## **Right to Information Policy**

**COR 22.0 - T** 

Current as of 25 January 2023



Relevant State/Federal Govt. Legislation	Archives Act 1983
	Audit Act 2008
	Fee Units Act 1997
	Financial Management Act 2016
	Personal Information Protection Act 2004
	Right to Information Act 2009
	Right to Information Regulations 2021
	State Service Act 2000
Commencement date	25 January 2023
Next review date	25 January 2024

## **Policy statement**

## 1. Scope and objective

This policy and these procedures apply to all officers, and where applicable, any contractors and consultants.

This policy and procedures document covers the four types of information disclosure identified in section 12 (2) of *Right to Information Act 2009* (RTI Act):

- 1. required disclosure
- 2. routine disclosure
- 3. active disclosure
- 4. assessed disclosure.

The Tasmanian Audit Office (the Office) holds information, for and on behalf of the Crown in the Right of Tasmania, in order to perform its functions.

The Office is a public authority as defined under the RTI Act. Section 23 of the RTI Act requires principal officers of public authorities to prepare and promulgate policies and procedures for the disclosure of information.

Under section 6 of the RTI Act, the Auditor-General is exempt from providing any requested information unless it relates to the administration of the Office. Information relating to financial and performance audits conducted and reports to Parliament are regarded as exempt, being classified as internal working information, as is information compiled in making preliminary assessments following receipt of referrals.

The Auditor-General is also required to comply with section 46 of the *Audit Act 2008* (the Audit Act) the practical effect of which is to forbid him and any person employed in his Office or contracted by him from disclosing any confidential matter that comes to his or their knowledge in the course of employment or duties under either the Audit Act or another Act. Because of this, the provision displaces any other duty or obligation to disclose information which might otherwise arise and only permits the disclosure of such information if that disclosure is required in connection with the administration of the Audit Act or in connection with the administration of that other Act.

This Policy should be read in conjunction with the Ombudsman's <u>Guideline 3/2010</u> - <u>Guideline in relation to process of disclosing information under each type of information disclosure</u>.

This Policy meets the requirements for policies and procedures specified in section 23 of the Act. It has been developed to:

- a) be used within the Office
- b) enable relevant details of the Act to be published and made available to the public.

## 2. Definitions and acronyms

AAG	Assistant Auditor-General
Active disclosure	A disclosure of information by a public authority or a Minister in response to an application in accordance with section 13 of the RTI Act.
Assessed disclosure	A disclosure of information by a public authority or a Minister in response to a request from a person made under Division 2 of Part 2 of the RTI Act.
	Application for assessed disclosure is the method of last resort.
Audit Act	Audit Act 2008
Authorised officer	Officers authorised to make certain decisions regarding disclosures of information as defined in the table at paragraph 7.
Business Unit	Financial Audit Services (FAS)
	Performance Audit Services (PAS) and
	Corporate Support and Strategy (CSS).
DAG	Deputy Auditor-General

Delegated officer	Officers delegated under section 24 of the RTI Act to make a decision on an application for assessed disclosure.
EC	Executive Committee
Exempt information	As set out in Part 3 of the RTI Act.
Information	a) anything by which words, figures, letters or symbols are recorded and includes a map, plan, graph, drawing, painting, recording and photograph;
	b) anything in which information is embodied so as to be capable of being reproduced; and.
	c) information which relates to the official business of the Tasmanian Audit office and excludes information which is in the possession of the Tasmanian Audit Office for the sole purpose of collation or forwarding to a body other than another public authority.
Information custodian	The manager of the business unit or division within the Office responsible for the initial collation and publishing of the information, and for ensuring the information is updated and accurate.
Officer	A member of staff of the Tasmanian Audit Office or any person employed by or for the Office, whether or not that person is a State Service officer or State Service employee.
PIPA	Personal Information Protection Act 2004
Principal Officer	The Head of Agency (the Auditor-General)
Public Authority	a) an Agency, within the meaning of the State Service Act 2000; or
	b) the Police Service; or
	c) a council; or
	d) a statutory authority; or
	e) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose; or
	f) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister of the Crown; or
	g) a Government Business Enterprise within the meaning of the Government Business Enterprises Act 1995; or
	h) a council-owned company; or
	i) State-owned company.

Reported disclosure	A disclosure of information by a public authority where the information is required to be published by the RTI Act or any other Act, or where disclosure is otherwise required by law or enforceable under an agreement.
Routine disclosure	A disclosure of information by a public authority which the public authority decides may be of interest to the public, but which is not a required disclosure, an assessed disclosure or an active disclosure.
RTI Act	Right to Information Act 2009

## 3. Policy maker

Auditor-General.

## 4. Policy provisions

Section 7 of the RTI Act gives a person a legally enforceable right to be provided with official information in the possession of the Office, unless the information is exempt information, such as in section 6 of the RTI Act or section 46 of the Audit Act.

Information management is the responsibility of all officers, and is critical to enable disclosure of information under the RTI Act.

All officers are responsible and accountable for:

- keeping records of all official information produced, received or acquired
- making records to support what they do
- registering documents in an approved information management system.

Tasmanian Audit Office delegated officers involved in the release of information to the public will make decisions which are consistent with the objects and provisions of the RTI Act and with any Manual and Guidelines issued by the Ombudsman. For further information please refer to the Ombudsman website.

#### **Object of the Right to Information Act 2009**

It is the object of the RTI Act to favour active disclosure of information wherever possible.

Section 3 of the RTI Act includes states the object of the Act:

- 1. The object of this Act is to improve democratic government in Tasmania
  - a) by increasing the accountability of the executive to the people of Tasmania;
  - b) by increasing the ability of the people of Tasmania to participate in their governance; and
  - by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State.

- 2. This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.
- 3. This object is also to be pursued by giving members of the public the right to obtain information about the operations of government.
- 4. It is the intention of Parliament
  - a) that this Act be interpreted so as to further the object set out in subsection(1); and
  - b) that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.

In addition, section 12 of the Act provides that:

This Act does not prevent and is not intended to discourage a public authority or a Minister from publishing or providing information (including exempt information), otherwise than as required by this Act. Procedure

## 5. Principles

The following principles will guide officers in making decisions about what information is released, and the method of making that information available.

- The Office will make official information in relation to our administration in its
  possession publicly available when it is relevant, appropriate and in the public
  interest to do so and not subject to an exemption set out in the RTI Act.
- Some of the information that the Office holds is not able to be released because it is:
  - 1. information by its nature that is exempt from release;
  - 2. contrary to the public interest to release; or
  - 3. prevented by other law or agreements from being released.
- Applications for personal information by an individual to whom the personal information relates should be dealt with under the *Personal Information Protection Act 2004*.

## 6. Roles and responsibilities

Officers authorised to make decisions regarding the disclosure of information are listed in the table below.

Disclosure type	Authorised officer(s)
1. Required	The Principal Officer or delegated officer
2. Routine	The information custodian, following approval by the Auditor-General to publish types of information on a regular basis

Disclosure type	Authorised officer(s)
3. Active	<ul> <li>The information custodian, except where the information is:</li> <li>being sought by the media, the request will be forwarded to the Director, Corporate Support and Strategy</li> <li>being sought by Members of Parliament, the request will be</li> </ul>
	<ul> <li>forwarded to the Director, Corporate Support and Strategy</li> <li>potentially contentious, the request will be discussed or forwarded to the Director, Corporate Support and Strategy.</li> </ul>
	If the information custodian determines that some or all of the information held by the Office should not be actively disclosed, the officer will advise the person of any reasons why the information cannot be released and their right to make an application for assessed disclosure.
4. Assessed	The Principal Officer and delegated officers

#### 7. Procedures

#### Required disclosure

"Required disclosure" means a disclosure of information by a public authority where the information is required to be published by law or under an enforceable agreement. For example, the Office is required to publish annual financial statements under the *Financial Management Act 2016*.

#### Who will decide what information should be released as a required disclosure?

Tasmanian Audit Office officers are allocated responsibility for compliance with the administration of specific Acts by the Auditor-General. These authorised officers are responsible for the release of information under those Acts.

#### Process for the required disclosure of information

Authorised officers will disclose the required information in accordance with legislative requirements and in a manner approved by the Auditor-General.

#### **Routine Disclosure**

Information released routinely may be made available online (through the Office's website) and at no cost. Where people cannot access the information online, the Office will provide an alternative and reasonable means of access. If a person requires a method of accessing the information that incurs cost, they may be required to pay for accessing the information by that method.

#### Who will decide what types of information can be routinely disclosed?

The Principal Officer must approve types of information under each class as suitable and appropriate for routine disclosure prior to the information being published.

As outlined below, the information custodian must determine what type of information can be routinely disclosed within each class and then seek approval from the Principal Officer.

Once approved, the information custodian is responsible for the preparation and publication of the items of routine information in the first instance, and for maintaining the currency of the information, where applicable.

#### Identification of potential information types for routine disclosure

The Office regularly reviews information it possesses and identifies what information may be routinely disclosed, as well as how and when it should be disclosed.

In making this assessment, officers take account of the objects of the RTI Act and consider:

- What information may be material to the community i.e. what is significant, relevant and meaningful?
- What information key stakeholders and the community might reasonably expect to be able to access?
- The extent of public or other demand for the information.
- How useful the information would be to the public in dealing with the Office?
- Whether publication would improve the public's ability to contribute to the work of the public authority or to decision-making by the authority.
- Whether publication would provide increased transparency about the operations of the Tasmanian Audit Office, such as information about the Office's expenditure.
- Whether publication would promote greater accountability by the Tasmanian Audit Office, for example by showing the basis of its decisions.
- Whether the information promotes community wellbeing.

Other questions relevant to a decision to routinely disclose information include:

- Does the Office possess the information?
- Does the information relate to the official business of the Tasmanian Audit Office?
- Has the information been archived or is it out of date or otherwise inaccessible?
- Is it impracticable or resource intensive to prepare the material for routine release?
- Is the information significant is it about important aspects of the Office such as major projects, key initiatives or policy documents?
- Is the information preliminary or deliberative or does it represent the final and approved position/decision?
- Does the information tell the public what we do, how we do it or how we spend public money?
- Is the release of the information lawful having regard to the RTI Act, Audit Act, and other legislation and any other legal obligation such as an agreement or copyright?
- Is the release appropriate having regard to issues such as privacy principles, defamation law, third party impacts/concerns and security issues?

- Is the information accurate? All efforts should be made to ensure that information is up to date and accurate.
- What is the cost and time involved in producing the information? The release of information should be at the lowest reasonable cost.
- Is the information otherwise exempt having regard to Part 3 of the RTI Act?
- Is it in the public interest to release the information having regard to Schedules 1 and 2 of the RTI Act?

#### Approval of a decision to routinely disclosure information

Information custodians must seek approval from the Principal Officer prior to publishing new types of routine information within the classes identified above.

#### **Publication of new items of routine information**

Once an information type is approved by the Principal Officer, the publishing and subsequent updating of the information is the responsibility of the information custodian.

Within each business unit, the normal processes and procedures for the publishing of information on the Tasmanian Audit Office external website will apply.

The information will be published on the information custodian's internet page and a link to the information will appear on the <u>RTI webpage</u>.

Publication should be in a format that is accessible, taking into consideration the principles of availability and accessibility as outlined in the <u>Tasmanian Government Communications</u> <u>Policy</u>. Further assistance in complying with the accessibility requirements for web publishing is available from the <u>Corporate Support and Strategy team</u>.

#### Who ensures that published information is kept up to date?

It is the responsibility of the information custodian to routinely publish and maintain the accuracy of the information in accordance with the approved frequency and method.

#### **Active Disclosure**

The RTI Act defines active disclosure as the disclosure of information by a public authority or a Minister in response to a request from a person, but which is not an application under the RTI Act.

Generally, the Office will make active disclosures in the course of most contacts with the public; this is the nature of working with clients. However sometimes the requests are more significant or require further action.

Broadly speaking active disclosures cover the information which does not meet the test for routine disclosure as it does not have major significance or general public interest or has not yet been considered for routine disclosure.

#### Access to personal information of the person making the request

Personal information is one important category of information which is often actively disclosed. Generally, the *Personal Information Protection Act 2004* (PIPA) allows a person to have access to information which is personal information about them.

Points to remember about release under the PIPA include:

- Some personal information is available on a fee for service basis, for instance birth certificates.
- In some situations where personal information is incorrect or out of date the person may be able to ask for it to be amended or request that a notation be made that the information is incorrect or out of date.
- Some information about a person which is of a medical or psychiatric nature may be released via a medical practitioner instead of direct to the person.
- A person requesting personal information will usually have to provide proof of identity before personal information is released.

#### What happens if the information cannot be actively disclosed?

A person who has requested the information should be informed if relevant information cannot be actively disclosed and advised that they have a right to make a formal application for an assessed disclosure.

#### Should there be a charge for information that is actively disclosed?

Generally there should not be a charge for the active disclosure of information, however a fee may be charged if:

- the information is to be used for a commercial purpose; or
- additional cost is involved in responding to the request (e.g. the information needs to be transcribed; or the information has been requested in a more costly form).

Charges must be based on the Costing Fees and Charges Guidelines for Use by Agencies established by the Department of Treasury and Finance and available on <a href="their website">their website</a>.

#### Who will decide what information can be actively released?

The normal Tasmanian Audit Office clearance processes and protocols apply to the public release of information. General enquiries will be dealt with through normal channels; for example telephone enquiries may be appropriate for simple requests but more complex requests for information may need to be dealt with in writing and subject to clearance by senior management or Executive Committee.

The <u>Tasmanian Government Communications Policy</u> provides general guidance about communications.

Other applicable processes include:

1. Requests received from the media

As outlined in the <u>Tasmanian Government Communications Policy</u>, with the exception of Cabinet Ministers, no individual is to make a public statement without

approval of the statement and the spokesperson by the relevant Minister or head of agency or their nominee. Although there are some government roles which may be an exception to this, generally where the information is being sought by the media, the officer will forward the request to the Director, Corporate Support and Strategy.

When responding to media enquiries and acting as a government spokesperson, staff must abide by the Whole of Government Media Protocols.

- 2. Requests received from Members of Parliament
  - Where the information is being sought by Members of Parliament, the request should be forwarded to the Director, Corporate Support and Strategy.
- 3. The information is potentially contentious or sensitive
  - Where the information being sought is potentially contentious or sensitive, the request should be forwarded to the Director, Corporate Support and Strategy.
- 4. The information may include exempt information or information protected from release

Where the information being sought may include exempt information, the request should be forwarded to the Director, Corporate Support and Strategy.

#### Process for the active disclosure of information

Information that is publicly available can be provided orally or in writing or by providing the information requested in a hard copy or electronic form.

Information will continue to be released according to normal Office practices.

For all requests not covered by the section above, officers will:

- direct the person to the information if it is already publicly available (including directing the person to a commercially available source if the information is required in hard copy and is available for sale)
- consider asking for a request in writing to provide greater clarity around the information being sought, and to whom the information is to be provided
- decide whether the information can be released to the person in full or in part, taking into consideration factors such as:
  - third parties who may have provided commercial in confidence information or information provided strictly in confidence by third parties
  - personal information decisions must be consistent with the Personal Information Privacy Protection Principles as set out in the Personal Information Protection Act 2004
  - confidentiality information provided in confidence (commercial or otherwise)
  - copyright or ownership of the material
  - the exemptions outlined in the RTI Act

- contractual obligations that may relate to the information
- defamation law
- whether the information is part of an ongoing investigation or legal action
- release any of the requested information that can be disclosed and, where applicable, inform the person of any relevant information that cannot be disclosed in this way and provide the person with advice on their rights to apply for an assessed disclosure to obtain access to any information which cannot be actively disclosed.

#### Making information available via active disclosure

All decisions should be made taking into account the need for a timely response and the objective of the RTI Act to favour active disclosure of information wherever possible.

#### Is there a charge for information which is actively disclosed?

Generally there is no charge for information which is actively disclosed. However, a business unit may charge a fee for the provision of the information if:

- · the information is to be used for financial gain; or
- additional cost is involved in disclosing the information (e.g. the information needs to be transcribed; or providing the information in the form requested is more costly than currently available form).

Charges must be based on the <u>Costing Fees and Charges Guidelines for Use by Agencies</u> prepared by the Department of Treasury and Finance. A copy of the guidelines is available at the Department of Treasury and Finance <u>website</u>.

#### **Assessed Disclosure**

Assessed disclosure is the form of disclosure of last resort. It should only be used in circumstances where information is not already available or requires detailed examination and is therefore not suitable for active disclosure.

Assessed disclosure is a formal process requiring an application. Information for the public about making an application is available on the Office's <u>website</u>.

#### Who can make a decision on an application?

The RTI Act permits the Principal Officer of a public authority or their delegate to make a decision on an application for assessed disclosure.

A list of the current delegated officers and information on the extent of the delegations will be maintained by the Right to Information Officer.

#### Processing an application for assessed disclosure:

The RTI Act requires delegated officers to have the knowledge and skills to undertake the task of appropriately assessing applications.

The Ombudsman has issued a manual and guidelines to assist delegated officers in this task. Delegated officers must be familiar with these documents which are available through the Ombudsman's website.

#### Assessed disclosure is the form of disclosure of last resort.

A person making a request for assessed disclosure must make the application in writing. The Tasmanian Audit Office's <u>Application for Assessed Disclosure form</u> and information about making an application is available on the Office's <u>website</u>.

#### Where should applications for assessed disclosure be sent?

Applications for assessed disclosure are to be addressed to:

Right to Information Officer Tasmanian Audit Office GPO Box 851 Hobart TAS 7001

Email: admin@audit.tas.gov.au

Applications must be accompanied by the application fee, which is set at 25 fee units<sup>1</sup>.

The fee may be waived if the applicant is:

- in financial hardship;
- a member of Parliament and the application is in connection with their official duty;
   or
- able to show that the information sought is intended to be used for a purpose that is of general public interest or benefit.

#### Who can make a decision on an application for assessed disclosure?

The Auditor-General (Principal Officer) may delegate their decision making power for assessed disclosures. Delegated officers are responsible for assessed disclosure decisions.

#### Processing an application for assessed disclosure

The process for assessing an application for assessed disclosure is outlined in the RTI Act and in the Manual and Guidelines published by the Ombudsman and available on the Ombudsman website.

All requests for information will be dealt with in a timely manner, taking into account the time required to assess the application and the need to consult third parties, which may include re-defining or transferring the application upon negotiation with the applicant. Timeframes for processing applications and negotiations are set out in the RTI Act.

An application for assessed disclosure may be transferred in full or part to another public authority or Minister where the subject matter of the application is more closely connected with the functions of another public authority or Minister.

<sup>&</sup>lt;sup>1</sup> Fee units are indexed annually and information about the *Fee Units Act 1997* and the current fees can be found on the Department of Treasury and Finance's <u>website</u>.

#### Search and retrieval of information

Upon receipt of a request for assessed disclosure, the delegated officer will liaise with information custodians and the business units responsible for the management of the information. The responsibility for searching for and producing the information to be assessed is the responsibility of the information custodian and/or business unit.

All information, whether potentially exempt or not, must be provided to the delegated officer for assessment.

An applicant for assessed disclosure of information may seek a review of a decision made under the RTI Act on the basis that the search for information has been insufficient. In this case the Auditor-General or Ombudsman may request a report on how the search for the information requested was conducted. Therefore information custodians and business units may be requested to provide a report of the efforts made to locate the information requested.

Section 50 (2) of the RTI Act provides that it is an offence to deliberately fail to disclose information which is the subject of an application for assessed disclosure of information, in the circumstances where the information is known to the person to exist, other than where non-disclosure is permitted in accordance with the RTI Act or another Act.

#### Providing a written decision

The delegated officer responding to an application for assessed disclosure must provide the applicant with a written decision that explains:

- the information in the Office's possession;
- whether or not the information is released;
- the reasons for any exemptions; and
- the applicant's rights to seek a review of an assessed disclosure decision.

Review provisions are contained in Part 4 of the RTI Act. To request a review of a decision by a delegated RTI officer, the applicant should apply to the Principal Officer within 20 working days. Applicants may also seek an external review by the Ombudsman.

#### **Publication policy**

In relation to assessed disclosures, the Office may publish information released in response to a request for assessed disclosure of information made under the RTI Act. Such information will be accessible via the Disclosure Register.

The register makes information released to an applicant available to a wider audience and increases Government transparency and accountability.

The disclosure register includes:

- a summary of the request for information, as this gives context to the nature of the released information
- the category of the applicant (i.e. Member of Parliament; media representative; organisation; private individual)

- where the category of applicant is a Member of Parliament, the log will indicate whether the application is on behalf of a constituent or other person
- the information released to the applicant
- where appropriate, supplementary contextual information providing greater balance or depth to the response to the request if necessary.

#### **Determining what information to publish**

Deciding what information to release to an applicant and what information will be published on the disclosure register are separate decisions. The first decision has a legislative basis, and the second is administrative only. The decision to publish material on the disclosure register will be made by Executive Committee.

The disclosure register will not necessarily include all information that has been released in response to requests for assessed disclosure of information, only information that is considered to be in the public interest.

In determining whether to disclose information on the Office's website, the guiding principle is that information is considered to be in the broader public interest if:

- the application is received from a Member of Parliament about a matter which is in the public interest, or
- the applicant seeks a waiver of the application fee on the basis of general public interest or benefit.

In such cases, applicants should assume that the information may be disclosed on the website.

The selection of what is disclosed will be made by considering -

- what is in the broader public interest. For example, if an applicant seeks and is
  granted a waiver of the application fee on the basis of general public interest, and it
  is determined that the release of the information is not contrary to the public
  interest, publication of the released information is likely.
- whether the information reveals personal information; the business affairs of a third party, or any other information which would not be appropriate to release to a wider audience, or which is restricted by any legal obligations.

#### Advice to applicants and third parties

Applicants will be advised in the letter acknowledging their application that information released to them may later be published on the disclosure register. Any third parties who are consulted during the assessment process will also be advised of this possibility. The applicant or the third party may wish to provide their views regarding the potential publication of the information on the disclosure register.

#### Discretion not to publish

The Office retains discretion not to publish some or any of the information which has been released to an applicant. Factors to be considered may include whether the:

- personal information of an individual would be apparent from the information
- business affairs of a third party would be revealed
- information has been redacted so significantly that it would be very difficult to discern its meaning
- information is so voluminous that it would not be practicable to publish.

There are two categories to consider in relation to 'personal information', i.e. the personal information of the applicant, and the personal information of others.

While information released to an applicant may contain that applicant's personal information, it would not be reasonable to publish that personal information.

The following information will generally not be published:

- the direct telephone number or signature of an officer
- · pages from which the content has been fully redacted
- personal information
- information about the business, commercial, financial or professional affairs of any person
- confidential information relating specifically to the applicant.

#### What if the released information is subject to an internal or external review?

If only partial information is provided to the applicant, but this is later changed following an internal or an external review, that additional information will then be published on the disclosure register.

Where practicable, the information released will be scanned and made available online in PDF format.

#### **Timing of disclosure**

Where it is decided to publish released information, it will be published, where practicable, within 2 working days of advising of the decision to release.

If the information released is extensive or voluminous, it may be released progressively, with a note indicating that this is the case.

#### Tenure of disclosure register

Information will generally be removed from the disclosure register after 12 months.

### 8. Contact details

Right to Information Officer Tasmanian Audit Office GPO Box 851 Hobart TAS 7001

Email: admin@audit.tas.gov.au

# 9. Supporting procedures/guidelines/related documents

Tasmanian Audit Office's Application for Assessed Disclosure form

<u>Guideline 3/2010 - Guideline in relation to process of disclosing information under each type of information disclosure.</u>

Manual and Guidelines issued by the Ombudsman

**Whole of Government Media Protocols** 

**Tasmanian Government Communications Policy** 

<u>Department of Treasury and Finance Costing Fees and Charges Guidelines for Use by Agencies</u>

# Responsibilities

Implementation	Director Corporate Support and Strategy
Compliance	Officers
Monitoring and evaluation	Executive Committee
Development and/or review	Executive Committee
Interpretation and advice	Director Corporate Support and Strategy

# **Policy history**

Policy No.	COR 22.0 - T
Approved / Rescinded	Approved
Date	25 January 2023
Executive Committee	Auditor-General
Signature	Rod Whitehead
Date of Review	
	Rod Whitehead

Date of Review	
Amendment Required	Yes/No
Name of Policy Maker	
Title	
Signature	