



RIGHT TO INFORMATION ACT 2009
s 49(1)(c)

***GUIDELINE IN RELATION TO SEARCHING AND
LOCATING INFORMATION***

GUIDELINE AS AT 24 JANUARY 2013

Right to Information Act 2009, s49 (1) (c)

**GUIDELINE IN RELATION TO
SEARCHING AND LOCATING INFORMATION**

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

1. The purpose of this Guideline

This purpose of this Guideline is to assist public authorities and Ministers to conduct a search in response to an application for assessed disclosure in a thorough, documented and disciplined manner (assessed disclosure is defined in s 5 of the Act and provided for in s 13).

2. What information is subject to search?

Section 6 of the Act gives a person a legally enforceable right to be provided with information in the possession of a public authority or Minister, unless the information is exempt information.

The term 'information' is defined in s 5 of the Act in the following terms:

"information" means-

(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.

Note that the terms "information in the possession of a Minister" and "information in the possession of a public authority", used in s 6, are also defined in s 5 of the Act.

The information for which search should be made is limited to information which relates to the official business of the Minister or public authority.

These definitions also exclude information which is in the possession of the Minister or public authority for the sole purpose of collation or forwarding to a body other than a public authority.

The information which is subject to search includes electronic records in the possession of the Minister or public authority, such as material retained on data management systems, and in email records.

When dealing with electronic information, however, s 10 (1) allows a Minister or public authority to refuse an application for assessed disclosure where:

- (a) the information cannot be produced using the normal computer hardware and software and technical expertise of the public authority; and
- (b) producing it would substantially and unreasonably divert the resources of the public authority from its usual operations, having regard to the factors in Schedule 3 of the Act.

Section 10(2) provides, among other things, that a person is not entitled to information contained in back-up systems.

If the terms of the application for assessed disclosure require it, the search should extend to information placed in the custody of the Archives Office by a public authority. This does not apply, however, to a record which can be inspected by the public at the Archives Office otherwise than in accordance with the Act.

Note that the search should encompass all relevant information held by the Minister or public authority, and care should be taken to make sure that the search is not inappropriately limited by any constraint on the person who carries it out (for example, their level of security clearance or knowledge of the organisation or the organisation's record keeping systems).

3. Conducting the search

The scope of the search is determined by the terms of the application for assessed disclosure. Where the terms of the application are unclear or too general in nature, you should negotiate immediately with the applicant to refine or redirect their application (negotiations must be completed within no more than 10 working days from receipt of the application).

At the initial stage, all of the information which is thought to be covered by the application for assessed disclosure should be identified and located. An assessment should then be made as to exactly what information falls within the scope of the application, and within the right given to the applicant by s 7 of the Act.

4. Recording the steps taken in the search

It is important to record the steps taken in the search. This will help to ensure that the search is carried out methodically, and in a disciplined way.

The record of the search may also become important if the applicant seeks review. An applicant for assessed disclosure has the right to seek a review by the Ombudsman on various relevant grounds, for example where:

- you have determined that the information requested was not in existence on the day the application was made (s 45 (1) (b)) or

- you have determined that the information requested is not in the possession of the public authority or Minister (s 45 (1) (d)) or
- the applicant believes, on reasonable grounds, that you have made an insufficient search for the information (s 45 (1) (e)).

In any such review, you will need to be able to satisfy the Ombudsman that your decision was factually correct, or that your search was sufficient.

Your decision on the application for assessed disclosure should include details of the searches you undertook, as this promotes openness and transparency, and it may reduce the likelihood that the applicant will seek review on one of the grounds mentioned.

5. What should be recorded?

A written record should be retained of all searches carried out in relation to the application for assessed disclosure.

While Attachment A to this Guideline is a suggested template for recording your searches, you are entirely at liberty to use any other appropriate method to ensure that a sufficient record is kept.

Whatever the method of recording the searches, you should be able to demonstrate, with respect to each action undertaken in the course of the search:

- the date of the action;
- the nature of the action undertaken – for example, discussion with a named person or search in an identified location or on an identified database;
- the outcome of the action; and
- the identity and position of the person who performed the action.

The record should be informative to someone who has no knowledge of the matter, such as the Ombudsman if an application for review is made. The extent of the detail in the record may become important if it is necessary to demonstrate, for example, that you discovered during the search that relevant information had been transferred to another public authority, or destroyed.

Where you undertake electronic searches, it is recommended that the record include details of the indexing system used, and the parameters of the search. It may also be valuable to retain printouts or "screen dumps" to record the nature of the searches conducted.

Finally, it is recommended that the search record be filed with the application for assessed disclosure, to enable the application and the search record to be read together, and to ensure that the search record can be easily located.

6. Information which is not in existence

Under s45 (1) (b) of the Act, an applicant may apply to the Ombudsman for review if you have determined that the information requested was not in existence on the day the application was made. The wording of the section sets the parameter of search - the search is for information which existed up to the date of the application, and not beyond.

7. Information which has been destroyed

If you conclude that the information has been destroyed, proof of destruction should be obtained where possible (you should include proof of the destruction with the decision provided to the applicant).

8. Information which is missing

Where the Minister or public authority has been unable to locate the requested information, a record of the search and an explanation should be provided to the applicant. The level of detail required will depend upon the complexity of the case.

9. Information no longer in possession of the Minister or public authority

Where you conclude that the information is not in the possession of the Minister or public authority, but was at some previous time, your decision should provide details of the information concerned, and indicate what you believed happened to it. Note that, as previously indicated, information placed in the custody of the Archives Office by a public authority is taken to be in its possession, and should therefore, subject to various qualifications, be included in any search (see s 11). One of those qualifications is that there is no need to search records which can be inspected by the public at the Archives Office otherwise than in accordance with the Act.

Leon Atkinson-MacEwen
Ombudsman

Date of first issue of Guideline: 20 December 2010

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Appendix A – Recording of Search Template

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