

AFP National Guideline on Freedom of Information releases

1. Disclosure and compliance

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

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

This instrument forms part of the AFP Governance Instrument Framework (GIF) as defined in the [AFP Commissioner's Order on governance \(CO1\)](#). The [AFP Commissioner's Order on professional standards \(CO2\)](#) and [AFP Commissioners Order on security \(CO9\)](#) set the framework for the conduct expected of AFP appointees through obligations and best practice to help maintain the safety and security of AFP information, operations, assets, and people. Inappropriate departures from the provisions outlined within AFP governance instruments may constitute a breach and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Guideline authority

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

3. Introduction

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

4. General right to access information

The AFP is an 'agency' within the terms of the [FOI Act](#), and therefore is subject to requests for access to documents in its possession. An applicant may request access to, or a copy of, any document held by the AFP, whether it relates to the applicant.

Section 11 of the FOI Act provides that every person has a legally enforceable right to obtain access to documents under the FOI Act, other than exempt documents, irrespective of any reasons provided for requesting access.

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

5. Exemptions to releasing documents

The [FOI Act](#) contains exemptions on releasing documents, grouped in two broad categories:

- non-conditional exemptions;
- conditional exemptions.

A public interest test applies to all conditional exemptions and an agency must give access to the document unless access at that time would, on balance, be contrary to the public interest.

Non-conditional exemptions

Non-conditional exemptions apply if disclosing particular documents would or could reasonably be expected to:

- harm national security, defence or international relations, the enforcement of the law and/or the protection of public safety;
- reveal information communicated in confidence, or documents subject to legal professional privilege;
- release information subject to a secrecy provision;
- constitute contempt of parliament or contempt of court;
- reveal Cabinet documents;
- reveal confidential Parliamentary Budget Office documents;
- disclose trade secrets or commercially valuable information;
- disclose electoral roll information.

Conditional exemptions

Conditional exemptions apply only if releasing the document would be contrary to the public interest. Conditional exemptions apply to documents containing information relating to:

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

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

Even where a document is exempt, a decision maker has a discretion to give access to a document. The FOI Guidelines encourage decision makers to give access to exempt

documents if they can be released without causing significant harm (see Part 6 of the FOI Guidelines).

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

An FOI request is a request that seeks documents pursuant to the [FOI Act](#). If an appointee is uncertain whether a request for documents is an FOI request, they may consult the FOI team for advice at FOI@afp.gov.au

AFP appointees who receive an FOI request must forward the request to the FOI Team as soon as possible by email: FOI@afp.gov.au.

Or, if not feasible by email, AFP appointees must forward the request to the FOI Team physical location:

Freedom of Information Team
AFP National Headquarters
GPO Box 401
Canberra City, ACT 2601

7. Role of FOI Team

The FOI Team processes all FOI Act requests for documents within the required statutory timeframes. Officers in the FOI Team hold an authorisation to be the decision maker under the FOI Act.

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

8. Role of AFP appointees

An AFP appointee who receives a request for documents from the FOI Team must within 10 working days:

- locate and forward to the FOI Team a copy (not originals) of all relevant documents (including emails, diaries, notebooks and field books) relating to the request, in the format requested by the FOI Team (unless they have agreement from the FOI Team for an extension of time, or the volume of documents is too voluminous and the FOI Team has agreed the documents do not need to be provided); and/or
- advise the FOI Team if:
 - no documents within the scope of the FOI request can be found;
 - there are sensitive issues - such as where releasing the documents would cause harm, including harm to the AFP's operations, security, capability, or budget, including reasons why the release of the documents would cause harm;
 - releasing the documents could attract media attention or have political implications.

AFP appointees must take all reasonable steps to comply with an FOI Team request in a timely manner and to conduct all reasonable searches for documents in the AFP's possession.

The FOI decision maker relies on advice from business areas in responding to requests. Failure to identify a concern may result in the information or document being released.

AFP appointees must immediately notify the FOI Team of potential delays in providing documents. The FOI Team is not afforded the automatic right to extend deadlines, as any extension must comply with, and follow the requirements in the FOI Act, however, it may be possible for the AFP to:

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

AFP appointees must not withhold, destroy, or alter any documents, even if they consider them exempt. AFP appointees must not redact any document before they have been considered by the FOI Team.

AFP appointees should refer to section 9 of the [Information Management Handbook](#) for guidance on information disclosure. Section 9 will assist their assessment of whether documents involve sensitive issues which should be advised to the FOI team.

Documents and any advice on sensitive issues provided to the FOI Team must be cleared by an AFP appointee from the relevant business area, at an appropriate level. Non-sensitive matters are normally cleared at Superintendent/ Coordinator level.

AFP appointees responding to an FOI Team request that involves significant issues should notify their relevant Commander/Manager and Assistant Commissioner / National Manager.

The FOI Team should be notified as soon as possible of any significant issues relating to the FOI request so consideration can be given to briefing the AFP Executive, Minister, AFP Media, or other Commonwealth agencies advised as relevant.

9. Role of the decision maker (FOI Team)

The FOI decision maker must consider all documents relevant to the request. The FOI decision maker may grant or refuse access under the FOI Act to any document held by the AFP. Section 20 of this guideline contains a link to the current Instrument of Authorisation for decision making.

The FOI decision maker must form their own view on whether to release or refuse access to documents by considering all relevant provisions in the FOI Act, including any sensitive issues advised by the business area. In exercising this power, the FOI

decision maker may consult relevant AFP and external sources (e.g. third party individual, government or business) to ensure they have regard to all relevant facts and, if necessary, also obtain legal advice.

If a document is considered exempt under the FOI Act, either in full or in part, each exemption stands in its own right and must be considered separately. The FOI decision maker will determine which exemptions can be applied.

If the FOI decision maker believes significant issues are likely to be raised by releasing documents under a request, the FOI decision maker must do the following (as required) before communicating the decision to the applicant:

- liaise with the business area; and
- notify the AFP Executive, the Minister's office and AFP Media team.

10. Conflict resolution

If the FOI decision maker and the business area cannot resolve a dispute on the exemptions claimed, the matter must be raised with the Team Leader, FOI who will consult further with the business area at the most appropriate level. The FOI decision maker will make a decision taking into account further representations the FOI Team receives during the additional consultation process.

11. Processing fees and charges

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

The FOI Act provides that FOI decision makers may waive payment of the charge, if the applicant can establish:

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

The FOI decision maker may decide:

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

A charge cannot be imposed on a person seeking access to their own personal information or if documents are released outside of the statutory period (including as extended).

12. Disclosure Log

The AFP business area is required to arrange for documents released in response to an FOI request to be published on the Disclosure Log on the AFP website. The

Disclosure Log is a requirement under s.11C of the FOI Act. The Disclosure Log lists documents which have been released under the FOI Act. This information must be published in the Disclosure Log within 10 working days after documents were released to an applicant.

However, the Disclosure Log requirement does not apply to:

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

Documents are published on the Disclosure Log for 12 months. Archived disclosure log documents may be sought from the FOI Team.

13. Review of decision

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

13.1 Internal review

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

Section 20 of this guideline contains a link to the current Instrument of Authorisation which outlines who may conduct an internal review.

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

13.2 Review by the Information Commissioner

The FOI Act allows an applicant to seek the Information Commissioner's review of an AFP FOI decision by applying to the Information Commissioner within 30 days of being notified of the decision.

Applicants may appeal decisions by the Information Commissioner under s. 57A of the FOI Act, by applying to the Administrative Appeals Tribunal (AAT) for review.

14. Avenues of complaint

Applicants may complain about the AFP's FOI processing and responses to FOI requests to the Information Commissioner who, under the [FOI Act](#) may investigate the AFP's conduct.

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

15. Requests for access to personnel records

Current and former AFP appointees may request access to their personnel records outside the FOI process via:

- HR Advisory Team for HR records;
- Security Vetting for records contained within their Personnel Security Vetting file.

Any such requests and subsequent disclosures are not part of the FOI process but are 'administrative releases' considered and dealt with by the business area receiving the request (or other relevant business area) in accordance with the [AFP National Guideline on information management](#).

The business area may determine it appropriate to redact documents before releasing them, consistent with the *Privacy Act 1988* (Cth).

The relevant business area must consider the request on its merits and not refer the request or the requester to the FOI process.

AFP appointees should not request access to their personnel records as an FOI request unless they have previously applied outside the FOI process and:

- are unsatisfied with the outcome;
- have not been notified of the outcome of any request made outside the FOI process within 30 days of making the request.

If the business area responsible for an AFP appointee's personnel records decides not to grant access to the requested documents, they must inform the applicant in writing, provide reasons for the decision and include advice that it is open to the applicant to apply for access to their personnel records under the FOI process in accordance with s. 15 of the FOI Act.

Business areas should seek advice from [AFP Legal](#) before making such a decision.

16. Requests for other documents outside the Freedom of Information Act

Applicants may request documents from the AFP outside of the FOI process. Examples include under:

- the [Privacy Act 1988](#) (Cth) which gives a right to access documents held by the AFP;
- the [Archives Act 1983](#) (Cth) for access to Commonwealth records in the open access period (the majority of archival records enter the open access period after 20 years. Cabinet notebooks enter the open access period after 30 years. Census data is not released until 99 years after the census date). Requests for records under the Archives Act should be made directly to the [National Archives of Australia](#).

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

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

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

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

17. Annotating or amending information

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

- incorrect
- incomplete
- misleading
- out of date.

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

18. Information Publication Scheme

The FOI Act provides a statutory framework for proactive publication of information by agencies via the Information Publication Scheme (IPS) rather than as a scheme primarily reactive to requests for documents. For further information please refer to the [National Guideline on the Information Publication Scheme](#).

19. Further advice

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

20. References

Legislation

- [Archives Act 1983](#) (Cth)
- [Australian Federal Police Act 1979](#) (Cth)
- [Freedom of Information Act 1982](#) (Cth)
- [Freedom of Information \(Charges\) Regulations 1982](#) (Cth)
- [Privacy Act 1988](#) (Cth)
- [Ombudsman Act 1976](#) (Cth)

AFP governance instruments

- [AFP National Guideline on information management](#)

Delegations and authorisations

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

Other

- [Information Commissioner's FOI Guidelines](#)

21. Shortened forms

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
FOI	Freedom of Information
FOI Act	Freedom of Information Act 1982 (Cth)

22. Definitions

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

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

(See s. 4 of the AFP Act).

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

Applicant means a person seeking access to documents under s. 15 of the [FOI Act](#).

Decision maker means a person authorised by the Commissioner under s. 23(1) of the [FOI Act](#) (see paragraph 22 below).

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

Document means anything in written form, as well as photographs, audio and video recordings and computer records. See s. 4 of the [FOI Act](#) for the complete definition.

Internal review means a complete reconsideration of a request, and is conducted by an AFP authorised person who is independent from the initial decision maker.

Personnel records is defined in the [FOI Act](#) as documents containing personal information about an employee or former employee that are, or were, kept by the AFP for personnel management purposes.

Public interest as outlined in s. 11B(3) of the [FOI Act](#) includes documents that 'promote the object of the Act', 'inform debate on a matter of public importance', 'promote effective oversight of public expenditure' and 'allow a person to access his or her own personal information'.