



**RIGHT TO INFORMATION ACT 2009,
S 49(1)(A)**

**GUIDELINE IN RELATION TO PROCESS OF
DISCLOSING INFORMATION UNDER EACH
TYPE OF INFORMATION DISCLOSURE**

GUIDELINE NO. 3/2010

Right to Information Act 2009, s 49(1)(a)

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This Guideline is issued by the Ombudsman under s 49(1)(a) of the *Right to Information Act 2009* (the Act).

The Guideline relates to the process of disclosing information under the four types of information disclosure referred to in s 12 of the Act.

1. The four types of information disclosure

Section 12(2) of the Act refers to four types of information disclosure - required disclosure, routine disclosure, active disclosure and assessed disclosure.

These terms are defined in s 5(1) of the Act. Drawing on these definitions, the different types of disclosure are as follows -

- "Required disclosure" is the disclosure of information by a public authority where (1) the information is required to be published by the RTI Act or another Act; or (2) disclosure is otherwise required by law or is enforceable under an agreement.
- "Routine disclosure" is the disclosure of information by a public authority which the public authority decides may be of interest to the public, where the disclosure is not one of the other three types of disclosure.
- "Active disclosure" is the disclosure of information by a public authority or a Minister in response to a request from a person made otherwise than under the provisions of the Act which outline the process for assessed disclosure - *i.e.* the voluntary release of information on receipt of a request.
- "Assessed disclosure" is the disclosure of information by a public authority or a Minister in response to an application under s 13 of the Act - *i.e.* in response to a formal application for assessed disclosure.

2. The scope and purpose of this Guideline

This Guideline is predominantly about the process for disclosing information by way of routine and active disclosure. There are a few reasons for this -

- The statute, agreement or other instrument which requires the making of a required disclosure will ordinarily indicate, directly or indirectly, the process by which such disclosure should occur. For instance, it is common for an Act to require the production of an annual report, and to require it to be published by tabling in the Parliament.
- The Act and regulations made under the Act specify in some detail the process of disclosing information by way of assessed disclosure, and no need is seen to supplement that detail in this Guideline.
- Disclosure by way of required disclosure and assessed disclosure is obligatory. In the first case, it is required by law or an agreement, and in the second it is required by the provisions of the Act to give effect to the right to information provided by s 7 of the Act. The scope for discretionary release lies with routine disclosure and active disclosure, particularly with routine disclosure. It is in the area of discretionary release that guidance is needed.

The principal purpose of this Guideline is to give such guidance, with a view to advancing the objectives of the Act.

The Guideline is particularly concerned with the discretionary release of information by public authorities, as opposed to discretionary release by Ministers. This is because, as explained, the greatest scope for discretionary release lies with routine disclosure, and because the definition of routine disclosure in the Act does not apply to information in the possession of Ministers.

However, unless the contrary appears, the contents of this Guideline apply to the disclosure of information by both public authorities and Ministers.

3. The objectives of the Act

It is specifically provided in s 12(3) of the Act that assessed disclosure is the method of disclosure of last resort. In other words, where possible, public authorities and Ministers should be making information voluntarily available, and so reducing the need for assessed disclosure. This includes where the information at issue is exempt : s 12(1).

This is against the background of the objects specified in s 3 of the Act, which indicates that the purpose of the Act is to improve democratic government in the State by increasing the accountability of the executive to the people of the State, and by increasing the ability of the people to participate in their governance.

Most importantly, in the context of this Guideline, s 3 demonstrates the intention of the Parliament that public authorities and Ministers should be taking steps to "facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information" : s 3(4).

If assessed disclosure is a last resort and official information is to be made readily available, this must be through routine and active disclosure. Put simply, the intention of Parliament is that, to advance the objects of the Act, public authorities and Ministers should be making official Information available voluntarily, unless there are good public policy reasons for not doing so.

This approach is often described as a "push model" - where official information is pushed out by government to the community. The obverse is a "pull model" - where the release of official information only occurs in response to a formal application under freedom of information legislation.

The adoption of this "push model" requires recognition by public authorities and Ministers that part of their core functions is making information about their activities available to the public.

4. General principles applying to disclosure

These principles should be taken into account in deciding whether information should be disclosed by way of routine or active disclosure, and how it should be disclosed -

- There should be proactive disclosure, by way of routine disclosure, of certain classes of information held by a public authority, where the information is significant and non-exempt.

(See sections 6.1 and 6.2 of this Guideline for details about the classes of information which should be disclosed and the criteria to be applied in deciding whether disclosure should occur.)

- Information that is being generally released by way of routine disclosure should, where possible, be available online, through the public authority's website. Where access to such information is not available online, the authority should provide an alternative means of access, for instance by compact disc or photocopy.
- Consistently with s 3(4)(b) of the Act, administrative access to information should be provided at the lowest reasonable cost. There should be no charge for alternative access in cases where a person's inability to access a document online is due to a disability.

When considering what would be the lowest reasonable cost, it is recommended that consideration be given to guidelines published by the

Department of Treasury and Finance in December 2006, entitled *Costing Fees and Charges – Guidelines for Agencies*. These guidelines can be viewed at –

[http://treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/Costing-Fees-and-Charges-Guidelines-2006.pdf/\\$file/Costing-Fees-and-Charges-Guidelines-2006.pdf](http://treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/Costing-Fees-and-Charges-Guidelines-2006.pdf/$file/Costing-Fees-and-Charges-Guidelines-2006.pdf)

- The assessed disclosure of information is the method of disclosure of last resort.

Before requiring an application for assessed disclosure, or before deciding to proceed with a formal decision on such an application, a decision is therefore needed on whether this course is justified. Examples of where assessed disclosure might reasonably be required are where this is necessary for the interests of third parties to be properly considered, is necessary for the purpose of giving detailed consideration to whether it would be contrary to the public interest for the information to be released, or is necessary for the purpose of formally explaining why the information being sought is considered to be exempt.

- Any request for the active disclosure of information should be addressed in a timely way, preferably within the time frame that would apply if the request was an application for assessed disclosure under the Act.

5. Public authorities – Information Disclosure Policy

5.1 Obligations of the principal officer of a public authority

Various provisions of the RTI Act impose obligations upon the principal officer of a public authority about the disclosure of information. Relevantly, these are –

- s 12(3)(a) which requires the principal officer to ensure that there are adequate processes in place in the public authority to ensure that there is appropriate active disclosure, routine disclosure or required disclosure by the public authority
- s 12(3)(b) which requires the principal officer to ensure that these processes comply with guidelines issued by the Ombudsman under s 49 – and hence these Guidelines
- s 23(1)(a) which requires the principal officer to develop policies and procedures in relation to the disclosure of information, for use in the public authority
- s 23(1)(b) which requires the principal officer to publish details of these policies and procedures, and of the RTI Act and the way in

which people can exercise their rights under the Act in respect of the public authority.

The principal officer of each public authority should prepare an Information Disclosure Policy to meet these requirements, and publish that policy on the authority's website.

5.2 Content of an Information Disclosure Policy

An Information Disclosure Policy should -

- specify the policies, processes and procedures of the public authority with respect to each of the kinds of disclosure created by the RTI Act – required, routine, active and assessed
- specify the classes of information which are made available, and the particularly types of information which are available within each class
- specify how the information is made available, so that it can be accessed easily by members of the public
- include details of any costs which are payable, and the circumstances under which they are payable
- ensure that the staff of the authority are clear about who can release what information, and when - see section 6 of this Guideline, about the decision making framework
- emphasise that the assessed disclosure of information under the Act is a last resort
- take into account the factors which favour disclosure, and those which favour non-disclosure, as outlined in the Act
- ensure that third party interests are not compromised
- explain that, generally speaking, people should be given access to their personal information
- ensure that staff are made aware of circumstances in which the release of information would be unlawful - for instance where this would breach confidentiality provisions in an Act or contract
- be consistent with the Personal Information Protection Principles in the *Personal Information Protection Act 2004*
- be approved by the principal officer

- be compliant with this Guideline and other Guidelines issued and maintained by the Ombudsman.

The Information Disclosure Policy must -

- be published on the authority's website, but should also be available in hard copy if requested
- be reviewed and updated on a regular basis

6. Decision Making Framework for Routine Disclosure

6.1 Criteria for routine disclosure

To assist in deciding what information should be made available by way of routine disclosure, a public authority should ensure through its Information Disclosure Policy that staff involved in decision making are making judgements based on consistent criteria.

Information which is made available as a routine disclosure should be -

- Significant – for example key initiative and policy documents
(See immediately below for considerations which should be taken into account in determining whether information is significant.)
- Appropriate - having regard, for example, to existing legislation, privacy principles and security issues
- Accurate - all efforts should be made to ensure that information included is accurate

In deciding what information is "significant", public authorities are encouraged to consider-

- what information may be material to the community
- what information key stakeholders and the community might reasonably expect to be able to access
- the extent of public demand for the information
- how useful the information would be to the public in dealing with the authority
- whether publication would improve the public's ability to contribute to the work of the authority, or to decision-making by the authority

- whether publication would promote greater accountability by the authority, for example by showing the basis of its decisions
- whether the information promotes community wellbeing.

6.2 Classes of information

Public authorities should generally include the following information in the information which it makes available by way of routine disclosure. The headings used are suggested for the purposes of consistency and clarity.

About us

Organisational information, location and contacts, information relating to constitutional and legal governance.

Our services

A description of the services offered by the public authority, including advice and guidance, booklets and leaflets, transactions and media releases.

Our priorities

Strategic and performance information, major projects or initiatives, plans, assessments and reviews.

Our decisions

Policy proposals and decisions, decision making processes, internal criteria and procedures, consultations.

Our policies and procedures

Current written protocols for fulfilling the authority's functions and responsibilities.

Our finances

Information relating to projected and actual income and expenditure, tendering, procurement and contracts.

Lists and Registers

Information held in registers required by law and other lists and registers relating to the functions of the public authority.

Simon Allston
Ombudsman

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