

FOI process overview

2 June 2020

This document provides an overview of City of Port Phillip's process for handling requests for access to Council documents that are made via the *Freedom of Information Act 1982* (the FOI Act). It also provides contact details for the Victorian Information Commissioner who is responsible for most appeals in regard to the FOI Act.

An application must be valid to be processed

Upon receipt of an application made under the *Freedom of Information Act 1982* (FOI Act) the responsible Council Officer, generally the FOI Officer, needs to determine if there is a valid request.

Council must ensure a request is valid by meeting the following requirements of the FOI Act:

- a request must be in writing;
- a request must be accompanied by the required application fee, which is \$29.60 in the 2019/2020 financial year. The application fee may be waived or reduced if payment would cause hardship for the applicant. City of Port Phillip (CoPP) processes require evidence to support a request for an application fee to be waived or reduced. A student card, pension card, health care card or similar are suggested forms of evidence. CoPP's processes require a photocopy of the relevant card/evidence be placed on the FOI application file to provide evidence as to why the application fee was waived or reduced. (Relevant section of the FOI Act: Section 17(2A)); and
- a request must provide sufficient information necessary for a responsible Council officer to identify the requested documents (section 17). The responsible Council officer is usually the FOI Officer. If the request is not clear, Council is obliged to provide reasonable opportunity for the applicant to consult with the FOI Officer and clarify the terms of their request.

Confirming the request is valid, timeframes and access charges

Confirmation of a valid request

Once a request satisfies section 17, Council will confirm with the applicant that the request is valid and is able to be processed.

Timeframes for processing

Timeframes for making a decision under the FOI Act have changed with the commencement of the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017*, (the Amendment Act) on 1 September 2017.

The Amendment Act allows for different decision-making timeframes dependent on the situation.

Council must take all reasonable steps to notify a FOI applicant of a decision as soon as possible but not later than 30 days from the date the request is deemed to be valid.

However, if consultation with third parties is required under sections 29, 29A, 31, 31A, 33, 34 and/or 35 of the FOI Act, Council is entitled to a further period of no more than a further 15 days to make a decision on access to documents.

An FOI applicant can agree to allow Council up to 60 days from the date an application became valid to provide a decision on access.

As long as this initial 60 day period has not expired, and any subsequently agreed upon periods have not expired, the applicant can agree to allow Council further periods of time to provide a decision on access.

Council is required to notify the applicant in writing of any extension, or further extension, of the timeframe for making a decision.

If a decision on access is not made within the appropriate timeframe, the applicant has the right to appeal rights to the Victorian Civil and Administrative Tribunal.

Access charges

Before and/or during the search for documents, Council is required to estimate access charges payable under section 22 of the FOI Act and the *Freedom of Information (Access Charges) Regulations 2014*.

A summary of the charges is as follows:

Search Fees - \$22.20 per hour to be calculated per hour or part of an hour.

Copying Fees - 20 cents per black and white A4 size page \$1.00 per colour A4 size page.

Other Charges - Reasonable costs incurred by the agency.

Access charges are in addition to the application fee.

If it is estimated that the access charges may exceed the sum of \$50, a deposit payment will be required. The FOI Act requires Council to seek the applicable deposit of the total estimated costs from the applicant prior to processing a request. If a deposit is paid, Council has a fresh 30 days from receipt of payment to make its decision on the request for access.

Processing a request

Relevant Council staff must conduct a thorough and diligent search to locate all documents that are relevant to a request.

However, if the work involved in processing the request would substantially and unreasonably divert Council's resources, Council may refuse to process the request without conducting a thorough and diligent search for documents. Council may also refuse to process a request if it is clear from the nature of the request that no information could be released to the applicant under the FOI Act.

If this situation arises, Council will provide the applicant with written notice of its intention to refuse to process the request as soon as is practicable. The applicant will be provided with a reasonable opportunity to consult to make the request in a form that can be processed. Council will, as far as is reasonably practicable, provide an applicant with information to assist the applicant to rephrase the request so that it can be processed.

All documents located must be assessed for relevance to the terms of the request. That is, the FOI Officer will consider whether or not the documents satisfy the terms of the request.

Once all of the relevant documents are located, the FOI Officer determines if any documents or parts of documents are exempt from release under the FOI Act (there are numerous exemptions set out in the FOI Act).

Third party consultation

Assessment also includes determining if any documents require third party consultation prior to a decision being made on release.

The amendments to the FOI Act, effective 1 September 2017, require consultation in regard to the applicability of sections 29, 29A, 31, 31A, 33, 34 and 35. If the discovered documents contain information that may require exemption under one of the above sections, where practicable, the FOI Officer will consult with the relevant parties before making a decision on access.

For reference, the sections that relating to consultation under the amended Act are:

- 29 - Documents containing matter communicated by any other State,
- 29A - Documents affecting national security, defence or international relations,
- 31 - Law enforcement documents,
- 31A - Documents relating to the Independent Broad-based Anti-corruption Commission (IBAC),
- 33 - Documents affecting personal privacy,
- 34 - Documents relating to trade secrets etc., and
- 35 - Documents containing material obtained in confidence.

The FOI Officer aims to balance providing the third party with sufficient time to provide a considered response in regard to the possible release of information with providing the FOI Applicant with a decision as soon as is practicable. Generally, the FOI Officer allows the third party a week for the consultation process.

Following consultation, the FOI Officer considers the third party's feedback and makes an independent decision on the release of the relevant material in accordance with the FOI Act.

Where consultation reveals that a third party objects to a release of information, but the FOI Officer determines that the information should be released despite the objection, the third party is advised by the FOI Officer of their appeal rights against the FOI Officer's decision.

The subject information cannot be released to the FOI Applicant until the appeal process is complete. In such a circumstance, the FOI Officer advises the third party and the FOI Applicant of the appeal process and the relevant timeframes for that process. The third party has 60 days from the date of this notification to seek a review of the decision from the Victorian Civil and Administrative Tribunal (VCAT).

Notification of a decision on access

Once the request is processed, Council must send a decision letter to the applicant explaining the number of documents or pages being released and why documents or parts are exempt from release.

If an access charges deposit has been paid, the applicant is required to pay the balance of the access charges prior to being provided with releasable documents. If no deposit has been required, the applicant is required to pay the full sum of the access charges prior to being provided with releasable documents.

A request for payment of either the full or the balance of the access charges, along with a payment form, will be sent to the applicant with the decision letter.

Appealing a decision on access

If an applicant is dissatisfied with Council's decision in regard to access, they can appeal to the Victorian Information Commissioner.

The Victorian Information Commissioner can be contacted at :

Office of the Victorian Information Commissioner
PO Box 24274
Melbourne Victoria 3001
PH. 1300 00 6842 (1300 00 OVIC).
Email: enquiries@foicommissioner.vic.gov.au

Queries and FOI resources

Council's Freedom Of Information Officer is available to assist you with your application throughout the FOI process. The best way to contact a FOI Officer at Council is via a centralised email at helpfoi@portphillip.vic.gov.au. This email is checked regularly and ensures that a staff member will attend to your query without delay.

Further information concerning Council's handling of FOI applications, and the organisation's FOI Statement can be found on Council's [website](#).

The Information Commissioner provides information concerning the operation of the FOI Act in Victoria on their [website](#). Council's FOI obligations fall under Victorian legislation.

A Federal FOI Act, also called the *Freedom of Information Act 1982*, provides people with the right to access federal government documents. The Federal Office of the Australian Information Commissioner has information on its [website](#) concerning the operation of the Federal Act.