

# Freedom of Information

## Professional Standards



## Introduction

I am pleased to present these Freedom of Information Professional Standards, which further deliver on the Government's commitment to ensuring openness and transparency across the public sector.

These standards provide a benchmark for agencies in administering their responsibilities under the Freedom of Information Act 1982 (Vic).

The Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012 came into operation on 1 December 2012 and established Victoria's first independent Freedom of Information (FOI) Commissioner, the most significant change to Victoria's FOI regime in more than 30 years.

The Government strongly supports these standards and Principal Officers should ensure that all officers and employees comply with the professional standards. These standards do not displace, and should be read in conjunction with, any other obligations and standards that apply to public sector agencies, their Principal Officers and employees.

This is a further significant milestone in Victoria's FOI history. I encourage the circulation of this document to all staff involved in the administration of FOI matters.

A handwritten signature in black ink, appearing to read 'Robert Clark', with a horizontal line underneath it.

Robert Clark MP  
Attorney-General

*.....ensuring transparency and openness  
.....promoting access to public sector information  
.....clarifying and strengthening application of the FOI Act*

## Contents

<b>Introduction</b> .....	<b>2</b>
<b>Principle 1: Access to Public Sector Information</b> .....	<b>4</b>
Standard A: Right of Access .....	4
Standard B: Responsibilities of Agencies .....	4
<b>Principle 2: Assessing and Determining Applications</b> .....	<b>5</b>
Standard C: Assistance to Applicants .....	5
Standard D: Requirements for a Valid Request.....	5
Standard E: Identification of Relevant Documents .....	5
Standard F: Timely Decision-Making .....	5
Standard G: Decisions .....	5
<b>Principle 3: Reviews and Appeals</b> .....	<b>6</b>
Standard H: Applicants' Right of Review .....	6
Standard I: Agency Requirements .....	6
<b>Principle 4: Complaints</b> .....	<b>7</b>
Standard J: Assistance to the FOI Commissioner .....	7
Standard K: Timely Responses.....	7
<b>Principle 5: File Management and Reporting</b> .....	<b>8</b>
Standard L: Records Management .....	8
Standard M: Annual Reporting.....	8
Standard N: Part II Information Statements .....	8
<b>Principle 6: Education</b> .....	<b>9</b>
Standard O: Responsibilities of Principal Officers .....	9

## Principle 1: Access to Public Sector Information

- ◆ The community has a right to access information.
- ◆ Agencies must maximise and facilitate agency information being made available through an appropriate proactive release framework.

### Standard A: Right of Access

- 1) The FOI Act must be interpreted to maximise the release of public sector information unless specific exemptions apply.
- 2) Persons have a right to access information in a timely and accurate manner.
- 3) All actions and decisions under the FOI Act should be without bias.

### Standard B: Responsibilities of Agencies

- 1) Principal Officers have a responsibility to:
  - a. promote an appropriate pro-release culture to ensure the transparency of public sector information
  - b. ensure FOI decision makers are aware of the requirements of the FOI Act and these professional standards, and how they apply to decisions and actions in the course of processing FOI requests
  - c. ensure relevant staff are provided with adequate information, guidance, training and support in applying these professional standards and the requirements and objects of the FOI Act
  - d. ensure internal FOI procedures are regularly reviewed in regard to their effectiveness, compliance with legislation, case law and any guidance from the FOI Commissioner
  - e. ensure their agency's decisions comply with the requirements of the FOI Act and these professional standards
  - f. provide an appropriate level of resources to ensure the timely processing of requests, and
  - g. keep the FOI Commissioner informed of changes to their agency's Principal Officer and FOI contact details.

## Principle 2: Assessing and Determining Applications

- ◆ Agencies must assist applicants in making a FOI request.
- ◆ FOI decisions must be fair, clear and aligned with the spirit of openness and transparency.

### Standard C: Assistance to Applicants

- 1) Agencies must provide reasonable assistance to applicants to enable the lodgement of FOI requests, including through online transaction capability, wherever practicable, and advise of rights concerning reviews, appeals and complaints about the administration of their FOI requests.

### Standard D: Requirements for a Valid Request

- 1) Agencies must assist an applicant to make a valid request in accordance with section 17 of the FOI Act.

### Standard E: Identification of Relevant Documents

- 1) Agencies must ensure that thorough and diligent searches are undertaken when identifying and locating documents relevant to FOI requests.

### Standard F: Timely Decision-Making

- 1) Agencies are to ensure internal practices and procedures facilitate the making of timely decisions in accordance with the time lines specified in the FOI Act.

### Standard G: Decisions

- 1) In properly exercising their statutory decision-making power under the FOI Act, an authorised FOI Officer cannot be directed to make a particular decision under the Act.
- 2) FOI Officers, and Principal Officers where relevant, must undertake any necessary consultation within and across agencies to gain a knowledge of the documents sufficient to be able to determine the subject matter, context and what, if any, basis exists to support an exemption under the FOI Act.
- 3) Before making a decision, FOI Officers must consult third parties in relation to commercial information in accordance with section 34(1) of the FOI Act, in accordance with section 34(3) of the Act.
- 4) In accordance with section 27 of the FOI Act, agency decisions must at a minimum:
  - a. be in writing
  - b. include the name of the person making the decision
  - c. applicants should be informed of efforts made to identify and locate documents
  - d. indicate where exempt or irrelevant matter has been deleted from a document
  - e. clearly state the exemptions applied and the specific reasons for applying the exemption to the document
  - f. advise applicants and third parties of any right of review and/or complaint to the FOI Commissioner or appeal right to the Victorian Civil and Administrative Tribunal (VCAT) and the right to apply to the Health Services Commissioner for conciliation in accordance with section 49Q of the FOI Act, and
  - g. in the case of a no document exists decision, advise applicants of their right to complain to the FOI Commissioner.
- 5) In addition, agencies must ensure that their decisions on access are in line with the exemption provisions under the FOI Act.
- 6) Decision-making processes are to be fair, clear and applied consistently.
- 7) Decisions and actions are to be objective, free of bias and begin from the position that the public is entitled to access information held by the public sector.

## Principle 3: Reviews and Appeals

- ◆ Agency advice and decisions must inform the applicant and third parties of their review and appeal rights in an accurate and timely manner.
- ◆ The FOI Commissioner must perform functions and exercise powers under the FOI Act in relation to reviews with as little formality and technicality as possible.
- ◆ Agencies must provide assistance to the FOI Commissioner in relation to requests for the review of agency decisions in accordance with the FOI Act.

### Standard H: Applicants' Right of Review

- 1) Agencies must inform applicants of any review and appeal rights to enable them to exercise their rights within the time limits imposed under the FOI Act.
- 2) The FOI Commissioner may make preliminary inquiries in order to determine material facts and issues and/or whether a matter can be resolved by agreement between the parties.
- 3) In accordance with the FOI Act and guidelines issued by the FOI Commissioner, Principal Officers and agencies must cooperate with and provide timely assistance to the FOI Commissioner in the course of the Commissioner responding to requests for the review of agency decisions.

### Standard I: Agency Requirements

- 1) Principal Officers and their agencies must be alert to any guidelines issued by the FOI Commissioner and requirements of VCAT.

## Principle 4: Complaints

- ◆ Agencies must provide timely and accurate advice and assistance to the FOI Commissioner to enable the exercise of the functions of the Commissioner relating to complaints made about agencies' administration of the FOI Act.

### Standard J: Assistance to the FOI Commissioner

- 1) The FOI Commissioner may make preliminary inquiries in order to determine material facts and issues and/or whether a matter can be resolved informally.
- 2) In accordance with the FOI Act and guidelines issued by the FOI Commissioner, Principal Officers and their agencies must provide timely assistance to, and co-operate with, the FOI Commissioner in regard to complaints about the administration of FOI requests.

### Standard K: Timely Responses

- 1) Agencies must communicate in a timely manner with the FOI Commissioner and with applicants in relation to complaints.

## Principle 5: File Management and Reporting

- ◆ Agencies must provide data to the FOI Commissioner to enable annual reporting to Parliament on the administration of the FOI Act in Victoria.
- ◆ Agencies must ensure record keeping practices enable the prompt and efficient identification of agency documents.
- ◆ Agency annual reports and websites are to provide sufficient information to enable the public to determine the broad categories of records it holds.

### Standard L: Records Management

- 1) Principal Officers must ensure that agency records management systems and practices, inclusive of archiving practices, facilitate the timely and accurate processing of FOI requests.

### Standard M: Annual Reporting

- 1) Principal Officers must ensure accurate and timely reporting of information as required under the FOI Act and relevant guidance from the FOI Commissioner.

### Standard N: Part II Information Statements

- 1) Agencies must comply with the publication requirements of Part II statements, making information available on-line where this is practicable.
- 2) Part II statements must be published in a manner easily accessible to the public.

## Principle 6: Education

- ◆ Principal Officers are to ensure that agency staff and FOI Officers receive the necessary training, education and support in relation to the administration of the FOI Act.

### Standard O: Responsibilities of Principal Officers

- 1) Principal Officers must:
  - a. support their FOI Officers and relevant staff through the provision of training and professional development opportunities, including online or face-to-face training
  - b. ensure that agency FOI Officers and relevant staff receive training that focuses on both the technical application of the FOI Act and its objectives, as well as the importance of complying with the spirit of the Act and achieving outcomes sought by the legislation
  - c. ensure all agency staff are reminded of the need to cooperate promptly and assist their FOI Officers in dealing with requests, reviews, appeals or complaints
  - d. make available any guidance materials issued by the FOI Commissioner, and
  - e. ensure that their agency's obligations under the FOI Act are met, cognisant of relevant guidance from the FOI Commissioner.