

INFORMATION DEFGRAM NO 686/2010

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FREEDOM OF INFORMATION REFORMS COMMENCING 1 NOVEMBER 2010

1. Key reforms to the *Freedom of Information Act 1982* (the FOI Act) came into effect on Monday, 01 November 2010. These reforms are a central part of the Government's transparency initiatives, and are underpinned by the notion that government-held information is a national resource. The reforms will have a major effect on how Freedom of Information (FOI) issues are handled by all Commonwealth agencies, including Defence. Key elements of the reforms are as follows.

Creation of the Office of the Australian Information Commissioner

2. The new Australian Information Commissioner—former Commonwealth Ombudsman Professor John McMillan, AO—has oversight of Australian Government information policy and practice, including FOI and privacy. The Information Commissioner, supported by the FOI Commissioner, Dr James Pople, will act as an independent monitor of FOI matters and review FOI access decisions made by agencies and ministers. The Information Commissioner has taken over most of the Commonwealth Ombudsman's functions in investigating complaints about handling of FOI requests and, unlike the Ombudsman, can recommend the imposition of penalties on agencies that do not comply with FOI legislation.

Fees and charges

3. FOI application fees, including fees for internal review, have been abolished. This means that most applications will be valid immediately—far more than are presently the case—with a commensurate reduction in the time available for agencies to process applications. The only exception will be for FOI applications to the Administrative Appeals Tribunal (AAT), which will still attract a fee.

4. The first five hours of decision-making time are now free for all applicants. No charges will apply where a person requests access to their personal information, and the FOI Act provides for the waiver of all charges if a statutory time frame is not met.

5. Agencies can, however, extend the period for dealing with a request for up to an extra 30 days if the applicant agrees in writing, and if the Information Commissioner is notified of this arrangement. Where an applicant does not agree to an extension, agencies can apply directly to the Information Commissioner.

Public interest test

6. There is now a single public interest test for the majority of exemptions, including personal and business affairs, which favours disclosure. Documents subject to a public interest test are categorised as conditionally exempt. Decision makers are now required to address the public interest factors taken into account when they give reasons for invoking conditional exemptions. Note, however, that a public interest test does not apply for national security exemptions.

Review process

7. Applicants who wish to have an FOI access decision reviewed can seek internal review by the agency and, following a decision, go to the Information Commissioner for further review. Alternatively, applicants can choose to go directly to the Information Commissioner for review. Applicants who disagree with the outcome of the Information Commissioner's review can apply to the AAT, again as before 01 November 2010.

8. In certain circumstances, where access requests are clearly unreasonable, the Information Commissioner can restrict an applicant's access rights by declaring the person to be a vexatious applicant.

Implications for the Archives Act

9. The reforms have a number of implications for decisions made under the [Archives Act 1983](#) (the Archives Act). The period during which the FOI access regime applies to government information has been reduced. Open access under the [Archives Act](#) has been brought forward from 30 years to 20 years for all records other than Cabinet notebooks and census information (which have been reduced from 50 years to 30 years). This will be phased in over a ten-year transition period commencing 01 January 2011 so that, by 2021, the open access period will be 20 years.

More information

10. The Freedom of Information and Information Management (FOIIM) Branch is currently delivering Defence-wide presentations on the FOI reforms. If you would like a briefing on the reforms, or have any other questions, please contact FOIIM Branch as follows:

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