



DPS Information Requests Policy

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Contact: Director, Legal Services
People & Governance Branch

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Date of effect

- 1 This policy was approved by the Acting Secretary on 24 July 2017.
- 2 This policy replaces all previous DPS policies and any other related strategies, local guidance or directions on this subject (including Governance Paper No. 2.11 – Corporate Governance – Policy – Information Requests), unless otherwise specified in this policy.

Policy review mechanisms

- 3 This document will be reviewed every three years or earlier if required.

Intent of policy

- 4 This policy is designed to set out DPS' approach to handling requests for DPS documents.

Application

- 5 This policy applies to all employees and office holders.

Policy statement

6 The Parliament amended the *Parliamentary Service Act 1999* (PS Act) to confirm the intention of the Parliament that all parliamentary departments are excluded from the application of the *Freedom of Information Act 1982* (FOI Act). The effect of the amending legislation is that from 28 June 2013 the FOI Act is taken not to apply and not to have ever applied to the parliamentary departments and persons who hold, or perform duties of, an office established under the PS Act.¹

7 However, DPS recognises the importance of transparency and public accountability, and supports the principle that administrative documents should be open to scrutiny. For this reason, DPS will provide such documents when requested by a member of the public, subject to any claim of appropriate immunity or exemptions that would ordinarily apply under the FOI Act or as otherwise set out in this policy.

Definitions

8 For the purpose of this policy:

(a) **document** includes:

(i) any of, or any part of, the following things:

- a. any paper or other material on which there is writing
- b. a map, plan, drawing or photograph
- c. any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them
- d. any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device
- e. any article on which information has been stored or recorded, either mechanically or electronically, or
- f. any other record of information

(ii) any copy, reproduction or duplicate of such a thing, or

(iii) any part of such a copy, reproduction or duplicate,

but it does not include material maintained for reference purposes that is otherwise publicly available.

(b) **person** means a natural person or body corporate, such as a company or organisation.

¹ The Department of the House of Representatives, the Department of the Senate and the Department of Parliamentary Services are excluded from the application of the FOI Act, under s 68A of the PS Act. The Parliamentary Budget Office is exempt from the application of the FOI Act, under s 7(1) and Division 1 of Part I of Schedule 2 of the FOI Act.

Applications for access to documents

9 Applications must be received in writing at the address below:

Director, Legal Services Team
Department of Parliamentary Services
PO Box 2600
Canberra ACT 2600

or via email to the designated DPS Information Requests email address dpsinforequests@aph.gov.au (receipt of the request) with a return email or postal address provided.

10 In addition, in order to be a valid request, the document(s) requested must be:

- (a) within the possession or control of DPS, and
- (b) unambiguous and clearly described.

11 An applicant does not have to reside in Australia or be an Australian citizen.

12 A request may be made by one person on behalf of another person, by an organisation on behalf of a client, or by a person as the agent or representative of a group of individuals or corporate bodies. However, exemptions may apply to the release of personal information where a request is made on behalf of an applicant, unless formal authorisation has been provided.

13 All requests will be coordinated by DPS Legal Services which will manage requests and responses.

14 Access under this policy only applies to existing documents (i.e. documents that exist at the time the request is made), rather than to information. However, DPS may, in its absolute discretion, decide to respond to a request for general information or create a new document in response to a request.

Exempt documents

15 A decision to give a person access to a document is made on the assumption that the content of any document that is released is disclosed to the world at large. Accordingly, public access to documents held by DPS is subject to certain limitations to ensure that information, including personal, classified or restricted information is properly protected.

16 A document may fall into any of the three groups below:

- (a) **Group 1** — Consistent with the FOI Act, documents which fall into the following categories are exempt documents and will not be released:
 - (i) documents affecting national security, defence or international relations
 - (ii) Cabinet documents
 - (iii) documents affecting enforcement of law and protection of public safety, including the safety of visitors to and occupants of Parliament House
 - (iv) documents to which secrecy provisions in other legislation apply

- (v) documents subject to legal professional privilege
 - (vi) documents containing material obtained in confidence
 - (vii) documents whose disclosure would be in contempt of Parliament or in contempt of court including, for the avoidance of doubt, any documents subject to parliamentary privilege
 - (viii) Parliamentary Budget Office documents
 - (ix) documents disclosing trade secrets or commercially valuable information.
- (b) **Group 2** — In addition, access will not be provided to documents which fall into the following categories:
- (i) documents relating to, or connected with, the work of the Senate or the House of Representatives
 - (ii) information, analysis and advice provided by the Parliamentary Librarian under section 38B(1)(a) of the PS Act
 - (iii) documents held by parliamentarians and their staff even if the information resides on facilities provided by DPS
 - (iv) internal deliberative documents, including advice provided to the Presiding Officers by DPS employees, contractors and office holders
 - (v) documents that DPS does not have the authority to release (e.g. where Presiding Officer approval would be required prior to release).
- (c) **Group 3** — DPS may, in its absolute discretion, determine that access can be granted to documents which fall into the following categories:
- (i) documents relating to the financial or property interests of the Commonwealth
 - (ii) documents affecting certain operations of agencies
 - (iii) documents that if disclosed under this policy would result in the unreasonable disclosure of personal information about any person (including a deceased person)²
 - (iv) documents that if disclosed under this policy would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking.

² In accordance with the relevant DPS policies and procedures, employees may apply for access to their own personnel file or authorise a third party to access their file.

Decision makers

17 For the purpose of this policy, decision makers regarding the release or non-release of documents in response to information requests are:

- (a) the Secretary
- (b) the Parliamentary Librarian
- (c) SES Band 2 level officers in the relevant business area
- (d) SES Band 1 level officers in the relevant business area.

18 While information requests will generally be given to the decision maker in the relevant business area for a particular issue, in assigning requests regard will be given to the need for the decision maker to be free of both real and apparent bias.

Identifying, locating and collating documents

19 If the decision maker is satisfied that the work involved in processing the request would substantially and unreasonably divert DPS resources, if reasonable to do so, the applicant will be given the opportunity to narrow the scope of the request so that it can be actioned without unduly diverting resources.

20 Poor record keeping or an inefficient filing system will not of themselves provide grounds for a claim that identifying or locating documents would be a substantial and unreasonable diversion of resources. Nor will the fact that a large number of documents lay within the scope of a request be determinative if the documents could be easily identified, collated and assessed.

Making a decision

21 Decision makers may obtain assistance from other employees and consult with third parties, and take advice, submissions and recommendations into account, but they remain responsible for reaching an independent decision and exercising any discretion.

22 Given that DPS cannot rely on the protection the FOI Act affords against civil action and criminal prosecution for agencies and employees who provide access to documents, a decision maker should seek appropriate advice from DPS Legal Services. This includes consideration of potential breach of third party copyright.

23 In response to a request, a decision maker may decide to:

- (a) allow access to all documents as requested
- (b) allow access to information, but in a different format to that requested
- (c) withhold all requested documents as exempt
- (d) withhold certain documents as exempt and allow access to the remainder, which may include the redaction of information
- (e) refuse access on the basis that the document sought does not exist or cannot be found

- (f) subject to paragraphs 19 and 20, refuse access if satisfied that the work involved in processing the request would substantially and unreasonably divert DPS' resources.

Reasons for decision

24 For reasons of transparency and accountability, if access to documents is withheld, either in whole or in part, the decision maker should notify the applicant of the reasons for their decision.

Internal review

25 Persons who are denied access to documents in whole or in part may apply for internal review of the decision. For the purpose of this policy, the internal reviewers are:

- (a) the Secretary
- (b) the Parliamentary Librarian
- (c) SES Band 2 level officers.

26 Upon receipt of an application for internal review, DPS Legal Services will arrange for one of the officers above, who was not involved in the original decision, to review the decision.

27 The internal review officer may rely on record searches or third party consultation undertaken by the original decision maker, or may cause the same work to be undertaken again.

28 Internal review is not available if the original decision was made personally by the Secretary.

29 A person who remains unhappy with a decision following an internal review process should seek independent advice about any further review options that may be available to them.

Timeframes

30 All requests for information will be acknowledged within 14 calendar days of receipt of the request. DPS will endeavour to process the request within 30 calendar days of receipt of the request, unless third party consultation is required (in which case the request should be finalised within 60 calendar days).

31 An application for internal review of a decision (under clauses 25-29 of this policy), must be made in writing (see paragraph 9), within 30 calendar days of being notified of the original decision.

32 DPS will endeavour to determine a request for internal review of a decision within 30 calendar days of receipt of the request.

33 If the timeframe falls on a weekend or on a public holiday in the Australian Capital Territory then the next business day will be the determinative date.

Document consultation and approval

34 As this policy is for an administrative access scheme reflecting a legislative scheme, no consultation on this document occurred.