

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Question No. 71

Senator Ludwig asked the following question at the hearing on 18 November 2013:

1. What is the department's process for accessing FOI requests?
2. How many officers are approved decision makers?
 - a) Please list these the APS level of each officer
3. What training is given to decision makers?
4. How many decision makers have been appointed within the minister's office?
5. What training have they received?
6. What process does the department have for consulting the minister or his staff informally about FOI requests?
7. Does the Minister receive regular updates or notification of FOI requests that are being made?
8. Does the Minister or his staff request or are given briefings on the likely outcome of FOI requests, even if the documents requested do not require their consultation as a third party under the FOI Act?
9. Does the department ever exchange advice or information about FOI requests with other departments or agencies?
 - a) If so, which departments or agencies?
10. What policy or practice dictates this practice?
11. What department would be consulted?
12. Is that a formal or informal process?
13. Does the department ever provide advice on the handling of particular classes or batches of FOI requests?
14. Does the Minister ever provide such advice to other Ministers or departments?
15. Was the minister or his staff consulted regarding the FOI release for the Incoming government brief, before the decision maker made its decision?
16. Were they consulted after the decision, but before the applicant was informed?
 - a) If so, did the decision change at all in the interim period?
17. The Department made an assessment of the Incoming Ministers Brief for then Attorney Dreyfus and approved its release on 31 May 2013. Was the department's assessment that it was in the public interest to release that document?
18. What changed in regards to the public interest of the incoming briefs between 31 May 2013, when the Department released Minister Dreyfus' Incoming Ministers Brief, and the 18th of October 2013.
19. The Information Commissioner decision Crowe and the Department of Treasury (2013) decision was on the release of the then-opposition blue book. Was this a relevant factor for the decision of a government's Incoming government brief?
20. Has the Freedom of Information Act 1982 changed since May 2013?

21. Was legal advice sought by the department regarding the request and decisions for the release of the briefs either in May or October?
22. The document in which the Department refuses the FOI request cites then Opposition leader-Tony Abbott as a source in favour of their case. Is it usual conduct to quote Opposition Leaders in making government decisions?
23. Have the FOI authorised officers for the departments been changed since the election? If so for what purpose and at who's direction?
24. Who was involved in the assessment of FOI13/158 request for the incoming brief?
25. Was the minister involved in the assessment of FOI13/158 request for the incoming brief?
26. Did the minister or his staff have any discussion with the department regarding FOI requests?
27. What notes were kept of these meetings?
28. Would you agree that prior to September 7th it established precedent seemed to be that incoming briefs would be published by FOI request by the Attorney-General's department?
29. These briefs were released under Attorney-General Dreyfus and as lately as May of this year. Was it the Departments expectation that these briefs would be subject to FOI when the Department was preparing them in August and September?
30. If the expectation was that they would be released then the hypothetical 'damage' to frank and honest advice would have already occurred and thus there could be no further damage from the release?
31. Who requested the Attorney-General incoming government brief FOI in May?
 - a) Did the now-Attorney-General or his then-staff request the Attorney-General incoming government brief in May 2013?

The answer to the honourable senator's question is as follows:

1. The department assesses requests in accordance with the Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982* (FOI Act).
2. All officers occupying positions at SES Band 1, Band 2 and Band 3 levels in the department are authorised to make decisions under the FOI Act. Officers occupying Executive Level 2 and Executive Level 1 positions in the Office of Corporate Counsel are also authorised decision makers. There are currently two Executive Level 2 positions and one Executive Level 1 position in the Office of Corporate Counsel. There are approximately 68 SES Band 1, 2 and 3 positions in the department.
3. All decision makers have access to the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act and receive advice and administrative support from case managers in the Freedom of Information section, which provides centralised management of FOI request processing. FOI training by the Australian Government Solicitor was also provided to the department in June and July 2013.
4. For the purposes of the FOI Act a minister's office is a separate entity from the portfolio department for which the minister is responsible. The Attorney-General and the Minister for Justice have each authorised a staff member to make decisions in relation to FOI requests.

5. Decision makers have access to the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act and are able to seek advice from the Freedom of Information and Privacy section in the department.
6. The department conducts informal consultation with ministers' offices in the same way as with other Commonwealth agencies in circumstances where they may have relevant information about documents falling within the scope of an FOI request.
7. Weekly reports about the department's current FOI requests are provided to the Attorney-General's Office and the Office of the Minister for Justice.
8. Ministers' offices are advised of, and where appropriate provided with briefings about, the forthcoming release of documents in circumstances in which the Attorney-General or Minister for Justice may receive questions relating to the information in those documents.
9. Yes. The Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act state:

[3.91] Each agency or minister is required to make their own decision in relation to a request for access under the FOI Act. However, before making a decision about release of a document it is good practice to consult with other relevant agencies, even when the FOI Act does not require consultation and when the agency does not intend to disclose the document. Through consultation the decision maker may discover that another agency has already disclosed the document in response to an access request or made it publicly available. Consulting with other agencies will also assist in managing requests where an FOI applicant has requested access to the same or similar documents from several agencies.

- a. The department consults with other departments or agencies that have relevant responsibilities or interests in relation to documents falling within the scope of an FOI request.
10. See answer to question 9, above.
 11. See answer to question 9, above.
 12. Consultation between the department and other departments and agencies is formally coordinated through the Freedom of Information and Privacy section. In particular, formal consultation is conducted with the Department of Prime Minister and Cabinet in relation to any Cabinet-related material that falls within the scope of an FOI request.
 13. As the agency with policy responsibility for the FOI Act, the Department sometimes provides policy advice to other departments or agencies on the operation of that Act.
 14. The department has no record of the Attorney-General providing such advice to other ministers or departments. However, the Attorney-General may from time to time, give oral advice to other Ministers concerning the FOI Act.
 15. No.
 16. No.
 - a. Not applicable.
 17. The departmental decision maker decided to grant access in part to the incoming minister brief prepared for (then) Attorney-General Dreyfus. Access was granted to an edited copy of the document with exempt material redacted from some sections and one section exempted in full. Access to some parts of the document was refused because the decision maker was satisfied that, at the time of the decision, disclosure of the material would, on balance, have been contrary to the public interest.

18. There was no change in the public interest test applicable to conditional exemptions under the FOI Act in that period.
19. Yes.
20. No.
21. No
22. Relevant case law, including quotes from judgements or decisions, may be included in reasons for a decision under the FOI Act. Statements of reasons provided by the department have, where relevant, referenced the Information Commissioner's noting, in the decision referred to in question 19, of comments by other people.
23. No.
24. Processing of FOI requests to the department involves an authorised decision maker reaching a decision after discussion with staff from the relevant areas within the department and advice from the Freedom of Information and Privacy section. For FOI 13/158 the decision maker was an SES Band 1 officer.
25. No.
26. See response to question 6, above.
27. See response to question 6, above.
28. The FOI Act provides a right of access, subject to certain exceptions, to documents of the department other than exempt documents.
29. The department is not able to anticipate FOI requests that may be received in relation to documents that do not yet exist.
30. The department processes FOI requests in accordance with the requirements of the FOI Act and the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.
31. The department does not publicly identify people who make requests for access under the FOI Act to documents held by the department.
 - a. See response above.