

Processing FOI Applications

Guideline

Version: 19

STATE RECORDS

of South Australia



Government of South Australia
State Records

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Processing FOI Applications

Purpose

This guideline assists agencies in processing Freedom of Information (FOI) applications. It can be used by all agencies subject to the *Freedom of Information Act 1991* (FOI Act), including state government agencies, ministerial offices, statutory authorities, local government councils and universities.

This guideline includes:

- » detailed information for each step of the FOI process
- » process maps for state government agencies, local governments and universities.

The [Freedom of Information in South Australia webpage](#) found on the State Records website has available other information sheets and guidelines regarding the FOI Act and progressing FOI applications .

Types of FOI applications

There are two types of FOI applications under the FOI Act, an application:

- » for access to an agency's documents – see Part 3 of the FOI Act
- » to amend an agency's documents – see Part 4 of the FOI Act.

Applications for access to an agency's documents are classified as either personal or non-personal. Where the applicant is requesting their own personal information (or someone is requesting the personal information on behalf of someone else) it is considered a personal application. All other applications are deemed non-personal applications.

The FOI Act requires applications to be dealt with on behalf of an agency by an accredited FOI officer (sections 14(1) and 32(1)) for both types of applications.

Applications to access an agency's documents will be the main focus of this guideline. However, advice will be provided for applications for amendment where relevant.

Processing FOI applications

The following steps will assist agencies to process FOI applications in a logical sequence that is consistent with the requirements of the FOI Act. Process maps, one for state government agencies and one for local government and universities, are located at the end of this guideline. The step numbers within the guideline correspond with the numbers applied to the steps on the process maps.

These steps refer to points in the process where correspondence should be sent to the applicant or third parties as well as reporting requirements under the FOI Act or relevant policies. Templates can be located on the State Records website.

Step 1 FOI application received

FOI applications can only be received and processed by an 'agency' defined under section 4 of the FOI Act which has not been exempt under Schedule 2 of the FOI Act or by regulation (*Freedom of Information (Exempt Agency) Regulations 2008*).

On receiving an application, ensure the application has a clear 'date received' notation. The time limit (day 1 of 30 calendar days) commences the day after receipt of an application provided it is a valid application (defined in Step 2).

A new file for the application should be created and the application registered in your agency's information management system.



An application must be dealt with as soon as practicable (within 30 calendar days) after it is received (sections 14(2) and 32(2)).

Deemed refusal

A deemed refusal is where an agency fails to make a determination and notify the applicant within the 30 calendar day timeframe and the time limit has not been extended under section 14A or by negotiation with the applicant. The applicant can take it as the agency refusing access to the documents (see section 19(2) of the FOI Act). Where a deemed refusal occurs an applicant can exercise their rights of review and appeal. Agencies should advise the applicant of their rights of review and appeal once an application becomes a deemed refusal.

However, there is nothing in the FOI Act that prevents an agency from providing access to documents after a deemed refusal (as per section 19(2a)). Agencies can continue to process an FOI application even after the timeframe for processing has lapsed.

Where an agency provides access to documents after a deemed refusal this is held to be a 'determination' under the FOI Act, attracting the protections afforded to the agency's provision of access under sections 50-52.

Step 2 Is the application valid?

Check the validity of the application for access to information. To be valid, section 13 of the FOI Act requires an application must:

- » be in writing
- » state it is made under the FOI Act
- » have the application fee attached (or valid reasons for fee waiver)
- » provide enough information to identify documents
- » have an Australian postal address specified
- » be lodged at an office of the agency.

If the application is valid, correspondence acknowledging receipt of the application should be sent to the applicant, which includes advice about next steps and the review process.

If the application is not valid, the accredited FOI officer is obligated to assist the applicant to make it a valid application (section 15). This can be achieved by contacting the applicant and advising them of what they need to do to make their application valid.



Importantly, the 30 calendar day time limit does not commence until the application is considered valid.



Valid applications should be entered into a case management system or reporting register such as State Records [FOI Application Data Collation Spreadsheet](#). The information to be recorded at this point includes the:

- » date the application was received
- » application type (personal or non-personal)
- » type of applicant (MP, member of the public, etc).

For information on the criteria for making applications to amend personal information refer to sections 30 and 31 of the FOI Act or see the State Records [FOI Amendment Applications webpage](#).

For information on the criteria for making internal review applications refer to sections 29 or 38 of the FOI Act.

Time limits for processing

The following time limits apply to the processing of FOI applications:

| Number of Days | Time limit Action |
|---------------------------------------|---|
| <p>Within 30 calendar days</p> | <ul style="list-style-type: none"> » For an agency to make a determination (section 14(2)), unless the agency formally extends the time to deal with the application under section 14A of the FOI Act. » For an agency to amend a document that contains information concerning the applicant’s personal affairs (section 32(2)). » For an applicant to lodge an application for an internal review, i.e. an application must be lodged within 30 calendar days after the day on which notice of the determination is given to the applicant, or within such further time as the principal officer may allow. » For an applicant to lodge an application for external review to the Ombudsman, An application must be lodged within 30 calendar days after notice of the determination on review is given OR if there has been no review, within 30 calendar days after the date of the determination. The Ombudsman may, in its discretion, extend the time for making an external review application. » To seek a review by the South Australian Civil and Administrative Tribunal, within 30 calendar days after notice of the internal review decision, or from the date of a determination that is not subject to internal review, or from the date of receiving an external review determination (section 40). |
| <p>Within 20 calendar days</p> | <ul style="list-style-type: none"> » For a Principal Officer to make a determination to extend the time limit of an application, including giving written notice of the extension to the applicant (section 14A). |
| <p>Within 14 calendar Days</p> | <ul style="list-style-type: none"> » For a Principal Officer to make a determination on an internal review (sections 29(5) and 38(4)). » For an agency to transfer an application (either in part or in full) to another agency to allow the receiving agency the maximum time to process the application (section 16(6)). |

Notes about time limits

Section 44 of the *Legislation Interpretation Act 2021* provides specific guidance to assist in determining when time limits begin and end.

The time for processing an application, be it for access to information or review of a determination, commences on the day after the application is submitted (i.e. day 1).

- » Application submitted – day 0
- » Day after application submitted – day 1
- » Due date (without extensions) – day 30

The day the determination is finalised and provided to the applicant is included in the time limit (i.e. your notice of determination must be provided by day 30).

If the last day of the time limit prescribed in the FOI Act for completing an action (i.e. day 30, day 20, or day 14) falls on a Saturday, Sunday or public holiday, the last day is taken to be the following working day. Importantly, this has no impact on the beginning of the time limit. In other words, day 1 is Saturday if an application is received on a Friday.

Is the applicant entitled to a fee waiver?

Section 53 of the FOI Act allows an agency to waive, reduce or remit fees and charges in accordance with *the Freedom of Information (Fees and Charges) Regulations 2018* (Fees and Charges Regulations). This ensures that financially disadvantaged people are not prevented from accessing documents or amending their personal records under the FOI Act.

Reasons for applying a fee waiver include:

- » the applicant is a concession card holder (e.g. by showing or providing a photocopy of their concession card)
- » payment of the fee or charge would cause the applicant financial hardship
- » the applicant is a Member of Parliament (and the cost of processing the application does not exceed \$1000) or
- » at the agencies discretion (if the above criteria cannot be satisfied, the agency can still decide to reduce, waive or remit fees or charges).



The reasons for waiving or remitting the fee or charge (e.g. concession card holder, financial hardship or Member of Parliament) must be recorded for reporting purposes under the FOI Act.

For more information, please refer to the [FOI Fees and Charges](#) webpage and the [FOI Annual Reporting Guideline](#) available on the State Records website.

Dealing with an FOI application from another agency

Although state government agencies are administratively separate, they all exist as one legal entity – the South Australian government. For this reason, state government agencies cannot apply to each other for access to documents under the FOI Act.

This limitation does not apply to local government councils, universities or state government instrumentalities, for example SA Water.

In the first instance, non-state government agencies should seek access to state government agency documents through administrative arrangements rather than through the FOI process. If appropriate, state government agencies should establish information sharing agreements with local government councils, universities and instrumentalities to ensure information required for a legitimate purpose is made available in a timely manner and in accordance with other legislation and government policies, such as the Information Privacy Principles Instruction, issued as Premier and Cabinet Circular No 12.

Step 3 Identify all documents covered by the application

Once the application is deemed valid, you should conduct a thorough search to locate all the documents that fall within the scope of the application. Referred to as a sufficiency of search, this often involves several people and different systems (both manual and digital).

It is important to liaise with the person(s) in your agency who has the best knowledge and association with the relevant documents to identify those that fall within the scope of the application. For example, it would be reasonable to assume the Finance Manager would have knowledge of your agency's budget documentation.

For more information on sufficiency of search requirements, see State Records [FOI and Sufficiency of Search webpage](#).

Section 4(1) of the FOI Act provides a “**document** includes anything in which information is stored or from which information may be reproduced”.

This is a very broad definition and can involve many types of documents including:

- » paper documents, including drafts
- » temporary and permanent files
- » notes (including handwritten post-it notes)
- » digital documents including databases and emails
- » chat channels (for example Microsoft Teams)
- » DVDs, video tapes or film recordings
- » photos, maps and plans
- » mobile phone SMS & MMS messages.

Section 4(4) of the FOI Act considers an agency to hold a document if it has an immediate right of access to it. This means that an agency is considered to hold the documents if it has physical possession or has a right to access the documents from other places.

Documents in the possession of external groups that agencies have a right to access are also considered to be held by the agency and must be considered if they fall within the scope of the application. For example:

- » permanent records transferred to the custody of State Records
- » temporary records transferred to temporary storage providers
- » contracted service providers – please refer to the [Contracting and Information Assets Standard](#).

In addition, section 4(5) of the FOI Act provides that where an agency can produce a document based on information held in computer storage (such as a database), the agency is taken to hold that document. For example, if a database holds information the applicant is seeking extraction of that data should occur and a report be printed.

Agencies are not obliged to research information. The obligation is only to provide access to existing documents or documents that can readily be produced from information held in

computer databases. For example, your agency is not obliged to create a list identifying all supporting FOI officers if that list does not already exist.

It is important to keep evidence of all search results and copies of emails, telephone calls, correspondence and communications resulting from the search and collection of documents.

State Records has developed a template form for internal search requests: see the [FOI Letters and Documents Templates webpage](#).

Records not held by your agency

Occasionally, in your attempts to identify documents covered by an application you will return with nothing found.

In this instance, section 23(1)(b) requires you to give written notice if, after reasonable searches, you can confirm that a document either does not exist or once did but no longer does.

For example, a document will no longer exist if it has been destroyed in accordance with an approved disposal schedule or by accident, such as a flood or fire.

When notifying under this section, you should explain:

- » that section 23(1)(b) provides the authority for the notification
- » the searches, enquiries and considerations undertaken
- » if the document did once exist, why this is no longer the case and
- » as the notification is not a determination under the FOI Act, the applicant does not have review rights (instead they can submit a complaint to the Ombudsman).



Notices provided under section 23(1)(b) are required to be recorded for reporting purposes under the FOI Act.

Agency records in the custody of State Records

When an agency transfers a permanent value document into the custody of State Records, the agency remains the owner of the document and is considered to continue to possess the document for the purposes of the FOI Act. Any application seeking access to that document cannot be transferred to State Records, as State Records is only the custodian and is not responsible under the FOI Act for access to the document. Therefore, the agency must consider documents in the custody of State Records if they are within the scope of the application.

Where the documents have an access determination of 'Open' under the *State Records Act 1997*, an agency can refuse the FOI application and direct the applicant to State Records' reading room or the State Records website.

For more information on access determinations, see the State Records [Public Access Determinations](#) webpage.

Step 4 Is this the correct Agency?

If your agency does not hold the document/s being sought by the applicant, the application may be transferred to another agency if the documents are, to your knowledge:

- » held by another agency (section 16(1)(a)), or
- » more closely related to the functions of another agency (section 16(1)(b)).

Transfers can be made between state government agencies, local government councils and universities. The act of transferring an application is a processing matter, not a determination under the FOI Act.

Transfer process

Step 1: Search for documents within your agency.

Proceed to step 2, if you:

- » find no documents and believe the application relates to the functions of another agency, or
- » do find documents but believe
 - the documents found relate more closely to the functions of another agency, or
 - the application itself also relates to the functions of another agency (also known as a partial transfer).

Otherwise, process the application as normal.

Step 2: Contact the receiving agency to discuss the application scope before transferring.

If not agreed, it is recommended you process the application as normal and advise the applicant they may wish to make an application to the proposed 'receiving agency' as well, as they may hold relevant documents.

If agreed, a formal transfer must be made under section 16.

Alternatively, a partial transfer may be appropriate. The transferring agency should then:

- » provide a copy of the application to the receiving agency, as well as a copy of any documents in scope held by the transferring agency (see section 16(2) of the FOI Act)
- » advise the receiving agency of the receipt date of the application
- » advise the applicant of the transfer and the date of the transfer, in writing (see sections 16(3) and 16(4) of the FOI Act)
- » record the application as transferred for reporting purposes.

Formal transfers ensure the receiving agency has the appropriate authority to process the application as well as ensure a deemed refusal cannot be made against the transferring agency.

There is no obligation to transfer under the FOI Act. However, failing to transfer applications formally could lead to a review process.



Where an agency has transferred an application in full this needs to be recorded for reporting purposes under the FOI Act.

For more information on how to do this refer to the [FOI Annual Reporting Guideline](#).

Partial transfer

A partial transfer to another agency (or agencies) is not discussed in the legislation. However, the FOI Act does not prevent agencies from partially transferring an application.

When an agency transfers an application in part, it should:

- » notify the applicant in writing at the time of transfer
- » advise which agency or agencies the application was partially transferred to.

Each agency is responsible for dealing with and issuing a separate notice of determination for the portion of the application they have processed.



Partial transfers do not need to be recorded for reporting purposes under the FOI Act.

Application fees

The transferring agency should not keep the application fee (if an application fee is attached) when transferring a FOI application in full. The fee should be refunded or transferred along with the application. The transferring agency must advise the applicant that they will instead need to pay the application fee to the agency that will receive the application if the fee is being refunded.

There is no need to refund an application fee paid via the SA.GOV.AU FOI application form unless the application is being transferred to a local council or university. The money paid via this form is collected by the Department of Treasury and Finance. See our [Online FOI Applications Refund](#) page for more information.

If your agency partially transfers an application to another agency, the transferring agency can keep the application fee. The receiving agency should not request that the applicant pay another application fee.

Time Limit for transfers

Transferring a FOI application should occur as soon as possible after your search. Your agency has 14 calendar days before it reduces the time the receiving agency has to process the application.

The receiving agency has one day removed from their usual 30 calendar day processing time limit for every day past the 14 calendar day transfer time limit (section 16(6)). The receiving agency's time limit begins the day after the application is transferred (as prescribed by the *Legislation Interpretation Act 2021*). Where an agency has not transferred the application within 30 calendar days after it was received, it is considered a deemed refusal and cannot be transferred under section 16 of the FOI Act.

The effect of a delay in transferring an FOI application

The following scenarios describe the time limits for the receiving agency to deal with an FOI application that has been transferred to them. For the purposes of each scenario, it is **assumed** a search for documents has been undertaken by the transferring agency.

| Scenario | Date of receipt by original agency | Date of transferral | Time limit for receiving agency to process application | Example |
|---|------------------------------------|---------------------|---|---|
| Scenario 1 (application transferred within 14 days) | Day 2 | Day 3 | The application is now due on day 32. The receiving agency has 30 calendar days to process. | <p>Applicant submits FOI application: Day 0</p> <p>Transfer deadline: Day 14</p> <p>Day 2: Transfer to Agency B</p> <p>Due date: Day 32</p> <p>Application received by Agency B on day 3. They have 30 days to process the application</p> |
| Scenario 2 (application transferred on the 14th day) | Day 14 | Day 15 | The application is now due on day 44. The receiving agency has 30 calendar days to process. | <p>Applicant submits FOI application: Day 0</p> <p>Transfer deadline: Day 14</p> <p>Day 14: Transfer to Agency B</p> <p>Due date: Day 44</p> <p>Application received by Agency B on day 15. They have 30 days to process the application</p> |
| Scenario 3 (application transfer time 15 days or more) | Day 24 | Day 25 | Section 16(6)(2) means that the due date is locked at day 44 because the 14 calendar day transfer deadline has passed. The 44 days cap can only be extended if an extension of time is made in accordance with section 14A. As this application was received by Agency B on day 25 and no section 14A extension was sought, it only leaves Agency B 19 calendar days to process. | <p>Applicant submits FOI application: Day 0</p> <p>Transfer deadline: Day 14</p> <p>Day 24: Transfer to Agency B</p> <p>Due date: Day 44</p> <p>Application received by Agency B on day 25. They only have 19 days to process the application</p> |

See the [Transferring FOI applications](#) webpage for more information about transfers.

State Records has developed a template letter for advising the applicant of a transfer: See the State Records [FOI Letters and Documents Templates](#) webpage.

Exempt agencies

An FOI application cannot be transferred to an agency that is not an agency under the FOI Act or is deemed exempt by Schedule 2 of the FOI Act or by regulation.

The original agency could:

- » refuse access on the basis it does not hold the documents. If this option is chosen, the agency should explain in the determination that another government body may hold the documents but they are exempt and therefore the application cannot be transferred.
- » process the application for the documents it does hold.

It is important to note that if an agency holds documents created by an exempt agency, those documents are not automatically exempt. Your agency must still process the application and make a determination.

If an agency holds documents of an exempt agency they also need to check they are not an exempt agency for the purpose of those documents. For example, documents of the South Australian Certificate of Education (SACE) Board relating to the results of students in SACE assessments are exempt information under the regulations and cannot be released.

FOI and access to Cabinet documents

Under Premier and Cabinet Circular 31 *Freedom of Information Release of Cabinet Documents Ten Year Rule* (PC031), an agency (other than the Department of the Premier and Cabinet (DPC)) that receives an FOI application seeking access to Cabinet documents between 10 and 20 years old must transfer the application to DPC in accordance with section 16(1)(a) of the FOI Act.

As a result of PC031, an application for access to Cabinet documents between 10 and 20 years old is not automatically exempt under Clause 1 of the FOI Act (Cabinet documents). However other exemptions and requirements under the FOI Act continue to apply where appropriate.

This policy does not apply to documents of Executive Council.

For more information, please refer to PC031 or the State Records [Cabinet Document Exemption webpage](#).

Step 5 Are the documents otherwise available?

Section 20 of the FOI Act allows your agency to refuse an application made for documents:

- » that are available for purchase (section 20(1)(c)) or
- » that can be inspected at the agency or at some other agency, including those that form part of a public register (section 20(1)(b)).

To rely on section 20(1)(b), these documents, or the process required to access them, must be included on your agency's information statement.

While these applications can be refused, your agency could consider asking the applicant to withdraw the application and provide the details of where or how the documents are made available. You should also consider returning the application fee for documents available outside of FOI.

If some of the documents sought are available for inspection or purchase and some are not, your agency should consider the following two options:

1. Explain to the applicant that some of the documents they have requested are available for inspection or purchase and seek formal agreement to narrow the scope of the application to cover the remaining documents. The agency would then process the application in accordance with the FOI Act.
2. Determine the application by partially refusing access to information otherwise available.



The refusal of access to documents that are otherwise available must be recorded for reporting purposes under the FOI Act. For more information, see the [FOI Annual Reporting Guideline](#).

Release of documents outside the FOI Act

If it is proper and reasonable to do so, or permitted under other legislation, the FOI Act does not prevent or discourage:

- » the publication of information, or
- » the giving of access to or the amending of documents.

This is known as proactive disclosure or administrative release. More information can be found on the State Records [Administrative Disclosure and Open Data](#) webpage.

Access permitted under other legislation

Your agency should refuse an FOI application where access to documents requested is already permitted or required under other legislation. Where this occurs, applicants should be advised of this and any applicable fees. Access should not be provided under FOI.

For example, under section 61 of the *Local Government Act 1999*, a member of a council has a statutory right to access documents without charge, provided the documents are to be used in connection with their function or duties as a member of the council.

Withdrawal of application

Sometimes, an applicant will withdraw their application. This might arise for a variety of reasons, for example they might not want to pay the advance deposit and the cost of processing the application, or the agency may have advised that there are no documents within the scope of their application.

If a withdrawal occurs, the agency should ensure they have the withdrawal notification in writing, acknowledge the withdrawal and close the file.



The withdrawal, and the date it was withdrawn, should be recorded as an outcome for reporting purposes.

Step 6 Is the application excessive?

Sometimes the scope of the application results in a large number of documents being captured by the FOI application.

If the application is very broad or you are having difficulty identifying exactly what information the applicant wants to access, you should contact the applicant and discuss narrowing the scope of the application in accordance with section 18(2) of the FOI Act. If the applicant agrees to narrow the scope of the application, you will need to confirm the agreed terms in writing with the applicant.

If the agency believes the work involved in processing the application will exceed the application fee, an advance deposit from the applicant can be sought (see step 9 for further information).

If the applicant does not agree to narrow the scope of the application, section 18(1) of the FOI Act could be applied to refuse the application. See step 7 for further information.



Importantly, the time frames associated with processing an FOI application (30 calendar days) **do not stop** while narrowing the scope with the applicant.

Step 7 Will the application unreasonably divert the agency's resources?

If the applicant is unwilling to reduce the scope of the application, you should establish whether dealing with the application will substantially and unreasonably divert the agency's resources, section 18(1).

You will need to refer to your **agency as a whole** (not just those responsible for processing FOI applications) to determine whether an application would substantially and unreasonably divert your agency's resources. Proper use of section 18(1) involves a careful and evidence-based estimate of the amount of the resources necessary to process the request. These resources must be of a sufficient magnitude to qualify as 'substantial' for the purpose of section 18(1).

If a decision is made that the agency's resources would be substantially and unreasonably diverted, and a reasonable time extension would not resolve this, you can refuse the application under section 18(1) of the FOI Act and issue a notice of determination.



This determination must be recorded for reporting purposes under the FOI Act.

Step 8 Is an extension of time needed (Section 14A)?

Only the Principal Officer of your agency can make a determination to extend the time limit of an application. This power cannot be delegated.

An extension of time can only be made if your agency can satisfy one or both of the following:

- » the application is for access to a large number of documents, or would necessitate processing large quantities of information, and dealing with the application within the normal time limit of 30 calendar days would unreasonably divert your agency's resources
- » the requirement to undertake consultation cannot be concluded within the normal time limit of 30 calendar days for processing the application.

Because a determination to extend the time limit of an application is made by the Principal Officer the applicant does not receive internal review rights. They may, however, seek an external review.



A determination under section 14A must be made in writing within 20 calendar days from the date the agency received the application.



The type of extension of time applied must be recorded for reporting purposes under the FOI Act.

Step 9 Fees and Charges

Fees and charges increase annually in line with an agreed indexation factor. A copy of the Fees and Charges Regulations and the Annual Fees Notice, which includes a detailed schedule of fees and charges, can be found by searching the SA Legislation website at www.legislation.sa.gov.au.

All transactions and services under the Fees and Charges Regulations have been determined exempt by virtue of Section 81-5 of *A New Tax System (Goods and Services Tax) Act 1991* Determination 2000 (No.2).

Calculation of fees and charges

In addition to the application fee already collected, your agency needs to determine whether further charges will be imposed for the processing of the FOI application, unless the applicant is eligible for a waiver of the application fee and other charges.

Section 53 of the FOI Act stipulates that fees and charges imposed must reflect the reasonable administrative costs incurred by agencies in exercising their functions under the FOI Act.

Agencies can only charge for the following activities:

| Activity | Description |
|---------------------|---|
| Finding | Searching a file index (or other places) to establish the location of documents and extracting documents from the place they are held |
| Sorting | Sorting documents to allow for scheduling |
| Compiling | Scheduling documents, giving documents a number and / or reference, and the time spent redacting exempt information |
| Copying | Photocopying documents to provide access, but not for consultation or redacting purposes |
| Consultation | Undertaking consultation required under the FOI Act. This relates to third party consultation only. ¹ |

Your agency cannot charge for seeking legal advice or internal liaison within your own agency. In addition, state government agencies cannot consult with another state government agency and therefore cannot charge for time spent liaising with them.

Your agency also cannot charge:

- » concession card holders
- » Members of Parliament, unless the costs calculated for the request exceed \$1,000
- » for applications to amend personal information or
- » for the first two hours spent when processing a personal application (i.e. when an applicant has requested access to their own personal information, or on behalf of someone else), after that charges can be applied as per the *Fees Notice*.

¹ Section 53(2aa) FOI Act

An applicant can request a review of any proposed fees and charges (section 53(3)). No fee can be charged in relation to the review.

Your agency may, as it sees fit, waive, reduce or remit a fee or charge in circumstances other than those provided for under the regulations (section 53(2a)).



Under the FOI Act, you must record the following information for reporting purposes:

- » the reason for waiving fees, if necessary
- » total fees and charges assessed (those that were applicable)
- » total fees and charges actually collected.

For more information please refer to the [FOI Annual Reporting Guideline](#).

Advance deposits (Section 17)

Where the estimated cost of dealing with the application is likely to exceed the application fee, your agency may seek an advance deposit. The request for such a payment must set out the basis on which the amount of the deposit has been calculated (section 17(4)).

The notification of the advance deposit should specify a time period within which the advance deposit must be paid and indicate payment options.

If the applicant does not pay the deposit within the period specified in the request, your agency may refuse to continue to deal with the application. Any money collected that exceeds the costs incurred by your agency in dealing with the application up to that point must be returned.



The 30 calendar day time limit for processing the application pauses and the due date adjusted until the advance deposit is paid. The time limit pauses from the day the notification for advance deposit is issued to the day the deposit is received. This is also known as “stopping the clock”.

Step 10 Examine carefully all documents relevant to the application

Once the documents relevant to the application have been identified they must be examined thoroughly to ascertain if the documents:

- » or parts of the documents, are exempt
- » contain information about the personal affairs of someone other than the applicant, or business information of another person or business
- » require consultation with other persons, organisations or agencies (see step 11 for more information)
- » contains a contract entered into by the Crown or an agency and a confidentiality clause has been included in the contract.

Crown / Agency Contracts

Any contract entered into by the Crown or your agency (including state and local government councils and universities) after 1 January 2005 ² is accessible for release under FOI unless the contract contains a confidentiality clause that has been approved by:

- » the responsible Minister (or their delegate) for state government agencies
- » a body appointed by the council (such as the elected members) for local government councils, or
- » the Vice Chancellor for universities.

Therefore, post 1 January 2005, the business affairs exemption cannot be claimed if it is a contract document. Any approved confidentiality clause will protect confidential information from disclosure under the FOI Act, but the remainder of the contract can still be considered for release.

Contracts entered into prior to 1 January 2005 are also not automatically exempt documents and should be considered for release in line with the objects and exemption clauses of the FOI Act.

In addition, state government agencies must comply with the government's [Disclosure of Government Contracts](#) (Premier and Cabinet Circular No 27).

For more information please refer to the State Records [FOI and Contracting](#) webpage.



All contracts containing a confidentiality clause must be recorded by your agency for reporting purposes under the FOI Act (schedule 1, clause 13(6)).

See State Records [Contracts Containing Confidentiality Clauses webpage](#) for more information.

² This is the date the FOI Act was amended for clause 7(3) to take effect.

Step 11 Seek opinions where necessary

Consideration should be given to seeking the expert opinions of others, to ascertain:

- » whether disclosure might affect intergovernmental relations
- » whether the document contains information that may be subject to secrecy provisions in other legislation
- » whether disclosure will affect the business affairs of any agency or person other than the applicant or if it would affect the economy of the state
- » if a document is a contract and whether it contains any confidentiality clauses approved by a Minister or an agency and, therefore, should not be released.

These (and other things) may not be within your own knowledge and so it is sensible to discuss these issues with others.

The person who has the best knowledge and association with the documents may assist in identifying the most appropriate factual source for the opinion. You may also need to seek an opinion from:

- » your Principal Officer
- » other public servants including contract administrators within agencies
- » your Minister's Office
- » the Crown Solicitor's Office.

If an opinion is sought from the Crown Solicitor's Office it should be shared with the person who has the best knowledge and association with the document to ensure that the legal advice has been properly understood.

Discussion of relevant details in relation to specific documents with one or more of the people or representatives of the organisations listed above is an important part of the decision-making process.

Government agencies and consultation

The formal consultation required by sections 25-28 of the FOI Act does not apply between state government agencies as all are considered one entity under the Crown.

However, if the document being sought was created by another agency it would be appropriate to liaise with and seek the views of that agency to establish facts so the relevant detail behind a document is properly understood.

Advise Minister's Office - for state government agencies only

When an application is received it is important to decide whether the Principal Officer of your agency (e.g. minister, chief executive officer or presiding officer, refer to section 4) and your Minister should be notified. When advising the Principal Officer and Minister of these applications, improper direction should not be given to an accredited FOI officer (or accepted by the accredited FOI officer) in relation to the processing of the application.

The Principal Officer and Minister can however direct an accredited FOI officer to make a determination. If this occurs, section 29(6) of the FOI Act should be invoked.

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Section 29(6) provides that if the Principal Officer gives such a direction, then the determination is not subject to internal review. This means the application has been determined by the Principal Officer, not the accredited FOI officer. This direction should be explained in the notice of determination provided to the applicant because it affects the applicant's review rights.

If a decision is made to advise your Minister of the application, you may also need to advise them of the outcome of that application. See step 16 for further information.

Step 12 Could consultation with third parties be required?

Sections 25-28 of the FOI Act require consultation with third parties prior to any documents being released to the applicant.

Formal consultation with a third party requires written communication between the agency and the third party. Without breaching personal privacy and where possible, copies of the documents concerned should be attached to the correspondence sent to the third party.

When consulting with third parties the following should be considered:

- » third parties do not have a power of veto over the decision to release documents and should be advised accordingly during the consultation process
- » an assessment will need to be made of all third party comments to ensure they are reasonable in the overall circumstances
- » if your decision to release the documents is against the objections of the third party, you must notify them in writing and advise them of their appeal rights
- » documents cannot be released until such time as all reviews and appeals of the third party are concluded or the time for lodging a review or appeal has lapsed.

Where consultation with the third party is not possible and it has been determined that the document requiring consultation will be released, written notice should be given to the third party (for example by writing to their last known address) which:

- » advises the third party that the agency has determined that access to the document is to be given
- » clearly describes their rights of review and appeal and how to exercise those rights
- » advises that access to the document will be deferred until such time as all reviews and appeals are concluded or the time for lodging an appeal or review has lapsed.

Records should be kept of all attempts to contact the third party as evidence of your efforts to consult.

After advising the third party that you have determined to release the documents, the applicant also needs to be informed of your decision by being provided with a notice of determination. The applicant needs to be advised that release of the documents will be delayed until such time as the period for lodging a review or appeal has lapsed or until all reviews and appeals have been concluded.

There is no need to consult if you are going to refuse access to the documents in question, see Step 13.

For further information on consultation refer to the [*Consultation and the FOI Act*](#) guideline available on the State Records website.

Step 13 Are documents, or parts of them, exempt?

Once all documents have been thoroughly examined you must decide whether there are any exemptions that would restrict access. Documents may be completely exempt or it may be possible for some of the information to be released to the applicant.

The exemptions are set out in Schedule 1 of the FOI Act. Consider carefully, the precise elements of each relevant exemption and apply those elements including any public interest tests to the documents as part of your decision-making process.

If a determination is made to refuse access to documents, a statement of reasons for that decision, including the appropriate exemption clause/s and the factual information in relation to how the clause/s applies, must be given to the applicant.

Section 3A(1)(b) of the FOI Act requires accredited FOI officers to exercise their discretion in a way that favours the disclosure of information provided it does not infringe the privacy of individuals. That is, where an exemption clause could be applied to a document or parts of a document, an agency can still determine to release the document if it is appropriate to do so in the circumstances and all necessary consultation has occurred.

This is known as partial access or release of documents. Refer to methods for deleting exempt matter below.



You must record the specific exemption clauses relied on in the notice of determination for reporting purposes under the FOI Act (section 23(2)(f)).

The Public Interest Test

The public interest is considered something that is important or that on balance will benefit the public in general. Where an accredited FOI officer determines that disclosure of information is in the public interest they must be satisfied that the benefit to the public resulting from disclosure will outweigh other public interests of non-disclosure. This is commonly known as the public interest test.

The accredited FOI officer must ascertain and assess the factors, both for and against disclosure, when applying an exemption that requires public interest consideration. An explanation of what specific detriment may or may not occur as a result of disclosure should also be included. The more comprehensive the argument the more likely the decision is to withstand scrutiny in the event of a review or appeal. The process of weighing the public interest must be recorded and included in the determination to provide evidence of the decision to disclose or not disclose a document.

For further information on the public interest please refer to the State Records [*FOI and the Public Interest Guideline*](#).

Methods for deleting exempt matter

In instances where parts of the document are not exempt, a copy of the document with any exempt material removed can be provided to the applicant (section 20(4)).

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The removal of this information is often referred to as 'redaction'. A document can be redacted in a number of different ways from blanking out the information using a permanent marker to using software that can electronically redact content.

Redaction should only be made to a copy of the document, not the official record itself. Regardless of the method used to remove exempt matter it is important that copies are kept by your agency. This includes copies of documents provided to the applicant as well as copies of documents without the exempt matter removed.

For further information on redaction please refer to the State Records [FOI and the Redaction of Documents](#) webpage.

Step 14 Forms of access

Access to a document can be given to an applicant in various ways (section 22) including:

- » a photocopy of the document
- » inspection at the agency in paper format or at a computer terminal
- » printed hardcopy
- » digital copy of a document provided via email or on a portable storage device e.g. USB
- » viewing of a video tape or film or listening to a sound recording
- » copy of a video or sound recording
- » transcript of a sound recording.

Fees and charges may be applied in line with the *Fees Notice* when giving access to documents using the methods mentioned above.

If the applicant requests that access be given in a particular way (section 22(2)), your agency must give access in that way unless doing so would:

- » unreasonably divert the resources of the agency from their use for official purposes
- » be detrimental to the preservation of the document or otherwise inappropriate, or
- » involve an infringement of copyright.

Step 15 Preparation of the Notice of Determination

A notice of determination is the formal written decision prepared by the agency to advise an applicant of the outcome of their FOI application. It must be signed by an accredited FOI officer or the Principal Officer.

The notice of determination must provide adequate, fair and unbiased reasons for any determination made under the FOI Act.

The applicant, and any interested third parties, must also be advised of their rights of review and appeal.

There are several types of notices of determination that can be made under the FOI Act such as:

| Section | Determination Type |
|------------------|--|
| Section 14A | Extension of time |
| Section 18(1) | A refusal to deal with an application because to do so would be a substantial and unreasonable diversion of resources |
| Section 18(2)(a) | A refusal to deal with an application because it is a pattern of conduct that amounts to an abuse of the FOI Act or the application is made for a purpose other than to obtain access to documents |
| Section 18(3) | A refusal to deal with an application because the advance deposit was not paid within a specified period |
| Section 20 | Applications for access where documents are partially released or access is refused |
| Section 21 | Applications for access where access to documents is deferred |
| Section 29 | Internal review applications for access |
| Section 36 | Applications for amendment of personal records |
| Section 38 | Internal review applications for amendment of personal records |

All notice of determinations must be made in accordance with section 23 of the FOI Act.

Where the applicant is refused access to all or part of a document, the notice of determination must include:

- » the relevant provision in the FOI Act for claiming the exemption
- » where applicable, the reasons why disclosure would be contrary to the public interest
- » facts supporting the reasons for refusal, together with a reference to the sources of information on which those findings are based.

Sources of information on which you base your findings may include:

- » the result of any consultation with third parties
- » the result of consideration of the facts concerning agency resources and time estimated to complete an application, and
- » relevant case law.

A notice of determination that fails to provide full reasons for refusing access may have a higher likelihood of attracting a request for an internal review by the applicant.

When providing your reasoning's for why information is exempt, you must be careful that you do not include any information that would result in the notice of determination becoming an exempt document (section 23(4)). To avoid this, it is best practice to provide generic reasons rather than specific reasons when explaining your rationale for refusing access to information. For example, stating a record refers to 'financial information of a private company' rather than providing the specific details.

The notice of determination also serves to advise the applicant of the total amount of any fees and charges relating to the processing of the application.

Where fees and charges have been waived, the agency should provide all documents for which access has been granted with the notice of determination. However, documents cannot be released until such time as any relevant reviews and appeals are concluded or the time for lodging a review or appeal has lapsed.

The notice of determination should include a schedule that details each of the documents to which access has been granted and those where access has been refused or deferred.



As mentioned in steps 1 and 2, the determination of a FOI application must be issued within 30 calendar days after it is received (sections 14(2) and 32(2)) unless an extension of time has been approved.



Also as noted in steps 5 and 7, all notice determination information must be recorded for reporting purposes under the FOI Act. The determination information to be recorded includes the:

- » date the determination was issued
- » time taken to respond (i.e. within timeframe, within extend timeframe or outside of timeframe)
- » outcome of the application (i.e. full release, partial release or refused)
- » reasons for rejection or refusal, if necessary, and
- » exemption clauses applied, if necessary.

For more information please refer to the [FOI Annual Reporting Guideline](#).

Deferring access to a document

Deferring access should not be used to deny access indefinitely.

Section 21 of the Act allows an agency to defer access if the document:

- » will be published under another Act (e.g. Annual Reports)

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- » was prepared for tabling or introducing to Parliament but has not been presented at the time the application was received
- » has been prepared for submission to a particular body or person but is yet to be submitted.

When making a determination to defer access you should provide the applicant with an indication of when the document will be available and how access will be provided.

Importantly, deferral of access also arises where third party consultation occurs. An agency will need to defer access until any third party review rights are finalised (see Division 2 – Consultation sections 25(3)(d), 26 (3)(d), 27(3)(d) and 28(3)(d) of the FOI Act).

Step 16 Should you consider informing your Minister about the determination?

For state government agencies only

If your Minister has advised that they wish to be informed of the outcome of a particular application, a copy of the finalised determination should be forwarded to them two working days prior to the determination being forwarded to the applicant. This enables the Minister to be made aware of the outcome of the application should they need to respond to any queries as a result of access being provided to the information.

Advising the Minister of the outcome of a particular application should not cause the applicant to receive their determination late.

Step 17 Issue Notice of Determination

The final step in progressing the FOI application is the issuing of the Notice of Determination by sending it to the applicant as requested.

Where a charge for access is required to be paid, the applicant should be advised and you can wait until the charge is paid in full before providing access to the documents.

For state government agencies, the Notice of Determination should also advise applicants that the details of their application (excluding their personal information) and the documents released may be published in the agency's disclosure log.

This is published in accordance with the Premier and Cabinet Circular 45 – Disclosure logs for non-personal Information released through Freedom of Information (PC045) (refer to step 18).

Step 18 Additional Reporting Requirements

For state government agencies only

Where an application for access to non-personal information is received and the information has been released to the applicant, state government agencies are required to make the FOI application and the documents released under that application available on its website under [PC045](#). Any information redacted under the original FOI application must also be redacted prior to release on the agency's website. If an applicant or third party disagrees with the publication, agencies should work with the applicant or third party, using the agency's dispute resolution policy, to resolve the issue. Information should not be included in the disclosure log until the dispute is resolved. For more information refer to [PC045](#).

Information management considerations

Under the *State Records Act 1997*, each FOI application and its associated record trail must be appropriately captured and managed within the agency's recordkeeping system. A new file should be created for every application received. This is in part because some applications may be required to be retained for a longer period of time than others in accordance with an approved disposal schedule.

Each FOI file should include all documentation relating to the application including:

- » any documentation relating to the processing of the application, e.g. consultation undertaken
- » copies of all documents and records within the scope of the application or an accurate description of them
- » copies, and a schedule, of the documents released, if any.

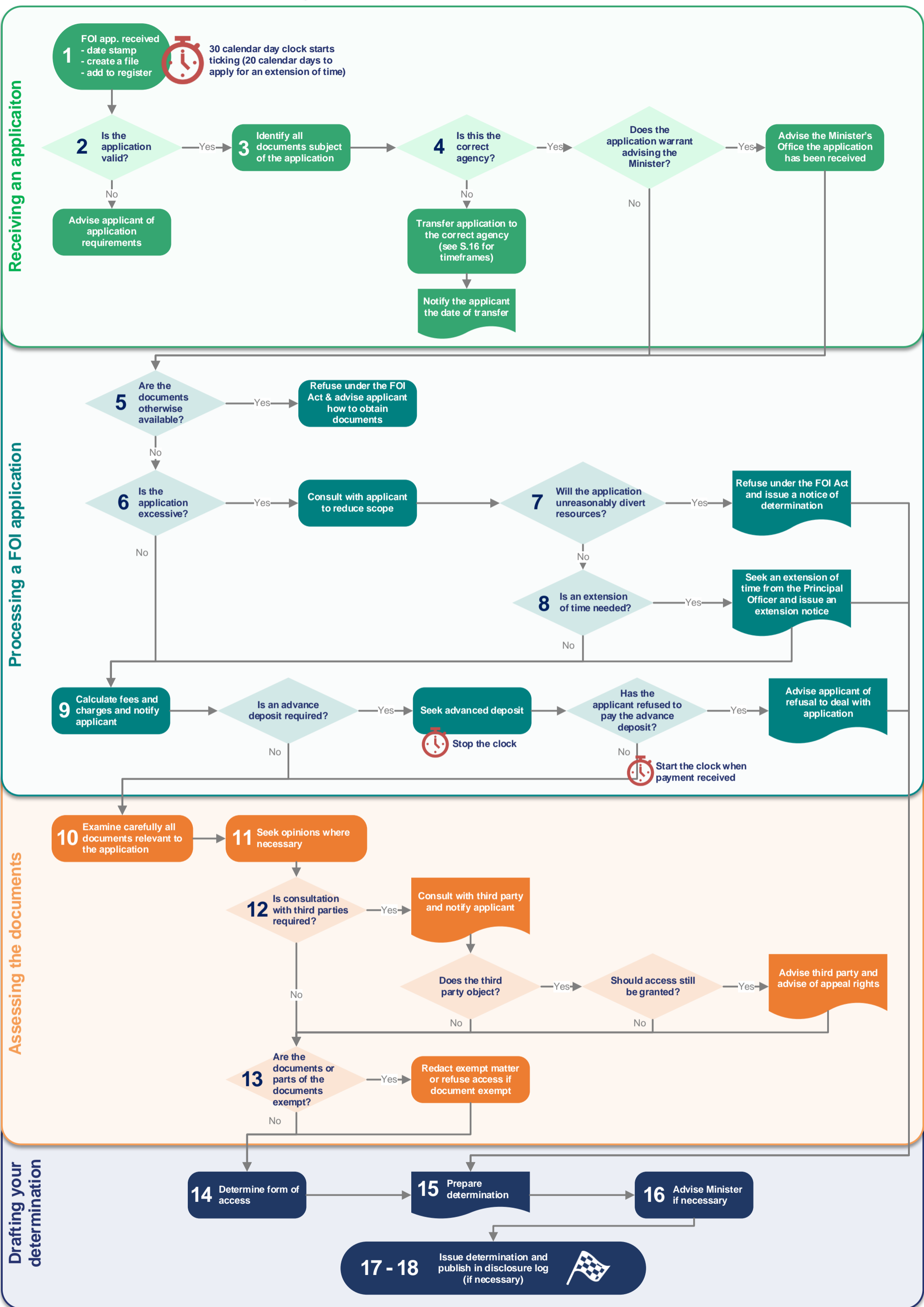
Documents relating to the application must be stored in the FOI file only and not in the original, or source files, where the documents were found. Any source files retrieved from State Records for the purposes of locating documents must be returned to the archives in their original state. That is, no records or documents can be added or removed from these files. Copies can be taken of the original documents to provide to the applicant where it is determined that access can be provided under the FOI Act. Redactions must only be made to copies not on original documents.

All documents in the possession of an agency should be subject to an approved disposal schedule, including those that may be within the scope of a current FOI application. In the event an FOI application is made for documents that are due to be legally destroyed in accordance with an approved disposal schedule or those that could be destroyed through normal administrative practice, the destruction must be delayed.

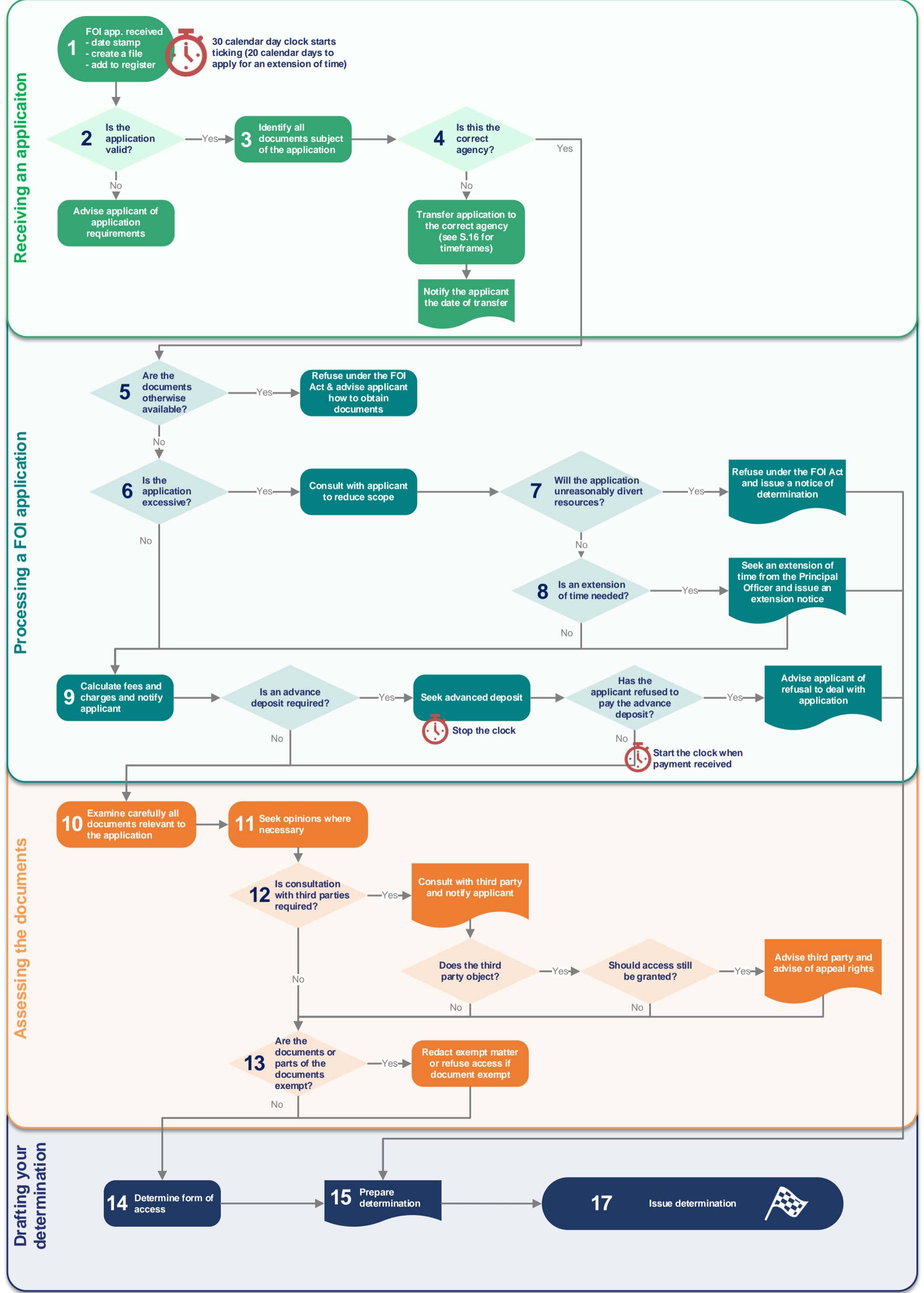
Depending on the type of application received, and whether it was subject to an external review, the records sentence applied to the documents associated with the FOI application may need to be amended. The records sentence associated with an FOI application can range from destroy when reference ceases to permanent.

See the "Records not held by your agency" section in Step 3 for information regarding documents already destroyed.

FOI Process Map for State Government Agencies Only



FOI Process Map for Local Government and Universities



| Date approved | Approved by | Version |
|---------------|---------------------------------|---------|
| 25/2/2025 | Manager, Information Governance | 19 |

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