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Freedom of Information Amendment Bill 2025 - Submission by OpenAustralia Foundation

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Executive Summary

The OpenAustralia Foundation (OAF) welcomes the opportunity to make this submission on the Freedom of Information Amendment Bill 2025. OAF is a national charity that operates the Right to Know platform, which since 2012 has helped Australians lodge over 12,000 FOI requests.

From this unique perspective, we have seen how people rely on FOI to:

- Access public interest information about decisions affecting their health, welfare, and communities.
- Scrutinise government spending, contracts, and environmental approvals.
- Participate in democratic debate by understanding the evidence behind policies.

The Bill threatens these rights. Its most controversial provisions would:

- Ban anonymous and pseudonymous FOI requests, silencing whistleblowers and deterring people in vulnerable situations. As the Centre for Public Integrity warns, this will have “*a worrying impact on vulnerable individuals, particularly potential whistleblowers*” [1].
- Introduce application and review fees, creating a financial barrier to exercising a fundamental democratic right. Shadow Attorney-General Julian Leeser has called this a “*truth tax*” [2].
- Expand Cabinet and deliberative exemptions, going directly against the lessons of the Robodebt Royal Commission. Royal Commissioner Catherine Holmes recommended repealing Cabinet secrecy provisions[4]; instead, this Bill dramatically expands them.
- Grant agencies new refusal powers, allowing them to dismiss persistent requests or impose a hard cap on processing. This is an attempt to subvert any access to information.

While the Bill includes some technical improvements, these cannot offset the damage that the core measures would do.

Taken together, they risk turning FOI from a tool of accountability into a mechanism for delay, denial, and secrecy.

Our submission highlights these risks in detail and recommends that Parliament:

1. Remove identity requirements for requests that aren't for personal documents
2. Reject all FOI fees
3. Retain existing Cabinet and deliberative exemption tests.

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4. Reject the proposed new refusal powers
5. Focus on genuine reform: enforceable timelines, proper funding for transparency and Freedom of Information, and a statutory pro-disclosure duty.

The cumulative effect of the Bill is to entrench secrecy at the expense of peoples' rights. If passed unamended, it will make government information less accessible, more expensive, and harder to challenge. As former senator Rex Patrick put it, "*there is nothing good for the public in this Bill. Nothing*" [3].

We therefore urge the Committee to **reject these provisions** and to **strengthen, not weaken, the public's right to know**.

Recommendations

The OpenAustralia Foundation urges the Senate to amend the *Freedom of Information Act 1982* to ensure it strengthens, rather than weakens, the public's right to know.

We recommend that Parliament:

1. **Reject identity requirements for non-personal information requests**

FOI must remain applicant-blind. Forcing people to disclose their real names will silence whistleblowers and deter vulnerable people from exercising their rights.

"This will have a worrying impact on vulnerable individuals, particularly potential whistleblowers and others who fear retaliation" - Centre for Public Integrity [1].

2. **Reject application and review fees**

Access to government information is a democratic right, not a privilege. Fees would create a "transparency tax" that discourages people from lodging requests or challenging refusals.

"There is nothing good for the public in this Bill. Nothing" - Rex Patrick, former Senator [3]

3. **Retain existing Cabinet and deliberative exemptions**

Keep the current "dominant purpose" test for Cabinet documents and do not insert new "factors against disclosure."

"The bill ... goes in the opposite direction to that pursued by Faulkner and Hawke. It would seriously erode access in important respects" [5].

4. **Refuse to allow unilateral refusals**

Do not introduce unilateral powers allowing agencies to brand requests "vexatious" or to refuse them after 40 hours of processing. Existing safeguards already deal with burdensome requests, with oversight from the Information Commissioner.

5. **Focus reform on genuine improvements**

Strengthen FOI by legislating: enforceable timeframes for decisions, guaranteed funding for the Office of the Australian Information Commissioner (OAIC) and agencies to enhance their FOI capabilities, and a statutory duty of pro-disclosure to guide agencies and ministers.

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“The government should prioritise fixing whistleblowing laws and winding back draconian secrecy offences, rather than making government information less accessible and more expensive.” - Kieran Pender, Human Rights Law Centre [8].

1. Identity Requirements - Banning Anonymous FOI

The Bill would require FOI applicants to provide their real name, overturning FOI’s longstanding applicant-blind principle. Under the FOI Act as it stands, agencies must assess requests on their content, not on who is asking. This neutrality protects vulnerable individuals and community groups, while ensuring a request is treated fairly - based on what information is being requested, not who is requesting it.

Why anonymity matters

Anonymous or pseudonymous requests are vital for:

- Whistleblowers who fear retaliation from employers or agencies.
- Individuals or community groups attempting to access information to hold the government to account without risking reputational damage.
- Migrants, welfare recipients, or employees seeking information about government policy and decisions that directly impact them, without fear of being identified.
- Journalists and researchers

Removing this protection will silence those who rely on Freedom of Information the most.

Lack of evidence

The Attorney-General has suggested the change is needed to prevent bots or foreign actors from abusing FOI. Yet when pressed, the government provided no evidence of such abuse. As journalist Bernard Keane observed:

“It’s just the latest example of national security being used as a fig leaf for government secrecy and evasion of accountability.” [6].

Risk of arbitrary barriers

The Bill also allows agencies and ministers to dictate the manner in which FOI requests are submitted. Experts warn this could be used to block platforms like Right to Know, which enable public requests and shared access to documents.

Expert views

We agree with the Centre for Public Integrity, who warns:

“This will have a worrying impact on vulnerable individuals, particularly potential whistleblowers and others who fear retaliation” [1].

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Professor Gabrielle Appleby, UNSW Faculty of Law & Justice, also makes a great point:

“If the government is concerned about a deluge of anonymous AI-generated applications, the legislation should target these, as [the government] purports to be able to identify them”. [7]

Recommendations

- Remove any identity requirements for requests of a non-personal nature.
- Strengthen the FOI Act to make clear that requests must be assessed without regard to identity, except where access to personal information makes identity verification strictly necessary.

2. Application and Review Fees - A Transparency Tax

The Bill would reintroduce application fees for FOI requests and introduce new fees for internal and Information Commissioner reviews. These fees were deliberately abolished in 2010 to make FOI more accessible and to signal a move to a more transparent culture.

Why fees matter

FOI is a right, not a privilege. Fees would put a price tag on the public's right to know, creating barriers for ordinary people who rely on FOI for accountability.

Examples:

- People with disabilities and their advocates seeking information about how decisions are made may not be able to afford application fees.
- Agencies may be emboldened to refuse access to information, knowing that someone may not have the ability to afford a fee for internal or external review.
- A regional community group monitoring environmental approvals could be priced out of repeated requests.
- A student researcher, freelance journalist, or member of the public may decide transparency and access to information isn't worth the personal cost when every appeal incurs another fee.

These scenarios illustrate how fees discriminate against those with fewer resources, making FOI a tool for the well-off rather than a right for all.

It's also clear that agencies are not collecting the charges they are asking applicants to pay. Our analysis of FOI Statistics published by the Office of the Information Commissioner shows that agencies only recovered 33% of the charges they asked applicants to pay from 2019/20 to 2023/24.

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Review fees - paying to fix government mistakes

The Bill also imposes fees for reviews when agencies get FOI decisions wrong.

“They make the error and you get to pay” [3].

This creates a chilling effect: few people will risk paying to challenge refusals, especially when agencies can already hide behind broad exemptions or the new refusal powers.

Expert views

Critics across civil society and politics have condemned FOI fees as a “transparency tax”:

“There is nothing good for the public in this Bill. Nothing” [3];

“The government’s transparency tax is a shameful attempt to shut down scrutiny by putting a price tag on the public’s right to know” [2].

The Human Rights Law Centre warns the reforms would make government information *“less accessible and more expensive” [8].*

Cumulative impact with exemptions and refusals

Fees on their own are damaging, but combined with expanded exemptions and new refusal powers they become devastating:

- Agencies can reject more requests under broadened Cabinet and deliberative secrecy.
- Individuals and groups who try to appeal refusals face new review fees.
- If they persist, agencies can dismiss them as “vexatious.”

This creates a **closed circle of denial**: more refusals → fewer appeals → less accountability.

Recommendation

- Reject all fee provisions. FOI requests, internal reviews, and IC reviews must remain free.

3. Expanded Cabinet and Deliberative Exemptions - Entrenching Secrecy

The Bill seeks to broaden FOI exemptions in two major ways:

1. Lowering the Cabinet test from “dominant purpose” to “substantial purpose.”
2. Adding new “factors against disclosure” to the deliberative process exemption.

Both changes tilt the FOI system towards secrecy and away from accountability.

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Cabinet secrecy - reversing reform, ignoring Robodebt

Under current law, documents are exempt from FOI only if they were created for the dominant purpose of submission to Cabinet. This was a deliberate reform in 2009-2010 to stop agencies using Cabinet as a blanket shield for secrecy.

The Bill would weaken this safeguard, exempting any document prepared for a substantial purpose of Cabinet consideration. This change sounds minor but has sweeping consequences: anything even loosely connected to Cabinet could now be locked away.

Former Senator Rex Patrick explained the danger:

“Cabinet only deals with the big issues, so the proposed law will stop access to any document that deals with big issues” [3].

This directly contradicts the Robodebt Royal Commission, which recommended abolishing Section 34 (Cabinet Secrecy) after finding it had been misused to block disclosure of unlawful policy decisions [4].

Deliberative process - codifying excuses

The Bill also amends the deliberative process exemption by listing explicit “factors against disclosure,” such as whether release could “prejudice frank advice” or “disrupt government decision-making.”

These changes are unnecessary and dangerous. As former APS Commissioner Andrew Podger observed:

“The bill goes in the opposite direction, seriously eroding access in important respects” [5].

There **is no evidence** that FOI undermines frank advice. Transparency can (and should) make public servants think twice before making recommendations that may not be in the public interest.

Real-world consequences

- During Robodebt, secrecy around Cabinet discussions delayed public exposure of systemic illegality.
- During COVID-19, public health advice and modelling often shaped life-altering restrictions. Under expanded exemptions, much of this could have been withheld as “frank advice” or “substantial Cabinet purpose.”
- Communities seeking explanations for environmental approvals or major infrastructure projects may find all internal advice hidden from scrutiny.

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Media and expert critique

Former barrister Hugh Selby observed:

“Freedom goes missing in planned FOI reforms, with Cabinet secrecy widened to cover anything touching the big issues” [9].

Government News concluded the amendments will “*add layers of secrecy rather than streamline access*” [10].

Recommendation

- Consider abolishing section 34 as recommended by the Robodebt Royal Commission [4]. In the alternate, retain the current “dominant purpose” test for Cabinet documents.
- Do not insert “factors against disclosure” into the deliberative process exemption.
- Strengthen the public interest test by requiring agencies to demonstrate specific harm before refusing access.

4. New Refusal Powers - Blocking Persistence

The Bill introduces sweeping new powers for agencies to refuse FOI requests. These include:

- The ability to unilaterally brand requests as “vexatious” or “frivolous.”
- A hard 40-hour processing cap, after which agencies may refuse a request outright.

These changes are unnecessary and risk being abused to suppress scrutiny.

Existing safeguards already work

The FOI Act already equips agencies with tools to handle difficult requests:

- Practical refusal provisions (s.24AA) allow negotiation to refine broad or burdensome requests.
- Vexatious applicant declarations (s.89K) can be issued by the Information Commissioner in extreme cases, ensuring independent oversight.

The Bill removes these safeguards by giving agencies a shortcut to refusal without oversight.

Risk of misuse

The danger is not hypothetical. Agencies facing uncomfortable scrutiny could weaponise these powers to silence persistence.

Examples:

- People making repeated requests about failures in social security, disability or child protection could be branded “vexatious.”

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- A community group or other non-profit advocacy group submitting multiple requests might be dismissed as “frivolous.”
- Complex issues - such as Robodebt, aged care, or defence procurement - often require large or follow-up requests. Under a 40-hour cap, agencies could simply refuse to process them.

Persistence is how people, community groups and journalists uncover misconduct. These powers would punish persistence, not government overreach and abuse.

Expert views

The Human Rights Law Centre warns that Australia’s FOI system is already marked by refusal; imposing further barriers will make it even more secretive [8].

Recommendation

- Remove these new refusal powers.
- Retain OAI oversight for vexatious determinations.
- Require agencies to consult applicants before refusing on processing time grounds.

5. Positive Measures

While we are strongly opposed to the Bill’s core provisions, we acknowledge that it contains several technical improvements that would benefit the FOI system. These include:

1. The Patrick fix - preserving requests during ministerial changes

The Bill ensures FOI requests survive machinery-of-government changes and ministerial reshuffles, implementing the Full Federal Court’s decision in *Attorney-General (Cth) v Patrick* [6]. This prevents agencies or ministers from allowing requests to lapse when portfolios change and closes a loophole that had been misused to frustrate access.

2. Business days - clarifying statutory deadlines

The shift from calendar days to business days for FOI processing will reduce ambiguity and avoid disputes where deadlines fall on weekends or public holidays. This is a reasonable and practical update that recognises that agencies often only work on business days.

3. IC remit powers - more efficient reviews

The Bill gives the Information Commissioner power to remit decisions back to agencies with binding directions. If applied correctly, this could resolve disputes more quickly, correcting errors without requiring lengthy review processes.

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4. Technical updates

Other adjustments, such as clarifying consultation obligations and improving how deemed refusals are handled, are sensible refinements.

Limitations of these improvements

While welcome, these measures do not address the real problems in FOI - chronic under-resourcing, excessive delays, and a culture of secrecy. Nor do they outweigh the regressive measures in the Bill.

Recommendation

- Pass the technical improvements (Patrick fix, business days, IC remit powers).
- Remove the Bill's regressive core provisions.

6. The Cumulative Impact of the Bill

While each of the Bill's provisions is concerning in isolation, their true danger lies in how they interlock. Together, they transform FOI from a mechanism of accountability into a system of deterrence and denial.

Identity requirements → fewer people making requests

- Vulnerable people - whistleblowers, welfare recipients, migrants, small-town residents - will be discouraged from lodging requests if forced to identify themselves.
- Platforms like Right to Know, which facilitate public, pseudonymous requests, may be sidelined.

Fees → fewer appeals and reviews

- Individuals and community groups who do persist face upfront costs.
- If their request is refused, they must pay again to appeal.
- Many will abandon reviews rather than pay to challenge poor decisions.
"They make the error and you get to pay" [3].

Expanded exemptions → more refusals at first instance

- Cabinet and deliberative secrecy will be expanded to cover most "big issue" policies.
- Agencies will have legal cover to reject more requests from the outset.

New refusal powers → punishing persistence

- Agencies can brand advocates and community groups as "vexatious" or refuse requests exceeding 40 hours.

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- Complex or systemic issues - from Robodebt to defence procurement - often require persistence. This Bill would punish persistence, hiding information from the public.

The closed circle of denial

Put together, these measures create a self-reinforcing cycle:

1. Agencies say no more often (expanded exemptions, easier refusals).
2. Everyone is deterred from challenging (fees on reviews).
3. Those who persist risk being silenced (vexatious powers, ID requirements).

The result is a system that protects secrecy, not accountability.

Recommendation

The Senate **must consider the combined effect of these proposed amendments**. This combined effect will be to dismantle FOI as a tool for ordinary Australians. All regressive elements must be removed for the Bill to serve its stated purpose of improving FOI.

7. Conclusion - Strengthen, Don't Weaken FOI

The Freedom of Information Act was designed to give Australians the right to know what their government is doing in their name and with their resources. It is a cornerstone of democratic accountability.

The Freedom of Information Amendment Bill 2025 threatens to dismantle that principle. By banning anonymous requests, imposing fees, expanding secrecy exemptions, and granting agencies new refusal powers, the Bill risks turning FOI into a tool for delay and denial rather than disclosure.

While the Bill contains limited technical improvements - such as preserving requests during ministerial changes - these do not outweigh the damage its core provisions would inflict.

From our work operating the Right to Know platform, the OpenAustralia Foundation has seen how ordinary Australians use FOI every day: to obtain information on how NDIS decisions are made, scrutinise environmental approvals, and understand health or education policies. FOI is not an abstract right - these are real, lived examples of everyday Australians using FOI to participate in their democracy.

The cumulative impact of this Bill would be to silence those voices. Everyone would face more refusals, higher costs, and greater risks simply for exercising their rights. That is not the legacy Parliament should leave.

The Robodebt Royal Commission showed us the cost of secrecy: people died, lives harmed and trust eroded [4]. **We cannot afford to repeat that mistake by writing new secrecy into law.**

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We therefore urge the Senate to:

- Remove the regressive provisions on identity, fees, exemptions, and refusal powers.
- Refocus reform on the real problems: delays, resourcing, and culture.
- Legislate for openness, by funding the OAIC properly, enforcing timeframes, and embedding a duty of pro-disclosure.

FOI must remain a right for everyone - not just for those who can pay, or those brave enough to reveal their names, or those lucky enough not to be branded “vexatious.”

Australia’s democracy is stronger when its people are informed. This Bill, in its current form, weakens that strength. Parliament should reject the secrecy it enshrines and legislate instead to uphold the public’s right to know.

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