



# Producing Documents to the Information Commissioner

## External review guide for agencies

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### **Your agency's obligations when producing documents**

The main function of the Information Commissioner (**the Commissioner**) is to review decisions on access to documents or amendment of personal information. Applications for external review to the Commissioner are referred to as 'complaints'.

After receiving a complaint, the Commissioner usually writes to the Principal Officer of the agency advising of the complaint. That letter will also require the agency to produce certain documents to the Commissioner within a specified time period.

Failure to comply is an offence under the *Freedom of Information Act 1992* (**the FOI Act**).

The Commissioner will only grant extensions of time in exceptional circumstances and only after a written request has been received prior to the due date.

### **What documents will your agency be required to produce?**

The precise document production requirements may vary from case to case. Therefore, it is important that you read the letter from the Commissioner carefully and follow the instructions. The following is a general guide to the Commissioner's usual requirements.

#### *Disputed documents*

The Commissioner will generally only require the production of a complete copy of any documents in dispute. However, in lieu of requiring the production of original documents, the Commissioner will also require the agency to complete a Statement of Certification that states that the documents produced are true and complete copies of the original documents.

If your agency's decision was to give access to an edited copy of a document, the agency will be required to clearly highlight the deleted information so that it remains visible to the Commissioner.

Where multiple exemptions are claimed for information in a document, the agency will be required to clearly differentiate the information that is subject to each of the exemption claims.

All documents should be clearly identified by reference to the description given in the agency's notices of decision.

Where there are numerous documents, a separate schedule which describes each document may be required.

### *The agency's FOI file*

The Commissioner will usually require the agency to produce a complete copy of its FOI file maintained in respect of the application. The term 'FOI file' means all relevant documents that together record how the agency dealt with the application. Such documents will include:

- the application made to the agency;
- any record of communications with the applicant;
- any record of communications with other external parties;
- the initial notice of decision;
- the application for internal review;
- the internal review notice of decision;
- any draft documents; and
- any record of internal communications.

The original of the FOI file will not usually be required.

### **How do I produce documents to the Commissioner?**

It is up to you to decide upon an efficient and appropriately secure method for ensuring your documents are produced to the Commissioner by the date required.

For documents that are proposed to be delivered to our office by hand, it is your responsibility to contact our office to make arrangements in advance.

For documents that are produced by a third party courier or by post, there must be a cover letter that quotes our reference number and clearly describes the documents being produced.

If you have prepared a schedule of the documents, please include that schedule and ensure that the numbering of documents on the schedule matches the numbering on the documents themselves.

After the documents have been delivered, you will be given a receipt by the Commissioner for your records.

### *Electronic records*

The Commissioner currently has a limited capability to receive documents in electronic form. Therefore, the Commissioner will generally prefer that a printed version be made and be organised in a manner to assist the Commissioner's inquiries. However, should an agency have good reason not to produce a printed version of the requested documents, it may only do so with the approval of the Commissioner's office. Therefore, the onus is on the agency to contact the Commissioner's office to discuss the particular circumstances of the matter.

Where the disputed documents are only held in electronic form, and it is not practicable to make a printed version, such as audio/visual documents, the agency is required to provide a copy of the relevant part of the document that falls within the scope of the

application and provide it in a format that is readily accessible by the Commissioner. The agency may be required to provide additional information to assist the Commissioner to examine the relevant part of such documents.

If you are unsure of what to do, please call the Commissioner's office well before the due date.

This is a general guide to the procedures used by the Commissioner when dealing with complaints under the FOI Act.

**Office of the Information Commissioner**

Phone: (08) 6551 7888

Freecall (WA country): 1800 621 244

Fax: (08) 6551 7889

Email: [info@foi.wa.gov.au](mailto:info@foi.wa.gov.au)

Web: [www.foi.wa.gov.au](http://www.foi.wa.gov.au)

Address: Albert Facey House, 469 Wellington Street, Perth WA 6000