

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARINGS: 11 February 2013

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(AE13/0196) PROGRAM – Internal Product

Senator Cash (Written) asked:

The department's response to the OAIC investigation refers to a 'Secretary's Instruction', which outlines the responsibilities of SES staff in relation to the management of FOI requests. Accompanying this was an all staff message from the A/g Secretary outlining his expectations in relation to FOI requests. (pg 4) Can we have a copy of the Secretary's Instruction and A/g Secretary's all staff message?

Answer:

See the Attachments:

- Attachment A - The all staff message sent by the A/g Secretary about the Secretary's Instruction on Freedom of Information.
- Attachment B - The Secretary's Instruction on Freedom of Information (SI15).
- Attachment C - The attachments to the Secretary's Instruction on Freedom of Information.

Secretary's Instruction on Freedom of Information

November marked the 30th anniversary of the Freedom of Information Act 1982 (FOI Act). Freedom of information is central to democracy and is an essential component of open and accountable government. The Australian Government's 2010 changes to FOI demonstrate a renewed commitment to freedom of information, and highlight the continuing importance of the Act to the Australian people.

DIAC has the largest number of requests under the FOI Act in the Commonwealth. In 2011/12 there were 8838 requests for access to documents and 3490 requests for amendments to documents – a total of 12 328 requests. On a daily basis, the department's FOI teams in National Office, Melbourne and Sydney work through an enormous numbers of FOI requests, from individuals, agents and the media.

Despite the hard work of our FOI officers, reports including the management initiated review of FOI procedures conducted by Ernst and Young, an own motion investigation by the Australian Information Commissioner, and a comparative best practice report by Robert Cornall AO have all highlighted a need to look at ways in which we can improve our FOI performance.

Over the coming months you will receive further information about FOI and notice some changes to the way in which FOI is managed in the department. These changes, designed to improve the department's FOI performance, have a particular focus on improving our compliance with the FOI Act's 30 day time-limit for responding to requests.

Improving our FOI performance relies on the cooperation of all staff and for this reason I have issued a Secretary's Instruction on FOI.

See: [Secretary's Instructions](#)

FOI is everyone's responsibility and all staff must be aware of, and comply with this instruction. As an open and accountable organisation, I expect all staff to understand their responsibilities in relation to FOI and to take these responsibilities seriously.

Secretary's Instruction 15 Freedom of Information (FOI)

Purpose

For all officers to understand their obligations in responding to requests made under the *Freedom of Information Act 1982* (FOI Act).

The purpose of the FOI Act is to open government activity to public scrutiny, so as to enhance accountability and encourage citizen engagement with public administration - the foundations of democracy.

The objects of the FOI Act are a clear statement of the intention to promote disclosure of information held by government. The objects include to:

- give the Australian community access to information by requiring agencies to publish the information, and provide a right of access;
- contribute to increased participation in government processes and increased scrutiny, discussion and review of government activities;
- increase recognition that information held by government is a national resource; and
- promote public access to information, promptly and at the lowest reasonable cost.

The FOI Act sets out a process for ensuring the public's right to access documents held by government.

Background

This Secretary's Instruction and related information provide direction to all staff relating to FOI. Secretary's Instructions are delivered under the department head's authority as outlined in the *Public Service Act 1999* and **must** be complied with.

Mandate

As there are tight statutory timeframes in the FOI Act for responding to FOI requests, all departmental staff **must** have a good understanding of their obligations and must comply with the following documents:

- *Departmental Procedures for Responding to FOI Requests*; and
- *FOI Time Frames and Responsibilities*.

All SES employees **must** ensure that they have appropriate practices and procedures in place within their business areas to ensure that the department complies with its obligations under the FOI Act.

Related Information

- *Freedom of Information Act 1982*
- *Freedom of Information Amendment (Reform) Act 2010*
- *Australian Information Commissioner Act 2010*
- Guidelines issued under section 93A of the *Freedom of Information Act 1982*
- *Secretary's Instruction 4 – Recordkeeping*

Authorisation

This Secretary's Instruction is issued under the authority of the Acting Secretary, Martin Bowles PSM, head of the Department of Immigration and Citizenship.

DEPARTMENTAL PROCEDURES FOR RESPONDING TO FOI REQUESTS

The *Freedom of Information Act 1982* (FOI Act) provides a statutory time frame of **30 calendar days** for an applicant to be advised of a decision

All staff are required to assist the department in complying with the FOI Act by:

- maintaining business records in accordance with *Secretary's Instruction 4 – Recordkeeping*;
- actioning any requests for documents that can be provided outside of the FOI Act within 30 days;
- when requested by the FOI section, identifying and providing all documents relevant to the FOI request and/or advising where documents do not exist;
- advising the FOI section if there are documents held by other areas of the department;
- advising the FOI section of any sensitivities in the documents provided;
- complying with all time frames for response; and
- seeking advice from the FOI section if they have any questions about their obligations in relation to FOI requests.

SES officers in responsible business areas must also:

- consider regularly publishing information which may be of interest to the public on DIAC's website;
- ensure sufficient resources have been allocated in order to meet the legislative time frames in the FOI Act;
- ensure that their staff understand their FOI responsibilities and comply with relevant time frames;
- provide formal sign-off for significant* FOI releases, confirming that all relevant documents have been identified and any sensitivities brought to the attention of the FOI decision-maker. This will generally occur at First Assistant Secretary level;
- ensure that the Minister's Office has been advised of any sensitive issues prior to any FOI release in matters identified as significant; and
- prepare any talking points or briefing material on sensitive issues that may arise from an FOI release.

Escalation

Failure to comply with requests for documents or other assistance within the required time frames will result in escalation to the Chief Lawyer as the department's *Information/FOI Champion*. The Chief Lawyer is responsible for reporting serious non-compliance to the Secretary and/or Deputy Secretaries.

Further information about FOI decision-making is contained in the document *Indicative FOI time frames and responsibilities where business area consultation is required*. Staff must also ensure they are familiar with that document.

Further information

FOI & Privacy Policy Section
PO Box 25, Belconnen ACT 2616
Ph: (02) 6264 1482
Fax: (02) 6264 1818
Email: foi@immi.gov.au

For more information on the FOI Act
and its implications for government,
see the Office of the Information
Commissioner website:
www.oaic.gov.au

*Cases identified as significant include requests from journalists, members of parliament and requests concerning highly sensitive matters. These cases are included on the *Significant Case Register*.
Decisions on significant cases are made in National Office

INDICATIVE FOI TIME FRAMES AND RESPONSIBILITIES FOR RBA SES LEVEL DECISION MAKERS
Significant cases only

Calendar Day	FOI Section	Responsible Business Area/s
1	<p><i>Days 1-2</i> Receive and register request (update the Significant Case Register if applicable)</p> <p>Send acknowledgement letter</p> <p>Seek extension under s15AA</p> <p>Assess validity of request and negotiate changes with applicant if required</p> <p>Assess changes and identify need to appoint decision maker from RBA</p>	
3	<p>FOI Section issues callout for documents and seeks appointment of decision maker from RBA</p> <p>Discuss with the RBA:</p> <ul style="list-style-type: none"> • Applying charges • Identifying any external consultations • Applicability of s24AB 	<p><i>Days 3-6 Decision maker appointed by the primary RBA</i></p> <p>Potential decision maker determines scope and identifies all documents within scope</p> <p>Where a request is lodged for a specific file also identify any related documents stored in other locations</p> <p>Advise FOI Section if documents have already been published or can be released outside the FOI Act</p> <p>Advise FOI Section of any issues with documents – including if there are more than 300 pages or if another business area/s may hold documents</p>
7		<p>Provide documents to FOI Section to enable charges to be calculated</p> <p>Advise the FOI section of the identity of the SES decision maker that has been appointed</p>
8	<i>Days 8-15</i> Make preliminary assessment of documents based on sensitivities identified, with assistance from the FOI Section	
16	Provide preliminary decision to decision maker	<i>Days 16-20</i> Review proposed redactions and highlight further sensitivities
21		Discuss further sensitivities with FOI Section and return documents with comments

22	FOI to incorporate decision makers comments and advise on wording for the decision maker	Days 22-24 Prepare talking points if required and alert the Minister's office to any sensitivities in proposed release
25	Provide copy of the documents and cleared talking points to the Minister's Office, Deputy Secretary, BSG and any other relevant stakeholders for information	
28*	Days 28-30 Finalise decision Finalise decision letter and schedule of documents Send decision to applicant	Sign decision letter and schedule of documents

Preparation stage (*days 1- 7*)

Decision making stage (*days 8- 21*)

Finalisation stage (*days 22-30*)

*The statutory timeframe to finalise the decision is 30 days. However, extensions may be applied under the Act. The FOI Section will keep the decision maker advised of any changes to the due date.