

FREEDOM OF INFORMATION POLICY

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OVERVIEW

The University of Adelaide is a body established for a public purpose and an “agency” under the *Freedom of Information Act 1991* (“the FOI Act”). Members of the public have a right of access to documents created or held by the University. This Policy aims to ensure compliance with the University’s obligations under the FOI Act and promote a consistent approach to the handling of applications under that scheme.

The FOI Act provides exemptions which allow the University to refuse access to documents containing information which it is not in the public interest to disclose, including confidential information. Where the University (or another party contracting with the University) wants to keep the terms of a contract confidential, certain legislative requirements must be met before the FOI Act exemptions can be relied upon. The Policy also aims to ensure that contracts containing confidential terms are adequately safeguarded from disclosure under the FOI Act.

SCOPE AND APPLICATION

This Policy, in conjunction with the FOI Act, applies to all documents held by or on behalf of the University. This includes documents created or received by staff, titleholders and contractors acting on behalf of the University. It also includes documents created or received by Adelaide Research & Innovation Pty Ltd in its capacity as an agent of the University. Documents in any format are covered, including emails and electronic data stored on databases, servers and hard drives.

Neither the FOI Act nor this Policy applies to documents created before 1 January 1987.

POLICY PRINCIPLES

1. General principles – public access to University documents

- a) Members of the public have a right to access documents held by the University, subject to those exemptions defined in the FOI Act as being consistent with the public interest, including the preservation of personal privacy and the maintenance of confidentiality.
- b) Notwithstanding this public right of access, the University recognises the value of confidential commercial information of the University and others. The University will strive to implement and administer contractual processes and clauses that clearly identify and manage confidential information, so that the authorised exemption under the FOI Act for contracts containing confidential terms can afford proper protection.

- c) Where appropriate and legally permissible, the University will provide access to information in a voluntary, cooperative manner without the need for those seeking information to resort to applications under the FOI Act.
- d) Where applications under the FOI Act are necessary and/or made, the University will process and determine all applications in accordance with the Act and by reference to the values underpinning the University's Strategic Plan, particularly the values of fairness, integrity and freedom of inquiry.
- e) In the final determination of applications under the FOI Act, access to documents requested must be facilitated wherever appropriate and lawful. The denial or limitation of access must be exercised responsibly, and only where necessary and legally authorised by the Act.
- f) The University will ensure it appoints such Accredited FOI Officers as are necessary to facilitate the expedient administration of the University's duties under the FOI Act.

2. Confidential contracts

Where some or all of the terms of a contract document are required to be kept confidential by the University, the confidentiality clause giving effect to that obligation must be approved by the Vice-Chancellor and President, or the Vice-Chancellor and President's delegate, in advance of the contract being finalised.

3. Authorities

Key	Authority Category	Authority	Delegation Holder
Information Management	Freedom of Information Confidentiality Clauses	Authorisation of confidentiality clauses contained in contracts that impose an obligation of confidentiality on the University.	Vice- Chancellor and President Vice President (Services and Resources) Chief Prudential Officer

PROCEDURES

1. Handling FOI applications

1.1. What to do if you receive an FOI application

Responsibility: All staff and others acting on behalf of the University

- a) If an FOI application is received on behalf of the University, it must be forwarded to the Accredited FOI Officer as soon as possible.
- b) All staff and others covered by this Policy must cooperate with the Accredited FOI Officer throughout the processing of an FOI Act application.

1.2. Ensuring all documents are provided and that exempt material is identified

Responsibility: All staff and others acting on behalf of the University, and their Managers

- a) If asked by the Accredited FOI Officer to collate documents relevant to the application, forward all documents to the Accredited FOI Officer that fall within the scope of the application as soon as possible. All documents, even unofficial or internal documents such as drafts or hand written notes, fall within the scope of the FOI Act and this Policy. Such documents may be exempt from

disclosure under one or more exemptions in the FOI Act, but they are still “documents” for the purpose of the Act and this Policy.

- b) If it is not clear whether a document falls inside or outside the scope of the application, forward it for consideration by the Accredited FOI Officer.
- c) If you forward a document to the Accredited FOI Officer that you know contains information that is confidential or legally privileged, you should expressly alert the Accredited FOI Officer to that fact, as it may not be obvious on the face of the document.
- d) All managers must ensure co-operation by their staff with the Accredited FOI Officer as they respond to FOI applications.

1.3. Accredited FOI Officer – making a determination

Responsibility: Accredited FOI Officer

- a) Process FOI applications and make a determination under the FOI Act.
- b) Ensure that the statutory time limits in the FOI Act are complied with, and liaise with the applicant where appropriate to keep them informed of the process.
- c) Ensure that the reasons given for the determination are sufficient (particularly the reasons for exempting material from access) and comply with the requirements of the FOI Act.
- d) If an internal review is lodged of the determination, provide all relevant information to Prudential Services for review.

2. Internal review of FOI determinations

Responsibility: Chief Prudential Officer, Vice-Chancellor and President

- a) Upon receipt of the material from the Accredited FOI Officer, the Chief Prudential Officer will review the relevant documents and the basis for the FOI determination and make a recommendation to the Vice-Chancellor and President.
- b) The Vice-Chancellor and President, as the Principal Officer for the University under the FOI Act, must then determine the application for internal review.

3. Protecting confidential contract terms from FOI disclosure

3.1. Where the terms of a contract will be confidential

Responsibility: Any University representative negotiating contract

- a) Include a confidentiality clause in the contract, which makes it a breach of the contract for the University to disclose the contract terms identified as being confidential. Although the exact terms of this clause may vary, a sample clause can be found on the [Prudential Services](#) website.
- b) Identify the specific parts of the contract document that are confidential, and for which exemption from disclosure under the FOI Act is sought, by including the following term in the contract:

“For the purposes of the Freedom of Information Act 1991 (SA), [insert relevant section or clause number(s), appendix number(s), paragraph(s) of the contract, or the words “entire contract”, as applicable] of this Agreement is/are confidential.”

- c) Obtain approval of the confidentiality clause **in advance** of the contract being signed, by forwarding the contract to Prudential Services at helpdesklegal@adelaide.edu.au prior to it being signed by any party, and preferably at the earliest stages of the negotiation process. Prudential Services will arrange for the approval.

3.2. Approval of confidentiality clause

Responsibility: Vice-Chancellor and President

- a) The confidentiality clause must be authorised by the Vice-Chancellor and President, or their delegate, before the contract is signed, or else the exemption for confidential material provided in the FOI Act will not apply and the contract document may be subject to disclosure under FOI.
- b) When determining whether to approve the confidentiality clause keeping the contract terms confidential, the Vice-Chancellor and President or their delegate must consider whether:
 - i. the contract terms in question are genuinely confidential to the parties concerned; and
 - ii. it is in the public interest to keep such terms confidential, having regard to matters such as maintaining the future flow of similar information to the University and the future ability of the University to enter or negotiate similar contracts.

4. Reporting and publication obligations

Responsibility: Accredited FOI Officer

- a) Ensure the University is registered on the Freedom of Information Management System (FOIMS) and report all FOI applications via FOIMS in accordance with the time frames and other requirements set by State Records.
- b) Report all contracts containing an authorised confidentiality clause to the Minister for Administrative Services and Government Enterprises via FOIMS as soon as practicable after the contract has been signed.
- c) Ensure the University complies with its general publication obligations under the Act.

RMO FILE NUMBER	F.2006/4451
POLICY CUSTODIAN	Vice-President (Services and Resources)
RESPONSIBLE OFFICER	Manager, Corporate Information
ENDORSED BY (Academic Board or VCC)	Vice Chancellor's Committee 22/07 on 28 November 2007
APPROVED BY	Vice Chancellor and President on 28 November 2007
RELATED DOCUMENTS AND POLICIES	<u>Privacy Policy</u> <u>Records Management Policy</u>
RELATED LEGISLATION	<u>Freedom of Information Act 1991</u>
SUPERSEDED POLICIES	Freedom of Information Policy authorised by Council on 5 August 2002
DATE EFFECTIVE	28 November 2007
NEXT REVIEW DATE	30 November 2008
CONTACT FOR QUERIES ABOUT THE POLICY	Freedom of Information Officer (phone 8303 5184) or Prudential Services at helpdesklegal@adelaide.edu.au (phone 8303 5033)
