



Part 14 —

Disclosure log

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Introduction

- 14.1 Agencies and ministers must publish information that has been released in response to every FOI request, subject to certain exceptions (s 11C). This publication is known as a ‘disclosure log’.
- 14.2 The requirement to publish a disclosure log complements the Information Publication Scheme (IPS) (see Part 13 of these Guidelines). Together these require agencies and, for the disclosure log, ministers, to publish a range of government information.
- 14.3 The disclosure log facilitates publication of information released to individuals in response to FOI requests, to the general public. This reinforces the objects of the FOI Act that promote proactive publication of information (s 3(1)(a)) and in recognition that information held by government is a national resource (s 3(3)).
- 14.4 In publishing information released in response to FOI requests, agencies and ministers should take account of the ‘lowest reasonable cost’ object in s 3(4):
- ... functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
- 14.5 Agencies and ministers should interpret the ‘lowest reasonable cost’ object broadly in publishing government information under s 11C. That is, an agency or minister should have regard to the lowest reasonable cost to potential FOI applicants, the public in general, to the agency or minister, and the Australian Government as a whole.
- 14.6 The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009, states:
- Like the proposed publication scheme in Schedule 2, proposed subsection 11C(3) provides that the information is to be published to the public generally on a website. If the information cannot readily be published on a website, the website should give details of how the information may be obtained.
- 14.7 The Information Commissioner is of the view that consistent with better practice, agencies and ministers should seek to make all documents released in response to FOI requests available for download from the disclosure log or another website (s 11C(3)(a) or (b)) subject to applicable exceptions, unless it is not possible to upload documents due to a technical impediment, such as file size, the requirement for specialist software to view the information, or for any other reason of this nature. This approach is consistent with the objects of the FOI Act.
- 14.8 The Information Commissioner has powers to investigate agency compliance with disclosure log obligations, either in response to a complaint made under s 70 of the FOI Act, or on the Information Commissioner’s own initiative (s 69(2)) (see [14.74]–[14.75] below). Following an investigation, the Information Commissioner will inform the agency of the investigation findings and any recommendations to be implemented by the agency. The Information Commissioner can take further steps if not satisfied the agency has taken adequate and appropriate steps to implement any recommendations made (ss 89, 89A and 89B).

14.9 Disclosure log publication benefits both the public and the Australian Government by improving access to government information while assisting agencies and ministers to respond more efficiently to FOI requests by reducing multiple requests for the same information.

Nature and content of the disclosure log

14.10 To assist members of the public to access information published on a disclosure log, agencies and ministers should provide an introduction to their disclosure log which plainly and clearly explains its purpose and the agency's obligations under s 11C of the FOI Act, as well as the exceptions to publication.

14.11 A disclosure log lists information that has been released in response to FOI requests for documents held by the agency or minister (s 11C(1)). Subsection 11C(3) sets out 3 ways information can be published on a disclosure log:

- a) making the information available for downloading from the agency or minister's website or
- b) linking to another website where the information can be downloaded, or
- c) giving details of how the information can be obtained.

14.12 As discussed above at [14.7], the Information Commissioner considers that giving details of how information can be obtained (s 11C(3)(c)) should only be used if it is not possible to upload documents to a website so they can be directly accessed by members of the public. Relying on s 11C(3)(c) when it is possible to publish the information for download does not promote the objects of the FOI Act, which require that agencies and ministers facilitate and promote public access promptly and at the lowest reasonable cost.

14.13 Agencies and ministers must publish information on the disclosure log within 10 working days of giving the FOI applicant access to the document (s 11C(6)) (see [14.30] below). Where a person requests access to information not published on an agency's disclosure log (s 11C(3)(c)), the agency or minister should provide access to the information within a reasonable period, which should be no more than 5 working days after receiving the request.

14.14 The disclosure log requirement does not apply to:

- personal information about any person, if it would be unreasonable to publish the information (s 11C(1)(a))
- information about the business, commercial, financial or professional affairs of any person, if publication of that information would be unreasonable (s 11C(1)(b))
- other information of a kind determined by the Information Commissioner if publication of that information would be unreasonable (ss 11C(1)(c) and 11C(2))
- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete information listed in one of the above dot points (s 11C(1)(d)).

Guidance on when it may be unreasonable to publish information on a disclosure log is given at [14.24]–[14.28] below.

14.15 The FOI Act does not require agencies and ministers to publish FOI decisions and statement of reasons, however agencies and ministers may choose to do so subject to legal requirements, such as those under the *Privacy Act 1988*.

Disclosure log decision making

14.16 Although granting access to documents under the FOI Act and publishing information on a disclosure log are separate decisions, these decisions should be made as part of the same decision-making process. This will support prompt release and publication of information at the lowest reasonable cost.

14.17 However there are 2 important differences between FOI and disclosure log decision making. First, only a person ‘authorised’ under s 23 can grant or refuse access to documents in response to an FOI request. In contrast, the FOI Act does not specify who can make a decision to publish information on the disclosure log (including whether to delete material that would be unreasonable to publish). It is nevertheless advisable that agencies and ministers adopt processes for making decisions under s 11C.

14.18 Secondly, there is no requirement to consult when making a decision to publish information under s 11C, in contrast with the consultation requirements that apply before a decision can be made to release documents affecting Commonwealth-State relations, business documents or documents affecting personal privacy (ss 26A, 27 and 27A). It is open to an agency or minister to consult a person about whether publication of personal, business or other information may be unreasonable. If so, the agency or minister must complete the consultation in time to comply with the obligation to publish information within 10 working days of giving access to the FOI applicant (s 11C(6)).

14.19 An alternative is for agencies and ministers to give advance notice to FOI applicants and third parties that information released under the FOI Act may later be published on a disclosure log (subject to certain exceptions). This advance notice can be given to FOI applicants in the acknowledgement notice under s 15(5) and to affected third parties during a consultation process under ss 26A, 27 or 27A (see Part 6 of these Guidelines).¹ The applicant or a third party may express a view on this issue and identify personal or business information that, in their opinion, would be unreasonable to publish. However, it is important that applicants and third parties are also made aware of the pro-disclosure objects of the FOI Act embodied in s 11C.

¹ The OAIC has published sample FOI notices that agencies and ministers can use for their own purposes. The sample notices are available as an agency resource at <<https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/sample-foi-notices/>>.

When access is granted to some (but not all) of the requested documents

14.20 If an FOI applicant is given access to only some of the documents requested (or to part of a requested document), the disclosure log requirement applies to the documents given to the applicant. If access is later given to additional documents following internal or IC review, the disclosure log requirement will apply at that (later) time to the additional documents released.

Disclosure log exceptions – determinations by the Information Commissioner

14.21 The Information Commissioner may make a determination that the requirement to publish information on a disclosure log under s 11C does not apply to information specified in the determination (ss 11C(1)(c) and 11C(2)). A determination of this kind is a legislative instrument for the purposes of the *Legislation Act 2003*. A determination may apply to information of a general kind that is held by many agencies or ministers, or to information of a specific kind held by a particular agency or minister.

14.22 There is currently one determination in force: Freedom of Information (Disclosure Log – Exempt Documents) Determination 2018.² This determination covers:

- a) information in a document that was an exempt document at the time that access was given by the agency or minister to the applicant and
- b) information in a document that the agency or minister would have decided was an exempt document at the time that access was given to the applicant, if the request for that document had been received from a person other than the applicant.

14.23 The determination has effect for 5 years from 1 December 2018. Further information about applying for a determination is provided in ‘Information Publication Scheme (IPS) and Disclosure Log determinations policy and procedure’, available on the OAIC website.³

Disclosure log exceptions – when publication would be ‘unreasonable’

14.24 As noted at [14.14], the requirement to publish information released to an FOI applicant on a disclosure log does not apply to 3 kinds of information if publication would be ‘unreasonable’:

- personal information
- information about a business

² Available from the Federal Register of Legislation <<https://www.legislation.gov.au/>>.

³ Available at <<https://oaic.gov.au/freedom-of-information/guidance-and-advice/information-publication-scheme-ips-and-disclosure-log-determinations-policy-and-procedure/>>.

- information covered by the Information Commissioner’s Freedom of Information (Disclosure Log – Exempt Documents) Determination 2018.

There is overlap between the information in these 3 categories. The following guidance about when an agency or minister may decide that publication would be unreasonable is not exhaustive.

14.25 Agencies have separate obligations under the Privacy Act to consider when disclosing personal information in the Disclosure Log.⁴ It is open to an agency or minister to decide that it is unreasonable to include information on the disclosure log about an individual or business that was released in response to an FOI request from that individual or business. The same applies to information about a person or business that was released to another FOI applicant, where the person or business was consulted under s 27 or 27A of the FOI Act and did not object to release to that particular FOI applicant but would object if the information was to become publicly available.⁵

14.26 The Explanatory Statement accompanying to the Information Commissioner’s Determination gives the following as an example of where publication may be unreasonable under 6(1)(a) of the Determination (information that was exempt at the time that access was granted):

[A]n agency may have released an exempt document to a particular FOI applicant in connection with a research project, in connection with legal proceedings in which the FOI applicant is involved, or because the confidential nature of information in a document would not be jeopardised by selective release to a particular FOI applicant. In these circumstances, the agency or Minister may decide that it is unreasonable to publish this information more widely in a disclosure log.

14.27 Whether it would be unreasonable to publish personal information about an Australian Government officer on the disclosure log will depend on a number of factors that should be considered case by case. These factors include the nature of the information, the seniority of the officer, and whether the officer has made out a special case against disclosure. As a general guide, it is open to a decision maker to decide in a particular instance that it is unreasonable to publish on a disclosure log the direct work telephone number of an officer, or an officer’s signature. On the other hand, published documents will often contain the names of officers involved in agency decision making. An agency may wish to consult affected staff about whether potential harm could arise from publishing their names.

14.28 An agency or minister should state when material is deleted from a document published on the disclosure log because of an exception in s 11C(1). This includes personal information about agency officers. The statement could be provided within the published document or in an

⁴ See ‘ZJ’ and *Chief Executive Officer for the Australian Centre for International Agricultural Research (Privacy)* [2021] AICmr 92 (17 December 2021) where the Australian Information Commissioner and Privacy Commissioner found the agency had interfered with the complainant’s privacy by disclosing their sensitive and personal information on a disclosure log in breach of Australian Privacy Principle 6. In that determination, the agency did not satisfy the Commissioner that it turned its mind to whether publication was ‘unreasonable’ or that it was open to find that publication was not unreasonable – see [80]-[90].

⁵ Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009, p 14.

accompanying statement. It is then open to a member of the public who is interested in inspecting that information to make a request to the agency, including an FOI request.

Making information publicly available

14.29 When a decision has been made to publish information on a disclosure log, agencies and ministers need to consider a range of operational matters in making the information available and, more generally, in maintaining the disclosure log over time.

Time of publication

14.30 Agencies and ministers must publish information on the disclosure log within 10 working days of the FOI applicant being given access to a document (s 11C(6)).

14.31 The date on which an FOI applicant is given access may be later than the date of the decision to grant access (see Part 3 of these Guidelines). Before giving access, an agency or minister can require a charge to be paid (s 11A(1)(b) of the FOI Act and s 11(1) of the Freedom of Information (Charges) Regulations 2019 (Charges Regulations)). The agency or minister must also be satisfied that all opportunities for review by third parties have run out and that the decision to grant access stands or was affirmed (ss 26A(4), 27(7) and 27A(6)).

14.32 The date on which an FOI applicant is given access may vary according to the method by which access is given. For example, it is probable that a document sent by email will be received on the same day. If a document is sent by post it is presumed (unless the contrary is known) to have been received on the day it would be delivered in the ordinary course of post (s 29 *Acts Interpretation Act 1901*).

14.33 It is open to an agency or minister to publish information on a disclosure log earlier than the period of 10 days stipulated in s 11C(6). Independently of the FOI Act, an agency or minister may (subject to applicable secrecy provisions) publish information at any time and by any method (s 3A). The FOI Act does not erode this discretion.

14.34 It is for each agency and minister to decide, generally and in individual cases, the particular day (within the 10-day period stipulated in s 11C(6)) on which information will be published on a disclosure log. The general practice of the agency or minister (if one has been adopted) should be made known publicly on the agency website and drawn to an FOI applicant's attention.

14.35 The FOI Act does not preclude same day publication (that is, publication of information on the disclosure log within 24 hours of access being given to the FOI applicant), but nor does it require or promote it as a preferred publication practice.

14.36 When balancing competing interests regarding the time of publication, an agency or minister may consider the following issues:

- If the agency is proposing to publish documents on the disclosure log on the same day they are released to the FOI applicant, the applicant should be told this in advance of the proposed date of publication on the disclosure log. The agency or minister should ensure

the applicant receives the documents on that day by means other than publication on the disclosure log (unless the applicant agrees to that method of access).

- In a case of same day publication, the agency or minister should consider reducing or waiving any charges they may otherwise have imposed under s 29 (see Part 4 of these Guidelines). The reason for so doing is that the applicant will not have been given any different or greater access than the rest of the community.

14.37 To provide transparency in relation to the time of publication and an agency or minister's compliance with s 11C(6), it is recommended that both the date the FOI applicant was given access to the documents and the date the documents were published is listed on the disclosure log.

14.38 The Information Commissioner's function of investigating complaints about agency FOI administration (s 70) can include complaints about the timing of disclosure log publication. For more information, see [14.75] and [Part 11](#) of these Guidelines.

Design and contents of the disclosure log

14.39 The FOI Act does not prescribe the form of a disclosure log. The community may benefit if agencies and ministers adopt a common approach, so that disclosure logs have a consistent appearance across government and can be easily understood. A disclosure log template is annexed to this document (see [Annexure A – Template disclosure log](#)). Modification of the headings in the template may be appropriate, depending on the nature of FOI requests an agency handles and its IT systems and information platforms.

14.40 Essentially, a disclosure log has 3 parts:

- the log (or table) published on an agency's or minister's website, listing the information that is available for public access
- information, which may be accessible in different ways – for example, directly through the log as an attachment that can be downloaded, from another website, or on request if it is not reasonably practicable to publish on an agency or minister's website
- a search facility applying to both the disclosure log and any attached information.

14.41 Section 11C requires publication of information contained in documents to which access has been granted under the FOI Act, rather than publication of the documents themselves. However, publication of the actual documents released (subject to deletion of material under s 11C) is consistent with the objects of the FOI Act. Publication of the documents that are released can also avoid doubt about whether the disclosure log accurately records information released under the FOI Act.

14.42 Publication of documents efficiently facilitates public access and reduces an agency or minister's costs of processing requests for the same or similar information. As discussed at [14.7] above, the Information Commissioner considers that documents should be made available for download from a website (ss 11C(3)(a) or (b)). Publication of documents on the disclosure log, rather than providing a description of the documents and how they can be

obtained on request from the agency or minister, is consistent with the FOI Act object of facilitating public access to government information.⁶ Agencies should only publish a description of a document on the disclosure log and ask members of the public to contact them for access if it is not technically possible to upload documents due to file size, or the requirement for specialist software to view the information, or for any other reason of this nature.

- 14.43 If the disclosure log contains only a description of the documents released, that description should be sufficient to allow the public to understand what those documents contain, so that a person can make an informed decision about whether to request a copy. Providing only the FOI request reference number is not sufficient; the description needs to specifically identify the content of the documents.
- 14.44 If the document has not been published, it is recommended that, as well as providing a clear description of the subject matter of the documents, agencies specify the document type (for example, email, brief, text message, report etc).
- 14.45 When a person asks for a copy of documents described on a disclosure log, the documents should be provided promptly, no later than 5 working days after the request is received. It is not appropriate to treat an application for documents described on a disclosure log, but not directly available, as an FOI request under s 15 of the FOI Act. The purpose of publication on a disclosure log under s 11(3) is to ‘publish the information to members of the public generally’. Further, it is not appropriate to impose a charge under s 29 for access to the information described on a disclosure log. An agency or minister can only impose a charge in the limited circumstances outlined in s 11(4) (see [14.69]–[14.73] below).
- 14.46 In some limited circumstances, it may be more practical for an agency or minister to publish the content of a document on the disclosure log in a different form, rather than publishing the document itself. For example, if the FOI applicant inspected a document or viewed a video it may be necessary to make a different publication arrangement on the disclosure log. Similarly, if a document released to an FOI applicant would be difficult to publish online in an accessible fashion (see [14.61]–[14.66] below), publishing the information in the document in a different accessible form may be more efficient (for example, as a Word document or providing a textual description of an image).
- 14.47 It is also open to an agency or minister to supplement the information they are required to make available under s 11C, in particular by publishing the following additional information:
- the terms of the FOI request that prompted release of the information (this can be provided in a summary form, rather than as a copy of the FOI request)
 - whether the FOI applicant was given access to all documents requested, and if not, the exemption or other basis on which partial access was granted (this information can be provided in a summary form), and

⁶ See Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009, p 14.

- whether all the information provided to the FOI applicant has been made publicly available under s 11C and, if not, the nature of the information that has not been made available.

14.48 These details will assist the public understand the information made available by an agency or minister on its disclosure log. For example, the topic or theme that unites a collection of papers may not be readily apparent unless the terms of the FOI request and the scope of the FOI release are explained.

14.49 A practical design issue that arises is whether additional information of the kind described above should be listed on the disclosure log or provided as an attachment or preface to the information made available under the disclosure log. The template disclosure log at [Annexure A – Template Disclosure Log](#) contains a column for summarising the relevant FOI request, so that all relevant information is provided in a single table. However, this will increase the size of the table and agencies and ministers may prefer to include this information elsewhere on their disclosure log webpage.

14.50 It is also open to an agency or minister to supplement the disclosure log in other ways. For example, an agency may wish to highlight that information in a document published on the disclosure log has been revised and published in a different form; that the information provides only partial or superseded information about an issue; or that the information is taken from an internal working paper or other document that does not necessarily reflect the views of the agency, minister or the Australian Government. Any supplementation of this kind should be distinct from the information published on the disclosure log. The disclosure log should provide an accurate historical record of information in documents released by an agency or minister under the FOI Act. However, s 11C does not require publication of documents recording the FOI decision-making process because the work involved in doing so may pose an additional administrative burden without any corresponding public benefit.

Facilitating access

14.51 The disclosure log is intended to facilitate public access to government information where there has been a demonstrated interest in that information. To fulfil this objective it is important that the disclosure log and attached documents are easy to find on an agency's or minister's website.

14.52 Agencies and ministers are strongly encouraged to ensure that the disclosure log (including attached documents) is:

- easily discoverable and understandable
- machine-readable
- presented in a table
- accessible — in particular, it should meet agency online accessibility obligations (see [14.61]–[14.66] below)

- as far as is possible, made available for reuse on open licensing terms, so as to enhance the economic and social value of the information.⁷

- 14.53 Agencies and ministers are encouraged to release information on the disclosure log as a machine readable or searchable PDF, or in HTML format to ensure readability and accessibility of information. Agencies and ministers should avoid publishing scanned documents on their disclosure log wherever possible.
- 14.54 The Information Commissioner recommends that the following 5 features be integrated into the design and ongoing administration of the disclosure log.
- 14.55 First, the disclosure log will be more easily discoverable if agencies and ministers use the ‘FOI Disclosure Log’ icon recommended by the Information Commissioner to link to the disclosure log from a prominent webpage (for example, the homepage or an ‘Access to information’ or ‘Freedom of Information’ webpage). Information about how to use the OAIC-developed icon is available in the OAIC’s ‘Guidance for agency websites: Access to information’ webpage.⁸
- 14.56 Second, agencies and ministers should clearly but briefly explain the purpose of the disclosure log — for example, to provide access to ‘publicly available information, released in response to an FOI request’.
- 14.57 Third, agencies and ministers should enable information on the disclosure log to be searched — for example by reference to particular words, categories or subject matter.⁹ Using HTML text to describe the documents will allow them to be indexed and discovered by external search engines.
- 14.58 Fourth, to ensure greater awareness of their disclosure log, agencies and ministers should consider using appropriate online channels to publicise its existence and content. At the time of writing, Twitter and Facebook are the most popular online tools for propagating government information; whereas in the past RSS (Really Simple Syndication) feeds were the primary channel used by agencies.¹⁰ Use of online and social media content has the additional benefit of being highly machine-readable. If used with appropriate open licences, automated news and announcement feeds, it can be used to make disclosure log content available for reuse in other services, applications and social media platforms, such as public websites that facilitate access to documents. This practice may encourage individuals to review agency disclosure logs before making an FOI request for specific documents.

⁷ See the *Australian Government Intellectual Property Manual and Guidelines on licensing public sector information for Australian Government entities* at <<https://www.communications.gov.au/documents/australian-government-intellectual-property-manual-0>>. See also the Information Commissioner’s *Principles on open public sector information* at <<https://www.oaic.gov.au/information-policy/information-policy-resources/principles-on-open-public-sector-information/>>.

⁸ See <<https://oaic.gov.au/freedom-of-information/guidance-and-advice/guidance-for-agency-websites-access-to-information-web-page/>>.

⁹ See the Australian Government’s ‘Writing for search engines’ at <<https://guides.service.gov.au/content-guide/search-engines/>>.

¹⁰ For a full list of Australian Government-approved social media channels, see <<https://www.australia.gov.au/news-and-social-media/social-media>>.

- 14.59 Fifth, it is important for agencies and ministers to generate and publish appropriate metadata. This will improve the visibility and accessibility of web services and linked data applications. Agencies and ministers should have regard to the ‘AGLS Metadata Standard’¹¹ and the ‘Australian Government Recordkeeping Metadata Standard Implementation Guidelines’.¹²
- 14.60 It is important that all disclosure logs are clearly identified and contain the features discussed in these Guidelines. As noted at [14.47] above, agencies may also wish to publish other information alongside the disclosure log, such as links to historical or other relevant information. This publication can fall under an agency’s general discretion to publish information outside of the FOI Act, where no other legal restrictions apply (s 3A). It can also fall under the explicit provision in s 8(4) which permits agencies to proactively publish information through the IPS.

Accessibility

- 14.61 The disclosure log must be published to ‘members of the public generally’ (s 11C(3)) and must be done in accordance with an agency’s accessibility obligations.¹³ Accessibility of published information by all members of the community is therefore an important issue for agencies and ministers to consider when managing a disclosure log.
- 14.62 Challenges associated with publishing documents in an accessible manner do not diminish the need to comply with the publication requirements in s 11C. Publishing documents in HTML format provides optimal accessibility however this may not be possible in all cases. If a document published on the disclosure log is not available in HTML, the agency or minister should provide an alternative means to access the information that is both timely and responsive to the needs of the user. The agency or minister must respond promptly to requests for alternative access.
- 14.63 Australian Government agencies and ministers are required to meet the Web Content Accessibility Guidelines Level AA and are strongly encouraged to meet WCAG 2.1 Level AA which provides a more accessible experience.¹⁴
- 14.64 The Australian Human Rights Commission has published *World Wide Web Access: Disability Discrimination Act Advisory Notes* (Version 4.1) which supports conformance to WCAG 2.0 to a minimum level of AA.¹⁵
- 14.65 It may not be straightforward to publish some documents in an accessible manner on a disclosure log. This may be an issue, for example, if information has been redacted from the document or the agency or minister only holds the hard copy document.

¹¹ Available at <<http://www.agls.gov.au/>>.

¹² Available at <<http://www.agls.gov.au/>>.

¹³ See <<https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible>>.

¹⁴ See <<https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible>>.

¹⁵ Available at <<https://www.humanrights.gov.au/world-wide-web-access-disability-discrimination-act-advisory-notes-ver-41-2014>>.

14.66 Other options that an agency or minister should consider to strengthen accessibility include:

- Working from original electronic documents wherever possible. Agencies and ministers should not publish scanned hard copies of electronic documents on their disclosure log. Instead, the original electronic document should be used wherever possible. Electronic redaction tools enable publication of electronic documents edited under s 22 (see [14.68]–[14.69] below).
- Applying optical character recognition (OCR) and associated accessibility optimisation to scanned hard copy documents when the original electronic document is not available. If it is necessary to publish a scanned document on the disclosure log, the agency or minister should use a multi-function printer or other device that can capture scans at a sufficiently high resolution to produce good-quality OCR. Agencies and ministers should also apply OCR to electronic documents containing images of text (such as image files, or PDF files not optimised for accessibility) where it is not reasonably practical to transcribe the content of the document in HTML.
- Including a description of the accessibility status of information on the disclosure log when the information is only available as a PDF. For example, consider stating that the information was created via OCR and is an approximation of the document provided to the FOI applicant. This description could form part of the ‘Other information’ listing in the template disclosure log at [Annexure A – Template Disclosure Log](#). Alternatively, accessibility information could be provided on an HTML document cover page that can be accessed using a link on the disclosure log.

Electronic redaction

14.67 Agencies and ministers are encouraged to use electronic rather than manual redaction. One reason agencies and ministers may prefer publishing scanned documents on the disclosure log is to preserve manual redactions made to the document given to the FOI applicant. However, effective redaction software exists that can be applied directly to electronic documents, enabling publication of more accessible information.

14.68 The Australian Signals Directorate and the Australian Cyber Security Centre tested the redaction functionality of Adobe Acrobat Pro DC 2017 in 2019 and reported that the tools were found to permanently delete the required information so that it was not present in any form in the redacted PDF file when used properly.¹⁶ This shows that correctly applied electronic redaction is as effective and reliable as manual processes.

Charges

14.69 The intention of s 11C is that information published or made available on a disclosure log should be freely accessible by the public (s 11C(4)). An agency may only impose a charge to

¹⁶ Available at <<https://www.cyber.gov.au/publications/redaction-functionality-in-adobe-acrobat-pro>>.

provide information that is not directly available for download from a website and only to reimburse the agency for a specific reproduction cost or an incidental cost (s 11C(4)(b)).

14.70 The Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009 states:

... subsection 11C(4) makes it clear that an agency cannot charge a person for simply accessing information from the website. Charges may be imposed if the agency incurs a specific reproduction or incidental cost in providing access. This would include a situation where, for example, the information was contained in a recording that could not be readily converted to electronic format for uploading to the website, and the agency incurred costs in having that recording transcribed. Another example would be where a hard copy of a report is requested when the report is also available online.

14.71 If a disclosure log entry only describes the documents and how they can be obtained and a person asks for the documents published under s 11C, an agency or minister cannot:

- process as an FOI request under s 15 of the FOI Act or
- charge for access to the documents under s 29 of the FOI Act and the Charges Regulations.

14.72 In determining whether to charge members of the public for information made available in another format, agencies and ministers should take account of the ‘lowest reasonable cost’ object in the FOI Act (s 3(4)).

14.73 Details of any charges that an agency or minister will apply must be published on their website (s 11C(5)).¹⁷ This should include an explanation for the charge and the amount of the charge likely to be imposed. For ease of reference this information should be provided on the disclosure log landing page, or, if that is not appropriate, in the introduction to the disclosure log (see Annexure A for more information).

14.74 Where an agency or minister does not apply charges for information accessed directly through the disclosure log, the introductory text to the disclosure log should tell members of the public that the information is available at no charge.

Information Commissioner’s functions and powers

14.75 The Information Commissioner plays an active role in monitoring the administration of disclosure logs by agencies and ministers.

14.76 The Information Commissioner’s power to investigate complaints about agency FOI administration extends to complaints about an agency’s disclosure log (s 70). The Information Commissioner can also undertake a Commissioner-initiated investigation into an agency’s FOI actions (s 69(2)). These complaint and investigation powers do not extend to the actions of

¹⁷ This is similar to the requirement to publish information about charges to access information under the IPS, see s 8D(5).

ministers. The disclosure log actions of an agency or minister are not subject to review by the Information Commissioner under Part VII of the Act.

14.77 To facilitate Information Commissioner oversight of agency disclosure logs, agencies are encouraged to keep an internal register which lists every FOI request:

- whether documents requested by the FOI applicant were released
- whether any such documents, or the information contained in them, are listed in the agency disclosure log, in full or in part
- if there is a listing, whether the information can be downloaded from the agency’s website (s 11C(3)(a)) or from another linked website (s 11C(3)(b)), or whether details are given about how the information may be obtained (s 11C(3)(c)).

14.78 The Information Commissioner is also required to prepare an annual report which includes information about freedom of information matters (see s 30 *Australian Information Commissioner Act 2010* and Part 15 of these Guidelines). The Commissioner’s annual report includes information on the following aspects of the administration of each agency and minister’s disclosure log:

- the number of FOI requests where access was granted that are listed in the agency or minister’s disclosure log
- the number of listings on the agency or minister's disclosure log that have been published under ss 11C(3)(a), (b) and (c) respectively
- if the agency or minister collects the figures, the number of unique visitors and page views for webpages that are part of the disclosure log.

Agencies and ministers are required to provide this information to the Information Commissioner under s 93 of the FOI Act (see Part 15 of these Guidelines).

Additional publication considerations

Copyright

14.79 Agencies and ministers should clearly state on their website, either on a dedicated copyright page or in a statement on or attached to the disclosure log, the extent to which the public can reuse material in which the agency or minister (or the Commonwealth) holds copyright.

14.80 Agencies and ministers should consider making information published on a disclosure log available on open licensing terms wherever possible (see [14.51]). In deciding on the appropriate licensing, agencies and ministers should consider the *Australian Government*

*Intellectual Property Manual*¹⁸ and *Guidelines on licensing public sector information for Australian Government entities*.¹⁹

- 14.81 While most of the information an agency or minister publishes on its disclosure log will have been created by government, there may be documents in the agency or minister's possession to which a third party (such as the author or publisher of the material) owns the copyright.
- 14.82 No action lies against the Australian Government, a minister, an agency or an officer of any agency for breach of copyright if the minister or an agency officer publishes a document in good faith, in the belief that publication is required or permitted under the disclosure log provisions (s 90(1)(a)). However, this provision does not constitute authorisation or approval for reuse of the material, including by members of the public.
- 14.83 Where a third party owns copyright in material an agency or minister publishes as part of its disclosure log, the agency or minister should include a clear statement on their website advising the public that they may need to seek permission from the copyright owner to reuse the material. A statement such as the following could be used:
- To the extent that copyright in some of this material is owned by a third party, you may need to seek their permission before you can reuse that material.
- 14.84 If an agency or minister knows the details of third party ownership of copyright in material it has published on its disclosure log, the agency or minister should, with the copyright owner's consent, provide contact details on its website.

Retaining and archiving disclosure log information

- 14.85 The FOI Act does not specifically require information attached or referred to on a disclosure log to be made available indefinitely. However, the information listed on a disclosure log entry should be retained, even if a document or information attached to a listed item has been removed. Over time, the disclosure log will grow in length and provide a valuable current and historical record of information released by an agency or minister under the FOI Act. When an agency ceases to exist or is restructured, or a minister ceases to hold office, an adjustment may be necessary in accordance with change of government procedures applying at that time.
- 14.86 In the course of routine maintenance or updating of a website an agency or minister may decide to withdraw some disclosure log content, and make it available in another form, for example, on request. Similarly, an agency or minister may decide that it is inappropriate to publish particular information on its website following a change of government or ministerial or portfolio changes. Conversely, an agency may find that information listed in the disclosure log that is available only on request should instead be published on the agency website because of frequent requests for that information. Before agencies destroy or transfer documents or information in the course of removing content from their website, they must seek approval

¹⁸ < <https://www.communications.gov.au/documents/australian-government-intellectual-property-manual-0>>.

¹⁹ < <https://www.communications.gov.au/documents/guidelines-licensing-public-sector-information-australian-government-entities>.

from the National Archives of Australia (s 24 of the *Archives Act 1983*). Approval is granted through the issuing of general records authorities, agency-specific records authorities and normal administrative practice.

14.87 Agencies and ministers should indicate if documents or information attached to a disclosure log listing are identified for removal at a future date. For example, it may be appropriate that information or documents are removed after a certain period of time, for example 2 years, unless the information has enduring public value. Factors affecting how long an agency should retain disclosure log entries include the length of the disclosure log, and the number and file size of documents attached. After removal, details should be provided if information is made available after that date in some other way, or if it is no longer available (for example, if it has been archived)²⁰.

14.88 Routine monitoring by agencies and ministers of disclosure log activity will assist in deciding the best measures to further the FOI Act object of facilitating public access to government information.

Information Publication Scheme – routinely accessed information

14.89 Under the IPS, agencies must publish information in documents to which the agency routinely gives access in response to FOI requests (s 8(2)(g)), except:

- personal information about any individual, if it would be ‘unreasonable’ to publish the information (s 8(2)(g)(i))
- information about the business, commercial, financial or professional affairs of any person, if publication of that information would be ‘unreasonable’ (s 8(2)(g)(ii))
- other information of a kind determined by the Information Commissioner under s 8(3), if publication of that information would be ‘unreasonable’ (s 8(2)(g)(iii)).

14.90 Publication of information on a disclosure log will, in many instances, satisfy this IPS publication requirement. Nevertheless, the IPS should contain a clear link to the disclosure log and an explanation that it contains information to which the agency has routinely given access in response to FOI requests.

14.91 On the other hand, an agency may decide that it is preferable, in complying with s 8(2)(g), for the IPS to contain either an extract from the disclosure log or a separate summary of information routinely released by the agency in response to FOI requests. Whichever approach is adopted, agencies must observe the additional requirement in s 8(2)(g) that the IPS entry identify items of information that are ‘routinely’ disclosed by the agency in response to FOI requests.

²⁰ We note that agencies will generally make older disclosure log documents available to the public through Trove. Where this is the case, the disclosure log should refer to this practice and direct the public to the Trove document repository.

14.92 For more information on s 8(2)(g) and the IPS generally see Part 13 of these Guidelines.

Legal protection for disclosure log publication

14.93 The FOI Act provides legal protection where information has been published in good faith in the belief that publication was either required or permitted by an agency or minister on a disclosure log (ss 90 and 92). The protection applies to the Australian Government, a minister, an agency or an officer of an agency. The scope of the protection is that no action lies for defamation, breach of confidence or infringement of copyright and no minister or agency officers will be criminally liable.

14.94 These protections complement the policy objective of the FOI Act to provide a secure framework for publication of Australian Government information to the public. The protections are conditional, and apply only where a minister or agency officer publishes a document in good faith, in the belief that the publication was required or permitted under the FOI Act.

14.95 The legal protections provided by ss 90 and 92 also apply to the release of information in response to an FOI request, and to publication other than under the FOI Act where a minister or agency officer believes in good faith that publication is required or permitted. For more information about these protections see Part 3 of these Guidelines.

Annexure A – Template disclosure log

Freedom of Information disclosure log

The [agency/Minister] is required by the *Freedom of Information Act 1982* to publish this disclosure log on its website. The disclosure log lists information that has been released in response to an FOI request. The disclosure log requirement does not apply to:

- personal information about any person if publication of that information would be unreasonable
- information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable
- other information covered by a determination made by the Australian Information Commissioner if publication of that information would be unreasonable
- any information it is not reasonably practicable to publish because of the extent of modifications needed to be made to remove the information listed above.

The Information Commissioner’s determination covers:

- information in a document that was an exempt document at the time access was given to the applicant.
- information in a document that the agency or minister would have decided was exempt at the time access was given to the applicant, if the request was made by someone other than the applicant.

The information described in this disclosure log has been released by [agency/Minister] under the *Freedom of Information Act 1982* and is available for public access.

A link is provided if the information can be downloaded from this website or another website. Information that is not available on this website, due to technical limitations, may be obtained by writing to [address].

[If applicable] A charge may be imposed to reimburse the [agency/Minister] for the cost incurred in copying or reproducing the information or sending it to you.

[Insert information about the charges that may be imposed for providing access to documents not published on the disclosure log, or which can be provided in another format. This information should be comprehensive and include the basis upon which the charge will be imposed (for example, in accordance with the charges set out in Parts 1 and 2 Schedule 1 to the [Freedom of Information \(Charges\) Regulations 2019](#)).]

[If applicable] We do not impose a charge for providing access to information on our disclosure log. You will be notified if any charge is payable and required to pay the charge before the information is provided.

There may be documents on the disclosure log that are currently not available in HTML format. If you are unable to read the format provided, please contact [insert FOI contact details] for assistance.

[Optional] Information attached to, or referred to, in the [agency/Minister’s] disclosure log will generally be removed after 2 years, unless the information has enduring public value. The archived disclosure log can be found here: [provide a link to the separate archive if not included on the disclosure log].

Sample disclosure log

FOI reference number	Date of access ⁽¹⁾	Date of publication ⁽²⁾	FOI request ⁽³⁾	Information published on the disclosure log ⁽⁴⁾	Other information ⁽⁵⁾

(1) Agencies and Ministers should note the date the FOI applicant was given access to a document under s 11A.

(2) Agencies and Ministers should note the date the documents were published on the disclosure log.

(3) Agencies and Ministers should provide a short summary of the FOI access request.

(4) Agencies and Ministers should provide a short summary of information provided under s 11A.

(5) Agencies and ministers may note here, for example, that information is no longer available or that it has been revised by the agency or Minister. They may also describe the accessibility status of a document only presented in a format other than HTML