

Right to Information Policy and Procedures

TABLE OF CONTENTS

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RIGHT TO INFORMATION POLICY AND PROCEDURES	4
1. Purpose	4
2. Scope	4
3. Definitions	4
4. Policy statement	6
4.1 Object of the <i>Right to Information Act 2009</i>	6
5. Principles.....	7
6. Roles and responsibilities.....	7
7. Procedures for types of disclosure.....	8
7.1 Required disclosure.....	8
7.1.1 Who will decide what information should be released as a required disclosure?.....	8
7.1.2 Process for the required disclosure of information.....	8
7.2 Routine disclosure.....	8
7.2.1 Identification of potential information types for routine disclosure.....	9
7.2.2 Who will decide what types of information can be routinely disclosed?.....	10
7.2.3 Publication of new routine disclosure items and ensuring published items are kept up to date.....	10
7.3 Active disclosure	10
7.3.1 Who will decide what information can be actively disclosed?.....	10
7.3.2 Process for the active disclosure of information.....	11
7.3.3 Making information available via active disclosure	11
7.3.4 Charges for information which is actively disclosed.....	11
7.4 Assessed disclosure	12
7.4.1 Process for making an application for assessed disclosure	12
7.4.3 Process for assessing an application for assessed disclosure	12
7.4.4 Process for advising of new applications for assessed disclosure.....	13
7.4.5 Search and retrieval of information	13
7.4.6 Providing a written decision	13
7.4.7 Process and timeframe overview.....	14
7.4.8 Review provisions.....	15
8. Publication policy.....	15
8.1 Disclosure log.....	15
8.1.1 Determining what information is published on the disclosure log.....	15
8.1.2 Advice to applicants and third parties.....	16

8.1.3	Discretion not to publish.....	16
8.1.4	What if the released information is subject to an internal or external review?.....	16
8.1.5	Timing of disclosure.....	16
8.1.6	Tenure of disclosure log.....	16
9.	Contact details.....	17
10.	Related legislation, policies and documents.....	17

RIGHT TO INFORMATION POLICY AND PROCEDURES

1. Purpose

The Department of Education (the Department) holds information, for and on behalf of Tasmania, in order to perform its functions and those of its Minister (Minister for Education and Training). The Department is a public authority as defined under the *Right to Information Act 2009* (the Act).

Section 23 of the Act requires principal officers (the Head of Agency) 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 Department 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 Department; 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 officers of the Department, 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; and (c) information which relates to the official business of the Department and excludes information which is in the possession of the Department for the sole purpose of collation or forwarding to a body other than another public authority.
Information custodian	The business unit within the Department 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 Department or any person employed by or for the Department, 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; and (b) who is alive, or has not been dead for more than 25 years.
Principal officer	The Head of Agency (the Secretary, Department of Education).
Public authority	Means: <ul style="list-style-type: none"> (a) an Agency, within the meaning of the <i>State Service Act 2000</i>, or (b) the Police Service; or (c) a council; or (d) a statutory authority; or (e) 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 <i>Government Business Enterprises Act 1995</i>; 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.
Right to Information officer	An officer (who does not hold a delegation under section 24 of the Act) responsible for providing support (collating information, etc) to a delegated officer.

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.

The 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 Department, 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 Department'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/right-to-information/right-to-information-guidelines-and-manual>

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:

- (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; 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:

- (1) 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 officers in making decisions about what information is disclosed and the method of making that information available.

- The Department 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 Department 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 are dealt with under the *Personal Information Protection Act 2004*.

6. Roles and responsibilities

Table 1: Officers authorised to make decisions regarding the disclosure of information

Disclosure type	Authorised officer(s)
1. Required	The Secretary or delegated officer.
2. Routine	The information custodian following appropriate approval by the relevant Deputy Secretary or Secretary.
3. Active	<p>The information custodian, except where the information is:</p> <ul style="list-style-type: none">• being sought by the media, the request will be forwarded to 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 relevant Deputy Secretary or another senior officer depending on the nature of the matter. <p>If the information custodian determines that some or all of the information held by the Department 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 Secretary and delegated Right to Information officers.

7. Procedures for types of disclosure

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 Department must make available under law.

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

Department business units are 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.

A full list of legislation administered by the Department is available on our website.

7.1.2 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 Secretary.

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.education.tas.gov.au.

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

- Organisational structure and functions, including information about our Minister
- Departmental Governance policies
- Major policy and program initiatives and reviews
- Employment and workforce statistics (available via the State Service Management Office's website)
- Senior Executive Service details (available via the State Service Management Office's website)
- Expenditure relating to telecommunications and mobile devices
- Gifts and Benefits Procedure
- Contracts and consultancies awarded by the Department greater than \$50 000 (published on www.tenders.tas.gov.au).

Where people cannot access the information online, the Department 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.

7.2.1 Identification of potential information types for routine disclosure

In addition, each business unit within the Department 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 Department.
- 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 Department such as information about the Department's expenditure.
- Whether publication would promote greater accountability by the Department, 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 Department possess or have custody of the information?
- Does the information relate to the official business of the Department?
- 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 Department 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?

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

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

All business units of the Department of Education 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 any business unit within the Department.

7.2.3 Publication of new routine disclosure items and ensuring published items are kept up to date

Once the information is approved by the Secretary, the publishing and subsequent updating of the information is the responsibility of the business unit.

Within each business unit, the normal processes and procedures for the publishing/uploading of information on the Department's internet website apply.

Publication should be in a format that is accessible, taking into consideration the principles of availability and accessibility as outlined in the *Tasmanian Government Communications Policy*. Refer <http://www.communications.tas.gov.au/policy>

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.

7.3.1 Who will decide what information can be actively disclosed?

The standard Department 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 Department policies and procedures.

If an officer determines that some or all of the information held by the Department should not be actively disclosed, the officer will tell the person making the request and explain their rights to seek an assessed disclosure under the *Right to Information Act 2009*.

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 Department'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, 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 relevant manager or Deputy Secretary.

7.3.2 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 Department 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.

7.3.3 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.

7.3.4 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. Refer <http://www.treasury.tas.gov.au/Documents/Costing-Fees-and-Charges-Guidelines-2006.pdf>

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.

7.4.1 Process for making an application for assessed disclosure

A person making a request for assessed disclosure must make the application in writing. An Application for Assessed Disclosure form and information about making an application is available on our website. Refer <https://www.education.tas.gov.au/about-us/legislation/rti/>

Applications for assessed disclosure are to be sent by:

- email: rti@education.tas.gov.au; or
- post: Right to Information, Department of Education, GPO Box 169, Hobart TAS 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 Secretary 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 Secretary 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 Department 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.

7.4.3 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/right-to-information/right-to-information-guidelines-and-manual>

¹ Fee units are indexed annually and information about the *Fee Unit Act 1997* and the current fees can be found on the Department of Treasury and Finance's website. Refer <http://www.treasury.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.

7.4.4 Process for advising of new applications for assessed disclosure

The Right to Information officer emails the Secretary and all Deputy Secretaries for their information any new applications for assessed disclosure received.

The Right to Information officer prepares a weekly summary for the Minister advising of new applications for assessed disclosure received. The Ministerial Services Unit are the conduit for providing the weekly summary to the Minister at a regular weekly meeting.

7.4.5 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/right_to_information/right_to_information_guidelines_and_manual

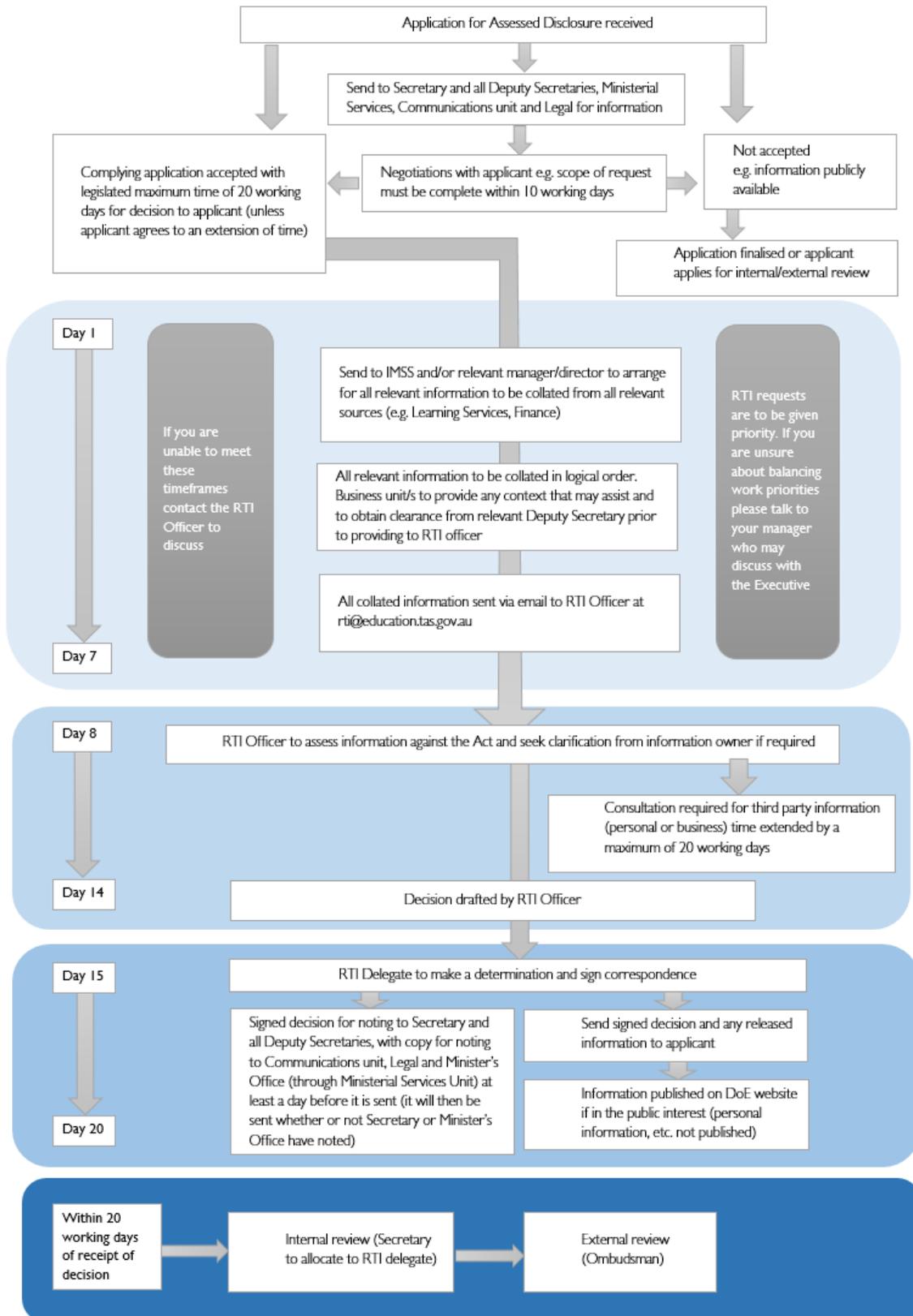
7.4.6 Providing a written decision

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

- the information in the Department'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.

7.4.7 Process and timeframe overview

The diagram shows the process and timeframes for applications for assessed disclosure made to the Department. This process is subject to variation in accordance with legislative requirements and Department need.



7.4.8 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. Publication policy

8.1 DISCLOSURE LOG

In relation to assessed disclosures, the Department may publish information released in response to a request for assessed disclosure of information made under the Act. Such information will be accessible via the disclosure log. Refer <https://www.education.tas.gov.au/about-us/legislation/rti/>

The disclosure log makes information released to an applicant available to a wider audience and increases government transparency and accountability.

The disclosure log includes:

- summary of the request for information, as this gives context to the nature of the released information
- category of the applicant (ie Member of Parliament (MP), media representative, organisation, private individual)
 - » where the category of applicant is an MP, the log will indicate whether the application is on behalf of a constituent or other person.
- information released which is considered to be in the wider public interest
- where appropriate, supplementary contextual information providing greater balance or depth to the response to the request if necessary.

8.1.1 Determining what information is published on the disclosure log

Deciding what information to release to an applicant and what information will be published on the disclosure log are separate decisions. The first decision has a legislative basis, and the second is administrative only.

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

In determining whether to disclose information on the Department'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 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; and
- whether the information reveals personal information; business affairs of a third party; or other information which would not be appropriate to release to a wider audience, or which is restricted by legal obligations.

8.1.2 Advice to applicants and third parties

Applicants will be advised in the letter accepting their application that information released to them may be published on the Department's disclosure log within 48 hours of being released to them. Any third parties who are consulted during the assessment process will also be advised of this possibility.

8.1.3 Discretion not to publish

The Secretary or delegated Right to Information officer 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
- whether the business affairs of a third party would be revealed
- whether the information has been redacted so significantly that it would be very difficult to discern its meaning
- whether the information is so voluminous that it would not be practicable to publish.

There are two categories to consider in relation to 'personal information', ie 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:

- personal information; or
- confidential information relating specifically to the applicant; or
- information about the business, commercial, financial or professional affairs of any person; or
- pages from which the content has been fully redacted.

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

If information is provided only in part 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 log. Where practicable, the released information will be made available online in pdf format.

8.1.5 Timing of disclosure

Where it is decided to publish released information, it will be published, where practicable, within two working days of releasing the information to the applicant.

If the information released is large, it may be released gradually, with a note indicating that this is the case.

The Right to Information delegated officer is responsible for the publication of this information.

8.1.6 Tenure of disclosure log

Information will generally be removed from the disclosure log after two years.

9. Contact details

Right to Information, Legal Services, Department of Education:

- telephone: 6165 6156
- email: rti@education.tas.gov.au
- post: GPO Box 169, Hobart TAS 7001.

10. 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.

The following document is available from www.education.tas.gov.au (search for Right to Information)

- Application for Assessed Disclosure.

Authorised by:	Rowena Taylor
Position of authorising person:	Senior Legal Services Officer
Date authorised:	April 2020
Developed by:	Legal Services
Date of last review:	April 2020
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