



Open by Design – FOI and Information Release in WA

About this guide

Open by Design principles are intended to advance integrity in government and facilitate appropriate release of information and documents that are important to the public. This *Open by Design* guide builds on the [Joint Statement of Principles to support proactive disclosure of government-held documents](#), published by the Australian Information Access Commissioners and Ombudsmen in September 2021.

It is designed to assist and encourage agencies to create appropriate *Open by Design* policies and processes to facilitate effective information release beyond the formal access procedures outlined in the *Freedom of Information Act 1992 (WA)* (**the FOI Act**).

Open by Design Principles from the Joint Statement

The *Open by Design* principles recognise that:

- information held by government and public institutions is a public resource
- a culture of transparency within government is everyone's responsibility
- appropriate, prompt and proactive disclosure of government-held information
 - ◇ informs community
 - ◇ increases participation and enhances decision-making
 - ◇ builds trust and confidence
 - ◇ improves service delivery
 - ◇ is required or permitted by law
 - ◇ improves efficiency

From this recognition, it is recommended that agencies:

- embed a proactive disclosure culture
- implement a best practice *Open by Design* approach to proactive disclosure
- engage with the community in relation to the information that is of most value and interest to them
- adopt a customer service approach to the proactive disclosure of information

Terminology

Open by Design – a systematic approach to information release that enables the proactive and informal/administrative release of government-held information, alongside the formal access processes under the FOI Act and other legislation.

Information release – the release of information and/or documents either proactively, in response to a request, or as required by law.

Proactive release – the release of information and/or documents that an agency holds or collects without someone having made an information access request. Access is given outside of the FOI Act. [See section 2 – Proactive release](#)

Informal/administrative release – the release of information and/or documents in response to a request, where release is not required by law. Informal/administrative release occurs after a specific request is received. Access is given outside of the FOI Act. [See section 3 - Informal/Administrative release](#)

Information Access Framework – an agency framework that outlines the way that information and documents held by the agency will be accessible by the public, which includes appropriate protections for sensitive information - [See section 5 – Developing an Information Access Framework](#)

Benefits of an Open by Design Approach

Systematic and well understood processes for appropriate release of government-held information promote open government and advance our system of representative democracy. Actively engaging with this guide, by building on and developing processes that follow *Open by Design* principles, will benefit agencies and the wider community and has the potential to:

- reduce the number of access applications made under the FOI Act
- create quicker outcomes and greater satisfaction for users of the agency's services
- facilitate lower costs for members of the public and agencies (compared to the applications fees and charges that may be imposed on the applicant under the FOI Act and the administrative costs for agencies in processing applications under the FOI Act)
- enable a consistent approach within agencies for appropriate protection of sensitive information
- complement engagement with the community as an alternative to using formal legal processes
- demonstrate that agencies are operating in accordance with the spirit of openness and accountability promoted in the objects of the FOI Act, which may in turn, increase trust in government

Attribution

We acknowledge that this publication is based on material developed by the Queensland Office of the Information Commissioner, the Office of the Victorian Information Commissioner and the Office of the Australian Information Commissioner. It has been modified to describe the requirements of the FOI Act.

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Disclaimer:

This Information guide is intended as a general guide only and should not be viewed as legal advice. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought. If you have any comments or suggestions on the content of this document, please submit them to advice_and_awareness@oic.wa.gov.au.

1. *Open by Design* - enabled and encouraged by the FOI Act

The FOI Act creates a right of access to documents of Western Australian State and local government agencies, including Ministers, subject to some limitations.¹ It outlines formal processes to give effect to that right.² However, it also permits, enables and encourages processes and policies that allow for release of information outside of the formal access processes.

The formal access processes under the FOI Act should only be used as a last resort.

The objects of the FOI Act³ are to:

- (a) enable the public to participate more effectively in governing the State; and
- (b) make the persons and bodies that are responsible for State and local government more accountable to the public.

Section 3(3) provides that nothing in the FOI Act is intended to prevent or discourage the publication of information or the giving of access to documents (including documents that contain exempt matter) otherwise than under the FOI Act if that can be properly done or is permitted or required by the law to be done.

Section 4 of the FOI Act requires agencies to give effect to the FOI Act in a way that assists the public to obtain access to documents promptly and at the lowest reasonable cost.

Part 5 of the FOI Act requires agencies to regularly publish an Information Statement and make its internal manuals available for inspection and purchase by members of the public.

Since the enactment of the FOI Act, WA Information Commissioners have encouraged WA State and local government agencies to consider the benefits of releasing information either proactively or informally (outside of the formal processes of the FOI Act) and reminded them that formal processes of the FOI Act should be used as a last resort.⁴

What about privacy?

The FOI Act provides some protection for the privacy of individuals in relation to FOI access applications for documents that include personal information about an individual other than the access applicant.⁵

Dealing with a request for information outside of the formal procedures of the FOI Act does not mean that an individual's privacy can or should be disregarded or ignored. In the absence of state privacy legislation, agency privacy policies are an important part of ensuring appropriate information access and privacy protection. In addition, the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth) and [privacy guidance provided by](#)

¹ See section 10 of the FOI Act.

² See Parts 2 and 4 of the FOI Act.

³ See section 3(1) of the FOI Act.

⁴ For example: The Information Commissioner's 2010 report to Parliament, entitled [The administration of freedom of information in Western Australia](#) at page 14; the Information Commissioner's submission to the 2017 *Special Inquiry into Government Programs and Projects* regarding [Transparency in Government Projects](#); and the [Joint Statement of Principles to support proactive disclosure of government-held information](#).

⁵ See Clause 3 of Schedule 1 to the FOI Act and sections 32 and 34 of the FOI Act.

[the Office of the Australian Information Commissioner](#), may also assist agencies' consideration of appropriate information access in the context of the relevant privacy principles.⁶

Information access processes should include processes to ensure that an individual's privacy is appropriately protected. This includes ensuring that appropriate proof of identity and/or authority is required before personal information is released to the person who made the request. Clarity and consistency within an agency about what is required for proof of identity or authority is a key part of appropriate information release.

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⁶ Note - Western Australian State and local government agencies are not directly subject to the *Privacy Act 1988* (Cth).

2. Proactive release (outside of the FOI Act)

Proactive release means the release of information and/or documents that an agency holds or collects without someone having made an information access request. Access is given outside of the FOI Act. Information may be proactively released by publication on an agency website or by other electronic publication or by way of publication of a hard copy document.

Documents that are available for purchase by the public or by free distribution to the public are not subject to the formal access processes of the FOI Act.⁷

Types of information that may be appropriate for proactive release

Agencies should use their knowledge of the information they hold, and the sensitivities associated with that information, to assess the kinds of information that is suitable for proactive release. Agencies are encouraged to consider the following types of information for proactive disclosure:

- categories of information for which the agency experiences a high demand
- information that is required to be published by law, such as corporate plans, financial planning documents or public registers
- information relating to issues currently faced by government which the community could help resolve
- information relating to future challenges, such as events associated with climate change
- information that will facilitate industry development, efficient markets and growth in trade and commerce
- documents tabled in Parliament
- information that assists members of the public to identify what information is held by the agency, such as a comprehensive Information Statement, which is required under the FOI Act⁸
- information that promotes agency accountability, such as reasons for certain decisions, governance arrangements and achievement of key performance targets
- information that could inform policy and program work of other agencies or non-government organisations, such as statistical information
- information that relates to a program or initiative that was the subject of a media release or highlighted in a corporate plan or strategy
- plans that underpin achievement of the agency's strategic and operational goals
- information that promotes community well-being

See [Table B](#) of the [Joint Statement of Principles to support proactive disclosure of government-held information](#) for more detail about categories of information that should be considered for proactive disclosure.

⁷ See section 6 of the FOI Act.

⁸ See sections 94 and 96 of the FOI Act.

Examples of proactive release

- data published - <https://www.data.wa.gov.au/>
- tender results - <https://www.tenders.wa.gov.au/>
- publication of other information, reports, submissions and documents on agency websites

Relevant factors to consider in deciding whether proactive release is appropriate

Factors for agencies to consider regarding whether proactive release is appropriate include:

- will the release of the information enable the public to participate more effectively in governing the State or make the agency more accountable to the public?
- have there been repeated requests for the same type of information or document, indicating that it may be of general interest to the public and should be made publicly available?
- does the information contain sensitive information that should be protected from general release – for example, personal information or commercial information about third parties?

Good practice for proactive release

Indicators of effective practices and processes for proactive release include:

- easy to find and searchable information about what kinds of documents the agency holds and how to access them - for example an **Access to Information** footer on the Home-page of the agency's website, which links to a webpage that explains how to access information and documents from the agency
- web documents are accessible to as many people as possible – See the Consistent User Experience Standard and the [World Wide Web Consortium \(W3C\) Web Content Accessibility Guides](#)
- projects for the development of proactive release processes are identified in information management planning

3. Informal/Administrative release (outside of the FOI Act)

Informal/administrative release is the release of information and/or documents in response to a request, where release is not required by law. Access is given outside of the FOI Act. Informal/administrative release of information may be a one-off or a standard process under an agency policy.

It may involve giving access to documents (including by way of inspection) in part or in full, or providing information over the telephone or by email, in response to the request.

Appropriate informal/administrative release of information is consistent with agency obligations under section 4 of the FOI Act, to assist the public to obtain access to documents promptly and at the lowest reasonable cost. It is also consistent with the objects of the FOI Act to enable the public to participate more effectively in governing the State and to make the persons and bodies responsible for State and local government more accountable to the public.

Types of information that may be appropriate for informal/administrative release

Agencies should use their knowledge of the information they hold, and the sensitivities associated with that information, to assess the kinds of information that is suitable for informal/administrative release. The kinds of documents or information that may be suitable for informal/administrative release include:

- documents containing the personal information of the individual making the request (for example, correspondence to the individual, applications made by the individual, agency assessment of those applications, documents supplied by the individual and records of contact with the individual)
- statistics or data relating to the agency's key functions and activities (excluding data containing personal information)
- information available on the agency's website that the person would like to access in a different format (for example, in hard copy)
- documents that would be released in full if the request were made under the FOI Act
- information that can be provided more simply and efficiently than through an FOI request, such as information from documents that would be heavily edited if released under the FOI Act, or information about the process followed or issues considered in reaching or preparing a particular decision

Examples of informal/administrative release

Information or documents for which the agency receives regular or routine requests may prompt the agency to set up designated release processes. For example:

- WA Police Direct - <https://www.police.wa.gov.au/Police-Direct/Apply-for-Information>
- DoT direct - <https://www.transport.wa.gov.au/dotdirect/dotdirect.asp>

Relevant factors to consider in deciding whether informal/administrative release is appropriate

Factors for agencies to consider regarding whether information release is appropriate include:

- who is requesting the documents and for what purpose – for example, is the request for personal information about the individual and is it made to update that personal information?
- are there statutory secrecy provisions or other restrictions that may prevent informal/administrative release of the information?
- is the information sensitive in relation to third parties – for example, personal or business information - and what are the factors supporting release or withholding of the information?
- what are the functions and activities of the agency – would release increase transparency and accountability around those functions and activities?
- is the information of a kind that would be released if it was requested under the FOI Act ?
- would there be any significant adverse effects as a result of releasing the information, either generally or to a particular individual?
- is release of the information approved by the relevant officer within the agency?

Good practice for informal/administrative release

While informal/administrative release is discretionary, it is appropriate for agencies to have clarity about when and how to use informal/administrative release within the agency. Agencies are encouraged to consider the following suggestions for good information release practice:

- develop, and regularly review, an information release policy to assist agency officers to efficiently identify types and categories of documents that can be routinely released informally/administratively
- ensure that records that include personal information or other sensitive material have been identified and have appropriate protections
- develop clear policies regarding the requirements to verify the identity of individuals when they request their own personal information
- record the informal/administrative release decision – consider keeping a record of documents that are made available informally, including any conditions attached to the release and relevant considerations to support the informal/administrative release decision
- ensure clear authority is given to agency officers to appropriately release information without the need for an FOI access application
- if a request cannot be dealt with by informal/administrative release, advise the person making the request of their right to make a formal request under the FOI Act

Can an FOI access application be dealt with by informal/administrative release?

If an agency receives an FOI access application, it is open to the agency to contact the applicant to **seek agreement** to deal with the application on an informal basis. Informal/administrative release may benefit the applicant and the agency by allowing the agency to provide documents in a more timely way.

However, if an applicant makes a valid access application under the FOI Act, the agency cannot compel the applicant to accept release through an informal form of release. Some applicants may wish to pursue access under the FOI Act to ensure that they have review rights in relation to any access given by the agency.

An agency may negotiate with the access applicant to deal with part of an access application under the FOI Act and to release other information informally/administratively outside of the FOI Act. However, this should only be done with the agreement of the access applicant.

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4. Access under the FOI Act contrasted with release outside of the FOI Act

The following table outlines some of the key differences between the formal access processes of the FOI Act and processes for proactive and informal/administrative release of government-held information.

| FOI Act | Agency proactive and informal/administrative release |
|---|---|
| The FOI Act creates a right of access subject to limitations ⁹ that is exercised by following particular processes outlined in the FOI Act. | Proactive and informal/administrative release is at the discretion of the agency. |
| A request made under the FOI Act must meet certain requirements. ¹⁰ For example – the application must be in writing. | A request made outside of the FOI Act does not have to meet any specific requirements, although an agency may choose to establish processes for particular kinds of requests. For example - the person making the request may be required to complete a request form or enter information in an online portal. |
| The FOI Act outlines timeframes in which the processes for dealing with an access application must be completed and the consequences of not meeting the timeframes. ¹¹ | The timeframes for dealing with proactive and informal/administrative release are at the discretion of the agency. However, if an agency is unable to deal with an informal request within a reasonable period, it would be appropriate to refer the person making the request to their rights under the FOI Act. |
| Parties to an FOI access application must be provided with a written notice of decision in relation to the access application that complies with the FOI Act. ¹² | Processes for proactive and informal/administrative release are at the discretion of the agency. A written decision is not required under proactive or informal/administrative release. |

⁹ See section 10(1).

¹⁰ See section 12.

¹¹ For example: sections 13(1) and (3), 19, 40(2), 43(2)49(2), 66(3) and 73(3) - See the [FOI Coordinators Manual](#) for information.

¹² See sections 13(2), 30, 34 and 49.

| | |
|--|---|
| <p>The FOI Act outlines particular processes in relation to a third party's personal information and commercial or business information and gives third parties review rights in relation to disclosure of their information contrary to their views.¹³</p> | <p>Third party rights are not specifically protected but agencies can have their own policies to protect third party information where appropriate.</p> |
| <p>Decisions made in relation to the exercise of the right under the FOI Act are subject to review by an independent body – the Information Commissioner.¹⁴</p> | <p>Decisions made in relation to proactive or informal/administrative release are not subject to review by the Information Commissioner under the FOI Act.</p> |
| <p>An agency cannot place any conditions or restrictions on an applicant's use or further publication of a document that is released under the FOI Act.</p> | <p>Agencies may make special information release arrangements for particular purposes. For example - it is common to impose a temporary embargo upon public reporting of government announcements or news releases; and researchers are sometimes given conditional access to confidential or privileged information. However, if a person seeks access with no restrictions on use, it may be appropriate to refer them to their rights under the FOI Act.</p> |
| <p>The requested information must be recorded in an existing document held by the agency.¹⁵</p> | <p>Agencies may create a document or documents or answer questions in order to satisfy a request.</p> |
| <p>Note: If an applicant makes a valid access application under the FOI Act, the agency cannot compel the applicant to accept release through an informal form of release. Some applicants may wish to pursue access under the FOI Act to ensure that they have review rights in relation to any access given by the agency.</p> <p>However, if documents are freely available to the public, the access provisions of the FOI Act do not apply.¹⁶</p> | |

¹³ See sections 32 to 35 of the FOI Act.

¹⁴ See section 65 of the FOI Act.

¹⁵ See sections 10 and 12 of the FOI Act.

¹⁶ See section 6 of the FOI Act.

Advantages of information release outside of the FOI Act

Information release outside of the FOI Act can benefit both agencies and the public. Advantages include:

- it can allow for timely and low cost disclosure of appropriate information
- it may reduce agency time and resources otherwise spent processing requests under the FOI Act
- there is greater flexibility regarding the form of release - for example, agencies may generate a report or summary of information rather than making a particular document available
- there is greater flexibility regarding timeframes
- it may assist to streamline other processes administered by the agency
- there is potential to impose conditions on access and use where appropriate
- proactive and informal/administrative release is at the discretion of the agency
- it demonstrates a commitment to openness, accountability and transparency, which can, in turn, increase trust and confidence in government

The advantages of information release outside of the FOI Act are enhanced when there is a clear understanding within both agencies and the public about when and how information is available outside of the FOI Act. (Refer to section 5 of this guide - [Information Access Framework](#))

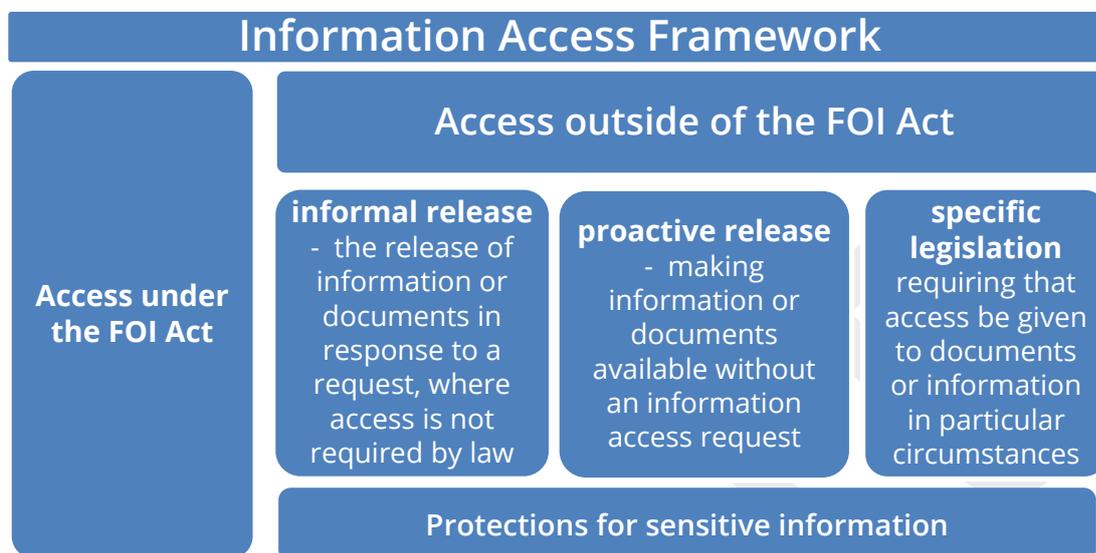
Advantages of information access under the FOI Act

Information release outside of the FOI Act may not always be appropriate. The reasons why agencies or the public might prefer to pursue access under the formal procedures of the FOI Act instead of informal/administrative release include:

- there are review rights for the person making the request under the FOI Act
- there are legislative protections for third parties under the FOI Act
- the FOI Act processes are intended to minimise the potential for disclosure of sensitive personal, business, commercial or legally privileged information (however, appropriate administrative processes and policies should minimise the risk of inappropriate disclosure)
- agencies will have the protections afforded by the FOI Act (however, appropriate administrative processes and policies should lessen the need for such protections)
- if substantial time is required for informal/administrative release, it may be appropriate to refer a person to their right to make an access application under the FOI Act

5. Developing an *Information Access Framework*

Agencies are encouraged to create and publish an *Information Access Framework* that clearly outlines the various pathways by which information and documents held by the agency can be accessed by the public.



The access pathways will come within the broad access categories described in the model *Information Access Framework* above.

An *Information Access Framework* should always include appropriate protections for sensitive information, including personal information, that should not be routinely disclosed.

An *Information Access Framework* can be an **effective tool** to:

- promote efficient use of agency resources when responding to requests for information
- provide agency officers with greater clarity about their roles and responsibilities in relation to the release of information
- create confidence in agency officers to release information where appropriate
- build privacy considerations into the release of information so that privacy is appropriately protected as a matter of course when information is released
- ensure that the agency's website or other pathways to access information are clear and easy to follow by both agency officers and the public
- ensure that proactive and informal/administrative release arrangements are well promoted and highly visible
- increase agency responsiveness to requests for information
- ensure that the public understands how proactive and informal/administrative release works in the agency

Characteristics of an effective Information Access Framework

An effective *Information Access Framework* **should include:**

- access pathways under the FOI Act and outside of the FOI Act that are clear and easy to find and follow
- reference to any specific legislation that requires or allows access in certain circumstances – see [Access under other specific legislation](#)
- clarity for agency officers about who is authorised to release information and under what circumstances
- an emphasis that, where possible, requested information should be released informally and that formal applications under the FOI Act should only be required as a last resort
- processes that require assessment of opportunities for proactive release for any new project or initiative
- process for regular reflection about routine requests for information as an opportunity for proactive and/or informal/administrative release – see [Routine requests](#)
- mechanisms to prevent third party interests from being inappropriately compromised
- compliance with agency privacy policies

An agency *Information Access Framework* should be approved and promoted by the principal officer of the agency, both throughout the agency and to the public. Customer service contacts and call centre officers should be aware of the *Information Access Framework*, including what information has been made available proactively, any informal/administrative release processes and how to request documents under the FOI Act.

Routine Requests

If there are requests for documents or information that an agency receives on a regular or routine basis, agencies should consider whether the information can be proactively or informally/administratively released outside of the FOI Act.

Examples:

- individual's payment summaries (informal/administrative release)
- information provided to the agency by the person making the request or vice versa (informal/administrative release)
- published reports or other publicly available information (proactive release)

Access under other specific legislation

Some agencies are required to provide access to certain information in accordance with specific legislation. An *Information Access Framework* should recognise these legislative access rights and provide information about the process for accessing the information under the relevant legislation.

If a document is accessible under legislation either by inspection or copy for a fee or not, the documents are not accessible under the FOI Act.¹⁷

Using agency Information Statements to support an Information Access Framework

The FOI Act requires most agencies to regularly publish an Information Statement that includes specific information as outlined in the FOI Act.¹⁸ This includes information about the structure and functions of the agency; an outline of the types of documents held by the agency; and information on how those documents can be accessed by the public. Agencies are also required to have internal manuals available for inspection and purchase by members of the public.¹⁹

An agency's Information Statement can be a valuable tool to enable timely information release and can provide a starting point for agencies to periodically review what information they routinely make available to the public outside the FOI process.²⁰ A good Information Statement can be a very useful resource for both agencies and members of the public.

Agencies are encouraged to make their Information Statement easy to access, searchable and highly visible on their websites. In addition, it is appropriate for agencies to build on the requirements for an Information Statement and to consider including material about:

- the information the agency has **proactively released** outside of the FOI Act and how the information can be accessed
- the information that may be subject to **informal/administrative release** outside of the FOI Act and how the information can be accessed
- any terms on which the information will be made available, including any charges
- the alternative formats in which information is available
- appropriate contact details

Agencies should also consider ensuring that the Information Statement or the information it describes, where practicable, is made available via alternative channels to the agency website for individuals that are not digitally literate or do not have internet access.

For information about the current requirements for an agency Information Statement, see the OIC's [Information Statement Guidelines](#).

¹⁷ See section 6 of the FOI Act

¹⁸ See sections 94 and 96 of the FOI Act

¹⁹ Section 97 of the FOI Act

²⁰ The Information Commissioner 2010 Report to Parliament, entitled [The administration of freedom of information in Western Australia](#) at page 11