

# Administrative Release of Information

## Guideline

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**STATE RECORDS**  
of South Australia



Government of South Australia  
State Records

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# Administrative Release of Information

The South Australian Government is committed to making more government held information available to members of the public without requiring them to make a freedom of information (FOI) access application. Providing ready and easy access to government information allows the public to better engage with the government and participate in the making of important decisions, policies and laws.

The purpose of this Guideline is to provide agencies with general advice regarding the administrative release of government information to the public.

## Meaning of ‘administrative release’

The term ‘administrative release’ refers to the release or disclosure of information by an agency, either proactively or as a response to a request, outside of a formal legislative process such as FOI, a public register or other agency specific legislation.

Additionally, ‘administrative release’ does not refer to information that is specifically created for public disclosure such as brochures written for the public or publications available for purchase.

## Authorisation to release information

Before an agency releases information administratively, specific authorisation should be sought from the head of the agency or their delegate. The head of the agency will depend on the type of agency and may include the Chief Executive of a department, director of a board, or presiding officer of a committee.

Authorisation by the head of the agency could be provided through a policy that specifically lists the information authorised for administrative release or on a case by case basis. Please see the section ‘*Developing an administrative release of information policy*’ in this guideline.

## Information that might be appropriate for administrative release

The following types of information might be appropriate for an agency to release through an administrative process. Please note, the types of information below are described in general terms only. Agencies should exercise judgment when assessing the suitability of information for administrative release, taking into consideration all relevant matters. If in doubt, agencies should seek legal advice before releasing information administratively.

## Information that might be appropriate for administrative release

Type of information	Description	Example
<b>Non-personal information in the public interest</b>	Non-personal information that is in the public interest to release to the general public or to a specific person that does not contain confidential or sensitive information.	Providing tender evaluation documents specific to a company regarding their unsuccessful tender submission.
<b>Non-personal information that can be easily obtained and summarised</b>	A summary of non-personal information that can easily and quickly be prepared by the agency that does not contain confidential or sensitive information.	A summary of the costs associated with the agency undertaking a particular activity.
<b>Non-personal information otherwise available</b>	Non-personal information that is already available to the public in some way but may not be easily accessible by everyone.	Information already published on the agency's website where the person requesting the information does not have internet access.
<b>Personal information of the requestor</b>	Personal information of the requestor that does not contain any information of a third party or information that is sensitive or otherwise inappropriate to release.	A copy of a person's x-ray provided to that person.
<b>Employment information of the requestor</b>	Employment information of the requestor who is a current or former employee of the agency that does not contain particularly sensitive information or information of a third party.	Performance appraisals, remuneration information, or incident reports involving the employee.
<b>Information that has been classified "Official"</b>	For State Government agencies this refers to information classified as 'official' in accordance with the Government's Information Classification System policy.  However, agencies must still consider the potential business impact when making a determination to release information administratively classified as 'official'.	
<b>Information held in State archives</b>	Information that has been transferred to State Records with a public access determination of 'open' can be accessed by visiting State Records' research centre or requested to be digitised and delivered electronically.  Information with a public access determination of 'closed' can be accessed via State Records if the agency provides written authority to State Records allowing the requester access.	

## Information that might NOT be appropriate for administrative release

Where information is deemed inappropriate for administrative release, an agency might require an FOI application to be made so that the request can be formally assessed.

Examples of when an FOI application may be required include:

- » the information is considered sensitive and disclosure will require careful balancing of public interest factors<sup>1</sup>;
- » releasing the information may constitute a breach of a legislative provision;
- » releasing the information may constitute a breach of confidence;
- » releasing the information may constitute a breach of legal or parliamentary privilege or Cabinet confidentiality;
- » the document contains information about a third party that cannot be redacted easily and/or consultation with a third party is required;
- » searching for and retrieving the information would require significant agency resources and the agency may need to consider recovering some of the costs from the requestor;
- » the requestor has indicated they wish to have the opportunity, if refused the information, to seek a review of the agency's decision;
- » the information has been classified as 'Official: Sensitive' or greater, and the classification is still relevant, or
- » the information relates to national security and has been given a protective security classification of 'Protected' or greater.

## Developing an administrative release of information policy

The risks of inappropriately releasing information can be greatly reduced if the agency has an established policy and/or procedure for the administrative release of information. For this reason agencies are encouraged to develop an administrative release policy and to publish the policy online so that it is available for the public to read.

An administrative release of information policy generally includes:

- » what types of information can be released under the policy;
- » who authorises the policy and the release of information (this person will be the head of the agency, or their delegate or delegates);
- » who is responsible for dealing with such requests for information;
- » whether proof of identity is required for certain types of information (for example when releasing personal information to subject holder outside of FOI, refer to your agencies privacy policy);

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<sup>1</sup> For a discussion of public interest factors, please refer to the *FOI and the Public Interest* guideline published on the State Records website.

- » how the information will be released and in what format;
- » relevant consultation required or timeframes for releasing or providing access to information;
- » details of any fees and charges;
- » the requirement for any internal or external approvals that may need to be sought before releasing information;
- » the preferred redaction method (if required) for information captured in a document that cannot be released administratively;
- » references to legislation or other policies that affect the release of information generally and those specific to the agency; and
- » whether there are any avenues for a person to query an agency's decision to release, or not to release, information.

## Fees and charges

In most cases, information appropriate for administrative release will not require excessive searching, redaction or consultation and is therefore not subject to a fee.

Where an agency chooses to charge a fee, all fees and charges must be published, reasonable, justifiable and applied consistently. If a person feels aggrieved by the agency's decision to charge and/or by the amount of the fee or charge, they may complain to the Ombudsman under the *Ombudsman Act 1972*.

## Legislation and policies relevant to release of information

It is important that agencies maintain an awareness of legislation and policies that impact release of information.

### Freedom of Information Act

The *Freedom of Information Act 1991* (FOI Act) gives members of the public a legally enforceable right of access to documents held by government, subject only to restrictions consistent with the public interest and the preservation of privacy.

The parts of the FOI Act that agencies may wish to consider when deciding whether to release information administratively include the exemption provisions in Schedule 1 of the FOI Act. These provisions may assist agencies identify reasons why a particular document may not be appropriate for administrative release.

### State Records Act

The *State Records Act 1997* (SR Act) gives State Records a range of functions and powers to ensure the management and conservation of information assets (previously defined as official records) held by government departments, statutory authorities and local government in South Australia.

Section 26 of the SR Act provides for public access to information assets that have been transferred into the custody of State Records (archived information assets). Information assets remain the responsibility of the agency that created them, even after they are physically transferred to State Records, and so a responsible agency may, in consultation with State Records, determine that there should be a restriction on public access to the information asset.

Members of the public do not need to make an application under the FOI Act (or any other Act) to access archived information assets that have an 'open' access determination made by the responsible agency. However where a member of the public is seeking access to a 'closed' archived information asset, the responsible agency may choose to require the requestor to make a request under the FOI Act, or may authorise State Records to provide access via a research centre. It is State Records' view that access, in most cases, should be provided through its research centre or digitised and provided electronically.

### Civil Liability Act and Civil Liability Regulations

The *Civil Liability Act 1936* provides the Crown with immunity from civil liability in respect to the publication of information by or on behalf of the Crown, or in circumstances prescribed by regulation.

Part 5 of the *Civil Liability Regulations 2013* prescribes the following information as immune under the *Civil Liability Act 1936*:

Immune Information		Examples
Information released...	... (or likely to be released) pursuant to an FOI application (other than information relating to the personal affairs of a person)	<ul style="list-style-type: none"> <li>» Minutes from a Committee meeting requested under an FOI application</li> <li>» Policies and documents contained in an Agency's Information Statement pursuant to Part 9 of the FOI Act</li> </ul>
	... pursuant to a whole of government disclosure policy	Mobile expenses published under Premier and Cabinet Circular No. 35: <i>Proactive Disclosure of Regularly Requested Information</i> )
	... in accordance with the Declaration of Open Data	Information released on Data SA
Information contained in contracts or other documents disclosed pursuant to government policy		Contracts and tender documents released on the SA Tenders and Contracts website
Information consisting of submissions from members of the public made in the course of consultation undertaken by the Government		Public submissions made to the YourSay.sa.gov.au website

Whilst agencies should be aware that this immunity from civil liability exists, they must ensure that consideration is given to relevant exemptions under Schedule 1 to the FOI Act and also potential defamation, breach of confidentiality or legislative provisions, during the development of their administrative release policies.

### Privacy Principles

Information privacy in State Government agencies is regulated through the *Information Privacy Principles Instruction* (the IPPI) issued as Premier and Cabinet Circular No. 12. The IPPI includes a set of 10 principles that regulate the way State Government agencies can collect, use, store, and disclose personal information of a natural person,



and are similar to other principles in place at a national level. A natural person is considered to be a living person.

All State Government agency employees who are involved in the collection and management and handling of personal information have a responsibility to ensure that they manage this information in accordance with the IPPI. Information may not be suitable for administrative release where the disclosure of personal information may constitute a breach of any of the 10 principles.

State Government employees that work in the areas of health and communities also need to consider the *SA Health Privacy Policy*.

These privacy principles do not apply to South Australian local government agencies or universities, who may have developed their own comparable privacy policies.

### Secrecy provisions

Some legislation contain 'secrecy provisions' that protect certain information created and collected by an agency or by a particular person from disclosure except in certain specified circumstances. To disclose it otherwise would be an offence under that legislation.

An example of a secrecy provision is section 8 of the *Public Interest Disclosure Act 2018* (the PID Act). Section 8 provides that the identity of a person who makes an appropriate disclosure of public interest information must be kept confidential. This means agency officers are prohibited from accessing or releasing information which identifies the informant under the PID Act.

It is important that agencies are aware of secrecy provisions in legislation that could impact on whether documents can be administratively released. To ascertain whether a secrecy provision may apply, it is a good idea that officers seek the views of other staff within their agency that may have expertise in the legislation relevant to the agency's business. Agencies can also seek advice from their Agency Security Adviser.

### Information security classifications

The South Australian Information Classification System (ICS), under the South Australian Protective Security Framework, specifies the information security classifications all South Australian public sector agencies must apply when assessing the confidentiality, integrity and availability of their information assets to ensure appropriate classification, protective markings and handling requirements are assigned. The classifications described within the ICS may be present on the documents being assessed for administrative release, or present in the records management system of the agency, and can be a useful tool for deciding whether administrative release is appropriate.

Please be aware that a person can still apply for access to documents under the FOI Act regardless of the classification level.

### Copyright Act

The *Copyright Act 1968* provides legal protection for people who express ideas and information in certain forms. The most common forms are writing, visual images, music and moving images.

In limited circumstances, agencies may need to seek permission from the copyright owner to release information or provide access in a form that does not infringe copyright, for viewing only.

When an employee creates a document as part of their job, the copyright is usually owned by their employer. Also, contractors and consultants to government are often



required to relinquish copyright and Intellectual Property rights as part of the terms of their contract. Therefore, copyright may not be an issue when deciding to release copies of documents created by an agency.

More information about copyright legislation can be found on the Australian Copyright Council website [www.copyright.org.au](http://www.copyright.org.au).

### Creative Commons

Creative Commons licences provide individuals and organisations a standardised way to grant the public permission to use their creative work under copyright law.

The licences are applied to government publications, as well as to online information, such as websites and videos. If a document contains one of these licences it may provide assistance in determining whether the document is suitable for administrative release. More information, including the different licences, can be found from the [Creative Commons](https://creativecommons.org/) website <https://creativecommons.org/>.

### Need further assistance?

#### Contact

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