

Policy

Freedom of information

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- > Format review

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1. Purpose

The Office of the National Rail Safety Regulator (ONRSR) has been established under the Rail Safety National Law (RSNL) to administer a national system of rail safety regulation, including the effective management of rail safety risks, through a national scheme for accreditation of rail transport operators.

The *Freedom of Information Act 1991* of South Australia (the “FOI Act”), as modified by the National Regulations, applies to the ONRSR in all jurisdictions where the RSNL applies. The objectives of the FOI Act are to promote openness and accountability, and facilitate more effective participation in the processes involved in the making and administration of laws and policies.

Under the FOI Act, the ONRSR has obligations to ensure that certain information concerning its operations is readily available. Additionally, members of the public and Members of Parliament are conferred a legally enforceable right to be given access to documents held by the ONRSR, subject only to such exemptions as are consistent with the public interest (as prescribed in the FOI Act). Members of the public may also seek amendment to the ONRSR’s records concerning his or her personal affairs.

The purpose of this document is to guide ONRSR staff members in their obligations with respect to the FOI Act and the ONRSR’s obligations as an agency, ensure consistency of approach towards applications under the scheme and ensure that contracts containing confidential terms are adequately safeguarded from disclosure under the FOI Act.

2. Scope

This policy has relevance for all documents held by or on behalf of the ONRSR. This includes documents created or received by staff, office holders and contractors acting on behalf of the ONRSR in administration of the RSNL. This policy applies to all documents (anything in which information is stored or from which information may be reproduced) whether paper-based or electronic. The term ‘documents’ is broad and includes all official and unofficial documents, emails, drafts and hand-written notes as described in the FOI Act.

This document is intended to be read in conjunction with the RSNL, FOI Act and other relevant ONRSR policies.

This policy itself imposes no legal duty and where actions or requirements are described as mandatory these reflect requirements in the RSNL or National Regulations. It is not intended to replace the legislation, or to limit or expand the scope of the legislation. In the event of an inconsistency between this policy and the legislation, the legislation will prevail.

3. Definitions

The definitions of terms used in this policy are the same as those in section 4 of the Rail Safety National Law, section 3 of the Rail Safety National Law Regulations and section 4 of the FOI Act.

RSNL – means the *Rail Safety National Law*, which has been enacted as a Schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA).

National Regulations – means the *Rail Safety National Law National Regulations 2012*, approved by the Standing Council on Transport and Infrastructure and made under the RSNL.

FOI Act – means the *Freedom of Information Act 1991* (SA).

4. Legislative framework

Section 263(1)(a) of the RSNL specifies that the *Freedom of Information Act 1991* (SA) applies to the ONRSR in all participating jurisdictions.

Division 1 of Part 8 of the National Regulations sets out modifications to the *Freedom of Information Act 1991 (SA)* for the purposes of the national rail safety scheme and includes the disapplication of the *Freedom of Information (Exempt Agency) Regulations 2008* and the *Freedom of Information (General) Regulations 2002*.

The *Freedom of Information Act 1991 (SA)* is available from website at <http://www.legislation.sa.gov.au>. Please note that this official version of the FOI Act needs to be read together with the provisions in Division 1 of Part 8 of the National Regulations.

5. Guiding principles

If proper and lawful, the ONRSR will attempt to provide access to information voluntarily in order to minimise applications under the FOI Act and the associated costs. It should be noted that the RSNL already provides for some information to be made available to the public at no cost, including the National Rail Safety Register and notices of accreditation and notices of registration.

Members of the public and Members of Parliament have a right to access documents held by the ONRSR, subject only to such exemptions as are consistent with the public interest, including maintenance of the effective conduct of public affairs through the free and frank expression of opinions, the preservation of personal privacy, and maintenance of confidentiality where appropriate.

The ONRSR fully supports the objectives of the FOI Act and ONRSR staff members are expected to be aware of this policy and strive to continually improve records management practices.

6. Accredited FOI Officers within the ONRSR

Accredited FOI Officers within the ONRSR are responsible for dealing with FOI applications received by the ONRSR in accordance with the FOI Act and for meeting the reporting and publications requirements of the ONRSR.

The ONRSR will commit sufficient staff to ensure that the organisation has an adequate number of Accredited FOI Officers for its size and/or the number of applications received.

7. Processing FOI applications

7.1. Responsibilities of all ONRSR staff

If an FOI application is received on behalf of the ONRSR, it must be forwarded to Corporate Counsel immediately, with relevant fee payment information. Note that the legislative timeframe for determining an FOI application begins when the application is received by an ONRSR staff member.

Accredited FOI Officers are likely to request staff to collate documents relevant to the application within strict timelines. All ONRSR staff are expected to cooperate with the Accredited FOI Officer throughout the processing of an FOI application and provide all documents that fall within the scope of the application, even if they are likely to be exempt under the FOI Act or are subject to confidentiality. If it is unclear whether a document falls within the scope of the application, it should be forwarded to the Accredited FOI Officer for consideration.

All staff members are expected to make the Accredited FOI Officer aware of any documents that are known to be legally privileged, confidential or likely to be exempt under the FOI Act.

7.2. Responsibilities of the accredited FOI Officer

In determining an FOI application, Accredited FOI Officers must make a determination as soon as practicable and, in any case, within the statutory time limits (usually 30 calendar days

of the ONRSR receiving the application, unless an extension of time is approved by the Chief Executive Officer of the ONRSR).

Applications under the FOI Act must be processed in accordance with the FOI Act and in a manner consistent with the *ONRSR Code of Conduct*. Consideration should be to any applicable guidelines, procedures, information sheets or other advice provided by State Records of South Australia. If proper and legally permissible, access to requested documents should be permitted in an efficient manner. The refusal of access is not encouraged unless there are reasonable grounds in accordance with the FOI Act.

Accredited FOI Officers must make FOI decisions independently and free from any influence, although advice may be sought to assist with the decision-making process.

7.3. Review of FOI determinations

The FOI Act provides for both internal and external review of determinations made with respect to FOI applications.

Determinations of internal reviews are to be determined by the Chief Executive Officer of the ONRSR as the Principal FOI Officer for the ONRSR.

All ONRSR staff is to cooperate with all forms of review and to act fairly, impartially and with the highest standard of professionalism, in accordance with the *ONRSR Code of Conduct*.

8. Transfer of applications

If the ONRSR receives an FOI application that relates to a document that is not held by the ONRSR but is, to the knowledge of the ONRSR, held by the other agency in South Australia or is held by the ONRSR but is more closely related to the functions of the other agency, the Accredited FOI Officers may transfer the application to the appropriate agency and notify the applicant in accordance with section 16 of the FOI Act.

If the other agency that holds documents is outside South Australia, the Accredited FOI officer should notify the applicant that they will need to make a FOI application to that agency under the law of the relevant jurisdiction. The Accredited FOI officer must still deal with the original application unless the applicant decides that they wish to withdraw the application.

This may be particularly relevant to the ONRSR where an application relates to records associated with the state and territory rail safety regulators that preceded the ONRSR. In these cases, applications should be transferred to the relevant state or territory agency.

9. Amendment of records

A person may seek an amendment to a document held by the ONRSR if the document contains information about his or her own personal affairs that he or she believes to be incomplete, incorrect, out-of-date or misleading.

Applications for amendment will be dealt with by an Accredited FOI Officer as soon as practicable and, in any case, within the statutory time limits (usually 30 calendar days from receipt). If proper and legally permissible, records should be amended in an efficient manner. Refusal to amend is not encouraged unless there are reasonable grounds in accordance with the FOI Act.

If an amendment application is refused, the ONRSR must comply with a written notice from the applicant to add a notation to the record in question and must ensure that, if disclosing the record to others in the future, a statement is given including the particulars of the notation.

10. Confidential contracts

The ONRSR recognises the importance of ensuring the confidentiality of sensitive commercial information of the ONRSR and other parties, including duty holders and

contractors. The ONRSR will make efforts to implement contractual processes and include confidentiality clauses, in accordance with the FOI Act, to identify and protect this confidential information.

Where some or all of the terms of a contract document are required to be kept confidential, ONRSR staff should include a confidentiality clause, identify the specific parts of the contract document that are confidential, and for which exemption from disclosure under the FOI Act is sought, and seek approval of the confidentiality clause from the Chief Executive Officer of the ONRSR in advance of the contract being signed.

11. Reporting and publication of information

Accredited FOI Officers within the ONRSR must:

- > Ensure the ONRSR 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.
- > Ensure the ONRSR complies with its general publication obligations under Part 2 of the FOI Act to publish an information statement, including:
 - the structure and functions of the ONRSR
 - how the functions of the ONRSR affect members of the public
 - the various types of documents held by the ONRSR, which are available for access; and
 - a description of how the public can obtain access or seeks amendment to records.

12. Fees

Relevant fees are prescribed in the *Freedom of Information (Fees and Charges) Regulations 2003* (SA).

13. Further information

Comprehensive material relating to freedom of information can be found on the SA State Records website at <http://www.archives.sa.gov.au/foi>.

Any queries relating to freedom of information should be directed to:

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