Legal Compliance
Education and Awareness

Freedom of Information Act 1991
(South Australia)
What does the FOI Act do?

- Promotes accountability & openness in Government & public agencies
- Enables members of the public to request documents held by government & public agencies;
  - from anything in which information is stored (hardcopy or electronic)
  or
  - from which information may be reproduced;
    - *letters & notes*
    - *reports & plans*
    - *Email*
    - *websites & databases*
    - *photographs, videos & audio tapes*
    - *data on laptops & USB sticks*
- Enables people to request the amendment of documents that relate to them which are incomplete, incorrect, out-of-date or misleading
How does the Act apply to the University?

- The University is an agency subject to the FOI Act.
- Any documentation or recorded information held by the University or staff in their official capacity is subject to FOI:
  - on a business system
  - in your in-box
  - in your desk drawer
- Any person (applicant) can submit an application for access to the University’s documents:
  - correspondence
  - research records
  - minutes from meetings
  - de-identified data & statistics (only where the document already exists)
- FOI only applies to existing records.
- FOI relies on good records management.
How does the application process work?

• **Applicants:**
  – must provide enough details about the document(s) for information to be found
    • use a *Request for Access* form
  – must provide valid identification & current address
  – do not have to give a reason for their request

• The University must respond within 30 days of the request
• Schools & Areas will be consulted in relation to any FOI application relevant to their activities
• Access to a document must be given unless it is an *exempt document*
  – The University’s *FOI Officer* will determine this

• Once documents are released the applicant can do with them as they please
What documents can be exempted?

• **Documents that:**
  – are subject to legal professional privilege
  – are contracts containing an approved confidentiality clause
  – contain advice or opinions prepared for the purpose of decision-making
  – would unreasonably disclose information about another person’s personal affairs
  – contain trade secrets or information that has a commercial value
  – contain research results, disclosure of which could have an adverse effect
  – relate to internal assessment or staff management procedures

• Some exemption categories also require the consideration of *public interest* such as:
  – *Research papers & internal working documents*
What happens if access to documents is refused?

- The applicant will be informed of the reasons why, including the exemption category.
- The applicant will be advised of their appeal rights for internal & external review.
- The Ombudsman can investigate & review FOI actions & decisions.
  - [State Ombudsman of South Australia](#)
What can happen if I don’t comply?

- **Individual Consequences:**
  - Where there is a breach of duty or of misconduct in the administration of the Act, staff may be reported to the Vice-Chancellor.
  - A breach of the Act may be considered misconduct actionable under the University’s Enterprise Agreement.
  - May also be misconduct or maladministration for the purposes of the Independent Commissioner Against Corruption Act.

- **University Consequences:**
  - If FOI requests are not handled appropriately the University may be subject to investigation by:
    - the State Ombudsman
    - the Independent Commissioner Against Corruption
  - Negative publicity
    - *Damage to the University’s reputation*
    - *Attraction & retention of staff & students is compromised*
University obligations under the Act

**REMEMBER:**

- **Anything** you write about anyone or anything is potentially subject to FOI
  - Including informal email communication
- You do **not** have the discretion to decide what can or can not be released
- You must not destroy records
- If entering into a contract which you want to keep confidential, ensure the contract;
  - contains the approved confidentiality clause
  and
  - is approved by the Vice Chancellor or their delegate
- Refer to [FOI Policy](https://www.adelaide.edu.au/)
What do I do if I get contacted about an FOI request?

• Immediately forward the request to the University’s FOI Officer

• Co-operate with the FOI Officer

• Assist in putting together copies of all documents relevant to the request
  – search local filing cabinets or email in-boxes

• Do not destroy documents

• Provide everything you’ve got to the FOI Officer

• Provide FOI Officer with clear reasons if you feel that any documents should not be released
Additional Resources

- Freedom of Information Officer
  - 8313 5334

- University Freedom of Information Website

- Sue Coppin, Records Services Manager
  - 8313 5184

- Carolyn Anderson, Director, Legal Services
  - 8313 8113

- University of Adelaide Freedom of Information policy

- University of Adelaide Enterprise Agreement

- State Records
  - Freedom of Information Guidelines

- Freedom of Information Act 1991 (SA)
Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Freedom of Information Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact Sue Coppin, FOI Officer or Legal & Risk if you are unsure of your compliance obligations under the Act.