

Managing FOI through Administrative Change

The purpose of this information sheet is to provide general advice to agencies on how to manage FOI applications and responsibilities during an administrative change. This information sheet should be read in conjunction with the *Managing Records through Administrative Change Guideline* issued under the *State Records Act 1997* and available from the State Records website www.archives.sa.gov.au.

The *Freedom of Information Act 1991* (FOI Act) is largely silent on what happens to FOI applications when an administrative change occurs, but does provide legislative instruction regarding defunct agencies (see Section 3 below).

Agencies may need to seek further legal advice from the Crown Solicitor's Office regarding a specific administrative change to a function.

Administrative change

Decisions of the South Australian Government can result in 'administrative changes' to South Australian agencies. An 'administrative change' refers to a change in the responsibilities for the administration of government functions. These changes can occur as a result of:

- » a function being transferred from one agency to another
- » a whole agency being transferred from one Ministerial portfolio to another
- » the Government undertaking new functions
- » the abolition of a function.

Section 1 – A function transfers to another agency

When a function of one agency (the former agency) is to be transferred to another agency (the responsible agency), the Accredited FOI Officers from the former agency will need to identify which FOI applications will be affected.

The former agency should contact the responsible agency and make arrangements for the completion of any outstanding FOI applications (see following). If possible this should be done before the administrative changes come into effect.

Outstanding FOI applications

Where a function is being transferred, the responsible agency should take control of any ongoing processing of active or overdue FOI applications.

Where applications are almost complete or are complex in nature, and the FOI officers involved in processing the applications do not transfer to the responsible agency, it may be more practical for the former agency to finish processing the FOI requests. This should only be done with the agreement of the responsible agency. However, once the requests have been processed, an Accredited FOI Officer appointed by the Principal Officer in the responsible agency should make the final determination.

Where the former agency agrees to complete outstanding FOI applications, it is advisable that it keeps the responsible agency informed of the progress of the applications. This is important in case an extension of time to complete an application is necessary. Only the Principal Officer of the responsible agency can grant an extension. If the FOI applicant were to lodge an internal review, it will be that Principal Officer that must also complete the internal review.

Once the former agency has dealt with any outstanding FOI applications, it should send copies of the decision and all relevant records to the responsible agency in accordance with the *Managing Records through Administrative Change Guideline* mentioned earlier. It is important the records are transferred in case the applicant lodges an internal or external review.

Designating Accredited FOI Officers

When a function is transferred from one agency to another and relevant FOI staff transfer with the function, valid designations will also transfer with the staff. This means staff designated as Accredited FOI Officers in their former agency in accordance with section 4(1)(b) of the FOI Act will remain accredited. However, since they may be processing requests and making determinations relating to functions they have not previously been involved in, it is advisable that all Accredited FOI Officers seek formal designation from their new Principal Officer as soon as practicable.

It should be noted that these Accredited FOI Officers can no longer process and determine applications on behalf of their former agency. That is, they are no longer Accredited FOI Officers for their former agency.

Completed FOI applications

The former agency retains responsibility for completed FOI applications and all relevant files associated with these applications. These files should be closed and the responsible agency should be provided appropriate access rights to these closed files if required. For further information, please refer to steps 5 and 8 of the *Managing Records through Administrative Change Guideline*.

Keeping the FOI applicant informed

The responsible agency should inform the relevant applicants of the change in agency (ie transfer of a function) and provide them with the name and contact details of the Accredited FOI Officer in their agency now dealing with their application. In cases where the former agency retains the responsibility for the incomplete application, it may be advisable to inform the applicant that the former agency will be finalising the request.

Updating FOIMS

The FOI Act requires agencies to provide certain information to the Minister administering the FOI Act to allow him or her to prepare an annual report. Agencies must supply this information to the Minister, via State Records, by entering it in the Freedom of Information Management System (FOIMS).

When a function or staff member of one agency transfers to another agency (or is allocated to a new Minister) as part of an administrative change, it is necessary to update FOIMS. The information entered into FOIMS must accurately reflect the administrative changes that have taken place.

Some changes to FOIMS, as a result of an administrative change, may require technical assistance from the FOIMS System Administrator at State Records. Contact the System Administrator as early as possible via email to staterecords@sa.gov.au.

Amending the Agency's Information Statement

Once the administrative changes come into affect, the Accredited FOI Officers in both the former and responsible agency should take steps to amend any relevant information they provide the public on how to make FOI applications including agency contact information. The agency's FOI Information Statement should also be amended to take account of any administrative changes.

Exempt agency to assume responsibility of function

Where a function that was subject to the FOI Act is transferred to an exempt agency, consideration should be given to whether making that function exempt by default was an intended consequence. It may be necessary to seek legal advice in order to determine whether the function that has been transferred should assume the exempt status of the responsible agency or whether the exempt status of the responsible agency should be amended. Regardless of the outcome State Records will require information to satisfy annual reporting requirements.

Section 2 – Newly created agencies

If the Government creates a new agency, the Principal Officer of the new agency will need to ascertain whether or not the agency is subject to the FOI Act.

Section 4 of the FOI Act provides the definition of an agency. If it is not clear whether the new agency is subject to the FOI Act, the Principal Officer should seek legal advice.

Designating Accredited FOI Officers

While the Principal Officer of the newly created agency is automatically an Accredited FOI Officer for that agency, it is advisable that they designate at least one Accredited FOI Officer. Accredited FOI Officers are responsible for dealing with FOI applications and making determinations.

To designate a new Accredited FOI Officer, the Principal Officer should do so through an instrument of designation that satisfies section 4(1)(b) of the FOI Act. This section requires Accredited FOI Officers of most State Government agencies to occupy an executive or senior level position in the agency and to have undertaken training approved by the Minister responsible for the FOI Act.

Registering an agency on FOIMS

When a new agency is created and it is determined that it is subject to the FOI Act, it must be registered in FOIMS to record and manage FOI applications to meet its statutory reporting obligations under FOI.

Creating an Information Statement

Section 9(1a) of the FOI Act requires agencies to publish an up-to-date Information Statement in a manner prescribed by regulation. Regulations under the *FOI (General)*

Regulations 2002 requires they be published on an agency's website or in their annual report, or both.

Section 3 - Defunct agencies

Agency ceases to exist function transferred

Section 8(1) of the FOI Act requires an agency, taking over the function of an agency that ceases to exist, to assume all responsibilities of that former agency.

This means the agency must take on the responsibility of processing, reporting and determining all FOI applications made to the former agency from the date it takes over the function as if it had 'merged' with the agency.

Agency and function cease to exist

Pursuant to section 8(2), where an agency ceases to exist and no other agency is to take over a function, the responsibilities of the defunct agency will devolve to:

- a) an agency nominated by the Minister administering the FOI Act, or
- b) State Records.

In this case, the relevant Minister should write to the Minister responsible for the FOI Act recommending an agency to be nominated to take responsibility for the records. The Minister, on advice, can accept this recommendation, nominate a different agency or advise that it should devolve to State Records.

Need further assistance?

Tel (+61 8) 8204 8786

Email staterecords@sa.gov.au

Web www.archives.sa.gov.au

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