

# FOI fact sheet for court staff

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## Overview of the FOI Act

This fact sheet provides a broad overview of the *Freedom of Information Act 1982* (**FOI Act**) and the steps the Federal Court of Australia (**Court**) is required to take when an FOI request is received.

The FOI Act is regulated by the Office of the Australian Information Commissioner (**OAIC**), an independent statutory agency within the Attorney-General's portfolio.

The FOI Act gives the Australian community a right of access to information held by most Australian government agencies.

## To what extent is the FOI Act applicable to the Court?

Under subsection 5(1) of the FOI Act, the Court is a "prescribed authority" for the purposes of the FOI Act. However, subsection 5(1) limits the application of the FOI Act to only requests for documents of the Court that relate to "matters of an administrative nature". The phrase "matters of an administrative nature" has been interpreted by the High Court of Australia to refer to the management and administration of the Court's registry and office resources.

The FOI Act is limited further in its application to the Court – it does not apply to judicial officers (subsection 5(1)) and does not apply to requests for documents relating to the handling of complaints about judicial officers (subsection 5(1A)).

## What happens after the Court receives an FOI request?

Under the FOI Act, the Court must acknowledge receipt of an FOI request within 14 days. The Act also requires that FOI requests are processed as soon as possible, and no later than 30 calendar days after the day on which the request was received.

In limited circumstances the statutory timeframe may be extended. For example, it can be extended for up to 30 days with the agreement of the FOI applicant or if agencies need to consult a third party. An extension of time for a large or complex request can also be granted by the Information Commissioner.

Failure to comply with the time limit means the agency is deemed to have refused the FOI request (**Deemed Refusal**). A Deemed Refusal is reviewable by the Information Commissioner.

For more information about the processing periods see: '[How long does an agency have to process a freedom of information request?](#)' and [FOI essentials: Timeframes and extensions](#) on the OAIC website.

## What happens if you are asked to find documents requested under the FOI Act?

You may be asked by a member of the Court's FOI team to find documents requested under the FOI Act. Because statutory timeframes apply, it is important that you look for documents promptly, within the period of time given by the Court's FOI team.

You are required to take "all reasonable steps" to find documents requested under the FOI Act (section 24A). You should undertake a reasonable search based on a flexible and common-sense interpretation of the terms of the request.

You must search in all places in which the documents may be stored. This includes databases, records management systems, email accounts, as well as filing systems. The Court has developed an [FOI search minute template](#) that enables staff to record the steps to look for documents requested under the FOI Act.

If you do not provide documents within the applicable timeframe, a decision will have to be made on the basis of the information available to the FOI decision maker. Therefore it is important that you undertake all relevant searches. The Court and the FOI decision maker are relying on you to find all documents requested.

The OAIC has published a resource to guide you when looking for documents within the scope of an FOI request – [Processing FOI requests: taking all reasonable steps to find documents](#).

## Request for your views on whether documents should be released

A member of the Court's FOI team may ask you whether you think a document should be released.

Under the FOI Act, the Court must give access to a document requested pursuant to a valid FOI request unless the documents requested do not relate to "matters of an administrative nature" under subsection 5(1) or the document is an "exempt document". If it is to be argued that an exemption applies, the FOI decision maker will need evidence, which can include advice from staff like yourself, to be satisfied that an exemption is applicable.

If you are asked to provide an opinion, it is important that your view is based on a consideration of the sensitivity of the documents and reasons that are permitted to be taken into account under the FOI Act.

## **Providing views on the sensitivity of a document**

A security classification on a document does not mean that a document is exempt from disclosure under the FOI Act. A document is only exempt if one of the exemptions in the FOI Act applies. It is possible that only one sentence is exempt and the rest of the document can be released, even if the whole document is classified. In some cases, documents may be classified, but the sensitivity that originally justified the classification has passed, in which case the document may no longer be exempt from disclosure under the FOI Act.

## **Documents that are unlikely to be exempt**

Some documents held by an agency are unlikely to be exempt from disclosure. Examples include documents that agencies are required to publish as part of their Information Publication Scheme, such as the agency's organisational chart, statutory appointments, annual reports, information routinely released in response to FOI requests, or an agency's operational information.

## **Reasons that cannot be taken into account in deciding whether documents are exempt**

The FOI Act lists factors that cannot be taken into account when deciding whether documents are exempt from disclosure. These irrelevant factors are when:

- access to the document could result in embarrassment to the Government or cause a loss of confidence in the Government;
- access to the document could result in a person misinterpreting or misunderstanding the document;
- the author of the document was (or is) of high seniority in the agency;
- access to the document could result in confusion or unnecessary debate.

## **Reasons why documents may be exempt**

The FOI Act establishes two types of exempt documents:

### *1. Documents that are exempt*

- For example, documents affecting national security, documents affecting law enforcement and public safety, and documents subject to legal professional privilege or which were obtained in confidence.

### *2. Documents that are conditionally exempt*

An agency must give access to a conditionally exempt document unless at the time disclosure would, on balance, be contrary to the public interest.

- Conditionally exempt documents include documents affecting personal privacy, deliberative processes or certain business information.
- A decision maker cannot refuse access to a document simply because it is conditionally exempt. The decision maker must apply the public interest test, which is weighted towards disclosure. Disclosure of conditionally exempt documents is required unless in the circumstances it would be contrary to the public interest to give access.

For more information about “exempt documents”, see the FOI Guidelines, especially [Part 5 \(Exemptions\)](#) and [Part 6 \(Conditional exemptions\)](#) and [FOI Essentials: Deciding a freedom of information request](#).

The OAIC has developed a [statement of reasons checklist](#) for decision makers which outlines the kind of information that must be given to applicants when refusing access.

### **Contact**

If you have specific questions about the FOI process or an FOI request made to the Court, please contact Scott Tredwell, General Counsel of the Federal Court of Australia.

If you have general questions about FOI you can email the OAIC at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) or phone 1300 363 992, or visit their website for more information: [oaic.gov.au](http://oaic.gov.au).

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