

Freedom of Information

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Purpose

The purpose of this Procedure is to:

- provide information for members of the public to effectively exercise their rights under the Victorian *Freedom of Information Act 1982* (the FOI Act) in relation to documents in Health Purchasing Victoria's (HPV) possession; and
- to provide direction to HPV to ensure compliance with the FOI Act.

This procedure outlines the types of documents which may be released and those which might be exempt under the FOI Act, as well as procedures for processing FOI requests. This procedure applies to HPV and all the documents in its possession.

Details of the policy statement to support the application of the Freedom of Information Procedure is referenced within the Legislative Compliance Policy. This procedure is designed to be read in conjunction with the policy.

Procedure

FOI Applications

Requirements for valid application

For a FOI request to be valid, the request must:

- be in writing and be accompanied by the FOI application fee;
- provide sufficient information to enable HPV to identify the requested documents;
- give an Australian address to which notices can be sent;
- not be ambiguous; and
- be sent or delivered to the address of HPV.

Where an applicant wishes to make a request but has not complied with the above requirements, HPV is obliged to take reasonable steps to assist the applicant to make a request in a manner that complies with the requirements under the FOI Act.

HPV is not permitted to refuse access on the ground that the request does not comply with the above requirements, without first giving the applicant a reasonable opportunity of consultation with HPV with a view to making a valid request.

1. Documents and information covered

Documents generally in HPV's possession

HPV has in its possession documents relating to its corporate governance, and documents relating to its statutory functions, including procurement activities. Below is an indicative list, which is not intended to be a comprehensive list, of all types of documents in HPV's possession.

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The following documents relate to HPV's corporate governance:

- internal administration documents relating to staff management and HPV's organisation and operation, including personnel records, organisational and staffing records, financial and resource management records, audit records, internal operating policies and procedures, Requests for Tender, instructions and indexes;
- departmental and general correspondence and papers;
- agreements, memoranda of understanding and contracts between HPV and other bodies and organisations;
- records of meetings both internal to HPV and with external stakeholders, including agendas and minutes;
- agenda papers and minutes of Board and Committee meetings; and
- financial reports, expenditure estimates and expenditure reports.

The following documents relate to HPV's statutory functions:

- policy documents;
- recommendations and decisions;
- documents relating to notifications in relation to health services;
- legal documents, including legislation, instruments of delegation, legal advices and court documents;
- requests for information under the FOI Act and files and papers relevant to the consideration of those requests;
- standard operating policies and procedures;
- correspondence with government and non-government parties;
- statistics and databases;
- documents submitted by third parties;
- training materials; and
- supplier lists.

In addition, a number of HPV documents can be accessed at www.hpv.org.au without lodging a FOI request.

Documents available on the websites include:

- tenders and contracts;
- Victorian Product Catalogue;
- procurement policies; and
- recall information.

2. Refusal of access

Unreasonable diversion of resources

Under section 25A of the FOI Act, HPV may refuse to grant access to documents in accordance with the request, without processing the request, if HPV is satisfied that the work involved in processing the request would substantially and unreasonably divert HPV's resources from its other operations.

To comply with the section, HPV must estimate the resources required to process the request (including the people who have the expertise necessary to process the request, and the amount of time required of each person to process the request), and the impact that this drain of resources would have on HPV at this point in time (including the number of people who assist in processing FOI requests, the total number of FOI requests per year, and the total FOI budget, if any is specified).

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HPV should consider (amongst other things) the resources that would have to be used in:

- identifying the documents that fall within the ambit of the request;
- examining each of the documents to determine their exempt status;
- consulting with third parties where necessary;
- making copies or edited copies of the documents; and
- notifying the person requesting access of HPV's interim and final decisions.

If HPV does decide to refuse to grant access to the documents under section 25A, HPV is required to give the person requesting access a written notice stating its intention to refuse access. The notice should also identify an officer with whom the person may consult so that the request might be made in a form that would remove the ground for refusal. HPV must then give the person a reasonable opportunity to consult with the relevant officer, and provide the person with any information that would assist him or her in making the request in an acceptable form.

3. Exemptions

Deletion of exempt or irrelevant material

Section 25 of the FOI Act permits HPV to delete or redact information from a document within the scope of an applicant's request, where that information is exempt from disclosure (as it falls within one or more of the exemptions above), or is irrelevant to the applicant's request. In those circumstances, the applicant must be provided with a copy of the requested document with such redacted or deleted information, provided the following three conditions are met:

- to grant access would disclose information that is exempt from disclosure, or would reasonably be regarded as irrelevant to the request;
- it is practicable for HPV to grant access to a copy of the document with the exempt or irrelevant material deleted; and
- it appears from the request or the applicant subsequently indicates that they wish to have access to such a copy of the document.

When access is granted as above, the applicant must be notified that they have been provided with a copy of a document with redacted or deleted information.

HPV will consider its requirements under Section 31A in considering if documents are exempt that relate to an IBAC matter.

4. Process upon receipt of FOI Request

A flow chart depicting the FOI request process is contained in **Attachment 2**.

4.1. Application Form

Where possible the standard application form should be completed by the applicant. See **Attachment 1**. Note that the FOI Act does not require an applicant to use this form to submit a valid FOI request.

4.2. Forward all requests to the FOI Officer

The FOI request should be emailed to foi@hpv.org.au, or sent to the FOI Officer. The Director Finance, Risk and Governance assumes the role of the FOI Officer at HPV. The contact details of the FOI Officer are included under 'Contact details' at the end of this procedure.

The request should then be processed in accordance with the following procedure:

Acknowledge receipt of request

The first step is to check whether the applicant's request is a valid request, and if so, acknowledge the receipt of the applicant's request in writing.

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If the applicant's request is not valid, the applicant should be notified in writing that the request does not comply with the requirements. As indicated above, HPV has a duty to assist an applicant in making a request which complies with the requirements under the FOI Act. The time frame for making a decision about an FOI request, as set out below, does not begin to run if the request is not valid.

If the applicant has made a request to HPV which should have been directed to another agency, HPV should assist the applicant to direct their request to the appropriate agency.

Transfer of the request

HPV may transfer the request to another agency if:

- the document is not in the possession of HPV but is in the possession of another agency; or
- the subject-matter of the document is more closely connected with the functions of another agency than with those of HPV.

If HPV determines to transfer the request, it must do so promptly and inform the applicant of the decision to transfer the request. The request is considered to have been made to the second agency at the time the request is transferred or 14 days after the date of the original request to HPV (whichever period is shorter).

Initiate search for relevant documents

Once the applicant of a valid request has been notified that their request has been received, the request should be forwarded to the relevant person or department so that a thorough and diligent search for all relevant documents can be undertaken.

These documents should then be gathered and forwarded to the FOI Officer.

Requests involving computers

The FOI Act does not generally require HPV to create a document that is not already in existence as of the date of the request. However, if HPV is able to produce a written document containing the information subject of the request by the use of a computer (i.e. running a report), then HPV is required to produce such a document and provide it to the applicant (subject to the exemptions stated in the FOI Act).

Consult if necessary

It is then necessary to consider whether any of the grounds for refusal of access are relevant to the document sought. See **section 2** above for further details on situations where access can be refused and the types of documents which are exempt.

Decision to be made by authorised person

A decision must be made by an authorised person, being the FOI Officer, to either grant access or refuse access.

If a request is refused, the applicant must be notified in writing of the decision. This notice must set out the reasons for the refusal of access (see below).

If a request is *granted*, the applicant must be provided access to the documents sought in accordance with **section 7** below.

Reasons to be given for refusal of access

If the decision is made to refuse access, reasons for the refusal must be given to the applicant by way of notice in writing.

The notice must:

- state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision;
- state the name and position of the person giving the decision;

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- inform the applicant or his/her right to apply for a review of the decision, the authority to which the application for review should be made, and the time within which the application for review must be made.

In providing reasons, the applicant should also be given a list and description of all the documents identified, and a list and description of the documents to which access has been refused providing with the reasons for the refusal of *each* document.

Where access given with the deletion of exempt matters

If access is given to an applicant but with exempt matters deleted from the documents, the above notice must be provided to the applicant and it must also state that the document is a copy of a document from which the exempt matter has been deleted.

Where refusal on grounds of internal working document

Where a request for access is refused on the grounds that the document is an internal working document, (section 30) the notice must also state the public interest considerations on which the decision is based.

Where refusal on grounds that the document does not exist or cannot be found

If HPV determines that the documents sought do not exist or, after a thorough and diligent search, they cannot be found, HPV must also notify the applicant of their right to complain to the Information Commissioner.

Third party consultation

HPV is required to consult third parties when considering if an exemption in Section 29, 29A, 31, 31A, 33, 34 or 35 applies. If HPV decides to release the documents under Section 33, 34 or 35, HPV will notify the third party that objected to disclosure, of their rights to seek review of their decision by VCAT.

Document filing and management

All FOI requests received are to be filed on the Finance, Risk and Governance protected folder on the shared drive, with each application to be recorded as a separate folder.

All correspondence and details of information requests including the assessment of appropriateness of documents are to be stored within the relevant folder.

In addition, the annual data collection reporting requirement to the Information Commissioner will also be filed in a separate folder to allow for a review of completeness.

4.3. Time within which requests to be decided

HPV must take all reasonable steps to ensure that an applicant is notified of a decision on a request as *soon as practicable*, but no later than 30 days after the request is received (unless the applicant agrees to extend the timeframe). Note also that if HPV determines that a deposit is payable on account of the access charge, the request is only considered to have been made on the day on which the applicant has paid the deposit.

HPV may extend the period for deciding a request if consultation is required under Section 29, 29A, 31, 31A, 33, 34 or 35, by a period of not more than 15 days, alternatively by not more than 30 days as agreed by the applicant.

4.4. Costs

Waiver of application fee where it would cause hardship to applicant

HPV may waive or reduce the application fee if this would cause hardship for the applicant. Whether or not payment of the application fee will cause hardship to an applicant must be judged on a case-by-case basis. Generally, if the applicant can produce evidence that they are receiving social security payments of some kind, this will be sufficient evidence that payment of the application fee would cause hardship to the individual (for example, a health care card, concession card, or evidence of unemployment).

Other types of evidence might include:

- bank statements;

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- whether the person has any dependents (e.g. partner, children); and
- if the person has a partner, whether the partner is in the workforce.

Additional costs (as at 1 July 2015 – N.B. most charges (other than copying) are calculated on Fee Units, which are updated on 1 July each year)

In addition to the application fee, HPV is entitled to charge an applicant the following costs involved in processing their FOI request:

- \$22.22 per hour or part of an hour for search time;
- \$5.55 per ¼ hour for access to documents via the inspection of the documents under supervision;
- 20 cents per A4 page for photocopying; and
- other reasonable costs, for:
 - colour photocopying;
 - providing a written transcript;
 - making arrangements to hear or view sound or visual image; and
 - providing a written document from information contained on a computer.

If, in the opinion of HPV, a charge may exceed \$50 HPV must notify the applicant of this and ask the applicant whether they still wish to proceed with the request. In such a request, HPV must inform the applicant that the applicant will be required to pay a deposit on account of the charge. The deposit the applicant will be required to pay is:

- \$25 if the charge does not exceed \$100; or
- 50% of the charge if the amount of the charge exceeds \$100.

Such a notice must also:

- state the name and position of the person who calculated the charge (the FOI Officer);
- inform the applicant of:
 - his/her right to apply for a review of the charge;
 - the authority to which the application for review should be made; and
 - the time within which the application for review must be made (there is no time specified in the Act or Regulations, however 28 days is recommended as it reflects the time frames for review applications to the Information Commissioner).

If requested to do so by the applicant, HPV must discuss with the applicant practicable alternatives for altering the request or reducing the anticipated charge, including reduction of the charge if the applicant shall waive, either conditionally or unconditionally, the need for HPV to comply with the 30 day deadline imposed under the FOI Act.

Note that a charge is limited to the time spent in conducting a routine search and does not cover additional time, if any, spent in searching for a document that is lost or misplaced. Furthermore, HPV cannot charge for examining a document to determine whether it contains an exempt matter, or in deleting an exempt matter from a document.

HPV must waive the charges for the reasonable costs incurred in supplying copies of documents, in making arrangements for viewing documents, in providing a written transcript, or in providing a written document if the applicant does not have the money to pay and the request relates to the personal affairs of the applicant.

In addition, under the FOI Act, charges other than those for copying or creating a document from a computer record shall not be made if the applicant's intended use is of general public interest or benefit, the applicant is a Victorian state MP or if the document sought contains information regarding the personal affairs of the applicant (such as the applicant's health information).

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HPV must not require an applicant to pay a charge before HPV has notified the applicant of the decision to grant access to a document.

If a charge is payable and a deposit is sought, then the time for processing the request stops until the deposit is paid (or waived). The 30 day period for making a decision starts again when a deposit is received.

Access to documents should not be granted until charges have been received. A recommended approach is to send the decision letter to the applicant with a request for the charges to be paid and then send out the documents sought once the charges have been paid.

4.5. Right of Review

An important part of the Freedom of Information scheme governed by the FOI Act is the ability for applicants to seek a review of an FOI decision or to complain to the Information Commissioner about their dealings with an agency.

However, the right to seek a review with the Information Commissioner only arises where the decision of the agency is made by an officer (an employee) who is not the "Principal Officer" of the agency. In relation to agencies such as HPV, the principal officer is generally considered to be the CEO.

If a decision regarding an FOI request is made by the CEO of HPV it is unlikely the applicant will have a right of review with the Information Commissioner and any appeal must be heard by the Victorian Civil and Administrative Tribunal (VCAT). This has the potential to significantly increase costs for the applicant and HPV.

At HPV, FOI decisions are made by an FOI Officer appointed to that role by HPV. The FOI Officer should be the signatory of any decision letter.

At HPV FOI decisions are not made by the CEO unless the CEO has specifically decided to make the decision in a particular case.

5. Forms of access

If a request for access to documents is granted, access may be provided by HPV in any one or more of the following ways:

- inspection of documents;
- copy of documents;
- an internet site, as established by the Minister for that purpose;
- hearing sounds or viewing images (e.g. listening to an audio recording or viewing films/pictures);
- written transcript;
- computer print-out; or
- providing a copy of document with exempt matters deleted.

When access in a particular form may be refused

Where an applicant has requested access in a particular form, HPV must provide access in that form except where the form of access requested:

- would interfere unreasonably with the operations of HPV;
- would be detrimental to the preservation of the document, or having regard to the physical nature of the document, would not be appropriate; or
- would involve an infringement of copyright.

6. Review of decisions

Review by the Information Commissioner

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Under section 49A of the FOI Act, an applicant may within 28 days of receiving notice of the decision to refuse access apply to the Information Commissioner for a review of the decision. This is not the case where the decision was made by the CEO of HPV (see section below dealing with applications to VCAT).

The Information Commissioner must give each party a reasonable opportunity to make written submissions in relation to the review.

The Information Commissioner may make preliminary enquiries and consult with HPV for the purposes of the review. HPV must assist the Information Commissioner to undertake the review.

The Information Commissioner is required to review the decision within 30 days of the application being received.

The Information Commissioner has powers under section 49KA of the FOI Act to request HPV to search further for documents. The Information Commissioner may only use these powers where the Information Commissioner reasonably believes that HPV has failed to undertake an adequate search for documents that relate to a decision that is the subject of a review under sections 49A to 49P.

During the review, the Information Commissioner may give notice to HPV to:

- process or identify a reasonable sample of the documents to which the request relates; or
- undertake a further search for documents in HPV's possession, custody or control.

HPV must comply with a requirement of the Information Commissioner within the reasonable period stated in the notice, being not less than 10 business days. HPV may request the time for complying with a notice to be extended.

After reviewing the decision, under section 49P of the FOI Act the Information Commissioner must make a fresh decision on the original application for access to documents.

The Information Commissioner must give HPV and the applicant written notice of the fresh decision and the reasons for it, and inform HPV and the applicant of their right to apply to VCAT for review.

A decision by the Information Commissioner requiring HPV to release a document referred to in section 33, 34 or 35 will not take effect until 60 days after notice of the decision is given, or if an application is made to VCAT within that 60 day period, until a decision is made by VCAT.

A decision by the Information Commissioner requiring HPV to release any other document or a document to the extent that it does not include information of a kind referred to in section 33, 34 or 35 will not take effect until 14 days after notice of the decision is given, or if an application is made to VCAT within that 14 day period, until a decision is made by VCAT.

Referral back to HPV for fresh decision

The Information Commissioner may, with the agreement of the applicant, refer the matter back to HPV for reconsideration and to make a fresh decision. HPV can also do this on its own accord.

The fresh decision must be made within 45 days of the referral, unless agreed otherwise by the Information Commissioner and HPV.

HPV must notify the Information Commissioner within 3 business days after the end of the 45 day period (or other agreed period) that a fresh decision has been made, or has not been made.

If HPV makes a fresh decision, it must revoke its earlier decision. Where the applicant agrees with the fresh decision, the Information Commissioner will dismiss the review.

Where the applicant does not agree with the fresh decision, or HPV does not make a fresh decision within 45 days (or other agreed period) of receiving the referral, the Information Commissioner will recommence the review

HPV may also make a fresh decision without a referral while a review by the Information Commissioner is taking place under section 49M of the FOI Act. In this circumstance, HPV must notify the Information Commissioner in writing of that fresh decision. Where the applicant agrees with the fresh decision, the

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Information Commissioner will dismiss the review. Where the applicant does not agree with the fresh decision, the Information Commissioner will complete the review.

HPV may make a fresh decision under section 49M of the FOI Act only once while the Information Commissioner is undertaking a review of the original decision.

The Information Commissioner may also facilitate a negotiated agreement between HPV and the applicant, and may refer the matter to a 'relevant authority', such as the Auditor-General, the Chief Commissioner of Police, or the Privacy Commissioner.

Victorian Civil and Administrative Tribunal (VCAT)

An applicant can apply to VCAT for the review of certain types of decisions, including:

- a decision of the CEO of HPV refusing to grant the applicant access to a document;
- a decision of the Information Commissioner refusing to grant the applicant access to a document;
- a decision of the Information Commissioner deferring the provision of access to a document;
- a decision relating to fees charged, if the Information Commissioner certifies that the matter is of sufficient importance for VCAT to consider;
- a decision to disclose a document containing information relating to the personal affairs of a person;
- a decision not to amend a record.

Unless the original decision refusing to grant the applicant access to a document is made by the CEO of HPV, an applicant cannot apply to VCAT for a review of a decision until the Information Commissioner has made a decision on review refusing access to a document.

HPV or the applicant can apply to VCAT for the review of a relevant decision, but must do so within 14 days of receiving notice of the decision, as per Section 52(9)

Once HPV or the applicant has filed an application for review, VCAT will notify the other party of the application and set a date for a directions hearing.

At the hearing, VCAT conducts a review of the merits of the decision. As such, it is making a fresh decision. VCAT can order access to the exempt documents if it is in the public interest.

7. Professional Standards

Section 6W of the FOI Act requires that the CEO of HPV and any employee or officer of HPV concerned in the operation of the FOI Act must comply with professional standards in performing the employee's or officer's functions under the FOI Act. In addition, the CEO of HPV must ensure that any officer or employee of HPV is informed about the requirements of and complies with the professional standards.

The Freedom of Information Professional Standards have been published and are available at:

<https://ovic.vic.gov.au/freedom-of-information/professional-standards/>

FOI Enquiries at HPV

FOI Officer Contact Details:

Post: C/- FOI Officer, Health Purchasing Victoria, Level 34, 2 Lonsdale Street, Melbourne, 3000

Email: foi@hpv.org.au

Related Documentation

- POL140 Legislative Compliance Policy

PROCEDURE

Attachment 1

Standard Application Form

Health Purchasing Victoria

FREEDOM OF INFORMATION REQUEST FORM

DETAILS OF APPLICANT

Name:

Address:

Post Code: Phone A/H:..... B/H:.....

DETAILS OF REQUEST

I want access to the following documents:

.....
.....
.....

FORM OF ACCESS:

I request a copy of the documents: YES / NO

I request to inspect the documents: YES / NO

I request registered post: (extra \$[insert amount]): YES / NO

DECLARATION:

I understand that charges may be made in respect of this request, and that I will be supplied with a statement of charges if appropriate.

Signature.....Date:.....

Name (Please Print):

Pension Card details (to be filled in only by staff member):

Staff Name (Please Print):

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Attachment 2

Freedom of Information Request Process

