



Freedom of Information Policy

Purpose:	To ensure staff of the National Commission for Aboriginal and Torres Strait Islander Children and Young People (National Commission) are aware of the National Commission's obligations under the <i>Freedom of Information Act 1982</i> (Commonwealth) (FOI Act) and relevant processes.
Applicable to:	All employees within the National Commission.
Relevant Authority:	Freedom of Information Act 1982 (Cth) FOI Guidelines issued by the Australian Information Commissioner.
Related Documents:	<i>Freedom of Information Act 1982</i> - Instrument of Authorisation
Approved by:	National Commissioner for Aboriginal and Torres Strait Islander Children and Young People.
Policy Owner:	Governance and Reporting
Review Date:	September 2027
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1 Introduction

The purpose of this policy is to ensure that all staff within the National Commission for Aboriginal and Torres Strait Islander Children and Young People (**National Commission**) are aware of their obligations under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) and understand the process for handling freedom of information (FOI) requests.

The Department of Social Services (**the department**) FOI team will provide administrative support to the National Commission in the processing of FOI requests.

This policy provides an overview of the FOI Act and the roles and responsibilities of the National Commission and the department's FOI team in dealing with FOI matters.

2. Overview of the FOI Act

The FOI Act applies to official documents of Australian Government ministers, documents of most Commonwealth agencies and in some circumstances, documents of contractors of the Commonwealth.

Each person has legally enforceable rights under, and subject to, the FOI Act to obtain access to government documents and to apply for the amendment or annotation of records of personal information held by government.

Agencies are required to publish specified categories of information and are encouraged to proactively release other government held information.

The FOI Act also requires agencies to provide information to the Office of the Australian Information Commissioner (the OAIC) to enable the Information Commissioner to prepare reports on freedom of information matters.

3. FOI Requests

For FOI requests to be valid under the FOI Act, they must:

- be in writing
- state that the request is an application for the purposes of the FOI Act
- provide sufficient information concerning the document(s) to assist an officer of the National Commission to identify them and
- give details of how notices can be sent to the applicant.

A person may make a request in writing to the National Commission by email, in writing or by using the Enquiry Form on the National Commission's website.

Email: enquiries@ncatsicyp.gov.au

Write to:

National Commission for Aboriginal and Torres Strait Islander Children and Young People
GPO Box 9820
Canberra ACT 2601

Physical mail must be collected regularly by Canberra-based staff of the National Commission. If there are no National Commission staff in the Canberra office, arrangements will be made for a nominated staff-member from DSS to collect the mail. Any correspondence that may constitute an FOI request must be scanned and emailed to the Director responsible for governance on the same day it is collected, to enable prompt assessment, acknowledgement and processing of the request.

The National Commission has an obligation to take all reasonable steps to assist an applicant to ensure their request is clear and complies with the FOI Act. The applicant need not reside in Australia, be an Australian citizen or even identify themselves, unless they are seeking personal information.

4. Responsibilities

All staff have an obligation to assist the National Commission and the department's FOI team to enable the National Commission to comply with its obligations under the FOI Act. The FOI Protocol between the department and the National Commission outlines how the department and the National Commission will work together and their respective responsibilities, including timeframes for when certain actions must be taken. The National Commission must allocate appropriate resources to the processing of an FOI request. This includes meeting deadlines set by the department's FOI team for the provision of documents or advice to meet statutory timeframes.

5. Statutory timeframes

The National Commission has **30 calendar days** from the date of receipt to process an FOI request.

Due to the statutory timeframes, it is important that staff who receive FOI requests, advise the department's FOI team within 2 calendar days and alert their supervisor.

An extension of the 30-day timeframe can occur in certain circumstances, for example, where third-party consultation is required (other than Commonwealth agencies or ministers), with the agreement of the applicant or with the approval of the Information Commissioner. To ensure compliance with statutory timeframes, staff must provide all relevant documents to the department's FOI team as soon as possible. The protocol between the department and the National Commission sets out the timeline for responding to FOI requests and details the responsibilities of the National Commission and the department's FOI team.

6. Authorised decision makers

Only authorised decision makers can make decisions on whether a document is exempt, or conditionally exempt under the FOI Act. The National Commission's FOI Instrument of Authorisation is published on its website. The department's FOI team also hold a copy of the National Commission's FOI Instrument of Authorisation.

All authorised decision makers must have appropriate security clearance for the handling of sensitive or classified material in accordance with departmental and other relevant Commonwealth policies.

7. Locating and providing documents

Conducting document searches

The FOI Act requires the National Commission to conduct a reasonable search of its electronic and hard copy records for documents in its possession that are relevant to the request. Electronic records may be stored in emails, ARC, PDMS, shared computer drives, electronic storage devices (i.e. USBs, CDs/DVD) and databases or systems specific to the National Commission. Paper or hard copy records may be stored in filing cabinets, safes, personal folders and diaries and desk drawers or cupboards.

To ensure searches are reasonable and appropriate, the National Commission will complete a document search minute certifying all relevant documents and information have been located. The document search minute is to be approved by an EL2 or above officer and provided to the department's FOI team along with the identified documents. The National Commission should provide all documents in electronic form.

In the event an FOI applicant seeks review by the Information Commissioner or the Administrative Review Tribunal, the National Commission may be required to provide proof that a reasonable search has occurred.

The National Commission should not decline to provide a document to the department's FOI team on the basis that they consider the document exempt or that it contains sensitive material. The department's FOI team needs all documents to prepare the draft decision for the National Commission's authorised decision maker who will ultimately decide whether a document (or part of the document) is exempt or whether a practical refusal reason exists under the FOI Act.

Where it becomes apparent to the National Commission that the request is complex or voluminous in size, the National Commission must advise the department's FOI team as soon as possible to discuss the scope of the request.

Information stored in a database

The FOI Act provides a right of access to documents rather than to information. However, documents can be produced from statistical information or data held by the Commission as an electronic record on a database or electronic system wherever possible, unless doing so would amount to a substantial and unreasonable diversion of resources.

The National Commission should not create a new document from statistical information or data in order to fulfil an FOI request without consulting the department's FOI team first.

Contracted service provider documents

When locating documents for an FOI request, the National Commission may need to enforce its contractual rights to obtain documents from contracted service providers where they hold documents that may fall within the scope of an FOI request.

Sensitive documents

The National Commission should provide documents to the department's FOI team even if the information in those documents is sensitive, marked as Cabinet material, or may be otherwise exempt under the FOI Act.

Although a document may appear to contain highly sensitive material, it is the responsibility of the National Commission's authorised decision maker to determine whether the document meets the criteria for claiming an

exemption from release as provided in the FOI Act. It is important to note that an internal security classification of a document is not a basis for exemption for FOI purposes.

8. Briefing stakeholders

To determine whether stakeholders should be briefed on the FOI request, the National Commission should consider the subject matter of the request, the documents that may fall within the request and the FOI applicant. If the National Commission is unsure whether request is sensitive and would require stakeholder briefing, the department's FOI team are available to assist.

National Commission staff are responsible for briefing the National Commissioner on sensitivities or possible media responses resulting from an FOI release. Where a release concerns portfolio administration, the Minister's Office may be notified as a courtesy.

If necessary, the department's FOI team can provide input into briefings and talking points in relation to FOI legislative requirements and processes. However, any talking points regarding the subject matter of the request are the responsibility of the National Commission.

9. Consequences of non-compliance

If the National Commission does not meet statutory timeframes, does not provide all relevant documents or does not provide documents that are suitable for release, there is the potential risk for:

- complaints to the Information Commissioner or the Commonwealth Ombudsman
- requests for external review of decisions by either the Information Commissioner or the Administrative Review Tribunal, and
- adverse media coverage for the National Commission.

10. Reporting obligations to the Information Commissioner

The National Commission is required to provide information to the OAIC to enable the Information Commissioner to prepare reports on freedom of information matters. The department's FOI team will record details of FOI matters in its matter management system and assist the National Commission to prepare and submit the quarterly and annual submissions to the OAIC in order to meet its obligations under section 93 of the FOI Act. The National Commission is required to confirm the accuracy of the submissions and provide commentary on the National Commission's FOI resourcing and expenditure.

If required, the department's FOI team can provide FOI statistics to support the National Commissioner's attendance at Senate Estimates.

11. Additional Guidance

For advice or assistance relating to FOI, please contact the department's FOI team by email at foi@dss.gov.au.

You can also find further information about FOI on the Office of the Australian Information Commission's [website](#), within the [FOI Act](#) and [FOI Guidelines](#).