



Right to Information Policy and Procedures

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RIGHT TO INFORMATION POLICY AND PROCEDURES

I. Purpose

The Statutory Position of the Education Registrar is established under Section 218 of the *Education Act 2016*. As such, information is held by the Education Registrar who considered to be the Principal Officer for the purposes of the *Right to Information Act 2009* (the Act).

The Office of the Education Registrar is an administrative construct which administratively supports the Education Registrar to carry out their power and functions as a Statutory Officer and the Office of the Education Registrar is referred to as the OER within this Policy.

Section 23 of the Act requires principal officers of public authorities to prepare and promote policies and procedures for the release of information under the Act.

This Policy and procedures is issued in compliance with the Act and explains the disclosure policy and processes in the OER for the four types of information disclosure specified in the Act.

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

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

This policy and procedures is based on the *Right to Information Act 2009: Information Disclosure Policy and Procedures*, May 2017, Department of Premier and Cabinet (DPAC).

2. Scope

This policy and procedures applies to all staff of the OER, and where applicable, any contractors and consultants.

This policy and procedures covers the four types of information disclosure identified in section 12(2) of the Act:

- a **required** disclosure
- a **routine** disclosure
- an **active** disclosure
- an **assessed** disclosure.

3. Definitions

Active disclosure A voluntary disclosure of information by a public authority or a Minister in response to a request from a person made otherwise than under section 13 of the Act.

Assessed disclosure A disclosure of information by a public authority or a Minister in

response to a request from a person made under section 13 of the Act. Application for assessed disclosure is the method of last resort.

Delegated officer	Officers delegated under section 24 of the Act to make a decision on an application for assessed disclosure or to undertake an internal review of a decision.
Exempt information	Information that is exempt as set out in Part 3 of the Act.
Information	Means: <ul style="list-style-type: none">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; andc) information which relates to the official business of the OER and excludes information which is in the possession of the OER for the sole purpose of collation or forwarding to a body other than another public authority.
Information custodian	The business unit within the OER responsible for the initial collation, preparation, development and publishing of the information, and for ensuring the information is up to date and accurate.
Officer	A member of staff of the OER or any person employed by or for the OER, whether or not that person is a State Service officer or State Service employee.
Ombudsman	The Ombudsman appointed under the <i>Ombudsman Act 1978</i> . Personal information Information or opinion in any recorded format, about an individual <ul style="list-style-type: none">a) whose identity is apparent or is reasonably ascertainable from the information or opinion; andb) who is alive, or has not been dead for more than 25 years.
Principal officer	The Education Registrar (Statutory Officer)
Public authority	Means: <ul style="list-style-type: none">a) an Agency, within the meaning of the State Service Act 2000; orb) the Police Service; orc) a council; ord) a statutory authority; ore) a body, whether corporate or unincorporated, 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.

Required disclosure A disclosure of information by a public authority where the information is required to be published by the 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.*

4. Policy statement

Section 7 of the Act gives a person a legally enforceable right to be provided with official information in the possession of the OER, unless the information is exempt information.

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

All officers are responsible and accountable for:

- keeping records of all official information produced, received or acquired; and
- making records to support what they do.

The OER's delegated officers involved in the release of information to the public will make decisions which are consistent with the objects and provisions of the Act and with the *Right to Information Act 2009 Tasmania Ombudsman's Manual* and guidelines issued and maintained by the Ombudsman. Refer <https://www.ombudsman.tas.gov.au>.

4.1 Object of the Right to Information Act 2009

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

Section 3 of the Act provides:

- I. 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; and*
 - b) *by increasing the ability of the people of Tasmania to participate in their governance; and*
 - c) *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(1) of the Act provides:

5. 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.

5. Principles

The following principles guide OER Staff in making decisions about what information is disclosed and the method of making that information available.

The OER will make official information in its possession publicly available when it is relevant, appropriate and in the public interest to do so, and where information is not subject to an exemption set out in the Act. Some of the information that the OER holds is not able to be disclosed because it is:

1. Information, by its nature, that is exempt from disclosure;
2. contrary to the public interest to disclosure; or
3. prevented by other law or agreements to be disclosed.

Applications for personal information by an individual to who the personal information relates will be dealt with under this Act.

The Tasmanian Ombudsman has issued a Guideline to assist agencies and applicants in distinguishing between information and a document - when requesting or assessing a request for access to information under the *Right to Information Act 2009* and the *Personal Information Protection Act 2004*.

- [Guideline 1/2013 - Distinguishing between information and a document - 30 August 2013 \(PDF, 125.6 KB\)](#)

6. Roles and responsibilities

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

Disclosure type	Authorised officer(s)
1. Required	The Principal Officer or delegated officer.
2. Routine	The Principal Officer
3. Active	<p>The Principal Officer, except where the information is:</p> <ul style="list-style-type: none">• being sought by the media, the request will be forwarded to DECYP Strategic Marketing, Communications and Media• being sought by Members of Parliament, the request will be forwarded to the Ministerial Services Unit• potentially contentious, the request will be discussed or forwarded to the Associate Secretary DECYP or another senior officer depending on the nature of the matter. <p>If the Principal Officer determines that some or all of the information held by the OER 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.</p>
4. Assessed	The Principal Officer.

7. Procedures

7.1 Required Disclosure

Required disclosure is the disclosure of information by a public authority where the information is required to be published by legislation, or where disclosure is otherwise required by law or enforceable under an agreement.

This could include information such as financial statements (required under the *Financial Management and Audit Act 1990*), the performance of the functions and the exercise of the powers of the Head of Agency (*State Service Act 2000*) and other reports which the Registrar Education must make available under law.

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

The Registrar Education is responsible for compliance with the administration of specific Acts as delegated by the Secretary. These delegated officers are responsible for the release of information under those Acts.

Process for the required disclosure of information

Delegated officers will disclose the required information in accordance with legislative requirements and in a manner approved by the Registrar Education.

7.2 Routine Disclosure

Routine disclosure is the disclosure of information by a public authority which it decides may be of interest to the public. This information is generally around the organisation's structure, policies, etc and will generally be available online. Refer www.oer.tas.gov.au

Information that is publically available on the OER's website includes:

- Organisational structure and functions
- Governance policies

Where people cannot access the information online, the OER will provide an alternative and reasonable means of access. If a person requires a method of accessing the information that incurs a cost, they may be required to pay, accessing the information by that method.

Identification of potential information types for routine disclosure

In addition, the OER is to regularly review information it possesses and identify what information may be routinely disclosed.

Officers should take account of the objects of the Act and consider:

- What information may be material to the community – ie what is significant, relevant and meaningful?
- What information might key stakeholders and the community 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 OER.
- 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 OER such as information about OER's expenditure.
- Whether publication would promote greater accountability by the OER, for example by showing the basis of its decisions.
- Whether the information promotes community wellbeing.

Other questions relevant to a decision to routinely disclose are:

- Does the OER possess or have custody of the information?
- Does the information relate to the official business of the OER?
- 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 OER 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 Act, 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, third party 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 Act?
- Is it in the public interest to release – having regard to matters to be considered under Schedules 1 and 2 of the Act?

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

The Registrar must approve types of information deemed as suitable and appropriate for routine disclosure prior to the information being published.

The OER will regularly review information they hold (or are gathering) and make a decision as to whether it should be routinely disclosed. Identification of potential suitable sources of information for routine disclosure can be made by the OER.

7.3 Active Disclosure

Active disclosure is the voluntary release of information by a public authority or a Minister in response to a request from a person made outside the provisions of the Act and is not an assessed disclosure. In general, this is the voluntary release of information on receipt of a request.

Who will decide what information can be actively disclosed?

The standard OER 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 will need to be dealt with in accordance with established OER policies and procedures.

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

The *Tasmanian Government Communications Policy* provides general guidance about communications. Refer <http://www.communications.tas.gov.au/policy>.

The OER's approval protocols should also be referred to.

Other applicable processes include:

a) **Media approaching officer**

At times, the media may approach officers. While these opportunities have the potential to highlight and promote achievements, events and community involvement, they could also be

contentious or have wider policy implications. Whenever you are approached by the media contact Strategic Marketing, Communications and Media (DECYP), who will advise of the processes and procedures and provide approval. No officer is to make a public statement without having first made this contact.

Strategic Marketing, Communications and Media will also decide whether or not a response to a media enquiry requires direct involvement with the Minister's Office.

b) Requests received from Members of Parliament

Where the information is being sought by Members of Parliament, the request should be forwarded to the Ministerial Services Unit who will determine the most appropriate course of action.

c) The information is potentially contentious or sensitive

Where the information being sought is potentially contentious or sensitive, advice should be sought from the Associate Secretary.

d) 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 Manager of the Government Services Branch.

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

- Direct the person to the information if it is already publicly available.
- Consider asking for a request in writing to provide greater clarity about 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 Act
 - » contractual obligations that may relate to the information
- » if 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 about their rights to apply for an assessed disclosure under the Act 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 Act to favour active disclosure of information wherever possible.

Charges 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 (eg the information needs to be transcribed; or providing the information in the form requested is more costly than the currently available form).

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

7.4 Assessed Disclosure

Assessed disclosure is the form of disclosure of last resort and is where information may be disclosed following receipt of a formal application for information under section 13 of the Act.

Process for making an application for assessed disclosure

A person making a request for assessed disclosure must make the application in writing.

Applications for assessed disclosure are to be sent by:

email: registrar@oer.tas.gov.au; or

- post: Right to Information
Office of the Education Registrar
GPO Box 104, Hobart, Tasmania, Australia 7001

Applications must be accompanied by the application fee. This fee is 25 fee units¹. The fee may be waived if the applicant is:

- impecunious (in financial hardship); or
- a Member of Parliament, and the application is in connection with their official duty; or
- a member of the media or journalist acting in connection with their professional duties; or
- able to show that the information sought is intended to be used for a purpose that is of general public interest or benefit.

The Principal Officer may delegate his or her decision making power for assessed disclosures. Delegated Right to Information officers are responsible for assessed disclosure decisions including any requests for internal reviews.

Section 24 of the Act require that the Principal Officer must be satisfied that delegated officers have the knowledge and skills necessary to perform or exercise the functions or powers delegated by the Secretary.

All delegated officers within the OER are required to undergo training to ensure a sound understanding of the Act and the Right to Information (RTI) Manual and guidelines issued by the Ombudsman.

Process for assessing an application for assessed disclosure

The process for assessing an application for assessed disclosure is outlined in the Act and in the RTI Manual and guidelines published by the Ombudsman. The RTI Manual also includes fundamental considerations when working with the Act including refusing applications, the public interest test, exemptions and statements of reasons. Refer <https://www.ombudsman.tas.gov.au>

All requests for information are dealt with in accordance with the timeframes specified in the Act. The Act provides specific timeframes for a number of considerations:

- negotiating with the applicant to refine the application
- consulting with third parties
- transferring the application to another public authority or Minister, and informing the applicant
- notifying the applicant of a decision on their application.

Search and retrieval of information

Upon receipt of a request for assessed disclosure the Right to Information officer, on behalf of the delegated officer, will liaise with the relevant business unit(s). This business unit(s) is responsible for searching and producing the information sought and providing it to the Right to Information officer strictly within the nominated timeframe.

All information, whether potentially exempt or not, must be disclosed to the officer who will then review the information and make a decision on whether it should be disclosed.

If the applicant is of the view the search for information has been insufficient, they may seek a review of the decision made by the delegated officer. If this is the case evidence may be requested on how the search for information was undertaken, this may be in the form of a report detailing specifically how the information was searched for.

Section 50(2) of the 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 Act or another Act. A penalty of up to a maximum fine of 50 penalty units applies to any breaches.

The Ombudsman issue and maintain *Guideline in relation to searching and locating information*. Refer <https://www.ombudsman.tas.gov.au>

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 OER's possession
- whether or not the information is released
- the reasons for any exemptions

- the applicant's rights to seek a review of an assessed disclosure decision, which is contained in Part 4 of the Act:
 - » an applicant may, within 20 working days of receipt of the decision, request an internal review of a decision by a delegated Right to Information Officer
 - » an applicant may also apply to the Ombudsman for an external review.

Review provisions

Review provisions are contained in Part 4 of the Act. To request an internal review of a decision by a delegated Right to Information officer, the applicant should apply to the Secretary within 20 working days following receipt of the written decision.

Section 45(1) of the Act specifies a number of other circumstances where it is possible for the applicant for assessed disclosure or a third party to go directly to the Ombudsman for an external review.

8. Contact details

Office of the Education Registrar:

telephone: 61 65 6135

email: registrar@oer.tas.gov.au

post: GPO Box 104, Hobart, Tasmania, Australia 7001

9. Related legislation, policies and documents

Disclosure of information is governed primarily by the *Right to Information Act 2009*, however the following legislation and related documents are also relevant in application of the Act:

- *Right to Information Regulations 2010*
- *Personal Information Protection Act 2004*
- *State Service Act 2000*
- *Archives Act 1983*
- RTI Manual and guidelines issued by the Ombudsman
- *Tasmanian Government Communications Policy* issued by DPAC
- Tasmanian Government Web Publishing Framework
- Whole of Government media protocols.