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State Records
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Processing FOI Applications in Ministers' Offices

A practical guide for processing FOI applications made to Ministers' Offices

Guideline

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Version 2

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Introduction

This process guide is intended to assist in processing Freedom of Information (FOI) applications made to Ministers' Offices. Further assistance in processing FOI applications can be found in the State Records Guideline "Processing FOI Applications – a practical guide for processing FOI applications" version 8 issued in November 2004 (FOI Process Guide).

Both FOI Process Guides have been updated to comply with the changes introduced by the *Freedom of Information (Miscellaneous) Amendment Act 2004*.

This guideline includes a brief introduction and a process map that sets out the steps to follow when processing applications made to a Minister's Office.

In addition to those considerations outlined in the FOI Process Guide, in processing an application made to a Minister it is important to consider the following important points:

Definitions

1. A Minister is an "agency"

A Minister is defined as an "agency" by subsection 4(1) of the Freedom of Information Act.

Ministers are separate agencies from their portfolio agencies (eg the Premier is an agency and the Department of Premier and Cabinet is also an agency).

2. A Minister is the Principal Officer of his or her agency

The FOI Act states that if an agency consists of one person, that person is the Principal Officer. A Minister is a one-person agency and therefore the Principal Officer.

3. Designation of Accredited FOI Officers

A Minister can designate an Accredited FOI Officer to deal with applications directed to his or her office by doing one of the following:

- Designate a person in his or her office to be the Accredited FOI Officer; or
- Designate an Accredited FOI Officer in a relevant portfolio/agency.

NB In either case the Accredited FOI Officer will make the determination in his or her capacity as Accredited FOI Officer for applications directed *to the Minister's Office*, not the portfolio/agency. An Accredited FOI Officer must also have completed relevant training and meet the requirements of the FOI Act to hold such a position.¹

¹ Section 4(1) FOI Act

Processing FOI Applications made to Ministers Offices

The FOI Act should be applied in the same manner to all FOI applications made regardless of the agency to which the application is made. A detailed explanation of the steps involved in processing an application is included in the FOI Process Guide. (A copy of which is available to download from the State Records website at www.archives.sa.gov.au).

The following should also be taken into consideration.

Identification of Across Government Applications

Often FOI applications for the same or similar information will be made to more than one Minister's Office. These applications, in general, will not be about an issue specific to your Minister's area of responsibility. Early identification and subsequent notification will assist in reducing the significant cost and administrative burden on agencies to deal with these kinds of applications.

Applications made by the following types of applicants may be applications that should be discussed at regular FOI information sharing meetings or with other FOI officers before proceeding:

- Applications made by Members of Parliament; and
- Applications made by the Media.

Those applications that are in relation to a specific issue and which would also be classified as relating to the area of your Minister's responsibility need not be discussed with staff in other Ministers' Offices. However, if unsure advice should always be sought and if appropriate, discussed at regular FOI information sharing meetings.

If your agency receives an application that is considered sensitive in nature, regardless of who made the application, your Minister's Office Manager must be advised immediately upon receipt of the application. This requirement is further discussed in the FOI Process Guide. In relation to these kinds of applications advice from your Minister's Office should be sought about the appropriateness of releasing the information.

Communication between Agencies

The FOI Process Guide ensures that your Minister's Office be made aware of applications made for sensitive information.

Your Minister should be immediately advised when an FOI application is made which may have been made to more than one Minister's Office. The Office Manager should use their discretion as to how this is managed. Your Minister may elect to either see or not to see the final determination.

In addition to the above, your Minister should be made aware immediately of all applications that are not of a non-personal nature; eg budget papers, reports and contracts etc.

When a FOI application is made to more than one Minister's Office, State Records should be immediately faxed a copy of the application.

Consultation

State Records coordinates regular FOI meetings to ensure efficiency in providing advice by the sharing of information and experiences. The aim of these meetings is to reduce the significant cost and administrative burden on agencies. The discussions also assist in ensuring the right balance of policy and legal advice is available. Attendance at these meetings by Office Managers and designated FOI officers who process applications on behalf of their Minister should be considered essential.

Consideration should also be given to the need to seek the expert opinions of others. It is frequently necessary to seek opinions of others when issues in relation to the documents may not be within your knowledge. The person who has the best knowledge and association with the documents related to the application may assist in identifying the most appropriate source for opinion. You may need to seek further opinion from:

- Your CEO;
- Other public servants, including the Crown Solicitors Office, or
- Your Ministers Office.

Legal advice sought from the Crown Solicitors Office must be communicated to the person who has the best knowledge and association with the documents to ensure that the legal advice has been properly understood.

Determining the Application

Section 23 of the FOI Act requires that a notice of determination be prepared in order to advise the applicant of the outcome of their application. Such a notice must be prepared regardless of the outcome of the application. The requirements for a Notice of Determination are prescribed in section 23 of the FOI Act and further explained in step 2.15 of the FOI Process Guide.

Step 2.16 of the FOI Process Guide requires that each agency notify their Minister of the outcome of an FOI application where that application:

- Is about information of a non-personal nature, eg budget papers, reports, contracts etc; and
- Is for personal information that may be controversial e.g. information relating to children in custody.

In these cases it is imperative that a copy of the determination be forwarded to your Minister a full two working days prior to the determination being released to the applicant. (Note: your Minister should have been made aware of the application when it was made).

As discussed in the section entitled "Communication between Agencies" Ministers should be immediately notified when an FOI application is made with the option to allow Ministers to decide if they wish to see the final determination.

However, it must be remembered that no direction may be given to an Accredited FOI Officer (or accepted by an Accredited FOI Officer) in relation to the conduct of an application and its determination.

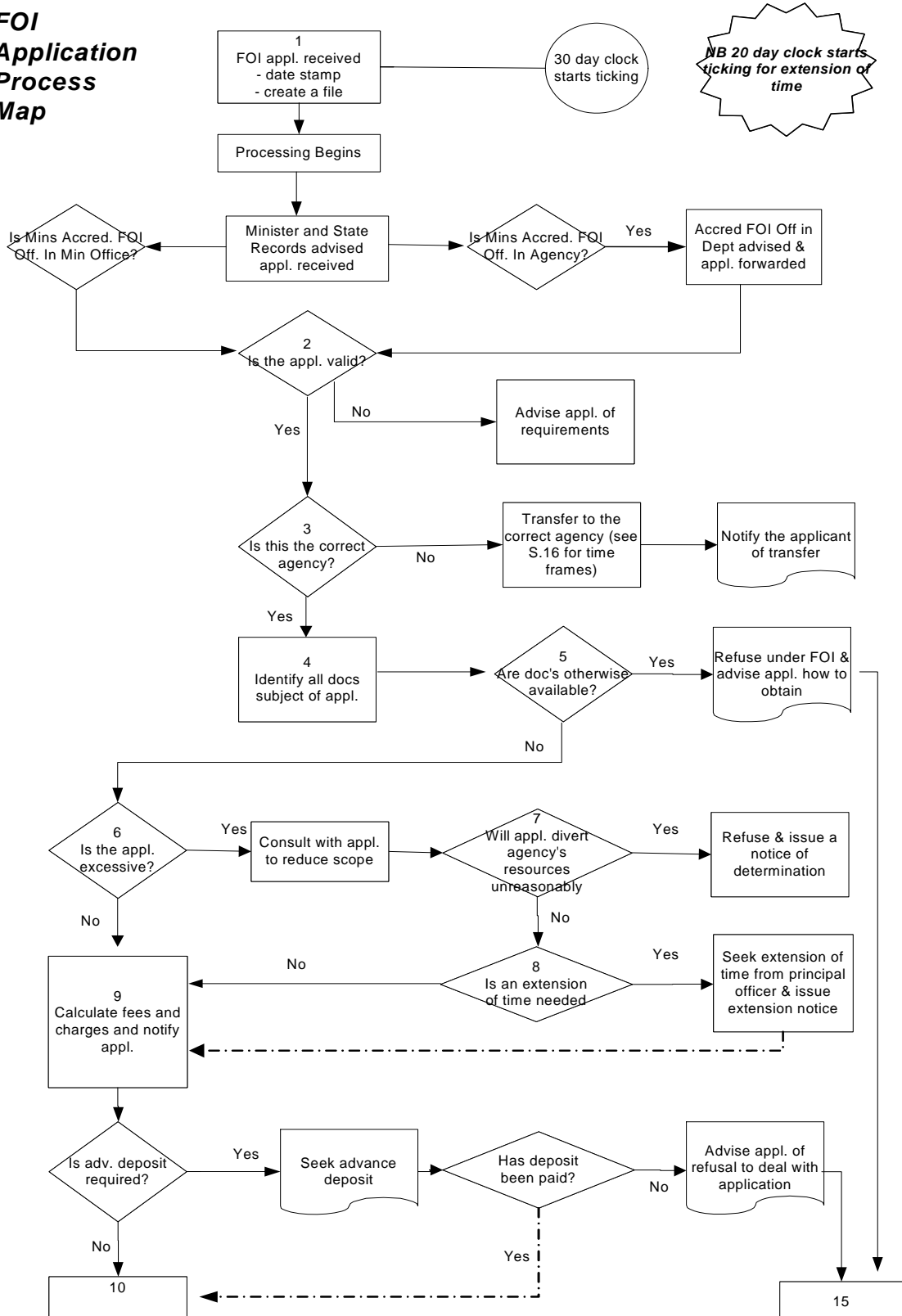
Internal Review

The Principal Officer (i.e. the Minister) must determine applications for internal review by the following process.

- An officer suitably independent of the original application and decision should investigate, summarise and make recommendations for determination; and
- The Principal Officer must make the final decision and sign off on the determination.

Note: there is no right to lodge an internal review application in relation to an extension notice issued under Section 14A of the FOI Act. This arises due to the fact that a notice to extend the timeframe within which an application must be processed can only be signed by the principal officer of an agency. (In the case of a Ministers' Office, the Minister is the Principal Officer of his or her agency).

**FOI
Application
Process
Map**



Processing FOI Applications in Ministers' Offices
Guideline

