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Administrative Release of Information

Guideline

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1. Introduction

The purpose of this Guideline is to provide agencies with general advice regarding the administrative release of government information to the public.

This Guideline forms part of the South Australian Government's Accountable Government Project and the Proactive Disclosure Strategy. This project and strategy aims to make more government information accessible at minimal or no cost to the public.

2. Meaning of 'administrative release'

The term 'administrative release' refers to the release or disclosure of information by an agency, either proactively or as a response to a request, outside of a formal legislative process such as freedom of information (FOI) or agency specific legislation.

For the purposes of this guideline the term 'administrative release of information' does not refer to information required to be released or disclosed by legislation, such as a public register, nor information that is specifically created for public disclosure such as brochures written for the public or publications available for purchase.

3. Authorisation to release information

Before an agency releases information administratively, specific authorisation should be sought from the head of the agency or their delegate. The head of the agency will depend on the type of agency and may include the Chief Executive of a department, director of a board, or presiding officer of a committee.

Authorisation by the head of the agency could be provided through a policy that specifically lists the information authorised for administrative release. Please see the section *Developing an administrative release of information policy* in this guideline.

4. Information that might be appropriate for administrative release

The following types of information might be appropriate for an agency to release through an administrative process. Please note, the types of information below are described in general terms only. Agencies should exercise judgment when assessing the suitability of information for administrative release, taking into consideration all relevant matters. If in doubt, agencies should seek legal advice before releasing information administratively.

Non-personal information in the public interest

Non-personal information that is in the public interest to release to the general public or to a specific person that does not contain confidential or sensitive information.

e.g. providing documents to a company relating to the assessment of that company's unsuccessful tender submission

Non-personal information that can be easily obtained and summarised

A summary of non-personal information that can easily and quickly be prepared by the agency that does not contain confidential or sensitive information.

e.g. a summary of the costs associated with the agency undertaking a particular activity

Non-personal information otherwise available

Non-personal information that is already available to the public in some way but may not be easily accessible by everyone.

e.g. information already published on the agency's website where the person requesting the information does not have internet access

Information that has been classified 'public'

For State Government agencies this would be information that has a security classification of 'public' in accordance with the Government's Information Security Management Framework Standard 19. In addition, information classified at a higher level, for example FOUO (For Official Use Only), may be authorised for public release by an agency head or by agency policy.

Information held in State archives

Information that has been transferred to State Records with a public access determination of 'open' can be accessed by visiting State Records' research centre.

Information with a public access determination of 'closed' can be accessed via State Records if the agency provides written authority to State Records allowing the requester access.

Personal information of the requestor

Personal information of the requestor that does not contain any information of a third party or information that is sensitive or otherwise inappropriate to release.

e.g. providing a copy of a person's x-ray to that person

Employment information of the requestor

Employment information of the requestor who is a current or former employee of the agency that does not contain particularly sensitive information or information of a third party.

e.g. providing performance appraisals, remuneration information, or incident reports involving the employee

5. Information that might not be appropriate for administrative release

Where information is deemed inappropriate for administrative release, an agency might require an FOI application to be made so that the request can be formally assessed.

Examples of when an FOI application may be required include:

- the information is considered sensitive and disclosure will require careful balancing of public interest factors¹;
- releasing the information may constitute a breach of a legislative provision;
- releasing the information may constitute a breach of confidence;
- releasing the information may constitute a breach of legal or parliamentary privilege or Cabinet confidentiality;
- the document contains information about a third party that cannot be redacted easily and/or consultation with a third party is required;
- searching for and retrieving the information would require significant agency resources and the agency may need to consider recovering some of the costs from the requestor;
- the requestor has indicated they wish to have the opportunity, if refused the information, to seek a review of the agency's decision;
- the information has been classified as sensitive and the classification is still relevant, or
- the information relates to national security and has been given a protective security classification of 'Protected' or above (refer to Attachment 2 for a discussion on the Security Classification and Framework).

6. Developing an administrative release of information policy

The risks of inappropriately releasing information can be greatly reduced if the agency has an established policy and/or procedure for the administrative release of information. For this reason agencies are encouraged to develop an administrative release policy and to publish the policy online for the public to read.

Attached to this guideline is a general template for an administrative release of information policy. The template provides a format for the following:

- an introduction to the policy;
- the scope of the policy;
- the title and contact details of the person who authorises the policy and the release of information (this person will be the head of the agency, or their delegate or delegates);

¹ For a discussion of public interest factors, please refer to the *FOI and the Public Interest* guideline published on the State Records website.

- the title and contact details of the person(s) who has the responsibility to deal with requests for information;
- how the information will be released;
- how the information can be requested, for example in writing or verbally;
- details of any time limits associated with releasing or providing access to information;
- details of any fees and charges (see below);
- whether evidence of identity is required before a person can access information;
- the requirement for any internal or external approvals that may need to be sought before releasing information;
- an indication of the types of information that should not be released and how agencies should go about redacting information from documents (if this is required);
- references to legislation or other policies that affect the release of information generally and those specific to the agency; and
- whether there are any avenues for a person to query an agency's decision to release, or not to release, information.

7. Fees and charges

The South Australian Government's Accountable Government Project and Proactive Disclosure Strategy aims to make more government information accessible at minimal or no cost to the public. In most cases, information appropriate for administrative release will not require excessive searching, redaction or consultation and therefore, requiring a fee or charge to be paid will not be necessary.

If an agency chooses to charge a person for administrative release, the agency will need to enter into a contract with the person seeking the information. Such an agreement need not take the form of a formal legal document but could simply be an agreement between the agency and the requestor in the form of a letter, for example.

All charges must be reasonable and justifiable in the circumstances and should be applied consistently. If a person feels aggrieved by the agency's decision to charge and/or by the amount of the fee or charge, they may complain to the Ombudsman under the *Ombudsman Act 1972*.

8. Legislation and policies relevant to release of information

It is important that agencies are aware and maintain an awareness of legislation and policies that provide a process through which access to documents can be requested or which prohibit or restrict release of information.

Attached is a document discussing legislation and policies that need to be kept in mind when an agency is considering releasing information through an administrative process.

9. For more information

The following documents may be of interest when considering the administrative release of information and can be accessed via the State Records website:

- *FOI and the Redaction of Documents* Information Sheet
- *Public Access Determinations* Guideline
- *Whistleblower's Protection Act – Implications for Records Management* Information Sheet

Please contact State Records if you require more information about administrative release of information by email foi@sa.gov.au or by telephone (08) 8204 8786.

Attachment 1 – policy template

Policy Title

e.g. Administrative release of information

1. Introduction

Include an introduction that explains the purpose of the policy.

e.g. This policy provides that certain information held by (insert agency name) has been authorised for administrative release.

For the purpose of this policy, the term ‘administrative release’ refers to the release or disclosure of information, either proactively or as a response to a request, outside of a formal legislative process such as freedom of information (FOI) or other legislation.

2. Authorisation

State who in the agency authorises the policy and the release of information, and include their contact details. You may also wish to describe the authorisation process.

e.g. This policy and the administrative release of information described in paragraph 3 are authorised by (insert head of agency or delegate, and their contact details).

3. Scope

Explain/define who the policy applies to i.e. the whole agency or only parts of the agency, and what information is authorised for release.

You can either be specific or general when describing the information to be released. Note: if general descriptions are used, the policy may not provide sufficient authorisation for release and authorisation from the head of the agency may have to be sought each time the agency decides to release information. If the latter is the preferred approach, the policy should describe the approval process.

4. The process

Include a description of the way each type of information will be released. This may differ depending on the type of information and its current format. If information can be requested by members of the public, include a description of how a person can request access e.g. in writing, over the telephone, front counter etc. and whether there are any time limits for providing access.

Note: you may wish to include these details in a procedure rather than the policy itself.

e.g. The information described in paragraph 3 will be administratively released by publishing the information on the agency’s website (include website address). Information may also be provided to members of the public in the following ways upon written request:

- *Inspection at (insert agency's location); and*
- *Photocopies.*

Written requests for inspection or photocopies should be addressed to (include contact details and agency address) and dealt with within 30 calendar days.

You could also include a description of who in the agency is responsible for publishing information online, dealing with requests for information, undertaking any consultation, redacting documents etc. This detail could be included in a procedure rather than the policy.

5. Fees and charges (if applicable)

If the agency wishes to charge for administrative release where information is provided in ways other than on the agency's website, the agency will need to enter into a contract with each person. This can be an informal agreement in writing e.g. a letter. The policy should describe the process for this.

6. Evidence of identity (if applicable)

If evidence of identity is required before releasing personal information to the requestor, explain the process. State Government agencies may wish to reference the *Information Privacy Principles Instruction*, or *Code of Fair Information Practice*, if appropriate.

7. Consultations / approvals (if applicable)

Include details of who might need to be consulted or liaised with internally or externally before releasing information, and any other approvals that are required.

If the policy relates to the release of submissions received in response to public consultation by the Government, the agency must ensure that potential respondents have the opportunity to request that their submission not be released/made public under this policy.

They should also be advised that, even if they do request that their submission not be released/made public, a request for access to their submission, including any confidential or sensitive information they provide, may be made under the *Freedom of Information Act 1991* and will be determined in accordance with that Act.

8. Unauthorised information

Describe the types of information that are not authorised for administrative release and how the agency will undertake redaction of unauthorised information from documents that will be released (if required).

9. Relevant legislation or policies (if applicable)

Explain any other legislation, policies or principles that may impact on whether authorised information is released. See Attachment 2 to this guideline.

10. Retention of information / archiving / other record management processes

Include a description of how the information being released will be managed and who is responsible for the management of the information.

e.g. Information published online should remain on the agency's website for at least two years, after which they may be removed and archived in accordance with the State Records Act 1997.

11. Rights of review (if applicable)

Explain how a person can query the agency's decision to administratively release, or not release, information.

Attachment 2 – relevant legislation and policies

Freedom of Information Act

The FOI Act gives members of the public a legally enforceable right of access to documents held by government, subject only to restrictions as are consistent with the public interest and the preservation of privacy.

The parts of the FOI Act that agencies may wish to consider when deciding whether to release information administratively include the exemption provisions in Schedule 1 of the Act. These provisions may assist agencies identify reasons why a particular document may not be appropriate for administrative release.

Civil Liability Act and Civil Liability Regulations

Amendments to the *Civil Liability Act 1936* commenced in October 2015 to provide the Crown with immunity from civil liability in respect of the publication by or on behalf of the Crown of information of a kind, or in circumstances, prescribed by regulation.

Part 5 of the *Civil Liability Regulations 2013* prescribe information that attracts immunity as follows:

- information (other than information relating to the personal affairs of a person) contained in a document to which access has been granted pursuant to an application under the *Freedom of Information Act 1991*;
- information contained in a document of a kind to which access would (having regard to any policy document applicable to the relevant agency) be likely to be granted pursuant to an application under the *Freedom of Information Act 1991*;
- information contained in contracts or other documents disclosed pursuant to a policy document;
- information released pursuant to a disclosure policy (however described) that applies to the whole of Government;
- information released in accordance with the Declaration of Open Data;
- information consisting of submissions from members of the public made in the course of consultation undertaken by the Government.

Whilst agencies should be aware that this immunity from civil liability exists, they must ensure that consideration is given to relevant exemptions under Schedule 1 to the FOI Act and also potential defamation, breach of confidentiality or legislative provisions, during the development of their administrative release policies.

State Records Act

The *State Records Act 1997* (the SR Act) gives State Records a range of functions and powers to manage and conserve official records held by government departments, statutory authorities and local government in South Australia.

Section 26 of the SR Act provides for public access to records in the custody of State Records. Official records remain the responsibility of the agency that created them, even

after they are physically transferred to State Records, and so a responsible agency may, in consultation with State Records, determine that there should be a restriction on public access to the record.

Members of the public do not need to make an application under the FOI Act (or any other Act) to access archived records that have an 'open' access determination made by the responsible agency. However where a member of the public is seeking access to a 'closed' record, the agency may choose to require the requestor to make a request under the FOI Act, or may authorise State Records to provide access via a research centre. It is State Records' view that access, in most cases, should be provided through one of its research centres.

Privacy Principles

Information privacy in State Government agencies is regulated through Cabinet Administrative Instruction No. 1 of 1989 called the *Information Privacy Principles Instruction* (the IPPs) issued as Premier and Cabinet Circular No. 12. The IPPs are a set of 10 principles that regulate the way State Government agencies can collect, use, store, and disclose personal information of a natural person, and are similar to other principles in place at a national level. A natural person is considered to be a living person.

These privacy principles do not apply to South Australian local government agencies or universities, who may have developed their own comparable privacy policies.

All State Government agency employees who are involved in the collection and management and handling of personal information have a responsibility to ensure that they manage this information in accordance with the IPPs. Where the disclosure of personal information may constitute a breach of any of the IPPs, that information may not be suitable for administrative release unless it is directly to the individual concerned.

State Government employees that work in the areas of health and communities also need to consider the *Code of Fair Information Practice*. The Code is based on the National Privacy Principles.

Secrecy provisions

Some legislation contains what are known as 'secrecy provisions'. These provisions protect certain information created and collected by an agency or by a particular person from disclosure except in certain specified circumstances. To disclose it otherwise would be an offence under that legislation.

An example of a secrecy provision is section 7 of the *Whistleblower's Protection Act 1993* (the WP Act). Section 7 provides that the identity of a person who makes an appropriate disclosure of public interest information must be kept confidential which means agency officers are prohibited from accessing or releasing information which identifies an informant under the WP Act.

It is important that agencies are aware of secrecy provisions in legislation that could impact on whether documents can be administratively released. To ascertain whether a secrecy provision may apply, it is a good idea that officers seek the views of other staff within their agency that may have expertise in the legislation relevant to the agency's business. Agencies can also seek advice from their Agency Security Adviser.

Security framework and classifications

The South Australian Government has developed the Information Security Management Framework. This document focuses primarily on cyber security, however, there are a number of descriptions of standardised information security classifications that have been developed for government documents and associated assets. The classifications described within the framework may be present on the documents being assessed for administrative release, or present in the records management system of the agency, and can be a useful tool for deciding whether or not administrative release is appropriate. The framework also contains a flow chart which assists in determining if a document could be sensitive or restricted.²

Please be aware that a person can still apply for access to documents under the FOI Act regardless of the classification level.

Copyright Act

The *Copyright Act 1968* provides legal protection for people who express ideas and information in certain forms. The most common forms are writing, visual images, music and moving images.

In limited circumstances, agencies may need to seek permission from the copyright owner to release information, or provide access in another form.

When an employee creates a document as part of their job, the copyright is usually owned by their employer. Also, contractors and consultants to government are often required to relinquish copyright and Intellectual Property rights as part of the terms of their contract. Therefore, copyright may not be an issue when deciding to release copies of documents created by an agency. When information is provided, the agency may wish to draw recipients' attention to relevant Government copyright and conditions of use (see Creative Commons).

More information about copyright legislation can be found from the Australian Copyright Council website www.copyright.org.au.

Creative Commons

The Australian Government's Open Access and Licensing (AusGOAL) Framework provides support and guidance for government agencies to facilitate open access to information held by government. AusGOAL contains a suite of licences, including Creative Commons licences, which communicate the terms under which works can be used.

The licences are applied to government publications, as well as to online information, such as websites and videos. If a document contains one of these licences it may provide assistance in determining whether the document is suitable for administrative release. More information, including the different licences, can be found from the AusGOAL website www.ausgoal.gov.au/.

² Information Security Management Framework - published on the sa.gov.au website see [OCIO Policy, Standards & Guidelines](#) website.