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State Records
of South Australia



Processing FOI Applications

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Guideline

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Introduction

This is a practical guideline for agencies to assist them in processing Freedom of Information (FOI) applications. It can be used by all agencies subject to the *Freedom of Information Act 1991* (FOI Act), including State Government agencies, Ministers' Offices, Local Government Councils and Universities.

This guide includes:

- detailed information for each step of the process
- an attached process map for State Government agencies
- an attached process map for Local Government and Universities

In support of this guideline, other Information Sheets and Guidelines are available on the State Records website www.archives.sa.gov.au.

Information Sheets available include:

- FOI Information Statement
- Managing FOI through Administrative Change
- What is an Accredited FOI Officer?
- Reporting Requirements under FOI
- FOI and Contracting for Local Government and Universities
- FOI and Contracting for State Government
- FOI and Redaction of Documents

Guidelines and procedures available include:

- FOI and the Public Interest Test
- Consultation and the FOI Act
- FOI and the Charging of Fees
- Across-government FOI applications procedure.

State Records periodically publishes new Information Sheets and Guidelines in addition to reviewing and updating those already available.

Please check the State Records website to ensure you have the most current version of the above documents.

Important Points to Consider

Agencies subject to the FOI Act

Section 4 of the FOI Act defines the meaning of an agency. Agencies subject to the FOI Act include:

- most State Government agencies
- Local Government Councils
- South Australian universities.

The definition of an 'agency' under section 4(1) of the FOI Act captures most statutory bodies and administrative units established through an Act of Parliament, including Ministers of the Crown. Ministers are separate agencies from their portfolio agencies (eg the Premier and the Department of the Premier and Cabinet are separate agencies).

There are also a number of agencies that have been made exempt under Schedule 2 to the FOI Act or by regulation. Agencies made exempt under Schedule 2 include the State Ombudsman, Royal Commissions, and the Auditor General. Agencies declared exempt, or partially exempt, by regulation are listed in the [Freedom of Information \(Exempt Agency\) Regulations 2008](#).

All agencies subject to the FOI Act must be registered on the Freedom of Information Management System (FOIMS) database. Further information is available on the State Records website.

Principal Officers

Section 4 of the FOI Act defines a Principal Officer of an agency. In most cases this is the chief executive officer of the agency. In the case of a board or committee that does not form part of another agency, it is the presiding officer; and where the agency consists of one person, that person is the Principal Officer. A Minister is a one-person agency and is, therefore, the Principal Officer.

Accredited FOI Officers

Section 14(1) of the FOI Act requires all FOI applications to be dealt with by an Accredited FOI Officer.

An Accredited FOI Officer is defined in section 4(1) of the FOI Act as:

- the Principal Officer of an agency, or
- an officer who has completed the approved training and who has been designated by the Principal Officer as an Accredited FOI Officer of the agency.

In addition, a person designated as an Accredited FOI Officer by the Principal Officer must be:

- in relation to an administrative unit in the Public Service, a person employed in an executive position or a person that usually reports to an executive (see the meaning of executive employee under the *Public Sector Act 2009*), or
- a person who is an officer with the South Australia Police, or

- for all other agencies, a person employed in a position that usually reports to the Principal Officer or to their deputy or immediate delegate of the Principal Officer.

The last category usually relates to Local Government Councils, Universities and State owned corporations.

An agency may have more than one Accredited FOI Officer. Other staff members who are not Accredited FOI Officers may help process FOI applications by undertaking some of the steps outlined in this guideline, including searching for and copying documents. However, it is the Accredited FOI Officer who has the responsibility of dealing with FOI applications, which includes making the determinations.

The Accredited FOI Officer is usually assigned as the agency's primary contact in FOIMS. Registration on FOIMS requires users to indicate if they are an Accredited FOI Officer.

For more detailed information in relation to the role and responsibilities of the Accredited FOI Officer please refer to the Information Sheet *What is an Accredited FOI Officer* available on the State Records website.

Designation of an Accredited FOI Officer by a Minister

According to section 4(1) of the FOI Act, a Minister, being the Principal Officer of an agency, can designate another person in their office to be an Accredited FOI Officer provided that person is employed in a position that usually reports to the Minister, the Minister's deputy or immediate delegate.

The Minister, as the Principal Officer of the agency, is responsible for

- extending the time limit of an application under section 14A of the FOI Act
- undertaking internal reviews.

In regard to internal reviews, an officer in the Minister's office who is suitably independent from the original application and determination, can investigate, summarise and make recommendations regarding the internal review, but the Minister must make the final determination. While the determination may be signed off by another officer it must be clear that the Minister made the determination and the person signing it is doing so on the Minister's behalf.

Decisions by an Accredited FOI Officer

An Accredited FOI Officer has a number of discretionary powers under the FOI Act, which they can exercise when making a decision.

An Accredited FOI Officer may:

- grant, deny or defer access to a document or documents
- grant partial access by deleting exempt matter from a document or documents
- grant access in another form
- remit an application fee
- impose or remit a charge
- grant or refuse a request to amend a personal record.

An Accredited FOI Officer cannot:

- grant an extension of time for dealing with an application (unless they are also the Principal Officer of the agency)
- participate in an internal review that involves a determination they made.

Time limits

The following time limits apply to the processing of FOI applications:

<i>Number of Days</i>	<i>Time limit Action</i>
<p>Within 30 calendar days</p>	<p>For an agency to make a determination, unless the agency formally extends the time to deal with the application under section 14A of the FOI Act.</p> <p>For an agency to amend a document that contains information concerning the applicant's personal affairs.</p> <p>For an applicant to lodge an application for an internal review, ie an application must be lodged within 30 days after the day on which notice of the determination is given to the applicant, or within such further time as the principal officer may allow.</p> <p>For an applicant to lodge an application for external review, ie an application must be lodged within 30 days after notice of the determination on review is given OR if there has been no review, within 30 days after the date of the determination. The relevant review authority may, in its discretion, extend the time for making an external review application.</p> <p>For an applicant to seek a review by the South Australian Civil and Administrative Tribunal (SACAT), ie within 30 days after notice of the internal review decision, or from the date of a determination that is not subject to internal review, or from the date of receiving an external review determination.</p>
<p>Within 20 calendar days</p>	<p>For an agency to make a determination to extend the time limit of an application, including giving written notice of the extension to the applicant.</p>
<p>Within 14 calendar Days</p>	<p>For an agency to make a determination on an internal review.</p> <p>For an agency to transfer an application (either in part or in full) to another agency to allow the receiving agency the maximum time to process the application.</p>

Notes about time limits

Section 27 of the *Acts Interpretation Act 1915* provides specific guidance to assist in the determination of the commencement and expiration of time limits.

The time limit, (ie the time for processing an application) be it for access or review of a determination, commences on the day after the application is lodged. The day the determination is finalised is included in the time limit.

If the last day of the time limit prescribed in the FOI Act for completing an action (ie day 30, day 20, or day 14) falls on a Saturday, Sunday or public holiday, the last day is taken to be the following working day.

All of these time limits and related actions are included in FOIMS.

Extensions to time limits – section 14A

Only the Principal Officer of an agency can make a determination to extend the time limit of an application. The Principal Officer does not have the power under the FOI Act to delegate this responsibility.

A Principal Officer may only extend the time limit to deal with an application if they can satisfy one or both of the following:

- the application is for access to a large number of documents, or would necessitate a search through large quantities of information, and dealing with the application within the normal time limit of 30 calendar days would unreasonably divert the agency's resources
- the requirement to undertake consultation cannot be concluded within the normal time limit of 30 calendar days for processing the application.

The Principal Officer must make a determination to extend the time limit and notify the applicant in writing within 20 calendar days from the date the agency received the application. The extension of time must be recorded in FOIMS.

Deemed Refusals

Where an agency fails to make a determination and notify the applicant within the time limit of 30 calendar days, and the time limit has not been formally extended, the agency is taken to have refused access to the documents (see section 19(2) of the FOI Act). This is known as a 'deemed refusal' and the applicant can exercise their rights of review and appeal. Agencies should advise the applicant of their rights to review and appeal once an application becomes a deemed refusal.

When the Principal Officer makes a determination

In relation to access, amendment and extension determinations made by the Principal Officer he or she must either:

- sign the written notification to the applicant, or

- make it clear that he or she has made the determination allowing the notification to be signed by another officer on his or her behalf.

In all cases, when the Principal Officer makes a determination the applicant does not have the right to apply for an internal review of that determination. This includes a determination made by the Principal Officer to extend the time limit for processing an FOI application. Applicants do, however, have the right to apply for an external review to the relevant review authority which is either the State Ombudsman, or for determinations made by SA Police, the Police Ombudsman. The applicant can also seek a review directly with SACAT.

Other considerations

Release of documents outside the FOI Act

If it is proper and reasonable to do so, or permitted under other legislation, the FOI Act does not prevent or discourage:

- the publication of information, or
- the giving of access or the amending of documents.

Access permitted under other legislation

If other legislation permits or requires access to be given to a document, or permits amendment to be made to a document, the agency concerned must provide access or make an amendment to that document as required by that legislation. That is, the agency should refuse an FOI application and deal with access or amendment under the relevant legislation.

For example, under section 61 of the *Local Government Act 1999*, a member of a council has a statutory right to access documents without charge, provided the documents are to be used in connection with their function or duties as a member of the council.

It is also not appropriate for an agency to use FOI as an administrative ‘tool’ to deal with access to information permitted under other legislation. This can be particularly problematic as there could be potential for dispute over a statutory requirement of the relevant legislation that could be at odds with the FOI Act, such as fees charged.

Dealing with an FOI application from another agency

Although State Government agencies are administratively separate, they all exist as one legal entity – the South Australian Government. For this reason, State Government agencies cannot apply to each other for access to documents under the FOI Act. This limitation does not apply to Local Government Councils, Universities or State Government instrumentalities, for example SA Water.

In the first instance, non-State Government agencies should seek access to State Government agency documents through administrative arrangements rather than through the FOI process. If appropriate, State Government agencies should establish information sharing agreements with Local Government Councils, Universities and instrumentalities to ensure that information required for a legitimate purpose is made available in a timely manner and in accordance with other legislation and government policies, such as the Information Privacy Principles Instructions, issued as Premier and Cabinet Circular No 12.

Deferring access to a document

Deferring access should not be used to deny access indefinitely.

Section 21 of the Act allows an agency to defer access if the document:

- will be published under another Act (eg Annual Reports)
- was prepared for tabling or introducing to Parliament but has not been presented at the time the application was received
- has been prepared for submission to a particular body or person but is yet to be submitted.

When making a determination to defer access you should provide the applicant with an indication of when the document will be available and how access will be provided.

Partial release of documents

The FOI Act requires the Accredited FOI Officer to exercise their discretion as far as possible to make a determination that favours disclosure over non-disclosure without infringing the right to privacy of individuals.

Under section 20(4) of the FOI Act, the Accredited FOI Officer must assess whether there are any areas of the document that could be released and if practicable provide access to the document with the exempt information removed. Removal of exempt matter is discussed later in this document.

FOI and access to Cabinet documents

On 1 October 2009 the South Australian Government introduced a policy to allow access to Cabinet documents between 10 and 20 years old through the FOI process. More recently this policy has been extended to allow for the proactive publication of Cabinet documents 10 years or older on a government website. This policy has been issued as *Premier and Cabinet Circular 31: Disclosure of Cabinet Documents 10 Years or Older (PC031)*. This policy means that:

- The Government can select Cabinet documents that are 10 or more years old and proactively publish them online for public access.
- Members of the public can apply under the policy and the FOI Act for access to other Cabinet documents 10 to 20 years old and the Cabinet documents exemption cannot be claimed to deny access. However other exemptions and requirements under the FOI Act continue to apply where appropriate.

This policy does not apply to documents of Executive Council.

The PC031 requires that the Department of the Premier and Cabinet process all FOI applications seeking access to Cabinet documents under this policy. For more information, please refer to the information sheet *How do I access Cabinet documents* on the State Records website.

Crown / Agency Contracts

Any contract entered into by the Crown or an agency (including State and Local Government Councils and Universities) after 1 January 2005 are accessible for release under FOI unless the contract contains a confidentiality clause that has been approved by the responsible Minister (or his or her delegate) or, in the case of Local Government and Universities, the agency responsible. That is, the business affairs exemption cannot be claimed if it is a contract document. Any approved confidentiality clause will protect confidential information from disclosure under the FOI Act, but the remainder of the contract can still be considered for release.

All contracts containing a confidentiality clause must be recorded in FOIMS to fulfil legislative reporting requirements.

Contracts entered into prior to 1 January 2005 are also not automatically exempt documents and should be considered for release in line with the objects and exemption clauses of the FOI Act. In addition State Government agencies must comply with the Government's [*Contract Disclosure Policy issued as Premier and Cabinet Circular No 27*](#).

For more information please refer to the information sheets relating to *FOI and contracting* available on the State Records website. There are two sheets: one for State Government agencies and one for Local Government and Universities.

Sufficiency of Search

To fulfil the 'sufficiency of search' requirement of the FOI Act, all documents in the possession of the agency must be considered. Section 4(4) of the FOI Act considers an agency to hold a document if it has an immediate right of access to it. This means that an agency is considered to hold the documents if it has physical possession or has a right to access the documents from other places.

Documents in the possession of external groups that agencies have a right to access are also considered to be held by the agency and must be considered if they fall within the scope of the application. For example:

- permanent records transferred to the custody of State Records
- temporary records transferred to temporary storage providers
- contracted service providers - please refer to *Contracting and Official Records Standard* which can be found on the State Records website.

Agency Records in the Custody of State Records

When an agency transfers a document into the custody of State Records, the agency remains the owner of the document and is considered to continue to possess the document for the purposes of the FOI Act. The application cannot be transferred to State Records, as State Records is only the custodian and is not responsible under the FOI Act for access to the documents. Therefore, the agency must consider documents in the custody of State Records if they are within the scope of the application.

Where the documents have an access determination of 'Open' under the *State Records Act 1997*, an agency can refuse the FOI application and direct the applicant to one of the State Records two reading rooms or the State Records website.

For more information on access determinations under the State Records Act see the *Public Access Determinations Guideline* available on the State Records website.

Records management considerations

In order to satisfy the agency's recordkeeping requirements under the State Records Act, each FOI application must be appropriately captured and managed within the agency's recordkeeping system. A new file should be created for every application received. This is, in part, because some applications may be required to be retained for a longer period of time than others in accordance with an approved disposal schedule.

Each FOI application file should include all documentation relating to the application including:

- any documentation relating to the processing of the application, eg consultation undertaken
- copies of all documents and records within the scope of the application or an accurate description of them
- copies, or a schedule, of the documents released, if any.

Documents relating to the application must be filed on the FOI application file only and not on the original, or source files, where the documents were found. Any source files retrieved from State Records for the purposes of locating documents must be returned to the archives in their original state. That is, no records or documents can be added or removed from these files. If necessary copies should be taken of the documents found in files retrieved from State Records.

All documents in the possession of an agency should be subject to an approved disposal schedule, including those that may be within the scope of a current FOI application. In the event an FOI application is made for documents that are due to be legally destroyed in accordance with an approved disposal schedule or those that could be destroyed through normal administrative practice, the destruction must not occur. Depending on the type of application received, and whether it was subject to an external review, the sentence applied to the documents associated with the FOI application may need to be amended. The sentence associated with an FOI application can range from 2 years to permanent.

In addition to the above, each FOI application must also be recorded in FOIMS. Please refer to the next section for further information.

Freedom of Information Management System (FOIMS)

The Freedom of Information Management System (FOIMS) was developed as an across government system for recording, processing and reporting FOI applications. State Records uses FOIMS to produce reports for the Minister responsible for administering the Act in accordance with section 54 of the FOI Act.

Section 54AA requires all agencies subject to the FOI Act to provide information as required by the Minister to allow the FOI Annual Report to be completed. This requires agencies to record in FOIMS all FOI applications and contracts containing approved confidentiality clauses in a timely manner.

When processing FOI applications, it is important that the relevant information is entered into FOIMS for each step of the process. Once an FOI application becomes valid, it should be entered into FOIMS and maintained in step with the application itself. This approach ensures that the agency is up-to-date with their reporting, as required by Section 54AA.

Processing FOI Applications

The following information is provided to assist agencies process FOI applications in a logical sequence that is consistent with the requirements of the FOI Act. Two FOI Process Maps, one for State Government agencies and one for Local Government and Universities, are located at the end of this section and the numbering within this section relates to the numbers applied to the steps on the Process Maps.

The following steps also refer to points in the process where letters should be sent to the applicant or third parties. Templates of these standard letters can be located on the State Records website.

Step 1 FOI Application Received

Ensure that the application has a clear 'date received' notation (ie the application is date stamped). The time limits commence the day after receipt of an application provided it is a valid application.

A new file for the application should be created and the application registered in your agency's records management system at this step.

Step 2 Is the application valid?

Check the application to ensure that it is valid. To be valid, section 13 of the FOI Act requires that an application:

- must be in writing
- must state that it is made under the FOI Act
- must have the application fee attached (or valid reasons for fee waiver)
- must provide enough information to identify documents
- must have an Australian postal address specified
- must be lodged at an office of the agency.

If the application is valid, a letter acknowledging receipt of the application should be sent to the applicant.

If the application is not valid the Accredited FOI Officer is obligated to assist the applicant to make it a valid application. The 30 day time limit does not commence until the application is considered valid.

Has the application fee been paid?

Section 53 of the FOI Act allows an agency to waive, reduce or remit fees and charges in accordance with the *Freedom of Information (Fees and Charges) Regulations 2008* (Fees and Charges Regulations) to ensure that financially disadvantaged people are not prevented from accessing documents or amending their personal records under the FOI Act.

In order to receive a waiver, reduction or remission, an applicant must satisfy the agency that:

- he or she is a concession card holder (eg by showing or providing a photocopy of their concession card), or
- payment of the fee or charge would cause them financial hardship.

The agency must then waive or remit the fee or charge.

Section 53 also allows an agency to waive, reduce or remit a fee or charge in circumstances other than those provided for in the Fees and Charges Regulations. For example, if a FOI applicant requests a fee to be reduced or waived but cannot satisfy the above criteria, the agency can still decide to reduce, waive or remit the fee or charge at its discretion.

For more information, please refer to the *FOI Fees and Charges Guideline* and *FOI Fees and Charges* information sheets available on the State Records website.

Step 3 Is this the correct Agency?

If your agency does not hold the document or documents being sought by the applicant the application may be transferred to another agency if the documents are, to your knowledge:

- held by another agency, or
- more closely related to the functions of another agency.

Premier and Cabinet Circular 31 *Freedom of Information Release of Cabinet Documents Ten Year Rule*, requires an FOI application seeking access to Cabinet documents between 10 and 20 years old, made directly to an agency (other than DPC) to be transferred to DPC in accordance with section 16(1)(a) of the FOI Act.

At the time the application is transferred the applicant must also be notified in writing.

Transfer of the application

Before transferring an application, the receiving agency should be contacted to discuss whether it holds the documents and whether a transfer is appropriate. If agreed, an advance copy of the application should be provided, particularly if there is likely to be any delay in preparing the formal transfer. This will also give the receiving agency an opportunity to advise if they are of the view the application should not be transferred to them.

When transferring an application, an agency should:

- forward a copy of the application to the agency receiving the transferred application, as well as a copy of any documents in scope of the application held by the transferring agency -see section 16(2) of the FOI Act
- advise the agency receiving the transferred application of the receipt date of the application
- advise the applicant of the transfer and the date of the transfer - see sections 16(3) and 16(4) of the FOI Act
- transfer the application to the receiving agency in FOIMS.

If the agency that holds the documents is not an agency for the purpose of the FOI Act, or is deemed exempt by Schedule 2 of the FOI Act or by regulation, an FOI application cannot be transferred to that agency. The original agency would refuse access on the basis that it does

not hold the documents, if that is the case or if it does hold some documents, then it should process the application with respect to those documents only.

It is important to note that if an agency holds documents created by an exempt agency, those documents are not automatically exempt; the agency must still process the application and make a determination. If an agency holds documents of an exempt agency they also need to check that they are not an exempt agency for the purpose of those documents, eg DECD in regard to some SACE information. If the original agency refuses access on the basis they do not hold documents, they should also explain in the determination that another government body may hold the documents but that they are exempt and, therefore, the application cannot be transferred, if this is the case.

Where the application is transferred in full, the application fee should also be transferred with the application. However, if the application is being transferred in part, the agency that originally received the application should retain the application fee.

Partial Transfer

A partial transfer to another agency (or agencies) is not discussed in the legislation. However, the FOI Act does not prevent agencies from partially transferring an application.

When an agency transfers an application in part, it should notify the applicant in writing at the time of transfer. The agency should advise in the notification which agency or agencies the application was transferred to. Each agency is responsible for dealing with and issuing a separate notice of determination for the portion of the application they have processed.

Time Limit for Transfers

A transferred application is taken to have been received by the receiving agency:

- on the day on which it is transferred, or
- 14 calendar days after the day on which it was received by the transferring agency, whichever is earlier.

Agencies must transfer applications promptly to allow the receiving agency the maximum amount of time to process the application. Every day after day 14 is one day less the receiving agency has to process it.

Where an agency has not transferred the application within 30 calendar days after it was received, it is considered a deemed refusal and cannot be transferred under section 16 of the FOI Act.

The effect of a delay in transferring an FOI application

The following table is an example of the time limits for the receiving agency to deal with an FOI application that has been transferred to them.

	<i>Date of receipt by original agency</i>	<i>Date of transferral</i>	<i>Time limit for receiving agency to process application</i>
<i>Scenario 1 (transfer time 14 days or less)</i>	<i>1 September</i>	<i>2 September</i>	<i>Due date for receiving agency is 2 October. That is 30 calendar days to process.</i>
<i>Scenario 2 (transfer time 15 days or more)</i>	<i>1 September</i>	<i>20 September</i>	<i>Section 16(6)(2) means that the date of receipt is 15 September resulting in the due date for receiving agency being 15 October. That is 25 calendar days to process.</i>

Advise Minister's Office

For State Government Agencies Only

When an application is received it is important to decide whether the Principal Officer of your agency and your Minister should be notified. When advising the Principal Officer and Minister of these applications, improper direction should not be given to an Accredited FOI Officer (or accepted by the Accredited FOI Officer) in relation to the processing of the application.

The Principal Officer and Minister can however direct an Accredited FOI Officer to make a determination. If this occurs, section 29(6) of the FOI Act should be invoked. Section 29(6) provides that if the Principal Officer, or person or body to which the Principal Officer is responsible i.e. Minister, gives such a direction, then the determination is not subject to internal review. This means the determination has effectively been made by the Principal Officer, not the Accredited FOI Officer. This direction should be explained in the notice of determination provided to the applicant because it affects the applicant's review rights.

The kinds of applications that your Minister may need to be aware of could include applications in relation to budget papers, reports, Cabinet documents and contracts. Your Minister's office may also need to be notified if a similar application has been made to another agency. In addition, applications from Members of Parliament and the Media are likely to be of interest to your Minister.

Applications concerning personal information may also require consideration as to whether your Minister should be informed, for example, information relating to children in custody or children in care.

If a decision is made to advise your Minister of the application, you may also need to advise them of the outcome of that application. See step 16 for further information.

Step 4 Identify all documents covered by the application

It is important to liaise with the person(s) who has the best knowledge and association with the relevant documents in order to identify those documents that fall within the scope of the application.

Once it has been established that your agency holds the documents, or has an immediate right to access the documents, a thorough search should be conducted to locate all of the documents covered by the application. This kind of search can often involve several people and many different systems both manual and electronic. Also see section on ‘Sufficiency of Search’ earlier in this guideline.

Section 4(1) of the FOI Act provides the following definition of document:

document includes anything in which information is stored or from which information may be reproduced

This is a very broad definition and can involve consideration of many types of documents including:

- paper documents, including drafts
- temporary and permanent files
- notes (including messages on post-it notes)
- electronic documents including databases and emails
- DVDs, video tapes or film recordings
- photos, maps and plans
- mobile phone SMS & MMS messages.

In addition, section 4(5) of the FOI Act provides that where an agency holds information in computer storage, and a particular document can be produced on the basis of the information so stored, the agency is taken to hold that document. This does not mean that agencies are obliged to research information. The obligation is only to provide access to existing documents or documents that can readily be produced from information held in computer databases.

It is important to keep evidence of all search results and copies of emails, telephone calls, correspondence and communications resulting from the search and collection of documents.

See earlier section on Sufficiency of Search.

Step 5 Are the documents otherwise available?

Section 20 of the FOI Act allows an agency to refuse an application made for documents that are available for purchase or for documents that can be inspected at the agency or at some other agency, including those that form part of a public register.

However, while these applications can be refused, the agency could consider asking the applicant to withdraw the application, while at the same time providing them with the details of where or how the document or documents are made available. For documents made available outside of FOI, the agency should also consider returning the application fee.

In the event that some of the documents sought are available for inspection or purchase and some are not, the agency should consider the following two options.

1. Explain to the applicant that some of the documents they have requested are available for inspection or purchase and seek formal agreement to narrow the scope of the application to cover the remaining documents. The agency would then process the application in accordance with the FOI Act.
2. Determine the application by partially refusing access to information otherwise available.

FOIMS allows for the recording of partial release determinations through the Application Determination section where the scope of the application has not been narrowed.

Step 6 Is the application excessive?

Sometimes the scope of the application results in a large number of documents being captured by the FOI application.

If the application is very broad or you are having difficulty identifying exactly what information the applicant wants to access, you should contact the applicant and discuss narrowing the scope of the application in accordance with section 18(2) of the FOI Act. If the applicant agrees to narrow the scope of the application, you will need to confirm the agreed terms in writing with the applicant. A diary entry may also be undertaken in FOIMS to record this agreement.

If the agency believes the work involved in processing the application will exceed the application fee, an advance deposit from the applicant can be sought. (See step 9 for further information).

If the applicant does not agree to narrow the scope of the application, section 18(1) of the FOI Act could be applied to refuse the application. See step 7 for further information.

Step 7 Will the application unreasonably divert the agency's resources?

If the applicant is unwilling to reduce the scope of the application, you should establish whether dealing with the application will substantially and unreasonably divert the agency's resources. If a decision that the agency's resources would be substantially and unreasonably diverted is made, and a reasonable time extension would not resolve this, you can refuse the application under section 18(1) of the FOI Act and issue a notice of determination. The determination information must also be recorded in FOIMS.

Step 8 Is an extension of time needed?

For applications that are seeking access to large numbers of documents or require considerable consultation or both, an extension of time for dealing with the application may be necessary. The applicant must be advised of an extension to the time limit in writing by the Principal Officer. The extension of time must be recorded in FOIMS in order that the new due date is calculated for reporting purposes.

See earlier section on Extension to Time Limits.

Step 9 Fees and Charges

Fees and charges increase annually in line with an agreed indexation factor. A copy of the Fees and Charges Regulations, which include a detailed schedule of fees and charges, can be found by searching the SA Legislation website at www.legislation.sa.gov.au.

All transactions and services under the Fees and Charges Regulations have been determined exempt by virtue of Section 81-5 of *A New Tax System (Goods and Services Tax) Act 1991* Determination 2000 (No.2).

Calculation of fees and charges

In addition to the application fee already collected, your agency needs to determine whether further charges will be imposed for the processing of the FOI application, unless the applicant is eligible for a waiver of the application fee and other charges.

Section 53 of the FOI Act stipulates that fees and charges imposed must reflect the reasonable administrative costs incurred by agencies in exercising their functions under the FOI Act.

Agencies can charge for the following activities only:

<i>Activity</i>	<i>Description</i>
Finding	Searching a file index (or other places) to establish the location of documents and extracting documents from the place they are held
Sorting	Sorting documents to allow for scheduling
Compiling	Scheduling documents, and giving documents a number and / or reference
Copying	Photocopying documents to provide access, but not for consultation or redacting purposes
Consultation	Undertaking consultation required under the FOI Act. This relates to third party consultation, but not for seeking legal advice or internal consultation within your own agency, or if your agency is a State Government agency, with another State Government agency. ¹

¹ Section 53(2aa) FOI Act

The application fee for a request for personal information allows for the first two hours spent processing the request to be free of charge. After that charges can be applied as per the Fees and Charges Regulations.

Fees and charges do not apply to applications for amendment of personal records.

Members of Parliament cannot be charged unless the costs calculated for the request exceed \$1,000.

An application fee cannot be requested from an applicant seeking a review of the proposed fees and charges.

An agency may, as it sees fit, waive, reduce or remit a fee or charge in circumstances other than those provided for under the regulations.

All fees and charges relating to an FOI application must be recorded in FOIMS.

Advance Deposits

Where the estimated cost of dealing with the application is likely to exceed the application fee, the agency may seek an advance deposit. The request for such a payment must set out the basis on which the amount of the deposit has been calculated.

The notification of the advance deposit should also specify a time period within which the advance deposit must be paid. The time period from the day the notification for advance deposit is issued and the day the deposit is received is not to be taken into account when calculating the number of days for processing the application. That is, the due date is adjusted by the number of days the application was suspended whilst waiting for the payment of the advance deposit.

If the applicant does not pay the deposit within the period specified in the request, the agency may refuse to continue to deal with the application. Any money collected that exceeds the costs incurred by the agency in dealing with the application up to that point must be returned.

FOIMS allows for the recording of advance deposit information.

Step 10 Examine carefully all documents relevant to the application

Once all of the documents relevant to the application have been identified they must be examined thoroughly to ascertain if:

- the documents or parts of the documents are exempt
- the documents contain information about the personal affairs of someone other than the applicant, or business information of another person or business
- consultation with other persons, organisations or agencies is required
- the document is a contract entered into by the Crown or an agency and a confidentiality clause has been included in the contract.

For further information in relation to confidentiality clauses in contracts see the Information Sheet *Freedom of Information & Contracting* on the State Records website.

Step 11 Seek opinions where necessary

Careful consideration should be given to the need to seek the expert opinions of others. It is frequently necessary to seek the views of others to ascertain:

- whether disclosure might affect intergovernmental relations
- whether the document contains information that may be subject to secrecy provisions in other legislation
- whether disclosure will affect the business affairs of any agency or person other than the applicant or if it would affect the economy of the State
- if a document is a contract and whether it contains any confidentiality clauses approved by a Minister or an agency and, therefore, should not be released.

These (and other things) may not be within your own knowledge, and so it is sensible to discuss these issues with others.

The person who has the best knowledge and association with the documents may assist in identifying the most appropriate factual source for the opinion. You may also need to seek an opinion from:

- your Principal Officer
- other public servants including contract administrators within agencies
- your Minister's Office
- the Crown Solicitor's Office.

If an opinion is sought from the Crown Solicitor's Office it should be shared with the person who has the best knowledge and association with the document to ensure that the legal advice has been properly understood.

Discussion of relevant details in relation to specific documents with one or more of the people or representatives of the organisations listed above is an important part of the decision making process.

Government Agencies and Consultation

The formal consultation required by sections 25-28 of the FOI Act does not apply between State Government agencies. However, if the document being sought was created by another agency it may be appropriate to seek the views of that agency to establish facts so that the relevant detail behind a document is properly understood.

For further information on consultation refer to the FOI Guideline on *Consultation and the FOI Act* available on the State Records website.

Step 12 Could consultation with third parties be required?

Sections 25-28 of the FOI Act require consultation with third parties prior to any documents being released to the applicant.

Formal consultation with a third party requires written communication between the agency and the third party. Without breaching personal privacy and where possible, copies of the documents concerned should be attached to the letter sent to the third party.

When consulting with third parties the following should be considered:

- third parties do not have a power of veto over the decision to release documents and should be advised accordingly during the consultation process
- an assessment will need to be made of all third party comments to ensure they are reasonable in the overall circumstances
- if your decision to release the documents is against the objections of the third party, you must notify them in writing and advise them of their appeal rights
- documents cannot be released until such time as all reviews and appeals of the third party are concluded or the time for lodging a review or appeal has lapsed.

In some cases agencies may not be able to obtain the views of the person with whom they are required to consult. If this is the case, and it has been determined that access to the document about which you are consulting will be given, you should give written notice to the third party (for example by writing to their last known address) which:

- advises the third party that the agency has determined that access to the document is to be given
- clearly describes their rights of review and appeal and how to exercise those rights
- advises that access to the document will be deferred until such time as all reviews and appeals are concluded or the time for lodging an appeal or review has lapsed.

Records should be kept of all attempts to contact the third party as evidence of your efforts to consult.

After advising the third party that you have determined to release the documents, the applicant also needs to be informed of your decision by being provided with a notice of determination. The applicant needs to be advised that release of the documents will be delayed until such time as the period for lodging a review or appeal has lapsed or until all reviews and appeals have been concluded.

Step 13 Are documents exempt or parts of them exempt?

Once all documents have been thoroughly examined you must decide whether any of the documents are wholly exempt or whether some of the information can be released to the applicant.

The exemptions are set out in Schedule 1 of the FOI Act. Consider carefully the precise elements of each relevant exemption and apply those elements including any public interest tests to the documents as part of your decision-making process.

If a determination is made to refuse access to documents, a statement of reasons for that decision, including the appropriate exemption clause and the factual information in relation to how the clause applies, must be given to the applicant.

Section 3A(1)(b) of the FOI Act requires Accredited FOI Officers to exercise their discretion in a way that favours the disclosure of information provided it does not infringe the privacy of individuals. That is, where an exemption clause could be applied to a document or parts of a document, an agency can still determine to release the document if it is appropriate to do so in the circumstances and all necessary consultation has occurred.

FOIMS allows for the recording of exemption reasons.

The Public Interest Test

The public interest is considered something that is important or that on balance will benefit the public in general. Where an Accredited FOI Officer determines that disclosure of information is in the public interest they must be satisfied that the benefit to the public resulting from disclosure will outweigh other public interests of non-disclosure. This is commonly known as the public interest test.

When claiming an exemption that requires consideration of the public interest the Accredited FOI Officer must ascertain and assess the factors, both for and against disclosure. An explanation of what specific detriment may or may not occur as a result of disclosure should also be included. The more comprehensive the argument the more likely the decision is to withstand scrutiny in the event of a review or appeal. The process of weighing the public interest must be recorded and included in the determination to provide evidence of the decision to disclose or not disclose a document.

For further information on the public interest please refer to the FOI Guideline on *FOI and Public Interest* available on the State Records website.

Methods for deleting exempt matter

In instances where parts of the document are not exempt, a copy of the document with any exempt material removed can be provided to the applicant. The removal of this information is often referred to as 'redaction'. A document can be redacted in a number of different ways from blanking out the information using a permanent marker to using software that can electronically redact a document. Regardless of the method used to remove exempt matter it is important that copies are kept by your agency. This includes copies of documents provided to the applicant as well as copies of documents without the exempt matter removed.

For further information on redaction please refer to the FOI information sheet *FOI and Redaction of Documents* available on the State Records website.

Step 14 Forms of access

Access to a document can be given to an applicant in various ways including:

- a photocopy of the document
- inspection at the agency in paper format or at a computer terminal
- computer printout
- digital copy of a document on a portable storage device eg CD
- viewing of a video tape or film or listening to a sound recording
- copy of a video or sound recording
- transcript of a sound recording.

Fees and charges may be applied in line with the Fees and Charges Regulations when giving access to documents in some of the above ways.

If the applicant requests that access be given in a particular way your agency must give access in that way unless doing so would:

- unreasonably divert the resources of the agency from their use for official purposes, or
- be detrimental to the preservation of the document or otherwise inappropriate, or
- involve an infringement of copyright.

Step 15 Preparation of the Notice of Determination

A notice of determination is the formal written decision prepared by the agency to advise an applicant of the outcome of their FOI application. The notice of determination must provide adequate, fair and unbiased reasons for any determination made under the FOI Act. The applicant, and any interested third parties, must also be advised of their rights of review and appeal.

There are several types of notices of determination that can be made under the FOI Act such as:

<i>Section</i>	<i>Determination Type</i>
Section 14A	Extension of time
Section 18(1)	A refusal to deal with an application because to do so would be a substantial and unreasonable diversion of resources
Section 18(2)(a)	A refusal to deal with an application because it is a pattern of conduct that amounts to an abuse of the FOI Act or the application is made for a purpose other than to obtain access to documents
Section 18(3)	A refusal to deal with an application because the advance deposit was not paid within a specified period
Section 23	Applications for access where documents are fully released, partially released, deferred or access is refused
Section 23(1)(b)	Where access to a document is refused because the document does not exist or cannot be found
Section 29	Internal review applications for access
Section 36	Applications for amendment of personal records
Section 38	Internal review applications for amendment of personal records

Where the applicant is refused access to all or part of a document, the notice of determination must include:

- the relevant provision in the FOI Act for claiming the exemption
- where applicable, the reasons why disclosure would be contrary to the public interest
- facts supporting the reasons for refusal, together with a reference to the sources of information on which those findings are based.

Sources of information on which you base your findings may include:

- the result of any consultation with third parties
- the result of consideration of the facts concerning agency resources and time estimated to complete an application, and
- relevant case law.

A notice of determination that fails to provide full reasons may have a higher likelihood of attracting a request for an internal review by the applicant.

The notice of determination also serves to advise the applicant of the amount of any fees and charges relating to the processing of the application.

Where fees and charges have been waived, the agency should provide all documents for which access has been granted with the notice of determination. However, documents cannot be released until such time as all reviews and appeals are concluded or the time for lodging a review or appeal has lapsed.

The notice of determination should include a schedule that details each of the documents to which access has been granted and those where access has been refused.

The determination must also be recorded in FOIMS.

Step 16 Should you consider informing your Minister about the determination?

For State Government agencies only

If your Minister has advised that they wish to be informed of the outcome of a particular application (see Step 3) a copy of the finalised determination should be forwarded to them two working days prior to the determination being forwarded to the applicant. This enables the Minister to be made aware of the outcome of the application should he or she need to respond to any queries as a result of access being provided to the information.

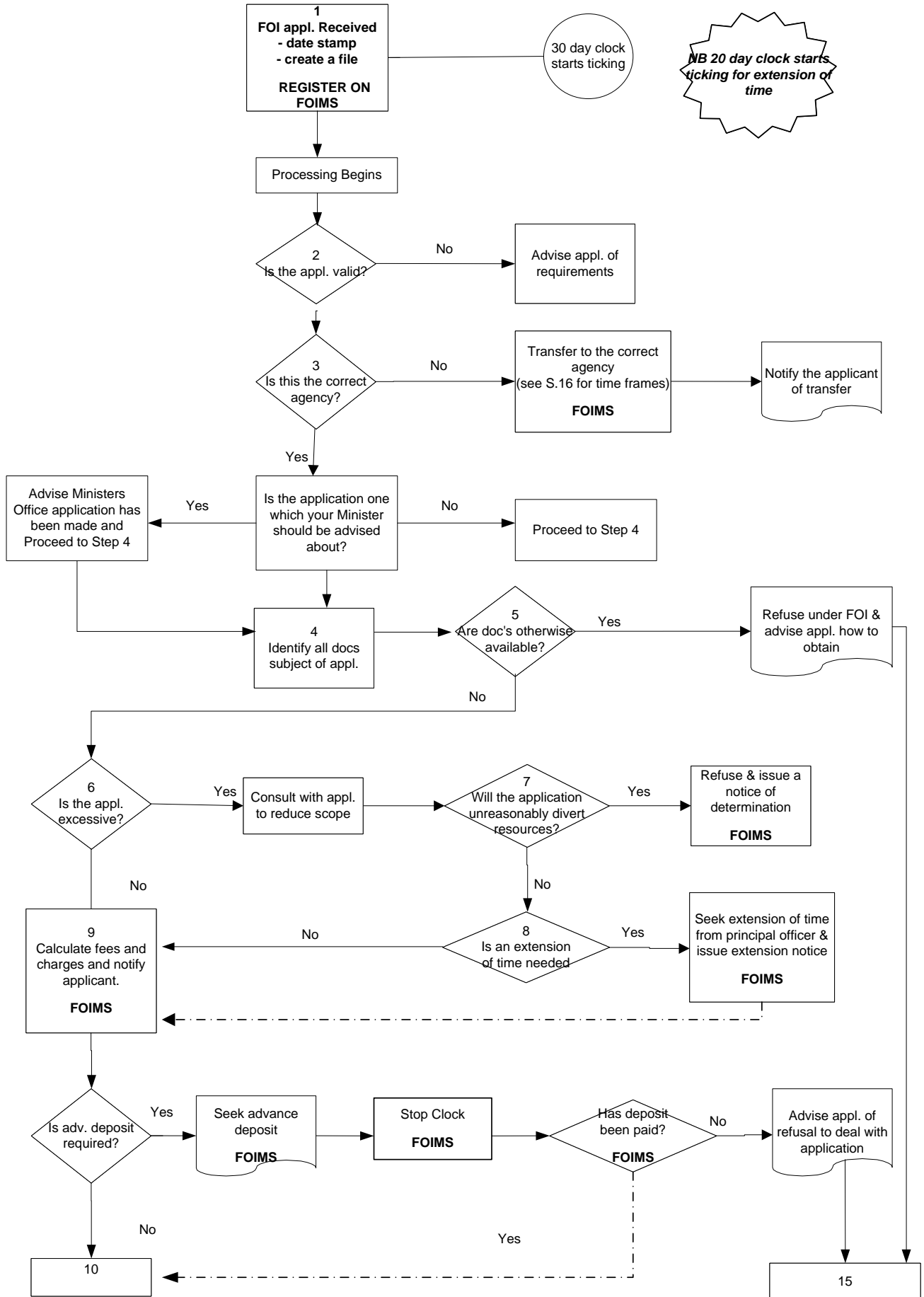
Advising the Minister of the outcome of a particular application should not cause the applicant to receive their determination late.

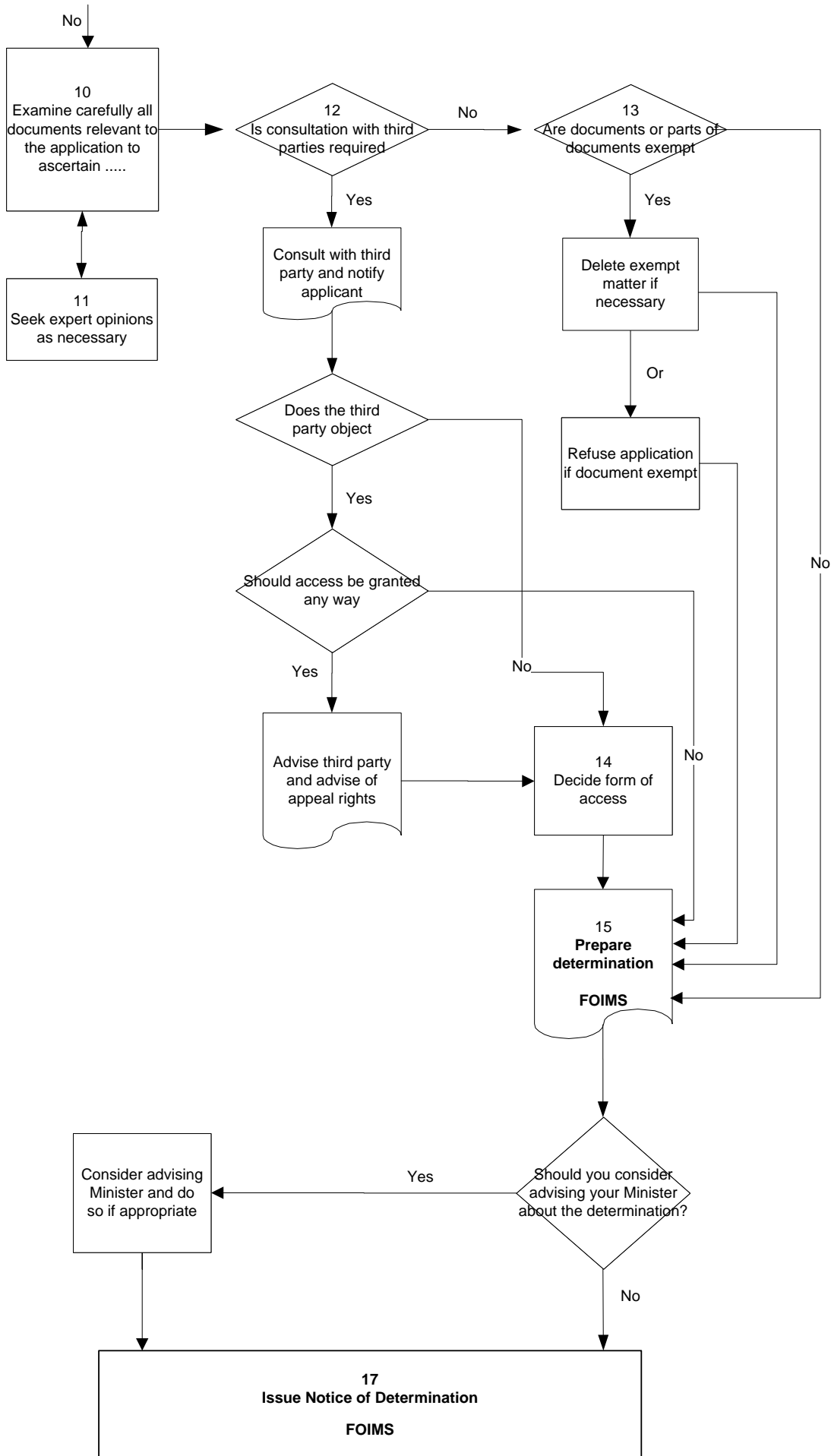
Step 17 Issue Notice of Determination

The final step is the issuing of the Notice of Determination by sending it to the postal address provided by the applicant.

Where a charge for access is required to be paid, you can wait until the charge is paid in full before providing access to the documents.

FOI Process Map for State Government Agencies Only





FOI Process Map for Local Government and Universities

