

Disclosure Logs for Non-Personal Information released through FOI (PC045)

The Department of the Premier and Cabinet Circular 45 – Disclosure Logs for Non-Personal Information Released through FOI (PC045) describes the requirements for agencies to publish non-personal information that has been released under the Freedom of Information Act 1991 (FOI Act) to their websites.

The FOI application information required to be made available by agencies includes a summary of the application details and documents that have already been disclosed to an FOI applicant that:

- » are not related to the personal affairs of an individual; and
- » could not be claimed as exempt documents/material pursuant to Schedule 1 of the FOI Act, when being publicly released; and
- » could not be considered defamatory or a breach of confidentiality or reasonably be anticipated to cause harm to a person.

This information sheet has been developed to answer agency queries in relation to the practical implementation of PC045. If after considering this information sheet you require further information, please contact State Records at staterecords@sa.gov.au or on telephone 7322 7081.

| Question | Response |
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| 1. Who has to comply with PC045? | <ul style="list-style-type: none"> » In-scope agencies are defined within Sections 3 and 4 of PC045. » If you are unsure whether PC045 applies to your agency seek legal advice from the Crown Solicitor's Office. |
| 2. Does PC045 apply to applications for documents containing an individual's personal affairs? | <ul style="list-style-type: none"> » No. » Even if the FOI application is made by a third party (agent or lawyer) on behalf of an individual, the FOI application should not be considered for inclusion in an agency's disclosure log. |
| 3. How will applicants know about PC045? | <ul style="list-style-type: none"> » All forms, brochures and other documents managed by State Records have been updated to include reference to PC045 and the possibility of disclosure of non-personal information. |

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| | <ul style="list-style-type: none"> » Agencies should advise applicants of PC045 early in the process, i.e. when acknowledging their application. » Suggested wording when communicating with applicants and third parties can be found at the end of this information sheet. |
| 4. Do we need to advise third parties that information may be published in a disclosure log? | <ul style="list-style-type: none"> » Yes, third parties should be advised of PC045 and the possibility of disclosure of non-personal information. |
| 5. How do we manage implementation of PC045 within our agency? What should be included in an 'Agency PC045 Implementation Plan'? | <ul style="list-style-type: none"> » Each agency will need to develop an implementation plan specific to their agency. » Agency PC045 Implementation Plans should include as a minimum: <ul style="list-style-type: none"> ○ responsibilities for identifying and approving information to be included in the disclosure log ○ responsibilities for technical management of the disclosure log ○ reasons for exemption from disclosure and the approval process for exemptions ○ circumstances that will result in documents not being automatically uploaded to the disclosure log, e.g. where there are significant additional redactions required ○ the process for providing access to documents that have not been automatically uploaded to the disclosure log, including timeframes ○ dispute resolution process. |
| 6. How do agencies manage exemptions from disclosure under PC045? | <ul style="list-style-type: none"> » Section 5.6 of PC045 states that Chief Executives have the authority to exercise discretion in individual cases. » The process for exemptions from disclosure should be included in each 'Agency PC045 Implementation Plan'. » FOI applications to which the Chief Executive's exemption applies should not be recorded on an agency disclosure log. |
| 7. Do details of the FOI application need to be included in the disclosure log if access is refused? | <ul style="list-style-type: none"> » No, if no access is to be provided (application refused in full) there is no need to include any reference to the application on the disclosure log. |

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| | Should details of an FOI application be included in the disclosure log where the determination is for partial release? | » If either full or partial access is provided the application detail should be considered for inclusion in a disclosure log. |
| 8. | Should the notice of determination be included within the disclosure log? | <p>» To give context to the application, and the documents disclosed, agencies should include the notice of determination with all personal information removed. It may also be appropriate to include the document schedule.</p> <p>» If the applicant is an MP and is applying in their capacity as a public office holder, and not in their personal capacity or on behalf of a constituent, then their name and address can be published.</p> |
| 9. | Should the applicant's details be included on the disclosure log? | » Personal information, including name and address, of applicants should be redacted from any documents prior to publication in the disclosure log. |
| 10. | <p>Who approves the redaction of further information under PC045 prior to publication on the disclosure log?</p> <p>In what circumstances would additional redactions be required?</p> <p>When additional redactions are required, will agencies need to create two sets of documents, one for the applicant and one that could be included on the disclosure log?</p> | <p>» Each agency will need to determine and include the authority for additional redactions within the Agency PC045 Implementation Plan.</p> <p>» Additional FOI Act exemptions may apply to documents before they are released to a wider audience via publication on the disclosure log e.g. information relating to the business or personal affairs of the FOI applicant.</p> <p>» The required additional redactions would create a second set of documents that could be included on the disclosure log.</p> |
| 11. | <p>When would it be acceptable to not include the actual released documents on the disclosure log?</p> <p>How do we manage access to documents that have not been</p> | <p>» If significant scanning and/or additional redactions were required prior to publication the agency may decide not to publish documents but instead provide access upon request.</p> <p>» Agencies would include a summary of the application details in the disclosure log, as well as advice about how to gain access to the documents.</p> |

automatically uploaded to the disclosure log?

- » If access is requested, agencies would then need to upload the documents, with additional redactions, to the disclosure log in a timely manner (as defined within the Agency PC045 Implementation Plan).
- » In rare cases it may be decided that documents that are suitable for release to an individual might not be appropriate to release to the world via the disclosure log. In such circumstances the agency may consider including the application details in the disclosure log but require that interested parties contact the agency to gain access to any documents.

12. Which FOI exemption clause do you use to redact employee names and contact details?

- » None.
- » PC045 provides the authority to allow for the redaction of employee names and contact details from a document before it is published in a disclosure log, if deemed necessary.

13. What happens if an agency receives an application for information that is soon to be published on the agency's disclosure log (i.e. <90 days after original access provided)?

- » Where this is known to have occurred and in the spirit of PC045, the second applicant should be advised that the information will be included on the agency's disclosure log by <insert date> and query whether they want to withdraw their application.
- » If this occurs the information should be included on the disclosure log within 30 days of the second application or 90 days of the original determination being made, whichever is earlier.

14. What happens if the agency receives an FOI application for documents that are published on the agency's disclosure log?

- » The agency should contact the applicant and advise how they can gain access to the documents.
- » The agency can then either ask the applicant to withdraw their application or refuse access in accordance with Section 20(1)(b) of the FOI Act.

15. What happens if an agency receives an application for the same information while they are in dispute with the original applicant about inclusion on the disclosure log?

- » The agency should accept the second application and process it in accordance with the FOI Act.
- » If access is provided to the second applicant and the first applicant is still in dispute, the agency should consider whether it is appropriate to include details of the second application, and any documents released, on the disclosure log.

The dispute with the first applicant may be resolved as a result of this.

16. How do we manage and resolve disputes about publication to the disclosure log?
- » Agency dispute resolution policies will guide the process for resolution. Specific details of how your agency will manage disputes should be included in Agency PC045 Implementation Plans.
 - » The Chief Executive has the power to grant exemptions from disclosure under Section 5.6 of PC045, it therefore seems appropriate for disputes over publication to involve the Chief Executive.
 - » Information should not be included on disclosure logs until disputes are resolved in favour of publication.
17. What processes should we use to notify applicants of dispute arrangements and management?
- » Agencies should provide applicants with early advice (see 3 above) of the potential for details of their application, and documents provided, to be published on the disclosure log.
 - » Where access is given and the application falls within scope for publication to the disclosure log, the notice of determination letter should include advice about the eligibility for publication and the process for dispute resolution. Advice should include:
 - authority for publication
 - who to advise if they disagree with publication on the disclosure log
 - how long they have to lodge their disagreement.
 - » Publication must not occur until any dispute is resolved in favour of publication.
18. What happens if an applicant is unhappy that they have to pay for the information and the community then gets it for free through the disclosure log?
- » If the application has not been processed the applicant could choose to withdraw their application.
 - » If the applicant wants their application processed but does not want it included on the disclosure log, the agency would process and determine the application in the ordinary way, including providing access to the applicant.
 - » The application details and any documents provided must not be published on the disclosure log until dispute over publication is resolved in favour of publication.

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| 19. | Should each agency's disclosure log display consistent information? | <ul style="list-style-type: none"> » An example of the minimum information to be included in disclosure logs is included in Attachment 2 to PC045. » Information contained within the disclosure log should be searchable and any documents that are uploaded should be saved in a user-friendly downloadable format. |
| 20. | Should all information be removed from the disclosure log after 12 months? | <ul style="list-style-type: none"> » Refer to Section 8 of PC045. |
| 21. | How long do we need to retain information once it is published to the disclosure log? | <ul style="list-style-type: none"> » In accordance with the <i>State Records Act 1997</i>. Refer Section 9 of PC045. |
| 22. | Why isn't there one central disclosure log for all information to be added to? | <ul style="list-style-type: none"> » A link to the proactive release pages on agency websites is included on the sa.gov.au website under the heading of Access to Government Information and Data. » Each agency is responsible for ensuring its disclosure log is available and up-to-date. » There is no current proposal to develop a central database/system to manage publication of information released under PC045. |
| 23. | How does publication on the disclosure log affect internal review rights under the Act? | <ul style="list-style-type: none"> » It doesn't. Only documents to which access has already been provided can be considered for publication. » If partial access is provided, and it is appropriate to publish on the disclosure log, disclosure of the documents that have been released should occur within the 90 day timeframe. » If as a result of a review additional documents are provided to the applicant, those documents, along with any notice by the agency to the applicant, should then be included in the disclosure log, subject to redaction requirements. |

Example of wording for inclusion in communications to applicants and third parties

Include following paragraphs in communications when:

1. *An applicant lodges a new application for access to non-personal information.*

In accordance with Premier and Cabinet Circular PC045, if you are given access to documents as a result of this FOI application, details of your application, and the documents to which access is given, may be published on the agency's disclosure log. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>.

2. *An applicant is being provided access to non-personal information.*

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your FOI application, and the documents to which you are given access, may/will be published on the agency's disclosure log. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>. If you disagree with publication, please advise the undersigned in writing by [date – e.g. < 30 days of from the date of notice of determination].

3. *The agency is consulting with a third party.*

In accordance with Premier and Cabinet Circular PC045, if access is given to documents, details of the FOI application, and the documents to which access is given, may be published on the agency's disclosure log. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>.

Need further assistance?

Contact

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