Legal Compliance
Education and Awareness

Freedom of Information Act 1991

(South Australia)
Freedom of Information Act 1991 (SA)

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- Enables people to request the amendment of documents that relate to them which are incomplete, incorrect, out-of-date or misleading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 a 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
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University obligations under the Act

REMEMBER:

• **Anything** you write about anyone or anything is potentially subject to FOI
  – *Including informal email communication and text messages (including those on personal devices)*
• 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**
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

- Jackie Morris, Freedom of Information Officer
  - 8313 5804

- University Freedom of Information Website

- Marc Davies, 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 Jackie Morris, FOI Officer if you are unsure of your compliance obligations under the Act.