

2025

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**THE JOURNEY TO PRO-DISCLOSURE: STATUTORY REVIEW OF THE FREEDOM OF INFORMATION
ACT 2016 (ACT)**

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September 2025**

The journey to pro-disclosure: Statutory Review of the Freedom of Information Act 2016 (ACT)

27 August 2025

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We acknowledge the Ngunnawal people as the traditional custodians of the land where we work and live, and recognise any other people or families with connection to the lands of the ACT and region. We celebrate the stories, culture and traditions of Aboriginal and Torres Strait Islander Elders of all communities who also work and live on this land.

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Glossary

Term/Acronym	Definition
Access application	A request made by a person for access to government information under s 30 of the FOI Act. Commonly referred to as an 'FOI request' or 'information request'.
ACTGS	ACT Government Solicitor (ACT Government)
ACTHD	The former Health Directorate (ACT Government)
ACTPS	ACT Public Service
CMTEDD	Chief Minister, Treasury and Economic Development Directorate (ACT Government)
CSD	The former Community Services Directorate (ACT Government)
DFV	Domestic and family violence
EPSDD	The former Environment, Planning and Sustainable Development Directorate (ACT Government)
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 2016</i> (ACT)
FOI team	Combination of appointed information officers and support staff in each agency's FOI function.
iCBR	Infrastructure Canberra (ACT Government)
Information officers	Refers to staff who are appointed as an 'information officer' for the purpose of the FOI Act (see section 18 and the FOI Act dictionary).
JACS	Justice and Community Safety Directorate (ACT Government)
Line areas	Refers to teams within agencies that conduct tasks unrelated to FOI operations. These teams may need to work with FOI teams to provide information that may be relevant to an access application
OAIS	Open Access Information Scheme
Portal	Refers to the OAIS portal website
TCCS	The former Transport Canberra and City Services (ACT Government)
TRO	Territory Records Office (ACT Government)
WhoG	Whole-of-Government

Executive Summary

This independent statutory review of the *Freedom of Information Act 2016* (ACT) ('FOI Act') was commissioned by the Justice and Community Safety Directorate (JACS) to assess the FOI Act's operation, pursuant to the (now expired) section 110 of the FOI Act.

Proximity Advisory Services was appointed as the independent reviewer. The review was conducted by a team of five multi-disciplinary advisors with expertise in freedom of information law and practice, legislative development and reform, and stakeholder engagement. Over the course of 12 weeks, Proximity consulted with 52 stakeholders, from ACT Government agencies including senior executives and FOI teams, ACT statutory bodies, the ACT Ombudsman, and community stakeholders to understand the operation of the current FOI Act.

Findings in this report are structured according to the Terms of Reference to which they relate.

21 recommendations have been made to give better effect to the FOI Act's pro-disclosure objectives. The core themes of these recommendations are:

- **Leadership and culture:** Building on the momentum of a strong pro-disclosure cultural core originating in FOI teams, executives within the ACT Government and the ACT Ombudsman can play larger roles in cultural change across the broader ACT Government. Recommendations and initiatives that fit into this category may lack external visibility, but they support the successful implementation of the remaining initiatives.
- **Resourcing and skilling:** Access requests are increasing in volume and complexity, impacting both FOI teams and line areas. Nuanced consideration of complex legislative tests by FOI specialists and non-specialists alike can lend itself to reverting to what is comfortable – in some instances this is not consistent with the pro-disclosure objectives of the FOI Act. Recommendations under this theme focus on building the capability of the ACT Government across both FOI processing teams and line areas to better give effect to the FOI Act's pro-disclosure objectives and increase comfort levels across government with releasing information.
- **Open access and proactive disclosure:** Closely linked with capability uplift, these recommendations aim to increase proactive disclosure and provide an accessible means to engage with government information outside of the access application process. Proactive publication of commonly sought information is the next step in determining whether there is a correlation between proactive provision of information and reduced burden on the access application element of the FOI framework.
- **Legislative change:** While the FOI Act is in very significant respects now framed to support pro-disclosure, recommendations under this theme aim to reduce remaining identified hinderances to pro-disclosure.

Recommendations are intended to provide shorter-term 'quick wins' and longer-term programs of work, to enable a response that is cognisant of the current and anticipated future financial constraints on the ACT Government. A summary of the observations, recommendations and initiatives is on the following page.

The review finds in Chapter 2 that the ACT's FOI system is broadly achieving its objectives, with strong legislative framing, a committed FOI processing culture, supportive executive leadership, timely decision-making, and robust independence in FOI functions. However, the review identifies areas for improvement, including the complexity of the public interest test, limited pro-disclosure culture beyond FOI teams, and ongoing challenges in resourcing and capability development. The following recommendations are made:

- **Recommendation 1:** Continue to foster inter-directorate relationships between FOI processing teams to promote knowledge sharing and a unified approach to FOI practice.
- **Recommendation 2:** Support and enhance leadership to further develop the ACT Government's pro-disclosure culture.
- **Recommendation 3:** Simplify interpretation of the public interest test.
- **Recommendation 4:** Improve accessibility and utility of existing FOI training materials.

Chapter 3 provides a summary of the ACT's access application profile. In 2023–24, the ACT received 1,351 FOI access applications—continuing a four-year upward trend, with the Education Directorate experiencing a near doubling of requests since 2021–22. Most applications came from individuals, followed by legal representatives, Members of the Legislative Assembly (MLAs), and media. Applications are increasingly broad in scope, requiring significant rescoping by FOI officers. The ACT recorded the lowest rate of full or partial access grants and one of the highest refusal rates nationally, though this may reflect reporting differences. Data inconsistencies across directorates also limit whole-of-government analysis and planning. The following recommendation is made:

- **Recommendation 5:** Establish a centralised FOI function to undertake analysis of access application data to inform government-wide planning, resourcing, training and proactive disclosure approaches.

In Chapter 4, the review analyses the ACT's fee charging arrangements. The ACT Government rarely charges fees for FOI access applications, reflecting the FOI Act's pro-disclosure objectives. However, this practice has led to confusion among agencies and applicants regarding when waivers apply. The current fee model—based on page count—is ineffective, administratively burdensome, and misaligned with actual processing effort. Agencies report that the cost of calculating and collecting fees often exceeds the fees themselves, and there are significant equity concerns about introducing financial barriers to accessing government information. It recommends:

- **Recommendation 6:** Amend the FOI Act to remove the fee charging mechanism in section 104.

Chapter 5 assesses the effectiveness and efficiency of the Open Access Information Scheme (OAIS). The One Government website has significantly improved public access to government information, making the Open Access Information portal largely redundant. Agencies struggle to maintain accurate and up-to-date content on the portal, risking non-compliance with OAIS requirements. The absence of a clearly defined leadership role for proactive disclosure has limited the scheme's effectiveness and its integration into broader pro-disclosure efforts. Additionally, directorates are not actively using their powers to declare additional information as open access, and OAIS activities are treated as continuous improvement rather than core business, resulting in inconsistent implementation and limited capacity to meet statutory obligations. Corresponding recommendations are:

- **Recommendation 7:** Ensure the role of centralised executive leadership and FOI policy team extends to proactive disclosure and OAIS mechanisms under the FOI Act.
- **Recommendation 8:** Decommission the Open Access Information portal.
- **Recommendation 9:** Pilot mandatory publication undertakings.
- **Recommendation 10:** Clearly and explicitly identify OAIS activities that are required under the FOI Act and ensure they are resourced as such.

Chapter 6 looks at the role of the ACT Ombudsman in the FOI scheme. The ACT Ombudsman plays a vital role in independently reviewing FOI decisions, with nearly half of formal reviews in 2023–24 resulting in varied or substituted outcomes—demonstrating its importance in upholding access rights. However, only 18% of reviews met the statutory 30-day timeframe, with most taking over 12 weeks, due in part to the absence of a statutory extension mechanism. While FOI officers generally report positive working relationships with the Ombudsman, many find the FOI guidelines outdated, hard to access, and lacking practical utility. Additionally, some FOI teams do not treat Ombudsman decisions as persuasive precedent in an administrative (not legally binding) sense, leading to inconsistent application of principles across agencies. In light of these insights, the following recommendations are made:

- **Recommendation 11:** Implement regular reviews of FOI Guidelines.
- **Recommendation 12:** Increase resourcing of both FOI processing teams and funds allocated to the ACT Ombudsman to enable more timely and accurate decision-making in the first instance and in full merits review.
- **Recommendation 13:** Amend the FOI Act to include a mechanism for the ACT Ombudsman to extend the review period, with appropriate notification considerations for the applicant and other party to the review.
- **Recommendation 14:** Establish methods for regularly communicating and training FOI processing officers and information officers on ACT Ombudsman decisions and the principles they create for consideration in future decisions.

Finally, Chapter 7 explores issues that could further improve the efficiency and efficacy of the FOI system. Informal release mechanisms (administrative access) are underused, with agencies lacking clear guidance on when and how to apply them. Personal information requests dominate workloads but may be better managed under the *Information Privacy Act 2014*, while care records and workplace grievances require tailored frameworks due to their sensitivity. Current FOI provisions may not adequately protect against psychological harm or systems abuse in domestic and family violence (DFV) contexts, and should be considered in progressing DFV reforms. Agencies also face challenges managing vexatious or abusive applicants, with staff wellbeing impacted and statutory protections unclear. While full centralisation is not recommended, there is strong support for establishing a centralised FOI policy team to lead training, data analysis, and continuous improvement across government.

- **Recommendation 15:** Undertake a coordinated approach to WhoG and agency-specific administrative access arrangements.
- **Recommendation 16:** Develop a separate information release framework to support the management and complexities of care-related records.
- **Recommendation 17:** Develop and publish guidance on FOI and workplace grievance matters.
- **Recommendation 18:** Continue to progress important DFV reforms with explicit consideration given to elements of the FOI framework's adequacy noting CSD's identified issues.

- **Recommendation 19:** Develop guidance on the interpretation of 'vexatious' under section 43 of the FOI Act.
- **Recommendation 20:** Amend section 43 or create a new section in the FOI Act to enable the designation of an applicant as vexatious.
- **Recommendation 21:** Establish a centralised FOI policy team that provides a 'strategic core' for the ACT's FOI framework.

Chapter 1: Introduction and background information

This chapter provides background information on the statutory review, the FOI Act, the history of the FOI Act, its objectives and provisions supporting pro-disclosure.

This review

Purpose

This independent statutory review of the operation of the *Freedom of Information Act 2016* (ACT) (the 'FOI Act') has been commissioned by the Justice and Community Safety directorate (JACS) on behalf of the ACT Government. This is the first review since amendments were made to the FOI Act in 2023 through the *Freedom of Information Amendment Act 2023* to streamline administrative requirements, while maintaining the transparency and accountability mechanisms of the FOI Act. This review is conducted pursuant to the (now expired) section 110 of the FOI Act, which required an independent statutory review of the Act to be conducted after the end of the fifth year of its operation.

This review is guided by six terms of reference focused on providing insights into whether the FOI Act is best achieving its objectives, and opportunities for improvement in its provisions and the operating environment within the ACT Government information access system. In summary, the terms of reference for this review are:

- Whether the operation of the FOI Act is achieving its objectives (Chapter 2)
- Analysis of FOI requests made under the FOI Act (Chapter 3)
- Whether current fee charging arrangements are appropriate (Chapter 4)
- Whether the Open Access Information Scheme (OAIS) is effective and efficient (Chapter 5)
- Whether the role of the ACT Ombudsman is effective (Chapter 6)
- Other opportunities to improve the FOI scheme (Chapter 7)

Detailed terms of reference are provided in **Annex A** of this report.

Reviewer

This review was completed by Proximity Advisory Services Pty Ltd ('Proximity'). Proximity is a professional services firm that provides consulting, commercial and legal services. The Proximity review team is made up of freedom of information experts, legal policy and legislative reform specialists, and stakeholder engagement consultants. A summary of the review team members is at **Annex B**.

Proximity is a government-focused firm and acts ethically to maintain confidentiality, uphold integrity, protect sensitive information, and effectively manage any actual, perceived, or potential conflicts of interest. Proximity's commitment to these principles is unwavering and forms the foundation of our work with the ACT Government and the broader community.

Approach

The review included desktop research that explored the ACT and other jurisdictions' FOI legislation and administration practices, analysis of information access application data since the FOI Act's commencement in 2018, and literature review of better practice principles for an FOI scheme. Stakeholder engagement was a critical component of the review and is summarised below in **Figure 1** and a list of stakeholders engaged is at **Annex C**. Stakeholders included operational and executive staff responsible for administering the FOI scheme, the ACT Ombudsman and support staff, and community representatives from the community legal and media sectors (in their capacity as access applicants).

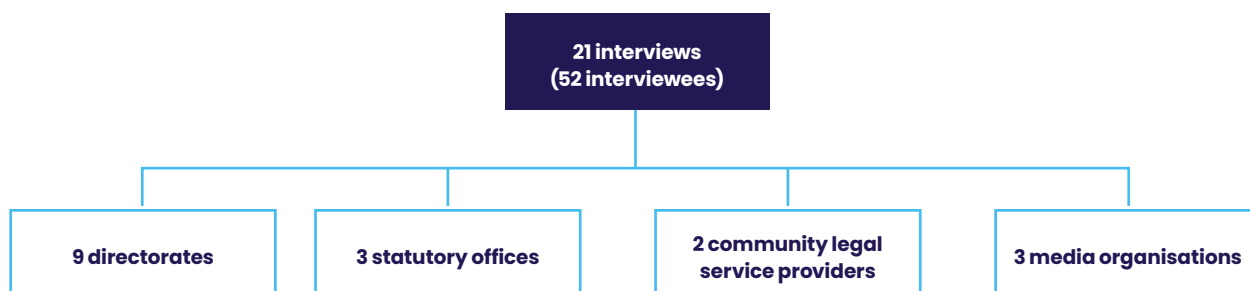


Figure 1: Breakdown of stakeholder engagement

Structure of report and content

Each chapter contains observations garnered throughout the review along with recommendations for the ACT Government's consideration. Each recommendation is categorised and prioritised to assist with implementation considerations such as resourcing.

Context

History of the FOI Act

From old to new

The FOI Act replaced the *Freedom of Information Act 1989* (ACT), which had been in force for nearly three decades. The 1989 Act was originally modelled on the Commonwealth's *Freedom of Information Act 1982* (Cth) and, over time, became increasingly outdated and inadequate in meeting contemporary expectations for transparency and accountability in government. The ACT Government recognised that the existing legislation was amongst the weakest in Australia, with critics such as journalist Jack Waterford describing it as 'possibly the weakest FOI Act in the world'.¹

The FOI Act was introduced to modernise the ACT's approach to freedom of information, drawing inspiration from more progressive models such as the *Queensland Right to Information Act 2009* (Qld) with some 'changes to improve the efficacy of the scheme and further increase the availability of government information'.² The FOI Act was designed to address previous criticisms of the old FOI framework and 'take [the ACT] from the back of the pack to right up the front' by making the ACT 'one of the most open jurisdictions in the country'.³

Key features of the new FOI framework include the establishment of an open information access scheme (OAI) which mandates the proactive publication of certain categories of government information, and the introduction of a public interest test as the primary criterion for determining whether information should be released. Additionally, the new FOI Act attempts to recognise that members of the public seek personal information for various reasons related to their personal circumstances and general interest in public administration.

The FOI Act represents a deliberate and substantial attempt to improve transparency and accountability in the ACT. It aims to transform the territory into one of the most open jurisdictions in Australia by embedding transparency into the fabric of public administration and ensuring that access to information is treated as a right, not a privilege.

The shift towards pro-disclosure

The new FOI Act aimed to improve the transparency of the ACT Government by providing the public with a right of access to government information unless access would, on balance, be contrary to the public interest. The Act is intended to be administered with a pro-disclosure bias, with discretions to be exercised as far as possible in favour of disclosing government information. This principle is embedded in the FOI Act's objectives, which aim to promote open government, enhance public participation, and increase government accountability. Schedule 2 of the FOI Act also codifies a range of public interest factors favouring and limiting public disclosure.

The combination of a bias towards disclosure of government information, and a range of provisions prompting the ACT Government to regularly consider proactive public disclosure of information, has been likened to a 'push model', where information is 'pushed out' by government, and not only 'pulled out' by applicants who submit an access application under the FOI Act.

As will be discussed throughout this report, multiple sources and best practice bodies agree that pro-disclosure is the current best practice. However, the ACT is yet to fully reap the expected practical rewards of pro disclosure, being a reduction in access applications and greater meaningful public access to information. Whilst this is discussed in much more depth in this report, this notion of a continuing journey towards pro-disclosure became clear throughout stakeholder consultations and resulted in inspiration for the title of this report: 'Continuing the Journey to Pro-Disclosure'.

¹ Freedom of Information Bill 2016, Bill Second Reading Speech, Hansard, 5 May 2016, Shane Rattenbury MLA, [page 1639](#).

² FOI Act, [Explanatory Statement](#).

³ Freedom of Information Bill 2016, Bill Second Reading Speech, Hansard, 5 May 2016, Shane Rattenbury MLA, [page 1639](#).

Chapter 2: Alignment with the objects of the FOI Act

The objects of FOI Act provided in section 6 are to:

- a. provide a right of access to government information unless access to the information would, on balance, be contrary to the public interest; and
- b. recognise the importance of public access to government information for the proper working of representative democracy; and
- c. enable the public to participate more effectively in government processes and to promote improved decision-making within government; and
- d. make the people and bodies that are responsible for governing the Territory more accountable to the public; and
- e. ensure that, to the fullest extent possible, government information is freely and publicly available to everyone; and
- f. facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information; and
- g. ensure that personal information held by the Territory is accurate, complete, up-to-date and not misleading.

This chapter provides a broad assessment of the FOI Act against the objects of the Act. This chapter explores a range of topics which are relevant to the objects of the FOI Act including both positive findings and areas for improvement.

An ideal state FOI system

The following list of ideal state FOI system elements has been developed by the reviewer following synthesis of jurisdictional comparison across Australian FOI frameworks, academic literature and reviews of government information access arrangements internally.

Leadership & Culture



Has clear cultural leadership across government, led by a centralised function providing support for teams across government involved in proactive release of information and processing access information.

Is underpinned by a pro-disclosure cultural norm in all areas and functions of government.

Supports and exhibits proactive publishing of accessible, high-value information such as policy documents, contracts, performance data, and decision-making records, without waiting for formal requests.

Is supported by senior executives throughout government and encourages publishing of sensitive information that is in the public interest to be disclosed.

Preserves an arms-length relationship between political and administrative arms of government to avoid political capture, bias and undue influence.

Open Access & Proactive Disclosure



Fully embodies the principle of maximum disclosure where information is presumed to be public unless there is a compelling and legally justified reason for government to withhold it.

Provides access to government information which is equitable, unaffected by administrative prioritisation of, or prejudice towards, access seekers

Favours proactive disclosure and informal disclosure mechanisms wherever possible, and in any case provides for timely access to information.

Protects against inappropriate disclosure but ensures time-sensitive reasons are revisited periodically and disclosed when appropriate.

Makes the “correct and preferable” decision based upon the merits of an application assessed robustly against public interest factors both for and against disclosure.

Resourcing & Skilling



Balances resources across records management, FOI processing, line areas, and review functions to ensure fundamental enabling capabilities (e.g. records management) and subject matter experts (i.e. line area) can support efficient and effective FOI decision-making.

Provides adequate training and support for all government staff, including in fundamental skills such as records management, public servant duties, and in FOI technical matters.

Is supported by ICT investment and functionality to ensure timely and effective access application decision-making.

Legislative Change



Has effective regulatory oversight and review mechanisms that ensures decisions are made correctly, contributes to continuous improvement in access to government information, and provides technical support.

Current state: Elements working well

It is important to recognise at the outset that the ACT FOI system is generally working well. There are many elements of the current system that support and embody the 'ideal state' FOI system described above, at least in part. This is positive, and despite any recommendations of this review for changes and improvements, these positive aspects of the current system should be retained, protected and amplified. Recommendations to change aspects of the system as fundamental to democracy as freedom of information are not made lightly, due primarily to the risk that changes could compromise the existing attributes of the system that is working well.

Therefore, this section aims to highlight important positive findings that were identified throughout the review.

The Act

With the 2023 amendments, the ACT's FOI Act provides a progressive legislative framework to support access to government information. While the review identifies a range of opportunities for minor improvement to the provisions of the FOI Act, existing provisions of the Act clearly and deliberately support pro-disclosure. This also provides a strong basis for focusing the ACT Government's attention on matters within its control in administering the FOI Act that do not require substantive law change to realise benefits.

Directorate FOI representatives

Pro-disclosure culture

A clear theme that emerged from consultations with FOI teams was that staff are hard-working, engaged and proud to work within the FOI system in the ACT. FOI plays a vital role in a healthy democracy and officers' understanding of this and their eagerness to give effect to the FOI Act is positive. This culture is an essential and foundational ingredient for a pro-disclosure culture across the broader ACT Government. This notion of support for the objects of the FOI Act aligns closely with the ideal state described above.

This review recognises all the staff within the FOI system that work hard each day to fulfil the objects of the FOI Act and provide a high-level of service to the public. This recognition is extended to the information officers and team members not specifically consulted.

Stakeholder views shared during the review included:

"under the old FOI Act, directorates tried to provide as little information as possible. I think now, the directorates operate in line with the intentions of the Act."

"I'm proud of our directorate's approach to pro-disclosure."

"[FOI] presents agencies with a good opportunity to tell [their] story."

"ACT [Government] culture is very refreshing ... [in that the ACT] actually wants to release things."

These sentiments of improvements in pro-disclosure and the notion that this change is good are important to support and encourage.

Information officers strive to make high quality decisions

The FOI teams engaged throughout the review expressed that they place a strong focus on supporting good decision-making. Stakeholders conveyed that they understand the importance of providing the public with access to information, and that generally, decision-makers dedicate a great amount of time and effort to making decisions which align with the objects of the FOI Act.

Strong bonds within directorate FOI teams

It was also observed throughout this review, that representatives from directorates operated in a high-trust and collaborative environment. Close-knit teams that offer support, work together and share information help to improve morale, encourage members of the team to work towards a collective goal and can contribute to better decision-making. Internal collaboration was seen to be especially valuable when dealing with complex decisions, external pressures, resourcing constraints, and abusive applicants. This sense of teamwork and unification should be retained within agency teams, and executives should consider efforts to foster similarly strong relationships between FOI teams and line areas, and within line areas with respect to pro-disclosure.

We heard from stakeholders that a weekly FOI coordinators meeting occurs which involves FOI processing officers discussing complex or cross-agency cases and seeking peer advice. We also heard that the associated 'coordinators chat' is widely valued as a practical and accessible space to crowdsource solutions and build relationships across directorates. Stakeholders noted that the informal nature of the group is a strength, allowing for open discussion, including 'silly questions' and fosters a sense of shared purpose across the group. This group has also played a role in shaping FOI policy, helping to inform the 2023 amendments to the FOI Act.

Most operational stakeholders believe more networking and coordination would help to reduce any inconsistency in application of the public interest test across agencies, particularly for information officers working in smaller agencies or in isolation.

These positive elements regarding the culture and performance of directorate FOI processing officers and information officers are encouraging, however the report explores a range of discrete but important issues that can be addressed to further leverage the positive cultural foundation being developed.

Recommendation 1: Continue to foster inter-directorate relationships between FOI processing teams to promote knowledge sharing and a unified approach to FOI practice.

- Maintain existing collaboration opportunities, such as regular cross-directorate FOI meetings and online FOI forums for sharing experiences.
- Encourage FOI processing teams to share lessons learned from other directorates with line areas to inform a unified approach.
- Leverage 'spotlight' sessions for FOI processing officers and information officers to share knowledge in an opt-in forum.
- Develop a formal coordinator role to codify lessons learned into self-service micro-learning materials (see also Recommendation 21).

Theme: Leadership and Culture | Resourcing and Skilling | OAIS and Proactive Disclosure | Legislative Change

Executives empowering FOI teams

Information officers and team members provided that their executives were supportive and enabled them to effectively conduct their roles. Stakeholder views shared during the review included:

"There is good support from leaders ... we have built up a level of trust."

"[Executives] come to bat for us and step in if we're having issues [obtaining information] from a business unit."

"[Our] leadership is very pro-disclosure."

It is positive to observe that in addition to FOI team members, executives support the pro-disclosure objectives of the FOI Act, and that there are strong relationships between FOI functions and their executives. This should be supported and enhanced to ensure pro-disclosure is demonstrated throughout the ACT Government, not just in the FOI functions of each directorate.

Recommendation 2: Support and enhance leadership to further develop the ACT Government's pro-disclosure culture.

- Establish formal centralised senior executive leadership accountability for FOI (at Deputy Director-General level), and subordinate accountabilities (Executive Group Manager and Executive Branch Manager equivalent). The relevant Deputy Director-General would be viewed as the senior leader for FOI within the ACT Government.
- Accountability should be located in a centrally responsible policy agency (see Recommendation 21).
- Senior leader to advocate for increased proactive disclosure and pro-disclosure culture across ACT Government.
- Senior leader to be supported by counterparts across JACS and the broader ACT Government.
- Clarify importance of FOI Act in the preservation of human rights and proactively monitor FOI performance across the ACT Government.

Theme: Leadership and Culture | Resourcing and Skilling | OAIS and Proactive Disclosure | Legislative Change

Decision-making and review

The review found that the FOI scheme provides members of the public with access to information in a low-cost and reasonably timely manner, in most circumstances. Consultations with information officers indicated that where possible, if information was on balance not contrary to the public interest to disclose, it would be released in response to an access application. Further, the Ombudsman review mechanism appears to provide robust scrutiny of information officers' decisions which further supports the public's ability to obtain information where a right to information exists. Independent merits review is an important accountability mechanism that is being used for the right reasons in the ACT.

Independence

Across agencies, information officers generally reported a very strong sense of independence in their decision-making processes, with minimal anecdotal, but no substantive, evidence of undue influence. While there was a perception that disclosure risk may have been previously over-managed, the current environment is seen as more balanced. Officers noted that executive interest in FOI releases is typically limited and appropriately focused. This independence is reflected in the reported confidence FOI teams and information officers have to push back where they disagree with the views of senior executives in relation to an access application.

The presence of the Ombudsman as a review mechanism was also a tool identified by stakeholders that they could use to push back against executives who might disagree on the approach taken to an access decision.

Charging arrangements

In addition to this ability to obtain information, from the perspective of the public, information is generally able to be obtained through the FOI process with no cost. In 2023-24 and 2022-23 no agency reported charging fees for processing an access application.⁴ This strongly supports the objective of the FOI Act to provide access to information in a manner that is low-cost. Fee charging regimes are further discussed in Chapter 4.

Timeliness of decisions

Information is also able to be obtained in a 'timely' manner, in the sense that statutory timeframes are consistently met. In 2023-24, it was reported that 99% of decisions in response to access applications met the statutory timeframes (including statutory extensions of time). While this does not necessarily mean that disclosure is always 'prompt' in the eyes of the requester, being able to obtain information within 30 business days (in most cases) is important to ensure public access and should nevertheless be recognised.

⁴ ACT Ombudsman, [Report on the Freedom of Information Act 2016](#), October 2024, page 24.

The *Freedom of Information Amendment Act 2023* made significant changes to the FOI Act, with a primary goal of improving the efficiency of the FOI scheme, stating in the Bill's explanatory statement:

*"The purpose of the Bill is to ... improve and streamline processing of freedom of information access applications and reviews, and to provide greater flexibility in managing workflows, in order to meet the objectives of the Act more efficiently, for applicants and the broader public."*⁵

Many of the 2023 amendments to the FOI Act focused on improving timeframes to address persistent processing issues. These included:

- aligning and clarifying pauses to processing times
- requiring third parties who object to disclosure to respond more promptly
- encouraging applicants to reply to clarification requests more quickly, and
- setting clearer timeframes for Ombudsman reviews.⁶

Notably, the standard initial processing timeframe was extended from 20 to 30 working days, providing agencies with more realistic time to manage increasingly complex requests. We also reviewed internal operating materials that indicate at least some agencies set their own timeframes for different elements of processing, such as receipting requests, assessing requests for validity, searching for records, and making a decision on access.

This has contributed to the ACT becoming one of the leading jurisdictions in Australia for meeting statutory FOI timeframes (see **Figure 2** below). In 2023–24, 99% of access decisions were made within the statutory timeframe, either within the standard period or under an approved extension. Of those, 83% of decisions were made without any extension, 15% were made within an applicant approved time extension and only 1% required an Ombudsman-approved extension. As noted by the Ombudsman, longer extensions often come from particular agencies, such as the CSD, due to the complexity and sensitivity of the information involved. These extensions are typically granted on the condition that information is released incrementally, which helps balance transparency with practical constraints. This performance is particularly notable given the increasing volume of applications (discussed in Chapter 3), suggesting that while demand is growing, agencies are largely keeping pace. Information about hours worked by FOI processing staff was not available to the review to determine whether existing staffing arrangements are being stretched into overworking in order to keep pace.

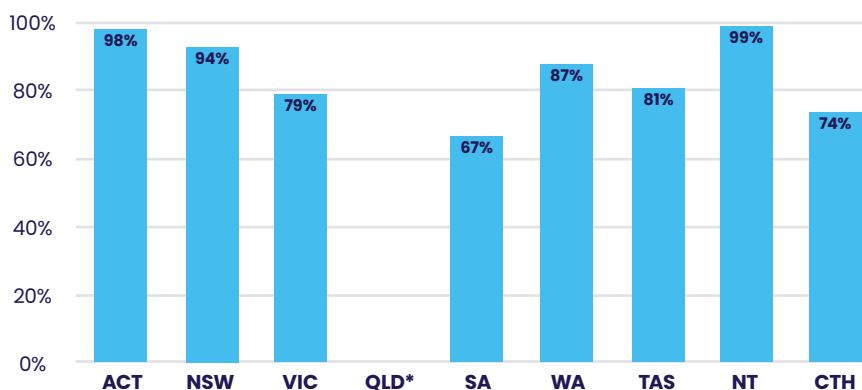


Figure 2: Percentage of all decisions made within the statutory time frame (2022–23)⁷

⁵ [Freedom of Information Amendment Bill 2022 | Bills](#)

⁶ [Freedom of Information Amendment Bill 2022 | Bills](#)

⁷ [OGP_metrics_all_jurisdictions_all_years_June_2024.pdf](#). *Data on the number of decisions made within a jurisdiction's statutory timeframe is not currently available from QLD

Current state: focus areas for improvement

While there are several positive aspects of the current FOI system, there are opportunities for improvement that could propel the ACT to becoming one of the leading pro-disclosure jurisdictions in Australia.

The public interest test and its complexity

The public interest test is a key mechanism of the FOI Act used to determine whether access to certain government-held information should be granted, even when an exemption applies. Overall, the review found that the test is complex to apply and difficulty in its application is exacerbated by a lack of guidance to support accurate application of the test.

The test involves a multi-step process, summarised in Figure 3. The FOI Act's explanatory memorandum provides that balancing the factors in step 3 should not be approached as in equilibrium but instead should be approached as laden in favour of disclosure.⁸

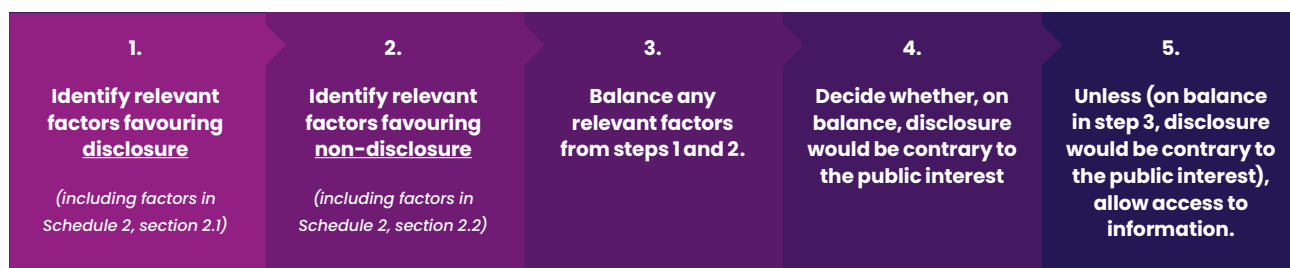


Figure 3: Public interest test process⁹

Throughout consultations, a wide range of stakeholders that interacted frequently with the public interest test noted that the test was complex, difficult to understand, and highly subjective. In consultations with the ACT Ombudsman, it was noted that one of the more frequent reasons for a decision changing on review was that too much weight was given to factors favouring non-disclosure.

Consultations also uncovered that in some agencies, particularly those that frequently received access applications for similar categories of information, FOI processing officers and information officers tended to use a consistent mix of factors favouring disclosure and non-disclosure. Stakeholders expressed that in some cases, as a result of this repeated use of the same mix of factors, FOI teams could tend to disproportionately fall-back upon these factors when making or recommending decisions. As a result, in some cases where factors became very familiar to FOI teams, they were unduly applied to some access applications:

‘sometimes new staff don’t even look at the other factors... they just use the same three over and over’.

Reuse itself is not the problem per se, rather it is reuse without adequate attention paid to whether other factors may apply and warrant a different outcome in a specific case, which was validated anecdotally by stakeholders throughout consultation.

The ACT Ombudsman produced guidelines to assist information officers in applying the FOI Act, including the public interest test. The Freedom of Information (Volume 4–Considering the public interest) Guideline 2023 is designed to aid decision-makers when making an assessment as to whether government information is contrary to the public interest to disclose. Stakeholders referred to ongoing issues applying the public interest test despite this guidance which suggests either the test is too complex for officers, or that the guidance is insufficient, whether because it is outdated, incomplete, inaccessible or for another reason.

⁸ [Explanatory Statement](#), Freedom of Information Bill 2016, page 13.

⁹ FOI Act s 17(1).

Recommendation 3: Simplify interpretation of the public interest test.

- Update the Freedom of Information (Volume 4 – Considering the public interest) Guidelines 2023 to more clearly guide information officers in the proper process for accurately identifying and assessing the relevance and weighting of factors for and against disclosure in each individual case (specifically under Weighing the factors on p. 89).
- Include a requirement that this assessment be lodged on an access decision. Ensure reasons for the decision to include a factor, and weight a factor are captured in this method.
- Centralised FOI policy team to capture data on used and unused Schedule 2 public interest factors to identify opportunities for future streamlining of the FOI Act by removing unused factors. To the extent practically possible, data should also be captured on factors which are frequently used, but not listed in Schedule 2, to inform policy on future additions or guidance.

Theme: Leadership and Culture | **Resourcing and Skilling** | OAIS and Proactive Disclosure | **Legislative Change**

Cultivating a pro-disclosure culture throughout the ACT Government

While some line areas were described by FOI processing officers as highly cooperative and well-versed in FOI obligations, others require intensive support, guidance, and ‘nudging.’ FOI processing officers and executives noted that most line areas are risk-averse, often due to a lack of understanding of FOI legislation, fear of repercussions, or different drivers for action:

“[Line areas] are more fearful, and more emotionally connected to the information.”

“[Line areas] have more fear of repercussions, or they don’t understand the legislation.”

“People get a bit “antsy” or “cagey” when you mention FOI.”

The review found that the positive, pro-disclosure culture fostered in FOI processing teams and their executives is not being reciprocated in line areas and other parts of the ACT Government. Despite a strong relationship management function, FOI processing officers are continually facing hurdles to key issues preventing a broader pro-disclosure culture, evidenced by superficial initial document searches that suggest no, or limited documents exist when an applicant, the FOI processing officer or a senior executive knows that more extensive information is available. Multiple accounts of this behaviour were raised throughout consultation, including by applicants that knew information existed and were only provided it on review by the ACT Ombudsman.

The review identified the key drivers for the ongoing suboptimal FOI culture across the ACT Government are broadly categorised as:

- technical limitations (understanding FOI generally, or a specific request)
- resourcing constraints lending itself to limited consideration of FOI
- lack of regard for FOI and its role in the public service.

Reinforcing that a pro-disclosure culture supports the ACT Government’s Code of Conduct is an important first step to further disseminating the positive culture developed in FOI processing teams into line areas.¹⁰ The review did not identify evidence of this messaging in any materials reviewed.

Figure 4 summarises key elements of the ACTPS Code of Conduct and its relevance to line areas in supporting a culture of pro-disclosure.

¹⁰ It is worth noting that public employees should be aware of and understand the general obligations that arise from the Freedom of Information Act 2016 as well as other legislation: ACTPS Code of Conduct 2022, para 13.

Public Sector Values In demonstrating integrity, public employees: • respond appropriately in difficult situations • do not shirk away from from uncomfortable conversations, • take responsibility and are accountable for their decisions and actions and are consistent when dealing with others, and • engage genuinely with the community and manage the resources entrusted to them honestly and responsibly.	Public Sector Principles • Effective records management underpinning the Best Practice Principle of <i>Accountable and Collaborative</i> (para 26). • Adequate document searches and supporting FOI processing teams underpinning procedural fairness (paras 27-28) afforded an information access applicant	Public Sector Conduct • Public employees have a duty of care to ensure that records are managed in accordance with directorate/ agency obligations under the <i>Territory Records Act 2002</i> (para 45). • Public employees must conduct themselves in an apolitical manner, act objectively and bring a neutral mind to their work (para 46).
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Figure 4: ACTPS Code of Conduct (2022) elements and their relevance to the role of a line area in FOI processing

Sparse resourcing of FOI and related functions

The review identified flow-on effects that current resourcing is having across the ACT Government regarding the FOI system. In some cases, “issues” in the FOI system were symptoms of more deeply rooted problems being tackled by responsible directorates/agencies, such as the Territory Records Office and its ongoing battle to uplift records management capability across the ACT Government.

Whether an issue originating in the FOI system, or a symptom in the FOI system of a broader issue across the ACT Government, resourcing was the key variable that underpinned officers’ ability to resolve an issue. The purposes of resourcing in an FOI scheme are two-fold and closely related:

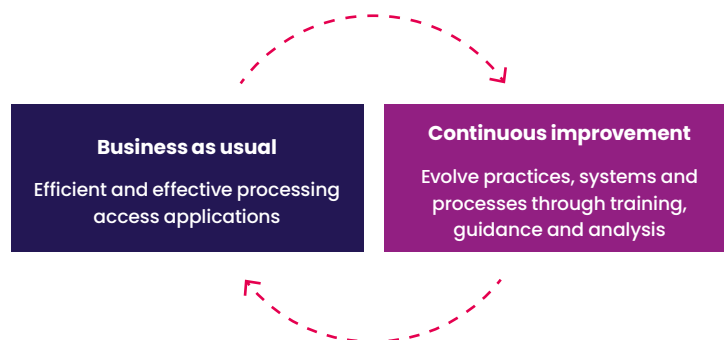


Figure 5: Relationship between FOI functions

Business-as-usual resourcing

Throughout stakeholder engagement, resourcing was raised as a consistent pain point for FOI processing teams. Analysis in Chapter 3 highlights the key cause of this issue – applications are increasingly complex, there are more of them, and there is more information to be reviewed for each application.

As such, while the ‘application profile’ of the ACT Government’s FOI system has incrementally changed, resourcing has not, and in some cases has been wound back through Machinery of Government or other decisions.

Continuous improvement resourcing

FOI processing teams rarely have human resources dedicated to continuous improvement initiatives. Instead, continuous improvement is undertaken in FOI processing officers’ ‘down-time’ when there is a reprieve of information access applications. Inadequate business-as-usual resourcing means that continuous improvement initiatives can never be progressed appropriately, as there is never down-time from processing applications.

This isn't necessarily an issue, if combined with a well-resourced, centralised FOI function that administers 'one-to-many' aspects of the FOI system such as:

- The OAI and portal
- Training and guidance
- Development and updating of templates
- Standardised text for responses (where appropriate), based on ACT Ombudsman guidelines
- Assistance with maintenance, analysis and reporting of data
- Development of FOI processing solutions, including IT solutions.

However, the ACT Government's current approach is to resource FOI functions based only on business-as-usual FOI activities (i.e. survival resourcing) in a decentralised system whereby those same processing officers are responsible for directorate-level continuous improvement initiatives.

This is demonstrated simply in the development and provision of training by FOI processing teams to line areas (to remedy the identified issue of line area capability and culture). **Figure 6** summarises the logical flow resulting from resourcing levels.

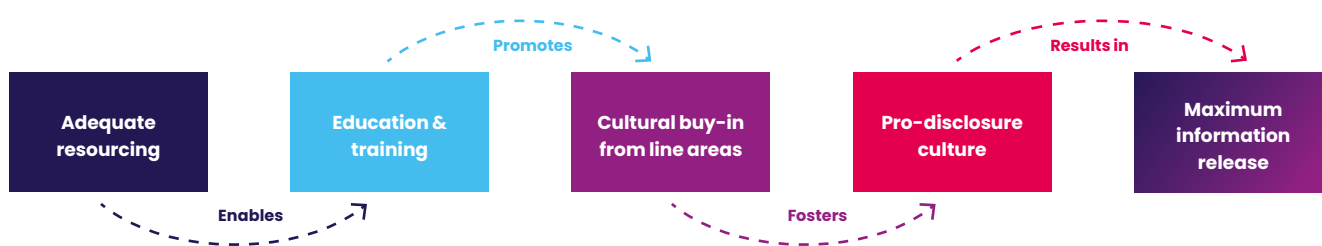


Figure 6: Indirect links between resourcing and maximum information release

Promptness of decisions

The review identified that, despite meeting statutory timeframes for deciding an access application, responses within the statutory timeframes are often not prompt enough for certain stakeholder groups submitting access applications.

Extended processing times can mean FOI is less useful

Throughout consultation community stakeholders acknowledged their right to information through the FOI system but stated that they rarely made use of this right due to the delay in receiving information.

One stakeholder noted that often clients would need to access information about their housing status and decisions made about them and their property. Representatives noted that FOI has previously been used as an effective information pathway, however the increase in time to make decisions has resulted in them pursuing other pathways which provide information more quickly (e.g. through a subpoena). FOI processing officers shared views that a subpoena process seems more appropriate for these information requests, and in some cases access applications have been interpreted as a 'free bite of the cherry' before undertaking formal litigation discovery.

It is worth noting that this potential duplication is appropriate and many FOI systems contemplate information access requests supporting preparation for engaging with the justice system. Through the lens of human rights, an individual's right to receive information can support their right to fair hearing; specifically, the right to adequate facilities and time to prepare a defence or civil action. Access to information is also important in shaping whether a person takes legal action to vindicate their rights and so supports the right to access the courts.

Lack of promptly made decisions can reduce public scrutiny

The vast majority of the public engages directly with the government insofar as they are regulated (e.g. registration and licensing of cars, property transfer) or receive government-supported services (e.g. education, medical). The public rarely reviews cabinet briefs, published reviews and press releases, but instead mainly interacts with “macro” government activities and announcements via third party media reporting.

Freedom of expression places emphasis on the role of media as one of the ways that the broader public exercises their right to receive information. It has been referred to as the cornerstone of democracy.¹¹ This recognition, and the need for the media to have prompt and proactive access to information about public issues is critical to effective public administration and democracy.

This review identified that sometimes due to the time it takes for the media to be provided with the relevant information the public does not have timely access to government information, and in some cases, the media ceases to follow up certain stories at all due to the resources required to escalate access application refusals to the Ombudsman (and to ACAT).

It should be clearly stated that media has multiple methods to obtain information from government, including direct engagement with media and communications teams within the ACT Government, with Ministers’ Office’s, and other informal relationships. Media often relies on the FOI system where there are particular sensitivities that render these avenues ineffective, in essence because they all rely on a willingness of the government or Minister’s Office to release sensitive information.

Media stakeholders noted that although 99% of access decisions are made within the statutory timeframes, this timeframe is not prompt enough to provide the public with the information when it is needed. The misalignment between FOI decision timeframes and the relevant news cycles means that sometimes media outlets will provide information late (and over time may become disincentivised to do so in the future, due to low engagement with these news stories), or where an access request is rejected, media outlets will rarely, if ever, escalate their access application due to the immense amount of time that an Ombudsman review takes. As a result, this means that where information is requested by media outlets, then deemed contrary to the public interest and consequently rejected, the public rarely sees this information.

This issue engages topics far broader than the terms of reference for this review, such as effective accountability and transparency of government in handling sensitive issues through avenues other than the FOI system, but the review does observe that the current FOI system is neither structured nor resourced to meet the needs of media cycles. Altering the FOI system to preference media cycle would likely give rise to fundamental equity and resourcing issues.

Building capability through coordination and training

Training is a critical area for building capability across ACT Government on the FOI system. Stakeholders noted that high-quality FOI decision-making comes from experience and education, and that more structured support would help reduce inconsistency and improve confidence across agencies.

ACTGS has provided training to some directorates since 2018 and has piloted newly developed training material with certain agencies. However a coordinated, WhoG approach to training of FOI processing teams and the broader public service has not materially progressed.

Further, FOI processing officers have indicated that training should not be too risk-averse, or legalistic in nature, suggesting that historic training may have been. Importantly, this training should not be limited to FOI processing officer or information officers alone. Officers reported encountering varying levels of understanding among line areas and executives regarding the purpose and principles of FOI. One stakeholder shared instances of applications that were missed, because they weren’t identified as being FOI applications and passed on to the FOI team in time. This suggests a need for broader awareness training across the ACTPS to ensure all staff understand how to identify an FOI application, and their responsibilities in supporting FOI. This aligns with the recommendations of reviews of similar Australian jurisdictions.

¹¹ For example, at [13] of UN HRC General Comment No. 34.

In designing and implementing the training, it is worth learning from lessons of past efforts to deliver FOI training. One stakeholder summarised the key pain point:

"[I] struggled without having a good information officer training package – gov solicitor was preparing something for us, but it fell into a bit of a heap – was too much for the people involved, need something more practical and targeted."

Stakeholders noted the need for training materials and modes of delivery to be accessible, accounting for the diverse circumstances and linguistic, cultural and educational backgrounds of staff. Training was also an area that stakeholders recognised would benefit from centralisation across the ACT Government, as each agency currently creates their own onboarding training, templates, and guidelines.¹² It was noted that informally, some of this sharing already occurs across agencies, which is particularly beneficial for smaller agencies.

Recommendation 4: Improve accessibility and utility of existing FOI training materials.

- Centralised FOI policy team to coordinate with ACTGS, directorate FOI processing officers, and the ACT Ombudsman.
- Test existing FOI training materials developed by the ACTGS with an FOI processing officer user group and modify to improve accessibility and utility.
- Make recorded training materials available on a WhoG accessible intranet page.
- Make efforts to transfer delivered training sessions into self-service e-Learning modules on key aspects of FOI regime, including topics relevant to line areas (FOI 101, public interest test, etc.)
- Make recorded and self-service training available to non-directorate FOI processing officers and information officers (e.g. ACT Human Rights Commission, ACT Legal Aid, etc.).
- Advocate for inclusion of FOI training in ACTPS onboarding.
- Centralised FOI policy team to monitor ongoing training needs of directorates and update training as required, in coordinate and collaboration with ACTGS.
- Incorporate ACT Ombudsman review decisions and key updates from the ACT Ombudsman into training materials.

Theme: Leadership and Culture | **Resourcing and Skilling** | OAIS and Proactive Disclosure | Legislative Change

¹² To supplement ACTGS-provided ad hoc FOI training and the ACT Ombudsman's guidelines.

Chapter 3: FOI requests and outcomes

This chapter details the analysis of the ACT's FOI requests. This includes an analysis of the quantity, type, size and scope of applications as well as examining who is submitting access applications, and the cost to individuals and organisations to submit applications.

Quantum, types, size and scope of information access applications

Quantum of applications

The ACT Ombudsman prepares a report annually on the operation of the FOI Act.¹³ This includes collecting and reporting on access application data. In the 2023–24 financial year, there were 1,351 access applications received, and 1,064 finalised.¹⁴ The 1,351 applications received was noted as a 4% increase from the previous financial year, and the fourth consecutive increase in a row (see **Figure 7**).¹⁵

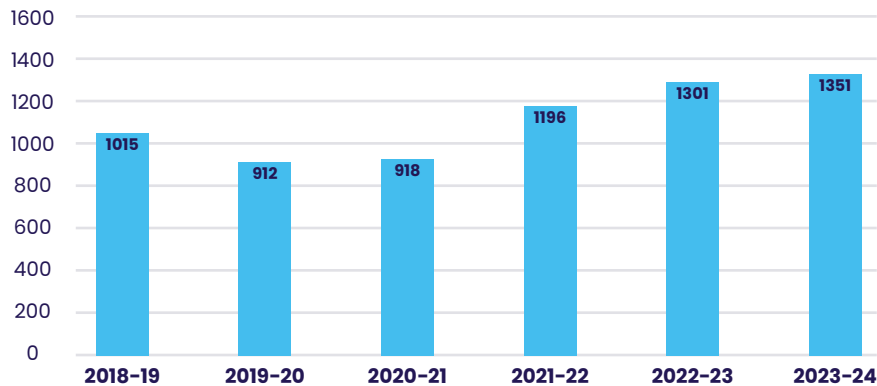


Figure 7: Access applications received by agencies and Ministers (sourced from ACT Ombudsman Annual Report)¹⁶

This increase has occurred mostly uniformly across the agencies, apart from Education which saw a near double of applications between 2021–22 and 2023–24 (see **Figure 8**).¹⁷ There has been a 50% increase in public requests from 2016–17 to 2021–22.

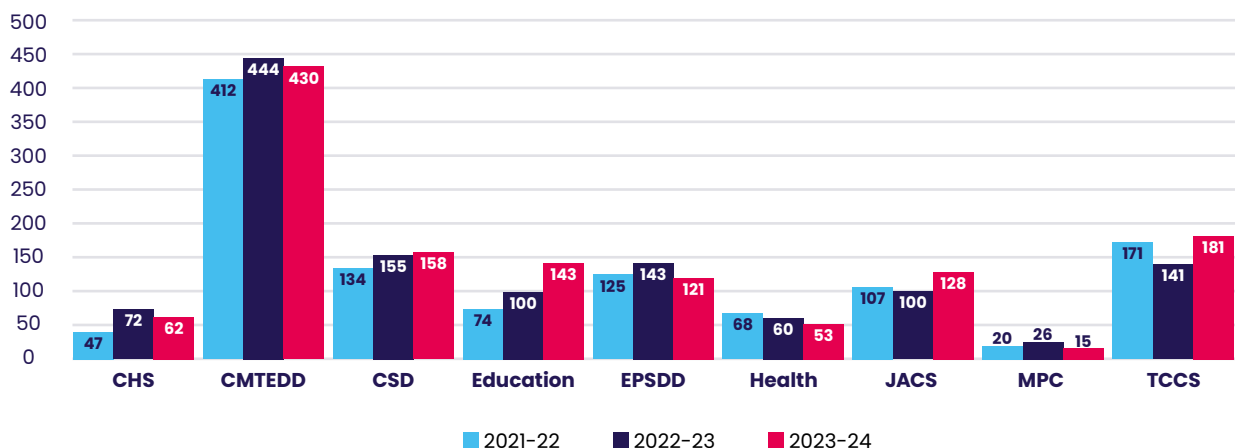


Figure 8: Access applications received by each agency in the last 3 financial years (sourced from ACT Ombudsman Annual Report)

¹³ FOI Act, s 67.

¹⁴ ACT Ombudsman, *Report on the Freedom of Information Act 2016*, October 2024, page iii.

¹⁵ Ibid p 12

¹⁶ Ibid

¹⁷ Ibid

On a per capita basis, despite this growth, these numbers still put the ACT in the lower end of applications, compared to other Australian jurisdictions (see **Figure 9**). It is worth noting that this data does not take into consideration other mechanisms for accessing government-held information. For example, the Education Directorate provided that in addition to FOI requests, they processed 652 requests to access personal information relating to 1124 individuals under the Information Privacy Act 2014 and the Access to Student Record Policy.¹⁸ These nuances and variability between jurisdictions have not been analysed in this review.

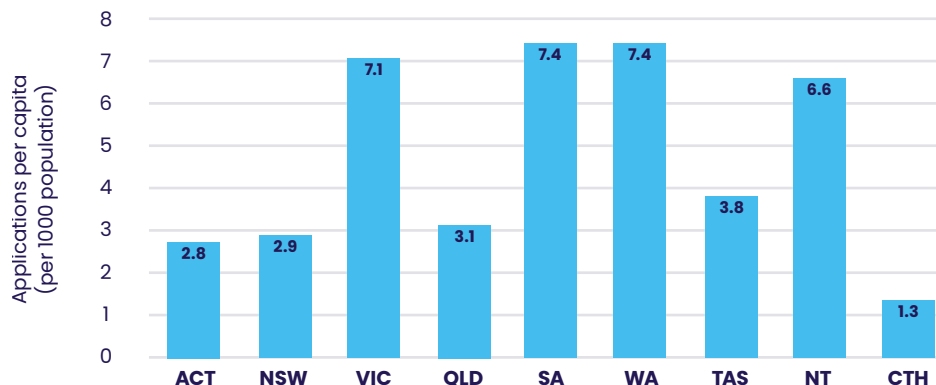


Figure 9: Formal applications received per capita (2022-23)¹⁹

Types of applications

Anecdotally, we heard that the types of requests and applicants differ significantly depending on the agency, and the nature of the information it holds. For example, an agency like CSD whose large majority of applications are related to personal information, differs significantly compared to an agency like Infrastructure Canberra who receives more requests on more operational government matters. **Figure 10** highlights how the proportion of personal versus standard access requests can vary not only between agencies but also across different financial years.

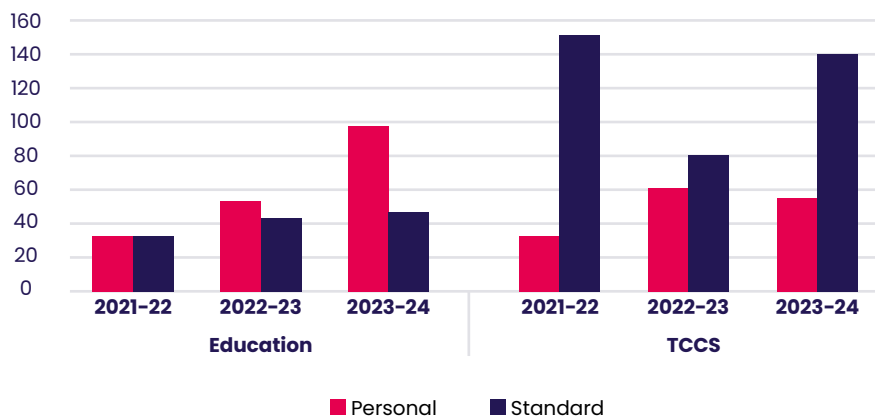


Figure 10: Comparison of personal and standard access requests in Education and TCCS

Across most agencies, requests from individuals remain the most common, followed by requests submitted by legal representatives. Law firms, in particular, are known for submitting large and often complex requests. While these may represent a smaller proportion of total applications, they can be resource-intensive to process. Requests from MLAs are less common but can also often be among the most time-consuming. Officers noted that these applications can involve extensive back and forth around scope, particularly when submitted by newer MLAs who may be less familiar with FOI processes. These requests can be challenging to manage, as agencies are conscious

¹⁸ This policy enables requests for routine records, such as academic reports and student attendance information to be handled outside of the formal FOI process, providing a faster response to the applicants.
¹⁹ Australian Information Access Commissioners and Ombudsmen, [National Dashboard-Utilisation of Information Access Rights - 2022-23](#)

of maintaining constructive relationships with both government and opposition offices and are sensitive to any perception that information is being withheld. Media requests do not appear to make up a large proportion of FOI applications in the ACT. **Figure 11** provides a breakdown of applicant types across five agencies in the 2023–24 financial year.

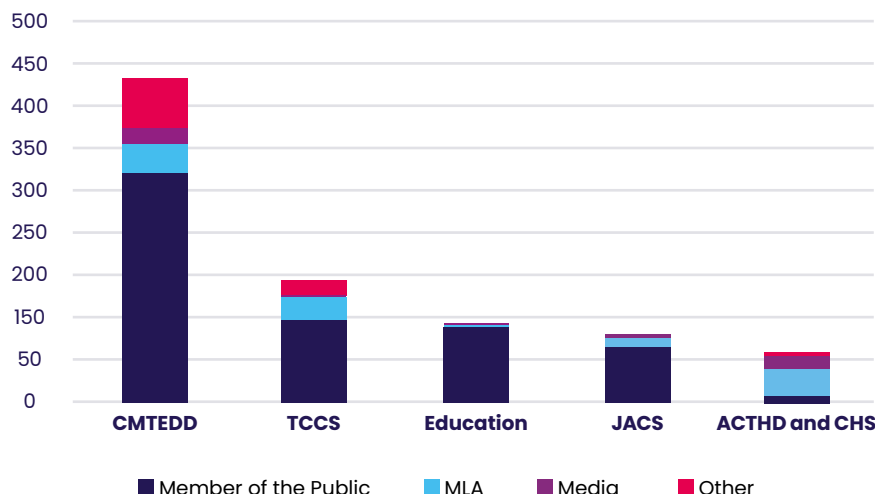


Figure 11: Applicant types in CMTEDD, TCCS, Education, JACS, and ACTHD and CHS in 2023–24

This breakdown of applicant types is consistent with a functioning OAI – most applications are from individuals more interested in information about their own dealings with government which would not be appropriate for OAI provisions.

Repeated access requests from the same applicant are common and can consume a significant portion of the FOI team’s time. For instance, in the 2023–24 financial year, JACS received 128 access applications, 24 of which (19%) were submitted by a single applicant.

Scope of applications

The Ombudsman has observed a growing trend in the number of FOI applications with broad or wide-ranging scopes. This observation was echoed by information officers across agencies, who reported that many applications they receive are overly broad and require active engagement with applicants to help narrow the scope to something more manageable and targeted. This exercise of rescoping is time consuming and from anecdotal evidence is not factored into resourcing levels in FOI processing teams, which partly explains the resourcing pressures that are continuing to mount as increasingly broad requests are rescoped by similarly sized and shrinking FOI processing teams.

While all agencies are required to report on mandatory FOI data categories, there are also a number of optional data fields that provide additional insight into FOI trends. In 2023–24, eight of the nine ACT Government directorates provided data for these optional categories.²⁰ However, data collection practices vary significantly between agencies.

Managing and monitoring applications

Directorate tracking

Most agencies maintain internal tracking spreadsheets (often Excel based) to manage and monitor FOI requests. These spreadsheets typically include data on applicant type, request status, and processing timelines. However, the level of detail and the specific categories captured differ depending on the agency’s internal processes and the nature of the information they manage. For example, JACS tracks requests for fire reports as a distinct category due to their frequency, a classification not relevant to other agencies.

²⁰ ACT Ombudsman, [Report on the Freedom of Information Act 2016](#), October 2024, page 1.

TCCS noted that they use JIRA to track their requests, which could be rolled out to other directorates following successful implementation across CED in late 2025. Some agencies track the size of requests in terms of pages released or volume, however many noted that the number of pages released is not a reliable indicator of complexity. Officers explained that smaller requests can involve more sensitive or nuanced issues, or have challenges in identification of documents, requiring more time and deliberation than large but straightforward document sets. However, these nuances of scope and complexity are not always captured in reporting mechanisms. This may mean that while an agency may receive fewer access applications than another agency, they may need to expend a similar amount of time responding to these requests due to their greater complexity.

Applicant type is more commonly recorded, but again, categorisation can vary among agencies. While the Ombudsman reports on the types of applicants involved in review applications, it does not currently publish data on the types of applicants making initial access requests. This represents a potential gap in understanding the broader FOI landscape and how different user groups engage with the system.

Agencies reported that it remains difficult to identify clear trends over time, beyond quantum and general complexity of applications. While certain directorates may experience spikes in applications due to current events or public interest in a particular issue, these surges are usually temporary. As one officer put it, ‘different directorates become flavour of the month’, but the pattern typically returns to baseline levels. One stakeholder noted that the relatively small size of the ACT also limits the ability to meaningfully draw conclusions from FOI data.

Application outcomes

The outcome of 1,254 applications in 2023–24 is outlined in **Figure 12** below.²¹ Based on 2022–23 cross-jurisdictional data, compared to all other Australian jurisdictions, the ACT had the lowest percentage of decisions where access was granted in full or in part, and one of the highest percentages of decisions where access was refused in full.²²

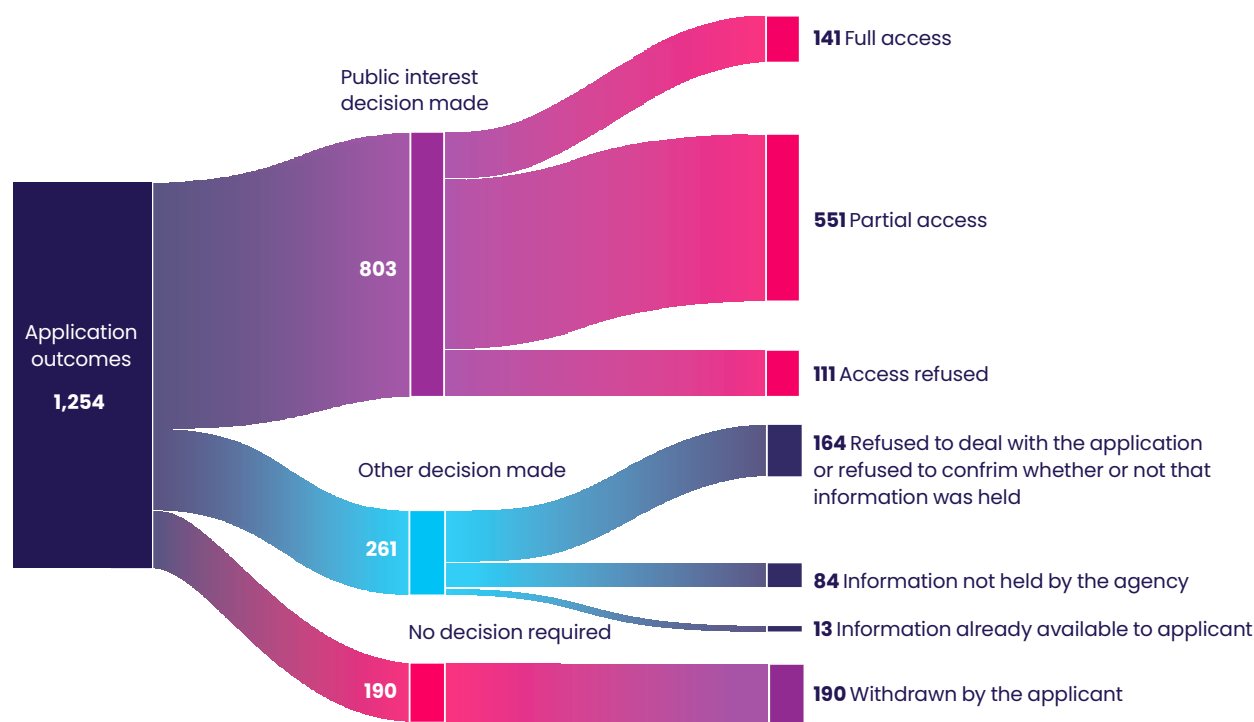


Figure 12: Formal application outcomes in 2023–24²³

²¹ The previously quoted 1,351 applications from FY2023-24 does not relate to decisions, just applications made. Similarly, the 1,388 figure includes applications made in FY 2022-23 that were decided in FY 2023-24.
²² [OGP metrics all jurisdictions all years June 2024.pdf](#)
²³ ACT Ombudsman, [Report on the Freedom of Information Act 2016](#), October 2024.

There are many possible reasons for the ACT's statistics not matching its desire to be 'pro-disclosure', and having a legislative framework that should support disclosure better than other jurisdictions. Some plausible reasons include:

- **Definitional and legislative differences:** Definitions of what constitutes an 'access decision' or 'refusal' may vary slightly across jurisdictions, affecting comparative statistics.
- **Reporting and classification practices:** Jurisdictions likely differ in how they categorise and report FOI outcomes, such as counting informal releases or administrative access separately (whereas the ACT does not report these at all), or redaction of officer's names resulting in a partial release decision (as it is in the ACT).
- **Agency culture and risk aversion:** Noted line area risk aversion may impact information access application decisions.
- **Nature of requests in the ACT:** Requests in the ACT may be more targeted at politically sensitive or high-profile issues, increasing the likelihood of refusal.
- **Nature of requests in other jurisdictions:** As a small jurisdiction, the ACT may not have representative application types compared to other, larger jurisdictions.²⁴

Another reason for the higher proportion of partial access decisions may arise due to how partial decisions are categorised. Information officers believe that FOI data is currently distorted because if there is any redaction of personal information in an application, these applications are counted as partial releases, even when the overwhelming majority of the documents are provided in full. Some FOI processing officers have suggested that this inflates the number of partial decisions and may give the impression that agencies are withholding more information than they actually are.

While reclassification would assist, there is further work that could be done to better scope at the initial access application stage, for example by engaging with the applicant to see if they will amend their request so that it does not seek personal information of that kind, would also assist in reducing partial access.

Cost of processing applications

Most agencies do not explicitly capture information on the amount of time spent on requests, which makes it difficult to explicitly determine time and cost per application. One agency that does collect information on time spent, noted that data from line areas is not consistently captured. The Education Directorate collects and reports on application processing times, as shown in **Figure 13**.

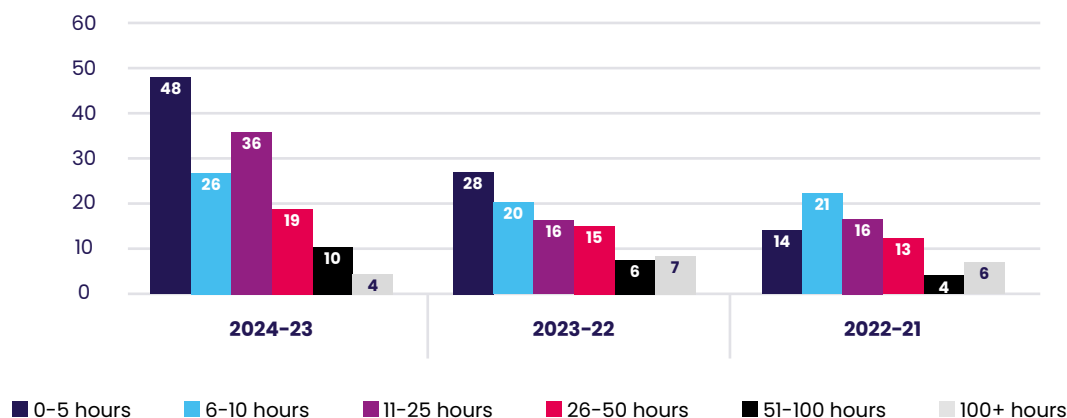


Figure 13: Application processing time in the Education Directorate (partial data)

²⁴ The small number of applications the ACT receives (relative to other jurisdictions) means that fluctuations in access applications skew data more intensely than is the case for other jurisdictions. This makes identifying trends in data, and identifying quantitative evidence of the benefits of pro-disclosure, more difficult.

Recommendation 5: Establish a centralised FOI function to undertake analysis of access application data to inform government-wide planning, resourcing, training and proactive disclosure approaches.

- Implement a consistent approach to monitoring access applications, including minimum data collection requirements and application lifecycle tracking.
- These minimum data collection requirements are intended to support operational excellence, rather than the data collected by the ACT Ombudsman for annual reporting purposes.
- Develop and mandate a uniform FOI data collection template for all ACT Government agencies.
- Explore further use of project management tools such as JIRA for accurate management of access applications.
- Required fields for collection should include:
 - Applicant type (e.g. individual, legal representative, MLA, media, other)
 - Initial request scope (broad/general, narrow/specific)
 - Whether a scope has been revised (marginally reduced scope, significantly reduced scope)
 - Processing time (start date, end date, total days)
 - Outcome (granted in full, refused in full, partially granted (personal information), partially granted (other), withdrawn)
 - Review status (nil, Ombudsman review)
 - Complexity indicators (e.g. sensitivity, document identification challenges)
 - Whether an application is staged release, and tracking the number of stages and period of time over which information is released.
 - 'Tags' based on particularly relevant externalities such as media, topical issues for the community, etc.
 - Estimated time taken (in hours or days) by an FOI processing officer, as well as the line area supporting processing.
- Consider transitioning from disparate Excel-based tracking to a centralised digital platform (e.g. JIRA or a purpose-built FOI management system).
- Ensure the system supports real-time tracking and reporting, customisable fields for agency-specific needs, and integration with existing records management systems.
- Expand ACT Ombudsman annual reporting to include qualitative scope and complexity assessments and comparative analysis across agencies to identify variations in application scope and complexity across agencies.
- Undertake internal annual reviews of FOI data to identify trends, resource needs, and areas for improvement. Include benchmarking against other jurisdictions, adjusting for population and access mechanisms.

Theme: Leadership and Culture | **Resourcing and Skilling** | OAI and Proactive Disclosure | Legislative Change

Chapter 4: Charging fees

This chapter assesses whether the current fee charging mechanisms and practices are appropriate in the context of the operation of the current scheme and the objectives of the FOI Act. This chapter looks also at the relationship between the fees charged for access and the cost of administering the scheme incurred by agencies, and the changing resourcing pressures that the FOI Act puts upon agencies to respond to access applications.

Current fee regime

Section 104 of the FOI Act permits the imposition of fees for processing access applications.

The current fee regime was introduced with the aim of striking a balance between ‘recognising the right to information and the costs that are inevitably incurred in retrieving that information’.²⁵ Fees may only vary based on the amount of information provided to the applicant, and cannot be based on the identity of the applicant or the time spent retrieving information or making a decision on the application.²⁶ Fees also cannot be charged for the first 50 pages of information provided, applications for personal information, applications for additional information identified by the respondent, or deemed decisions (where no decision is made within the required timeframe).²⁷

Before processing the application, agencies are required to provide an estimate of the likely fee and ask the applicant to confirm or vary their application accordingly.²⁸ This is an appropriate method to accurately quantify a fee, but it occurs after a lot of resources have been put into processing the application, including application triaging and document discovery.

An applicant may request to have the fee waived, and it must be waived if:

- The information was previously publicly available
- The information is of special benefit to the public (the Ombudsman has interpreted this broadly, including cases where the information ‘better informs the public about government or concerns a public issue’)²⁹
- The information becomes publicly available before or within 3 working days of being provided to the applicant
- The applicant is a concession card holder (and has a material connection to the information provided)
- The applicant is a not-for-profit (and the application relates to the organisation)
- The applicant is an MLA.³⁰

The Minister, in consultation with the Ombudsman, sets the fees that can be charged, set out in the *Freedom of Information (Fees) Determination 2018*. These include:

- A fee of \$0.35 per page of information given (excluding the first 50 pages),
- The actual cost of postage, printing (excluding the first 50 pages), or an electronic storage media (i.e. a USB or hard drive), and
- The actual cost incurred by giving information that has required transcription of a sound recording, where words are in shorthand writing or a codified form, or information that has required retrieval or collation.

²⁵ FOI Act Explanatory Statement, p47 [explanatory statement | PDF](#)

²⁶ Act, s104(2)-(3)

²⁷ Act, s104(4), s105

²⁸ Act, s106

²⁹ Ombudsman Guidance 3, p26 [3.-Ombudsman-Guidelines-Dealing-with-access-applications.pdf](#)

³⁰ Act, s107

Current fee charging practices

In practice, this broad list of exceptions means the current fee regime has been applied in only a very limited number of cases. One agency remarked that they ‘wouldn’t even know how to charge’, reflecting a general sentiment that charging is not a common, active consideration in the processing of an information access request. A summary of fees charged since the introduction of the FOI Act is set out in **Table 1**, below. Feedback from agencies highlighted that there were several reasons for this trend.

Table 1: Fees charged by agencies and Ministers each reporting period since FY 2017–18

Reporting period	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Instances of fees charged	1	2	1	0	1	0	0

‘Spirit’ of the Act and guidance from the Ombudsman

A key reason that agencies have refrained from charging fees is the prevailing view that despite the regime existing, doing so is discouraged on the basis that it contradicts the intent of the FOI Act. As outlined in Chapter 2, one of the FOI Act’s objectives is to ‘facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information.’³¹ Ombudsman guidance reinforces this principle, advising that if the cost of calculating and collecting a fee exceeds the fee itself, agencies and Ministers should reconsider imposing it.³² Agencies were also highly aware of the Ombudsman’s commentary in annual reports, which has noted that the lack of fees charged ‘is consistent with the pro-disclosure objects of the FOI Act, with cost not being an obstacle to access.’³³

This has contributed to a culture (or unwritten rule) of not charging fees. Agencies reflected that introducing fees now, after years of not doing so, would be difficult to justify and could be perceived as punitive. Stakeholders also raised the concern that charging fees would need to be applied consistently across government to prevent ‘decision shopping’ whereby an application seeks out the ‘cheapest’ directorate to make requests through, also complicating transfer of such applications elsewhere in the ACT Government.

Practical limitations

Additionally, directorates face practical challenges in applying fees:

- Exempt application types:** Many application types are exempt from fees or qualify for mandatory waivers. This is particularly the case for an agency that deals mostly with personal information requests, like CSD, which reported only three potentially chargeable applications between 2022–23 and 2024–25.
- Lack of systems, processes and resources:** Partly due to the historical absence of fee charging, agencies lack the systems, processes, staff expertise, and resources to administer fees. Several agencies noted that the administrative burden of charging fees would likely outweigh any financial return. One agency shared an instance where a fee was charged but never paid. Another stated ‘we don’t have the structures in place to even issue an invoice, let alone have it paid and chased up.’
- Timing of providing a fee estimate:** The requirement to provide a fee estimate before assessing the application is seen as impractical and an ineffective method to evaluate a fee. Agencies explained that it is often impossible to predict the number of pages to be released until the review process is nearly complete—by which point most of the work has already been done.
- Pages are an ineffective measure of effort/cost:** basing fees on the number of pages released does not reflect the actual effort involved in processing applications. For instance, CSD reported releasing 53,000 pages in 2023–24, representing approximately only 35% of the total pages reviewed. Two applications might result in the same number of pages released, but one could involve significantly more sensitive or complex content, requiring far more time to process. Agencies also questioned the relevance of page-based charging in a digital environment, where documents are rarely printed. This aligned with concerns within the Commonwealth regime that there is a lack of clarity regarding what fees are payable for providing access to electronically stored information.³⁴

³¹ Act, s 6

³² Ombudsman Guidance 3, p26 [3.-Ombudsman-Guidelines-Dealing-with-access-applications.pdf](#)

³³ ACT Ombudsman, *Report on the Freedom of Information Act 2016*, October 2024, page 24.

³⁴ <https://search.informit.org/doi/epdf/10.3316/informit.904755517355074>

Best practice considerations for charging fees

Fee regimes have always been a contentious issue in the context of FOI schemes. This is largely due to the inherent tension between the principle of open access to government information and the imposition of financial barriers that may inhibit that access, leading to inequity whereby those with adequate resources are advantaged and able to access government information more readily, and disadvantaging those who are less well-resourced and potentially more vulnerable to government action. A poorly constructed fee regime can skew an FOI regime in favour of corporate applicants, such as media organisations, over ordinary community members.

A 2012 enquiry by the Australian Information Commissioner into the Commonwealth's fee regime captured this tension:

*"FOI requests can impose a substantial administrative burden on agencies and divert resources from other functions. Access charges are a way of controlling and managing demand for documents and defraying some of the cost of FOI to government. On the other hand, FOI charges can discourage or inhibit the public from exercising the legally enforceable right of access to government information granted by the FOI Act. The objective of the Act to make government open and engaged with the public will be hampered if it is too expensive or cumbersome for people to make FOI requests. Balancing those competing interests has always been important, yet difficult."*³⁵

The inquiry acknowledged that while fees can play a legitimate role in managing demand and offsetting costs, they must be carefully balanced to avoid undermining the objectives of the FOI framework. It proposed four guiding principles for a revised charging framework, outlined in **Figure 14**.

1. Support of a democratic right	2. Lowest reasonable cost	3. Uncomplicated administration	4. Free informal access as a primary avenue
Freedom of information supports transparent, accountable and responsive government. A substantial part of the cost should be borne by government.	No one should be deterred from requesting government information because of costs, particularly personal information that should be provided free of charge. The scale of charges should be directed more at moderating unmanageable requests.	The charges framework should be clear and easy for agencies to administer and applicants to understand. The options open to an applicant to reduce the charges payable should be readily apparent.	The legal right of access to documents is important, but should supplement other measures adopted by agencies to publish information and make it available upon request.

Figure 14: Australian Information Commissioner guiding principles for a revised Commonwealth charging framework ³⁶

Internationally, the principle of low-cost access is widely endorsed. Supported by the United Nations, Article 19's *Principles on the Right to Information Legislation*, states that costs should not deter individuals from accessing public information.³⁷ Generally, they advise that information should be provided at no or low cost, limited to the actual reproduction and delivery expenses. They also advise that costs should be waived or reduced for requests for personal information or requests made in the public interest, or from applicants facing financial hardship.

Article 19 has also noted that international experience shows access fees are generally ineffective at offsetting the costs of administering FOI schemes. This is reflected in Australian jurisdictions such as Victoria, where in 2022–23, government agencies spent over \$21.3 million administering the Act but recovered just over \$2 million in fees and charges.³⁸ In 2024, a Victorian parliamentary committee recommended abolishing application fees altogether and limiting access fees to the costs of copying and delivering information.³⁹

³⁵ Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General [Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General | OAIC](#)

³⁶ Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General [Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General | OAIC](#)

³⁷ [RTI Principles Updated_EN.pdf](#)

³⁸ [Freedom of Information Act 'not fit for purpose' | The Canberra Times | Canberra, ACT](#)

³⁹ [The operation of the Freedom of Information Act 1982 \(Vic\)](#)

There are varied approaches across Australian jurisdictions for charging fees, summarised in **Table 2**. Unlike the ACT, most jurisdictions impose an application fee.⁴⁰ All jurisdictions enable imposition of charges for processing applications, however in most jurisdictions this is calculated using time spent rather than the number of pages provided to the applicant. The FOI Act's Explanatory Statement explains that the decision to base charges on pages rather than processing time 'encourages agencies to be efficient.'⁴¹

Table 2: Summary of fees and charges across Australian jurisdictions

Jurisdiction	Application fee	Processing charges	Reductions or waivers
ACT	No	Yes, based on pages (nil for first 50 pages)	Cannot charge applications for personal information, applications for additional information identified by the respondent, or deemed decisions. Broad list of circumstances where a fee must also be waived.
NT	Yes (\$30)	Yes, based on processing time	Application fee is waived for personal information applications. General discretion to waive or reduce fees based on circumstances of application.
Vic	Yes (\$31.80)	Yes, based on processing time	Fees can be waived based on financial hardship.
QLD	Yes (\$55.75)	Yes, based on processing time (nil for first five hours)	Fees can be waived based on financial hardship, and if costs of charging outweigh the charge.
Cth	No	Yes, based on processing time (nil for first five hours of decision-making)	General discretion to waive or reduce fees based on circumstances of application.
NSW	Yes (\$30)	Yes, based on processing time (nil for first 20 hours if applying for own personal information)	Mandatory refund for deemed refusal or invalid application. Discount for financial hardship or if information is of special benefit to the public. General discretion to waive or reduce fees based on circumstances of application.
WA	Yes (\$30)	Yes, based on processing time	No fees for personal information. Reduction in charges for financial hardship.
SA	Yes (\$42)	Yes, based on processing time	No application fee to amend personal records. Charges waived for financial hardship.
Tas	No	Yes, based on processing time	General discretion to waive or reduce fees based on circumstances of application.

Views among agencies on whether fees should be introduced in practice were mixed. While there was general agreement that FOI costs would never be fully recouped, some agencies supported the idea of fee-charging, particularly to address vexatious/frivolous applicants. Agencies noted that current provisions for managing vexatious applicants are largely ineffective (see Chapter 7 for a detailed discussion of this issue). It was discussed that applying fees could act as a deterrent by "putting something at stake", particularly for applicants who refuse to narrow overly broad requests. However, permitting this practice could result in misuse of the fees system, whereby fees are applied to effectively exclude people who agencies decide they don't want to deal with. Therefore, the inclusion of fees as a deterrent is not supported.

⁴⁰ This is problematic where no information is found, and the application fee must be refunded to the applicant.

⁴¹ Explanatory statement, p47 [explanatory statement](#) PDF

Options for reforming the fee regime

Moving forward, the ACT has three primary options:

1. Retain the current fee regime with additional support
2. Transition to a new fee regime
3. Remove the fee regime entirely

Option 1: Retain the current fee regime with additional support

Despite the practical challenges raised by agencies (such as the requirement to estimate fees before processing an application) the existing FOI fee regime is broadly consistent with those in other Australian jurisdictions, despite lacking key types of fees that other jurisdictions have. The ACT's fee regime also includes several exemptions and waiver provisions that help reduce the financial burden on applicants, particularly for personal information and special public interest requests. However, given the minimal use of fees to date, any move to begin charging now is likely to be perceived as creating new barriers to access, and a step backward from the pro-disclosure ethos of the FOI Act.

Agencies consistently emphasised that any shift toward applying fees, under the current or a revised regime, would require renewed operational support. This would need to include:

- **Explanation of change:** A clear and accessible communications package to explain the purpose and application of fees to ACT Government stakeholders and the general public.
- **Human and ICT resourcing:** Noting that agencies were generally sceptical about the likelihood of receiving additional funding to support a charging scheme, financial systems to manage fee estimation, invoicing, collection processes, and possible refunds, as well as administrative staff to process payments.
- **Training:** Dedicated online and/or in-person training supported by detailed guidelines to reduce ambiguity and ensure consistent interpretation.

A fundamental consideration for the ACT Government is whether it is comfortable with the current FOI system and its inherent complexity, or whether it wants to adopt a cost-defrayal approach to accessing government information – achieving both with the current fee regime is not possible.

Option 2: Transition to a new fee regime

This option involves moving away from the current minimal or no-fee model and establishing a new fee regime. The aim would be to improve cost recovery, manage agency workloads, and discourage misuse of the FOI scheme. However, any such transition must be carefully designed to maintain the accessibility and fairness that underpin the FOI Act.

At the more modest end of the spectrum, a new regime could involve introducing a flat application fee. This would provide a clearer and more predictable cost recovery mechanism, while still allowing for exemptions and waivers similar to those that currently exist for processing fees. Such a change would be relatively straightforward to implement and could help standardise the application process across agencies.

A more substantial reform (and not mutually exclusive from a flat, initial application fee) could involve rethinking how processing fees are calculated. One option is to align with other jurisdictions by basing fees on the time spent processing a request. A revised model could also adjust the fee estimate requirement, such as requiring estimates only when charges are expected to exceed a certain threshold.

Another potential feature of a new regime is the introduction of differentiated fees based on the type of applicant or the nature of the request. For example, higher fees could apply to large or complex applications submitted by law firms, journalists, or researchers, groups that often use FOI strategically or professionally. While this approach could help manage agency workloads and discourage misuse, it also raises significant equity and perception issues. Charging different fees for different stakeholders could be seen as restrictive or unfair and may also be difficult to implement consistently and transparently.

With equity remaining a central concern, any new regime should include clear exclusions and waivers, particularly those related to personal information, financial hardship, and particular public interest applications, to protect vulnerable applicants and uphold the pro-disclosure intent of the FOI Act.

As with Option 1, it is important to acknowledge that any move toward charging fees, regardless of scale, may be perceived as a step away from the pro-disclosure ethos of the FOI Act.

Option 3: Remove the fee regime entirely

Removing the fee regime would simplify the FOI scheme and bring the legislation into alignment with current practice in the ACT. The current provisions, while legally valid, are largely dormant and have created confusion rather than clarity. Some directorates expressed frustration at having to explain to FOI processing officers and information officers why fees are not being charged, despite the legislative provisions allowing for it. It also creates confusion and distrust with applicants that ask whether they will be charged a fee:

"I tell them that in this instance there isn't a fee and hopefully they don't ask me why."

Without a clear policy or formal directive, agencies are left to justify their inaction on a case-by-case basis, which can lead to inconsistent practices and uncertainty.

Eliminating the fee regime would also reinforce the position of the ACT Ombudsman, who has consistently stated that the absence of fees aligns with the pro-disclosure objectives of the FOI Act. It would remove any ambiguity about whether agencies should be charging fees and affirm the principle that access to government information should not be hindered by financial barriers.

If this option were pursued, it would be important to strengthen other mechanisms within the FOI Act, particularly those dealing with vexatious applicants or individuals perceived to be 'gaming' the system.

In the event that legislative amendment is not preferred or feasible in the short term, an alternative approach could involve formally suspending or deactivating the fee provisions through policy, along with public communication notifying of this policy approach. This would remove the expectation that agencies should be charging fees, without requiring immediate changes to the legislative framework.

Recommendation 6: Amend the FOI Act to remove the fee charging mechanism in section 104.

- Align legislation with current practice by removing provisions in the FOI Act that empower the ACT Government to charge fees.
- Make a determination under section 104 that clearly provides that there are no fees charged for access applications (interim).
- Amend ss 28(2)(e)(i), 96(3)(f), and 105 to remove reference to fee charging.
- Provide adequate public communication about this change and its intent to reinforce pro-disclosure and promote proactive disclosure by avoiding application-based release.

Theme: Leadership and Culture | Resourcing and Skilling | OAIS and Proactive Disclosure | **Legislative Change**

Chapter 5: The Open Access Information Scheme

This chapter explores the open access information scheme (OAIS). This includes an analysis of the purposes of the scheme, the effectiveness of the scheme including its burden on resources, its utility to the public and how the public interacts with the scheme. As an important component of providing government information to the public, this chapter discusses topics such as resourcing and workflow in relation to the OAIS. The chapter then concludes by examining opportunities to improve the scheme and its administration.

The Open Access Information Scheme

The OAIS is designed to increase government accountability and promote a culture of openness and transparency in government.⁴² OAIS requirements are set out under Part 4 of the FOI Act and apply to agencies in the ACT, and Ministers of the ACT Government. The Act works by identifying certain categories of information which are deemed to be ‘open access information’, including information declared to be open access information by the ACT Ombudsman.⁴³

The Chief Minister has indicated that ‘the aim of the Open Access Information Scheme is to make the publication of government information, largely routine, and to reduce the need for community members to seek access to information through formal Freedom of Information channels.’⁴⁴

Categories of information that must be published under the OAIS

Certain information that is useful to the public must be published as open access information under the FOI Act.⁴⁵ Types of information that must be published by agencies includes:⁴⁶

- Functional information
- Tabled documents
- Policy documents
- Budget papers
- Information about government grants
- The agency’s disclosure log
- Statements regarding bodies that advise the agency or its Minister
- Reports or recommendations made by advisory bodies

Unless open access information is contrary to the public interest to disclose, it must be made public by the agency or Minister and must be:⁴⁷

- **Accurate:** The natural definition of information being correct or precise is likely sufficient and in line with the objects of the FOI Act.
- **Up-to-date:** Agencies and Ministers are encouraged to ensure information is up to date and of use to the public. This includes removing redundant or incorrect material that is publicly available as soon as possible, particularly where it includes operational information that directly impacts clients of the agency.⁴⁸
- **Complete:** Agencies and Ministers must continue to monitor whether information withheld from access is ‘no longer contrary to the public interest to release and if so to publish the information’.⁴⁹ Where information is considered contrary to the public interest to disclose, agencies and Ministers are encouraged to consider providing a summary of the information in lieu of providing the information itself.⁵⁰
- **Accessible:** The information must be published by the agency or Minister on a website under its control, or they must include on the website a link to another website where the information is published, and the agency or Minister must make a hard copy available on request and without charge.⁵¹ In practice, this means that information is generally made available on the website of the agency/Minister and/or on the OAIS portal website.

OAIS material is identified and published by line areas, sometimes in consultation with enabling OAIS functions which are often jointly administered by teams performing FOI processing functions. As such, line areas are required to apply the public interest test when determining what material it must publish under the FOI Act, and what it is entitled to exclude from publishing for public interest reasons.

As noted in Chapter 2, the public interest test is complex, even when applied by FOI processing teams that deal with the test on a daily basis. The requirement for line areas to consider relevant indicia appropriately to proactively publish open access information is more likely to lend itself to conservative publishing decisions than pro-disclosure publishing decisions.

⁴² ACT Ombudsman, *Guidelines 1 of 6: ‘Open access information’*, October 2019, page 5.

⁴³ FOI Act s 23.

⁴⁴ FOI Act, Notifiable Instrument NI2021-275, *Freedom of Information (Accessibility of Government Information) Statement 2021 (No 1)*, page 3.

⁴⁵ Explanatory Statement, Freedom of Information Bill 2016, page 16.

⁴⁶ FOI Act s 23.

⁴⁷ FOI Act s 24, 25.

⁴⁸ ACT Ombudsman, *Guidelines 1 of 6: ‘Open access information’*, October 2019, page 18.

⁴⁹ Explanatory Statement, Freedom of Information Bill 2016, page 20; see also ACT Ombudsman, *Guidelines 1 of 6: ‘Open access information’*, October 2019, page 18.

⁵⁰ ACT Ombudsman, *Guidelines 1 of 6: ‘Open access information’*, October 2019, page 18.

⁵¹ ACT Ombudsman, *Guidelines 1 of 6: ‘Open access information’*, October 2019, page 21.

Mechanisms for increasing open access information

The FOI Act also provides agencies, the Executive and the Ombudsman with separate powers to effectively make other kinds of matters become open access information:

- Agency publication undertakings: Information that is not otherwise described as open access information under section 23 of the FOI Act, but the agency has themselves declared it will publish.⁵²
- Ombudsman declaration: Information declared by the ACT Ombudsman to be open access information.⁵³
- Executive prescription: Information prescribed in regulation by the Executive under section 109 of the FOI Act.

The effect of an agency publication undertaking is that the agency must comply with the undertaking(s) they make, and information contained in a publication undertaking becomes open access information. The publication undertaking mechanism aims to make the scheme more effective in practice, through pre-emptive disclosure of information people might otherwise seek to access via formal FOI processes or may not know about at all.

Effectiveness of the Open Access Information Scheme

Leadership

There is currently no identified leadership role in the ACT Government that promotes the importance of the OAIS or drives accountability across directorates to consider more proactive release of information. This has been identified as the key factor limiting the further dissemination of a pro-disclosure culture when access applications are made. Effective and visible leadership of proactive disclosure activity, through the OAIS and other proactive disclosure, is necessary to set the tone of a pro-disclosure culture for the ACT's FOI system more broadly. Strong leadership within the ACT Government at the proactive disclosure level would positively affect pro-disclosure culture at the access application stage of the FOI system.

Recommendation 7: Ensure the role of centralised executive leadership and FOI policy team extends to proactive disclosure and OAIS mechanisms under the FOI Act.

- Support directorates to implement a consistent and proactive approach to the OAIS.
- Ensure OAIS is reported across the ACT Government and discussed by senior leadership.

Theme: Leadership and Culture | Resourcing and Skilling | **OAIS and Proactive Disclosure** | Legislative Change

Impact of the OAIS

Impact on information access applications

The intentions of the OAIS are to improve access to information and to reduce the number of access applications. However, through consultations across FOI processing officer, information officer, and executive stakeholder groups, stakeholders said the OAIS has had 'no effect' at reducing the number of access applications, and that the OAIS had limited effect on improving access to government information:

"it has zero effect [on FOI]"

"there is no correlation between the OAIS and access applications."

⁵² Information set out in an agency publication undertaking will only become "open access information, of an agency" listed under s 23(1).
⁵³ A declaration made by the ACT Ombudsman under s 65 of the FOI Act is a disallowable instrument.

Unpacking those views, conversations with stakeholders mostly focused on the following elements of the OAIS which are considered ineffective:

- The Open Access Information portal being the place that community members must navigate to find the information they are looking for, and its limited utility for that purpose.
- The lack of resourcing available for line areas to proactively publish required and optional government information.
- The relationship between government information that is published, and the information that members of the community want access to (demonstrated in a stakeholder view that information published is 'vanilla' and may actually prompt more information access applications)

That being said, the ACT Ombudsman has observed that:

- the number of open access information decisions has increased overall
- decisions not to publish has decreased by 69% compared to FY 2022-23
- decisions to publish have increased by 37% compared to FY 2022-23

This indicates that the ACT Government is generally seeing value in resources allocated to proactive disclosure of open access information.

Impact on the objects of the FOI Act

Two of the objects of the FOI Act are to provide a right of access to government information and to promote access to the maximum amount of government information – if the OAIS alerts the public to the existence of insufficient information which encourages an access application, this may be more aligned with the objectives of the FOI Act. This outcome may not necessarily be bad but may suggest an opportunity for more proactive disclosure through the OAIS.

Interestingly, in discussion with the ACT Ombudsman, the Ombudsman indicated that the OAIS has had a noticeable impact on reducing the FOI burden. The Ombudsman noted that some decisions referred applicants to the Open Access Information portal – demonstrating its effectiveness.

While the basis for this discrepancy in views was not made apparent to the review, the Ombudsman's broad oversight of the FOI system may enable identification of trends in FOI applications which are not visible to others. In support of the Ombudsman's view, one FOI executive noted that there is a positive correlation between OAIS and a reduced number of access applications. However, this response is more likely due to the specific nature of the access applications received in their agency, and potentially that agency's strong efforts towards populating the OAIS portal with materials. This demonstrates a closer representation of the ideal state of an OAIS and also shows that there is scope for improved practices in proactive disclosure of government information.

The review has found that the OAIS aligns with the objects of the FOI Act and should be preserved into the future. There are efforts to improve its efficacy (discussed below), however the concept of an information scheme that prompts additional interest and access to government information through the access application process is a positive process that should continue.

Open Access Information Portal

The Chief Minister's 2025 Statement on Accessibility of Government Information notes that one of the first initiatives undertaken by the ACT Government to support the FOI Act's pro-disclosure position was the introduction of an Open Access Information portal.⁵⁴ The portal is intended to provide agencies with a central platform to publish information and make links to information published on agency websites.

⁵⁴ <https://www.legislation.act.gov.au/DownloadFile/ni/2025-268/current/PDF/2025-268.PDF>

Utility of the portal in a ‘One Government’ website environment

In 2021, the ACT Government commenced a project to centralise its websites. Through this website consolidation project, the ACT Government intends to make it easier to find, access and understand ACT Government information and services, without the need to know or navigate the structure of government.⁵⁵ A new One Government website (act.gov.au) was launched in early 2024 and is now hosting content from 6 out of 9 government directorates. Content has been rewritten, restructured and simplified to:

- make it easier for the community to understand and access government information and services
- reduce the number of websites for users to navigate
- improve open and transparent access

Further, in December 2024, a new ‘Open government information’ section was established to continue to improve access and transparency by brining content that specifically responds to open government principles into a single location. This website includes links to:

- the Open Access Information portal
- Open Government website
- Open Data website containing reuseable, accessible, understandable and shareable data from the ACT
- FOI disclosure logs
- Annual reports
- Directorate and agency reports, strategies and plans
- Public notices
- Media releases
- Contracts register
- Community engagement, consultation and research

Accessibility to information included in the list of OAIS information that must be published has improved drastically with the One Government website, and has been a deliberate consideration in the design of the website’s structure. This is acknowledged and commended.

As such, the review has found that the Open Access Information portal is largely redundant for the following reasons:

- **It was established as a way to be ‘seen to be complying’:** It was established at the commencement of the new FOI Act in 2018 to provide a place where agencies could demonstrate their compliance to a small number of invested stakeholders that were monitoring how the ACT Government complied with new OAIS requirements under the FOI Act. Publication through the portal is not necessary to be compliant with the FOI Act and most of the information required to be published is already found in places like agency annual reports and on government websites.
- **It does not match the ‘user experience’ of finding information:** Most members of society searching for government information use search engines such as Google and Bing to find the information. Where information is not readily available using search engines, users will likely contact the agency to ask for the information (in some cases triggering a formal information access application). As such, the portal does not have utility as a destination for finding government information.
- **It represents duplicative administrative effort for agencies:** As compliance with the OAIS provisions of the FOI Act are being complied with through the One Government website uplift, additional efforts to maintain the Open Access Information portal are duplicative at best or not undertaken at worst.
- **It is a less efficacious means of accessing information:** The new One Government website makes it easier and simpler to access information contained in the portal.

Maintaining the portal represents a risk to the exact OAIS provisions in the FOI Act that the portal was created to demonstrate compliance with – it currently lacks up-to-date, accurate and complete information by virtue of a more effective means of demonstrating compliance through the One Government website.

Given publication through the portal is not necessary to be compliant with the FOI Act, the portal not having utility as a destination for finding government information, and ongoing efforts to improve accessibility of the ACT Government website, the review has found the Open Access Information portal largely redundant and an easy opportunity for cost savings by the ACT Government by decommissioning it.

⁵⁵ <https://www.legislation.act.gov.au/DownloadFile/ni/2025-268/current/PDF/2025-268.PDF>, p. 2

Recommendation 8: Decommission the Open Access Information portal.

- Transition responsibility for the Open Access Information portal to the newly established centralised FOI policy team (interim).
- Undertake a gap analysis of information published on the new One Government website with information currently available on the Open Access Information portal.
- Ensure all information on the portal is available on the One Government website. Where it isn't, either make it available or justify rationale for not being available (e.g. no longer current, is now inaccurate, is incomplete).
- Discontinue periodic reporting by directorates regarding information for the portal.
- Release a communications campaign publicly about the decommissioning of the portal and the 'Open government information' section of the One Government website.
- Decommissioning the Open Access Information portal.

Theme: Leadership and Culture | Resourcing and Skilling | **OAIS and Proactive Disclosure** | Legislative Change

Accountability mechanisms

The review did not identify any publication undertaking, declaration or regulation prescribing additional information that has been made open access information under these powers. The latest ACT Ombudsman guidelines regarding the OAIS also provide this assessment, noting the guidelines were last updated in 2020.⁵⁶

Publication undertakings

The lack of publication undertakings by the ACT Government indicates that either:

- the OAIS is hampered in its ability to realise its full potential, or
- agencies are proactively publishing information of interest to the public without the use of publication undertakings.

The review has found that the OAIS is hampered in its ability to realise its full potential by directorates not actively engaging in the process of publication undertakings, whereby government information it holds that would not otherwise be open access information is identified and made publicly available proactively by directorates under section 29 of the FOI Act.

The Act clearly intends agencies to regularly review whether it holds kinds of government information that it could undertake to disclose through the OAIS by a publication undertaking. Subsection 29(2) of the Act provides that:

"Every 12 months an agency must review its publication undertaking or, if the agency does not have a publication undertaking, consider whether it has information it could include in a publication undertaking."

Further, an agency's failure to comply with this obligation is specifically identified as a ground for a complaint to the Ombudsman in paragraph 69(2)(b).

The Review identified limited evidence of agencies instituting processes to ensure compliance with subsection 29(2) of the FOI Act, with the exception of the TCCS Open Access Information Policy which clearly sets out Information Officers' responsibilities to conduct these reviews annually. Further, the ACT Ombudsman's OAIS Guidelines do not mention agencies' annual obligations. Agencies should consider including information on administration of subsection 29(2) in their respective OAIS policies, if not already covered, and addressing their reviews in annual reporting.

⁵⁶ https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/296036/1.-Ombudsman-Guidelines-Open-Access-Information-March-2020.pdf

Recommendation 9: Pilot mandatory publication undertakings.

- Baseline WhoG position on the use of publication undertakings to encourage agencies to use them, with appropriate support provided by the centralised FOI policy team.
- Identify 1-2 pilot directorates to implement a mandatory publication undertaking requirement that senior leadership of the directorate must oversee and report on annually in the directorate's annual report.
- Empower the newly established centralised FOI policy team to monitor directorate compliance with s 29(1) and s 29(2).
- Report to the Minister responsible for the FOI Act.

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Information to be declared open access by the Ombudsman

The absence of Ombudsman declarations, guidance and even general information about s 65 (declared open access information) suggests that there is room for improvement in the use of this power. It would likely require improved trend analysis of review decisions to identify specific information, or classes of information, that the Ombudsman considers open access.

This power could be seen as another “push” mechanism for the ACT Government to release information, and in lieu of agency publication undertakings would add significant value to the quantum and substance of pro-disclosure activities of the ACT Government.

Resourcing

Similarly to the observation made in Chapter 2 about resourcing of business-as-usual versus continuous improvement functions of the FOI system, current resourcing of the OAIS would be categorised as a continuous improvement initiative, rather than business-as-usual and required for the proper administration of the FOI Act.

The review disagrees with this approach to resourcing OAIS activities and strongly encourages the ACT Government to consider dedicated resourcing across the ACT Government for required OAIS activities under the FOI Act.

Recommendation 10: Clearly and explicitly identify OAIS activities that are required under the FOI Act and ensure they are resourced as such.

- Identify business-as-usual OAIS resourcing requirements for each directorate and determine FTE requirements to support these OAIS activities.
- Identify continuous improvement elements of the OAIS that are subject to variable resourcing based on capacity of OAIS and/or FOI processing teams and communicate variable resourcing needs to centralised FOI policy team for support.
- Ensure business-as-usual OAIS activities are monitored, with accountability measures in place to ensure they are performed.

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Chapter 6: The ACT Ombudsman

This chapter explores and assesses the efficacy of the ACT Ombudsman and its role in reviewing access applications, providing guidance, and promoting a pro-disclosure culture. This chapter analyses the relationship that exists between the Ombudsman and FOI teams, and the more nuanced relationship within the ACT Government as a whole. This chapter concludes by exploring recommendations that could be considered to improve the effectiveness of the Ombudsman.

The role of the ACT Ombudsman

This chapter analyses the efficacy of the ACT Ombudsman's role within the ACT's FOI system.

The Ombudsman occupies seven core functions under the FOI Act.⁵⁷ These are to review decisions, grant extensions of time, monitor the operation of the FOI Act, make OAIS declarations, publish FOI guidelines, report on the operation of the Act and to investigate complaints. All these functions play an important role in ensuring the proper operation of the FOI Act in order to ensure the objectives of the FOI Act are met.

The scope of this statutory review focused on the two statutory functions of the Ombudsman which have direct impact on the provision of access to government-held information: the Ombudsman's review function and their FOI guidelines function. Through the course of consultations, stakeholders also expressed a wide range of broader views about the Ombudsman's role in providing guidance and setting cultural expectations, and aspects of the relationship between the Ombudsman and directorates. This chapter is accordingly broken into two parts, the first dealing with issues relating to the Ombudsman's statutory review and guidelines functions; the second dealing with other issues broadly identified as connected with the relationship between the ACT Ombudsman and directorates.

Review of decisions

Section 73 of the FOI Act gives relevant persons, including applicants, a right to apply to the Ombudsman for review of a decision made under s 35(1) of the Act to give access to government information, to refuse to give access to government information, or that government information is not held. The Ombudsman generally has 30 working days to finalise the review of the decision⁵⁸ and either resolve the matter informally,⁵⁹ or confirm, vary, or set aside and substitute, the decision.⁶⁰

Similarly to other jurisdictions, this statutory function establishes the ACT Ombudsman as the primary administrative, or merits, reviewer of ACT Government decisions relating to FOI access requests. In broad terms, this function is one of overseeing and reviewing decisions made by the ACT Government to ensure that decisions are transparent, lawful, fair and provide accountability.⁶¹

Inherent to this function is a critical role of objectively testing the correctness of a government decision that disclosure of requested information is contrary to the public interest with the result that access to the information should be denied. The function also reflects a critical 'check and balance' role in a system where applicants generally do not themselves have adequate information or resources to test the merits of a decision to refuse access to government information.

Analysis of ACT Ombudsman decisions

In 2023–24, the Ombudsman received 43 applications for review, and finalised 49 applications for review. The significant majority of applications for review were made by members of the public, with much smaller numbers made by members of the Legislative Assembly, private organisations and not-for-profit organisations, as reflected in **Figure 15**:

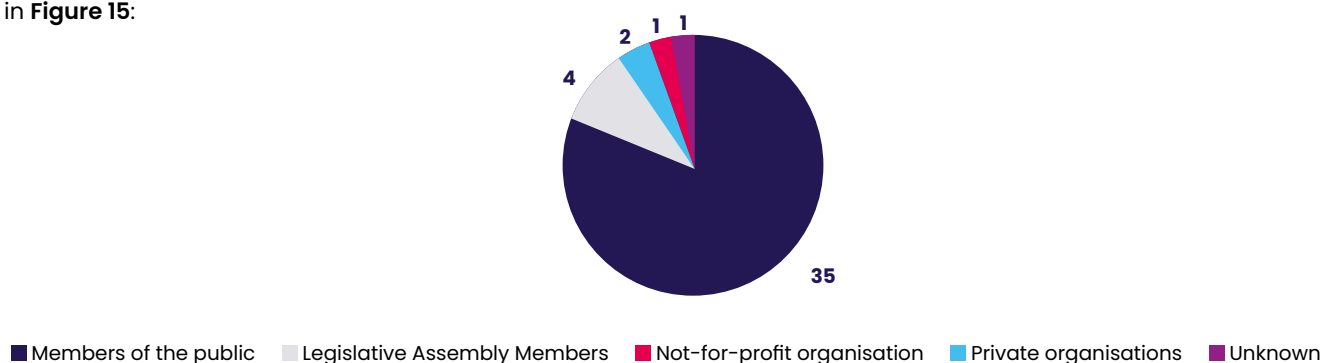


Figure 15: Applications for Ombudsman review by applicant type⁶²

⁵⁷ FOI Act s 64(1).

⁵⁸ FOI Act s 82(3).

⁵⁹ FOI Act s 80A.

⁶⁰ FOI Act s 82(2).

⁶¹ ACT Ombudsman Website, www.ombudsman.act.gov.au/about-us/our-role.

⁶² Data obtained from ACT Ombudsman, [Report on the Freedom of Information Act 2016](#), October 2024, page 28–30.

In respect of the applications finalised by the Ombudsman over the 2023–24 period, most were either: withdrawn; closed as they were assessed as having no reasonable prospects of success; or went through the formal review process (**Figure 16**). Significantly, **Figure 16** reflects that, of 23 applications where the Ombudsman made a formal decision, 11 (or 48%) were either variation or substitution decisions (i.e., altering or replacing the original decision made at the agency level). This highlights the importance of the Ombudsman's role. Excluding matters that are closed as having no reasonable prospects of success where the Ombudsman agrees with decision made in the first instance, the Ombudsman changed the initial decision made by the directorates in almost half of the review decisions.⁶³ Without this mechanism, applicants would not have been able to gain access to the relevant information they were seeking without escalation to ACAT.

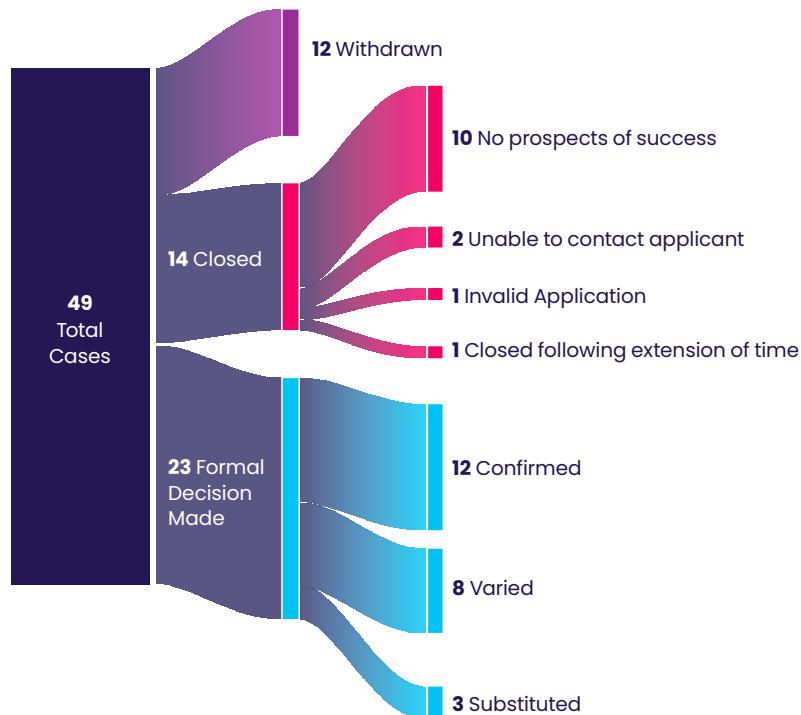


Figure 16: Overview of outcomes of decisions finalised by the Ombudsman in 2023–24⁶⁴

Publishing guidelines

Under section 66 of the FOI Act, the Ombudsman may make guidelines which provide for anything that is consistent with the objects of the Act, including the specific matters referred to in section 66(2) of the Act. The guidelines are public documents, published as notifiable instruments under the FOI Act. The guidelines are intended to assist decision-makers in 'exercising their responsibilities' given the 'nature of the scheme and at times the difficult decisions that are required to be made under the [Act]'.⁶⁵ Effective guidelines can also serve an additional purpose of providing guidance to the public on the FOI process. There are currently six published guidelines, which relate to:

1. The open access information scheme;⁶⁶
2. Informal requests for information;⁶⁷
3. Dealing with access applications;⁶⁸
4. Considering the public interest;⁶⁹
5. Amending personal information; and⁷⁰
6. Ombudsman reviews.⁷¹

⁶³ It is noted that ACT Ombudsman's decisions are made based on information available at the time of the review, not based on information available at the time of the initial decision. Therefore, some variations and substitutions of decisions are the effect of changing circumstances which warrant a varied or substituted decision, even when the initial decision may have been the correct and preferable decision at the time it was made by the original decision-maker. See also: ACT Ombudsman, *Freedom of Information Guidelines* (Volume 6), page 6.

⁶⁴ Data obtained from ACT Ombudsman, *Report on the Freedom of Information Act 2016*, October 2024, page 28–30.

⁶⁵ Explanatory Statement, *Freedom of Information Bill 2016*.

⁶⁶ ACT Ombudsman, *Guidelines 1 of 6: 'Open access information'*, October 2019.

⁶⁷ ACT Ombudsman, *Guidelines 2 of 6: 'Informal requests for government information'*, October 2019.

⁶⁸ ACT Ombudsman, *Guidelines 3 of 6: 'Dealing with access applications'*, February 2020.

⁶⁹ ACT Ombudsman, *Guidelines 4 of 6: 'Considering the public interest'*, November 2023.

⁷⁰ ACT Ombudsman, *Guidelines 5 of 6: 'Amending personal information'*, May 2020.

⁷¹ ACT Ombudsman, *Guidelines 6 of 6: 'Ombudsman reviews'*, May 2020.

Efficacy of guidelines

Consultations with internal ACT Government stakeholders elicited a range of views about the utility of the current guidelines. While some stakeholders identified that the guidelines were helpful sources of information, others disagreed, with the majority of stakeholders suggesting that the guidelines have limited utility and do not address key questions that FOI Officers have when assessing information requests. Most stakeholders also identified that the current guidelines are out of date, limiting their helpfulness. Stakeholders suggested that:

- The guidelines should be routinely updated to reflect ACT Ombudsman review decisions which impact relevant subject matters – for example, which impact the way in which directorates should approach application of the public interest test. More generally, stakeholders felt it was important that principles the ACT Ombudsman applies when reviewing FOI decisions be incorporated into guidelines to ensure their clear and consistent application by directorates in subsequent decisions.⁷²
- There should be a more general regular review process to ensure the guidelines remain up to date.

It also became clear during this review that the guidelines are difficult to locate. FOI processing officers are aware that they can access the guidelines as notifiable instruments published on the ACT Legislation Register. However others, including members of the public, would be unlikely to be able to easily access the guidelines in this way. While the guidelines are linked on the ACT Ombudsman's website as available, the current link did not appear to work. The ACT Ombudsman noted that they are currently working to address these access issues by ensuring all links are functional and streamlining content on the website, to be resolved prior to the completion of the review.

While the primary purpose of the guidelines is to guide decision-makers, they could also clearly provide an excellent source of information to the public about the FOI process which is likely to be particularly useful to prospective FOI applicants. Consistently with this, the FOI Act's pro-disclosure purpose would clearly be aided by ensuring that the existence of the guidelines is prominently noted and that the guidelines are easily accessible by all who may need or wish to access them.

Recommendation 11: Implement regular reviews of FOI Guidelines.

- Regular, periodic review should be undertaken by the ACT Ombudsman – preferably annually, but at minimum every 2 years or when triggered by law change (see below).
- Where FOI Guidelines are unchanged, the web page or guideline should note the last review date, so the Guideline's currency is clear.
- FOI Guidelines should be reviewed following substantive changes to the FOI Act and updated to incorporate principles from previous ACT Ombudsman review decisions, as well as any ACAT or superior court decisions.
- Notify stakeholders publicly (e.g. through media release, social media, etc.) and through direct channels (e.g. emails) following updates made to the FOI Guidelines summarising key changes.
- Reconsider update of FOI Guidelines as a continuous improvement activity, noting it is a statutory function and should therefore be considered as a business-as-usual function, and resourced accordingly.
- Review of FOI Guidelines should include re-publishing on the ACT Ombudsman website along with public and ACT Government communication of re-publishing.
- Review should also include monitoring currency of FOI Guideline links and website content accuracy.

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⁷² The ACT Ombudsman noted that they updated the FOI Guidelines Volume 4 – Considering the Public Interest Test following legislative amendments and to provide guidance on review decisions.

Relationship between the ACT Ombudsman and directorates

A strong and effective working relationship between the ACT Ombudsman, directorate FOI processing officers and information officers is necessary to ensure optimal administration of the FOI Act. This relationship is particularly necessary to ensure the effectiveness of:

- the decision review process, which benefits from openness in communication between directorates and the Ombudsman, and
- the Ombudsman's guidance to directorates.

Stakeholder consultations generally identified that there is an effective working relationship between the Ombudsman and directorates. Consultations did, however, disclose isolated issues which strain, or reflect unhelpful tensions, in this relationship. To a large extent, these issues could likely be addressed through greater training and education of agency FOI teams.

Views on how decisions should be made

A common perception of directorate FOI processing officers and information officers articulated during consultations was that, in reviewing decisions, the Ombudsman sometimes applies undue weight to factors favouring disclosure, and inadequate weight to factors favouring non-disclosure. A related perception was that the Ombudsman, sitting at arm's length from agencies, was sometimes unable to appropriately appreciate the importance of relevant information being kept confidential to government.

While a level of disagreement between agencies and a regulator in an FOI scheme is to be expected and is often healthy, these particular perceptions appear to reflect a lack of understanding in some FOI officers of:

- the proper approach to application of the public interest test, and
- more broadly, the proper nature of the Ombudsman's role as an independent, arm's length, statutory officer charged with performing FOI functions which are of a regulatory and oversight nature.

Some agency stakeholders noted that, due to the time taken for the Ombudsman to make decisions, the facts upon which the initial decision had been based had changed, resulting in the Ombudsman finding that the initial decision was made incorrectly. These stakeholders expressed concern that decisions being recorded as having been either 'varied' or 'substituted' in these circumstances reflected poorly on agency FOI teams. This concern appears to reflect a lack of understanding of the nature of merits review decision-making processes which require a review decision-maker to have regard to the facts before them at the time of making their decision. Education of FOI teams, and clear messaging in Ombudsman decisions on this point for public and government stakeholders, may ease these concerns.

It is suggested that education and training about best practice in application of the public interest test, including the weighing of public interest factors, could assist in addressing any misunderstanding and assist in easing the kinds of concerns raised by agency information officers. The Ombudsman could also consider whether there would be utility in regular education of FOI teams about the proper nature of the Ombudsman's independent oversight role in the ACT's FOI system.

Adherence to statutory timeframes

Another point of tension between the ACT Ombudsman and directorates arose as a result of the inconsistencies in the ACT Ombudsman's approach to decision-making within statutory timeframes.

Under the FOI Act, and subject to any extensions or pauses to the timeframe, initial directorate decision-makers have 30 working days to respond to information requests.⁷³ Directorate information officers noted that, despite the breadth and complexity of many FOI requests, and in some cases a lack of resources, most requests were resolved within the 30 day timeframe (or that timeframe as extended in accordance with relevant provisions of the FOI Act). In practice, over the 2023-24 period, 99% of information requests were decided within applicable statutory timeframes.⁷⁴

⁷³ FOI Act s 40(1); Note: this was changed from 20 working days to 30 working days on 24 May 2023.

⁷⁴ Data obtained from ACT Ombudsman, [Report on the Freedom of Information Act 2016](#), October 2024, page 19.

The ACT Ombudsman generally did not meet statutory timeframes for the finalisation of the 49 applications resolved in 2023–24, with many applications taking significantly longer than the applicable statutory timeframe to resolve:

- the ACT Ombudsman only met their statutory timeframe of 30 working days⁷⁵ in 18% of cases.⁷⁶
- 65% of applications took longer than 12 weeks to finalise.
- 31% of applications took longer than 6 months to finalise.

This is reflected in **Figure 17** against ACT Ombudsman-set response timeframe targets.

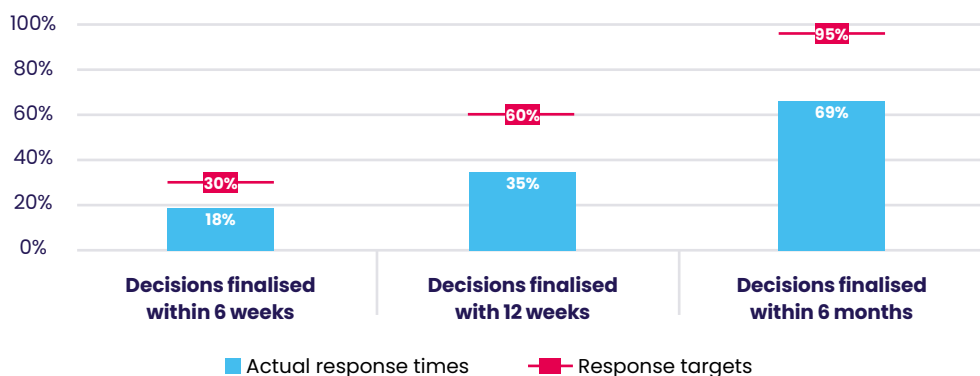


Figure 17: Ombudsman decision times against decision targets (captured cumulatively)

This tension appeared to be further exacerbated by the Ombudsman continuing to push directorates to meet their statutory timeframes, with one stakeholder noting that the Ombudsman has stated that a 'lack of resources is not an excuse' for failing to meet deadlines. This issue was explored through discussions with information officers about their obligations under the Work Health and Safety Act regarding psychosocial hazards, which are often involved in FOI access application processing. In complying with these obligations, information officers are caught with further resourcing constraints to meet statutory timeframes.

Both ACT Government and external stakeholders called for the Ombudsman to observe stricter adherence to statutory timeframes and called for consequences to apply when these timeframes are not met. It is beyond the scope of this review to consider whether, and if so what, consequences could and should apply to the Ombudsman for failure to meet timeframes. That said, the options, beyond the political, appear limited.

It is likely that limitations in resourcing of the Ombudsman contribute to statutory deadlines for review decisions being exceeded. However, there are other relevant factors at play:

- **Prioritising correctness over promptness:** The Ombudsman has placed priority on making review decisions that are well thought out and comprehensive over meeting the 30 day timeframe for review decisions. An aspect of this, from the Ombudsman's perspective, is significant engagement with parties through the review process, beyond that necessary to meet minimum procedural fairness requirements.
- **Lack of mechanism for extension:** The timeframe itself is short and there is no mechanism for extension of it. The Ombudsman's review function is a full merits review function. As a general proposition, 30 days is unlikely in many cases to be sufficient time to conduct a full merits review process.

From the review's perspective, there is a trade-off to be made between the making of review decisions which are well thought out and which provide adequate guidance to agencies versus the making of decisions within a 30 day timeframe.

Overall, the review considers it appropriate for the Ombudsman to have placed greater priority on making decisions that are well-thought-out even if they do not meet statutory deadlines. There is nevertheless scope for the Ombudsman to examine the extent of their engagement with parties during the review process and to find some time efficiencies in the review process. That would be unlikely, however, to significantly reduce the number of decisions being made out of time.

⁷⁵ FOI Act s 74(1)(a).

⁷⁶ Data obtained from ACT Ombudsman, [Report on the Freedom of Information Act 2016](#), October 2024, page 31.

The review also notes that both the Ombudsman and ACAT are empowered with a full merits review function. In a scheme involving multiple layers of administrative review, the regulator (ie, Ombudsman) review function could be more limited in scope to facilitate quicker review, with the more time consuming full merits review function reserved for the tribunal. The ACT Government may wish to consider this alternative in the context of considering any Act amendments to allow extensions of time for Ombudsman review (see Recommendation 13). That is, the ACT Government may wish to consider whether extended timeframes for full merits review to be undertaken by the Ombudsman are preferable to a more limited and quicker Ombudsman review function or vice versa.

Recommendation 12: Increase resourcing of both FOI processing teams and funds allocated to the ACT Ombudsman to enable more timely and accurate decision-making in the first instance and in full merits review.

- Requires consideration by the ACT Government whether it is happy with current access decision-making timeframes in the first instance (information officers) and on review (ACT Ombudsman).
- Match increasing in resources to self-reported staffing shortfalls by directorates.
- Additional resources are required in both directorate FOI teams and in the Ombudsman's FOI function if the ACT Government wanted more correct decisions made more quickly by both parties. Additional resourcing would significantly assist ensuring timeframes are met.

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Recommendation 13: Amend the FOI Act to include a mechanism for the ACT Ombudsman to extend the review period, with appropriate notification considerations for the applicant and other party to the review.

- A fixed, 30-day timeframe for the making of Ombudsman review decisions is not appropriate or sustainable.
- This is a pain point that will likely be exacerbated as the current trend of increasingly complex access applications continues to grow.
- The ACT Government could consider whether an extension of time mechanism could be complemented by consideration of whether the nature and scope of the Ombudsman's review function could be limited to allow for shorter review timeframes.

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Precedential value of ACT Ombudsman decisions

One aspect of inconsistency between the views of agency FOI team members appeared to be whether review decisions made by the Ombudsman had status as precedent and therefore had to be followed by agencies in subsequent decisions. Some directorate FOI Officers explicitly stated that Ombudsman decisions were not law and did not represent precedent to be applied beyond the decision under review. Conversely, the Ombudsman's view was that his review decisions should in an administrative sense be understood as operating in a precedential way – that is, so that directorates apply the principles established in review decisions consistently in subsequent access decisions.

While the Ombudsman's decision is binding in the context of the specific case reviewed (section 82 of the FOI Act), the precedential value of the Ombudsman's decisions for future FOI matters is more limited. More particularly, the Ombudsman's review decisions are administrative in nature and so do not operate as legal precedent. This means that agencies are not legally required to apply the reasoning or outcomes of past Ombudsman decisions to future, unrelated FOI requests.

However, it is common for administrative decisions made by statutory regulators, such as the Ombudsman in the current context, to be regarded as persuasive guidance which is routinely followed by those making initial administrative decisions, in order to promote consistency in decision-making and to reduce the likelihood of repeated complaints or adverse review outcomes.

Consistent with this, the review considers that Ombudsman review decisions should be considered persuasive and, as a general rule, followed by agencies in their decision-making to promote consistency of decisions. There are two ways in which this outcome might be achieved across all directorates:

1. By education and guidance leading to cultural change in FOI teams, resulting in staff understanding and accepting that principles set out in Ombudsman review decisions should be taken into account, and generally applied consistently, in subsequent access decisions.
2. By legislative amendment to compel information officers to have regard to Ombudsman guidance, as is the case in the Commonwealth FOI legislation.⁷⁷ This would aid in altering the nature of Ombudsman guidance in that, information officers would be legally required to 'have regard' to the Ombudsman's guidelines (including review decision principles set out in the guidelines) and consider their application to each decision they make, departing from the guidelines only where there is a clear and legally defensible basis for doing so.

The Ombudsman considers legislative amendment is not necessary. The review supports the relatively immediate implementation of non-legislative measures to strengthen FOI teams' application of principles established in Ombudsman review decisions. However, having regard to the content of stakeholder feedback, the review has concluded that serious consideration should also be given to legislative amendment so as to ensure appropriate change in understanding of the relationship between directorates as initial decision-makers and the Ombudsman as regulator and reviewer.

Recommendation 14: Establish methods for regularly communicating and training FOI processing officers and information officers on ACT Ombudsman decisions and the principles they create for consideration in future decisions.

- Educate and provide guidance to FOI teams in order to lead cultural change, so that teams understand and accept that principles set out in Ombudsman review decisions should be taken into account, and generally applied consistently, in subsequent access decisions.
- Would likely be most effective if facilitated by the centralised FOI policy team (refer Recommendation 21).
- Consider in the future whether legislative amendment is required to ensure information officers have regard to the Ombudsman's guidelines when making decisions.

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⁷⁷ Freedom of Information Act 1982 (Cth) s 9A(b).

Chapter 7: Other opportunities for improvement

This chapter explores a wide range of opportunities for improvement that fall outside of other terms of reference for this review. Particularly, this chapter analyses ways to improve the timeliness of access applications, alternative pathways for release, resourcing of the FOI system within the ACT Government, how the digital environment should be embraced, and specific pain points felt by FOI teams in administering the scheme otherwise not covered by other terms of reference.

Context to FOI efficiency

When FOI processes are efficient, they enable timely access to information, reduce administrative burdens, and enhance the public's ability to participate in democratic processes. Streamlined FOI systems also help agencies manage resources more effectively and reduce the risk of non-compliance with obligations under the FOI Act.

A 2021 own-motion investigation by the Victorian Information Commissioner explored the number of issues impacting efficiency in the Victorian regime. These included increasing citizen demand for information, outdated processes, cultural attitudes within agencies that prioritise information protection over timely disclosure, a lack of FOI performance reporting and monitoring, inadequate engagement with applicants and legislative impediments.⁷⁸ A 2023 parliamentary committee review into the Commonwealth FOI scheme found similar issues were causing delays in original and review decisions.⁷⁹

In the ACT context, the *Freedom of Information Amendment Act 2023* made significant changes to the FOI Act, with a primary goal of improving the efficiency of the FOI scheme, stating in the Bill's Explanatory Statement:

*"The purpose of the Bill is to ... improve and streamline processing of freedom of information access applications and reviews, and to provide greater flexibility in managing workflows, in order to meet the objectives of the Act more efficiently, for applicants and the broader public."*⁸⁰

In the *Freedom of Information (Accessibility of Government Information) Statement 2025*, the ACT Chief Minister highlighted the government's ongoing commitment to "continually improve processes to deliver a consistent approach to proactive disclosure of government information."⁸¹

Alternative pathways for release

Providing alternative pathways for information release, such as the informal release (or administrative access) and OAIIS pathways contained within the FOI Act are important mechanisms to improve FOI efficiency by resolving requests outside the formal FOI process, reducing processing time, and easing the burden on FOI processing officers and information officers while still meeting the public's information needs. Alternative pathways can provide a quicker, more flexible and inexpensive alternative to providing access to government information through the FOI Act request process.⁸²

The ACT Ombudsman noted that in 2023–24, there was a slight decline in the number of access applications resolved informally, with 100 applications finalised outside the formal FOI process, down from 111 the previous year.⁸³ While we heard from some agencies that they utilised policies to 'fast-track' access to routine information, broader uptake and awareness of informal release mechanisms remain limited.

As the ACT Government's culture of proactive disclosure and pro-disclosure continues to mature, there will likely be further opportunity for information officers to have early conversations explaining what information is available, what is legitimately withheld and what can be accessed through other means. This requires trust between the applicant and agency and will likely evolve naturally over time with sufficient training and support to have discussions about alternative pathways to release. Tracking changes to community attitudes is one way to determine whether this is in fact changing over time.⁸⁴

78 Office of the Victorian Information Commissioner, *Own Motion Investigation Report: Impediments to timely FOI and information release* (PP no. 270, Session 2018–21).

79 Senate Legal and Constitutional Affairs References Committee, *The operation of Commonwealth Freedom of Information (FOI) laws* (Final Report).

80 *Freedom of Information Amendment Bill 2022*

81 *Freedom of Information (Accessibility of Government Information) Statement 2025 (No 1)*, NI/2025-268 - Register of Notifiable instruments

82 OAIC, *Administrative access | Freedom of information guidance for government agencies*

83 ACT Ombudsman, *Report on the Freedom of Information Act 2016*, October 2024, page 10.

84 The 2023 Community Attitudes Survey, where 79% of respondents in the ACT reported not knowing of any other way of obtaining information held by government agencies other than through FOI.

Recommendation 15: Undertake a coordinated approach to WhoG and agency-specific administrative access arrangements.

- Define parameters for categories of information that fall under administrative access arrangements across government.
- Provide policy guidance on considerations for directorates and agencies to determine their own administrative access arrangements.
- Require directorates and agencies to develop their own guidance for administrative access arrangements to ensure their ongoing currency.
- Develop centrally led initiatives that provide opportunity for administrative access efficiencies, such as centralised portals for accessing personal information across directorates, ACT Government staff seeking their own personnel records, etc.
- Should be led and continually monitored by the centralised FOI policy team.

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Information better suited to other access arrangements

Throughout consultations stakeholders observed that certain types of information may require consideration for specialist or alternative access arrangements, and that the FOI framework is not well suited to handling access applications for these types of information.

As a small jurisdiction, the ACT is well-placed to trial an alternative framework to enable the release of particular information, such as life story records involving individuals with lived experience of protective care, information under the Child and Young People Act, and others.

Personal information

Particularly, stakeholders noted that access applications for personal information are overwhelming and expressed their views that access to personal information requests, at the quantities being received, is not something the FOI Act was designed to handle. Personal information is available under section 7 of the FOI Act, as it is included in the broad definition of 'government information'. Individuals have a right to amend their personal information under Part 6 of the FOI Act, but this right is rarely invoked.⁸⁵

Perhaps not surprisingly, the number of access applications received for personal information are highly varied, depending on the agency. The Community Services Directorate and the Justice and Community Safety Directorate receive a much higher quantity of personal information requests relative to other agencies due to the nature of their work. Further examples of specific types of information that may not be suitable for release under the FOI Act are discussed below, but there remains a question as to whether personal information should be accessible under the FOI Act at all, or whether a separate pathway for release should be established or reinforced.

Right of access under the Information Privacy Act 2014

There currently exists a separate right of access to personal information under the *Information Privacy Act 2014* (ACT) (the 'IP Act').⁸⁶ This right of access to personal information is similar to the right of access provided under the FOI Act, and in fact directly refers to the reasons for refusal under the FOI Act, as reasons for refusal under the IP Act.⁸⁷

External stakeholders noted that they either did not use the pathway under the IP Act, or did not know it existed. While outside the scope of this review, the right of access under the IP Act is not readily available through internet search and there is limited guidance about the right of access. This likely directs more applicants to the FOI Act as the most clearly and comprehensively communicated avenue for information access.

⁸⁵ In the 2023–24 period, ACT Government agencies collectively received one formal request to amend personal information under the FOI Act – See Ombudsman report.

⁸⁶ Information Privacy Act 2014 (ACT) part 1.5 s 12.1.

⁸⁷ Information Privacy Act 2014 (ACT) part 1.5 s 12.2.

Stakeholders that did know about the right under the IP Act often noted that the right of access should be explored as an opportunity to separate and streamline applications for personal information and applications for government information, each under their own Act.

This poses an interesting option and has somewhat been tested by the Queensland Government in separating their former *Freedom of Information Act 1992* (QLD) into a *Right to Information Act 2009* (QLD) and an *Information Privacy Act 2009* (Qld), each with its own right to government information, and a right to personal information under each Act respectively.

This has recently been reversed via the new *Information Privacy and Other Legislation Amendment Act 2023* (Qld) which came into effect on 1 July 2025. This legislation restores the single right of access under the *Right to Information Act 2009* (Qld) following a 2017 review of the framework which noted that the rationale for this dual right of access was that:

“it would make the application process simpler and quicker for applicants and agencies and permit greater specialisation in privacy matters. However, there is widespread agreement that these benefits have not eventuated.”⁸⁸

The 2017 review further noted that the dual rights of access have instead resulted in: legislative duplication; complicated reasons for decisions; significant cross-referencing between Acts; and delays due to processing applications under the wrong Act. The split of two rights of access appeared to be confusing for applicants and combining the two rights with a singular right under the RTI Act was ‘unanimously supported by stakeholders throughout all stages of the review.’⁸⁹

Effectively, Queensland has come full circle and returned to a single right of access under their RTI Act. This is not necessarily to say that the ACT should not further explore streamlining the various rights of access that exist but should be cautious of the fact that this method has been somewhat tried and reverted.

Right to deletion of personal information

Additionally, there appears to be some public confusion about rights to data deletion, possibly influenced by privacy laws in other jurisdictions. Agencies reported receiving requests to erase all personal data, which is often not possible under the Territory Records Act 2002 due to mandatory retention requirements. This suggests a need for better public education.

Care records

There is a strong view that the FOI Act, in its current form, is not fully equipped to handle requests for care records, or similar records containing particularly sensitive information relating to a person’s interaction with government services, efficiently or appropriately. Multiple stakeholders suggested that these requests might be better managed through a dedicated information release framework tailored to the specific sensitivities and complexities of such records.

While the development of a bespoke information release framework for care records is not within the scope of the review’s terms of reference, it is considered a vitally important issue to address as the FOI Act isn’t well designed to deal with these requests. To assist further exploration and possible development of a specialist framework for care records, we have set out design features that would provide robustness as an information release framework below.

88 Queensland Government, [Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009](#), October 2017, page 15.
89 Queensland Government, [Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009](#), October 2017, page 15.

Recommendation 16: Develop a separate information release framework to support the management and complexities of care-related records.

A standalone process is required to develop an appropriate framework, with consideration to the particular risks and sensitivities involved, and consultation with appropriate experts and stakeholders. Core elements to be considered carefully should include a process to:

- Identify appropriate application process and decision-maker.
- Develop review mechanism.
- Define persons who can make an application (e.g. guardians, legal personal reps, etc.).
- Determine the cohort of persons in relation to whom information may be sought (e.g. does this include deceased persons).
- Determine form of release.
- Develop grounds for redactions (e.g. 3rd party information).

Theme: Leadership and Culture | Resourcing and Skilling | OAS and Proactive Disclosure | **Legislative Change**

Medical records and privacy legislation

Similar concerns have been raised in relation to overlapping legislative frameworks regarding medical records.

Officers noted that information can fall under the FOI Act, the *Health Records (Privacy and Access) Act 1997*, and the *Information Privacy Act 2014*, depending on the content of the file. For instance, in the Education Directorate, the inclusion of medical information in a student record may inadvertently bring the entire file under the scope of health records legislation. This can create uncertainty about which legal obligations apply and how best to process the request.

Sensitive information

The current definition of ‘sensitive information’ under the FOI Act isn’t seen as intuitive or being as user-friendly as other parts of the legislation. One example provided by a stakeholder was that while membership of a club can sometimes be classified as sensitive, other types of personal information that may be equally or more private are not. The definition of sensitive information is intended to capture associations that could be used to discriminate against someone, so there are parallels with the protected attributes in the *Discrimination Act 1991*.

Reviews such as the Glanfield Inquiry and the ACT Legislative Assembly’s Standing Committee on Health, Ageing and Community Services have found that current rules around ‘sensitive information’ are complex and limit effective information sharing.⁹⁰ The review understands work is underway to resolve difficulties with sensitive information, however it is not known whether those initiatives will extend to clarifying how sensitive information is handled under the FOI Act.

Schedule 1.3(6) of the FOI Act provides that information is exempt from disclosure if its release would be contrary to a secrecy provision under another law. While this exemption is intended to protect sensitive information, some stakeholders felt as though its broad application can limit transparency and freedom of expression. In practice, many secrecy provisions across government are drafted in expansive terms, meaning it may limit access to even routine or lower-risk information.

Workplace disputes

In several directorates and agencies, FOI processing officers and information officers observed an increase in FOI applications relating to workplace grievances. These often involve sensitive personal information, including allegations of misconduct, interpersonal disputes, and internal investigations. While FOI legislation provides a mechanism for individuals to access information held by government agencies, it is not always clear whether such requests are the most appropriate or effective avenue for resolving employment-related concerns.

⁹⁰ Laurie Glanfield AM, Report of the Inquiry: Review into the system level responses to family violence in the ACT (April 2016) https://www.cmtedd.act.gov.au/data/assets/pdf_file/0010/864712/Glanfield-Inquiry-report.pdf; Standing Committee on Health, Ageing and Community Services, Report on Child and Youth Protection Services, Report 11 (July 2020) 45.

One directorate noted that in 2025 alone, they had managed several FOI applications relating to workplace disputes involving current and former employees. They provided that, although the public interest test has, in some cases, exempted information from release, the management of these applications prior to the processing stage required careful consideration of how the FOI process could be administered to mitigate risks to the workplace health and safety of the affected employees (such as individuals who had made human resources complaints). Advice from ACTGS is often required to clarify how to handle these competing duties and to ensure the FOI process could be undertaken safely.

There is ambiguity around the extent to which FOI can or should be used to access records related to workplace disputes. In some cases, the information sought may be exempt from release due to privacy considerations or because it relates to internal deliberations. In others, the request may overlap with processes better suited to resolving employment matters, such as internal grievance procedures, industrial relations frameworks, or complaints to oversight bodies.

Some officers suggested that clearer legislative provisions or supplementary guidance could help clarify the role of FOI in this context. This could include outlining when FOI is appropriate, how it interacts with other complaint-handling mechanisms, and how to balance transparency with privacy and fairness.

Recommendation 17: Develop and publish guidance on how the FOI Act applies to workplace grievance matters.

- Important to ensure consistent interpretation, application and management of these issues.
- Ensure the intersection between the FOI and obligations held by employers under the Work Health and Safety Act are actively addressed.
- To be led by the central FOI policy team in collaboration with the ACTGS and ACT Work Health and Safety enabling function.
- Where appropriate, direct individuals to specialist complaints-handling processes established for workplace issues.

Theme: Leadership and Culture | **Resourcing and Skilling** | OAIS and Proactive Disclosure | Legislative Change

Domestic and family violence safeguards

Another key concern is that the current public interest test lacks adequate safeguards to manage risks associated with DFV.

In 2024, the ACT Government passed the *Domestic Violence Agencies (Information Sharing) Amendment Act 2024* (Information Sharing Act) to enhance inter-agency information sharing in the DFV and child protection sectors. The Act is being implemented in phases, with most first-phase 'information sharing entities' being agencies that are also respondents under the FOI Act.

The Information Sharing Act provides that the FOI Act does not apply to information held solely because it was disclosed under the scheme.⁹¹ While this limits FOI access to such information, it does not affect access to information obtained or generated outside the scheme. Individuals may still apply to the originating agency for access under the FOI Act. Once the scheme is operational, this will mean that different legislative approaches will govern access to DFV-related information depending on the source and context of disclosure.

As part of developing the Information Sharing Act, CSD supported a review of the FOI Act's adequacy in preventing disclosures that could increase DFV risk. Key issues identified included:

- **Risk of systems abuse:** Perpetrators may exploit FOI processes to access information about victim-survivors, particularly where existing exemptions are inadequate. This risk has been documented in Victoria's reviews of its DFV information sharing laws.
- **Inconsistent protections:** Once the scheme commences, access to DFV-related information will vary depending on the legislative framework under which it is disclosed.
- **Psychological harm:** While the FOI Act limits disclosure that could endanger physical safety or lead to harassment, it may not adequately address risks of psychological harm, which is a key concern in DFV contexts.

⁹¹ Domestic Violence Agencies (Information Sharing) Amendment Act 2024 (ACT), s16AZ

It is our understanding that work is currently in progress to draft amendments to the FOI Act to provide these protections. CSD indicated that they support legislative reforms being progressed that are like the Victorian model and would, at a minimum:

- provide clarity that information the disclosure of which would, or could reasonably be expected to result in a person experiencing or being at risk of DFV, is information for which disclosure is contrary to the public interest; and
- clarify that a decision maker can refuse to confirm or deny that information is held by the respondent, where if the information did exist it would or could reasonably be expected to result in a person experiencing or being at risk of DFV.

Nevertheless, concerns were raised that further work is needed to clarify that disclosures likely to cause psychological harm are not in the public interest. This issue has been considered in Commonwealth law, where the AAT found that current provisions focus on physical rather than psychological harm.⁹²

In August 2024, the ACT Ombudsman considered whether disclosing personal information of a DFV victim is inherently contrary to the public interest, and whether a family violence order constitutes sufficient evidence.⁹³ The decision in that matter acknowledged the absence of explicit DFV provisions in the FOI Act, though it suggested such disclosures may still be contrary to the public interest.⁹⁴ The Ombudsman's guidelines also support considering DFV risks when assessing FOI applications.⁹⁵

Finally, concerns were raised about the FOI accessibility of information held by the Domestic Violence Review Coordinator. Given the Coordinator's role in collecting sensitive DFV-related data (the Coordinator's functions include the collection of 'information about suspected DFV incidents' and identifying 'patterns and trends in relation to DFV'), it was suggested that it should be clarified that such information is not subject to FOI. This was an express recommendation from the Coordinator in the ACT Domestic and Family Violence Review 2023 Biennial Report.⁹⁶

The review does not recommend specific amendments or policy solutions noting the complexities associated with the design and implementation of reforms, and the limited scope of this review and capacity for consultation with relevant experts and stakeholders. The review nonetheless notes it is critically important for the ACT Government to continue to progress these DFV reforms with explicit consideration to elements of the Act and its administration.

Recommendation 18: Continue to progress important DFV reforms with explicit consideration given to elements of the FOI framework's adequacy noting CSD's identified issues.

- Consider clarifying the public interest test to explicitly include risks of psychological harm and DFV-related disclosures
- Consider specifying that information held by the Domestic Violence Review Coordinator is not subject to FOI release.

Theme: Leadership and Culture | **Resourcing and Skilling** | OAIS and Proactive Disclosure | Legislative Change

⁹² Re Romeo Gerard v Callejo Jr and Department of Immigration and Citizenship [2010] AATA 244.

⁹³ 'DE' and Education Directorate [2024] ACTOFOI 35

⁹⁴ Ibid 7.

⁹⁵ Freedom of Information (Volume 4 – Considering the Public Interest) Guidelines 2023, s8.2.

⁹⁶ [Domestic-and-Family-Violence-Review-Biennial-Report-2023.pdf](#)

Resourcing

Resourcing is a foundational issue in the effective administration of FOI. It is widely recognised that inadequate resourcing (funding for staffing, training and processes) ‘undermines not only the immediate efficiency of FOI processes but also the culture of FOI teams, leading to ongoing inefficiencies.’⁹⁷ Without sufficient support, agencies may struggle to meet their legislative obligations, and the quality and timeliness of responses can suffer. Details of resourcing across the ACT Government’s 8 core agencies is set out in Table 3.

Table 3: Agency FOI resourcing details

Directorate	Current resourcing	FOI requests received (23/24)
JACS	1 x SOGC 1 x ASO6	128
ACT Health and CHS	1 x SOGC 2 x ASO6 1 x ASO5	53 (Health), 62 (CHS)
iCBR	Resourcing is split between Governance functions. Consequently, it is difficult to quantify the exact cost of the FOI function.	15
TCCS	1 ASO4 FTE providing administrative support. This position does not process FOIs. 1 ASO6 FTE 1 SOGB FTE	181
CMTEDD	0.2 x SOGA 1 x SOGB 3 x ASO6 2 x ASO5	430
CSD	1 x Senior Director 1 x Director (OAIS Manager) 12 x FOI Processing Officers (a combination of SOGC and ASO6) 3 x Administrative Support Officers Ongoing funding for 11 of those positions and manages the remaining as a cost pressure.	158
EPSDD	0.2 x SOGB 1.0 x SOGC 2.0 x ASO6 1.0 x ASO5 These positions also assist with legal discovery or production of documents under subpoena and access requests under the Territory Records Act 2002.	121
Education	SOGA x 0.9 SOGC x 1.0 (vacant) SOGC x 0.7 ASO6 x 0.8 ASO5 x 0.87	143

⁹⁷ Monash University, Office of the Victorian Information Commissioner, Ombudsman SA and Office of the Information Commissioner for Western Australia, [The culture of implementing Freedom of Information in Australia](#), 2024, page 8.

In 2020, JACS commissioned a review of the full-time equivalent (FTE) effort involved in processing FOI under the FOI Act, and forecasting for future FTE requirements to sustain capacity and capability over the long-term.⁹⁸ That review found that, at the time, the current staffing levels were adequate to manage the existing volume of FOI requests until at least 2022–23, provided that modest efficiency gains were achieved through improved technology. The review noted that the ACT Government receives approximately 40 additional FOI requests per year across all agencies, a volume that could be absorbed without additional staffing under the existing conditions. It found that increasing FTE would not necessarily lead to significant improvements in timeliness due to the highly manual nature of FOI processing. However, it also cautioned that if FTE levels were reduced, processing times would likely increase.

A comparison of staffing levels in 2020 compared to now can be seen in **Table 4**.

Table 4: Comparison in staffing levels in 2020 compared to 2025

Directorate	FTE Change between 2020 and 2025	Change details
ACT Health and CHS	1.15 FTE increase	Addition: • 0.15 x ASO6 • 1 x ASO5
CMTEDD	0.6 FTE increase	Addition: • 0.4 x SOGB • 2 x ASO6 Reduction: • 0.8 x SOGA • 1 x ASO4
CSD	5 FTE increase	Addition: • 3 x FOI Processing Officers • 1 x Administrative support officer • 1 x Senior Director or Director
EPSDD	0.2 FTE decrease	Addition: • 0.2 x SOGB • 1 x SOGC • 1 x ASO5 Reduction: • 4.0 x ASO4
Education	1.87 FTE increase	Addition: • 0.9 x SOGA • 0.7 x SOGC • 0.87 x ASO5 Reduction: • 0.6 SOGB
JACS	Nil	N/A
TCCS	Nil	N/A
iCBR	Unclear	Unclear

The overall resourcing does not look out-of-step with how other jurisdictions resource their FOI functions. That being said, the ‘macro’ resourcing of FOI does not adequately capture the lived experience of officers in high complexity directorates, or agencies with no dedicated FOI resourcing. The result of our consultations found that many agencies (particularly smaller ones) reported significant strain on resourcing in managing FOI requests. For example, one small statutory agency noted that FOI requests often require the involvement of the most senior staff, diverting attention from core responsibilities.

⁹⁸ Deloitte, Review of the administration of the Freedom of Information Act 2016, November 2020 (available at https://www.justice.act.gov.au/_data/assets/pdf_file/0010/2086921/170-Documents.pdf).

One stakeholder also commented that ‘resourcing is calculated as a blunt ratio of applications received to FTE, whereas there are lots more things that go into it’. The review heard that this method overlooked other responsibilities falling with an individual employee’s or a team’s broader roles; including responsibilities critical to effective operation of the FOI scheme including intergovernmental consultation, customer service, participation in Ombudsman Reviews and informal education of agency colleagues.

There were also anecdotal observations that FOI is administered at a more senior level in the ACT compared to the Commonwealth.

Difficult applicants and applications

Vexatious applications

Under section 43 of the FOI Act, an agency may refuse to deal with an access application if the application is deemed frivolous or vexatious, or the application involves an abuse of process. This provision, similar to ones in the Commonwealth, Queensland, and the Northern Territory, is intended to balance the principle of maximum disclosure with the need to protect agencies from unreasonable or abusive use of the FOI system.⁹⁹ The Act does not define ‘vexatious’, relying instead on its ordinary meaning, understood as conduct that is ‘instituted without sufficient grounds, and serving only to cause annoyance’.¹⁰⁰ The Ombudsman has made it clear that the section 43 mechanism should only be used as a last resort.¹⁰¹ The Ombudsman has outlined factors that may be considered in determining vexatiousness, including the number and nature of applications, the applicant’s conduct, whether the information has already been provided, and the overall impact on the agency.

Despite the existence of this provision, agencies reported that the threshold for declaring an application vexatious was so high that it was almost impossible to meet. In one case, advice was sought twice in relation to an individual who had submitted over 80 applications, yet the requests were deemed reasonable. Agencies expressed frustration that even when applicants are clearly abusing the system by submitting broad, repetitive, or aggressive requests, they are unable to take meaningful action. Information officers described these applicants as refusing to compromise on scope, submitting “fishing” requests for “anything and everything,” or using FOI as a means of retaliation against government. One stakeholder noted that ‘the precedent is that we almost have to be attacked by someone leaving the office’ before the provision can be used.

Some information officers noted the toll that dealing with vexatious applicants was having on staff. In some cases, staff have reported being verbally abused, experiencing psychosocial stress, and feeling physically unsafe. Agencies are increasingly considering policies to protect staff, such as withholding the names of information officers or limiting contact to a single point of communication, particularly because a lack of separation in the ACT makes officers feel more vulnerable. One stakeholder noted that while other parts of government may have communication protocols in place for difficult individuals (such as restricting contact to email or limiting responses to once a month) FOI teams often lack similar options.

Part of the issue for many agencies is that it is still unclear where the bar is before someone meets the statutory test in section 43. Agencies have called for clearer guidance or a lower threshold for applying section 43, to make it a more practical tool for managing genuinely vexatious behaviour. One practical solution could be to include in s 43 a non-exhaustive list of detailed behaviours that may indicate vexatious conduct, such as submitting a specific number of requests on the same issue, repeating requests for information that has already been disclosed, or continuing to apply after receiving multiple decisions on the same topic. This could provide agencies with clearer, more objective criteria and make the provision easier to administer. It may be necessary for agencies to consider formal policies to protect staff from abuse, including mental health support.

99 Mick Batskos, ‘Vexatious Applicant, Vexatious Application or Something Else? Dealing with Difficult Applicants under Freedom of Information Laws in Australia’ (2020) 27 Australian Journal of Administrative Law 137

100 ACT Ombudsman, Freedom of Information Guidelines, Guideline 3: Dealing with Access Applications (February 2020) 43

101 “AO” v Chief Minister, Treasury and Economic Development Directorate [2020] ACTOFOI 1, [46]–[48]; “AR” v Canberra Health Services [2020] ACTOFOI 3, [46]–[48].

Recommendation 19: Develop guidance on the interpretation of ‘vexatious’ under section 43 of the FOI Act.

- Should be developed by the centralised FOI policy team, in consultation with the ACT Ombudsman.
- Should be made publicly accessible on the One Government website.
- Should extend to how the ACT Government interprets and applies the designation of an application as ‘vexatious’ under the FOI Act.

Theme: Leadership and Culture | **Resourcing and Skilling** | OAIS and Proactive Disclosure | Legislative Change

Abusive applicants

Throughout the review ACT Government stakeholders expressed that there are increasing psychosocial hazards in access application processing. This is primarily attributed to applicants and their behaviour. The FOI Act does not provide an effective mechanism for the ACT Government to refuse to deal with abusive applicants, or applicants that are not using the FOI scheme for genuine purposes.

The ACT Ombudsman has made a range of decisions that provide practical advice on how to deal with unreasonable applicant behaviours, including:

- ‘AQ’ and Canberra Health Services [2020] ACTOFOI 2 (21 January 2020)
- ‘AR’ and Canberra Health Services [2020] ACTOFOI 3 (21 January 2020)
- ‘CN’ and Transport Canberra and City Services [2023] ACTOFOI 22 (3 October 2023)
- ‘DG’ and Office of the Director of Public Prosecutions [2024] ACTOFOI 17 (2 October 2024).

However, there is scope for the FOI Act to more explicitly reference abusive applicants in its text and provide statutory protections and empower FOI officers to refuse to deal with abusive applicants.

Recommendation 20: Amend section 43 or create a new section in the FOI Act to enable the designation of an applicant as vexatious.

- Impacts on human rights must be considered, and any power must be developed to withstand scrutiny.
- This should not be used with enduring effect except in only the most significant of cases that pose a considerable and demonstrated impact on staff health and wellbeing.

Theme: Leadership and Culture | Resourcing and Skilling | OAIS and Proactive Disclosure | **Legislative Change**

Embracing the digital environment

Despite being introduced in 2016, the FOI Act remains largely grounded in a paper-based model, drawing heavily on the structure and assumptions of earlier FOI schemes. This has created a growing mismatch between the legislative framework and the realities of a modern, digitally enabled government. As governments increasingly operate in information-rich environments, the volume and complexity of digital records have grown significantly, placing new demands on FOI, and potentially creating ambiguities around the forms of information falling within the scope of the FOI Act.

The Western Australian Information Commissioner and other experts have pointed to the proliferation of digital records as a major issue.¹⁰² Marie Shroff, former New Zealand Privacy Commissioner, has argued that digital technology offers significant opportunities to enhance access and support participatory democracy, but only if FOI frameworks are updated to address practical issues such as managing multiple versions of documents, ensuring

¹⁰² Catherine Fletcher, Freedom of Information – from the Age of Enlightenment to the Digital Age and Beyond, Brief (February 2021). Available at <https://www.wa.gov.au/media/154052/download?inline>.

consistent treatment of electronic records, and reducing the administrative burden of digital FOI requests. The same set of circumstances may give rise to multiple forms of access, through different platforms, formats, or legal pathways, leading to confusion and inconsistent outcomes.¹⁰³ For example, where access is granted by way of inspection, technological limitations may complicate efforts to provide partial access or redact sensitive content.¹⁰⁴ The Association of Information Access Commissioners of Australia and New Zealand (AIAC) have also acknowledged the need for FOI frameworks to adapt to emerging technologies, stating:

“Acknowledging the potential for new and emerging technologies, like artificial intelligence and messaging apps, to increase public sector productivity and improve service delivery, while also committing to ‘transparency by design’ to ensure information and data created are appropriately preserved and able to be accessed.”¹⁰⁵

JACS conducted a feasibility study in 2020 for a government-wide case management and reporting solution, and/or a document search and collation tool, however it was not progressed due to “limitations in functionality that did not warrant the investment”.

We are also aware that one directorate commissioned a proof-of-concept for a new technology-based FOI solution in 2023, however we have not received evidence this has progressed further.

We heard that ICT solutions have not been prioritised due to these issues of feasibility to date. The review notes that the ACT Government should continue to monitor opportunities to adopt new technologies as innovations drive anticipated improvements in cost, functionality and ease of deployment (including through use of artificial intelligence and automation)

Record management systems

This shift also brings into sharper focus the quality and consistency of recordkeeping across agencies in the ACT. FOI processing officers and information officers have observed that differences in digital tools and systems, ranging from document management platforms to email archiving and metadata tagging, can significantly affect how efficiently and accurately information can be found. There is a recognised need to modernise the practices of public servants in creating and managing records, as well as ICT systems used to process FOI requests. This aligns with reviews of other Australian jurisdictions, that have highlighted that many agency software systems and records management platforms are ill-suited to the demands of FOI processing.¹⁰⁶ It should be noted that records management platforms are chosen and designed for purposes far broader than FOI processing, and that deliberate efforts have been made in the ACT Government to design records management systems to support rather than hinder FOI processing. In addition, records that are subject to FOI requests may exist in business systems other than designated records management systems, or in hard copy.

The sheer volume of digital records being created also raises questions about what should be retained, for how long, and in what form. . There is a well-established framework under the *Territory Records Act 2002* that allows agencies to determine how long their records must be retained, and to account for disposal decisions. However, without a commitment, and sufficient resources, to apply that framework, clear guidance and robust systems, agencies may struggle to meet their obligations under both the FOI Act and *Territory Records Act 2002*.

Work is currently underway to finalise a WhoG e-learning package on records management which, among other things, emphasises the importance of good records management to support FOI and other accountability measures. This is an important step and investment in training for records creators and should somewhat alleviate capacity pressures on records managers to perform quality assurance on existing recordkeeping systems.

Seeking advice from the ACT Government Solicitor

FOI processing officers reported that they rarely, if ever, seek advice from the ACTGS regarding FOI matters. The most cited reason was time pressures and perceived delays in receiving ACTGS advice. There was a perception that the ACTGS is already under significant pressure and would not be able to prioritise FOI matters. Some officers also described past experiences where requests for advice took a long time to return or yielded limited practical use.

¹⁰³ Batskos, M. (2021). Is technology killing freedom of information? AIAL Forum, (103), 93–116. <https://search.informit.org/doi/10.3316/informit.904755517355074>

¹⁰⁴ *Ibid.*

¹⁰⁵ Association of Information Access Commissioners of Australia and New Zealand (AIAC) 2 April 2025 – Communiqué

¹⁰⁶ Romano, M.-A., Lidberg, J., Paterson, M., Bradshaw, E., & Davison, S. (2024). The culture of implementing Freedom of Information in Australia (, Ill.). Monash University. <https://doi.org/>

As a result, when navigating complex or borderline cases, information officers often rely on their own judgement or peer support from other information officers. While this informal support is highly valued, it might not always provide the legal certainty or consistency needed across the ACTPS.

That being said, the ACTGS provided that they receive a significant number of requests for advice, which demonstrates that some areas of the ACT Government are more comfortable either:

- Making decisions outside of statutory timeframes
- Seeking extension with permission from the applicant

There was some interest in exploring whether more accessible legal support could help address this gap. Some officers suggested that having access to a dedicated FOI legal resource, perhaps available on a shared or on-call basis, would be very useful. Having someone in a dedicated role could ensure timely, practical advice on difficult cases, and support consistency across agencies. There was also discussion on whether such a general advisory role may better sit within the role of the Ombudsman (discussed in Chapter 6: The ACT Ombudsman). The review notes that given their differing roles and expertise, it would be proper for both the ACTGS and ACT Ombudsman to have advisory roles supporting information officers.

Review pathways

No pathway for internal review

In discussing the review pathways currently available under the FOI Act, some stakeholders noted the previously available internal review mechanism. The previous freedom of information legislation, the *Freedom of Information Act 1989* (ACT) provided a mechanism for an internal review, then escalation to ACAT, but had no mechanism for a review by the Ombudsman. Under the current FOI Act, applicants no longer have recourse for an internal review but instead go straight to an external review by the Ombudsman.

Some consultations noted that whilst the current FOI Act has no means for internal review, this may be a good thing. Due to the ACT being a small jurisdiction, internal Directorate FOI teams have a limited number of staff within which they can allocate an internal review. If an internal review mechanism still existed, the likelihood of the original decision-maker being somewhat involved in the review would raise concerns that a real, or at least perceived, conflict of interest may be present.

Further, one consultation identified the risk that in some cases, under the previous FOI legislation, due to the existence of the internal review mechanism, the true merits of some FOI requests were given little consideration at the initial decision stage and instead rejected in a 'blanket' manner. If this decision was then objected to and the internal review mechanism triggered, the directorate decision-makers then duly considered the merit of releasing the information. It was indicated that this methodology was used particularly when information release was averse to government interests. Instead, the new FOI Act provides that an Ombudsman review is the first means of review. As was noted in the consultation, this works to mitigate this risk as you 'only get one bite of the cherry'.

In Queensland, a 2016 review of the *Right to Information Act 2009* (Qld) discussed the topic of internal review. Under the Queensland legislation, applicants have the option to either proceed to an internal review or to proceed directly to an external review. The review committee received submissions both supporting the existing optional pathway for internal review as well as submissions submitting that internal review should be mandatory prior to pursuing external review. The report concluded that the optional pathway for internal review be maintained as its use was at the discretion of the applicant, and the number of requests for external review was not overwhelming.

In the development of the ACT's FOI Act, it was noted in the Legislative Assembly that 'the review role of the Ombudsman negates the need for internal review of FOI decisions. The information officer position is intended to ensure that it is the senior officer that makes the first decision and avoids the need for internal review.'¹⁰⁷

In the current ACT context, it seems that the absence of an internal review pathway is appropriate. Stakeholders did not specifically call for reinstitution of an internal review mechanism. Further, if an internal review pathway was implemented, whilst it may decrease the review processing times for applications that utilise this pathway, it could potentially increase the risk of conflicts of interest, and reduce the quality of initial decisions, as well as place additional pressure on already under-resourced FOI teams.

107 ACT Hansard, page 1642, Week 5 – 5 May 2016, [\[Access\]](#).

ACAT review

Despite the absence of an internal review mechanism, the text of the FOI Act provides both applicants and directorates a right to seek further external review at ACAT, however, in practice this mechanism has not been used.¹⁰⁸ Stakeholders confirmed that since the FOI Act's enactment in 2016, no FOI decision has progressed to ACAT. This is likely due to a few factors.

Firstly, it was clear in stakeholder consultations that Directorates as the decision-makers will likely not consider applying to ACAT. Even when a Directorate may disagree with the decision of the Ombudsman to vary or substitute an original decision with their own, stakeholders expressed that they do not want to be the first directorate under the new FOI Act to disagree with the Ombudsman so strongly as to apply for an ACAT review.

Secondly, no applicant has ever applied to ACAT for a review, this is likely due to a range of contributing factors not limited to:

- a lack of real necessity to gain access to the information
- prohibitive cost barriers
- already being satisfied with the new decision of the Ombudsman
- timeline to have a decision made by the directorate, then reviewed by the Ombudsman and then further reviewed by ACAT, means by the time the information is received, it is no longer relevant or current.

Interestingly, when discussing this absence of escalation, some stakeholders within the ACT Government directorate FOI teams noted that the lack of ACAT interaction has somewhat contributed to a lack of guidance surrounding the application of the public interest test.

In other areas of law, where there is a lack of guidance and the public interest would strongly benefit from clear administrative precedent, a test case may be funded by the government under the notion that the precedent derived would assist in providing better quality, and more consistent future decisions.¹⁰⁹ Whilst it is beyond the scope of this review to recommend an administrative test case, it would seem that additional clarity that binds both directorate FOI teams as well as the Ombudsman may assist in ensuring the consistent application of FOI principles in all decisions. Further, given the nature of FOI decisions, identifying a suitably broad case to use to seek clarification on all/most elements of the public interest test seem unlikely.

Financial barrier to ACAT review

ACAT fees for review of an administrative decision are \$428 for a natural person and \$856 for a corporation.¹¹⁰ This is comparable to the Queensland Civil and Administrative Tribunal (\$379.50 and \$759.10 respectively) and is significantly less expensive than the Commonwealth's Administrative Review Tribunal (\$1,121). The financial barrier to review is likely a real consideration for access applicants.

It is worth noting that ACAT has both fee exemptions (e.g. for concession card holders) and fee waiver programs (e.g. for persons experiencing hardship).¹¹¹

Anecdotal evidence from the Commonwealth's regime also suggests a significant imbalance in preparing for tribunal review of an FOI decision. While the ART, ACAT, QCAT and other tribunals are set up to be approachable to self-representing applicants, government preparation for tribunal matters is often supported by government solicitor advice and representation. This necessitates an applicant to do the same to 'match' the efforts of the other party. While out of scope for this review, if a matter was to be progressed to ACAT, the ACT Government should consider covering costs to the access applicant where the ACT Government is seeking the decision be reviewed. If there is an opportunity to support a matter commenced by an access applicant, the ACT Government may wish to set aside funds to cover the cost of this initial request if the matter is likely to yield clarity in the interpretation of key, complex legislative tests such as the public interest test.

¹⁰⁸ ACT Ombudsman, [Report on the Freedom of Information Act 2016](#), October 2024, page 33.

¹⁰⁹ For example, see the Australian Taxation Office's Test Case Litigation Program.

¹¹⁰ [Court Procedures \(Fees\) Determination 2025](#)

¹¹¹ [ACAT fees – ACAT](#).

Hub and spoke model

The current FOI model in the ACT is largely decentralised, with each agency mostly responsible for managing its own FOI requests. The benefits of this model include:

- More contextual understanding of information subject to an access application, leading to a more accurate identification of public interest factors favouring or limiting access.
- Knowledge of records management systems used by specific directorates or agencies.
- Incrementally developed subject matter expertise about 'tricky applications.'

In contrast, a hub and spoke model would involve a centralised FOI team (the "hub") that supports or coordinates FOI processing across agencies (the "spokes"). This model can take various forms, from full centralisation of processing to hybrid approaches where the hub handles certain functions (e.g. triage, redaction, or training) while agencies retain responsibility for decision-making. As a result of this decentralised approach, at present most directorates and agencies do not meaningfully:

- develop training and capability uplift materials, instead relying on on-the-job professional development due to capacity constraints
- analyse trends in FOI applications or use data to predict peaks and troughs in workload, limiting their ability to plan resourcing, identify systemic issues, or respond proactively to emerging pressures.

Some stakeholders noted that a hub and spoke model could support consistency in applying the FOI Act, help reduce delays in transferring requests between agencies and provide assistance during machinery-of-government changes or staff turnover. If the central hub was to take on some of the more resource intensive early stages of FOI processing, some stakeholders believed it could help improve efficiency, particularly for agencies already stretched, or smaller agencies that lack dedicated FOI resources.

However, many stakeholders expressed caution about adopting this model more broadly. Several noted that it would not address the root causes of FOI inefficiencies and could, in some cases, make processes more disjointed. A centralised hub may lack the nuanced understanding of how each agency operates, the specific subject-matter issues they deal with, and how each agency holds and manages its records, potentially leading to delays or inaccuracies. There were also concerns that a hub and spoke model may inadvertently increase the administrative burden on agencies, if agencies are required to prepare detailed submissions or assist with information gathering for requests they are no longer directly managing. One agency noted that the operational challenges of transferring records to a central hub, only for the final decision to be reviewed again internally, could create inefficiencies rather than resolve them.

While the hub and spoke model is not preferred for FOI processing, the review has demonstrated a clear need for a centralised team to provide support for matters that could lead to inefficiencies across the ACT Government, and/or functions are not currently being performed consistently across directorates. While JACS is currently the directorate responsible for administering the Act, the ACT Government should consider which agency would be best placed to centrally locate this team and executive leadership.

Recommendation 21: Establish a centralised FOI policy team that provides a 'strategic core' for the ACT's FOI framework.

Functions it would undertake include:

- Legal policy development for reforms required to the FOI Act
- Data collection, trend analysis and reporting of matters outside the purview of the ACT Ombudsman
- Training development and delivery
- Coordination with other similar functions, including information privacy officers
- Coordination with enabling functions, including the WhoG Website team, Territory Records Office, etc.
- Coordinating procurement of FOI surge support required for directorates and agencies
- appropriately resource this team (1 x Senior Manager, 2 x Policy Officers)

Theme: Leadership and Culture | Resourcing and Skilling | OAIS and Proactive Disclosure | Legislative Change

Annex A:

Detailed terms of reference

Annex A: Detailed terms of reference

FOI Act Objectives

- A. Whether the operation of the FOI Act is achieving its objectives to:
1. provide a right of access to government information unless access to the information would, on balance, be contrary to the public interest;
 2. recognise the importance of public access to government information for the proper working of representative democracy;
 3. enable the public to participate more effectively in government processes and to promote improved decision-making within government;
 4. make the people and bodies that are responsible for governing the Territory more accountable to the public;
 5. ensure that, to the fullest extent possible, government information is freely and publicly available to everyone;
 6. facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information; and
 7. ensure that personal information held by the Territory is accurate, complete, up-to-date and not misleading.

Data behind FOI requests

- B. FOI requests made under the FOI Act including:
1. the types of requests;
 2. the size and scope of these requests;
 3. the types of people/organisations making these requests;
 4. the cost to agencies of processing these requests;
 5. whether fees or charges were payable for these requests; and
 6. whether the fees or charges payable were equivalent to the cost to agencies of processing FOI requests.

Charging Fees for Access

- C. Whether the current settings and practices in relation to the charging of fees for access applications are appropriate, including current exemptions from processing fees, having regard to the ongoing resourcing pressures on FOI processing teams. Options should be provided for charging mechanisms that reflect the cost of processing a high number of applications for an individual.

Open Access Information Scheme Efficacy

- D. Whether the open access information scheme is an effective and efficient way to provide information to the public, or whether resources would be better allocated into processing individual access applications or the release of information in other ways, having regard to other avenues for pro-active release of government information.

Opportunities to Improve Efficiency

- E. Any other opportunities to:
1. improve the efficiency and effectiveness of the open access information scheme;
 2. improve the use of and access to information available through the open access information scheme and under the FOI scheme more broadly to reduce the need for FOI applications to be lodged;
 3. reduce administrative burden on agencies and improve efficiency while maintaining public access to government information, including whether a 'hub and spoke' delivery service model would improve performance by the ACT Government in processing FOI applications.

Efficacy of Ombudsman

- F. The effectiveness of the role of the ACT Ombudsman including an analysis of the types of matters reviewed by the Ombudsman and the outcome of these matters.

Annex B: Proximity review team

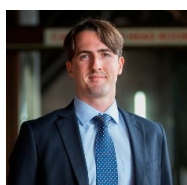
Annex B: Proximity review team



Leo Hardiman PSM KC
Expert Advisor

Leo is a government law specialist with over 30 years' experience in government legal work. He has extensive experience in constitutional law, legislative development and implementation, statutory interpretation, Commonwealth financial and taxation law, and the machinery of government. More broadly, Leo has advised the Commonwealth and its agencies on complex issues spanning the entire Commonwealth statute book.

Leo is also a former Commonwealth Freedom of Information Commissioner.



Declan Norrie
Special Advisor | Regulatory Practice Lead

Declan is a high performing Special Advisor working across Proximity's consulting, legal, and commercial service lines. Declan specialises in assisting Commonwealth and state/territory policy agencies and regulators with complex legislative reform design and implementation, including supporting agencies through the legislative process, reviewing and improving regulatory frameworks and practices, and improving supporting organisational operating models. He has a reputation for combining his legal and consulting skillsets to maximise the impact of the projects he leads on client outcomes, and has been recognised by the Australian Law Awards, Australasian Law Awards, and ACT Law Awards for this innovative approach.



Kyle Wood
Senior Advisor

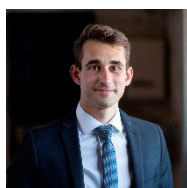
Kyle is a highly versatile Senior Advisor, with experience solving complex challenges covering a range of sectors and at both state and federal government levels. As a high performer working across the consulting and legal practices, Kyle consistently delivers high quality, robust and innovative outcomes. Kyle's experience in meaningfully consulting with stakeholders assist the team to identify views and insights from stakeholders that inform the team's approach to suggested reform.



Jason Woods
Advisor

Jason is a trusted Advisor at Proximity who loves solving challenging problems and thrives in a team environment. His highly developed research, communication and critical-thinking skills allow him to adapt and perform in dynamic workplaces.

Jason has made outstanding contributions to a range of Commonwealth, State and Territory Government projects. Jason's ability to work across both legal research and data analysis enable him to suggest reforms which are data-driven and legally efficient.



Cooper Shaw
Advisor

Cooper is a driven Advisor with a dual background in law and business, holding a Bachelor of Laws (Hons) and a Bachelor of International Business. He brings a unique blend of regulatory and private legal experience, having worked on high-impact projects within consulting and traditional legal environments.

With a strong foundation in legal research and analysis, Cooper excels at interpreting legislation, case law, policy, and grey literature to support evidence-based decision-making. Cooper's analytical mindset, responsiveness, and ability to distil complexity into actionable advice makes him a trusted contributor to teams tackling regulatory reform.

Annex C: Stakeholders consulted during review

Annex C: Stakeholders consulted during review

Organisation	Date of consultation(s)
Justice and Community Safety Directorate	16/05/2025
Education Directorate	19/05/2025
The former Community Services Directorate	9/07/2025
Infrastructure Canberra	19/05/2025
Territory Records Office	23/06/2025
ACT Ombudsman	20/05/2025
	10/06/2025
The former Health Directorate	23/05/2025
Chief Minister, Treasury and Economic Development Directorate	30/05/2025
	03/06/2025
The former Environment, Planning and Sustainable Development Directorate	04/06/2025
Human Rights Commission	27/05/2025
	03/06/2025
CBR City News	28/05/2025
The former Transport Canberra and City Services Directorate	30/05/2025
The Canberra Times	03/06/2025
ABC	05/06/2025
Canberra Community Law	06/06/2025
Legal Aid ACT	12/06/2025
ACT Law Society	Written submission provided
Aboriginal Legal Services NSW/ACT	No consultation occurred
Women's Legal Centre	No consultation occurred
ACT Bar Association	No consultation occurred
WIN News	No consultation occurred
Riot Act	No consultation occurred
Canberra Daily	No consultation occurred

Annex D: Detailed comparison of fees and charging regimes in Australian jurisdictions

Annex D: Detailed comparison of fees and charging regimes in Australian jurisdictions

Jurisdiction	Application fee	Processing and access charges	Reductions or waivers
NT <i>Information Act 2002</i> (NT)	\$30 application fee for applications seeking access to government information, or a mix of personal and non-personal information.	Fees may be charged for searching for information you request under FOI, for considering and making a decision on your application, and for providing access to or copies of the information.	May waive or reduce a fee payable under the Act depending on the circumstances of the application, your circumstances including ability to pay, and the objects of the Act.
Vic <i>Freedom of Information Act 1982</i> (Vic)	FOI requests are subject to a \$31.80 application fee (from 1 July 2023). The application fee is subject to an increase on 1 July every year.	Access charges may be applicable, including charges for search time, supervision, photocopying and other applicable charges. The standard charges as at 1 July 2022 are: \$23.85 per hour for the search for documents and/or extraction of information from a database, and \$0.20 per black and white A4 page.	If payment of the application fee would cause you hardship, you can ask for it to be waived by providing evidence, such as a photocopy of your current health care card.
QLD <i>Right to Information Act 2009</i> (QLD)	The current application fee for an application under the RTI Act is – \$55.75. This fee cannot be waived.	Processing charges may be imposed on searching for or retrieving documents, and making, or doing things related to making, a decision about an application. Access charges may also be imposed for providing the documents. The processing charges are nil if the agency or Minister spends less than 5 hours and \$8.65 per 15 minutes or part of 15 minutes if the agency spends more than 5 hours.	Processing and/or access charges may be waived if the likely associated costs would be more than the likely amount of the charge, an applicant is in financial hardship, or the applicant is a non-profit organisation and in financial hardship.
Cth <i>Freedom of Information Act 1982</i> (Cth)	Nil.	Charge based on the amount of work needed to process the request. What they can charge is set by regulation and may include: search and retrieval (\$15 per hour), decision-making, (\$20 per hour (first 5 hours are free)), delivery (cost of postage or delivery), photocopying (10 cents a page), supervised inspection (\$6.25 per half hour), transcript (\$4.40 per page).	An agency or minister must consider any reason applicants give to reduce or not apply the charge. Common reasons include financial hardship or disclosing the document is in the general public interest or in the interest of a substantial section of the public.
NSW <i>Government Information (Public Access) Act 2009</i> (NSW)	An application fee of \$30 is payable by an applicant to an agency when lodging an access application for government information.	Agencies that receive access applications, or have applications transferred to them, may impose a charge for processing the application of \$30 per hour. The \$30 application fee also counts towards the first hour of processing. If an applicant is applying for their own personal information, or applying on behalf of someone else for that person's personal information, agencies cannot charge for the first 20 hours of processing.	An agency must refund an application fee if it is a deemed refusal, or the application is invalid for a reason other than failure to pay the application fee. Applicants are entitled to a 50 per cent discount in processing charges if they can demonstrate financial hardship or the information applied for is of special benefit to the public generally. Agencies may also choose to waive, reduce or refund the fees and charges in other circumstances using their general discretion.

Jurisdiction	Application fee	Processing and access charges	Reductions or waivers
WA <i>Freedom of Information Act 1992 (WA)</i>	\$30 application fee.	\$30 per hour of staff time for dealing with an application (not for locating the documents). \$30 per hour for supervision by staff when access is given to inspect documents; or the time taken to prepare a transcript or make photocopies. The actual cost incurred by the agency for preparing a copy of a tape, film or computerised information, or arranging delivery, packaging and postage of documents. 20 cents per photocopy.	No fees apply if you are seeking personal information. 25% reduction of charges may apply to financially disadvantaged applicants.
SA <i>Freedom of Information Act 1991 (SA)</i>	\$42 FOI application fee that must be paid to the agency that holds the documents at the time of lodging an application.	\$15.90 per 15 minutes spent by the agency (the first 2 hours is free for information concerning the personal affairs of the applicant. Photocopy (\$0.25 per page), written transcript of words recorded (\$9.35 per page), copy of photograph, X-ray, video tape, computer tape or computer disk and postage (actual cost incurred by the agency).	No application fee to amend your personal records. If you hold a current concession card then you do not have to pay any fees, or if paying any fees would cause you financial hardship, then all fees will be waived.
Tas <i>Right to Information Act 2009 (Tas)</i>	Nil.	Search and retrieval (\$15.00 per hour), decision making (first five hours free, subsequent hours: \$20 per hour), preparing a transcript from a sound recording, shorthand or similar medium (\$4.40 per page), photocopy (\$0.10 per page), supervision of your inspection of documents or hearing or viewing an audio or visual recording at our premises (\$6.25 per half hour), posting or delivering a copy of a document (actual cost).	You can ask for the processing charge to be waived or reduced for any reason. This may include financial hardship or on the grounds of public interest. You may be eligible for a reduction or waiver if you: have a current concession card, are a full-time student, or are requesting on behalf of a NFP.