



Freedom of Information

This Direction is given under section 18B of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

1. About this Direction

Application

- 1.1 This Direction applies to applications lodged with the Administrative Appeals Tribunal (AAT) for a review of a decision under the *Freedom of Information Act 1982* (FOI Act).
- 1.2 This Direction has effect from 1 July 2015.

Interpretation

- 1.3 In this Direction:
 - decision-maker** means the principal officer of the agency, or the Minister, to whom the request for access to documents under the FOI Act was made;
 - we** or **us** refers to the AAT.

2. Procedures relating to exempt documents

- 2.1 The following practices apply in relation to the documentation to be lodged with us in applications where documents which are the subject of an application for review are claimed to be exempt documents
- 2.2 Where the decision-maker claims that a document is an exempt document, the decision-maker should **not** include that document with the documents lodged with the AAT under section 37 of the AAT Act (see section 64 of the FOI Act). It is **not** appropriate to lodge the documents that are claimed to be exempt and then to request that we make a confidentiality order under section 35 of the AAT Act.
- 2.3 Except where to do so would be to disclose the matter claimed to be exempt, the decision-maker must, not later than seven days prior to the date appointed for the hearing or at such earlier time as we direct, lodge with us and give to any other party a schedule (or schedules) of the documents to which the claims of exemption relate.

- 2.4 The schedule (or schedules) must list the documents sequentially by number and, unless where to do so would disclose the matter claimed to be exempt, must provide the following details in respect of each document:
- (a) the date of the document;
 - (b) the person or persons by whom the document was created and, where applicable, the person or persons to whom it was directed;
 - (c) a sufficient description of the nature of the contents of the document so as to provide a prima facie justification for the ground or grounds of exemption relied upon;
 - (d) where applicable, a statement as to the ground or grounds of public interest relied upon in support of the claim of exemption;
 - (e) where the claim of exemption relates only to part of the document, a concise indication of the part or parts involved (e.g., para 6 or part 2 para 6);
 - (f) where a document is no more than a copy of another document for which exemption is claimed, it should be so identified. The claims of exemption do not need to be repeated in respect of the copy document.
- 2.5 The decision-maker must, not later than seven days prior to the date appointed for the hearing or at such earlier time as we direct, lodge with us and give to any other party an affidavit or affidavits setting out the evidence to be relied upon in support of the claims of exemption. In respect of any evidence for which a confidentiality order is to be sought pursuant to section 35(2) of the AAT Act (see also section 63 of the FOI Act), that evidence must be set out in a separate affidavit or affidavits clearly marked for the attention only of the members of the Tribunal constituted to hear the application. Such affidavit or affidavits must be lodged with the AAT, but copies are not to be given to any other party.

3. Transfer of request for access to documents between agencies

- 3.1 Where any part of a request for access to documents has been transferred to another agency pursuant to the provisions of section 16 of the FOI Act, the referring agency shall identify clearly in its statement under paragraph 37(1)(a) of the AAT Act the respects in which the request for access has been so transferred, the name of the transferee agency or agencies and the date on which each such transfer was made.

4. Other matters

Parties to applications for review lodged with us under the FOI Act are reminded of the following:

- 4.1 Section 60 of the FOI Act specifies the parties to a review by the AAT of a reviewable decision. For example, the person who made the request for access to documents in respect of which the decision was made is a party, even if he or she did not make the application to the AAT.
- 4.2 Under section 60AA of the FOI Act, agencies have an obligation to notify affected third parties that an application has been made to the AAT.

- 4.3 The Practice Direction titled 'Timing of Requests under section 50A of the *Archives Act 1983* or section 60A of the *Freedom of Information Act 1982*' applies in circumstances where it is claimed that a document is exempt under section 33 of the FOI Act (which is about national security, defence and international relations).

Justice Duncan Kerr
President

30 June 2015