

Joint Statement

24 September 2021

Statement of Principles to support proactive disclosure of government-held information – developed by all Australian Information Commissioners and Ombudsmen:

Information Commissioners and Ombudsmen across Australia oversight and promote citizens' rights to access government-held information and have powers to review agency decisions under the applicable right to information (RTI) legislation. Beyond formal rights of access, the proactive disclosure of government-held information promotes open government and advances our system of representative democracyⁱ.

All Australian Governments (Commonwealth, State, Territory, and Local) and public institutions are strongly encouraged to commit to being Open by Design by building a culture of transparency and by prioritising, promoting and resourcing proactive disclosure.

These principles recognise that:

1. **information held by government and public institutions is a public resource** and, to the greatest extent possible, should be published promptly and proactively at the lowest reasonable cost, without the need for a formal access request, and
2. **a culture of transparency within government is everyone's responsibility** requiring action by all public sector leaders and officers to encourage and support the proactive disclosure of information, and
3. **appropriate, prompt and proactive disclosure of government-held information:**
 - **informs community** – proactive disclosure leads to a more informed community, and awareness raising of government and public institutions' strategic intentions and initiatives, driving innovation and improving standards. Transparent and coherent public communication can also address misinformation
 - **increases participation and enhances decision-making** – proactive disclosure increases citizen participation in government processes and promotes better informed decision-making through increased scrutiny, discussion, comment and review of government and public institutions' decisions
 - **builds trust and confidence** – proactive disclosure enhances public sector accountability and integrity, builds public trust and confidence in decision-making by government and public institutions and strengthens principles of liberal democracy
 - **improves service delivery** – proactive disclosure improves service delivery by providing access to information faster and more easily than formal access regimes, providing the opportunity to decide when and how information is provided, and to contextualise and explain information
 - **is required or permitted by law** – proactive disclosure is mandated, permitted, or protected by law in all Australian States and Territories and the Commonwealthⁱⁱ
 - **improves efficiency** – proactive disclosure reduces the administrative burden on departments and agencies and the need for citizens to make a formal information access request.

Australian Information Commissioners and Ombudsmen recommend that public sector agenciesⁱⁱⁱ:

1. Embed a proactive disclosure culture in all public sector agencies and public institutions by:

- 1.1 comprehensively planning and enacting the proactive publication of information consistent with the legislative framework in each jurisdiction
- 1.2 encouraging the release of information informally to the public to the greatest extent possible
- 1.3 understanding the authorising environment for proactive disclosure of information may come from legislation or instruments other than RTI legislation
- 1.4 establishing an internal framework for proactive disclosure to guide public sector staff and establish consistency in approach, which:
 - 1.4.1 outlines legislative authority and/or leadership endorsement of proactive disclosure
 - 1.4.2 guides consideration of and distinguishes information appropriate for proactive disclosure
 - 1.4.3 identifies internal responsibility for proactive disclosure
- 1.5 adopting a customer service mindset when providing access to information so all public sector staff understand they must assist the public to access information

2. Implement a best practice Open by Design approach to proactive disclosure by:

- 2.1 embedding proactive disclosure of information into agency practices through the implementation of governance mechanisms, including:
 - 2.1.1 regularly publishing new or updated information, unless the agency articulates a clear reason why publication is not suitable in the circumstances
 - 2.1.2 regularly reviewing information disclosed following access requests to maximise proactive disclosure in response to these principles and requests from citizens
- 2.2 adopting a transparency by design approach to service delivery, decision-making and disclosure of information, including:
 - 2.2.1 preparing documents with the view that the information will be disclosed, or preparing a version of the document that can be disclosed, and which benefits the public (for example, an executive summary of a report)
 - 2.2.2 using new and existing tools and technology to enable more efficient proactive disclosure
- 2.3 encouraging governments to install proactive disclosure mechanisms whenever creating new institutions or processes as a normative feature in the design of government operations
- 2.4 considering the examples of information suitable for proactive disclosure provided at Table B

3. Engage with the Australian community in relation to the information that is of most value and interest to them by:

- 3.1 seeking opportunities to consult with the public on the information that individuals want to access and consider to be of value or interest
- 3.2 analysing trends in formal and informal information requests to identify commonly requested information
- 3.3 recognising that ‘value’ may not be intrinsic to the information itself but can be created by combining data from a range of sources or using it in innovative ways that deliver social, community and economic benefits

4. Adopt a customer service approach to the proactive disclosure of information by:

- 4.1 publishing information on a website in a way that is accessible and searchable by the public and includes relevant metadata, such as the date the information was approved or published
- 4.2 making information publicly available as soon as practicable to ensure it remains relevant and up to date for members of the public
- 4.3 identifying where published information has been superseded or impacted by more contemporary consideration of the issues to which it relates
- 4.4 endeavouring to meet all reasonable requests to provide information in an alternative format and in a timely manner where that information is not accessible online
- 4.5 ensuring that, where practicable, information is made available via alternative channels so that individuals who do not have access to the internet are not disadvantaged
- 4.6 being aware of and responsive to the information access needs of people from culturally and linguistically diverse communities and ensuring that published information meets current Web Content Accessibility Guidelines.

ENDS

ⁱ The principles were developed to fulfil the Open by Design commitment under consideration for inclusion in Australia’s Third Open Government National Action Plan 2021-2022. The principles are consistent with the 28 June 2021 [resolution](#) of the International Conference of Information Commissioners to support the proactive publication of information relating to the COVID-19 pandemic

ⁱⁱ Table A outlines the relevant proactive disclosure legislative provisions and summarises the information that must or may be made publicly available under them.

ⁱⁱⁱ “Public sector agencies” means any entity, office or body defined as an “agency” under the applicable RTI legislation.

Table A – Legislative provisions and summary of proactive release information

This table outlines the proactive release requirements under the right to Information legislation (RTI) for each jurisdiction.

It should be noted that other legislation, regulations or instruments may operate within each jurisdiction to require or permit publication of government held information and these requirements are not reflected in the table below.

| | CTH | ACT | NSW | NT | QLD | SA | TAS | VIC | WA |
|--|--|--|--|-----------------------------|--------------------------------------|--|--------------------------------------|--|--|
| Legislation | <i>Freedom of Information Act 1982</i> | <i>Freedom of Information Act 2016</i> | <i>Government Information (Public Access) Act 2009</i> | <i>Information Act 2002</i> | <i>Right to Information Act 2009</i> | <i>Freedom of Information Act 1991</i> | <i>Right to Information Act 2009</i> | <i>Freedom of Information Act 1982</i> | <i>Freedom of Information Act 1992</i> |
| Provisions mandating or authorising proactive release | Sections 3A, 7A, 8, 11C | Section 24 | Sections 6,7,18 | Section 11 | Sections 19-22 | Sections 9, 10 | Section 49 | Sections 7, 8, 10, 11, ¹ 16 | Sections 3, 94, 95, 96, 97 |
| Information that must be published or made available under RTK legislation | | | | | | | | | |
| Information statement/agency information guide/etc | X | X | X | X | X | X | X | X | X |
| Structure of the agency | X | X | X | X | X | X | X | X | X |
| Functions of the agency, including decision-making powers and other powers affecting the public | X | X | X | X | X | X | X | X | X |
| A description of the kinds of information usually held by the agency and whether it is available free of charges, for purchase or inspection | X | X | X | X | X | X | X | X | X |
| Details of certain appointments | X | | | | | | | | |
| Consultation mechanisms | X | | X | | | | | X | X |

¹ Section 11(2) of the *Freedom of Information Act 1982* (Vic) requires an agency to publish a statement outlining certain documents in the agency's possession. Further, sections 7, 8 and 11 do not require an agency to publish exempt information (see, sections 7(3), 8(3) and 11(3) of the *Freedom of Information Act 1982* (Vic)).

Table B - Categories of information for proactive release

| Category | Examples ⁱ |
|---|---|
| Valuable to citizens/individuals | <ul style="list-style-type: none"> • Information about their community – development applications, infrastructure projects, environmental information, etc • Information to assist individuals to access government services • Information about laws, regulations, etc • Information about the existence and management of public assets – roads, public transport infrastructure, schools, hospitals, etc • Personal information of the individual • Information to assist in emergency situations – hazard information, disaster, or crisis response information, etc • Registers held by government • Consumer information – food safety, product safety, trade licencing information, consumer complaints, etc |
| Likely to affect the rights of, and services provided to, the public and to which the public may be subject to by government | <ul style="list-style-type: none"> • Information about policies and procedures for government decision-making • Information about complaints procedures, review rights and challenging government decision-making • Information about judicial processes and decisions • Eligibility information for government services, grants, rebates, subsidies, etc • Information about use of artificial intelligence, machine learning and other enhanced decision-making technology in government decision-making • Details about the information held by agencies including information not publicly available • Information on consultation mechanisms to enable public participation in government decision-making • Results of consultation for the purposes of enabling public participation and government decision-making |
| Important to the digital economy | <ul style="list-style-type: none"> • Datasets for research – including aggregated and de-identified datasets • Datasets for innovation and commercial development • Geospatial and geographic information • Population information • Statistical and social data • Meteorological information • Patent and trademark information • Transport information |

**Important to government
accountability and
transparency**

- Information about agency performance – annual reports, audit reports, strategic plans, performance indicators, audits, inspections and reviews, etc
- Information to ensure effective oversight of public funds - government income and expenditure statements, major plans for capital expenditure including any private finance initiative and public-private partnership contracts, etc
- Information on delivery of government commitments
- Conflict of interest information for decision makers e.g. members of Parliament and Councillors
- Gifts and benefits policies, travel policies, gift registers, etc
- Ministerial diaries, lobbyist registers
- Contract registers and tendering/procurement information
- Reports of integrity agencies
- Agendas and minutes of meetings, including meetings of committees and sub-committees
- Information about appointments and staff remuneration
- Information about consultation processes - access to consultation papers or information about where the papers can be obtained and the results and outcomes of consultation processes
- Information about policies and procedures for conducting agency functions, delivering of services, recruitment of staff, etc

ⁱ Note that examples listed may belong to more than one of the categories listed, however for brevity are only listed once.