

Premier and Cabinet Circular

**PC 031 – DISCLOSURE OF CABINET DOCUMENTS 10 YEARS OR
OLDER**



Effective from June 2019

Contents

1	Introduction	3
2	Commencement	3
3	Scope	3
4	Definitions	4
5	Policy	4
	• Proactive disclosure of Cabinet documents	4
	• Ten Year Rule	4
	• FOI exemption clauses	5
6	Publishing Cabinet documents on a government website	5
7	Disclosure other than on a government website	5
8	Removal of Cabinet documents from a government website	5
9	The FOI application process	5
10	FOI applications made to agencies other than DPC	6
11	Consultation with third parties	6
	• Proactive disclosure of Cabinet documents	6
	• Ten Year Rule	6
12	Liaison with other government agencies	7
	• Proactive disclosure of Cabinet documents	7
	• Ten Year Rule	7
13	Fees and charges	7
	• Proactive disclosure of Cabinet documents	7
	• Ten Year Rule	7
14	Cabinet convention	8
	Document Control	8
	For more information	8

1 Introduction

- 1.1 This circular sets out the Government's policy in regard to the:
- proactive disclosure of selected Cabinet documents 10 years or older; and
 - disclosure of certain Cabinet documents under the *Freedom of Information Act 1991* (the FOI Act) after 10 years rather than the 20 years currently provided for in the Act. This is known as "the Ten Year Rule."
- 1.2 The objects of the FOI Act are to promote openness and accountability of Ministers and the Government and, amongst other things, facilitate effective participation of members of the public in government decision making.
- 1.3 Most governments, based on the Westminster system, have a class exemption for Cabinet documents in their Freedom of information laws. This Cabinet exemption supports the rationale that information prepared for Cabinet should be kept secret to generate full and frank discussion and decision making. This ensures Cabinet decisions are not undermined and protects Cabinet confidentiality and the collective responsibility of Cabinet.
- 1.4 The Cabinet exemption in the FOI Act currently does not apply to Cabinet documents 20 years or older. In 2009 Cabinet decided it did not want to claim the Cabinet exemption over certain types of Cabinet documents that are 10 to 20 years old. This Cabinet decision was given effect through the issuing of this circular which is now amended to also allow for the proactive disclosure of selected Cabinet documents.
- 1.5 By introducing the Ten Year Rule policy and extending it to allow the publication of selected Cabinet documents proactively, Cabinet recognises that disclosing information of interest or benefit to the public online, or through FOI, supports a broader Government commitment to improving transparency of government. This in turn can contribute to better engagement by citizens in government decision making and policy development.

2 Commencement

- 2.1 This policy, as amended, comes into effect on 1 January 2013.

3 Scope

- 3.1 This policy will apply to all agencies as defined by the FOI Act to the extent that a Premier and Cabinet Circular can apply to those agencies.

4 Definitions

Cabinet document

For the purposes of this policy, a Cabinet document is defined as a:

- Cabinet submission;
- Cabinet note;
- Cabinet agenda, or
- Attachment to any of the above documents

that has been submitted to Cabinet, including the Sub-Committee or another committee of Cabinet, whether it has been considered by Cabinet or not.

It should be noted that this definition is more restrictive than the documents included in the exemption in Clause 1 of Schedule 1 to the FOI Act. Cabinet documents within the scope of clause 1 that are not covered by the definition above should not be released unless certified by a Minister under clause 1(2a).

5 Policy

- **Proactive disclosure of Cabinet documents**

5.1 This policy provides that a Cabinet document can be proactively disclosed to the public if 10 years have passed since the end of the calendar year in which it came into existence and:

- the Cabinet document has been specifically selected by the Minister responsible for the FOI Act in consultation with Cabinet and DPC for publication on a government website; or
- the Cabinet document has previously been released under the FOI Act and/or the Ten Year Rule and assessed by DPC for publication on a government website.

5.2 DPC is responsible for publishing Cabinet documents that fall within the scope of this policy that have been selected and assessed for publication on a government website.

- **Ten Year Rule**

5.3 This policy also provides that a Cabinet document can be considered for release, through the FOI process, if 10 years have passed since the end of the calendar year in which it came into existence.

5.4 DPC is assigned as the agency to deal with all FOI applications under the Ten Year Rule. DPC will process the FOI applications in accordance with the FOI Act with particular regard for this policy.

- **FOI exemption clauses**

- 5.5 When deciding whether to disclose a Cabinet document under the FOI Act and the Ten Year Rule, regard must be given to the provisions of the FOI Act, including other exemption clauses in Schedule 1 to the FOI Act.
- 5.6 Regard must also be given to the other exemption clauses in Schedule 1 to the FOI Act when deciding whether to proactively disclose selected Cabinet documents as if the FOI Act applied to proactive disclosure.
- 5.7 Consideration of other exemption clauses may result in a Cabinet document (or parts thereof) concerning matters such as law enforcement, public safety, trade secrets, personal information or legal professional privilege, being exempt from disclosure.

6 Publishing Cabinet documents on a government website

- 6.1 Cabinet documents selected to be proactively published online should be published in such a way as to allow easy and ready access to the document and should conform to the Web Content Accessibility Guidelines (WCAG) 2.0.

7 Disclosure other than on a government website

- 7.1 For members of the public that are unable to download Cabinet documents online, details about how the document can be otherwise accessed, for example, available in hard copy, inspection or via email must be clearly stated on the government website.

8 Removal of Cabinet documents from a government website

- 8.1 Cabinet documents proactively published online should remain on the website for at least two years, after which they may be removed and archived in accordance with the *State Records Act 1997*. When a Cabinet document is removed, details of how it can continue to be accessed, and for how long it can be accessed, should be published on the website, together with the contact details of a responsible officer or business unit in DPC.

9 The FOI application process

- 9.1 A person can apply for access to documents held by an agency under section 13 of the FOI Act.
- 9.2 Cabinet Office in DPC holds copies of all Cabinet documents submitted to Cabinet unless they have been transferred to State Records.

- 9.3 An FOI application for access to a Cabinet document, where this policy applies, should be addressed directly to DPC. An application form specific for this purpose is available on the State Records website at www.archives.sa.gov.au.
- 9.4 Applicants are encouraged to use the Ten Year Rule application form in either the hard copy or electronic format provided. An applicant is not limited to how many application forms can be submitted.
- 9.5 A person making an application must include, on the application form, sufficient information to identify the specific Cabinet document. To assist the applicant find that information, lists of all Cabinet submissions relevant to this Ten Year Rule will be made available on www.sa.gov.au.
- 9.6 If more than the 30 day statutory time limit is required to process an FOI application, the DPC Accredited FOI Officer should seek an extension to the time limit from the principal officer, in accordance with section 14A of the FOI.

10 FOI applications made to agencies other than DPC

- 10.1 Where an FOI application for Cabinet documents under the Ten Year Rule is made directly to an agency other than DPC, the agency should transfer the application to DPC in accordance with section 16(1)(a) of the FOI Act.
- 10.2 All transfers must be dealt with as soon as possible after an application has been received.

11 Consultation with third parties

- **Proactive disclosure of Cabinet documents**

- 11.1 Consultation with relevant third parties must occur if the Cabinet document selected for publication contains information of the type described in sections 25 to 28 of the FOI Act. That is, documents affecting inter-governmental or local governmental relations; documents affecting personal affairs; documents affecting business affairs; and documents affecting the conduct of research. Formal consultation under the FOI Act is not necessary to undertake since the proactive disclosure of Cabinet documents is not subject to the Act.

- **Ten Year Rule**

- 11.2 The consultation provisions in sections 25 to 28 of the FOI Act must be applied where the Cabinet document is requested under Ten Year Rule and contains information of the type described in these sections, that is documents affecting inter-governmental or local governmental relations;

documents affecting personal affairs; documents affecting business affairs; and documents affecting the conduct of research.

- 11.3 Third parties consulted under these sections of the FOI Act must be provided advice on their rights of review and appeal where the DPC Accredited FOI Officer determines that access to the Cabinet document can be granted to the FOI applicant.

12 Liaison with other government agencies

- **Proactive disclosure of Cabinet documents**

- 12.1 Prior to proactively publishing a Cabinet document online, liaison must occur with the Minister who signed the Cabinet document (provided they are still a current Cabinet Minister) and the agency that prepared the Cabinet document to gain their views on any relevant considerations. Ministers and agencies must respond promptly to ensure that publication of the document occurs without unreasonable delay.

- **Ten Year Rule**

- 12.2 The DPC Accredited FOI Officer must liaise with the agency that prepared the Cabinet document to gain its views on any relevant considerations. Agencies must respond promptly to DPC to ensure access to documents can be determined without unreasonable delays.
- 12.3 If appropriate, a copy of the information determined to be released should be provided to the agency two working days prior to release.

13 Fees and charges

- **Proactive disclosure of Cabinet documents**

- 13.1 Access to Cabinet documents proactively disclosed under this policy is free of charge unless an agency is requested to provide repeated access to information to the same person in a way other than publishing the information on a government website, for example providing photocopies or a copy on a disc.
- 13.2 If the agency decides to charge a person for repeatedly requesting information to be provided in a different way, the agency must apply the same charges as those prescribed under the Freedom of Information (Fees and Charges) Regulations. The provisions under the FOI Act and Regulations relating to fee waiver, reduction or remission must also be applied.

- **Ten Year Rule**

- 13.3 Section 53 of the FOI Act allows an agency to waive, reduce or remit a fee or charge in circumstances other than those provided for in the

Freedom of Information (Fees and Charges) Regulations, at its discretion.

14 Cabinet convention

- 14.1 There is a convention that access by a current Government to Cabinet documents of a previous government of a different political party is refused and access given only to enable clarification of policy matters or for continuity of administration.
- 14.2 Where access is to be provided to a Cabinet document of a previous government under this policy the Opposition should, as a courtesy, be advised at least two days prior to releasing documents prepared by their administration.

Document Control

Review number: 1
Review date: June 2019

Date of approval: June 2020
Next review date: June 2021

For more information

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