

Submission to the Senate Inquiry on the *Freedom of Information Amendment Bill 2025* (Cth).

Dear Senators,

I am writing to make a submission to this committee in my personal capacity. Prior to leaving academia, I published several papers in top-tier journals on Freedom of Information and Data Protection more generally. I also have experience in successfully arguing Freedom of Information cases outside of Australia.

The following observations are made based on that expertise and experience.

1. The problem with the proposed 40-hour limit in its present form.

The test in question has been in operation in some form in the United Kingdom. It is known as Section 12 of the Freedom of Information Act 2000. Where a public authority (or agency) estimated it would take more than the relevant time (18 hours or 24 hours) to find and extract the relevant information, then it could refuse the request by not providing any information at all. The problem is these estimates are guesses: the search time varies based on the query and this was open to abuse. Nor was the regulator able to apply for the test in question.¹ The counterweight is that the public authority had to help requesters redefine their request to fit the search time limit.

Paradoxically, this will increase, not reduce the burden on agencies. It is possible to define a request that takes no search time: one does so as function (e.g. return all results with the word 'Bob' in them). The result is that the person is then asking for a large amount of information they are not interested in to get around the limit, or simply the possibly that the public authority will try to reject their request on spurious grounds.

The time limit should be for document redaction. This can be objectively measured (e.g. N thousand words need to be redacted) and promotes the more appropriate usage of the *Freedom of Information Act 1982* (Cth). The true burden lies in redacting documents, not searching for them. Allowing search also paradoxically rewards agencies for being incompetent in their information management.

Recommendation 1: Amend the proposed 'burden' limit in Schedule 3 to exclude search time.
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2. Fees and Freedom of Information

Unlike most people who campaign on Freedom of Information, I support a modest request fee, if that would speed up the Freedom of Information system. Even \$5 would prevent frivolous requests, by forcing people to think: it need be no higher than that. However, it is important to ensure that there are easy means to pay (e.g. the public authority must make available credit card payments online). In Victoria, there are agencies who delay Freedom of Information requests by making it difficult to pay, or simply requiring insecure payments (e.g. over the phone). The legislation should make it clear that an FOI request only requires the payment of a fee if the agency provides an effective mechanism.

¹ Reuben Kirkham, 'How long is a piece of string? The appropriateness of search time as a measure of 'burden' in Access to Information regimes.

Recommendation 2: Amended Schedule 6 to provide that an agency may only require a fee if it provides an online credit facility to pay which is provided prominently on its /foi subdomain (e.g. www.governmentdepartment.gov.au/foi).

3. Speeding up Enforcement of Freedom of Information Requests

If the fees are justified as reducing the number of requests, then the tradeoff must be an improved service. This should allow for a direct application to be made to the Administrative Review Tribunal at the 30-day point, as well as requiring the Tribunal to normally decide these cases in a three-month period (provided it can do so in accordance with the law).

Recommendation 3: Add a provision allowing a direct appeal right to the Administrative Review Tribunal from 30 days of making the request.

4. Forms

The FOI Bill proposes to allow agencies to impose their own submission forms upon applicants. This is problematic. It will do nothing to prevent the creation of tools to submit FOI requests, nor (if there is a payment requirement of some kind) add extra deterrent friction. Yet without careful regulation these forms could create problems. To give an example, there might be a dispute about when a request was submitted, if the form was not configured to automatically send a copy. Some forms also distort the request contents (e.g. if they were incompetently coded), which is another risk. This could lead to more disputes and thus waste resources.

Recommendation 4: Continue to allow Freedom of Information requests to be made by email and reject the proposals to the contrary in Schedule 2 of the Bill.

Thank you for considering this submission. If I can assist further, please let me know. I would be happy to appear before the Committee.

Best wishes,

Dr Reuben Kirkham