

Processing FOI Applications

Guideline

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STATE RECORDS
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Processing FOI Applications

Purpose

This is a practical guideline for agencies to assist them in 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, Ministerial 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.

In support of this guideline, other Information Sheets and Guidelines regarding the FOI Act and progressing FOI applications are available on the State Records website

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.

The following steps also refer to points in the process where letters should be sent to the applicant or third parties as well as reporting requirements under the FOI Act or relevant policies. Templates of these standard letters can be located on the State Records website.

Step 1 FOI Application Received

FOI applications can only be received and processed by an 'agency' defined under section 4 of the FOI Act which has not been exempt under Schedule 2 of the Act or by regulation ([Freedom of Information \(Exempt Agency\) Regulations 2008](#)).

On receiving an application, ensure that the application has a clear 'date received' notation (i.e. 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 your agency's records management system at this step.

Step 2 Is the application valid?

Check the application for access to information 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)
- » must provide enough information to identify documents
- » must have an Australian postal address specified
- » must be lodged at an office of the agency.

For information on the criteria for making applications to amend personal information refer to section 30 of the FOI Act or see the *FOI Amendment Applications* information sheet available on the State Records website.

For information on the criteria for making internal review applications refer to sections 28 or 38 of the FOI Act.

If the application is valid, a letter acknowledging receipt of the application should be sent to the applicant, include advice about next steps and appeal process.

If the application is not valid the Accredited FOI Officer is obligated to assist the applicant to make it a valid application. This can be achieved by contacting the applicant and advising them of what they need to do to make their application valid. The 30 day time limit does not commence until the application is considered valid.

Time limits for processing

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

Number of Days	Time limit Action
Within 30 calendar days	<ul style="list-style-type: none"> » 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. » For an agency to amend a document that contains information concerning the applicant's personal affairs. » For an applicant to lodge an application for an internal review, i.e. an application must be lodged within 30 days after the day on which notice of the determination is given to the applicant, or within such further time as the principal officer may allow. » For an applicant to lodge an application for external review to the Ombudsman, i.e. 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. The Ombudsman may, in its discretion, extend the time for making an external review application. » For an applicant to seek a review by the South Australian Civil and Administrative Tribunal (SACAT), i.e. 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.
Within 20 calendar days	<ul style="list-style-type: none"> » 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.

Number of Days	Time limit Action
Within 14 calendar Days	<ul style="list-style-type: none"> » For an agency to make a determination on an internal review. » For an agency to transfer an application (either in part or in full) to another agency to allow the receiving agency the maximum time to process the application.

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.

The time limit, (i.e. the time for processing an application) be it for access to information or review of a determination, commences on the day after the application is lodged. The day the determination is finalised and provided to the applicant is included in the time limit.

If the last day of the time limit prescribed in the FOI Act for completing an action (i.e. 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.

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 2018* (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 (e.g. by showing or providing a photocopy of their concession card), or
- » payment of the fee or charge would cause them financial hardship.

Members of Parliament are also entitled to a fee waiver as long as the cost of progressing the FOI application does not exceed \$1000.

The agency must then waive or remit the fee or charge. The reasons for waiving or remitting the fee or charge (e.g. concession card holder, financial hardship or Member of Parliament) must be recorded by you for reporting purposes under the FOI Act.

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 *FOI Fees and Charges* information sheets and the FOI Annual Reporting Guideline available on the State Records website.

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.

Step 3 Is this the correct Agency?

If your agency does not hold the document or documents being sought by the applicant, the application may 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.

At the time the application is transferred the applicant must also be notified in writing.

Transfer of the application

Before transferring an application, the receiving agency should be contacted to discuss whether it holds the documents and whether a transfer is appropriate. If agreed, an advance copy of the application should be provided, particularly if there is likely to be any delay in preparing the formal transfer. This will also give the receiving agency an opportunity to advise if they are of the view the application should not be transferred to them.

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 documents 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
- » record the application as transferred for statistical purposes.

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. The original agency would refuse access on the basis that it does not hold the documents, if that is the case or if it does hold some documents, then it should process the application with respect to those documents only.

It is important to note that if an agency holds documents created by an exempt agency, those documents are not automatically exempt; the agency must still process the

application and make a determination. If an agency holds documents of an exempt agency they also need to check that they are not an exempt agency for the purpose of those documents, e.g. Department for Education in regard to some South Australian Certificate of Education information. If the original agency refuses access on the basis they do not hold documents, they should also explain in the determination that another government body may hold the documents but that they are exempt and, therefore, the application cannot be transferred, if this is the case.

Where an agency has transferred an application in full this needs to be recorded for reporting purposes under the FOI Act. For more information on how to do this refer to the FOI Annual Reporting Guideline.

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.

FOI and access to Cabinet documents

Under Premier and Cabinet Circular 31 *Freedom of Information Release of Cabinet Documents Ten Year Rule* (PC031), an agency (other than Department of Premier and Cabinet (DPC)) that receives an FOI application seeking access to Cabinet documents between 10 and 20 years old must be transfer the application to DPC in accordance with section 16(1)(a) of the FOI Act.

As a result of PC031 access to Cabinet documents between 10 and 20 years is not automatically exempt under Clause 1 of the FOI Act (Cabinet documents). However other exemptions and requirements under the FOI Act continue to apply where appropriate.

This policy does not apply to documents of Executive Council.

For more information, please refer to the information sheet refer to PC031.

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 the application, and still meet the 30 calendar days timeframe for processing.

Where an agency has not 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 effect of a delay in transferring an 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.

	Date of receipt by original agency	Date of transferral	Time limit for receiving agency to process application
Scenario 1 (transfer time 14 days or less)	1 September	2 September	Due date for receiving agency is 2 October. That is 30 calendar days to process.
Scenario 2 (transfer time 15 days or more)	1 September	20 September	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.

Deemed Refusal

A deemed refusal is where an agency fails to make a determination and notify the applicant within the timeframe of 30 calendar days, and the time limit has not been extended under section 14A. The applicant can take it as the agency refusing access to the documents (see section 19(2) of the FOI Act). Where a 'deemed refusal' occurs an applicant can exercise their rights of review and appeal. Agencies should advise the applicant of their rights of review and appeal once an application becomes a deemed refusal.

However, there is nothing in the FOI Act that prevents an agency from providing access to documents after a 'deemed refusal' (as per section 19(2a)). Agencies can continue to process an FOI application even after the timeframe for processing has elapsed. Where an agency provides access to documents after a 'deemed refusal' this is still held to be a 'determination' under the FOI Act, attracting the protections afforded to the agency's provision of access under sections 50-52.

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 (e.g. minister, chief executive officer or presiding officer, refer to section 4) and your Minister should be notified. When advising the Principal Officer and Minister of these applications, improper direction should not be given to an Accredited FOI Officer (or accepted by the Accredited FOI Officer) in relation to the processing of the application.

The Principal Officer and Minister can however direct an Accredited FOI Officer to make a determination. If this occurs, section 29(6) of the FOI Act should be invoked. Section 29(6) provides that if the Principal Officer, or person or body to which the Principal Officer is responsible i.e. Minister, gives such a direction, then the determination is not subject to internal review. This means the determination has effectively been made by the Principal Officer, not the Accredited FOI Officer. This direction should be explained in the notice of determination provided to the applicant because it affects the applicant's review rights.

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(s) who has the best knowledge and association with the relevant documents in order to identify all documents that fall within the scope of the application.

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

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 hand written post-it notes)
- » electronic documents including databases and emails
- » DVDs, video tapes or film recordings
- » photos, maps and plans
- » mobile phone SMS & MMS messages.

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 also 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 transferred to temporary storage providers
- » contracted service providers - please refer to *Contracting and Official Records Standard* which can be found on the State Records website.

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.

Agency Records in the Custody of State Records

When an agency transfers a permanent value 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. 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. Therefore, the agency must consider documents in the custody of State Records if they are within the scope of the application.

Where the documents have an access determination of 'Open' under the *State Records Act 1997*, an agency can refuse the FOI application and direct the applicant to State Records' reading room or the State Records website.

For more information on access determinations under the State Records Act see the *Public Access Determinations Guideline* available on the State Records website.

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.

The refusal of access to documents that are otherwise available must be recorded for reporting purposes under the FOI Act. For more information, see the FOI Annual Reporting Guideline.

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 to or the amending of documents.

This is known as proactive disclosure or administrative release.

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.

Where access to information is permitted under another piece of legislation, applicants should be advised of this and any applicable fees. Access should not be provided under FOI.

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 should 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 with the applicant.

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, section 18(1). Whether an application would substantially and unreasonably divert your agency's resources refer to your agency's resources as a whole rather than those of the designated FOI area of the agency. Proper use of section 18(1) involves a careful and evidence-based estimate of the amount of the resources necessary to process the request. These resources must be of a sufficient magnitude to qualify as 'substantial' for the purpose of section 18(1).

If a decision is made that the agency's resources would be substantially and unreasonably diverted, 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. The determination information must also be recorded for statistical purposes under the FOI Act.

Where an application has been refused due to unreasonably diverting your agency's resources this determination must be recorded by you for reporting purposes under the FOI Act.

Step 8 Is an extension of time needed (Section 14A)?

An extension of time can only be made by a Principal Officer if an agency 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.

Only the Principal Officer of an agency can make a determination to extend the time limit of an application. This power cannot be delegated.

A determination under section 14A must be made in writing within 20 calendar days from the date the agency received the application. The extension of time must be recorded by you for reporting purposes under the FOI Act.

Step 9 Fees and Charges

Fees and charges increase annually in line with an agreed indexation factor. A copy of the Fees and Charges Regulations and the Annual Fees Notice, which includes 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:

Activity	Description
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, giving documents a number and / or reference, and the time spent redacting exempt information
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

¹ Section 53(2aa) FOI Act

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 Notice*.

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, in which case all fees can be charged, including the initial \$1000.

An applicant can request a review of any proposed fees and charges. No fee can be charged in relation to the review.

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.

Under the FOI Act, you must record for reporting purposes the following information:

- » Total fees and charges assessed (those that were applicable); and
- » Total fees and charges actually collected.

For more information please refer to the FOI Annual Reporting Guideline on our website.

Advance Deposits (Section 17)

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 or business
- » consultation with other persons, organisations or agencies is required
- » the document is a contract entered into by the Crown or an agency and a confidentiality clause has been included in the contract.

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.

All contracts containing a confidentiality clause must be recorded by your agency for reporting purposes under the FOI Act. For more information please refer to the FOI Reporting Guideline for fulfil legislative reporting requirements.

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.

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 confidentiality 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.

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.

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.

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 of the third party are concluded or the time for lodging a review or appeal has lapsed.

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.

There is no need to consult if you are going to refuse access to the documents in question, see Step 13.

Step 13 Are documents exempt or parts of them exempt?

Once all documents have been thoroughly examined you must decide whether there are any exemptions that would restrict the giving of access. Documents may be completely exempt or it may be possible for some of the information to be released to the applicant.

The exemptions are set out in Schedule 1 of the FOI Act. Consider, carefully, the precise elements of each relevant exemption and apply those elements 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) of the 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.

This is known as partial access or release of documents. Refer to methods for deleting exempt matter below.

You must record the specific exemption clauses relied on in the notice of determination for reporting purposes under the FOI Act, section 23(2)(f).

The Public Interest Test

The public interest is considered something that is important or that on balance will benefit the public in general. 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 and included in the determination 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.

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 (Section 20(4) of the FOI Act).

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. Redaction should only be made to a copy of the document, not the official record itself. Regardless of the method used to remove exempt matter it is important that copies are kept by your agency. This includes copies of documents provided to the applicant as well as 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.

Step 14 Forms 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 a portable storage device e.g. 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 Notice* 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:

Section	Determination Type
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	Determination Type
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 20	Applications for access where documents are partially released or access is refused
Section 21	Applications for access where access to documents is deferred
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

All notice of determinations must be made in accordance with section 23 of the FOI Act.

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.

When providing your reasoning's for why information is exempt, you must be careful that you do not include any information that would result in the notice of determination becoming an exempt document (section 23(4) of the FOI Act. To avoid this, it is best practice to provide generic reasons rather than specific reasons when explaining your rationale for refusing access to information. For example, stating a record refers to 'financial information of a private company' rather than providing the specific details.

The notice of determination also serves to advise the applicant of the total amount of any fees and charges relating to the processing of the application.

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 any relevant 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 or deferred.

As noted in steps 5 and 7, all notice determination information must be recorded by you for reporting purposes under the FOI Act. For more information please refer to FOI Annual Reporting Guideline.

Deferring access to a document

Deferring access should not be used to deny access indefinitely.

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

- » will be published under another Act (e.g. 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.

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

For 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 made 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 in progressing the FOI application is the issuing of the Notice of Determination by sending it to the postal address provided by the applicant or as otherwise requested by the applicant.

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

For state government agencies, the Notice of Determination should also advise applicants that details of their application (non-personal details only, e.g. scope of request), and the documents to which access is given, may be published in the agency's disclosure log in accordance with the Premier and Cabinet Circular PC045 – *Disclosure logs for non-personal Information released through Freedom of Information* (refer to step 18).

Step 18 Additional Reporting Requirements

For State Government agencies only

Where an application for access to non-personal information is received and the information has been released to the applicant, state government agencies are required to make the FOI application and the documents released under that application available on its website under [PC045](#). Any information redacted under the original FOI application must also be redacted prior to release on the agency's website. If an applicant or third party disagrees with the publication, agencies should work with the applicant or third party, using the agency's dispute resolution policy, to resolve the issue. Information should not be included in the disclosure log until the dispute is resolved. For more information refer to PC045.

Record management considerations

In order to satisfy the agency's recordkeeping requirements under the *State Records Act 1997*, each FOI application and its associated record trail must be appropriately captured and managed within the agency's recordkeeping system. A new case file should be created for every application received. This is, in part, because some applications may be required to be retained for a longer period of time than others in accordance with an approved disposal schedule.

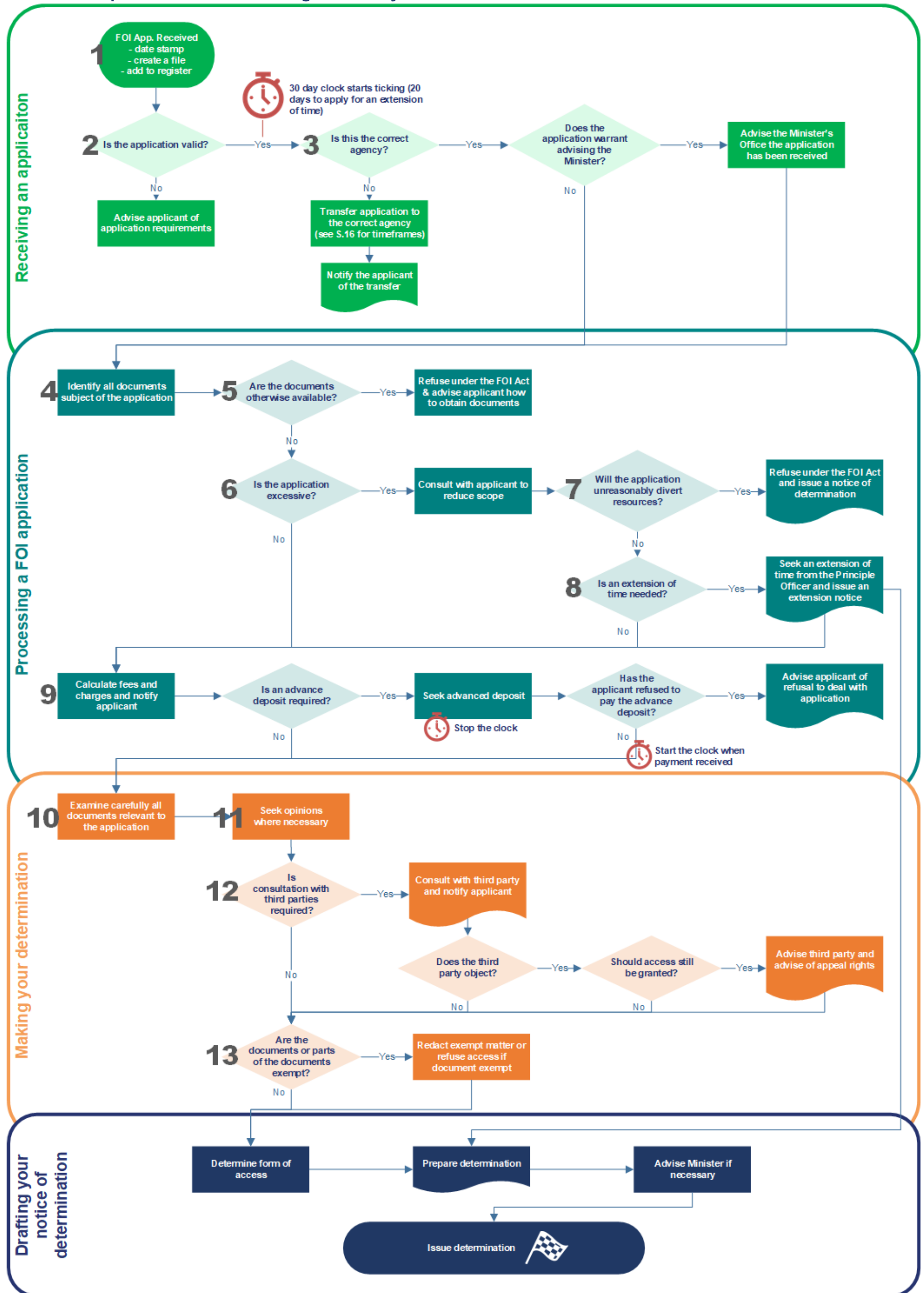
Each FOI application file should include all documentation relating to the application including:

- » any documentation relating to the processing of the application, e.g. consultation undertaken
- » copies of all documents and records within the scope of the application or an accurate description of them
- » copies, and 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. Copies can be taken of the original documents to provide to the applicant where it is determined that access can be provided under the FOI Act. Redactions must only be made to copies not on original documents.

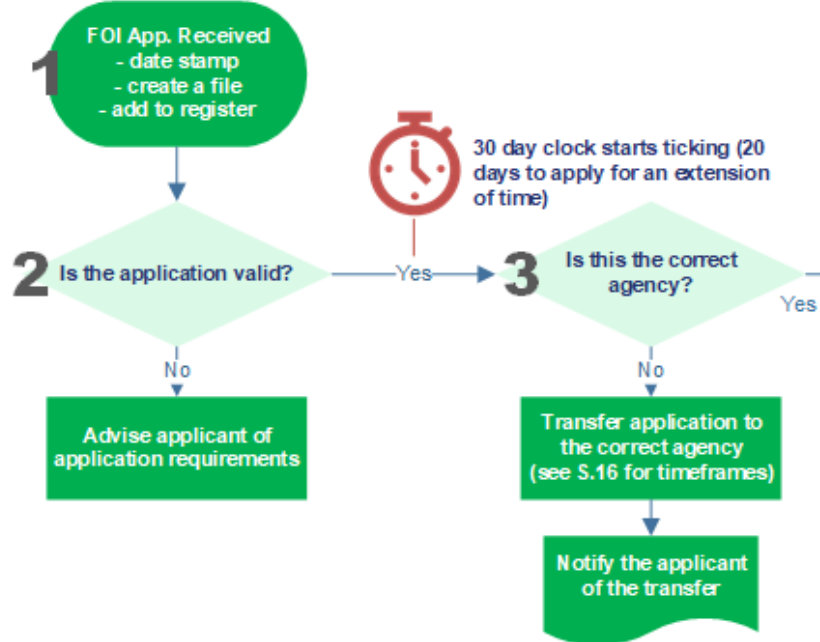
All documents in the possession of an agency should be subject to an approved disposal schedule, including those that may be within the scope of a current FOI application. In the event an FOI application is made for documents that are due to be legally destroyed in accordance with an approved disposal schedule or those that could be destroyed through normal administrative practice, the destruction must be delayed. Depending on the type of application received, and whether it was subject to an external review, the records sentence applied to the documents associated with the FOI application may need to be amended. The records sentence associated with an FOI application can range from 2 years to permanent.

FOI Process Map for State Government Agencies Only

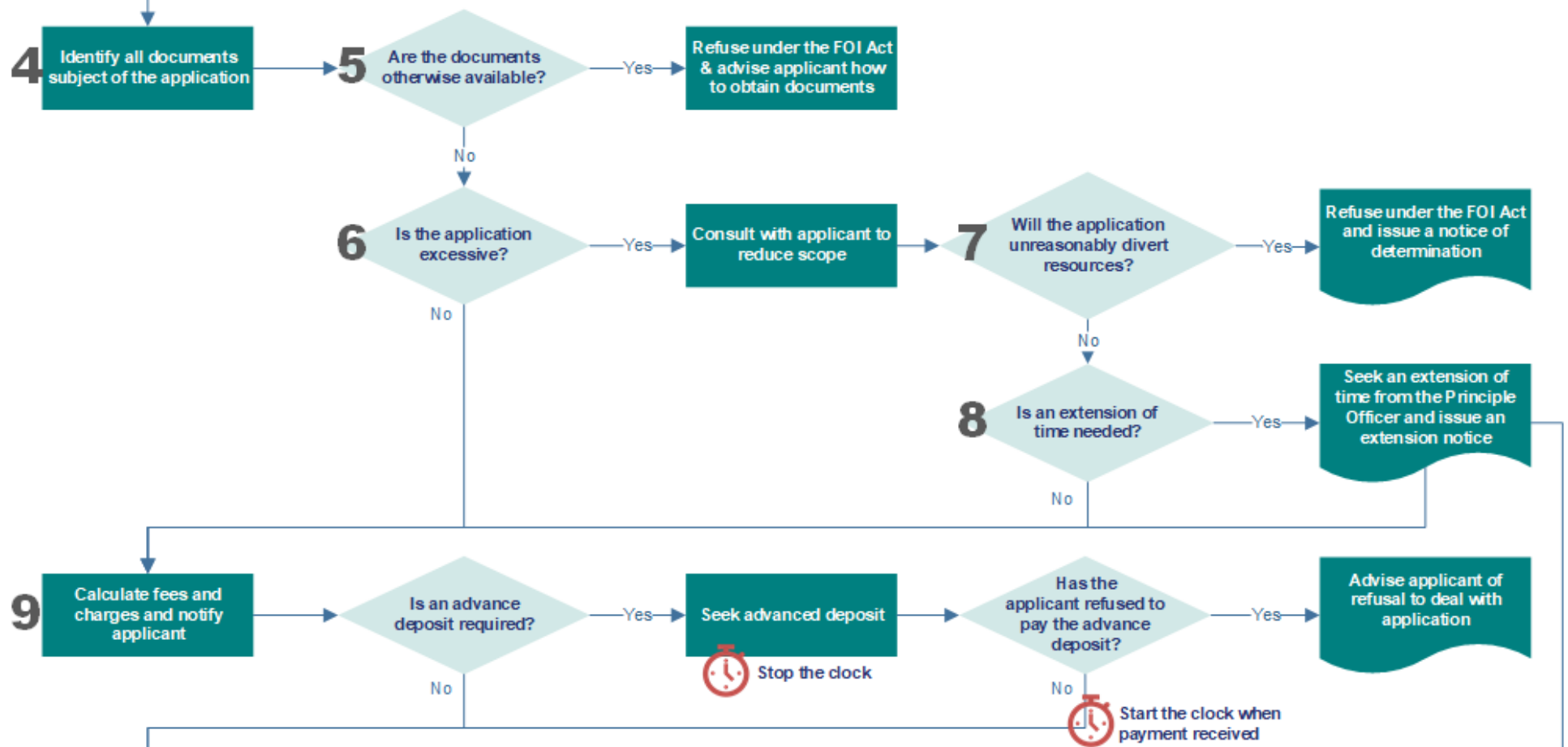


FOI Process Map for Local Government and Universities

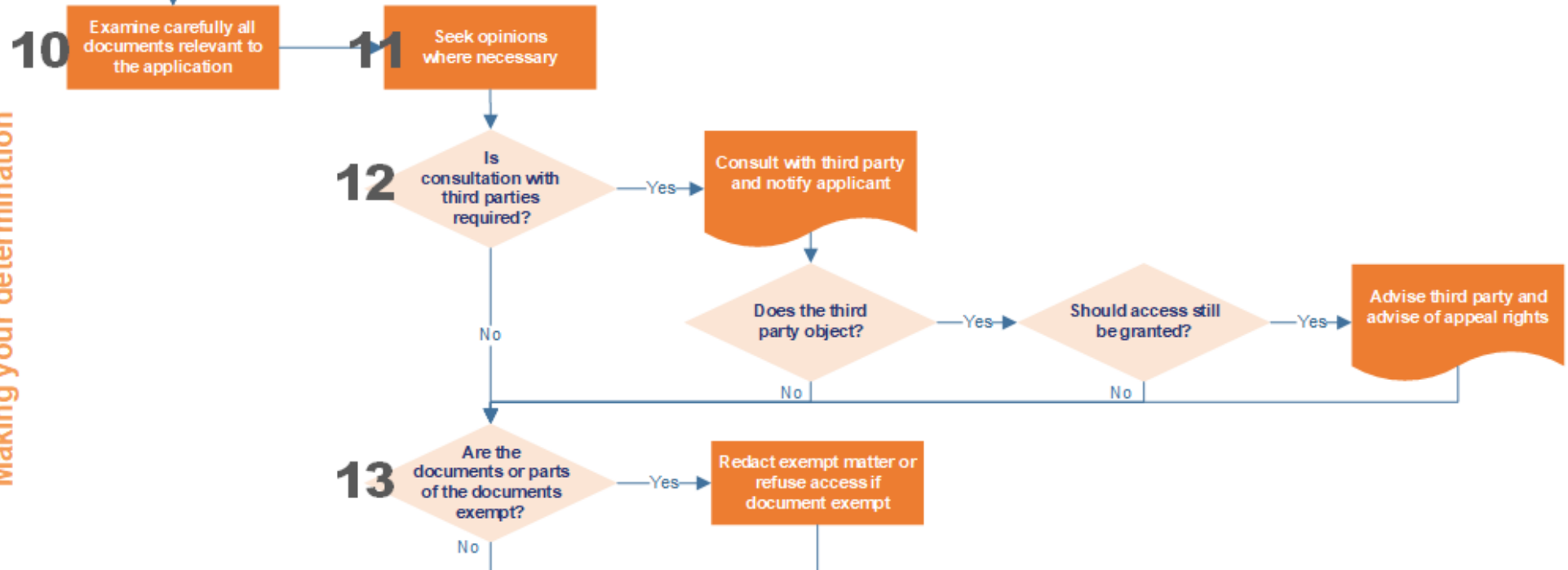
Receiving an application



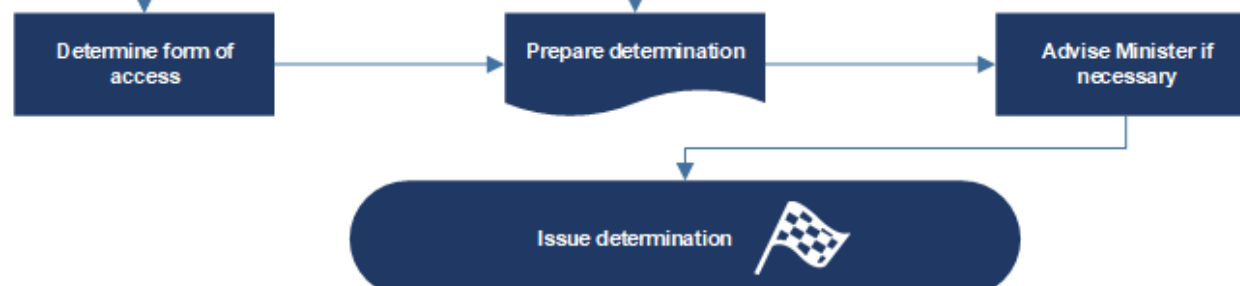
Processing a FOI application



Making your determination



Drafting your notice of determination



Date approved	Approved by	Date for review	Version
01/07/2022	Team Leader Policy and Legislation	18/02/2025	18

Need further assistance?

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