disclosure would, or would be reasonably likely to prejudice the effectiveness of those methods or procedures;</li> <li>(c) prejudice maintenance or enforcement of lawful methods for protecting public safety.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• There must be real and substantial grounds for the anticipated harm. Mere allegation or theoretical possibility of harm is insufficient.</li> <li>• “In a particular instance” requires the anticipated prejudice or harm to relate to a specific current or pending investigation, rather than a future investigation or investigations generally.</li> <li>• “Lawful methods and procedures” is a two limb test – the document must disclose method or procedure, <u>and</u> there must be a reasonable expectation of prejudice to the effectiveness of the method or procedure if disclosed. Therefore, disclosure of a method or procedure that would not come as a surprise to anyone (which means there is no reasonable expectation of prejudice to its effectiveness) is unlikely to be exempt.</li> </ul>
38	Documents to which secrecy provisions of enactments apply	<p>Applies only to documents whose disclosure is prohibited by a provision specified in Schedule 3 of the FOI Act.</p> <p>No provision of the AML/CTF Act has been specified.</p>	<p>Not relevant to AUSTRAC. To the extent AUSTRAC might hold documents captured by a Schedule 3 listed provision, e.g. prohibited information under <i>Telecommunications (Interception and Access Act) 1979</i>, seek PIAT advice.</p>



42	Documents subject to legal professional privilege	Documents that contains information to which LPP applies.	Not all communications between AUSTRAC Legal (or external legal, e.g. AGS) and AUSTRAC automatically attracts LPP. Only applies to communications related to seeking legal advice or litigation.
45	Documents containing material obtained in confidence	<p>If disclosure of document would found an action by a person (other than an agency or the Commonwealth) for breach of confidence.</p> <p>Could capture information such as dob-in to AUSTRAC or information relevant to an investigation (ongoing or non-ongoing).</p>	<ul style="list-style-type: none"> <li>• The information must be specifically identified, rather than identified in global terms.</li> <li>• The information must have the necessary quality of confidentiality, and be communicated and received on the basis of a mutual understanding of confidence.</li> <li>• Unauthorised disclosure of the information would cause detriment to the person who communicated the information.</li> </ul>
45A	Parliamentary Budget Office documents	<p>(a) Documents originated from PBO that was prepared in response to a confidential request (by a Senator or a MP relating to budget or policy costings).</p> <p>(b) Documents brought into existence for the dominant purpose of providing information to the PBO in response to a confidential request.</p> <p>(c) Document provided to the PBO in response to a request by the PBO for more information in relation to a confidential request.</p> <p>(d) Draft of (a), (b) or (c).</p>	<ul style="list-style-type: none"> <li>• Applies to copies or extract of the exempted documents.</li> <li>• Does not apply if the PBO, or the Senator/MP who made the confidential request, has made the information publicly available.</li> </ul>
46	Documents disclosure of which would be contempt of Parliament or court	<p>Documents whose disclosure would:</p> <ul style="list-style-type: none"> <li>• be in contempt of court;</li> <li>• be contrary to an order or direction by a Royal Commission, a tribunal, or any other person or body having power to take evidence on oath;</li> <li>• infringe the privileges of the Parliament or the Commonwealth or a State.</li> </ul>	Consider nature of content of the document and whether the document relates to a matter before the court, the tribunal or a Royal Commission, e.g. enforcement related document?

47	Documents disclosing trade secrets or commercially valuable information	Unlikely to apply to most documents held by AUSTRAC, although decision makers should be wary of any document that might be captured, e.g. documents from a vendor bidding for AUSTRAC IT contract that reveal the unique technical capabilities or functions of their product offering.	<ul style="list-style-type: none"> <li>• The extent to which the information is known outside the business of the owner of that information.</li> <li>• The extent to which the information is known by persons engaged in the owner's business.</li> <li>• Measures taken by the owner to guard the secrecy of the information.</li> <li>• The value of the information to the owner and to their competitors.</li> <li>• The effort and money spent by the owner in developing the information.</li> <li>• The ease or difficulty with which others might acquire or duplicate the secret.</li> </ul>
47A	Electoral rolls and related documents	Electoral roll information (including print or copy of a print, copy on tape or disc etc.)	Unlikely to be relevant to AUSTRAC unless the FOI request seeks AEC information in AUSTRAC's possession. If such an FOI request were received, AUSTRAC would transfer the request to AEC.

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Conditional exemptions – must disclose unless against public interest

Section	Description	When to use	Things to consider
47B	Commonwealth-State relations	<ul style="list-style-type: none"> <li>• Document whose disclosure would, or could reasonably be expected to, cause damage to Commonwealth-State relations.</li> <li>• Document whose disclosure would divulge information communicated in confidence to the Commonwealth by or on behalf of government or authority of a State, or a Norfolk Island authority.</li> <li>• Document whose disclosure would divulge information communicated in confidence to a Norfolk Island authority by or on behalf of the government or authority of a State.</li> </ul>	<ul style="list-style-type: none"> <li>• “State” for the purpose of this exemption includes ACT and NT.</li> <li>• “Relations” encompasses all interactions between the Commonwealth and States and are not limited to formal working relationships.</li> <li>• The damage must be reasonably expected and not merely speculative.</li> <li>• Exemption on basis of confidential communication only applies to communication from State/Norfolk Island authority <u>to the Commonwealth</u>, not the reverse. Similarly, it applies only to confidential communication from State government or authority <u>to a Norfolk Island authority</u>, not the reverse.</li> </ul>
47C	Deliberate processes	<p>Document whose disclosure would reveal matters in the nature of, or relating to:</p> <ul style="list-style-type: none"> <li>• opinion, advice or recommendations obtained, prepared or recorded; or</li> <li>• consultation or deliberation that has taken place in the course of or for the purposes of deliberative processes of an agency, a Minister, or the Commonwealth government.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not apply to:               <ul style="list-style-type: none"> <li>○ scientific or technical reports, including where the scientific or technical expert has expressed an opinion in the report;</li> <li>○ statement of reasons in relation to a decision made in the exercise of a power;</li> <li>○ purely factual material (unless it is so embedded in and intertwined with the deliberative content that it is impractical to excise it).</li> </ul> </li> <li>• Harm does not need to be anticipated for the exemption to apply, the information merely needs to be deliberative, although any reasonably anticipated harm will be relevant when weighing public interest.</li> </ul>

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47D	Financial or property interests of the Commonwealth	Document whose disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.	<ul style="list-style-type: none"> <li>• “Financial or property interests” relate to assets, expenditure or revenue-generating activities, and may include intellectual properties or Crown interest in natural resources.</li> <li>• The anticipated harm must be both substantial and adverse.</li> <li>• Could potentially capture documents revealing FININT related analysis, methodologies or IP?</li> </ul>
47E	Certain operations of agencies	<p>Documents whose disclosure would, or could reasonably be expected to:</p> <ul style="list-style-type: none"> <li>• prejudice effectiveness of procedures or methods for conduct of tests, examinations or audits conducted by the agency;</li> <li>• prejudice the attainment of the objects of particular tests, examinations or audits conducted by the agency;</li> <li>• have a substantial adverse effect on management or assessment of personnel by the Commonwealth or agency;</li> <li>• have a substantial adverse effect on the proper and efficient conduct of the agency’s operation.</li> </ul>	<ul style="list-style-type: none"> <li>• There must be substantial basis for belief in the anticipated harm; cannot merely assert that the harm would occur.</li> <li>• Example of “substantial adverse effect on agency operation” in AUSTRAC context may include, for example, disclosure of information that may discourage reporting entity peak bodies to engage collaboratively with AUSTRAC.</li> </ul>
47F	Personal privacy	If disclosing the document would involve unreasonable disclosure of personal information about any person, including a deceased person.	<ul style="list-style-type: none"> <li>• “Personal information” is any information or opinion about an identified individual or an individual who is reasonably identifiable, whether or not the information or opinion is true.</li> <li>• When assessing whether there would be “unreasonable disclosure”, consider: <ul style="list-style-type: none"> <li>○ the extent to which the information is well known;</li> <li>○ whether the person is known to be associated with the matters dealt with in the document;</li> <li>○ availability of the information from publically accessible sources.</li> </ul> </li> </ul>

47G	Business	<p>Where disclosure would reveal information concerning a person or entity's business, commercial or financial affairs, where the disclosure of the information:</p> <ul style="list-style-type: none"> <li>would, or could reasonably be expected to, unreasonably affect the person or entity's lawful business, financial or commercial affairs; or</li> <li>could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purposes of administering a law of the Commonwealth or matters administered by the agency.</li> </ul>	<ul style="list-style-type: none"> <li>Must not be applied if s 47 (trade secret or commercially valuable information) can apply instead.</li> <li>Although the information must have some relevance to the person or entity's business, commercial or financial affairs, the focus is on the effect of disclosure rather than the nature/content of the information.</li> <li>Must have a substantial rather than merely asserted basis for the anticipated harm.</li> </ul>
47H	Research	Document revealing information relating to research being, or is to be, undertaken by staff of CSIRO or ANU.	Not relevant to AUSTRAC. If AUSTRAC held such documents, the request would be transferred to the CSIRO or the ANU as the case may require.
47J	The economy	Documents whose disclosure would, or could reasonably be expected to, have a substantial adverse on Australian economy.	Unlikely to apply to any AUSTRAC held documents. Seek advice from PIAT if unsure.

### Assessing conditionally exempt material against public interest

Public interests factors favouring disclosure	Factors irrelevant to public interest assessment
<p>Whether access to the document would:</p> <ul style="list-style-type: none"> <li>promote the objects of the FOI Act;</li> <li>inform debate on a matter of public importance;</li> <li>promote effective oversight of public expenditure;</li> <li>allow a person to access his or her own personal information.</li> </ul>	<p>Irrelevant factors that must not be taken into account when assessing whether disclosure would be contrary to public interest:</p> <ul style="list-style-type: none"> <li>disclosure could result in embarrassment to AUSTRAC or the Commonwealth;</li> <li>disclosure could result in mis-interpretation or misunderstanding of the document;</li> <li>the author of the document was (or is) of high seniority in the agency;</li> <li>disclosure could result in confusion or unnecessary debate.</li> </ul>



Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

I examined the scope of your request and have decided to exempt, in full, documents relating to «Name of Third Party Individual». The exemption is based upon section 47F(1) of the FOI Act.

In making my decision I have also had regard to the following:

- *Freedom of Information Act 1982*
- Guidelines issued by the Australian Information Commissioner

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## Applicable Conditional Exemption

### Public interest conditional exemptions – Personal Privacy

You have requested personal information relating to an identified individual. I have carefully assessed the scope of your request and potential impact(s) release that any information could reasonably be expected to have on the privacy of the identified individual, and weighed it against the public interest factors outlines in the FOI Act and the guidelines issued by the Information Commissioner.

On balance, I am satisfied release of any personal information could reasonably be expected to unreasonably affect the individual concerned. Having considered the public interest factors, I am of the view release of any personal information would be contrary to the public interest in the circumstances, therefore any personal information in scope of your request is conditionally exempt and redacted under s 47F.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC



Australian Government

AUSTRAC

Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

I examined the scope of your request and have decided to exempt, in full, documents relating to «Name of Third Party Individual». The exemption is based upon section 47G(1) of the FOI Act.

In making my decision I have also had regard to the following:

- *Freedom of Information Act 1982*
- Guidelines issued by the Australian Information Commissioner



## Applicable Conditional Exemptions

### Public interest conditional exemptions – business

You have requested business information relating to an identified business, commercial or financial affairs of an organisation. I have carefully assessed the scope of your request and potential impact(s) release that any information could reasonably be expected to have on the business, and weighed it against the public interest factors outlined in the FOI Act and the guidelines issued by the Information Commissioner.

On balance, I am satisfied the unreasonable effect on the business, commercial or financial affairs of the organisation could reasonably be expected to arise from releasing any information in scope of your request outweighs the public interest factors favouring release. Therefore, I find that any information in scope of your request is conditionally exempt under s 47G.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC



Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

AUSTRAC conducted searches for financial transaction reports meeting the scope of your request. The information reported to AUSTRAC identified within scope is not available as a discrete written document, although can be 'exported' from AUSTRAC's systems and produced in a spreadsheet format. I am therefore dealing with this FOI request as if it were a request for the spreadsheet document so produced.

I examined the document in scope and have decided to exempt the document in part with exemptions applied. The document also contains some information that could reasonably be considered to be irrelevant to the scope of your request. Therefore, I have decided to redact that irrelevant information under s 22 of the FOI Act.

In making my decision I have also had regard to the following:

- *Freedom of Information Act 1982*
- *Guidelines issued by the Australian Information Commissioner*

## Applicable Conditional Exemptions

### Public interest conditional exemptions – business

The document includes business information relating to an identified business, commercial or financial affairs of an organisation. I have carefully assessed the content of the information and potential impact(s) release of the information could reasonably be expected to have on the business, and weighed it against the public interest factors outlined in the FOI Act and the guidelines issued by the Information Commissioner.

On balance, I am satisfied the unreasonable effect on the business, commercial or financial affairs of the organisation could reasonably be expected to arise from releasing the information outweighs the public interest factors favouring release. Therefore, I find the information is conditionally exempt under s 47G and have redacted it accordingly.

### Public interest conditional exemptions – Personal Privacy

The document includes personal information relating to an identified individual. I have carefully assessed the content of the personal information and potential impact(s) release of the information could reasonably be expected to have on the privacy of the identified individual, and weighed it against the public interest factors outlines in the FOI Act and the guidelines issued by the Information Commissioner.

On balance, I am satisfied release of the personal information could reasonably be expected to unreasonably affect the individual concerned. Having considered the public interest factors, I am of the view release of the personal information would be contrary to the public interest in the circumstances, therefore the personal information is conditionally exempt and redacted under s 47F.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024



Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

AUSTRAC conducted searches for financial transaction reports meeting the scope of your request. The information reported to AUSTRAC identified within scope is not available as a discrete written document, although can be 'exported' from AUSTRAC's systems and produced in a spreadsheet format. I am therefore dealing with this FOI request as if it were a request for the spreadsheet document so produced.

I examined the document in scope and have decided to exempt the document in part with an exemption applied. The document also contains some information that could reasonably be considered to be irrelevant to the scope of your request. Therefore, I have decided to redact that irrelevant information under s 22 of the FOI Act.

In making my decision I have also had regard to the following:

- *Freedom of Information Act 1982*
- *Guidelines issued by the Australian Information Commissioner*

## Applicable Conditional Exemption

### Public interest conditional exemptions – Personal Privacy

The document includes personal information relating to an identified individual. I have carefully assessed the content of the personal information and potential impact(s) release of the information could reasonably be expected to have on the privacy of the identified individual, and weighed it against the public interest factors outlines in the FOI Act and the guidelines issued by the Information Commissioner.

On balance, I am satisfied release of the personal information could reasonably be expected to unreasonably affect the individual concerned. Having considered the public interest factors, I am of the view release of the personal information would be contrary to the public interest in the circumstances, therefore the personal information is conditionally exempt and redacted under s 47F.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC



Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

AUSTRAC conducted searches for financial transaction reports meeting the scope of your request. The information reported to AUSTRAC identified within scope is not available as a discrete written document, although can be 'exported' from AUSTRAC's systems and produced in a spreadsheet format. I am therefore dealing with this FOI request as if it were a request for the spreadsheet document so produced.

I examined the document in scope and have decided to exempt the document in part with an exemption applied. The document also contains some information that could reasonably be considered to be irrelevant to the scope of your request. Therefore, I have decided to redact that irrelevant information under s 22 of the FOI Act.

In making my decision I have also had regard to the following:

- *Freedom of Information Act 1982*
- *Guidelines issued by the Australian Information Commissioner*

## Applicable Conditional Exemption

### Public interest conditional exemptions – business

The document includes business information relating to an identified business, commercial or financial affairs of an organisation. I have carefully assessed the content of the information and potential impact(s) release of the information could reasonably be expected to have on the business, and weighed it against the public interest factors outlined in the FOI Act and the guidelines issued by the Information Commissioner.

On balance, I am satisfied the unreasonable effect on the business, commercial or financial affairs of the organisation could reasonably be expected to arise from releasing the information outweighs the public interest factors favouring release. Therefore, I find the information is conditionally exempt under s 47G and have redacted it accordingly.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC





Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision


The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

AUSTRAC conducted searches for documents within scope of your FOI request by examining the relevant database(s) which would reasonably hold the documents requested. AUSTRAC relied upon the information supplied supporting your FOI request and found no documents exist within our agency that meets the scope of your FOI request.

I am therefore refusing access to the documents requested s 24A of the FOI Act on the basis that the documents requested do not exist.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#)



Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024



Australian Government

AUSTRAC

Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

I examined the scope of your request and have decided to refuse access to the documents requested pursuant to s 7(2G) of the FOI Act.

In making my decision I have also had regard to the following:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner.

Section 7(2G) has the effect of exempting AUSTRAC from the operations of the FOI Act in relation to documents concerning information communicated to it under s 16 of the *Financial Transaction Reports Act 1988* or s 41 or s 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

The documents you have requested are subject to s 7(2G), on this basis these documents are not subject to the operations of the FOI Act.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024



Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

AUSTRAC conducted searches for any document meeting the scope of your request. The information reported to AUSTRAC identified within scope is not available as a discrete written document, although can be 'exported' from AUSTRAC's systems and produced in a spreadsheet format. I am therefore dealing with this FOI request as if it were a request for the spreadsheet document so produced.

I examined the document and have decided to release it to you in full.

In making my decision I have also had regard to the following:

- Freedom of Information Act 1982;
- Guidelines issued by the Australian Information Commissioner.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information

Commissioner (OAIIC). Information on how to apply for Information Commissioner review is available on the [OAIIC website](#).

Yours sincerely

«FOI Decision Maker Name»

Authorised Decision Maker

AUSTRAC

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024



Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

AUSTRAC conducted searches for financial transaction reports meeting the scope of your request. The information reported to AUSTRAC identified within scope is not available as a discrete written document, although can be 'exported' from AUSTRAC's systems and produced in a spreadsheet format. I am therefore dealing with this FOI request as if it were a request for the spreadsheet document so produced.

I have not identified any relevant exemptions that apply to the document. However, the document contains some information that could reasonably be considered to be irrelevant to the scope of your request. Therefore, I have decided to release the document to you in part, with the irrelevant information redacted under s 22 of the FOI Act.

In making my decision I have also had regard to the following:

- Freedom of Information Act 1982;
- Guidelines issued by the Australian Information Commissioner;

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024





Australian Government

AUSTRAC

Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to the Freedom of Information request (FOI request) received from you on «Date» seeking access to:

«"Scope of request"»

AUSTRAC conducted searches for financial transaction reports meeting the scope of your request. The information reported to AUSTRAC identified within scope is not available as a discrete written document, although can be 'exported' from AUSTRAC's systems and produced in a spreadsheet format. I am therefore dealing with this FOI request as if it were a request for the spreadsheet document so produced.

In respect to the documents requested outside Suspicious Matter Reports (SMRs), I have not identified any relevant exemptions that apply to the document. However, the document contains some information that could reasonably be considered to be irrelevant to the scope of your request. Therefore, I have decided to release the document to you in part, with the irrelevant information redacted under s 22 of the FOI Act.

In respect to the information requested concerning SMRs, Section 7(2G) has the effect of exempting AUSTRAC from the operations of the FOI Act in relation to documents concerning

information communicated to it under s 16 of the *Financial Transaction Reports Act 1988* or s 41 or s 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

As documents concerning SMRs are subject to s 7(2G), the documents requested which specifically concern SMRs are not subject to the operations of the FOI Act.

In making my decision I have also had regard to the following:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner.

You have the right to seek review if you are not satisfied with this decision. An application for internal review of this decision must be made in writing within 30 days of receipt of this letter by email to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au). You may also seek review of this decision by the Information Commissioner by contacting the Office of the Australian Information Commissioner (OAIC). Information on how to apply for Information Commissioner review is available on the [OAIC website](#).

Yours sincerely

«Decision Maker Name»  
Authorised Decision Maker  
AUSTRAC

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024



Australian Government

AUSTRAC

Reference: PIAT-«Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to your Freedom of Information request (FOI request) that was received on «Date», in which you, «acting within your capacity as Trustee/Liquidator» of «Name», sought access to documents under the provisions of the *Freedom of Information Act 1982* (FOI Act), that you understood to be held by AUSTRAC.

The documents you requested are:

«"Scope of request"»

On «Date» I sent you a notice under s 24AB(2) of the Act, advising you that a 'practical refusal reason' existed in relation to this request. I advised you that I was satisfied your request met the definition of a practical refusal reason in s 24AA(1) of the Act, as it appeared that the work involved in processing the request would 'substantially and unreasonably divert the resources' of AUSTRAC from its other operations.

Under the notice, you were provided with a 14 day 'consultation period', during which you could consult with me about the scope of the request. The notice advised you that you were required to respond before the end of the consultation period and either (a) withdraw your request or (b) revise the scope of your request or (c) confirm that you did not wish to revise the scope of your request.

You responded to the notice on «Date» and provided a new scope/advised that you did not wish to amend the scope of your request. After considering your response, I am satisfied that the work involved in processing the request will substantially and unreasonably divert the resources of AUSTRAC from its other operations. Therefore, I am satisfied that a practical refusal reason still exists under s 24AA(1)(a)(i) of the Act.

Section 26 of the FOI Act requires AUSTRAC to provide a statement of reasons in support of a decision. My reasons for this decision are set out in **Attachment A**.

The FOI Act provides a number of avenues for review if you are dissatisfied with any aspect of this decision. Your review rights are set out in **Attachment B**.

If you have any questions or require further information, please contact the decision maker via email [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au)

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker  
AUSTRAC

#### Enclosures

Attachment A – Statement of Reasons

Attachment B – Review Rights

## Statement of Reasons

I, «Decision Maker Name», am an officer authorised under s 23 of the FOI Act to make a decision in relation to your request. The following is my decision and the reasons for that decision.

### Overview

Section 24(1)(b) of the Act provides that, where a practical refusal reason exists, an agency may refuse to process a request only if the agency has undertaken the 'consultation process' set out within s 24AB of the Act and, after completing the consultation, the agency remains satisfied that a practical refusal reason exists.

I have undertaken the consultation process in accordance with s 24AB. Within the particular 24AB notice issued to you, I provided information to demonstrate why processing the request specified in a particular nature would substantially and unreasonably divert AUSTRAC's resources from its other operations if processing of the request occurred.

Although broadly phrased FOI requests can be accepted in some circumstances, those circumstances are limited to situations where document identification search results reveal a limited number of documents requiring FOI processing. In the circumstance of your particular request, a significant number of documents have been identified requiring FOI processing which is the primary issue communicated to you within the s 24AB notice.

### Only enter this paragraph if a rephrased scope of request was offered for adoption

To assist your endeavors to avoid a s 24 practical refusal decision, AUSTRAC provided you some available options in respect to revising your request on «Date». We provided these options in the hope a more specified request would reduce the number of documents captured within scope which would not substantially and unreasonably divert our resources.

In respect to your response, I remain satisfied that the request still meets the definition of a 'practical refusal reason' in s 24AA(1)(a)(i) in that processing the request will involve a substantial and unreasonable diversion of AUSTRAC's resources.

The founding principals in this particular case concern the fact AUSTRAC has attempted to assist your endeavors to identify the documentation by providing you an opportunity to

contribute to the document identification process by increasing the specificity in respect to the type of document(s) you are seeking. In this particular case, the documents currently identified for FOI processing require a substantial and unreasonable diversion of AUSTRAC resources.

Therefore, I am refusing your request for access under s 24(1)(b) of the Act.

**Evidence/Material on which my findings were based**

In reaching my decision to refuse access to the documents, I relied on the following documentary evidence:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner;
- the scope of the request received by AUSTRAC from you on «Date»; and
- the s 24AB response received from you on «Date».

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024

## Review Rights

The following review rights apply.

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents. An application for a review of the decision must be made in writing within 30 days of receipt of this letter. No particular form is required; however, it would assist the decision maker if the application grounds on which it is considered that the decision should be reviewed were set out.

Under s 53A of the FOI Act you may have ground for review under s 54 if you can establish that there are other documents held by AUSTRAC which have not been released.

Applications for review of the decision should be addressed to [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au) or via mail to:

**Australian Transaction Reports and Analysis Centre**  
Freedom of Information  
PO Box K534  
HAYMARKET NSW 2140

It is preferred you seek internal review before seeking review of the decision by the Australian Information Commissioner.

### Office of the Australian Information Commissioner

One of the three primary functions of the Office of the Australian Information Commissioner is the oversight of the Freedom of Information Act 1982 and review of decisions made by agencies and ministers under that Act. If you are dissatisfied with the result of an FOI request, you may seek an Information Commissioner (IC) review.

IC review applications can be made to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) or via mail to:

Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

For further information about IC reviews please refer to the OAIC website.

## Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal (AAT) after the OAIC has made a decision. The AAT may also review a decision by the OAIC not to undertake a review. An application must be submitted to the AAT within 28 days of being notified of the decision by the OAIC. The AAT can be contacted on 1300 366 700.

## Complaints

If you are not satisfied with the way AUSTRAC has processed your Freedom of Information request, you can complain to the OAIC. A complaint must be made in writing and must identify AUSTRAC as the agency that made the decision. There is no particular form required to make a request, however, the complaint should set out the grounds on which it is considered the action taken in relation to the FOI request should be investigated. Complaints can be made to the OAIC at the address listed above.

For up to date information please visit the OAIC website at <https://www.oaic.gov.au>

Released by AUSTRAC under the FOI Act 1982 on 22 August 2024





Ref: «Number»

5 August 2024

«SendToTitleFirstnameSurname»

«SendToTradingName»

«SendToAddress3»

«SENTOCITY» «SENDTOSTATE» «SENDOPOSTCODE»

Sent by email to: «Email Address»

Dear «SendToTitle» «SendToSurname»

### Freedom of Information request – Notice of Practical Refusal Reason

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to your Freedom of Information request (FOI request) that was received on «Date», in which you, «acting within your capacity as Trustee/Liquidator» of «Name», sought access to documents under the provisions of the *Freedom of Information Act 1982* (FOI Act), that you understood to be held by AUSTRAC.

The documents you requested are:

«"Scope of request"»

### Notification of intention to refuse access under section 24

Under section 24 of the FOI Act there is a power to refuse a request if a request consultation process has been undertaken and a practical refusal reason still exists.

### Why I intend to refuse your request

#### **OPTION – No scope provided**

You have not provided enough information to identify the documents you seek. You are required to state the documents you are requesting and identify the documents with specificity which would reasonably allow an AUSTRAC officer to identify the documents.

If you are seeking access to financial transaction reports it is greatly appreciated if you state that in the terms of your request. For example you could state that you are seeking the documents in connection to your own International Fund Transfer Instruction Reports and Threshold Transaction Reports.

**AUSTRAC Officer to consider providing additional suggested scopes if it appears from the request the FOI applicant may not be seeking access to IFTI/TTR's (ie a request from a journalist stating they wish to know more about a 'matter' may not be seeking IFTI/TTR reports.**

**OPTION – Unable to identify entity**

You have not provided enough information about yourself to identify the documents you are requesting. Please provide the following information:

- Full name
- Date of birth
- Current and previous addresses
- Bank account numbers if known
- Licence and passport numbers
- Certified photographic identification for yourself

**END OPTION**

**OPTION – Using broad terminology requesting all docs relating to the applicant**

When you use the terminology of 'All documents' and/or 'including but not limited to' this makes the assessment of interpreting the scope of your request difficult. This is because your request is not specific in nature identifying a particular type of document, related to a particular type of matter. The identification and retrieval of documents is an important step toward the FOI process and is significantly challenging where documents are not specified.

To assist AUSTRAC in processing requests in a timely manner, we ask that you consider how you have worded the scope of your request. If you are seeking a specific types of transaction reports such as International Funds Transfer Instruction Reports and Threshold Transaction Reports, it is greatly appreciated if you state that in the terms of your request.

**Officer required to provide a suggested scope based on your observation of the FOI request itself.**

**Eg you will provide a suggested scope similar to:** *I seek access to all international funds transfer instruction reports and threshold transaction reports related to me.*

END OPTION

#### **OPTION – Documents previously released**

I believe that the work involved in processing your request would substantially and unreasonably divert the resources of this agency from its other operations as documents within the scope of your request have already been released on «Date» to «Name».

On the basis the documents being requested are accessible, I intend to refuse access to the documents you requested. You may wish to consider specifying the exact document(s) you wish to obtain under FOI which have not previously been assessed and released.

**Officer required to provide a suggested scope based on your observation of the FOI request itself.**

**Eg you will provide a suggested scope similar to:** *Outside the documents released previously under FOI on «Date», I seek access to all international funds transfer instruction reports and threshold transaction reports related to me.*

END OPTION

#### **OPTION – Time Required to Process FOI Request**

AUSTRAC have considered the scope of your request and commenced the process of identifying the documents in scope.

AUSTRAC's findings revealed a wide number of documents in scope of this request. The documents and their content would reasonably require AUSTRAC process a FOI request which would far surpass 40 hours of processing time. The following are my observations in regards to the documents identified as part of this request.

**Officer required to breakdown the scope, searches conducted and reasons behind why FOI request would surpass 40 hours of processing time if request was to be pursued. .**

END OPTION

On this basis, I intend to refuse access to the documents you requested as a practical refusal reasons exists in accordance with s 24AA. However, before I make a final decision to do this, you have an opportunity to revise your request by asking for a particular document,

withdraw the request or continue with the request as stated within your original correspondence. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

### Consultation period

If you have any questions regarding this request or would like to discuss this matter with me, I can be contacted by email at [info\\_access@austrac.gov.au](mailto:info_access@austrac.gov.au)

The FOI Act provides a timeframe of 14 days for us to consult in relation to this matter. Within 14 days of this notice you should contact me or, in writing, do one of the following:

- (a) withdraw the request;
- (b) make a revised request; or
- (c) indicate that you do not wish to revise the request.

If you do not contact me or do one of the above within 14 days of the date of this letter your request will be taken to be withdrawn.

Please note processing of your request will be suspended during this time.

Yours sincerely

«Decision Maker Name»

Authorised Decision Maker

AUSTRAC