



Australian Government  
Merit Protection Commissioner



MERIT  
PROTECTION  
COMMISSIONER

Office of the Merit Protection Commissioner's

# Information Access Policy



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# About this policy

The Merit Protection Commissioner (MPC) is an independent statutory office holder. The Merit Protection Commissioner is also the Parliamentary Service Merit Protection Commissioner providing employment services to the Australian Public Service and the Parliamentary Service. The Commissioner is assisted by staff of the Australian Public Service Commission.

The MPC's statutory functions arise under the *Public Service Act 1999* and the *Parliamentary Service Act 1999*. Further details on the operation of each function under each Act are specified in the Public Service Regulations 1999 (the Regulations) and the Parliamentary Service Determination 2013 (the Determination).

We review employees' concerns about matters affecting their employment, such as promotion, discipline (misconduct) and performance management. We also provide recruitment and inquiry services to agencies and conduct inquiries into certain matters.

We support the integrity and good practice in employment decision-making as well as encouraging productive and harmonious working environments.

This policy explains how the MPC will deal with a request for information that is held/owned by the MPC. Information held/owned by the MPC has generally been gathered in the course of the MPC exercising her/his statutory functions and may be Protected Information.

The MPC however has discretion to release information she/he holds in accordance with:

- section 72B (Protection of information) of the [Public Service Act 1999 \(the Public Service Act\)](#); and
- section 65AB (Protection of information) of the [Parliamentary Service Act 1999 \(the Parliamentary Service Act\)](#).

The MPC also has obligations to comply with the:

- [Freedom of Information Act 1982](#) (the FOI Act)\*; and the
- [Privacy Act 1988 \(the Privacy Act\)](#).

\* The Parliamentary Service Merit Protection Commissioner is however exempt from the FOI Act under paragraph 68A(b) of the Parliamentary Service Act. Parliamentary departments and office holders are not prescribed authorities for Freedom of Information Act purposes.

This policy is to be read in conjunction with the [MPC Privacy Policy](#) and the [APS Code of Conduct](#).

## Scope

Whilst the MPC is assisted by staff of the Australian Public Service Commission in the carrying out of her/his statutory functions, this policy applies only to information holdings of the MPC.

A request from an existing (or recent) client or applicant that involves provision of information that would usually be exchanged in the normal course of undertaking one of the MPC's statutory functions will not be considered a request for information under this Policy.

For example: an applicant may request a copy of an email sent to us in support of their application at any time. This type of request is considered to be business as usual and does not fall within the scope of this policy.

Media enquiries may be sent to [media@mpc.gov.au](mailto:media@mpc.gov.au).

# Information Access Principles

## Principle 1: We will release information when we can

The MPC will be as open as is possible to requests to access information it holds/owns. There are provisions in the Public Service Act and Regulations, the Parliamentary Service Act and Determination, the FOI and Privacy Acts that may restrict our ability to provide information to some requests. If we are unable to give access to information we will give reasons for our decision and explain any rights of review.

Making an FOI request can be time consuming. In response to this, we commit to keeping our and [FOI disclosure log](#) up-to-date as possible and will provide information without requiring a formal FOI request wherever it is appropriate and lawful.

## Principle 2: We will communicate and be responsive

We will ensure that our procedures for providing access to information is straightforward, timely and easy to understand. When a formal FOI request is made we will aim to provide the information requested in the most efficient and least costly way possible.

We will always provide details of the review rights within the MPC and to the Office of the Australian Information Commissioner (**OAIC**) or Commonwealth Ombudsman. The MPC has a [Feedback and Complaints Policy for any complaints about the process](#).

## Principle 3: We respect people's privacy and confidentiality

We will maintain an individual's privacy and confidentiality in line with our obligations under the Public Service Act, Parliamentary Service Act, Privacy Act and MPC Privacy Policy. If a request for information contains personal information about a third party we will consult (where practicable) with that party prior to the information's release.

Prior to releasing information, unless we have a lawful obligation to do otherwise, we will delete personal information relating to others where it is apparent the information is not already known to the requesting party (such as addresses, phone numbers and email addresses).

If information has been provided to the MPC under a mutual understanding that the information is confidential, we will not release the information without permission of the person or entity who supplied it. If permission to release the information is not given, the MPC will inform the party requesting access to the information that they may make a request under the FOI Act. The MPC will then consider whether the information can be released in accordance with the FOI Act.

If the information sought is information provided to the MPC by another Commonwealth Government Department or Agency, the MPC may consider transferring the request to that Department or Agency under section 16 of the FOI Act.

# Accessing MPC information

We provide access to information in the following ways:

- **Proactive publication of information** that we publish under the [Information Publication Scheme](#) or through our [website](#).
- **Discretionary release** of information which is not protected by section 72B of the Public Service Act or section 65AB of the Parliamentary Service Act.
- **Information which is protected information** under section 72B of the Public Service Act or section 65AB of the Parliamentary Service Act. Protected information is information gathered when exercising the MPC's functions, duties or powers. The MPC has a power to release protected information where the MPC is satisfied the disclosure of the information is in the interests of an Agency or a person, is in the public interest and is not likely to interfere with a review or inquiry under either Act or Regulations/Determination.

- **Formal release of information following an FOI request** where information is not released under any of the above ways, and is provided in response to a request made under the FOI Act

We will assess requests for access to information with reference to the:

- Public Service Act and Regulations
- Parliamentary Service Act and Determination
- FOI Act
- Privacy Act
- MPC Privacy Policy
- [Information Commissioner's Guidelines issued under s93A of the FOI Act](#)
- APS Code of Conduct
- Any other relevant legislation and guidelines (as applicable to each individual case).

## Requests for information outside of the FOI Act

Requests for information can be made without making a formal FOI request. An email can be sent to [info@mpc.gov.au](mailto:info@mpc.gov.au) providing the following:

- name and telephone contact details
- a description of the information sought.

Requests for information will be acknowledged within two business days.

### Proof of identity?

If we receive a request for copies of documents containing information about the person making the request, we may require proof of their identity so that we can be certain we are providing the documents to them and not to another person.

## How requests outside of the FOI Act are handled

In deciding whether to grant discretionary access to information, the MPC will have regard to section 72B of the Public Service Act or section 65AB of the Parliamentary Service Act. The MPC will consider the individual circumstances of each request. Both provisions are in similar terms. Section 72B of the Public Service Act provides:

*72B Protection of information—Merit Protection Commissioner's functions etc.*

*Definitions*

*(1) In this section:*

**entrusted person** means any of the following:

- the Merit Protection Commissioner;*
- a delegate of the Merit Protection Commissioner;*
- a person acting under the direction or authority of the Merit Protection Commissioner;*
- a member of staff assisting the Merit Protection Commissioner;*
- a member of a committee established or appointed by the Merit Protection Commissioner under the regulations;*
- any other person prescribed by the regulations for the purposes of this paragraph.*

**prescribed entrusted person** means an entrusted person of a kind prescribed by regulations for the purposes of this definition.

**protected information** means information that was obtained by an entrusted person in connection with the performance of functions or duties, or the exercise of powers, under:

- subsection 50(1) or (2); or*
- section 50A; or*
- any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.*

*Prohibition on disclosure or other use of protected information*



(2) Except as authorised by this section or the regulations, a person who is, or was, an entrusted person must not, directly or indirectly, make a record of, disclose or otherwise use protected information.

*Note: Section 122.4 of the Criminal Code creates an offence in relation to the disclosure of information by Commonwealth officers.*

*Authorised disclosure or other use of protected information*

(3) An entrusted person may make a record of, disclose or otherwise use protected information for the purposes of, or in connection with, the performance of functions or duties, or the exercise of powers, under this Act or the regulations.

*Authorised disclosure of protected information by the Merit Protection Commissioner*

(4) The Merit Protection Commissioner may disclose protected information in a report prepared for purposes connected with the performance of the functions, or the exercise of the powers, of the Merit Protection Commissioner under this Act or the regulations, if the Merit Protection Commissioner is satisfied that the disclosure is necessary for the purpose of setting out the grounds for the conclusions and recommendations contained in the report.

(5) Subject to subsection (6), the Merit Protection Commissioner may disclose protected information to a person, or to the public or a section of the public, if the Merit Protection Commissioner is satisfied that:

(a) the disclosure:

- (i) is in the interests of an Agency or a person; or
- (ii) is in the public interest; and

(b) the disclosure is not likely to interfere with a review or inquiry under this Act or the regulations.

(6) The Merit Protection Commissioner must not disclose the name of an individual, or any other material that would enable an individual to be identified, in protected information that is disclosed under subsection (5), unless the Merit Protection Commissioner is satisfied that the disclosure is fair and reasonable in all the circumstances.

*Compellability of entrusted persons to give evidence*

(7) A person who is, or was, an entrusted person (other than a prescribed entrusted person) is not compellable in any proceeding:

- (a) before a court (whether exercising federal jurisdiction or not); or
- (b) before a person authorised by a law of the Commonwealth or a State or Territory, or by consent of the parties, to hear, receive and examine evidence;
- (c) to disclose protected information that was obtained in connection with the performance of functions or duties, or the exercise of powers, under:
- (d) paragraph 50(1)(a), (b), (c), (d) or (e); or
- (e) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

*Note: **Prescribed entrusted person** is defined in subsection (1) of this section.*

*Competence of certain entrusted persons to give evidence*

(8) A person who is, or was, a prescribed entrusted person is not competent, and cannot be compelled, to disclose protected information in any proceeding:

- (a) (a) before a court (whether exercising federal jurisdiction or not); or
- (b) before a person authorised by a law of the Commonwealth or a State or Territory, or by consent of the parties, to hear, receive and examine evidence.

*Note: **Prescribed entrusted person** is defined in subsection (1) of this section.*

The MPC reserves the right to refuse access to requested information, unless it is legally obliged to release it.

Certain information or documents will not usually be released by MPC under section 72B of the Public Service Act or section 65AB of the Parliamentary Service Act. Should this be relevant to your request for information the MPC staff member handling your request will discuss any issues with you.

# Formal requests for information under the FOI Act

If the information can't be released in any of the ways outlined above, a request can be made under the FOI Act.

## To make an FOI request

### A request must:

- be in writing
- state that the request is an application for the purposes of the FOI Act
- provide information about the document(s) to assist us to process the request
- provide an address for reply.

## Requests can be sent to:

By post: MPC FOI Contact Officer  
Office of the Merit Protection Commissioner  
GPO Box 3176, CANBERRA ACT 2606

By email: [info@mpc.gov.au](mailto:info@mpc.gov.au)

## Requests made on behalf of someone else

If a person has asked a third party to make an FOI request on their behalf, we may require a specific, written authority before allowing that person access.

## Proof of identity

If we receive a request for copies of documents containing information about the person making the request, we may require proof of their identity so that we can be certain we are providing the documents to them and not to another person.

## Who to contact for help with an FOI request?

If assistance is required with an FOI request, please contact the MPC on 02 8239 5330 and ask to speak to the FOI officer or send an email to [info@mpc.gov.au](mailto:info@mpc.gov.au).

## Are there fees for making an FOI request?

The FOI Act and the [Freedom of Information \(Charges\) Regulations 2019](#) allow the MPC to charge for providing access to information or documents that do not contain the personal information of the FOI applicant. We will make information available at the lowest reasonable cost and will reduce the cost of public access by publishing information online, especially information that is routinely sought by the public. Our website has [information about FOI fees and charges](#).

## What will happen after an FOI request is made?

FOI requests will usually be handled by an authorised FOI Delegate of the MPC. The MPC will let the person making the request know that we've received the FOI request by sending them a letter or email within 14 days of receipt. The MPC will in appropriate FOI requests make telephone contact with the person to discuss their request. This may include the scope of the information sought or whether the FOI request might be handled by way of Discretionary release of information or transfer to another Commonwealth Department or Agency.

The MPC will send a decision in writing to the person making the request within 30 days from the day after we get the request. It may take longer than 30 days if we have to consult a third party before releasing information or documents that have personal information about them, business information or trade secrets. MPC will let the person making the request know if timeframes are extended.

FOI requests will be taken to have been withdrawn where the requested information has been released to the person making the request outside of the FOI Act (for example, under section 72B of the Public Service Act or by other means). We can lawfully refuse to release some information or documents, or parts of documents, if the FOI Act allows it.

This includes information or documents that:

- affect the enforcement of a law
- are given to the MPC in confidence
- are subject to legal professional privilege.

Information or documents that have business and personal information in them may not be released if it is contrary to the public interest or is prevented by legislation.

## Roles & Responsibilities

The decision to release information through a Discretionary release will be made by the MPC, in conjunction with the MPC Officer responsible for the matter. Where the MPC makes a decision not to release the information, an individual may choose to make an application under the [FOI Act](#).

[info@mpc.gov.au](mailto:info@mpc.gov.au) is the first contact point for FOI requests made to MPC. In undertaking these functions, the MPC and her/his FOI delegates will follow the MPC's Freedom of Information Request Processing Guide and will be guided by the resources published by the OAIC.

## MPC Information Publication Scheme

As required by the FOI Act, we have an [Information Publication Scheme](#).

## MPC Disclosure Log

In compliance with the FOI Act, we will publish certain information or documents released in response to FOI requests in our [Disclosure Log](#) where appropriate.

## Review of this Policy

This Policy will be reviewed after 12 months of operation and every 24 months thereafter.