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State Records
of South Australia



Processing FOI Applications

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Guideline

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Introduction

This is a practical guideline for agencies to use to assist them processing Freedom of Information (FOI) applications. It can be used by all agencies subject to the *Freedom of Information Act 1991* (FOI Act), including State Government agencies, Ministers' Offices, Local Government Councils and Universities.

This guide includes:

- detailed information for each step of the process
- an attached process map for State Government agencies
- an attached process map for Local Government and Universities
- standard forms and letters
- a fee worksheet to be used for calculating fees and charges where applicable
- an application checklist that can be attached to the front of your FOI file as a quick reference guide.

In support of this guideline, other Information Sheets and Guidelines are available on the State Records website www.archives.sa.gov.au under the headings of Recording Government / Freedom of Information / FOI Administration Officers.

Information Sheets available include:

- FOI Information Statement
- Managing FOI through Administrative Change
- What is an Accredited FOI Officer?
- Training for FOI Officers
- Reporting Requirements under FOI
- FOI Management System (FOIMS)
- FOI and Contracting for Local Government and Universities
- FOI and Contracting for State Government
- FOI and Redaction of Documents.

Guidelines available include:

- Public Interest Test Guideline
- Consultation and the FOI Act Guideline
- FOI and the Charging of Fees Guideline.

State Records periodically publishes new Information Sheets and Guidelines in addition to reviewing and updating those already available.

Please check the State Records website at www.archives.sa.gov.au to ensure you have the most current version of the above documents.

Important Points to Consider

Agencies subject to the FOI Act

Section 4 of the FOI Act defines the meaning of an agency. Agencies subject to the FOI Act include:

- most State Government agencies
- Local Government Councils
- South Australian universities.

The definition of an ‘agency’ under section 4(1) of the FOI Act captures most statutory bodies and administrative units established through an Act of Parliament including Ministers of the Crown. Ministers are separate agencies from their portfolio agencies (eg the Premier and the Department of the Premier and Cabinet are separate agencies).

There are also a number of agencies that have been made exempt under either Schedule 2 or by regulation. Agencies made exempt under Schedule 2 include the State Ombudsman, Royal Commissions, and the Auditor General. Agencies declared exempt, or partially exempt, by regulation are listed in the *Freedom of Information (Exempt Agency) Regulations 2008*.

Principal Officers

Section 4 of the FOI Act defines a Principal Officer of an agency. In most cases this is the chief executive officer of the agency. In the case of a Board or committee, that does not form part of another agency, it is the presiding officer and where the agency consists of one person, that person is the Principal Officer. A Minister is a one-person agency and is, therefore, the Principal Officer.

Accredited FOI Officers

Section 14(1) of the FOI Act requires all FOI applications to be dealt with by an Accredited FOI Officer.

An Accredited FOI Officer is defined in section 4(1) of the FOI Act as:

- the Principal Officer of an agency, or
- an officer who has completed the approved training and who has been designated by the Principal Officer as an Accredited FOI Officer of the agency.

In addition, a person designated as an Accredited FOI Officer by the Principal Officer must be:

- in relation to an administrative unit in the Public Service, a person employed in an executive position or a person that usually reports to an executive, (see the meaning of executive employee under the *Public Sector Act 2009*), or
- a person who is an officer with the South Australia Police, or
- for all other agencies, a person employed in a position that usually reports to the Principal Officer or to their deputy or immediate delegate of the Principal Officer.

The last category usually relates to Local Government Councils, Universities and State Owned Corporations.

An agency may have more than one Accredited FOI Officer. Other staff members who are not Accredited FOI Officers may help process FOI applications by undertaking some of the steps outlined in this guideline including, searching for and copying documents. However, it is the Accredited FOI Officer who has the responsibility for dealing with FOI applications, which includes making the determinations.

For more detailed information in relation to the role and responsibilities of Accredited FOI Officers please refer to the Information Sheet *'What is an Accredited FOI Officer'* available on the State Records website.

Designation of an Accredited FOI Officer by a Minister

According to section 4(1) of the FOI Act, a Minister, being the Principal Officer of an agency, can designate another person in their agency to be an Accredited FOI Officer provided that person is employed in a position that usually reports to the Minister or to the deputy or immediate delegate of the Minister.

It is the Government's preference that FOI applications made to a Minister's Office be dealt with by the agency more closely associated with the requested documents.

Unless the application is formerly transferred under section 16 of the FOI Act, the Minister, as the Principal Officer of the agency, will still be responsible for

- extending the time limit of an application under section 14A of the FOI Act
- undertaking internal reviews.

In regard to internal reviews, an officer in the Minister's Office who is suitably independent from the original application and determination, can investigate, summarise and make recommendations regarding the internal review, but the Minister must make the final determination. While the determination may be signed off by another officer it must be clear that the Minister made the determination and the person signing it is doing so on his or her behalf.

A Minister, or in fact any agency, can also designate a person in another agency to be their Accredited FOI Officer to deal with applications. This person should be from a relevant portfolio/agency and may already be the current Accredited FOI Officer of that agency.

Decisions by an Accredited FOI Officer

An Accredited FOI Officer has a number of discretionary powers under the FOI Act, which they can exercise when making a decision.

An Accredited FOI Officer may:

- grant, deny or defer access to a document or documents
- grant partial access by deleting exempt matter from a document or documents
- grant access in another form
- remit an application fee

- impose or remit a charge
- grant or refuse a request to amend a personal record.

An Accredited FOI Officer cannot:

- grant an extension of time for dealing with an application (unless they are also the Principal Officer of the agency)
- participate in an internal review that involves a determination they made.

Time limits

The following time limits apply to the processing of FOI applications:

<i>Number of Days</i>	<i>Time limit Action</i>
<p>Within 30 calendar days</p>	<p>For an agency to make a determination, unless the agency formally extends the time to deal with the application under section 14A of the FOI Act.</p> <p>For an agency to amend a document that contains information concerning the applicant's personal affairs.</p> <p>For an applicant to lodge an application for an internal review ie an application must be lodged within 30 days after the day on which notice of the determination is given to the applicant.</p> <p>For an applicant to lodge an application for external review ie an application must be lodged within 30 days after notice of the determination on review is given OR if there has been no review, within 30 days after the date of the determination.</p> <p>For an applicant to lodge an appeal to the District Court ie within 30 days after notice of the internal review decision, or from the date of a determination that is not subject to internal review, or from the date of receiving an external review determination.</p>
<p>Within 20 calendar days</p>	<p>For an agency to make a determination to extend the time limit of an application, including giving written notice of the extension to the applicant.</p>
<p>Within 14 calendar Days</p>	<p>For an agency to make a determination on an internal review.</p> <p>For an agency to transfer an application (either in part or in full) to another agency - must be done as soon as possible to allow the receiving agency the maximum time to process the application.</p>

Notes about time limits

Section 27 of the *Acts Interpretation Act 1915* provides specific guidance to assist in the determination of the commencement and expiration of time limits.

In relation to the commencement of a time limit, the time allowed for any action or event, eg time for processing an application or for lodging applications, commences on the day after the application is lodged. The day the determination is finalised is included in the time limit.

If the last day of the time limit prescribed in the FOI Act for completing an action, ie day 30, day 20, or day 14, falls on a Saturday, Sunday or public holiday, the last day is taken to be the following working day.

Extensions to time limits – section 14A

Only the Principal Officer of an agency can make a determination to extend the time limit of an application. The Principal Officer does not have the power under the FOI Act to delegate this responsibility.

A Principal Officer may only extend the time limit to deal with an application if they can satisfy one or both of the following:

- the application is for access to a large number of documents, or would necessitate a search through large quantities of information, and dealing with the application within the normal time limit of 30-calendar days would unreasonably divert the agency's resources
- the requirement to undertake consultation cannot be concluded within the normal time limit of 30-calendar days for processing the application.

The Principal Officer must make a determination to extend the time limit and notify the applicant in writing within 20 calendar days from the date the agency received the application.

Deemed Refusals

Where an agency fails to make a determination and notify the applicant within the time limit of 30 calendar days, and the time limit has not been formally extended, the agency is taken to have refused access to the documents (see section 19(2) of the FOI Act). This is known as a 'deemed refusal'. The applicant will then be able to exercise their rights to review and appeal.

When the Principal Officer makes a determination

In relation to access, amendment and extension determinations made by the Principal Officer he or she must either

- sign the written notification to the applicant, or
- make it clear that he or she has made the determination allowing the notification to be signed by another officer on his or her behalf.

In all cases, when the Principal Officer makes a determination the applicant does not have the right to apply for an internal review of that determination. This includes a determination made by the Principal Officer to extend the time limit for processing an FOI application. They do, however, have the right to apply for an external review to the relevant review authority (either the State Ombudsman or Police Complaints Authority).

Other considerations

Release of documents outside the FOI Act

If it is proper and reasonable to do so, or permitted under other legislation, the FOI Act does not prevent or discourage:

- the publication of information, or
- the giving of access or the amending of documents.

Access permitted under other legislation

If other legislation permits or requires access to be given to a document, or permits amendment to be made to a document, the agency concerned must provide access or make an amendment to that document as required by that legislation. That is, the agency should refuse an FOI application and deal with access or amendment under the relevant legislation.

For example, under section 61 of the *Local Government Act 1999*, a member of a council has a statutory right to access documents without charge, provided the documents are to be used in connection with their function or duties as a member of the council.

It is also not appropriate for an agency to use FOI as an administrative ‘tool’ to deal with access to information permitted under other legislation. This can be particularly problematic as there could be potential for dispute over a statutory requirement of the relevant legislation that could be at odds with the FOI Act, such as fees charged.

Dealing with an FOI application from another agency

Although State Government agencies are administratively separate, they all exist as one legal entity – the South Australian Government. For this reason, State Government agencies cannot apply to each other for access to documents under the FOI Act. This limitation does not apply to Local Government Councils, Universities or State Government instrumentalities, for example SA Water.

In the first instance, non-State Government agencies should seek access to State Government agency documents through administrative arrangements rather than through the FOI process. If appropriate, State Government agencies should establish information sharing agreements with Local Government Councils, Universities and instrumentalities to ensure that information, required for a legitimate purpose, is made available in a timely manner and in accordance with other legislation and government policies, such as the Information Privacy Principles Instructions, issued as Premier and Cabinet Circular No 12.

Deferring access to a document

Deferring access should not be used to deny access indefinitely.

Section 21 allows an agency to defer access if the document:

- will be published under another Act (eg Annual Reports)
- was prepared for tabling or introducing to Parliament but has not been presented at the time the application was received
- has been prepared for submission to a particular body or person but is yet to be submitted.

When making a determination to defer access you should provide the applicant with an indication of when the document will be available and how access will be provided.

Partial release of documents

The FOI Act requires the Accredited FOI Officer to exercise their discretion as far as possible to make a determination that favours disclosure over non-disclosure without infringing the rights to privacy of individuals.

Under section 20(4) of the FOI Act, the Accredited FOI Officer must assess whether there are any areas of the document that could be released and if practicable provide access to the document with the exempt information removed. Removal of exempt matter is discussed later in this document.

FOI and access to Cabinet documents (Ten Year Rule)

From the 1 October 2009, the South Australian Government introduced a policy to allow access to Cabinet documents between 10 and 20 years old through the FOI process. This policy has been issued as [*Premier and Cabinet Circular 31: Freedom of Information Release of Cabinet Documents under the Ten Year Rule*](#) and is known as the Ten Year Rule. This policy means that:

- the Cabinet document exemption should not be claimed for documents that are more than 10 years old
- all other exemptions and requirements under the FOI Act continue to apply to Cabinet documents where appropriate.

This policy does not apply to documents of Executive Council.

The Ten Year Rule policy requires that the Department of the Premier and Cabinet process all FOI applications seeking access to Cabinet documents under this policy. For more information, please refer to the State Records website at www.archives.sa.gov.au.

Access to Cabinet documents older than 20 years can be sought through a regular FOI request if not already open through the archives.

Crown / Agency Contracts

Any contract entered into by the Crown or an agency (including State and Local Government Councils and Universities) after 1 January 2005 are accessible for release under FOI unless the contract contains a confidentiality clause that has been approved by the responsible Minister (or his or her delegate) or, in the case of Local Government and Universities, the agency responsible. That is, the business affairs exemption cannot be claimed if it is a contract document. Any approved confidentiality clause will protect confidential information from

disclosure under the FOI Act, but the remainder of the contract can still be considered for release.

Contracts entered into prior to 1 January 2005 are also not automatically exempt documents and should be considered for release in line with the objects and exemption clauses of the FOI Act. In addition State Government agencies must comply with the Government's [Contract Disclosure Policy issued as Premier and Cabinet Circular No 27](#).

For more information please refer to the Information Sheets relating to FOI and contracting available on the State Records website. There are two sheets: one for State Government agencies and one for Local Government and Universities.

Sufficiency of Search

To fulfil the 'sufficiency of search' requirement of the FOI Act, all documents in the possession of the agency must be considered. Section 4(4) of the FOI Act considers an agency to hold a document if it has an immediate right of access to it. This means that an agency is considered to hold the documents if it has physical possession or has a right to access the documents from other places.

Documents in the possession of external groups that agencies have a right to access are considered to be held by the agency and must be considered if they fall within the scope of the application. For example:

- permanent records transferred to the custody of State Records
- temporary records management storage providers
- contracted service providers (please refer to *State Records Contracting and Official Records Standard* which can be found on the State Records Website at: <https://www.archives.sa.gov.au/management/standards.html>).

Agency Records in the Custody of State Records

When an agency transfers a document into the custody of State Records, the agency remains the owner of the document and is considered to continue to possess the document for the purposes of the FOI Act. Therefore, the agency must consider documents in the custody of State Records if they are within the scope of the application.

The application cannot be transferred to State Records, as State Records is only the custodian and is not responsible under the FOI Act for access to the documents.

Where the documents have an access determination of 'Open' under the *State Records Act 1997*, an agency can refuse the application and direct the applicant to one of the State Records two reading rooms or the State Records website for more information.

For more information on access determinations under the State Records Act see the Records Management *Public Access Determinations Guideline* available on the State Records website at www.archives.sa.gov.au.

Records management considerations

In order to satisfy the agency's recordkeeping requirements under the State Records Act, each FOI application must be appropriately captured and managed within the agency's recordkeeping system. A new file should be created for every application received. This is, in part, because some applications may be required to be retained for longer than others in accordance with an approved disposal schedule.

Each FOI application file should include all documentation relating to the application including:

- any documentation relating to the processing of the application, eg consultation undertaken
- copies of all documents and records within the scope of the application or an accurate description of them
- copies, or a schedule, of the documents released, if any.

Documents relating to the application must be filed on the FOI application file only and not on the original, or source files, where the documents were found. Any source files retrieved from State Records for the purposes of locating documents must be returned to the archives in their original state. That is, no records or documents can be added or removed from these files. If necessary copies of the documents found in files retrieved from State Records should be taken.

All documents in the possession of an agency should be subject to an approved disposal schedule, including those that may be within the scope of a current FOI application. In the event an FOI application is made for documents that are due to be legally destroyed in accordance with an approved disposal schedule or those that could be destroyed through normal administrative practice the destruction must not occur. Depending on the type of application received, and whether it was subject to an external review, the sentence applied to the documents associated with the FOI application may need to be amended. The sentence associated with an FOI application can range from 2 years to permanent.

Freedom of Information Management System (FOIMS)

The Freedom of Information Management System (FOIMS) was developed as an across government system for recording, processing and reporting FOI applications. State Records uses FOIMS to produce the reports pursuant to section 54 of the FOI Act for the Minister responsible for administering the Act.

Section 54AA requires all agencies subject to the FOI Act to provide information as required by the Minister to allow the FOI Annual Report to be completed. This requires agencies to record all FOI applications and contracts containing approved confidentiality clauses in FOIMS in a timely manner.

For more information about FOIMS and Reporting, please refer to the Information Sheets located on the State Records website at www.archives.sa.gov.au

Processing FOI Applications

The following information is provided to assist agencies process FOI applications in a logical sequence that is consistent with the requirements of the FOI Act. Two FOI Process Maps, one for State Government agencies and one for Local Government and Universities, are located at the end of this section and the numbering within this section relates to the numbers applied to the steps on the Process Maps.

Step 1 FOI Application Received

Ensure that the application has a clear 'date received' notation (eg the application is date stamped). The time limits commence the day after receipt of an application provided it is a valid application.

A new file for the application should be created and the application registered in both FOIMS and in your agency's records management system at this step.

Step 2 Is the application valid?

Check the application to ensure that it is valid. To be valid, section 13 of the FOI Act requires that an application:

- must be in writing
- must state that it is made under the FOI Act
- must have the application fee attached (or valid reasons for fee waiver given)
- must provide enough information to identify documents
- must have an Australian postal address specified
- must be lodged at an office of the agency.

If the application is valid, a letter acknowledging receipt of the application should be sent to the applicant (*Refer to Attachment 1 or FOIMS for a standard acknowledgement letter*).

If the application is not valid the Accredited FOI Officer is obligated to assist the applicant to make it a valid application. The 30-day time limit does not commence until the application is considered valid.

Has the application fee been paid?

Section 53 of the FOI Act allows an agency to waive, reduce or remit fees and charges in accordance with the *Freedom of Information (Fees and Charges) Regulations 2008* (Fees and Charges Regulations) to ensure that financially disadvantaged people are not prevented from accessing documents or amending their personal records under the FOI Act.

In order to receive a waiver, reduction or remission, an applicant must satisfy the agency that:

- he or she is a concession card holder (eg by showing or providing a photocopy of their concession card), or
- payment of the fee or charge would cause them financial hardship.

The agency must then waive or remit the fee or charge.

Section 53 also allows an agency to waive, reduce or remit a fee or charge in circumstances other than those provided for in the Fees and Charges Regulations. For example, if a FOI applicant requests a fee to be reduced or waived but cannot satisfy the above criteria, the agency can still decide to reduce, waive or remit the fee or charge at its discretion.

For more information, please refer to the FOI Fees and Charges Guideline and Information Sheet available on the State Records website at www.archives.sa.gov.au.

Step 3 Is this the correct Agency?

If your agency does not hold the document or documents being sought by the applicant the application should be transferred to another agency if the documents are, to your knowledge:

- held by another agency, or
- more closely related to the functions of another agency.

Premier and Cabinet Circular 31 *Freedom of Information Release of Cabinet Documents Ten Year Rule*, requires an FOI application seeking access to Cabinet documents between 10 and 20 years old, made directly to an agency (other than DPC) to be transferred to DPC in accordance with section 16(1)(a) of the FOI Act.

If an application is to be transferred to another agency, it must be transferred as soon as possible, and preferably no later than 14 days after receiving the application. At the time the application is transferred the applicant must also be notified in writing. (*Refer to Attachment 1 or FOIMS for standard transfer letters*).

Transfer of the application

When transferring an application, an agency should:

- forward a copy of the application to the agency receiving the transferred application, as well as a copy of any document in scope of the application held by the transferring agency (see section 16(2) of the FOI Act)
- advise the agency receiving the transferred application of the receipt date of the application
- advise the applicant of the transfer and the date of the transfer (see sections 16(3) and 16(4) of the FOI Act)
- transfer the application to the receiving agency in FOIMS.

It is important that all transfers be undertaken as soon as possible since the application is deemed to have been made to the agency accepting the transferred application 14 days after it was received by the agency that transferred it, or on the day it was actually transferred (whichever is earlier) (*Refer to Attachment 1 or FOIMS for standard transfer letters*).

Before completing the transfer in FOIMS, the Accredited FOI Officer should be advised that the transfer is being made and, if agreed, an advance copy of the application should be sent to the other agency particularly if there is likely to be any delay in preparing the formal transfer. It will also give the receiving agency an opportunity to advise if they are of the view the application should not be transferred to them.

If the agency that holds the documents is not an agency for the purpose of the FOI Act, or is deemed exempt by Schedule 2 of the FOI Act or by regulation, an FOI application cannot be transferred to that agency.

Where the application is transferred in its entirety, the application fee should be transferred with the application. However, if the application is being transferred in part, the agency that originally received the application should keep the application fee.

Partial Transfer

A partial transfer to another agency (or agencies) is not discussed in the legislation. However, the FOI Act does not prevent agencies from partially transferring an application.

When an agency transfers an application in part, it should notify the applicant in writing at the time of transfer. The agency should advise in the notification which agency or agencies the application was transferred to. Each agency is responsible for dealing with and issuing a separate notice of determination for the portion of the application they have processed. Normal time limits apply.

Time Limit for Transfers

A transferred application is taken to have been received by the receiving agency:

- on the day on which it is transferred, or
- 14 calendar days after the day on which it was received by the transferring agency, whichever is earlier.

Agencies must transfer applications promptly to allow the receiving agency the maximum amount of time to process the application. Every day after day 14 is one day less the receiving agency has to process it.

The effect of a delay in transferring a FOI application

The following table is an example of the time limits for the receiving agency to deal with an FOI application that has been transferred to them.

	<i>Date of receipt by original agency</i>	<i>Date of transferral</i>	<i>Time limit for receiving agency to process application</i>
<i>Scenario 1 (transfer time 14 days or less)</i>	<i>1 September</i>	<i>2 September</i>	<i>Due date for receiving agency is 2 October. That is 30 calendar days to process.</i>
<i>Scenario 2 (transfer time 15 days or more)</i>	<i>1 September</i>	<i>20 September</i>	<i>Section 16(6)(2) means that the date of receipt is 15 September resulting in the due date for receiving agency being 15 October. That is 25 calendar days to process.</i>

Transferring an application after 30 calendar days

Where an agency does not hold documents and therefore has not processed the application or transferred the application within 30 calendar days after it was received, it is considered a deemed refusal and cannot be transferred under section 16 of the FOI Act.

The notice of determination should advise the applicant which agency they should make a new application to and advise them of their review and appeal rights in relation to the original application. It would also be appropriate for the Accredited FOI Officer to consider returning any fees paid to the applicant.

Advise Minister's Office

For State Government Agencies Only

When an application is received it is important to decide whether the Principal Officer of your agency and Minister should be notified. When advising the Minister of these applications no direction can be given to an Accredited FOI Officer (or accepted by the Accredited FOI Officer) in relation to the conduct of the application.

The kinds of applications that your Minister may need to be aware of could include applications in relation to budget papers, reports, Cabinet documents and contracts. Your Minister's office may also need to be notified if a similar application has been made to another agency. In addition, applications from Members and Parliament and the Media are likely to be of interest to your Minister.

Applications concerning personal information may also require consideration as to whether your Minister should be informed, for example, information relating to children in custody or children in care.

If a decision is made to advise your Minister of the application, you may also need to advise them of the outcome of that application. (See step 16 for further information).

Step 4 Identify all documents covered by the application

It is important to liaise with the person who has the best knowledge and association with the relevant documents.

Once it has been established that your agency holds the documents, or has an immediate right to access the documents, a thorough search should be conducted to locate all of the documents covered by the application, using all search tools available, both manual and electronic. This kind of search can often involve several people and many different systems.

Section 4(1) of the FOI Act provides the following definition of document:

document includes anything in which information is stored or from which information may be reproduced

This is a very broad definition and can involve consideration of many types of documents including:

- paper documents, including drafts
- temporary and permanent files
- notes (including messages on post-it notes)
- electronic documents including databases and emails
- DVDs, video tapes or film recordings
- photos, maps and plans
- mobile phone SMS messages.

In addition, section 4(5) of the FOI Act provides that where an agency holds information in computer storage, and a particular document can be produced on the basis of the information so stored, the agency is taken to hold that document. This does not mean that agencies are obliged to research information - the obligation is only to provide access to existing documents or documents that can readily be produced from information held in computer databases.

It is important to keep evidence of all search results and copies of emails, telephone calls, correspondence and communications resulting from the search and collection of documents.

See earlier section on Sufficiency of Search.

Step 5 Are the documents otherwise available?

Section 20 of the FOI Act allows an agency to refuse an application made for documents that are available for purchase or for documents that can be inspected at the agency or at some other agency, including those that form part of a public register.

However, while these applications can be refused, the agency could consider asking the applicant to withdraw the application, while at the same time providing them with the details of where or how the document or documents are made available. For documents made available outside of FOI, the agency should also consider returning the application fee.

In the event that some of the documents sought are available for inspection or purchase and some are not, the agency should consider the following two options.

1. Explain to the applicant that some of the documents they have requested are available for inspection or purchase and seek formal agreement to narrow the scope of the application to cover the remaining documents. The agency would then process the application in accordance with the FOI Act.
2. Determine the application by partially refusing access to information otherwise available.

Step 6 Is the application excessive?

Sometimes the scope of the application results in a large number of documents being captured by the FOI application.

If the application is very broad or you are having difficulty identifying exactly what information the applicant wants to access, you could contact the applicant and discuss narrowing the scope of the application in accordance with section 18(2) of the FOI Act. If the applicant agrees to narrow the scope of the application, you will need to confirm the agreed terms in writing.

If the agency believes the work involved in processing the application will exceed the application fee, an advance deposit from the applicant can be sought. (See step 9 for further information).

If the applicant does not agree to narrow the scope of the application, section 18(1) of the FOI Act could be applied to refuse the application. See Step 7 for further information.

Step 7 Will the application unreasonably divert the agency's resources?

If the applicant is unwilling to reduce the scope of the application, you should establish whether dealing with the application will substantially and unreasonably divert the agency's resources.

If a decision that the agency's resources would be substantially and unreasonably diverted is made, and a reasonable time extension would not resolve this, you can refuse the application under section 18(1) of the FOI Act and issue a Notice of Determination. (*Refer to Attachment 3 for an example Notice of Determination*).

Step 8 Is an extension of time needed?

For applications that are seeking access to large numbers of documents or require considerable consultation or both, an extension of time for dealing with the application may be necessary.

See earlier section on Extension to Time Limits. (*Refer Attachment 3 for an example of a letter to extend the time*).

Step 9 Fees and Charges

See step 2.

Fees and charges increase annually in line with an agreed indexation factor. A copy of the Fees and Charges Regulations, which include a detailed schedule of fees and charges, can be found by searching the SA Legislation website at www.legislation.sa.gov.au

All transactions and services under the Fees and Charges Regulations have been determined exempt by virtue of Section 81-5 of *A New Tax System (Goods and Services Tax) Act 1991* Determination 2000 (No.2).

Calculation of fees and charges

In addition to the application fee already collected, your agency needs to determine whether further charges will be imposed for the processing of the FOI application, unless the applicant is eligible for a waiver of the application fee and other charges.

Section 53 of the FOI Act stipulates that fees and charges imposed must reflect the reasonable administrative costs incurred by agencies in exercising their functions under the FOI Act.

Agencies can charge for the following activities only:

<i>Activity</i>	<i>Description</i>
Finding	Searching a file index (or other places) to establish the location of documents and extracting documents from the place they are held
Sorting	Sorting documents to allow for scheduling
Compiling	Scheduling documents, and giving documents a number and / or reference
Copying	Photocopying documents to provide access, but not for consultation or redacting purposes
Consultation	Undertaking consultation required under the FOI Act. This relates to third party consultation, but not for seeking legal advice or internal consultation within your own agency, or if your agency is a State Government agency, with another State Government agency. ¹

The application fee for a request for personal information allows for the first two hours spent processing the request to be free of charge. After that charges can be applied as per the Fees and Charges Regulations.

Fees and charges do not apply to applications for amendment of personal records.

Members of Parliament cannot be charged unless the costs calculated for the request exceed \$1,000.

An application fee cannot be requested from an applicant seeking a review of the proposed fees and charges.

An agency may, as it sees fit, waive, reduce or remit a fee or charge in circumstances other than those provided for under the regulations.

¹ Section 53(2aa) FOI Act

Advance Deposits

Where the estimated cost of dealing with the application is likely to exceed the application fee, the agency may seek an advance deposit. The request for such a payment must set out the basis on which the amount of the deposit has been calculated.

The notification of the advance deposit should also specify a time period within which the advance deposit must be paid. The time period from the day the notification for advance deposit is issued and the day the deposit is received is not to be taken into account when calculating the number of days for processing the application. That is, the due date is adjusted by the number of days the application was suspended whilst waiting for the payment of the advance deposit.

If the applicant does not pay the deposit within the period specified in the request, the agency may refuse to continue to deal with the application. Any money collected that exceeds the costs incurred by the agency in dealing with the application up to that point must be returned.

Step 10 Examine carefully all documents relevant to the application

Once all of the documents relevant to the application have been identified they must be examined thoroughly to ascertain if:

- the documents or parts of the documents are exempt
- the documents contain information about the personal affairs of someone other than the applicant or business information of another person
- consultation with other persons, organisations or agencies is required
- the document is a contract entered into by the Crown or an agency and a confidential clause has been included in the contract.

For further information in relation to confidentiality clauses in contracts see the Information Sheet *Freedom of Information & Contracting* on the State Records website.

Step 11 Seek opinions where necessary

Careful consideration should be given to the need to seek the expert opinions of others. It is frequently necessary to seek the views of others to ascertain:

- whether disclosure might affect intergovernmental relations
- whether the document contains information that may be subject to secrecy provisions in other legislation
- whether disclosure will affect the business affairs of any agency or person other than the applicant or if it would affect the economy of the State
- if a document is a contract and whether it contains any confidential clauses approved by a Minister or an agency and, therefore, should not be released.

These (and other things) may not be within your own knowledge, and so it is sensible to discuss these issues with others.

The person who has the best knowledge and association with the documents may assist in identifying the most appropriate factual source for the opinion. You may also need to seek an opinion from:

- your Principal Officer
- other public servants including contract administrators within agencies
- your Minister's Office
- the Crown Solicitor's Office.

If an opinion is sought from the Crown Solicitor's Office it should be shared with the person who has the best knowledge and association with the document to ensure that the legal advice has been properly understood.

Discussion of relevant details in relation to specific documents with one or more of the people or representatives of the organisations listed above is an important part of the decision making process. However, Accredited FOI Officers should take care to ensure they do not compromise this process by asking other officers whether they recommend a particular document should or should not be released. It is the responsibility of the Accredited FOI Officer to make this decision.

Government Agencies and Consultation

The formal consultation required by sections 25-28 of the FOI Act does not apply between State Government agencies. However, if the document being sought was created by another agency it may be appropriate to seek the views of that agency to establish facts so that the relevant detail behind a document is properly understood.

For further information on consultation refer to the FOI Guideline on *Consultation and the FOI Act* available on the State Records website at www.archives.sa.gov.au.

Step 12 Could consultation with third parties be required?

Sections 25-28 of the FOI Act require consultation with third parties prior to any documents being released to the applicant.

Formal consultation with a third party requires written communication between the agency and the third party. Without breaching personal privacy, and where possible, copies of the documents concerned should be attached to the letter sent to the third party. (*Refer to Attachment 2 for standard consultation letters*).

When consulting with third parties the following should be considered:

- third parties do not have a power of veto over the decision to release documents and should be advised accordingly during the consultation process
- an assessment will need to be made of all third party comments to ensure they are reasonable in the overall circumstances
- if your decision to release the documents is against the objections of the third party, you must notify them in writing and advise them of their appeal rights

- documents cannot be released until such time as all reviews and appeals are concluded or the time for lodging a review or appeal has lapsed
- the applicant must also be notified of the decision and advised that the documents will be released when the appeal time has expired providing there is no appeal.

In some cases agencies may not be able to obtain the views of the person with whom they are required to consult. If this is the case, and it has been determined that access to the document about which you are consulting will be given, you should give written notice to the third party (for example by writing to their last known address) which:

- advises the third party that the agency has determined that access to the document is to be given
- clearly describes their rights of review and appeal and how to exercise those rights
- advises that access to the document will be deferred until such time as all reviews and appeals are concluded or the time for lodging an appeal or review has lapsed.

Records should be kept of all attempts to contact the third party as evidence of your efforts to consult.

After advising the third party that you have determined to release the documents the applicant also needs to be informed of your decision by being provided with a notice of determination. The applicant needs to be advised that release of the documents will be delayed until such time as the period for lodging a review or appeal has lapsed or until all reviews and appeals have been concluded.

Step 13 Are documents exempt or parts of them exempt?

Once all documents have been thoroughly examined you must decide whether any of the documents are exempt in their entirety or whether some of the information can be released to the applicant.

The exemptions are set out in Schedule 1 of the FOI Act. Consider carefully the precise terms of each relevant exemption and apply those terms including any public interest tests to the documents as part of your decision-making process.

If a determination is made to refuse access to documents, a statement of reasons for that decision, including the appropriate exemption clause and the factual information in relation to how the clause applies, must be given to the applicant.

Section 3A(1)(b) FOI Act requires Accredited FOI Officers to exercise their discretion in a way that favours the disclosure of information provided it does not infringe the privacy of individuals. That is, where an exemption clause could be applied to a document, or parts of a document, an agency can still determine to release the document if it is appropriate to do so in the circumstances and all necessary consultation has occurred.

The Public Interest Test

The public interest is considered something that is important or that on balance will benefit the public in general. It is not usually something of individual interest. Where an Accredited FOI Officer determines that disclosure of information is in the public interest they must be satisfied

that the benefit to the public resulting from disclosure will outweigh other public interests of non-disclosure. This is commonly known as the public interest test.

When claiming an exemption that requires consideration of the public interest the Accredited FOI Officer must ascertain and assess the factors, both for and against disclosure. An explanation of what specific detriment may or may not occur as a result of disclosure should also be included. The more comprehensive the argument the more likely the decision is to withstand scrutiny in the event of a review or appeal. The process of weighing the public interest must be recorded to provide evidence of the decision to disclose or not disclose a document.

For further information on the public interest please refer to the FOI Guideline on 'FOI and Public Interest' available on the State Records website at www.archives.sa.gov.au.

Methods for deleting exempt matter

In instances where parts of the document are not exempt, a copy of the document with any exempt material removed can be provided to the applicant. The removal of this information is often referred to as 'redaction'. A document can be redacted in a number of different ways from blanking out the information using a permanent marker to using software that can electronically redact a document. Regardless of the method used to remove exempt matter it is important that copies are kept by your agencies. This includes any copies of documents provided to the applicant as well copies of documents without the exempt matter removed.

For further information on redaction please refer to the FOI information sheet *FOI and Redaction of Documents* available on the State Records website at www.archives.sa.gov.au.

Step 14 Form of access

Access to a document can be given to an applicant in various ways including:

- a photocopy of the document
- inspection at the agency in paper format or at a computer terminal
- computer printout
- digital copy of a document on data portable storage device eg CD
- viewing of a video tape or film or listening to a sound recording
- copy of a video or sound recording
- transcript of a sound recording.

Fees and charges may be applied in line with the Fees and Charges Regulations when giving access to documents in some of the above ways.

If the applicant requests that access be given in a particular way your agency must give access in that way unless doing so would:

- unreasonably divert the resources of the agency from their use for official purposes, or
- be detrimental to the preservation of the document or otherwise inappropriate, or
- involve an infringement of copyright.

Step 15 Preparation of the Notice of Determination

A notice of determination is the formal written decision prepared by the agency to advise an applicant of the outcome of their FOI application. The notice of determination must provide adequate, fair and unbiased reasons for any determination made under the FOI Act. The applicant, and any interested third parties, must also be advised of their rights of review and appeal.

There are several types of notices of determination that can be made under the FOI Act such as:

<i>Section</i>	<i>Determination Type</i>
Section 14A	Extension of time
Section 18(1)	A refusal to deal with an application because to do so would be a substantial and unreasonable diversion of resources
Section 18(2)(a)	A refusal to deal with an application because it is a pattern of conduct that amounts to an abuse of the FOI Act or the application is made for a purpose other than to obtain access to documents
Section 18(3)	A refusal to deal with an application because the advance deposit was not paid within a specified period
Section 23	Applications for access where documents are fully released, partially released, deferred or access is refused
Section 23(1)(b)	Where access to a document is refused because the document does not exist or cannot be found
Section 29	Internal review applications for access
Section 36	Applications for amendment of personal records
Section 38	Internal review applications for amendment of personal records

Where the applicant is refused access to all or part of a document, the notice of determination must include:

- the relevant provision in the FOI Act for claiming the exemption
- where applicable, the reasons why disclosure would be contrary to the public interest
- facts supporting the reasons for refusal, together with a reference to the sources of information on which those findings are based.

Sources of information on which you base your findings may include:

- the result of any consultation with third parties
- the result of consideration of the facts concerning agency resources and time estimated to complete an application, and
- relevant case law.

A notice of determination that fails to provide full reasons may have a higher likelihood of attracting a request for an internal review by the applicant.

The notice of determination also serves to advise the applicant of the amount of any fees and charges relating to the processing of the application. (*Refer to Attachment 3 for a standard notice of determination*).

Where fees and charges have been waived, the agency should provide all documents for which access has been granted with the notice of determination. However, documents cannot be released until such time as all reviews and appeals are concluded or the time for lodging a review or appeal has lapsed.

The notice of determination should include a schedule that details each of the documents to which access has been granted and those where access has been refused.

Step 16 Should you consider informing your Minister about the determination?

This section applies to State Government agencies only.

If your Minister has advised that they wish to be informed of the outcome of a particular application (see Step 3) a copy of the finalised determination should be forwarded to them two working days prior to the determination being forwarded to the applicant. This enables the Minister to be aware of the outcome of the application should he or she need to respond to any queries as a result of access being provided to the information.

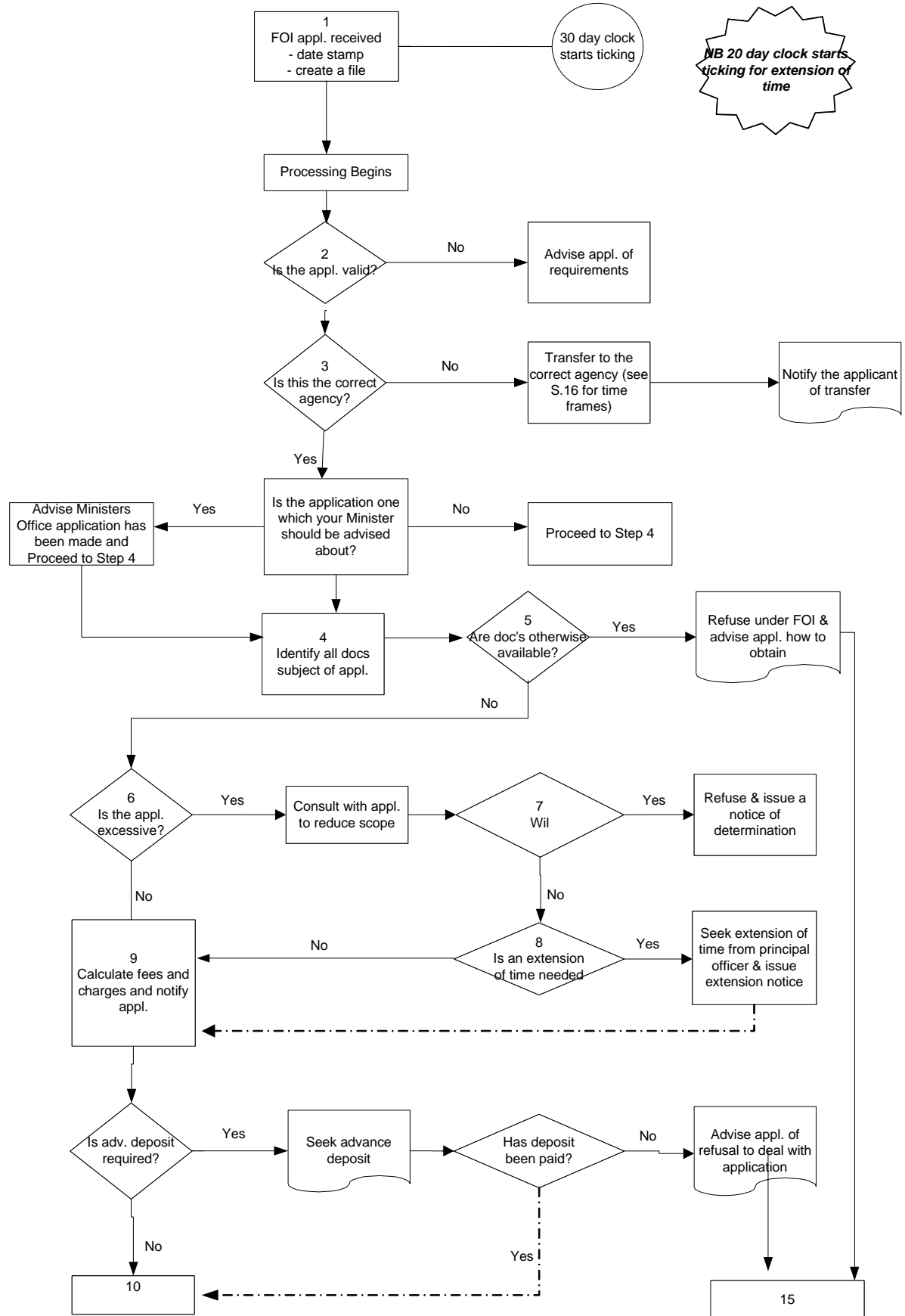
Advising the Minister of the outcome of a particular application should not cause the applicant to receive their determination late.

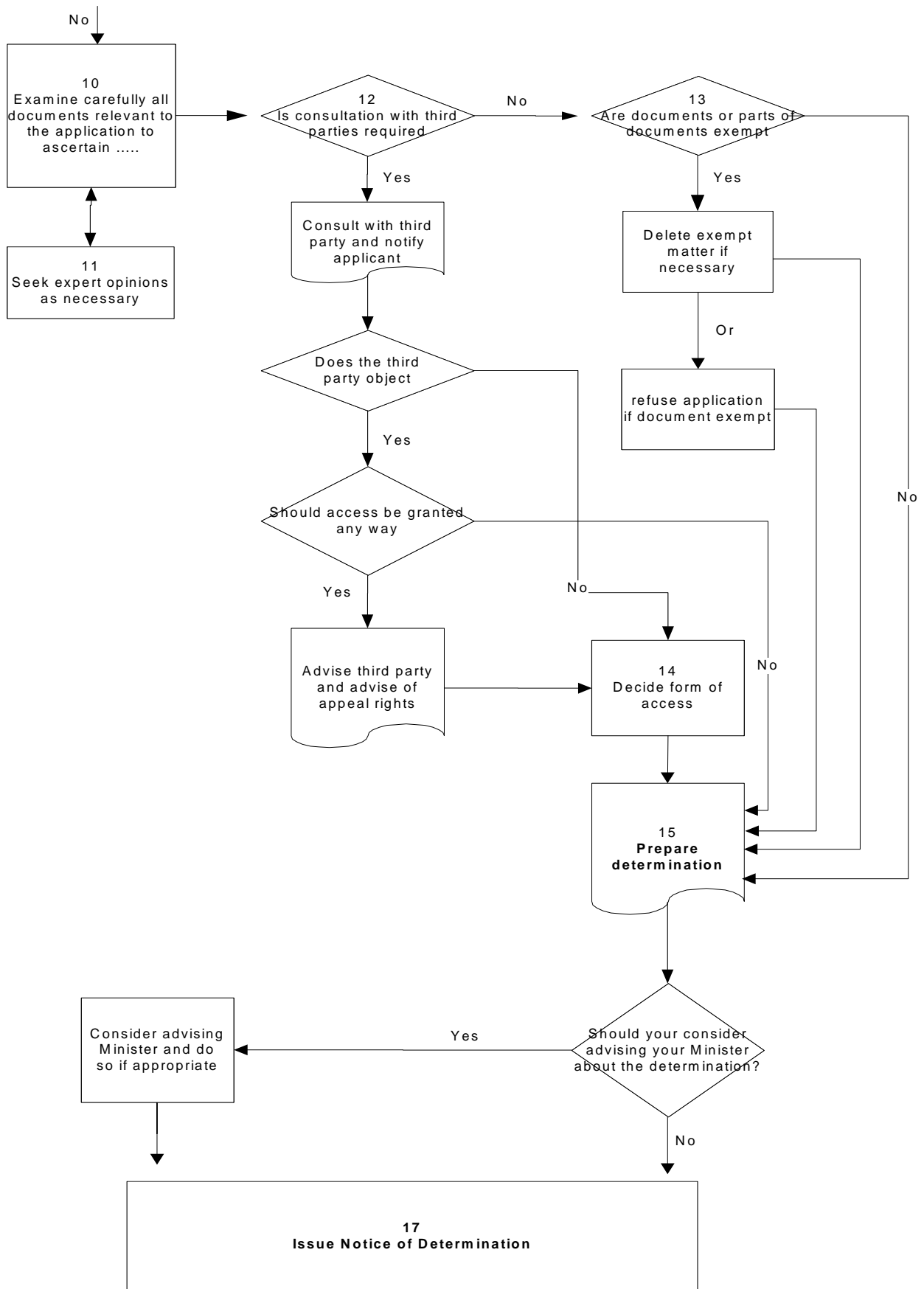
Step 17 Issue Notice of Determination

The final step is the issuing of the Notice of Determination by sending it to the postal address provided by the applicant.

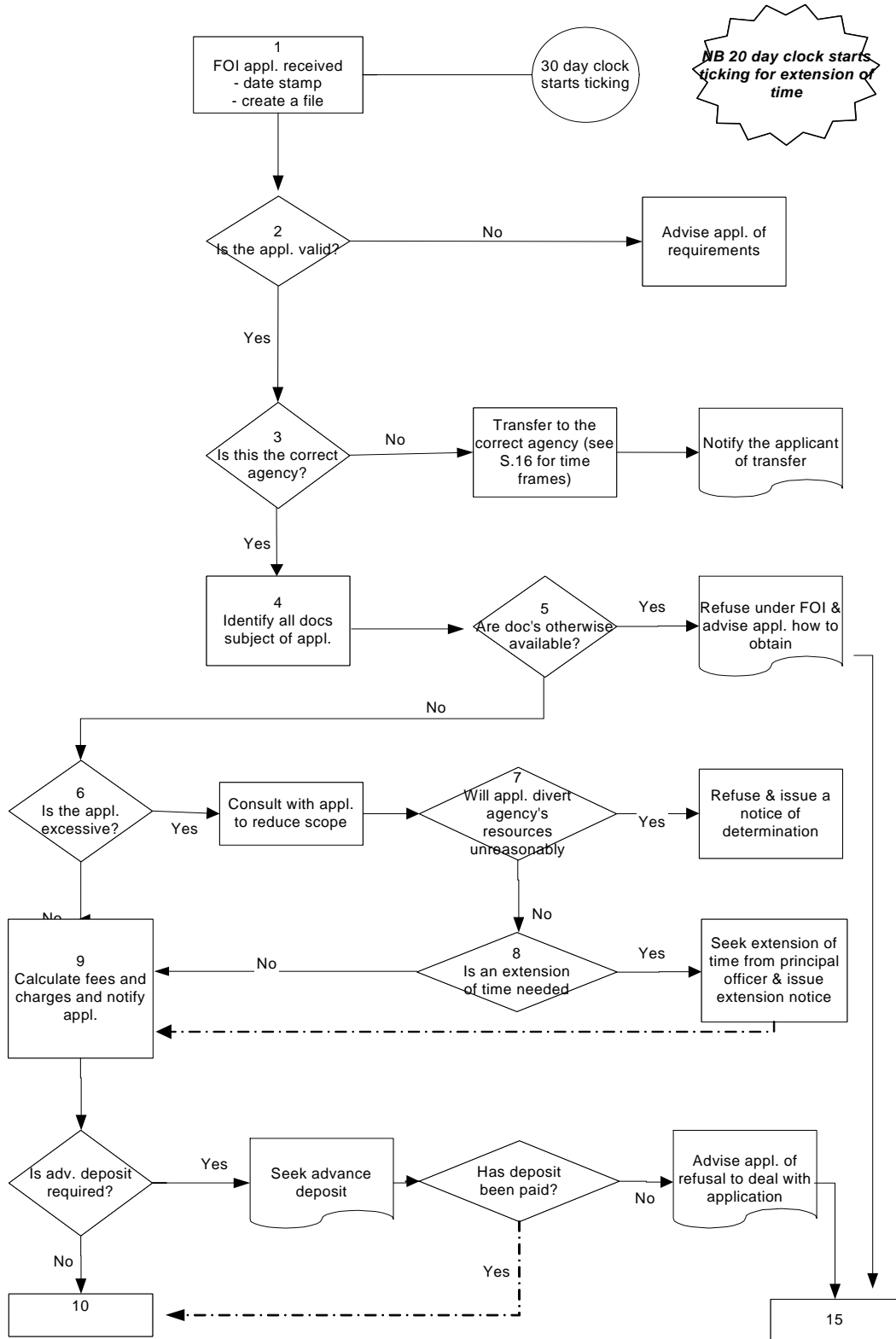
Where a charge for access is required to be paid, you can wait until the charge is paid in full before providing access to the documents.

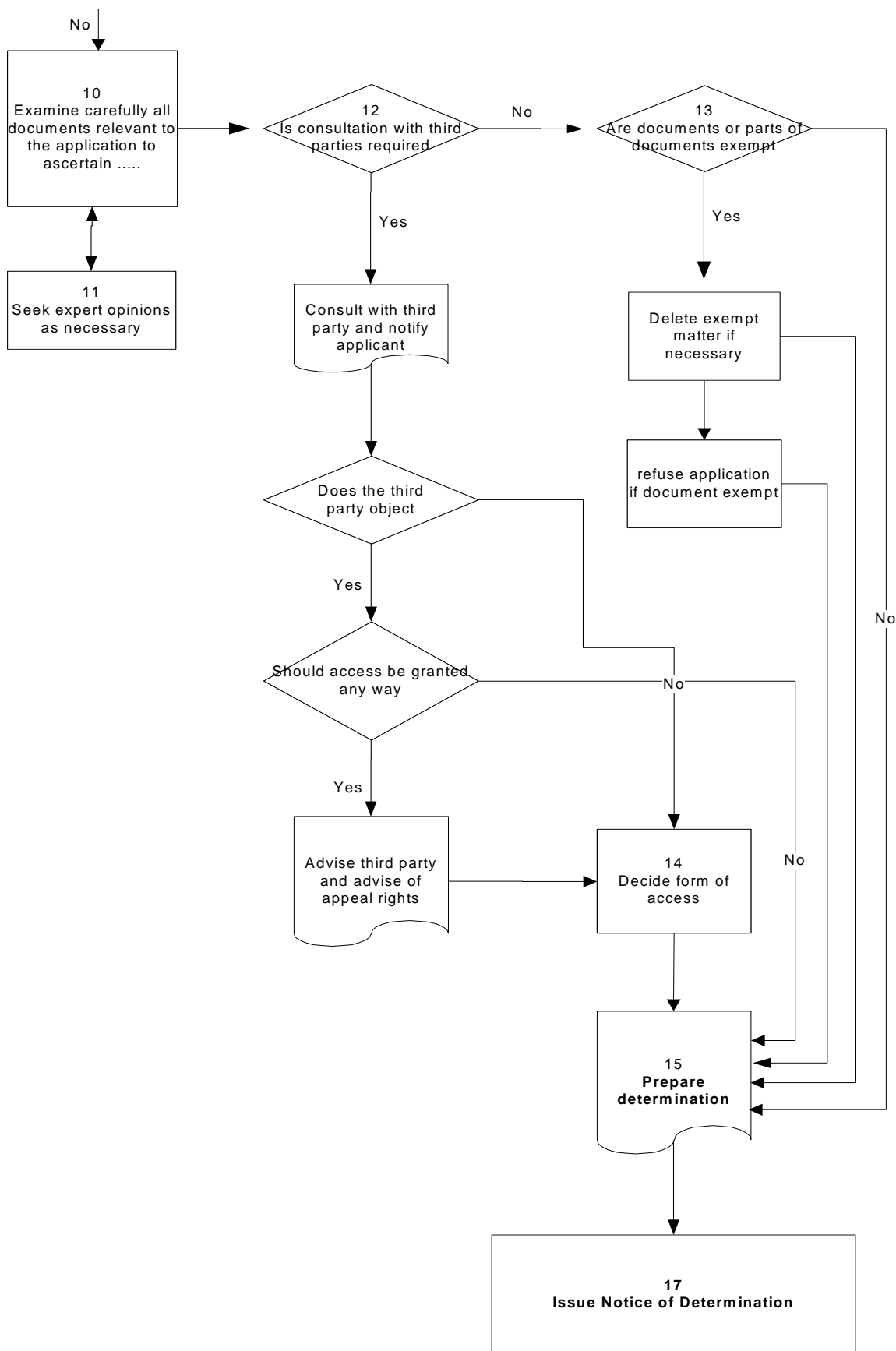
FOI Process Map for State Government Agencies Only





FOI Process Map for Local Government and Universities





Attachment 1 – Acknowledgement and Transfer Letters

This attachment contains the following two sample letters:

- Acknowledgement letter
- Notification of transfer of application to another agency.

**ACKNOWLEDGEMENT LETTER
INCLUDING OUTLINE OF PROCESS**

FOI Ref No.

Insert date

Insert address

Dear **insert name**

RE: Freedom of Information Application

I acknowledge receipt of your application made under the *Freedom of Information Act 1991* (the Act) seeking access to **insert text from the application**.

Your application was received in this office on **insert date** and is currently being processed in accordance with the Act. Following are a number of points in relation to your **rights to appeal** of which you need to be aware.

This agency is obliged to answer your application within 30 calendar days of receipt. If you are not satisfied with the decision about your application, or you do not receive a response within 30 calendar days of the agency's receipt of it, you have the right to apply for an internal review. Your internal review application must be lodged within 30 calendar days:

- after the day that you receive your determination, OR
- of the decision due date, if you have not received a response.

If you are dissatisfied with the way your request is handled you may contact the State Ombudsman on telephone number 08 8226 8699.

Please do not hesitate to contact the Freedom of Information Officer on **insert telephone number** if you have any queries.

Yours sincerely

Accredited FOI Officer

NOTICE TO APPLICANT
FOI REQUEST FORWARDED TO ANOTHER AGENCY (s. 16)

FOI Ref No.....

Insert date

Insert address

Dear **insert name**

RE: Freedom of Information Application

I refer to your recent application made under the *Freedom of Information Act 1991* (the FOI Act) seeking access to **insert text from the application**.

Two options provided below – delete whichever doesn't apply

Your application was received in this office on **insert date**, however, the documents you are seeking access to are not held by this agency.

I understand that the documents are held by **insert name of Agency**. Therefore, I have transferred your application to that agency's Accredited FOI Officer on **insert date of transfer** for consideration and reply directly to you.

OR

Your application was received in this office on **insert date**, however, its subject matter is more closely associated with the functions of **insert name of Agency**.

I have, therefore, transferred your application to that agency's Accredited FOI Officer on **insert date of transfer** for consideration. This agency will deal with your application and reply directly to you.

Should you require further information you may contact the Accredited FOI Officer in **insert name of agency** on **insert telephone number**.

Yours sincerely

Accredited FOI Officer

NB: You should liaise with the agency to which you are transferring this request before you advise the applicant.

Attachment 2 – Consultation Letters

This attachment contains the following sample consultation letters:

- Documents affecting inter-governmental or local government relations – Section 25
- Documents affecting inter-governmental or local government relations (letter informing of access being granted contrary to objections - Section 25(3))
- Documents affecting personal affairs, business affairs, conduct of research (Sections 26, 27 & 28)
- Consultation Response Proforma
- Documents affecting personal affairs, business affairs, conduct of research (Sections 26, 27 & 28)
- Documents affecting personal affairs, business affairs and conduct of research (Exemption Granted)
- Documents affecting personal affairs, business affairs and conduct of research (Letter informing of access being granted contrary to objections – Section 31(a), 32(a), 33(a) respectively).

CONSULTATION

**DOCUMENTS AFFECTING INTERGOVERNMENTAL OR LOCAL
GOVERNMENTAL RELATIONS - S.25**

FOI Ref No.

Insert date

Insert name and address details

Attention: (Accredited FOI Officer)

Dear **Insert name**

RE: Freedom of Information Application

This Agency has received an application under the *Freedom of Information Act 1991* (the FOI Act) seeking access to **insert text from application**.

The documents requested concern the affairs of your Agency. Therefore, before deciding on whether or not to grant access to these documents, I seek your Agency's view as to whether or not the documents are exempt by virtue of clause 5 of Schedule 1 of the FOI Act. A copy of the documents and clause 5 are attached.

If you object to disclosure, your objections must address the terms of clause 5. It is not enough to simply assert that the document is exempt or to merely repeat the words of clause 5 - you need to explain *why*, in your view, the document is exempt.

If, after considering your objections, I determine that your objections do not support a claim for exemption, I will make a determination to release the document. I will not, however, release a document until you have had the opportunity to exercise your rights of review and appeal under the Act. I will give you further information about these rights at a later stage if it is necessary.

I would appreciate receiving your response by **insert date** as the Act requires me to make a decision on the FOI application within 30 calendar days. If you are unable to reply by this date, please contact me on **insert telephone number**.

Yours sincerely

Accredited FOI Officer

CONSULTATION
DOCUMENTS AFFECTING INTERGOVERNMENTAL OR LOCAL
GOVERNMENTAL RELATIONS
LETTER INFORMING OF ACCESS BEING GRANTED CONTRARY TO
OBJECTIONS (S.25 (3))

FOI Ref No.....

Insert date

Insert name and address details

Attention: (Accredited FOI Officer)

Dear **Insert name**

RE: Freedom of Information Application

I refer to your letter dated **insert date** concerning an FOI application for documents that affect your agency's affairs.

I note your view that the requested documents are exempt by virtue of clause 5 of Schedule 1 of the *Freedom of Information Act 1991* (the FOI Act). However, I consider that, for the following reasons, access to the documents listed below should be granted.

(document list)

(detailed facts that support your reasons for release of the documents, and why clause 5 exemption does not apply)

Accordingly, I have determined that the applicant should be given access to the documents.

The Act gives you certain rights of review and appeal relating to this determination. These rights and how to apply are attached to this letter.

Should you submit an application for an Internal Review, a fee of **insert current fee** must be attached.

If your agency intends to exercise these rights it must do so to **insert name of person to be advised by insert date***. If this Agency has not received your response by this date it will proceed to make the documents available to the applicant.

Should you require any further information please contact me on **insert telephone number**.

Yours sincerely

Accredited FOI Officer

*This date is 30 days from the date the third party is notified of your decision.

CONSULTATION

**DOCUMENTS AFFECTING PERSONAL AFFAIRS, BUSINESS AFFAIRS,
CONDUCT OF RESEARCH (Sections 26, 27 & 28)**

FOI Ref No.

Insert date

Insert name and address details

Dear **Insert name**

RE: Freedom of Information Application

This agency has received an application under the *Freedom of Information Act 1991* (the FOI Act) for access to documents that contain information concerning your personal/business/research affairs. A copy of the documents are attached. **Provide copies of the documents without divulging any confidential or sensitive matters or the personal affairs of any other person.**

The Act provides that before access is given to these documents you have a right to state whether or not you believe the documents are exempt by virtue of clause **6/7/or 8** of Schedule 1 of the FOI Act. A copy of this clause is attached for your information.

If you object to disclosure, your objection must address the terms of clause **6/7/or 8**. It is not enough to simply assert that the document is exempt or to merely repeat the words of clause **6/7/or 8** – you need to explain *why* you consider the document is exempt.

If you do object to the document being released, I will then consider your objections. If I determine that your objections do not support a claim for exemption, I will make a determination to release the document. I will not, however, release the document until you have had the opportunity to exercise your rights of appeal under the FOI Act. I will give you further information about these rights at a later stage if it is necessary.

Please forward your written response to **insert name of officer to receive information** by **insert date**, as detailed on the attached consultation response proforma.

If you wish to discuss this matter or if you are unable to reply by this date, please contact **insert contact name** on **insert telephone number**. FOI ref No: **insert number** should be quoted when writing to or contacting the agency on this matter.

Yours sincerely

Accredited FOI Officer

CONSULTATION RESPONSE PROFORMA
DOCUMENTS AFFECTING PERSONAL AFFAIRS, BUSINESS AFFAIRS,
CONDUCT OR RESEARCH (Sections 26, 27 & 28)

FOI Ref No:

Date: ____/____/____

Accredited Freedom of Information Officer

ATTN:

Agency

Address.....

Facsimile

RE: Consultation – Freedom of Information – (Insert Subject)

Document	Date	No of Pages	Author	Item No	Release Y/N

I _____ (full name) of _____ (address / company) have read the abovementioned document(s) and agree/disagree (*cross out the word that is not applicable*) with release to the applicant as requested pursuant to the *Freedom of Information Act 1991* (the FOI Act).

If you **do not** want the above document(s) released, please state your reasons below, addressing the terms of clause 6, 7 or 8 of Schedule 1 of the FOI Act – attach additional sheets if required:

Please provide your telephone, facsimile and e-mail details should there be a need to contact you to further clarify your response:

Telephone (____)_____ (____)_____ _____

home

work

mobile

E-Mail _____

Facsimile (____)_____

Signed _____

Print Name _____

Date ____/____/____

Please complete this form and return to the above address or facsimile number by (date).
Should you have any queries, please contact (name) on (telephone no) or via e-mail (email address)

CONSULTATION
DOCUMENTS AFFECTING PERSONAL/BUSINESS/RESEARCH AFFAIRS
EXEMPTION GRANTED (SS.26, 27 & 28)

FOI Ref No.

Insert date

Insert name and address details

Dear **insert name**

RE: Freedom of Information Application

I refer to our previous correspondence to you concerning a request for access to documents under the *Freedom of Information Act 1991* that affect your **personal/business/research affairs**.

After considering your views, the agency has made the decision that these documents are exempt and that access should not be granted.

The applicant has a right to appeal against this decision. If an appeal is lodged I will write to you again.

Thank you for your co-operation in this matter.

Yours sincerely

Accredited FOI Officer

CONSULTATION

**DOCUMENTS AFFECTING PERSONAL/BUSINESS/RESEARCH AFFAIRS
LETTER INFORMING OF ACCESS BEING GRANTED CONTRARY TO
OBJECTIONS (SS.31 (a), 32(a), 33(a) respectively)**

FOI Ref No.

Insert date

Insert name and address details

Dear **Insert name**

RE: Freedom of Information Application

I refer to our previous correspondence concerning an application for access to documents under the *Freedom of Information Act 1991* (the FOI Act) that affect your **personal/business/research affairs**.

The Agency notes your view that the requested documents are exempt by virtue of clause 6//OR 8 of Schedule 1 of the FOI Act. However, I consider that for the following reasons access to the documents listed below should be granted.

(document list)

(detailed facts to support your reason for release of documents, and why clause 6//OR 8 exemption does not apply)

Accordingly, I have determined that the applicant should be given access to the document(s).

The Act gives you certain rights of review and appeal relating to this determination. These rights are attached to this letter.

If you wish to apply for an internal review of this decision, a fee of **insert fee (if applicable)** must be forwarded with your application.

If you intend to exercise these rights, please advise **insert name** by **insert date (30 days from receipt of this letter)**. If this agency has not received your response by this date it will proceed to make the document(s) available to the applicant.

Should you have any questions, please contact me on **insert telephone number**.

Yours sincerely

Accredited FOI Officer

Attachment 3 – Determination Letters

This attachment contains the following sample determination letters:

- Notification of Access – Granted in a Different Form
- Notification of Access – Refusal or Partial Refusal
- Notification of Extension of Time.

DETERMINATION – NOTIFICATION OF ACCESS

APPROVED IN DIFFERENT FORM S.22 (3)

FOI Ref No.

Insert date

Insert name and address details

Dear **insert name**

RE: Freedom of Information Application

I refer to your request for information under the *Freedom of Information Act 1991* received by this agency on **insert date** for access to documents concerning **insert text from application**.

On **insert date** it was determined that you may have access to these documents. However, I cannot grant access in the requested form as it would:

* involve the unreasonable diversion of the agency's resources - **(state facts and reasons)**.

OR

* involve an infringement of copyright - **(state facts and reasons)**.

OR

* be detrimental to the preservation of the document - **(state facts and reasons)**.

I can, however, arrange for **insert detail of alternative access, eg inspect documents**.

I have determined on ... /... /... that the charge for access will be **insert current fee**. This amount must be paid prior to access being given, and by **insert date**. The attached sheet sets out details of the charges.

If you are dissatisfied with the determination to grant access in a different form or the costs* to be incurred, you are entitled to exercise your rights of review and appeal. The rights and the procedures to be followed are attached to this letter.

If you are dissatisfied with the way your application has been handled, you may contact the State Ombudsman on (08) 8226 8699.

Please contact me by **insert date (say two weeks)** on **insert telephone number** to advise if you still wish to proceed with your access request and to arrange payment of the above fee. If I have not heard from you by that date I will assume that you no longer require access to the document(s).

Yours sincerely

Accredited FOI Officer

* Section 22(3) provides that the applicant will not be required to pay a charge for access greater than the charge applicable if access had been given in the requested form.

**NOTICE OF DETERMINATION
REFUSAL OR PARTIAL REFUSAL**

FOI Ref No.

Insert date

Insert name and address details

Dear **insert name**

RE: Freedom of Information Application

You have requested under the *Freedom of Information Act 1991* access to copies of **details of application**.

I have determined that the documents covered by your application are those described in the attached schedule. In determining which documents are covered by your application I have inspected the files listed in the Schedule to this letter. *[schedule helps to list the documents for the applicant]*

I have exempted from release some documents. The attached schedule makes clear which documents are totally or partially exempt and which clauses I have relied upon to sustain those exemptions.

1. If refusal (either total or partial) reasons for exemption under clause [clause number] [state clause]

[findings of material questions of fact - material questions of fact are defined as relevant questions of fact, ie facts relevant to the decision. It has been described as a conclusion reached by the decision maker on factual issues that are relevant to the final decision. They are the issues required to establish the factual basis for a decision to refuse access.]

[public interest test – if the exemption requires that the contrary to the public interest test be met then the Notice of Determination must explain why it would be contrary to the public interest to release the information.]

2. If to be deferred – the reason for deferral and the likely time of deferral

3. Fees and charges

[details of how the fees and charges have been calculated – including a statement of any amount payable by the applicant, or a statement of any amount refundable to the applicant]

If you are dissatisfied with this determination, you are entitled to exercise your rights of review and appeal as outlined in the attached documentation, by completing the “Application for Review of Determination” and returning the completed form along with an application fee of **insert current fee** to:

Chief Executive
Agency / Department
ADDRESS DETAILS

Should you have any enquiries in relation to this matter, please contact **Name** on **phone number**

Yours sincerely
Accredited FOI Officer

NOTICE TO APPLICANT

EXTENSION OF TIME BY PRINCIPAL OFFICER (s. 14A)

FOI Ref No.....

Insert date

Insert address details

Dear **Insert name**

RE: Freedom of Information Application

I refer to your application under the *Freedom of Information Act 1991* (FOI Act), which sought access to **Insert text from application**

Your application was received on **insert date**. The 30 calendar day statutory deadline was due to expire on **insert date**. **Insert agency** has formed the view that it is not possible to deal with your application in that time period. Therefore, I am determining to extend the time period to deal with your application until **insert new date**.

The purpose of this letter is to inform you of the new due date for your application and your appeal rights in relation to this extension.

Section 14A of the Act allows me, as the Principal Officer of this agency, to extend the time period in two circumstances. They are:

- (a) If “the application is for access to a large number of documents or necessitates a search through a large quantity of information and dealing with the application within that period would unreasonably divert the agency’s resources from their use by the agency in the exercise of its functions”; or
- (b) If “the application is for access to a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within that period”.

Processing of your application so far has revealed that **insert whichever paragraph below is applicable and if need be use combinations, e.g. it is possible that you have to search a large number of documents and that consultation will be required, if so use 2 and 3.**

1. The application catches a large number of documents and dealing with it by **insert original due date** would have unreasonably diverted the agency's resources from their use by the agency in the exercise of its functions.
2. The application necessitates a search through a large quantity of information and dealing with it by **insert original due date** would have unreasonably diverted the agency's resources from their use by the agency in the exercise of its functions.
3. Consultation under Division 2 of the Act is required and it would not have been reasonably practicable to comply with Division 2 by **insert the original due date**.

Section 14A allows me to extend the time for a "reasonable period of time having regard to the circumstances". The circumstances that have been taken into account when the time frame was extended are as follows:

- 1 **Insert a sentence setting out your agency's usual FOI resources;**
- 2 **Insert a sentence setting out your agency's usual other resources and that they are fully occupied in their usual tasks**
- 3 **Insert a sentence setting out how your agency's usual FOI resources are fully engaged in FOI applications.**

I have determined that, taken together, it is reasonable in these circumstances to extend the time to the due date set out above.

Review Rights

As this determination under Section 14A is made by the Principal Officer of this agency there is no rights to internal review. However, you may apply for external review, to the **State Ombudsman or Police Complaints Authority – whichever is relevant** or the District Court. Should you wish to do so you have 30 days from the date on which you receive this letter in which to apply for external review.

If you apply to the Ombudsman, your application does not have to be in any particular form, but it is preferable that it is in writing. If you have any questions about an application to the Ombudsman, please contact his office on (08) 8226 8699.

Please contact me on **insert telephone number** if you have any questions.

Yours sincerely

Principal Officer

Attachment 4 – Worksheets and Checklists

This attachment contains the following sample worksheets and checklists:

- Fee worksheet
- Application Checklist.

FEE WORKSHEET

	File Number
1. Applicant	
2. Chargeable: YES / NO	
3. Agency/action area	
4. Reason for charge not being imposed (if applicable)	

_____ RECOMMENDED _____ APPROVED

5. PRELIMINARY ASSESSMENT			
a. Search & Retrieval Time	HRS	MINS	\$
b. Photocopying			\$
c. Despatch			\$
6. TOTAL ESTIMATED CHARGE			\$
7. DEPOSIT SOUGHT			\$
8. PAYMENT RECEIVED	a. Receipt No:	b. Date:	/ /

_____ RECOMMENDED _____ APPROVED

9. ACTUAL CHARGE			
a. Search & Retrieval Time	HRS	MINS	\$
b. Photocopying		Copies	\$
c. Computer Usage		CPU Seconds	\$
d. Transcripts		Pages	\$
e. Replaying/Copying Films/Tapes			\$
f. Other			\$
g. Despatch			\$
10. TOTAL CHARGE			\$
11. LESS DEPOSIT			\$
12. NET CHARGE			\$

_____ RECOMMENDED _____ APPROVED

FREEDOM OF INFORMATION ACT

APPLICATION CHECKLIST

(Attach this checklist to the front of your FOI file as a quick reference guide)

FOI Applicant:

Response Due Date:

FOI Request Number:

Person Preparing Response:

Date:

Scoping the Request (Check all applicable items)

- Acknowledge receipt to applicant after correct agency ascertained
- Commence identifying relevant records
- Contact the requester by phone to negotiate/clarify the request and follow up any modified request in writing Date:
- Contact any other offices, agencies, staff, etc, which are likely to have relevant records Date:

- Estimate fees
 - Fee waiver requested Granted Denied
 - Calculate estimated fees
 - Notify applicant of fee estimate and/or requirement to pay deposit Date Advance Deposit Due:

- (If applicable) Seek permission (within 20 days) for extension of time from Principal Officer Date:

- Send a follow-up letter or fax re: renegotiated or clarified request, extension or fee Date:

Basis for extension

- Volume Consultation Other

Search and Review (Check all applicable items)

- Search all sources likely to house relevant records
- Obtain records from and coordinate response with other offices, agencies etc
- If no records are located, document the search stating the type of search (*manual, automated*), the files searched, and the name and title of the person who conducted the search
- Determine whether any exemptions apply
- Consult any other agency or third party about documents if applicable
- Response from third party in favour of release yes no
- Are third party reasons for non-release valid yes no
- Notify third party and applicant of decision and if applicable rights of appeal

FREEDOM OF INFORMATION ACT REQUEST CHECKLIST (Continued)

FOI Requester:

FOI Request Number:

Decision Letter — Full Disclosure (check if all of request is located and released)

- Signed by Accredited FOI Officer
- Collect fees

Decision Letter — Denial/Partial Denial (check if any material is denied)

- Signed by Accredited FOI Officer
- Name(s) & title(s) of person responsible for denial
- Cite applicable exemption and include statement explaining the exemption
- Specifically identify the information being withheld and the exemption that applies to that specific information
- Include appeal rights paragraph
- Coordinate with all offices / agencies having an interest in the document
- Coordinate with FOI legal staff
- Collect fees

Decision Letter — “No Records” Determination (check if no records are located for all or part of request)

- Signed by Accredited FOI Officer
- Name(s) & title(s) of person responsible for determination
- State type of search conducted and the location of files searched
- Include appeal rights paragraph
- Coordinate with all offices / agencies likely to have responsive documents
- Coordinate with FOI legal staff
- Collect fees for search, if appropriate

Other Determination Not to Comply (check applicable item)

- Transfer to other agency
- Failure to adequately identify records sought
- Request cancelled/withdrawn
- Refusal to pay reasonable fee

FOI File Documentation (check all applicable items)

- Maintain a copy of, or create an index of, documents released and withheld
- Document search in remarks, if no records found
- Complete the checklist and fee worksheet and include it in the file
- Forward a copy of the signed decision letter (with FOI no) to offices / agencies etc