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Premier and Cabinet Circular

**PC045 – Disclosure logs for non-personal information released
through freedom of information**



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Effective from November 2023

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Contents

Purpose statement.....	3
Context	3
Authority and accountability	3
Application	3
Removal of information from a website.....	6
Retention and disposal of information.....	6
Exemptions	6
Monitoring and compliance	7
Distribution and publication.....	7
Document Control.....	7
For more information.....	7
Appendix.....	8

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Purpose statement

Agencies are required to publicly disclose all non-personal information that has been released under the *Freedom of Information Act 1991* (FOI Act) on their website.

A Disclosure Log should exist on an agency's website and list information that has been released through a formal freedom of information (FOI) process, including electronic copies of the documents.

Maintaining disclosure logs enables the community at large to identify and access information that may be of public interest, and supports transparency and accountability of government.

Context

Release of information through disclosure logs will complement *Premier and Cabinet Circular PC 035 – Proactive Disclosure of Regularly Requested Information*.

This policy is intended to operate as a disclosure policy for the purposes of subclause 26(1)(d) of the *Civil Liability Regulations 2013* and any document published pursuant to this policy is intended to be limited to those referred to within subclause 26(1)(a) or (b) of those regulations.

This policy applies to all non-personal FOI applications received from 1 October 2017.

To avoid any doubt, this policy does not apply to applications where the applicant (or their agent) is seeking access to their own personal affairs information. These applications are generally categorised by agencies as 'personal applications' and cannot be disclosed.

Authority and accountability

This policy applies to state government agencies as defined in the FOI Act that:

- are subject to the control and direction of a minister, and
- are an agency or instrumentality of the Crown.

Application

Definitions

Agency – a state government agency as per the definition of agency in the FOI Act; that is subject to the control and direction of a minister; and is an agency or instrumentality of the Crown.

Agent – a lawyer or some other person acting on behalf of an individual/FOI applicant where that individual has given authority for this to occur.

Exempt document – refer to Section 4 of the FOI Act.

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Notice of Determination – the formal notice provided to an FOI applicant advising of the outcome of their application. Refer to Section 23 of the FOI Act.

Personal Affairs – refer to section 4 and clause 6 of Schedule 1 of the FOI Act.

Personal Applications – applications where an individual (or their agent) is seeking to access personal affairs information about themselves.

The Disclosure Log

Agencies must make information and documents that have already been disclosed to a FOI applicant available on their websites if they:

- are not related to the personal affairs of an individual
- could not be claimed as exempt documents/material pursuant to Schedule 1 of the FOI Act, when being publicly released
- could not be considered defamatory or a breach of confidentiality or reasonably be anticipated to cause harm to a person, including the name of the applicant.

An agency disclosure log should be easily accessible on the agency's website and should include:

- the date of the Notice of Determination
- an agency reference
- a summary of the application
- where possible, a copy of, or a link to, the documents that were released, including the Notice of Determination (with personal information of the applicant redacted)
- if documents (or links to documents) cannot be provided, advice about how to access the documents
- agency contact details for further information.

An assessment checklist is included at Attachment 1 to assist agencies determine whether a specific application or document/information within an application should be included in the agency disclosure log.

Each agency has discretion on how they publish this information on their website. An example layout is included in Attachment 2 to guide agencies.

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Timing for publication

Agencies should update their disclosure logs as soon as possible after the giving of access and in any case within 90 days of the determination being made, subject to any objections raised.

Advice of possible publication and objections

Agencies receiving non-personal FOI applications should advise the applicant that details of their application may be published in the agency disclosure log, if access is provided. This advice should be included in the agency's letter of acknowledgement and Notice of Determination.

Where an agency is consulting with a third party in accordance with Sections 25-28 of the FOI Act, the agency should include information in its consultation letter to advise that, in addition to possible release to the applicant, the information may also be included in the agency's disclosure log.

If an applicant or third party disagrees with the publication, agencies must work with the applicant or third party, using the agency's dispute resolution policy, to resolve the matter.

Information must not be included in the disclosure log until the dispute is resolved.

Redaction of information

Before documents in the disclosure log are published, agencies must ensure that all exempt information has been redacted.

It may be necessary for further redactions to be undertaken prior to publication of the disclosure log. This could include the redaction of specific information relating to the applicant's business affairs or agency employee names and contact information that, whilst able to be released to the applicant, may be exempt or an unreasonable disclosure when released to the wider community.

In most circumstances agencies will provide access to documents in electronic form. Agencies must ensure that, where redactions have been made to an electronic document, they cannot be reversed/undone using technology once the document is publicly released. Refer to FOI and the Redaction of Information on the State Records of South Australia website for further information.

Charging for access

There is no charge to the public to access information under this policy unless the agency is requested to provide repeated access to the same person in a way other than online for example providing photocopies or copies on a USB.

If an agency charges a person for repeatedly requesting information in another way, the agency must enter into a contract with the individual and only charge the reasonable costs of supplying the information for example photocopy costs.

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Exemptions from application of this policy

From time to time agencies may determine that an application should not be included on an agency's disclosure log. The chief executive of an agency has the authority to exercise discretion in individual cases. Authorised documentation for the exemption must be created and maintained by the agency as evidence to support the decision not to publish.

Removal of information from a website

Information should remain on the agency's website for at least one year unless it is removed to provide more current information. When removed it must be dealt with as per the *retention and disposal of information* section of this policy. Following removal, the following information should be published on the website:

- details of how it can still be accessed
- the format it can be accessed
- how long it will be available for access (dependant on the records retention)
- contact details of a responsible officer or business unit within the agency.

Retention and disposal of information

Where the information to be published is a copy of an official record already maintained by the agency, the information published can be retained and disposed of in accordance with Normal Administrative Practice. The official record being held in the agency will be retained and disposed of in line with the appropriate approved disposal schedule issued under the *State Records Act 1997*.

If the information to be published is altered enough to be considered a new record (such as it differs greatly from the official record), then the published information must, together with the original official record, be retained and disposed of in accordance with the appropriate approved disposal schedule issued under the *State Records Act 1997*.

Exemptions

Clause 26 of the *Civil Liability Regulations 2013* prescribes, amongst others, the following classes of information, the publication of which by the Crown will attract the immunity from civil liability granted by section 75A of the *Civil Liability Act 1936*:

- 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 FOI Act
- 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 FOI Act

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- Information released pursuant to a disclosure policy (however described) that applies to the whole of government.

All agencies should:

- give individual consideration to the content of any documents proposed to be published pursuant to this policy
- consider whether additional redactions should be made prior to inclusion of the document in the disclosure log
- remove information which is otherwise prevented by law from being published which is potentially defamatory, which has been received in confidence, or the publication of which might otherwise reasonably be anticipated to cause harm to a person.

This is provided for in the assessment checklist at Attachment 1.

Monitoring and compliance

The publication of government information online must comply with *Premier and Cabinet Circular 30 - Protective Security in the Government of South Australia* and the Information Classification System (ICS). The ICS requires agencies to label information with a security marking arising from a risk-based classification process. These markings will help to determine how information is managed and released to the public. Agencies should seek advice from their Agency Security Advisor where appropriate.

Distribution and publication

This circular will be published on the Department of the Premier and Cabinet and State Records of South Australia websites.

A fact sheet is available on the State Records website to support agencies in interpreting and implementing this circular.

State Records will write to agency chief executives when this circular is amended or updated.

Document Control

Review number: 3
Review date: November 2023

Next review date: April 2026

For more information

State Records of South Australia, Attorney-General's Department
T: (08) 7322 7077

E: staterecords@sa.gov.au
W: archives.sa.gov.au/managing-information/freedom-of-information-south-australia/agency-foi-reporting-and-requirements/disclosure-logs-pc045

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Appendix

Assessment Checklist

Attachment 1

Premier and Cabinet Circular PC 045

Disclosure Logs for Non-Personal Information Released through Freedom of Information

While it may be appropriate for an agency to release documents to an FOI applicant, these same documents may be exempt if the agency was considering releasing them to the wider community. This checklist has been developed to assist agencies to determine whether applications and documents should be included in an agency's disclosure log and/or whether redactions need to be undertaken prior to publication in the disclosure log.

Does the application request the personal affairs information of the applicant?	Yes	No
<i>If YES, no further action is required as you should not include the application in the disclosure log. If you answered NO, proceed to the next question.</i>		
Did the agency determine to provide access in full or part to documents as part of this application?	Yes	No
<i>If you answered NO, no further action is required as nothing can be included in the disclosure log. If you answered YES to this question, the application may need to be included in the disclosure log. Please proceed to the next questions.</i>		
Has the applicant been provided access?	Yes	No
Has the applicant or a third party advised that they disagree with publication?	Yes	No
<i>Applications cannot be included in the disclosure log until the applicant has been provided with access and any dispute about publication is resolved. If the applicant has been provided access and there is no dispute about publication, proceed to the next set of questions.</i>		
Is there any information which is prevented by law from being published?	Yes	No
Is there any information which if published would be an unreasonable exposure of personal affairs or business affairs information?	Yes	No
Is there any information that may be defamatory?	Yes	No
Is there any information that was received in confidence from a third party?	Yes	No
Is there any content that would allow information received in confidence from a third party to be identified?	Yes	No
Could any harm come from the publication of the names and contact information of agency employees?	Yes	No

If you answered YES to any of these questions, the information must be redacted from the documents before they are published in the disclosure log. If you answered NO to all of these questions you can publish in the disclosure log.

Example Layout

Attachment 2

Premier and Cabinet Circular PC 045 Disclosure Logs for Non-Personal Information Released through Freedom of Information

Date of Determination	Agency Reference	Application Summary	Copy of/Link to Document (or advice about how to access document)	Agency Contact Details
31 October 2017	<i>SRSA99/2017</i>	<i>All documents the agency holds regarding the introduction of Peregrine Falcons to the CBD</i>	<i>PDF or link to location of PDF The Peregrine Falcon model can be viewed in the office. Contact the Agency FOI Unit to arrange a viewing time.</i>	<i>Agency FOI Unit phone 555 7777</i>



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