

# STATE RECORDS

of South Australia

## What is an Accredited FOI Officer?

This information sheet provides an explanation of an Accredited Freedom of Information (FOI) Officer, including how a person becomes an Accredited FOI Officer and their responsibilities.

Attached to this information sheet are three example instruments of designation that can be used by Principal Officers in designating staff as Accredited FOI Officers.

These instruments can be used in one of the following circumstances where a member of staff is to be designated as an Accredited FOI Officer:

- » Staff employed in administrative units of the Public Service as defined in the *Public Sector Act 2009*, or
- » South Australia Police Officers (in cases where the Accredited FOI Officer is a Police Officer), or
- » Staff employed in any other kind of agency.

### Accredited FOI Officers

Parliamentary debate indicates that the rationale behind the designation of an Accredited FOI Officer was to ensure that FOI determinations were made at a sufficiently senior level.<sup>1</sup>

To assist in achieving this outcome the Principal Officer of an agency is automatically an Accredited FOI Officer under section 4 of the *Freedom of Information Act 1991* (FOI Act).

Under the FOI Act, Principal Officer, in relation to an agency, means –

- (a) if the agency consists of a single person (including a corporation sole but not any other body corporate) – that person;
- (b) if the agency consists of an unincorporated body or committee – the presiding officer;
- (c) in any other case – the chief executive officer of the agency or a person designated by the regulations as principal officer of the agency;

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<sup>1</sup> Speech of the Hon RD Lawson MLC, Legislative Council, Wednesday 25 July 2001, page 2061.

Therefore, your Principal Officer may be your Chief Executive Officer, Commissioner or, in the case of universities, your Vice Chancellor.

Other people within your agency can become Accredited FOI Officers if the Principal Officer designates them as such, provided they meet the following legal requirements:

- » The officer has completed the approved training to become an Accredited FOI Officer (see FOI Training Course section for more details);

**AND**

- » The officer is an executive employee as defined in the *Public Sector Act*, or is in a position that usually reports to an executive employee;

**OR**

- » The officer is a Police Officer within South Australia Police;

**OR**

- » The officer is employed in any other agency in a position that usually reports to the Principal Officer of the agency or to the deputy or immediate delegate of the Principal Officer.

## Minister's Offices

In relation to a Minister's Office, a Minister is not an administrative unit of the Public Service, so the Minister would fall into the last category as 'other agency'. The position occupied by the Accredited FOI Officer in a Minister's Office would therefore need to be in a position that usually reports to the Minister (as Principal Officer) or to the deputy or immediate delegate of the Minister.

Although a Minister cannot designate a person outside of their office to be their Accredited FOI Officer, they can ask FOI Officers from a relevant portfolio agency to assist with processing their FOI applications.

The Minister, as the Principal Officer, is responsible for extending the time limit of an application under section 14A of the FOI Act and for making determinations on internal reviews.

## Designation Process

A common misunderstanding amongst FOI Officers is the belief that if they complete the approved FOI Training Course they automatically become an Accredited FOI Officer. This is not the case.

Once an officer has completed the approved training course, they are required to be designated by their Principal Officer as an Accredited FOI Officer and must be able to show that they meet all the legal requirements of the FOI Act.

Your agency is responsible for determining the process by which your Principal Officer designates a person as an Accredited FOI Officer.

The instrument of designation (either in the form of a minute or another document) should always be filed appropriately as an official record. Examples of instruments of designation are attached to this Information Sheet, one of which should suit your agency. Designations should be reviewed on a regular basis with particular consideration given to:

- » ensuring the agency has an adequate number of Accredited FOI Officers for the size of the agency, or the number of applications received
- » all FOI officers have attended appropriate training.

### Administrative Change and Accredited FOI Officers

Administrative change generally refers to a change in the responsibilities for the administration of government functions. It can also include an agency losing its 'agency' status, which may affect how an FOI application is processed.

During administrative change delegations should be reviewed and updated. The importance of which has been recognised by the Auditor General.

*“A significant element of an effective control environment of an agency is developing, documenting and implementing of appropriate delegations of authority. Of no lesser importance is ensuring that the authority framework is revisited for changing circumstances, and that there is a clear understanding within the agency of the requirements of the framework and to comply with the requirements.”<sup>2</sup>*

Although the designation of an Accredited FOI Officer is not a formal delegation, it is recommended that the designation of Accredited FOI Officers be included in any review of agency delegations.

For more information about administrative change and its effect on designating Accredited Officers, please refer to the FOI Information Sheet entitled *Managing FOI Through Administrative Change* and the State Records Guideline *Managing Records During Administrative Change*. Both of these documents can be found on the State Records website at [www.archives.sa.gov.au](http://www.archives.sa.gov.au)

### Responsibilities of an Accredited FOI Officer

Accredited FOI Officers are responsible for determining FOI applications received by their agency (section 14 of the FOI Act).

In determining an FOI application, Accredited FOI Officers must make a determination within 30 (calendar) days of the agency receiving the application, unless an extension of time is sought. (Note: only the Principal Officer of an agency can extend the timeframe within which a determination must be made.)

Accredited FOI Officers are required under section 23(2)(b)(i) of the FOI Act to include their name and designation on the notice of determination provided to the applicant.

Part 6 of the FOI Act outlines various protections for Accredited FOI Officers in respect of actions for defamation or breach of confidence, criminal actions, and personal liability.

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<sup>2</sup> Report of the Auditor-General for the year ended 30 June 2007 – Part A Audit Overview, page 6.

### **‘Directed’ Determinations**

Generally speaking, the FOI Act requires Accredited FOI Officers to make FOI determinations independently and free from improper influence.

During the decision making process it may be useful to seek the views of others either within or outside your agency. Taking relevant views into account while making a decision is an important part of the decision making process, however this should not result in the Accredited FOI Officer seeking direction when making a decision or a determination under the FOI Act.

A Principal Officer or a person or body to which the Principal Officer is responsible, such as a Minister, can lawfully direct an Accredited FOI Officer to make a certain determination, but in doing so, invokes section 29(6) of the FOI Act. Section 29(6) provides that if such a direction is given, then the determination is not subject to internal review. This means the Principal Officer has effectively made the determination, not the Accredited FOI Officer. This direction should be explained in the notice of determination provided to the applicant since it affects the applicant’s review rights.

### **Other FOI Officers**

In some agencies, particularly larger agencies, FOI Officers are appointed who are not designated Accredited FOI Officers. The role of these FOI Officers may be that of the contact officer for the public and/or to support the Accredited FOI Officer in the processing of FOI applications. This may include, but is not limited to, clarifying the request with the applicant, searching for documents, photocopying, consulting with third parties and updating the Freedom of Information Management System (FOIMS). These FOI Officers do not have the authority to make determinations under the FOI Act, as a determination made by a non-accredited FOI Officer would be considered invalid.

## **Other Relevant Information**

### **Accredited FOI Officer Training**

State Records runs an FOI training course designed for those people who will be designated as an Accredited FOI Officer and other staff involved in processing FOI applications. In accordance with section 4(1) of the FOI Act, this training has been approved by the Minister responsible for FOI.

There is a cost involved in attending this training.

For more information or to book a place in the training course, please visit the State Records website or email [srsatrainingenquiries@sa.gov.au](mailto:srsatrainingenquiries@sa.gov.au).

Need further assistance?

**Contact**

**Tel** (+61 8) 8204 8786

**Email** [staterecords@sa.gov.au](mailto:staterecords@sa.gov.au)

**Web** [www.archives.sa.gov.au](http://www.archives.sa.gov.au)

Date approved	Approved by	Date for review	Version
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**INSTRUMENT OF DESIGNATION**

**FREEDOM OF INFORMATION ACT 1991**

<insert name of agency>

**The Designation of an Accredited Freedom of Information Officer by the Principal Officer**

Pursuant to the *Freedom of Information Act 1991* (FOI Act) agencies can designate Accredited Freedom of Information (FOI) Officers.

Section 4 of the Act details the requirements of an Accredited FOI Officer, who is not the Principal Officer of the agency.

This officer must:

- have completed training of a type that has been approved by the Minister responsible for the FOI Act
- be an executive employee or an employee that usually reports to an executive employee; and
- be designated by the Principal Officer of the agency as an Accredited FOI Officer of the agency.

I <insert name of principal officer and name of agency>, pursuant to section 4 of the FOI Act, **designate**

**<insert name of officer>**

as an Accredited FOI Officer for the <insert name of agency> as he/she has met the legislative requirements by completing the approved training<sup>3</sup> and is employed as an executive or is an employee that usually reports to an executive.

.....

Principal Officer  
<insert title>  
<insert name of agency>

<sup>3</sup> If the person attended training from November 2009 onwards, they must complete all four modules of the approved training.



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**INSTRUMENT OF DESIGNATION**

**FREEDOM OF INFORMATION ACT 1991**

South Australia Police

**The Designation of an Accredited Freedom of Information Officer by the Principal Officer**

Pursuant to the *Freedom of Information Act 1991* (FOI Act) agencies can designate Accredited Freedom of Information (FOI) Officers.

Section 4 of the Act details the requirements of an Accredited FOI Officer, who is not the Principal Officer of the agency.

This officer must:

- have completed training of a type that has been approved by the Minister responsible for the FOI Act
- be an officer in South Australia Police; and
- be designated by the Principal Officer of the agency as an Accredited FOI Officer of the agency.

I **<insert name of principal officer> of South Australia Police**, pursuant to section 4 of the FOI Act, **designate**

**<insert name of officer>**

as an Accredited FOI Officer for the South Australia Police as he/she has met the legislative requirements, having completed the approved training<sup>4</sup> and is an officer in South Australia Police

.....

Principal Officer  
**<insert title>**  
**South Australia Police**

/ /

<sup>4</sup> If the person attended training from November 2009 onwards, they must complete all four modules of the approved training.







**INSTRUMENT OF DESIGNATION**

**FREEDOM OF INFORMATION ACT 1991**

<insert name of agency>

**The Designation of an Accredited Freedom of Information Officer by the Principal Officer**

Pursuant to the *Freedom of Information Act 1991* (FOI Act) agencies can designate Accredited Freedom of Information (FOI) Officers.

Section 4 of the Act details the requirements of an Accredited FOI Officer, who is not the Principal Officer of the agency.

This officer must:

- have completed training of a type that has been approved by the Minister responsible for the FOI Act
- be employed in a position that usually reports to the principal officer of the agency or to the deputy or immediate delegate of the principal officer
- be designated by the Principal Officer of the agency as an Accredited FOI Officer of the agency.

I <insert name of principal officer and name of agency>, pursuant to section 4 of the FOI Act, **designate**

**<insert name of officer>**

as an Accredited FOI Officer for the <insert name of agency> as he/she has met the legislative requirements, having completed the approved training<sup>5</sup> and is employed in a position that usually reports to the principal officer of the agency or to the deputy or immediate delegate of the principal officer.

.....  
Principal Officer  
<insert title>  
<insert name of agency>

/ /

<sup>5</sup> If the person attended training from November 2009 onwards, they must complete all four modules of the approved training.



