



LEGAL

Freedom of Information **s 22(1)(a)(ii)** Policy

Purpose

1. This Policy provides guidance for all Australian Criminal Intelligence Commission (ACIC)¹ members of the staff of the ACIC (MOS)² to support ACIC's compliance with its obligations under the *Freedom of Information 1982 (Cth)* (FOI Act) **s 22(1)(a)(ii)**

Principles

2. This Policy applies to the handling of:
 - a. requests made under the FOI Act, and
3. In complying with this Policy, all MOS must also handle information in accordance with the ACIC's operational and statutory requirements including statutory obligations outlined in the *Australian Crime Commission Act 2002 (Cth)* (ACC Act) and other enabling legislation.

Eligibility/applicability

4. This policy applies to all MOS.
5. The Legal Services Branch (LSB) and FOI authorised officers have unique responsibilities that ensure ACIC's compliance with the FOI Act. These officers execute these responsibilities with the support and assistance of all ACIC staff.

Overview of the FOI Act

6. The FOI Act provides each person with a legally enforceable right to access government documents and apply for amendment of records of personal information held by

¹ The Australian Crime Commission (ACC) is also known as the Australian Criminal Intelligence Commission (ACIC): section 7(1A) of the ACC Act and section 8 of the *Australian Crime Commission Regulations 2018 (Cth)*. The initialism 'ACIC' may be substituted for 'ACC' even where it is part of a fixed expression as defined in the ACC Act.

² MOS is defined in the ACC Act and may be referred to herein as staff.

government.

7. This right stems from section 11 of the FOI Act which provides: '*every person has a legally enforceable right to obtain access ... to a document of an agency [and] an official document of a Minister*', unless the document is exempt.

Interaction with the ACC Act

8. Section 51 of the ACC Act contains the ACIC's secrecy provision. It provides that staff (and former staff) must not divulge any information acquired in the performance of their duties.
9. The ACIC is bound by the FOI Act and acknowledges that the section 51 of the ACC Act does not override compliance with the ACIC's obligations under the FOI Act.

FOI Policy

Overview

10. The ACIC recognises its regulatory requirements as a Commonwealth agency and undertakes its obligations in relation to FOI pursuant to the provisions of the FOI Act.
11. Under the FOI Act, a person may:
 - a. request copies of documents held by Commonwealth Ministers, departments, and statutory authorities such as the ACIC, subject to exemptions in the FOI Act;
 - b. request that information and records about themselves be amended or annotated if it is incomplete, out of date, incorrect, or misleading; and
 - c. request review of a decision not to grant access to a document or amend or notate a personal record.
12. MOS must respond to requests under the FOI Act bearing in mind the objects set out in section 3 of the FOI Act, being:
 - a. to give the Australian community access to information held by the Commonwealth Government promptly and at the lowest reasonable cost;
 - b. promoting Australia's representative democracy;
 - c. increasing public participation in Government processes, with a view to promoting better informed decision-making; and
 - d. increasing scrutiny, discussion, comment and review of the Government's activities.

Responsibilities of Staff and FOI Authorised Officers

13. Under section 23(1) of the FOI Act, the CEO may make decisions, on behalf of the ACIC, relating to the release of documents or the amendments of records containing personal information. The CEO has also authorised certain MOS to make decisions in these matters on behalf of the ACIC. Only the CEO and those FOI authorised officers can make decisions, on behalf of the ACIC, in relation to requests made under the FOI Act.
14. The FOI Lawyer or an LSB lawyer assigned to the role of coordinating FOI **must**:

- a. act as the central liaison and coordination point for all FOI requests;
- b. identify and escalate issues that arise in FOI processing;
- c. engage in regular meetings with the Legal Executive to brief on FOI requests;
- d. provide ACIC Executive with a fortnightly report on FOI matters;
- e. assist FOI authorised officers as required;
- f. provide reasonable assistance to applicants;
- g. request and/or obtain extensions of time where appropriate;
- h. seek assistance from the relevant ACIC MOS/business areas to undertake searches;
- i. arrange for assistance from, or the referral of requests to, the appropriate staff; and
- j. maintain a record of FOI requests and report to the Information Commissioner as required.

15. The FOI authorised officers **must**:

- a. process FOI requests in accordance with the FOI Act;
- b. provide reasonable assistance to applicants;
- c. ensure consultation takes place with appropriate staff and, where applicable, other agencies, organisations, businesses or individuals, as to the release of any material; and
- d. respond to all requests for review of decisions where requested by the applicant.

16. All MOS of the ACIC **must**:

- a. create and maintain full and accurate records;
- b. refer any requests received under the FOI Act to the FOI inbox (foi@acic.gov.au) (including any requests that could be considered an FOI request);
- c. at the request of an FOI authorised officer, undertake searches of systems and provide the FOI authorised officer with relevant documents;
- d. at the request of an FOI authorised officer, provide advice on the sensitivities within documents relevant to an FOI request; and
- e. provide any other reasonable assistance.

17. MOS (other than FOI authorised officers) are not decision makers but facilitate the making of decisions by providing assistance and advice to the authorised FOI decision maker as required.

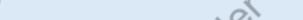
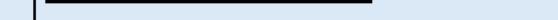
Processing and issuing a decision under the FOI Act

18. When processing and issuing a decision under the FOI Act, an FOI authorised officer must have regard to guidelines issued by the Information Commissioner in accordance with s 93A

³ of the FOI Act³ and the ACIC's internal Standard Operating Procedures⁴.

Seeking Proof of Identity for Personal Information

19. A person's identity may be relevant if a request relates to personal information and absent proof of identification, exemptions or restrictions may prevent the release of personal information. A person is more likely to be granted access to documents that contain their own personal information.
20. It is the responsibility of the authorised FOI decision maker to satisfy themselves of an applicant's identity.
21. If a need arises to establish an applicant's identity, an agency should seek only the minimum amount of personal information required to satisfy themselves of the applicant's identity and/or the consent of the person about whom the information relates (consistent with Australian Privacy Principle 3⁵). The particular circumstances of each request should be considered in deciding whether personal information (including identification documents) needs to be collected, and what level of information is required.

³ Freedom of information guidelines | OAIC

[Freedom of Information guidelines](#) | [SARs](#)

5 Read the Australian Privacy Principles | OAIC

Internal Review

24. If applicants are not satisfied with the decision of the original FOI authorised officer, they may request an internal review of the decision.
25. In cases where third parties have been consulted under section 26A, 27 or 27A and have objected to release of their information to the applicant, they may seek internal review or review by the Information Commissioner, of a decision by the ACIC to disclose their information to the applicant, without or after, seeking internal review.
26. The internal review **must** be conducted by an FOI authorised officer, other than the original FOI authorised officer, within the relevant time limits. The applicant **must** be advised that the request for internal review has been allocated to the reviewing officer, and be notified of the decision of the reviewing officer.

Application for Review by the Information Commissioner

27. Alternatively, applicants may decide to seek review of a decision by the Information Commissioner.
28. The FOI Lawyer or an FOI authorised officer must provide assistance to the Information Commissioner in the course of a review in any way requested by the Information Commissioner, including providing all requested information and submissions.
29. The ACIC must comply with directions issued under s 55(2)(e) of the FOI Act as to the procedure to be followed in relation to Information Commissioner reviews generally or in relation to a particular review. The Information Commissioner has issued a direction⁶ regarding Information Commissioner reviews that must be complied with and requires direct engagement between the ACIC and an FOI applicant to narrow the scope of the issues in review.
30. The Information Commissioner will make a decision and advise in writing affirming or varying the reviewable decision, or setting aside the reviewable decision and making a decision in substitution for that decision. The Information Commissioner may also exercise discretion not to make a decision and refer the applicant to the Administrative Review Tribunal (ART).

Appeal to the Administrative Review Tribunal

31. If unsatisfied with a decision made by the Information Commissioner (including a decision by the Information Commissioner not to review an ACIC decision), applicants, third parties and the ACIC may seek a further review by the ART.

⁶ [Direction as to certain procedures to be followed by agencies and ministers in IC reviews](#)

32. Applicants should seek advice from the ART on the form of such a request for review.
33. The FOI Lawyer **must** advise the DGCs of any requests to the ART for review for ACIC decisions. The DGCs will determine how the review will be handled.
34. Where a request for review is lodged with the ART, the FOI Lawyer or an FOI authorised officer **must** prepare any submissions to the ART for clearance in accordance with the legal services branch clearance guidelines.

Complaints to the Information Commissioner

35. Applicants for information under the FOI Act may complain to the Information Commissioner concerning action taken by the ACIC relating to their application.
36. When the Information Commissioner notifies the ACIC of such a complaint, Legal Services **must** prepare a response, in consultation with relevant ACIC business areas and with clearance from the business area and Legal Services Executive, for consideration by the CEO.

FOI Statistics

37. Section 93 of the FOI Act requires the ACIC to provide the Information Commissioner with information that the Information Commissioner requires to prepare annual reports mentioned in section 30 of the *Australian Information Commissioner Act 2010* (Cth). The ACIC **must** meet any requirements prescribed by the regulations⁷ for supplying that information and record keeping.
38. Statistics **must** be provided to the Information Commissioner within 21 days after the end of each quarter, which includes the end of each financial year. Statistical information is entered through an online account. A username and password are required before data can be entered. Only authorised users are permitted to enter this data.
39. A spreadsheet has been developed to record the statistical information required which is maintained by the FOI Lawyer. This spreadsheet allows the recording of all of the information required by the Information Commissioner and the link can be obtained via the FOI Lawyer.

Information Publication Scheme

40. In accordance with section 8(2) of the FOI Act, agencies must publish information regarding:
 - a. their structure, functions, decision making powers, and annual reports that are presented before the Parliament, and details of arrangements for public consultation on specific policy proposals;
 - b. operational information that is held to assist agencies to perform or exercise the agencies' functions or powers in making decisions or recommendations affecting members of the public;

⁷ Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017

- c. details about the appointments of officers under Acts (other than Australian Public Service (APS) employees within the meaning of the *Public Service Act 1999* (Cth));
- d. information in documents to which agencies routinely give access in response to FOI requests unless an exception in section 8(2)(g) of the FOI Act apply; and
- e. information routinely provided to the Parliament in response to requests and orders from the Parliament.

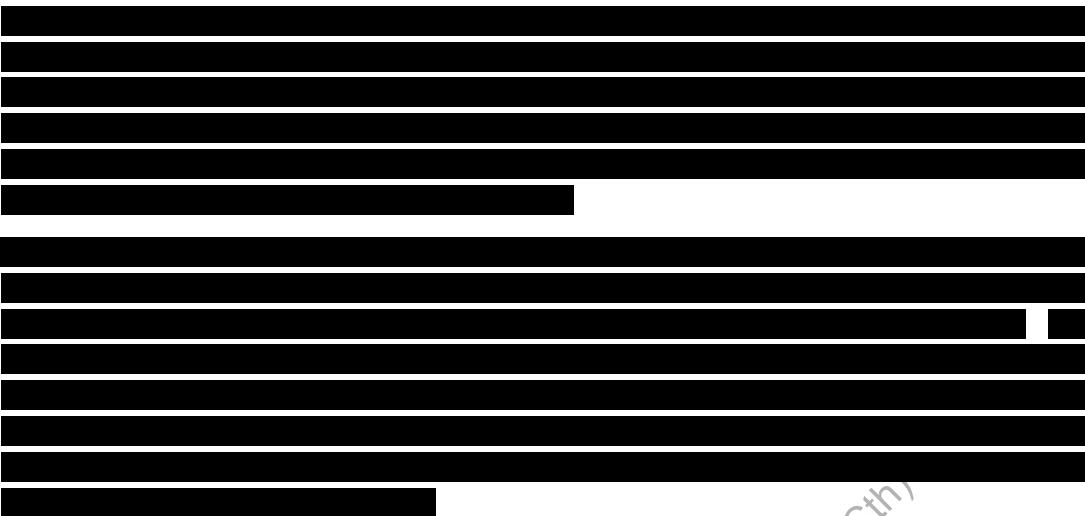
41. Section 8C(2) of the FOI Act provides that if an enactment (such as the ACC Act) restricts or prohibits the publication of particular information, then an agency is not required by Part II of the FOI Act to publish the information otherwise than as permitted or required by the enactment. Accordingly, the ACIC must publish information as required by the Information Publication Scheme (IPS) to the extent possible considering section 51 of the ACC Act and without prejudicing ACIC activities.

42. The Information Management Team has responsibility for the IPS.

s 22(1)(a)(ii)

(Cth)

s 22(1)(a)(ii)



(Cth)

Definitions

48. **FOI authorised officer:** a person who has been authorised by the CEO pursuant to s 23 of the FOI Act to make decisions in respect of a request made to an agency⁸.
49. **Member of the staff of the ACIC:** is defined in section 4 of the ACC Act to mean:
 - a. a person engaged under the *Public Service Act 1999* (including ongoing and non-ongoing staff, full and part time employees) under section 47 (1) of the ACC Act; or
 - b. a person participating in an ACIC operation and / or investigation; or
 - c. a member of a task force established by the Board; or
 - d. a person engaged under section 48(1) of the ACC Act to provide services to the ACIC; or
 - e. a person seconded or otherwise made available to the ACIC under section 49 of the ACC Act; or
 - f. a legal practitioner appointed to assist the ACIC as counsel under section 50 of the ACC Act.
50. **Personal information:** has the same meaning as in the Privacy Act, which is '*information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.*'
51. **Relevant Act:** for the purposes of section 51 of the ACC Act, means the ACC Act, a law of a State under which the ACIC performs a **duty** or function, or exercises a power, in accordance with section 55A of the ACC Act, or the *Law Enforcement Integrity Commissioner Act 2006* (or regulations under that Act), or the *Parliamentary Joint Committee on Law Enforcement Act 2010* (or regulations under that Act).

⁸ [Record 25/14507: FOI Act Approval Instrument - February 2025](#)

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Contact officer

Name	s 22(1)(a)(ii)	Ext	s 22(1)(a)(ii)
Job Title	Senior Lawyer		
Branch	Legal Services		

Record of approval

Version	Name	Title	Date	Next review
2	Nicole Mayo	Executive Director – Legal and Assurance	3 July 2025	July 2028
1	Anne Brown	Chief Operating Officer	8 February 2021	February 2024

Record of amendment

Version	Name	Amendments made	CM link + Revision number	Date
2 (Rev 7)	s 22(1)(a)(ii) [REDACTED]	Routine policy update – draft amendments – Record 23/355384: FOI and Privacy Policy	21/29108	May 2025
1	s 22(1)(a)(ii)	To Combine the FOI and Privacy Policy (16/103647) and Procedure (16/103650) into this new Privacy and FOI Policy (one document) to remove duplication. To correct text and restructure the contents to help ensure accuracy and understanding. Explanation of changes is saved at 20/257910 .	The new Privacy and FOI Policy document is saved at 21/29108	December 2021



AUSTRALIAN
CRIMINAL
INTELLIGENCE
COMMISSION

FREEDOM OF INFORMATION ACIC Standard Operating Procedures

CURRENT VERSION AS AT 22 AUGUST 2025

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Information under the Freedom of Information Act 1982

PURPOSE AND SCOPE

This document is an internal procedure document to assist lawyers in Legal Services Branch as authorised decision makers under the *Freedom of Information Act 1982* (Cth) and is not intended to be shared or used outside of Legal Services Branch.

KEY RESOURCES

Documents

This document should be read in conjunction with;

- The *Freedom of Information Act 1982* (Cth) (FOI Act) ([Freedom of Information Act 1982 - Federal Register of Legislation](#));
- The *Freedom of Information (Charges) Regulations 1982* (Charges Regulations);
- Office of the Australian Information Commissioner (OAIC) FOI Guidelines ([Freedom of information guidelines | OAIC](#));
- FOI page of the ACIC website (<https://www.acic.gov.au/publications/freedom-information>)
- FOI and Privacy Policy and Procedure ([Record 21/29108: Freedom of Information and Privacy Policy](#)).

Training Materials

The Australian Government Solicitor (AGS) delivers FOI training. Materials from their courses are available here:

- [Record 24/143871: AGS Combined Training Materials - FOI Next Steps Sessions 1-4 \(Online\) 16 - 17 August 2022](#)
- [Record 20/273033: AGS Combined training materials - FOI exemptions Online training - June 2020](#)

Legal Services Branch training materials are available here:

- [Record E24/5709: LEGAL SERVICES - Compliance - ACIC Legal Conference June 2024 - FOI Workshop](#)

Delegation

Section 23 of the FOI Act requires that an individual must be an **authorised** decision maker to be able to make a decision.

A copy of the current FOI delegations instrument can be located at CM [Record 25/14507: FOI Act Approval Instrument - February 2025](#)

Systems Access

To undertake searches for FOI matters you must have the following accesses, which may all be requested via the ServiceNow ASK platform:

[REDACTED] (s.22(1)(a)(i))

- Access to the FOI Inbox (foi@acic.gov.au)
- Installation of Adobe Acrobat Pro for your user profile and import the redaction codeset for the Australian FOI Act (held at CM: [20/272955](#))

Overview – Key Roles and Responsibilities

FOI Lawyer

- FOI subject matter expert for the ACIC
- Central agency contact for advice and guidance on FOI processing,
- Coordinates and allocates new FOI, review and external consultation requests to available Delegates by creating FOI tickets in TRIM
- Monitors the FOI inbox and responds to enquiries and OAIC correspondence
- Is responsible for OAIC, Executive and Ministerial reporting regarding agency FOI requests and statistics
- Makes FOI decisions
- Supports decision makers and provides training and guidance to the Agency on FOI related matters.

Decision Maker

- Is approved person under the CEO's FOI Act authorisations to make decisions on behalf of ACIC,
- Coordinates all aspects of processing an FOI decision, including requests for searches, considering application of exemptions to documents, seeking advice from the business area, drafting the decision letter and documents evidencing the basis for the administrative decision, briefing DGC on the decision
- Ensures all related correspondence is undertaken via the FOI Inbox and filed in the FOI Outlook folders accordingly

Deputy General Counsel / Director Regional Legal Services

- All decisions are provided for internal consultation to a DGC or Director Regional Legal Services (depending on risk and complexity).
- Both positions are briefed weekly by the FOI Lawyer on current matters and emerging issues.

Business Areas

- Assist with document discovery
- Provide advice to the decision maker on sensitivities within documents relevant to their area.

ACIC FOI PROCEDURE (STEP-BY-STEP)

Stage 1: Assessing and Acknowledging Request – (Suggested Week 1, Days 1-7)

Requests are usually received via the [ACIC website](#), post or FOI Inbox (foi@acic.gov.au). The 30-day statutory processing timeframe begins the day after a new request is received¹, the 14-day acknowledgement timeframe also begins at this time. If a person is unsure how to make an FOI request, direct them to our website ([here](#)).

Step 1 – Assess Validity

Step 1A – Validity Requirements	Action
<p>There are four requirements for validity, set out under s 15 of the FOI Act:</p> <ul style="list-style-type: none"> • <i>The request is in writing,</i> • <i>States that it's made under the FOI Act</i> (implied if submitted via webform), • <i>Scope is clear</i> (i.e. the request provides information concerning the document that would enable a responsible officer of the agency to identify it), and • <i>Address to receive response is provided</i> (email or mail) <p>If the Scope requirement is not met, be aware that you have a duty to take steps to assist the applicant make a request that meets the above requirements.</p>	<p>Administration</p> <ul style="list-style-type: none"> <input type="checkbox"/> Open the latest FOI OAIC Statistical Report (refer CM: E19/3006). Allocate the next sequential number for the request and record it. <input type="checkbox"/> Set up an Outlook Folder in the FOI inbox under 'OPEN REQUESTS' <p>Processing</p> <p>If the four requirements have not been met, send Record 24/123672: TEMPLATE A - Request not yet valid</p>
<p>Step 1B – Other barriers to accepting request</p> <p>Consider other barriers to processing, such as:</p> <ul style="list-style-type: none"> • FOI exclusion – info is part of a service that requires payment s 22(1)(a)(ii) • transfer reasons – info relates to another agency more than ACIC • Administrative Access – HR documents about a former employee 	<p>s 22(1)(a)(ii)</p> <p>If a transfer reason exists:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Identify the relevant Commonwealth body to request transfer and send Record 24/123673: Template C - FOI Commonwealth Transfer Request. <input type="checkbox"/> Notify applicant of outcome of successful transfer <p>If the request is from a former/current employee and ACIC is likely to be willing to administratively release the information:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Consult with Integrity, Security and Assurance Branch

¹ FOI Act, s15(5)(b).

	<p><input type="checkbox"/> (If endorsed for administrative release) Send Record 24/123674: Template D - Invalid FOI request - administrative release of personnel records</p> <p><u>If none of these reasons exist</u></p> <p><input type="checkbox"/> Proceed to Step 2 – Acknowledge</p>
<u>Step 2 – Acknowledge</u>	
ACKNOWLEDGE	<p><u>WITHIN 14 DAYS (Statutory Deadline)</u></p> <p>If the request is for specialist information, consider consulting internally (Step 3 - below) before Acknowledgment <u>but be wary of the strict 14-day statutory deadline.</u></p>

Stage 2: Document Discovery – (Suggested Week 2, Days 7-14)

There is no statutory timeframe for document discovery but this process should be initiated as soon as possible	
<u>Step 3 – Searches</u>	
<p>Every document held by the ACIC is discoverable under the FOI Act. Our main records management system s 22(1)(a)(ii) [REDACTED] but not all information will be saved here which is why the business area most closely associated with the requested records should always assist with document discovery.</p> <p>Consider the request and think about what searches would reasonably reveal all relevant documents. The FOI Act compels you to have taken 'all reasonable steps'.</p>	<p><u>Action</u></p> <p>Administration</p> <p><input type="checkbox"/> Create a Content Manager PROJECT BOX with the following naming conventions: <i>LEGAL SERVICES – COMPLIANCE – FOI –YY-NN – Applicant – Topic</i></p> <p><input type="checkbox"/> Create the following folders in the Project box: <i>LEGAL SERVICES – COMPLIANCE – FOI XX-XX – Emails</i> <i>LEGAL SERVICES – COMPLIANCE – FOI XX-XX – Working Documents</i> <i>LEGAL SERVICES – COMPLIANCE – FOI XX-XX – Statutory Correspondence</i> <i>LEGAL SERVICES – COMPLIANCE – FOI XX-XX – Document Discovery</i></p> <p>If the request is sensitive, apply access controls on the project box</p> <p>Processing</p> <ol style="list-style-type: none"> 1. Undertake/coordinate searches of the systems you consider may hold relevant documents. The following systems may be relevant:

<p>The Act is silent on what 'all reasonable steps' means. The Guidelines state at [3.88]: <i>'reasonable' has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Content Manager – S 22(1)(a)(ii) <input type="checkbox"/> NPI system and/or intelligence system(s) – seek assistance from the relevant Business Hub, send Record 24/123748: TEMPLATE F- FOI Request for assistance with searches <input type="checkbox"/> ACIC Outlook mailboxes – request via IT Security <p>Points of contact for NPI searches:</p> <p>National Criminal Intelligence System – NCIS Business Hub</p> <p>National Police Reference System (and all other 'Frontline' policing systems) – Frontline Business Hub (note: Frontline Business Hub advised they are unable to conduct searches for persons of interest (POIs)</p> <p>National Automated Fingerprint Identification System (and other biometric systems) – Biometrics Business Hub</p> <p>Australian Criminal Intelligence Database (ACID) (and other ACIC intelligence systems) – Request For Information (RFI) Team</p> <p>2. Record all searches undertaken and documents returned Record 21/47128: FOI Template - Document Discovery Analysis Spreadsheet (2021).</p> <ul style="list-style-type: none"> <input type="checkbox"/> TIP: You can copy/paste the metadata of records from CM straight into MS Excel.
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Step 4 – Document Compilation

<p>It is essential that all relevant records are captured and carefully assessed for exempt material. This may be informed by the line area responsible for the documents.</p> <p>If this is the first time you have applied FOI Act redactions, you will need to import the Australian FOI Act redaction codeset. Instructions at Record 24/125202: How to Import FOI Act Redaction Codeset.</p> <p>A step-by-step tutorial on redacting is here</p>	<p>Action</p> <ul style="list-style-type: none"> <input type="checkbox"/> Review all documents from your searches and make an assessment of relevance to scope. <input type="checkbox"/> Make a record of these decisions in the (above) Document Discovery Analysis Spreadsheet. <input type="checkbox"/> Compile all documents in scope and convert them to PDF (File -> Save As Dropdown arrow -> PDF) <input type="checkbox"/> Save a draft decision letter template to your Working Documents CM folder and number and save the PDF documents to your Document Discovery folder <input type="checkbox"/> Add the title of each document to 'Annexure A' of your Decision Letter
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By this stage you should have: assessed and acknowledged the request, completed document discovery & isolated the relevant records to be assessed for release

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Stage 3: Redact, Exempt, Consult – (Suggested Week 3, Days 7-21)

<u>Step 5 – Assess your Documents for Exemptions & Mark-Up Redactions</u>	
<p>Assessing your document release package for possible exemptions is a daunting process if you do not routinely process FOIs. The following may assist:</p> <ul style="list-style-type: none"> • OAIC FOI Guidelines (online – here); • FOI Tracker (E19/3006) seek similar exemptions on past requests and review the approach taken; • FOI Exemptions Word Bank (20/273088) – NOTE: these are examples (not templates!) of how ACIC decision makers have drafted reasons for exemptions in the past. Each request is different. Don't blindly copy/paste what has been done previously! It may not be relevant. • FOI Exemption AGS Training Booklet (20/273033); 	<p>Action</p> <ul style="list-style-type: none"> <input type="checkbox"/> Review your Document Release Package <input type="checkbox"/> Consider exemptions and mark up your Document Release Package with proposed redactions (Adobe Pro redaction guide here) DO NOT APPLY REDACTIONS <input type="checkbox"/> Remove documents from your release package that you will exempt in full (do not remove from your Annexure A table unless a s 25 reason exists or confirming existence of the document would itself be exempt information – see below) <input type="checkbox"/> Add the exemptions you have relied upon to your draft decision letter <input type="checkbox"/> Apply a watermark to your Document Release Package that says '<i>Released under the Freedom of Information Act 1982 (Cth)</i>' in black or '<i>Released by ACIC under the Freedom of Information Act 1982 (Cth)</i>'. <i>This document was not disclosed for the purpose of providing a contemporaneous nationally coordinated criminal history check under s 59AAA of the Australian Crime Commission Act 2002 (Cth)</i>' in red as a watermark and as text at the top of the document if releasing a NCCHC. <ul style="list-style-type: none"> <input type="radio"/> Watermark should be 45 degrees, 25-30% opacity and 'appear on top of page'. <input type="checkbox"/> For documents refused in full, create a 'Document Refusal Package' PDF and save separately into the Document Discovery folder in CM. <p>s 47E(d)</p> 

	<ul style="list-style-type: none"> • A decision letter is not required to include information that would render the decision an exempt document. <p>s 47E(d)</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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Step 7 – External Consultation

<p>Statutory Requirements – Third Party Consults</p> <p>You <u>must not decide</u> to give access to any document containing '<i>business</i>' or '<i>personal</i>' <i>information</i>' '<i>State-supplied information</i>' where it appears to that the party concerned might reasonably wish to contend that the information is exempt under: s 47 (trade secrets and commercially valuable information) and/ s 47G (business affairs) / s 47F (personal privacy) / s 47B (Commonwealth/State relations)</p> <p>S 27 & 27A - BUSINESSES AND INDIVIDUALS:</p> <p>Are you proposing to release any information that a third party would reasonably wish to contend? S 27(3) compels you to consider:</p> <ul style="list-style-type: none"> (a) <i>the extent to which the information is well known;</i> (b) <i>whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;</i> (c) <i>the availability of the information from publicly accessible sources;</i> (d) <i>any other matters that the agency or Minister considers relevant.</i> <p>S 26A – STATES (INCLUDING POLICE AGENCIES):</p> <p>Are you proposing to release any information that originated with or was received from States, and the States concerned might reasonably wish to contend that <i>the document is conditionally exempt under section 47B of the FOI Act</i> ?</p>	<p>Action – Consider External Consultation Requirement</p> <p>The Document Release Package should by now be marked up with your proposed redactions. Of the material proposed for release, are you proposing to release any information that a concerned third party (being a business, individual or State) may wish to contend?</p> <ul style="list-style-type: none"> <input type="checkbox"/> IF YES (individual or business) – Send Template N to the Third Party OR <input type="checkbox"/> IF YES (State body) Send Template P to the Third Party AND <input type="checkbox"/> Notify the Applicant of an extension to the processing time (Template O) <p>Action – If you have decided to consult a business, individual or State</p> <ul style="list-style-type: none"> <input type="checkbox"/> Update the due date in the FOI Tracker (Record 23/257424: FOI Statistical Reports - FY 2023 - 2024) <input type="checkbox"/> Update the due date in the FOI Inbox folder name for the request <input type="checkbox"/> If you need to consult a Commonwealth body, send Template XX to the FOI inbox for that body. If you are unable to find an email address in ACIC's records or online, contact the FOI Lawyer.
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<p>Business, Individual and Commonwealth/State consultations will extend the statutory processing period by 30 days to allow enough time for the interested party to consider release and raise objections. This is an 'agency managed' exemption and OAIC does not need to be notified.</p> <p>There is no statutory requirement, nor an extension of processing time, for consultation on documents originating from other Commonwealth agencies. It is still imperative to ensure Commonwealth partners are consulted on any proposed release (at a minimum). This will need to occur within the statutory timeframe for decision.</p>	
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Step 8 – Internal Consultation

Action – Internal Consultation	Action
<p>There is no statutory requirement for, however, you should always consult line areas who have provided you with documents on their release to make use of their expert knowledge in the subject matter</p> <p>If assisted by line area in searches, send Template Q</p>	<p>You will need to identify one or several ACIC business owners for documents in issue.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Seek their views on release of the documents, including reasons for any concerns with release. This will inform your exemption claims. <input type="checkbox"/> Any release of information (except from NPRS and NCIS) should be consulted with an EL2 director and their views on release recorded in writing. File this email in CM.

Step 9 – Draft Decision Letter, consult with DGC/DRLS-ACT

Statutory Requirement – Decision in 30 days!	Action – Prepare Your Draft Decision Package
<p>If you will be unable to provide a decision in 30 days, seek an extension. If you do not seek an extension and the period passes, the decision is a deemed refusal (even if it's only late by one day!) You should seek an extension as soon as it's clear you need more time.</p> <p>There are statutory maximum thresholds of time and the basis for the extension under the FOI Act.</p> <p>Will I need an extension?</p> <p>The following extensions operate independently of the extensions granted to consult third party individuals/States:</p>	<ul style="list-style-type: none"> ✓ Consider your consultation responses and make any final changes to your decision based on consultation objections raised ✓ Consider previous decisions for similar subject matter (search the FOI tracker for key words to see if this issue has been considered in a previous request, or ask the ACIC FOI Lawyer) ✓ Finish drafting your decision letter and decide if there are complexities that require second counsel ✓ <p>Action – Consult final package with DGC or DRLS-ACT</p> <p>Prepare your DGC/DRLS Coversheet (Record 24/173996: Template - FOI DGC DRLS Coversheet) which should include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> When the request was received and acknowledged, <input type="checkbox"/> What steps you took in document discovery,

<ul style="list-style-type: none"> <input type="checkbox"/> Extension by consent of Applicant – s 15AA FOI Act – maximum 30 days and only one extension available per request – send Template R to Applicant <input type="checkbox"/> Extension from OAIC for complex or voluminous requests – s 15AB FOI Act – Fill out the form at OAIC Web Form – NOTING THIS MAY BE MADE AVAILABLE TO THE APPLICANT. If ACIC is seeking to preserve the right to decide to not confirm or deny the existence of documents then the reasons must reflect this – please discuss these extensions with the ACIC FOI Lawyer before proceeding. <input type="checkbox"/> Extension from OAIC after a deemed refusal – s 15AC FOI Act – must wait for due date to pass and can only receive one extension per request. 	<ul style="list-style-type: none"> <input type="checkbox"/> The nature of the documents you identified, <input type="checkbox"/> What consultation you carried out, <input type="checkbox"/> Details of Your Decision! <p>Low risk/low complexity decisions may be referred to DRLS-ACT. Higher risk/complexity decisions to DGC (either South or North, depending who has nominated carriage of the request). You must not send a decision without endorsement of approach from DGC or DRLS.</p>
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Step 10 – Send decision and documents, complete CM filing

<p>FILING REQUIREMENTS</p> <p>FOI Decisions must comply with the ACIC's Records Management Policy. To ensure your compliance make sure you file all documents from the Outlook folder into your TRIM folders. Before you close your matter make sure the following documents are saved to the correct files in TRIM:</p> <p>Working Docs file: Your Decision Letter and any drafts; the NM Coversheet</p> <p>Document Identified: Your Search Results, Assessments Record, All Documents Within Scope, Document Release Package, Email from Line Area attaching Search Results</p> <p>Statutory Correspondence: The request, Acknowledgment, Decision, Extension, Third Party Consultation</p> <p>Emails: DGC/DRLS Consultation, Internal Consultation, and all emails that do not fall into the above categories</p>	<p>Send decision to Applicant</p> <ul style="list-style-type: none"> <input type="checkbox"/> Finalise your Decision Letter by adding the date and signature and convert it to a PDF. <input type="checkbox"/> If releasing documents, apply redactions to your Document Release Package. <input type="checkbox"/> Ensure appropriate watermark is on Document Release Package. <input type="checkbox"/> Sanitise all PDFs to be sent to the Applicant. <ul style="list-style-type: none"> <input type="radio"/> 'Protect' tab, 'Remove Hidden Information', untick 'Links, actions and javascripts' so Applicant can access any links provided in the decision letter. <input type="radio"/> Otherwise use 'Sanitize Document' tool. <input type="checkbox"/> Send via email – ensure the email comes from the FOI mailbox and your signature block does not contain your private ACIC email address or phone number. <p>Complete Filing</p> <ul style="list-style-type: none"> <input type="checkbox"/> File the Decision Email (or scanned copy if posted with the tracking number) in TRIM & Outlook <input type="checkbox"/> Move the Outlook file to 'Completed' Folder

PART B: ACIC FOI GUIDANCE

Assessing Validity of Request

The Requirements of a ‘Valid’ Request

1. Every person has the right to obtain access to documents under the FOI Act². The person making the request does not have to be an Australian citizen or resident, nor present in Australia.
2. A request can be made by a group of people, company, organisation or another government agency. This is consistent with s 23 of the Acts Interpretation Act 1901, which provides that ‘words in the singular number include the plural’ (that is, a reference to ‘person’ in s 11(1) of the FOI Act can have a singular or plural meaning).
3. The reason the information is requested is irrelevant to processing the request.
4. Section 15(2) of the FOI Act sets out what constitutes a valid request. A valid request must:
 - **be in writing** (s 15(2)(a)),
 - state that **it is made under the FOI Act** (s 15(2)(aa)),
 - **provide information** as is reasonably necessary to enable an officer of the agency to identify the document(s) requested (s 15(2)(b)), and
 - give **details of how notices** may be sent to the applicant (s 15(2)(c)).
5. There is an additional requirement set out under s 2A of the FOI Act that **the request must be sent to the agency or minister** (i.e. via delivery in person, post or email).
6. Most requests are sent directly to the FOI inbox or made via the ACIC’s FOI webform. However, it is important to note that a request can be sent through other means (such as via post or hand delivered to an ACIC officer directly) and be considered valid from that time. To ensure the ACIC meets its obligations under the FOI Act, all business areas should immediately forward FOI related correspondence to the FOI inbox (foi@acic.gov.au).
7. An agency or minister may refuse a request that does not meet the formal requirements set out in s 15 (subject to conducting a request consultation process before basing a decision on s 15(2)(b)). However, an agency also has a duty to take reasonable steps to assist a person to make a request that complies with the requirements of the FOI Act (s 15(3)).

² FOI Act, s11(1)

Common requests unlikely to be valid under the FOI Act

NATIONALLY COORDINATED CRIMINAL HISTORY CHECKS (NCCHCS)

8. **s 22(1)(a)(ii)**

[REDACTED]

9. **s 47E(d)**

[REDACTED]

Preparing documents

14. If the decision maker is forming a view to exempt documents (either wholly or in part), certain administrative steps must be followed to prepare those documents for release to ensure comprehensive records are maintained. This is particularly important for merits review proceedings.

Filing the relevant documents in TRIM

15. Save an unredacted copy of all documents identified as being relevant to the request to your desktop, convert each document to .pdf file format and then title each one in accordance with the schedule attached to the decision record. The following naming convention is suggested:
 - “Document 1 – [Document Title]”.
16. Create a further three files in TRIM and add these to FOI request project box. The titles of the files need to be:
 - SERVICES – COMPLIANCE – FOI XX-XX – Relevant documents unmarked
 - SERVICES – COMPLIANCE – FOI XX-XX – Relevant documents marked up
 - SERVICES – COMPLIANCE – FOI XX-XX – Relevant documents released
17. Upload copies of all the newly renamed .pdf documents on your desktop to each of the following folders:
 - Relevant documents unmarked; and
 - Relevant documents marked up
18. Do not edit the documents in the unmarked folder. These documents show the full content of the original documents assessed for the request.
19. Use the documents in the ‘marked up’ folder for your assessment – These versions of the documents are worked to show what redactions are being proposed and should evolve to show a ‘mocked up’ version of what is finally released.
20. Assess each document and apply redactions to any material you consider should not to be released. When marking any material as exempt, select the most appropriate exemption/s under the FOI Act, noting you will need to justify your reasons for doing so in the decision.

Preparing documents for release

21. Once a finalised marked up version of the documents and a decision has been completed and endorsed/noted at the appropriate level, save a copy of each of the marked up documents to your desktop and do the following:
 - Open each document in Adobe Pro;
 - Apply the redactions;

- Apply the FOI Watermark to each document;
- Sanitize each document;
- Remove hidden information;
- Update document properties by 'Right clicking' on each open document> 'Document properties and adding the information as outlined in the red boxes below. Save and close the documents once you have completed the above steps for each one.

22. The same steps above (except for applying the FOI watermark) should be applied again to the signed pdf. version of the decision record.

23. Once the above documents have all been prepared in accordance with the above, save them to the 'Relevant documents released' folder you created earlier. Save the finalised decision record to the 'Statutory Documents and Correspondence folder'.

24. Send the applicant the decision and the prepared finalized documents by email or other nominated means of contact.

25. To publish material on the disclosure log send an email to webmaster@acic.gov.au attaching the documents required to be uploaded, and setting out the wording.

26. Example email to Webmaster to have documents published on the FOI Disclosure Log:

Hi Webmaster

Could the following entry please be uploaded to the ACIC's Freedom of Information disclosure log:

<i>FOI Reference Number</i>	<i>Date FOI applicant granted access</i>	<i>Summary of FOI request received by CrimTrac</i>	<i>Documents to be uploaded</i>

Please let me know if you have any queries.

Kind regards,

Documents required to be included on the disclosure log must be made available within 10 working days after the day the person was given access to the document under FOI.

EXTERNAL CONSULTATION REQUESTS

27. Some documents held by external agencies may contain information that would reasonably be of concern to the ACIC if released. If a decision maker of an external agency has decided to give access to those documents, they will generally consult with the ACIC prior to release.

28. Where an external agency is processing a FOI request and a document for that request is identified as having been received from or originating from the ACIC, the agency may consult with ACIC to seek its views on the release of the material. This is called a 'courtesy consultation' request.
29. There is no provision in the FOI Act for courtesy consultations to occur between Commonwealth agencies. However, it is considered good practice to consult with other relevant agencies before a decision is made, even when the FOI Act does not require consultation and when the agency does not intend to disclose the document³.
30. When a courtesy consultation is received, the requested due date for response should be noted. If the requesting agency does not receive a response in the requested timeframe, it is generally taken to mean that there are no concerns with release of the material. If necessary, the requesting agency should be contacted to obtain an extension of time to respond to the courtesy consultation.
31. A response to a courtesy consultation should:
 - note whether the material has already been released under FOI or is publicly available;
 - note if the material would disclose the names of ACIC staff below the SES level. There are internal processes in place regarding the release of this information (see [17/189605](#))
 - outline the views of the ACIC and relevant internal stakeholders as to release or non-release of the material. If exemption claims are made over the material, an indication of which FOI exemption/s are being claimed and detailed explanation as to why need to be provided. There is no obligation on another agency to decide to not release material merely because there was an objection to its release.
 - a copy of the courtesy consultation material with any exemptions being claimed marked up.
32. A response to a courtesy consultation needs to be reviewed and endorsed by RLMS and, if necessary, other senior members of ACIC staff before being sent to the requesting agency.
33. The PROCEDURE for handling an external consultation request is briefly outlined below:
 - 33.1. The matter is received and a folder should be created in the FOI inbox, as well as a project box and folder in TRIM in accordance with the following naming conventions:

Project Box - *LEGAL SERVICES – COMPLIANCE – C25-NN – Applicant – Topic*
Folder - *LEGAL SERVICES – COMPLIANCE – C25-XX – Emails*
 - 33.2. The relevant internal line area who is related to the document/ subject matter is consulted on release and their views/ objections sought.
 - 33.3. The lawyer responsible for the request considers the document and applicable exemptions under the FOI Act.
 - 33.4. The lawyer receives and considers the response of the relevant line area, applies their knowledge of the FOI Act to create any redactions and then progresses a brief email outlining the proposed draft response to an EL2 Lawyer.

³ OAIC Guidelines [3.70]

- 33.5. Only when the EL2 approves the draft response is it provided to the external agency.
- 33.6. All emails must be filed in CM and the FOI inbox folder is moved to the 'closed consultations folder' for the relevant year.

REVIEW, COMPLAINANTS AND APPEAL

34. There are two main avenues a person may take to have an access grant decision or access refusal decision reviewed:
 - internal agency review
 - Information Commissioner review.
35. Where a person is dissatisfied with a review decision by the Information Commissioner they may apply to the Administrative Appeals Tribunal (AAT) for review. Both the Information Commissioner and the AAT can refer questions of law to the Federal Court of Australia during a review. In some limited circumstances, the Commonwealth Ombudsman can investigate complaints about agency actions on FOI matters.

INTERNAL REVIEW

36. An applicant who is dissatisfied with a decision to refuse access to a document or an affected third party who is dissatisfied with a decision to grant access to a document can apply for internal agency review of that decision. If the decision was made by a minister or personally by the principal officer of an agency, internal review is not available. In this circumstance, a person can seek review by the Information Commissioner. Applications for internal review must be made in writing and, in general, within 30 days of notification of the original decision, unless the agency agrees to an extension.

Internal Review Extensions

37. There is NO MECHANISM in the FOI Act for an agency to extend the timeframe for processing an internal review request.
38. If additional time is needed, the external review must first lapse (resulting in a deemed affirmation) and then an extension of time to reverse the deemed affirmation sought from the OAIC. Only the Information Commissioner can grant an extension of time once the decision period has expired (s 54D(3) of the FOI Act).
39. This is not best practice as a deemed decision will mean the ACIC has not been compliant with the statutory timeframes under the FOI Act. Internal reviews should be prioritised to ensure decisions are made on time and in accordance with the Act.

Internal Review Process

40. An internal review must be undertaken by an authorised officer other than the original FOI decision maker. It is preferred that the reviewing officer be of higher seniority than the original decision maker⁴.
41. The OAIC provides a detailed guide on processing and deciding internal review matters. Please refer to the OAIC's website [here](#) for more information.
42. The FOI Act does not prescribe any explicit procedure or criteria for internal review decisions. However, principles on best practice include⁵:
 - to bring a fresh, independent and impartial mind to the merits review process.
 - assess the merits of the request and all issues raised by the applicant
 - exercise all the powers available to the original decision maker.
 - have regard to all of the material on which the original decision was made.
 - may rely on a record of searches or third party consultation undertaken by the original decision maker, or undertake the same work.
 - may consult with the other ACIC staff and the original decision maker.
 - may consider additional material or submissions not considered by the original FOI decision maker.
43. The review decision must be notified within 30 days of the agency receiving the application. The decision must comply with s 26 of the FOI Act. If the agency does not make a decision within the statutory timeframe (or as extended by the Information Commissioner), the original decision is deemed to be affirmed. An agency may then apply to the Information Commissioner for a one-off extension to make a decision. If the Information Commissioner agrees, the Commissioner may allow any further time considered appropriate and may apply any conditions considered reasonable.
44. A person is not required to apply for internal review before applying for review by the Information Commissioner. However, the Information Commissioner considers it is usually better for a person to seek internal review first. Internal review can be quicker than external review and enables an agency to take a fresh look at its original decision and to discuss the matter with the applicant.

INFORMATION COMMISSIONER REVIEW

45. A person who disagrees with an agency's or minister's decision about access to a document (including a deemed decision) or a decision on a request to amend or annotate a record of personal information, may apply to the Information Commissioner for merit review of the decision.⁶

⁴ OAIC Guidelines [9.26]

⁵ OAIC Guidelines [9.34]

⁶ For more information see <https://www.oaic.gov.au/freedom-of-information/foi-decisions/ic-review-decisions/>

46. There are no timeframes imposed on the OAIC for completion of an Information Commissioner review.
47. The OAIC will notify the agency if a request for review is received. The OAIC will also allocate an officer from its office to manage the request, and that officer will provide advice about the steps and information required to progress the review.
48. The following steps may be undertaken by the Information Commissioner to progress a review:
 - request the provision of further reasons and/or submissions in support of the ACIC's position – These are generally requested at the beginning of a review and after the OAIC has provided its preliminary views to the agency.
 - produce documents over which exemption claims are made in un-redacted format (exempt where the claims concerned national security, Cabinet or Parliamentary Budget Office matters)
 - issue a notice to the ACIC to produce information and documents – Failure to comply is an offence punishable by six months imprisonment.
 - order further searches to be undertaken
 - require a person to attend a hearing to answer questions and take oath or affirmation that the answers given are true.
 - Refer a question of law to the Federal Court.
49. If Submissions are provided to the OAIC by an agency, these are generally made available to the FOI applicant. Submissions may be made confidentially but reasons for doing so must be submitted in advance of sending the submissions. Further, if confidential submissions are made, a separate non-confidential submission must be provided to share with the applicant.
50. If unredacted documents have been requested and there are concerns about releasing ACIC information outside the agency, an agency may request the Information Commissioner to attend an inspection of the documents in extenuating circumstances⁷.
51. Only the Information Commissioner, FOI Commissioner or Privacy Commissioner can make a final decision:
 - to affirm the decision of the agency (s 55K(1)(a)).
 - to vary the decision of the agency (s 55K(1)(b)).
 - to set aside the decision of the agency and make a fresh decision (s 55K(1)(c)).
52. The OAIC will notify the agency and the applicant of its decision, including whether further steps need to be undertaken post-review.

ART REVIEW

53. Most review decisions by the Information Commissioner (including a decision to declare a person a vexatious applicant), can be reviewed by the AAT. However, a person cannot apply to the AAT for review of the Information Commissioner's decision not to undertake or continue a review. A

⁷ OAIC Guidelines [10.1222]

person can also apply to the AAT for review of an agency's decision if the Information Commissioner has decided that the matter is better reviewed by the AAT. In this case, the decision by the agency or the minister is the decision that the AAT would review.

54. An application to the AAT must be made within 28 days of the Information Commissioner's decision being given to the review applicant.
55. Where the matter being reviewed is the Information Commissioner's declaration that a person is a vexatious applicant, the Information Commissioner is a party to the proceedings in the AAT. For other decisions (for example, a decision to refuse or grant access to a document) the agency or minister will be a party to the proceedings, and not the Information Commissioner. An agency or minister must notify affected third parties if an FOI applicant seeks AAT review of a decision to refuse access to third party information.
56. In AAT proceedings to review an FOI decision, the agency or minister who received the access request or the application for amendment of personal records has the onus of establishing that a decision that is adverse to the FOI applicant should be given. If an affected third party is a party to the proceeding, the third party has the onus of establishing that a decision refusing to give access to the document is justified, or the AAT should give a decision adverse to the person who made the request.
57. More information about review by the AAT can be found at www.aat.gov.au.

Federal Court

58. Both the Information Commissioner and the AAT can refer questions of law to the Federal Court of Australia during a merit review.
59. A party to a review also has the right to appeal to the Federal Court on a question of law from a decision of the Information Commissioner or of the AAT. Such an appeal must be made within 28 days of the decision being given, or within any further period that the Federal Court may allow.
60. More information about the Federal Court can be found at www.fedcourt.gov.au.

Complaints and investigations

61. The Information Commissioner can investigate agency actions relating to the handling of FOI matters and agency compliance with the IPS, either in response to a complaint or on the Commissioner's own motion. Such investigations may point to systemic problems in agencies or help identify areas where improvements in FOI handling can be made. The Commissioner cannot investigate the handling of an FOI matter by a minister, but can undertake merit review of the decision.
62. The Information Commissioner will not investigate a matter as a complaint if the proper remedy is for the person to seek review of the merit of an FOI decision. The complaints process is intended to deal with the manner in which agencies handle FOI requests and procedural compliance matters. Examples might include where there is delay by an agency in processing an FOI request; an agency failed to consult a third party whose interests would be affected before it released a document; an agency continued to insist that an FOI applicant narrow the scope of a reasonable request, or the complaint concerned an alleged conflict of interest by the decision maker.

Commonwealth Ombudsman

63. The Commonwealth Ombudsman may also investigate complaints about agency handling of FOI requests. In the normal course of events, such complaints are likely to be transferred to the Information Commissioner. However, in some circumstances, such as where there are other issues as well as FOI involved, it may be preferable for the Ombudsman to deal with the complaint. The Information Commissioner can transfer complaints to the Ombudsman.

Vexatious applicants

64. The Information Commissioner may declare a person to be a vexatious applicant, either on the Commissioner's own initiative or after considering an application by an agency or minister. A vexatious applicant declaration is not an action that will be undertaken lightly by the Commissioner, but its use may be appropriate at times. If an agency or minister applies for a vexatious applicant declaration, they must show clearly and convincingly that the declaration should be made.

65. The FOI Act sets out the grounds for declaring a person to be a vexatious applicant. The types of behaviour that might lead the Information Commissioner to consider declaring a person to be a vexatious applicant include:

- repeatedly engaging in access actions that involve an abuse of process
- harassing or intimidating an individual or an agency employee
- unreasonably interfering with the operations of an agency
- seeking to use the FOI Act to circumvent restrictions imposed by a court on access to a document or documents.

66. Such behaviour might occur when the person makes repeated requests for documents, amendment or annotation of personal records, internal review, or merit review by the Information Commissioner. An agency or minister who applies for a vexatious applicant declaration bears the onus of showing that the declaration should be made.

67. Before making a declaration, the Information Commissioner must give the person concerned an opportunity to make oral or written submissions.

68. A vexatious applicant declaration must be made in writing and be notified as soon as practicable to the person concerned. The declaration sets the terms and conditions for the effect of the declaration. For example, the declaration might provide that an agency or minister may refuse to consider any request by the person for documents under the FOI Act that are made without the written permission of the Information Commissioner.

69. A decision by the Information Commissioner to declare a person to be a vexatious applicant can be reviewed by the AAT.

PUBLICATION REQUIREMENTS

Information Publication Scheme

70. A new Information Publication Scheme applies to Australian Government agencies that are subject to the FOI Act. The scheme provides a statutory framework for the pro-active publication of information by agencies. The IPS underpins a pro-disclosure culture across government, and transforms the FOI framework from one that was primarily reactive to individual requests for documents, to one that also relies more heavily on agency driven publication of information. The IPS requirements also reflect the objective that information held by government is a national resource to be managed for public purposes.

71. The IPS requires agencies covered by the FOI Act to:

- publish an agency plan
- publish specified categories of information
- consider proactively publishing other government information.

72. Agencies must ensure that information published under the IPS is accurate, up to date and complete.

73. Many agencies highlight the IPS by an icon developed by the OAIC, published on the home page of the agency website.

Information Publication Scheme

74. Part II of the FOI Act establishes an [Information Publication Scheme \(IPS\)](#) for Australian Government agencies subject to the Act.

75. The IPS requires agencies to publish a broad range of information on their website and provides a means for agencies to proactively publish other information⁸. Agencies must also publish a plan that explains how they intend to implement and administer the IPS.

76. The IPS requirements reflects the objective that information held by government is a national resource to be managed for public purposes (s 3(3) of the FOI Act)⁹.

77. In accordance with subsection 8C(2) of the FOI Act and section 51 of the [Australian Crime Commission Act 2002](#) (Cth) ('the ACC Act'), the ACIC is not required to publish any information under the FOI Act otherwise than as permitted or required by the [ACC Act](#).

78. The ACC Act prescribes the circumstances where certain ACIC information can be disclosed. To this end, the agency discloses information to others, including law enforcement agencies and agencies that are prescribed in the [Australian Crime Commission Regulations 2002](#). However, much of this information cannot be lawfully disclosed to the public.

⁸ The [FOI Guidelines](#) issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982* – Version 1.4, October 2014, para 13.1

⁹ *Ibid*, 13.2

79. The ACIC has chosen to comply with the IPS scheme where compliance would not be restricted by section 51 of the ACC Act. The ACIC IPS agency plan can be accessed at on the ACIC website¹⁰.

AGENCY PLAN

80. The IPS requires agencies to publish an information publication plan, describing what information the agency proposes to publish, how the information will be made available and other steps the agency will take to ensure compliance with IPS requirements.
81. Publication of an agency plan is a continuing obligation. Agencies must ensure that all information the agency publishes under the IPS, including the agency plan, is 'accurate, up to date and complete'. Agencies should therefore ensure that the agency plan is regularly reviewed and updated where necessary.
82. The Information Commissioner has published an Agency Plan template, that can be adapted by agencies, in the *Guidelines issued under s 93A of the FOI Act 1982* available on the OAIC website.

PUBLICATION OF SPECIFIED CATEGORIES OF INFORMATION

83. The IPS specifies nine classes of information, in addition to the information publication plan, that agencies must publish on their website. The classes of information that must be published are:
 - details of the agency's organisational structure
 - details of the functions of the agency, including its decision-making powers and other powers affecting members of the public
 - details of appointments of officers within the agency that are made under legislation, other than Australian Public Service employee appointments
 - the information in agency annual reports that are laid before the Parliament
 - details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made
 - information in documents to which the agency routinely gives access in response to FOI requests, other than in specified cases such as where the information contains personal information and it would be unreasonable to publish the information
 - information that the agency routinely provides to Parliament in response to requests and orders from the Parliament
 - contact details for an officer or officers who can be contacted about access to the agency's information or documents under the FOI Act
 - the agency's operational information (information held by the agency to assist it to perform or exercise its functions or powers in making decisions or recommendations affecting members of the public, such as decision making manuals and guidelines).

¹⁰ The [FOI Guidelines](#) issued by the Australian Information Commissioner under s 93A of *the Freedom of Information Act 1982* – Version 1.4, October 2014, para 13.3.

OTHER INFORMATION TO BE PUBLISHED UNDER THE IPS

84. The FOI Act does not limit or restrict publication of information by agencies, including information that is exempt from disclosure under the FOI Act.
85. Agencies are generally best placed to identify other information that should be included in the IPS. In doing so, agencies should strive to implement the objects of the FOI Act, which declare that information held by government is a national resource that should be managed for public purposes, and that the Parliament intends to increase scrutiny, discussion, comment and review of the Government's activities.

COMPLIANCE WITH THE IPS

86. The Information Commissioner is responsible for investigating agency compliance with the IPS and monitoring, investigating and reporting on the operation of the scheme. In addition, each agency, with the Information Commissioner, must review the operation of the IPS within that agency at least once every five years.

Disclosure log listing information released under the FOI Act

87. Agencies and ministers must publish details of information that has been released in response to each FOI access request, subject to certain exceptions. This publication is known as a 'disclosure log' and must be completed not more than 10 days after the decision is made. The purpose of the disclosure log is to make available to the world at large information that has been released under the FOI Act.
88. The disclosure log must be published on an agency's or minister's website (and can usually be found through an icon or link on the homepage). The information released under the FOI Act may be published in one of three ways:
 - making the information available for downloading from the agency's or minister's website (it is common that PDF copies of documents released under the FOI Act are made available)
 - linking to another website where the information can be downloaded, or
 - giving details of how the information may be obtained (for example, upon written request for a photocopy, for which a copying charge can be).
89. If publication in a disclosure log would be unreasonable, an agency or minister is not required to publish:
 - personal information about any person
 - information about the business, commercial, financial or professional affairs of any person
 - exempt information that has been released under the FOI Act, or information that would have been exempt had the FOI request been received from a person other than the particular applicant (this last ground of exclusion arises from a determination made by the Information Commissioner under the FOI Act).
90. An agency or minister can also decline to publish information that would require extensive modification to make it publishable.
91. Information must be published in a disclosure log within ten working days of access being granted to the FOI applicant. The Information Commissioner has recommended that this issue be raised

with applicants, particularly if the applicant may object to publication occurring simultaneously with access being granted. If that does occur, the Commissioner has recommended that consideration be given to reducing or waiving any FOI access charge that would otherwise be imposed on the applicant.

92. It is open to an agency or minister to place supplementary information on a disclosure log - for example, to point out that a document has been revised and published elsewhere. It is also open to an agency or minister to archive information that was published in documentary form on a disclosure log, provided the disclosure log reference to the information is retained. If copyright restrictions apply to a document published on a disclosure log these should be noted.

Legal protections for IPS and disclosure log publication

93. The FOI Act provides a range of protections against civil and criminal liability for the Commonwealth, minister, agencies, agency officers who publish information, in good faith, in the belief that publication was either required or permitted under the IPS. Similarly, a person is not liable to any action for defamation, or breach of confidence, because they have supplied a document to an agency or minister and the document is published. Legal protections also apply to the release of information in response to an FOI request, and to publication apart from the FOI Act.
94. These protections complement the policy objective of the Act, of providing a secure framework for publication of government information to the public. The protections are conditional, and apply only where a minister or agency officer publishes a document in good faith in the belief that the publication was required or permitted under the Act.

OAIC FOI STATISTICS

95. These statistical returns are submitted quarterly and annually and are required by each agency under the FOI Act¹¹
96. The statistical returns will be requested by the OAIC by way of email. The request email will contain the due date, a link to the online reporting platform and instructions for accessing it.
97. The FOI Coordinator is responsible for the maintenance of the statistical returns spreadsheet in TRIM (located in [PROJECT19/318](#); blank template at: [22/64563](#)). The statistical returns spreadsheet mirrors the information that needs to be reported to the OAIC. If it is updated regularly (i.e. each time a request is received or finalised), reporting to the OAIC is a streamlined process.
98. For annual reports, the information provided is an indicative estimate and may be calculated on the following terms:

¹¹ s 93 of the FOI ACT; or Part 15 of the [OAIC Guidelines](#)

- Number of hours from FOI Coordinator: This is calculated by multiplying 7.5hrs by the number of days in an entire working year (generally 1800 hours) or number of days in which the position was filled on a full-time basis;
- hours from SES staff: Generally calculated as 2hrs for each FOI request where an SES staff member was consulted, and 1hr for all other FOI requests (assuming a third of the total number of requests were complex enough to require consult);
- hours from APS6-EL2 staff: This is generally calculated as about 10 hours for each request in which a staff member (other than FOI Coordinator) was the delegate, and 2hrs for the purpose of review/clearance for all other requests processed in the year; and
- hours from support staff (i.e. paralegal): this is calculated as 1-2hours per request for every such staff member involved in processing a request.

99. For further guidance about submitting FOI quarterly and annual statistical returns, please visit: <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/foistats-guide/>

100. In addition to reporting the ACIC statistical returns, the FOI Coordinator is also responsible for reporting statistical returns on behalf of the AIC.

Generating ACIC's Quarterly Statistics

101. The ACIC's Quarterly Statistics and matter register is generated each financial year from the template at: [22/64563](https://www.oaic.gov.au/sites/default/files/2022-07/22-64563-ACIC-Quarterly-Statistics-and-Matter-Register-2022-23-FY.xlsx).

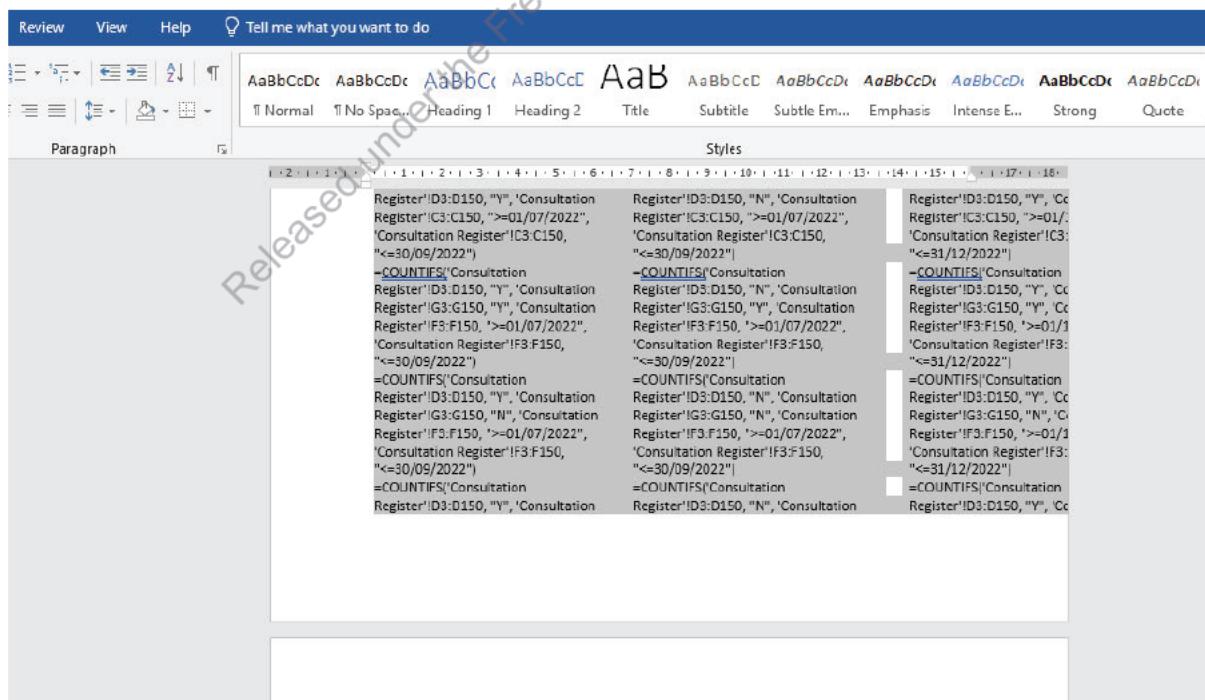
102. To generate the yearly template at the **start of the financial year**, open the template and click on the last tab titled 'Administrator Coding'. This tab contains the set up for the formulas used to auto-calculate all required statistics.

103. At G2, replace the "YYYY" text by inserting the **starting year** for the financial year. For example, if you are generating a spreadsheet for the 2022-2023 FY, insert 2022.

F	G
Input Required > Step 1: Enter the Starting Year for the Financial Year: YYYY	

104. Once done, the formulas from G4:Q72 should be formatted to the corresponding quarters for that financial year. Select the cells from G4 to Q72. Copy these cells through Ctrl+C.

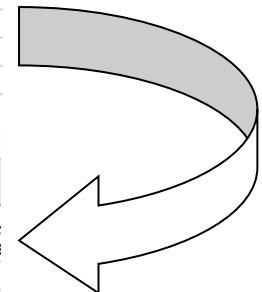
105. Open a blank Word document, and enter Ctrl+V. This will paste the formulas. Enter Ctrl+A to re-select all the formulas on the Word, and enter Ctrl+C.



106. In the Excel spreadsheet, head to the 'Quarterly FOI Statistics' tab. Click on cell B2, which reads: "Enter Formulas from Word Here". Enter Ctrl+V.

	B	C	D
<i>Quarter 1: July - September</i>			
<i>Enter Formulas from Word Here</i>			

	B	C	D
<i>Quarter 1: July - September</i>			
Predominantly Personal Information Request, Other Request			
	0	0	
	0	0	
	0	0	
Predominantly Personal Information Request, Other Request			
	0	0	
	0	0	



106.1. Due to limits imposed onto Excel due to security concerns, macros cannot be used to do away with this step. Transferring the formulas from Excel, to Word, and back to Excel ensures the formulas function as intended – that is, as formulas as opposed to text strings.

107. The spreadsheet is now set up for the year. Save the new spreadsheet on CM with the following convention:

FOI Statistical Reports – FY 20XX-20XX

Using ACIC's Quarterly Statistics Spreadsheet

108. The spreadsheet covers:

- 108.1. All FOI matters received by the ACIC (see the tab 'FOI Register');
- 108.2. All FOI Internal Reviews conducted by the ACIC (see the tab 'IR Register'); and
- 108.3. All Consultation Requests received by the ACIC (see the tab 'Consultation Register').

109. The FOI Register and the IR Register are set up to account for **most** statistics specifically requested by OAIC. Questions which are not relevant to the ACIC based on established agency practice are not replicated in the spreadsheet.

110. To use the FOI Register:

- 110.1. Note:
 - 110.1.1. that the "Status" and "Days Since Deadline" columns auto-calculate. Do not overwrite the formulas in these columns;
 - 110.1.2. that most fields use a drop-down list to minimise human error; and
 - 110.1.3. that there are additional instructions in certain columns (e.g. "If Yes, enter a Date, Otherwise Leave Blank")..
- 110.1.4. in relation to original deadline dates, insert the last date permitted by the Acts Interpretation Act 1901 (Cth).

110.1.5. in relation to extension deadlines, if multiple extensions are obtained, include the last valid deadline date.

110.2. Where a **valid** FOI matter is received by the ACIC:

110.2.1. On **receipt**, fill out the columns A, and C-I.

110.2.2. On **withdrawal, extensions, or finalisation**, fill out columns H-O as the matter continues.

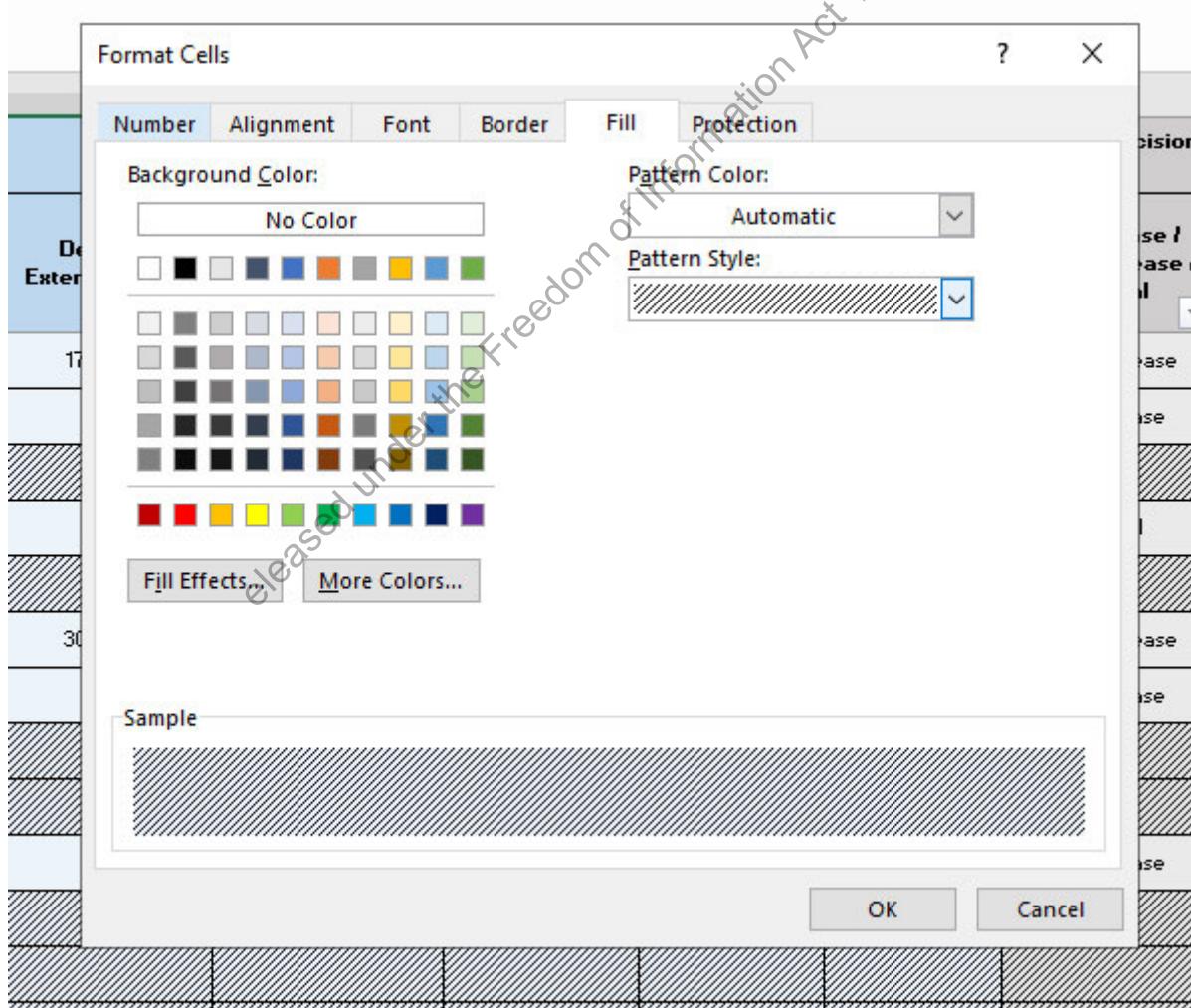
110.2.3. Where the matter is **finalised by a decision handed down**, fill out columns P-AI.

110.2.4. Where the matter has its decision **uploaded to the Disclosure Log**, fill out columns AJ-AK.

110.3. Where an **invalid** FOI matter is received by the ACIC:

110.3.1. On receipt, indicate ‘-’ (minus sign) as the date received, and fill out columns D-G.

110.3.2. Applicants are often given a deadline before a matter is considered withdrawn to make FOI request valid. Where this deadline is exceeded, highlight the entry (minus the ID and Status fields) and apply a cross out pattern to the entry. This can be done via Font Settings (Ctrl+Shift+F) > Fill Tab > Pattern Style Drop Down > “Thin Diagonal Stripe”).



111. To use the IR Register:

111.1. On **receipt**, fill out columns A, C-F.

- 111.2. If **withdrawn**, fill out column G.
- 111.3. If a **decision is made**, fill out columns H-O.
- 111.4. If a **decision is made by exceeding the 30 day deadline**, assume H is the decision deadline, and I is "Y".

112. To use the Consultation Register:

- 112.1. On **receipt**, fill out columns A, C-E. If the deadline is re-negotiated at any point, insert the last deadline.
- 112.2. On **providing a response**, fill out columns F-K.
- 112.3. Note that column H ("Nil comment") is distinct from column K ("Elected to not Comment"). The latter describes a situation where the ACIC denies the opportunity to comment on a proposed disclosure. This might occur, for example, where the documents discovered do not relate to ACIC holdings, personnel, or interests (e.g. a mistaken consultation).

Requesting statistical returns from the AIC

113. When the statistical returns request email is received, an email requesting this same information will need to be sent to the Deputy Director of the AIC. A template request email can be located at [18/299272](#).

114. When the response is received, logon to the online reporting platform. The AIC's login details are:

[REDACTED]
[REDACTED]
[REDACTED]

115. Enter the data as requested in the online platform.

Uploading statistical returns online to the OAIC

116. To access the OAIC online reporting platform for the ACIC, enter the following login details on the online platform login screen:

[REDACTED]
[REDACTED]
[REDACTED]

117. Enter the data as requested in the online platform.

Executive (Fortnightly) Reports

118. The FOI Coordinator is responsible for reporting on the FOI caseload to the ACIC Executive. This reporting occurs every second Friday.
119. The report is sent as a PDF (from MS Word) document that provides a qualitative overview of every request on foot, including applicant names, matter progress, business owners and sensitivities.
120. Once the reports are disseminated, ensure they are uploaded [E25/9832](#).

121. Ensure to create a new TRIM folder for the above reports at the commencement of each financial year registered under [PROJECT19/318](#).

Released under the Freedom of Information Act 1982 (Cth)