



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PuLC/PDL:JBsb100625

10 June 2025

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON, ACT 2612

By email: [REDACTED]

Dear Dr Popple,

REVISION OF PART 3 OF THE FREEDOM OF INFORMATION GUIDELINES

Thank you for the opportunity to provide input to the Law Council submission to the Office of the Australian Information Commissioner (**OAIC**) in response to its consultation on Part 3 of the Freedom of Information Guidelines (**FOI Guidelines**). The Law Society's Public Law and Privacy and Data Law Committees have contributed to this submission.

In general, we consider that the updates to Part 3 of the FOI Guidelines are comprehensive and take account of current case Law. We offer the following brief comments for your consideration:

Use of Artificial Intelligence (AI)

Proposed paragraphs 3.18 and 3.19 of the FOI Guidelines are set out as follows:

[3.18] The rise in the use of Artificial Intelligence (AI) brings with it the potential for FOI requests to be made without human intervention. As noted above, the FOI Act does not prevent the use of a pseudonym and an FOI request is not invalid on this basis. To reduce the possibility of AI generated FOI requests, agencies may consider publishing an online FOI request form that includes technology to identify whether the user is a robot.

[3.19] The advice given at [3.17] in relation to establishing the identity of the FOI applicant when considering the release of personal information applies equally if an agency or minister suspects an FOI request has been artificially generated. If the identity of the FOI applicant cannot be verified, the agency may decide that disclosure of personal information would be unreasonable and contrary to the public interest in all the circumstances.

There is nothing in the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to suggest that a person is not able to use AI to generate the content of an FOI request. Further, in our view, there is nothing inherently improper about this practice. We therefore suggest that this paragraph be clarified to more clearly address the possible situation of an FOI request being lodged through the use of an AI application as opposed to a legal person.

Disclosure of public servants' names and contact details

The Law Society notes the additional guidance at [3.49], which addresses the practice of agencies using s 22 of the FOI Act to delete the names of officials below Senior Executive Service level. We suggest that the FOI Guidelines could also address the increasingly common use of other sections of the FOI Act for similar purposes: See s 47E(c) of the FOI Act (substantial adverse effect on the management or assessment of personnel), 47E(d) (substantial adverse effect on agency operations) and s 47F (personal privacy).

We understand that the OAIC sought submissions from Commonwealth agencies in 2019 around the use of public servants' names and contact details, and that various Commonwealth agencies provided submissions to this inquiry.¹ While we understand that the majority of OAIC decisions regarding disclosure of public servants' details are determined by the facts in individual cases, we would recommend that consideration be given to balancing the public interest in disclosure and transparency with the legitimate interests of junior public servants in their personal privacy, particularly when such individuals may become a target for harassment or abuse in social media and other platforms. This would, arguably, dovetail with the spirit of the recent changes to the *Privacy Act 1988* (Cth) concerning doxing and other related reforms.

Implementation and Review of the Guidelines

While the FOI Guidelines appear to serve as a comprehensive support to agencies dealing with FOI requests, we note the importance of ensuring that public servants are trained to use them effectively. The OAIC's dashboard shows that in FY23-24, only 21% of FOI requests were granted in full and 55% granted in part. It appears that the number of FOI requests granted in full have dropped significantly from FY19-20 where 47% of requests were granted in full and 38% granted in part.² While it is difficult to draw strong conclusions from the data around the decrease in 'full releases', which may be attributable to more efficient and nuanced approaches by Commonwealth agencies in respect of FOI requests, it remains important to apprise agencies of the critical importance of transparency to the FOI scheme. We refer to our submission to the Law Council on these issues in 2023, and again highlight the need for Government agencies to be properly supported to carry out their obligations lawfully under the FOI Act.³

Given the volume of case law on FOI matters and the fact that Government Ministers and agencies are required to have consideration to the FOI Guidelines in performing a function or exercising a power under the FOI Act⁴, we also recommend that they are subject to regular review.

¹ OAIC, 'Disclosure of public servants' names and contact details', Discussion Paper, July 2019: https://www.oaic.gov.au/data/assets/word_doc/0028/9937/discussion-paper-disclosure-of-public-servants-names-and-contact-details.docx.

² This data was taken from the OAIC's Australian Government Freedom of Information Statistics dashboard on 5 June 2025: <https://www.oaic.gov.au/freedom-of-information/australian-government-freedom-of-information-statistics>.

³ Law Society, 'Inquiry into the operation of the Commonwealth Freedom of Information laws', submission dated 22 May 2023: <https://www.lawsociety.com.au/sites/default/files/2023-07/Letter%20to%20Law%20Council%20of%20Australia%20-%20Inquiry%20into%20the%20operation%20of%20the%20Commonwealth%20Freedom%20of%20Information%20laws%20-%2022%20May%202023.pdf>.

⁴ *Freedom of Information Act 1982* (Cth), s 93A.



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Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

Jennifer Ball
President