



Right to Information Act 2009:

Information Disclosure Policy and Procedures

**Office of the Tasmanian
Economic Regulator**

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1. Purpose

The Office of the Tasmanian Economic Regulator (OTTER) holds information, for and on behalf of Tasmania, in order to assist the Tasmanian Economic Regulator in performing his or her functions. The Regulator is a public authority as defined under the *Right to Information Act 2009* (RTI Act).

Section 23 of the RTI Act requires principal officers of public authorities to prepare and publish policies and procedures for the release of information. This *Information Disclosure Policy* is issued in compliance with the RTI Act and explains the disclosure policy and processes in OTTER for the four types of information disclosure specified in the RTI Act.

This Policy meets the requirements for policies and procedures specified in section 23 of the RTI Act. It has been developed to:

- a) be used within OTTER; and
- b) enable relevant details of the RTI Act to be published and made available to the public.

2. Scope

This policy and these procedures apply to all officers of OTTER, and where applicable, any contractors and consultants.

This policy and procedures document covers the four types of information disclosure identified in section 12(2) of the RTI Act:

- required disclosure;
- routine disclosure;
- active disclosure; and
- assessed disclosure.

3. Definitions

Active disclosure	A voluntary disclosure of information by a public authority or a Minister in response to a request for information.
Assessed disclosure	A disclosure of information by a public authority or a Minister in response to a request from a person made under Division 2 of Part 2 of the RTI Act. Application for assessed disclosure is the method of last resort.
Authorised officer	Officers authorised to make certain decisions regarding disclosures of information as defined in table 1.
Delegated officer	Officers delegated under section 24 of the RTI Act to make a decision on an application for assessed disclosure.
Exempt information	Information that is exempt by virtue of a provision of Part 3 of the RTI Act.
Information	Means: <ul style="list-style-type: none">a) anything by which words, figures, letters or symbols are recorded and includes a map, plan, graph, drawing, painting, recording and photograph;b) anything in which information is embodied so as to be capable of being reproduced; andc) information which relates to the official business of OTTER and excludes information which is in the possession of OTTER for the sole purpose of collation or forwarding to a body other than another public authority.
Information owner	The Director of OTTER or Assistant Director of the team within OTTER, whichever was responsible for the initial collation, preparation, development and publishing of the information, and for ensuring the information is updated and accurate.
Officer	Means the Regulator or a member of staff of OTTER or any person employed by or for OTTER, whether or not that person is a State Service officer or State Service employee.
Ombudsman	The Ombudsman appointed under the <i>Ombudsman Act 1978</i> .
OTTER	Office of the Tasmanian Economic Regulator.
Personal information	Information or opinion in any recorded format, about an individual – whose identity is apparent or is reasonably ascertainable from the information or opinion: and is alive, or has not been dead for more than 25 years.
Principal officer	The principal administrative officer of the public authority (the Director, OTTER).

Public authority	Means: <ul style="list-style-type: none">a) an Agency, within the meaning of the State Service Act 2000; orb) the Police Service; orc) a council; ord) a statutory authority; ore) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose; orf) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister of the Crown; org) a Government Business Enterprise within the meaning of the <i>Government Business Enterprises Act 1995</i>; orh) a council-owned company; ori) State-owned company.
Regulator	The Tasmanian Economic Regulator as established under the <i>Economic Regulator Act 2009</i> .
Required disclosure	A disclosure of information by a public authority where the information is required to be published by the RTI Act or any other Act, or where disclosure is otherwise required by law or enforceable under an agreement.
Routine disclosure	A disclosure of information by a public authority which the public authority decides may be of interest to the public, but which is not a required disclosure, an assessed disclosure or an active disclosure.
RTI Act	<i>Right to Information Act 2009</i>

4. Policy Statement

Section 7 of the RTI Act gives a person a legally enforceable right to be provided with official information in the possession of OTTER, unless the information is exempt information.

Information management is the responsibility of all officers and it is also critical to enable disclosure of information under the RTI Act.

All officers of OTTER that support the Regulator are responsible and accountable for:

- keeping records of all official information produced, received or acquired;
- making records to support what they do; and
- registering documents in OTTER records management system (TRIM).

OTTER delegated officers involved in the release of information to the public will make decisions which are consistent with the objects and provisions of the RTI Act and with any Manuals and Guidelines issued by the Ombudsman (refer www.ombudsman.tas.gov.au).

4.1. Object of the Right to Information Act 2009

It is the object of the RTI Act to favour active disclosure of information wherever possible.

Section 3 of the RTI Act includes this statement of the object of the RTI Act:

1. The object of this Act is to improve democratic government in Tasmania:
 - a) *by increasing the accountability of the executive to the people of Tasmania;*
 - b) *by increasing the ability of the people of Tasmania to participate in their governance;*
and
 - c) *by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State.*
2. This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.
3. This object is also to be pursued by giving members of the public the right to obtain information about the operations of government.
4. It is the intention of Parliament -
 - a) *that this Act be interpreted so as to further the object set out in subsection (1); and*
 - b) *that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.*

In addition, section 12 of the RTI Act provides that:

This Act does not prevent and is not intended to discourage a public authority or a Minister from publishing or providing information (including exempt information), otherwise than as required by this Act.

5. Related legislation, policies and documents

Disclosure of information is governed primarily by the *Right to Information Act 2009*, however the following legislation and related documents are also relevant in application of the RTI Act:

- *Right to Information Regulations 2010*
- *Personal Information Protection Act 2004*
- *State Service Act 2000*
- *Archives Act 1983*
- Manuals and Guidelines issued by the Ombudsman
- OTTER RTI Disclosure Log
- OTTER Records and Information Management policies and guidelines
- DPAC Tasmanian Government Communications Policy
- Tasmanian Government Web Publishing Framework
- Whole of Government Media Protocols

6. Principles

The following principles will guide OTTER officers in making decisions about what information is released and the method of making that information available.

- OTTER will make official information in its possession publicly available when it is relevant, appropriate and in the public interest to do so and not subject to an exemption set out in the RTI Act. Some of the information that OTTER holds is not able to be released because it is:
 1. information by its nature that is exempt from release;
 2. contrary to the public interest to release; or
 3. prevented by other law or agreements to be released.
- Applications for personal information by an individual to whom the personal information relates will be dealt with under the *Personal Information Protection Act 2004*.

7. Roles and Responsibilities

Officers authorised to make decisions regarding the disclosure of information items are outlined in the table below.

Table 1: Disclosure Type	Authorised Officer(s)
1. Required	The Principal Officer or delegated officer
2. Routine	The information owner, following approval by the Secretary to publish types of information on a regular basis
3. Active	The Principal Officer. If the information owner determines that some or all of the information held by OTTER should not be actively disclosed, the Principal Officer will advise the person of any reasons why the information cannot be released and their right to make an application for assessed disclosure.
4. Assessed	The Principal Officer or delegated officer.

8. Procedures for Types of Disclosure

8.1 Required Disclosure

Required disclosure is the disclosure of information by a public authority where the information is required to be published by legislation, or where disclosure is otherwise required by law or enforceable under an agreement.

This could include information such as financial statements (required under the *Financial Management and Audit Act 1990*), the performance of the functions and the exercise of the powers of the Head of Agency (*State Service Act 2000*) and other reports which OTTER must make available under law.

8.1.1 Who will decide what information should be released as a required disclosure?

OTTER officers are allocated responsibility for compliance with the administration of specific Acts by the Director, OTTER. These authorised officers are responsible for the release of information under those Acts.

A full list of legislation administered by the Regulator can be viewed in OTTER's annual reports, available from its website at <http://www.economicregulator.tas.gov.au>.

8.1.2 Process for the required disclosure of information

Authorised officers will disclose the required information in accordance with legislative requirements and in a manner approved by the Director.

8.2 Routine Disclosure

Routine disclosure is the disclosure of information by a public authority that it decides may be of interest to the public, but where the disclosure is not one of the other three types of disclosure.

Information that is being released by way of routine disclosure will generally be available online (via the OTTER website) at no cost. Where people cannot access the information online, OTTER will provide an alternative and reasonable means of access.

If a person requires a method of accessing the information that incurs cost, they may be required to pay accessing the information by that method.

8.2.1 Identification of potential information types for routine disclosure

OTTER will annually review information it possesses and identify what information may be routinely disclosed. In addition, OTTER will also consider what information may be disclosed upon the completion of major projects or major tasks.

Officers should take account of the objects of the RTI Act and consider:

- What information may be material to the community – i.e. what is significant, relevant and meaningful?
- What information key stakeholders and the community might reasonably expect to be able to access?
- The extent of public or other demand for the information.
- How useful the information would be to the public in dealing with OTTER?
- Whether publication would improve the public's ability to contribute to the work of the public authority or to decision-making by the authority?
- Whether publication would provide increased transparency about the operations of OTTER such as information about OTTER expenditure?
- Whether publication would promote greater accountability by OTTER, for example by showing the basis of its decisions?
- Whether the information promotes community wellbeing?

Other questions relevant to a decision to routinely disclose are:

- Does OTTER possess or have custody of the information?
- Does the information relate to the official business of OTTER?
- Has the information been archived or is it out-of-date or otherwise inaccessible?
- Is it impracticable or resource intensive to prepare the material for routine release?
- Is the information significant – is it about important aspects of OTTER such as major projects, key initiatives or policy documents?
- Is the information preliminary or deliberative or does it represent the final and approved position/decision?
- Does the information tell the public what we do, how we do it or how we spend public money?
- Is the release of the information lawful - having regard to the RTI Act, other legislation and any other legal obligation such as an agreement or copyright?

- Is the release appropriate - having regard to issues such as privacy principles, defamation, third party and security issues?
- Is the information accurate? All efforts should be made to ensure that information is up-to-date and accurate.
- What is the cost and time involved in producing the information? The release of information should be at the lowest reasonable cost.
- Is the information otherwise exempt - having regard to Part 3 of the RTI Act?
- Is it in the public interest to release – having regard to matters to be considered under Schedules 1 and 2 of the RTI Act?

8.2.2 Who will decide what types of information can be routinely disclosed?

The Principal Officer must approve types of information deemed as suitable and appropriate for routine disclosure prior to the information being published.

OTTER will regularly review information it holds (or is gathering) and make a decision as to whether it should be routinely disclosed. Identification of potential suitable sources of information for routine disclosure can be made by any information owner within OTTER.

8.2.3 Publication of new items of routine information

Once the information is approved by the Principal Officer, the publishing and subsequent updating of the information item is the responsibility of the information owner.

The normal processes and procedures for the publishing/uploading of information on the OTTER website apply. Publication should be in a format that is accessible

8.2.4 Who ensures that published information is kept up to date?

Once approved, the information owner is responsible for the preparation and publication of the items of routine information in the first instance, and for maintaining the currency of the information, where applicable.

8.2.5 When will information be removed from the OTTER's website?

Information published as a routine disclosure will be automatically removed from OTTER's website after two years unless an earlier removal date is determined by the information owner.

8.3 Active Disclosure

Active disclosure is the voluntary disclosure of information by a public authority or a Minister in response to a request from a person made outside the provisions of the RTI Act and is not an assessed disclosure. In general, this is the voluntary release of information on receipt of a request.

8.3.1 Who will decide what information can be actively released?

The normal OTTER clearance processes and protocols apply to the public release of information. General enquiries will be dealt with through normal channels; for example telephone enquiries may be appropriate for simple requests but more complex requests for information may need to be dealt with in writing with senior management clearance.

If the Principal Officer or an authorised officer determines that some or all of the information held by OTTER should not be actively disclosed, the officer will tell the person making the request and explain their rights to seek an assessed disclosure under the *Right to Information Act 2009*.

All decisions should be made taking into account the need for a timely response and the object of the RTI Act to favour disclosure of information wherever possible.

Other applicable processes include -

a) *Requests received from the media*

Requests received from the media will be managed by the Director, OTTER, or the Regulator as required and assessed on a case by case basis. No other officer from OTTER is allowed to make a public statement.

b) *Requests received from Members of Parliament*

Where the information is being sought by Members of Parliament, the request will be managed by the Director, OTTER, who will determine the most appropriate course of action in consultation with the Regulator when necessary.

c) *The information is potentially contentious or sensitive*

Where the information being sought is potentially contentious or sensitive, the request will be assessed by the Director, OTTER in communication with whomever he or she deems appropriate to consult.

d) *The information may include exempt information or information protected from release*

Where the information being sought may include exempt information, the request will be assessed by the Director, OTTER.

8.3.2 *Process for the active disclosure of information*

Information that is publicly available can be provided orally or in writing or by providing the information requested in a hard copy or electronic form.

Information will continue to be released according to normal agency practices.

For all requests not covered by the section above, officers will:

- direct the person to the information if it is already publicly available (including directing the person to a commercially available source if the information is required in hard copy and is available for sale by OTTER, e.g. a hard copy of the Tasmanian Electricity Code);
- consider asking for a request in writing to provide greater clarity around the information being sought, and to whom the information is to be provided;
- decide whether the information can be released to the person in full or in part, taking into consideration factors such as:
 - third parties – who may have provided commercial-in-confidence information or information provided strictly in confidence by third parties;
 - personal information – decisions must be consistent with the Personal Information Privacy Protection Principles as set out in the *Personal Information Protection Act 2004*;
 - confidentiality – information provided in confidence (commercial or otherwise);
 - copyright or ownership of the material;
 - the exemptions¹ outlined in the RTI Act;
 - contractual obligations that may relate to the information;

¹ Refer to definition of Exempt information in Section 3

- defamation; or
- if the information is part of an ongoing investigation or legal action,
- release any of the requested information that can be disclosed and where applicable inform the person of any relevant information that cannot be disclosed in this way and provide the person with advice on their rights to apply for an assessed disclosure under the RTI Act to obtain access to any information which cannot be actively disclosed.

If in doubt, contact the Director, OTTER.

8.3.3 Making information available via active disclosure

All decisions should be made taking into account the need for a timely response and the objective of the RTI Act to favour active disclosure of information wherever possible.

8.3.4 Charges for information which is actively disclosed?

Generally there is no charge for information which is actively disclosed. However a division/business unit may charge a fee for the provision of the information if –

- the information is to be used for financial gain; or
- additional cost is involved in disclosing the information (e.g. the information needs to be transcribed; or providing the information in the form requested is more costly than currently available form).

Charges must be based on the [Costing Fees and Charges Guidelines for Use by Agencies](#) prepared by the Department of Treasury and Finance. A copy of the guidelines are available at www.treasury.tas.gov.au

8.4 Assessed Disclosure

Assessed disclosure is the form of disclosure of last resort and is where information may be disclosed following receipt of a formal application for information under section 13 of the *Right to Information Act 2009*.

A person making a request for assessed disclosure must make the application in writing. OTTER's Application for Assessed Disclosure form and information about making an application is available on OTTER's website.

Applications for assessed disclosure for OTTER are to be addressed to:

Right to Information Officer
 Office of the Tasmanian Economic Regulator
 GPO Box 770
 Hobart TAS 7001

email: office@economicregulator.tas.gov.au

Applications must be accompanied by the application fee. This fee is 25 fee units². The fee may be waived if the applicant is:

- in financial hardship;

² Fee units are indexed annually and information about the *Fee Unit Act 1997* and the current fees can be found on the Department of Treasury and Finance's web site – <http://www.treasury.tas.gov.au>

- a Member of Parliament, and the application is in connection with their official duty; or
- able to show that the information sought is intended to be used for a purpose that is of general public interest or benefit.

8.4.1 Who can make a decision on an application for assessed disclosure?

The Principal Officer may delegate his or her decision making power for assessed disclosures. Delegated Right to Information officers are responsible for assessed disclosure decisions.

The provisions of section 24 of the RTI Act require that all delegated officers have the knowledge and skills to undertake the task of assessing applications. All delegated officers within the OTTER are required to undergo training to ensure a sound understanding of the RTI Act and the Ombudsman's Manual and guidelines.

8.4.2 Process for assessing an application

The process for assessing an application for assessed disclosure is outlined in the RTI Act and in the Manual and Guidelines published by the Ombudsman. The Manual also includes fundamental considerations when in working with the RTI Act; refusing applications; dealing with third parties; the public interest test; and exemptions and statements of reasons.

The Ombudsman's Manual and all Guidelines are available at www.ombudsman.tas.gov.au.

All requests for information will be dealt with in a timely manner, taking into account the time required to assess the application and the need to consult third parties, including re-defining or transferring the application upon negotiation with the applicant. Timeframes for processing applications and negotiations are set out in the RTI Act.

An application for assessed disclosure may be transferred in full or in part to another public authority or Minister where the subject matter of the application is more closely connected with the functions of another public authority or Minister, or where that other public authority is the custodian of that information.

8.4.3 Search and retrieval of information

Upon receipt of a request for assessed disclosure the delegated officer will liaise with information owner's and branches responsible for the management of the information. The responsibility for searching and producing the information to be assessed is the responsibility of the RTI delegated officer.

All information, whether potentially exempt or not, must be disclosed to the delegated officer.

Section 50(2) of the RTI Act provides that it is an offence to deliberately fail to disclose information which is the subject of an application for assessed disclosure of information, in the circumstances where the information is known to the person to exist, other than where non-disclosure is permitted in accordance with the RTI Act or another Act. A penalty of up to a maximum fine of 50 penalty units applies to any breaches.

8.4.4 Providing a written decision

The delegated officer or Principal Officer responding to an application for assessed disclosure must provide the applicant with a written decision that explains:

- the information in OTTER's possession;
- whether or not the information is released;

- the reasons for any exemptions; and
- the applicant's rights to seek a review of an assessed disclosure decision.

8.4.5 Review provisions

Review provisions are contained in Part 4 of the RTI Act. To request a review of a decision by a delegated officer, the applicant should apply to the Principal Officer within 20 working days. Applicants may also seek an external review by the Ombudsman.

9. Publication policy

9.1 Disclosure log

In relation to assessed disclosures, OTTER may publish information released in response to a request for assessed disclosure of information made under the RTI Act. Such information will be accessible via the disclosure log on the Right to Information page of the OTTER website (accessed via the "About the Regulator" page).

The log makes information released to an applicant available to a wider audience and increases transparency and accountability.

The disclosure log includes:

- a summary of the request for information, as this gives context to the nature of the released information;
- the category of the applicant (i.e. Member of Parliament (MP); media representative; organisation; private individual);
 - a. Where the category of applicant is an MP, the log will indicate whether the application is on behalf of a constituent or other person.
- the information released which is considered to be in the wider public interest;
- where appropriate, supplementary contextual information providing greater balance or depth to the response to the request if necessary.

9.1.1 Determining what information to publish on the OTTER website

Only the Principal Officer or a delegated officer may determine what is in the public interest and is to be published on the RTI disclosure log.

Deciding what information to release to an applicant and what information will be published on the disclosure log are separate decisions. The first decision has a legislative basis, and the second is administrative only.

The disclosure log will not necessarily include all information that has been released in response to requests for assessed disclosure of information, only information considered to be in the public interest.

In determining whether to disclose information on the OTTER website, the guiding principle is that information is considered to be in the broader public interest if:

- the application is received from a Member of Parliament about a matter which is in the public interest, or
- the applicant seeks waiver of the application fee on the basis of general public interest or benefit.

In such cases, applicants should assume that the information may be disclosed on the website.

The selection of what is disclosed will be made by considering:

- what is in the broader public interest. For example, if an applicant seeks and is granted a waiver of the application fee on the basis of general public interest, and it is determined that the release of the information is not contrary to the public interest, publication of the released information is likely; and
- whether the information reveals personal information; the business affairs of a third party; or any other information which would not be appropriate to release to a wider audience, or which is restricted by any legal obligations.

9.1.2 *Advice to applicants and third parties*

Applicants will be advised in the letter acknowledging their application that information released to them may later be published on the disclosure log. Any third parties who are consulted during the assessment process will also be advised of this possibility. The applicant or the third party may wish to provide their views regarding the potential publication of the information on the disclosure log.

9.1.3 *Discretion not to publish*

The Principal Officer or delegated officer retains discretion not to publish some or any of the information which has been released to an applicant. Factors to be considered may include:

- whether the personal information of an individual would be apparent from the information;
- whether the business affairs of a third party would be revealed;
- whether the information has been redacted so significantly that it would be very difficult to discern its meaning; or
- whether the information is so voluminous that it would not be practicable to publish.

There are two categories to consider in relation to 'personal information', for example, the personal information of the applicant, and the personal information of others.

While information released to an applicant may contain that applicant's personal information, it would not be reasonable to publish that personal information.

The following information will generally not be published:

- the direct telephone number or signature of an officer;
- pages from which the content has been fully redacted;
- personal information;
- information about the business, commercial, financial or professional affairs of any person; or
- confidential information relating specifically to the applicant.

9.1.4 *What if the released information is subject to an internal or external review?*

If only partial information is provided to the applicant, but this is later changed following an internal or an external review, that additional information will then be published on the disclosure log.

Where practicable, the information released will be scanned and made available online in a pdf format.

9.1.5 *Timing of disclosure*

Where a Principal Officer or delegated officer decides to disclose released information, it will be disclosed, where practicable, within 2 working days of advising of the decision to release.

If the information released is extensive or voluminous, it may be released progressively, with a note indicating that this is the case.

9.1.6 *Tenure of disclosure logs*

Information will generally be removed from the disclosure log after 12 months.

10. Methodology to cost resources

The Department of Treasury and Finance has adopted the following methodology to cost the time an officer spends on preparing a response to a request for assessed disclosure.

It is estimated that an average figure for employee costs (including on-costs) for a full time employee within the Tasmanian State Public Service is \$100 000³.

On average, a full time employee works approximately 230 days annually⁴, working 7.36 hours per work day. This equates to approximately \$434 per day or approximately \$58 per hour.

Based on the above methodology, the Department of Treasury and Finance estimated that the average hourly cost of preparing a response to a request for assessed disclosure is \$58 per hour.

The Regulator accepts this methodology.

11. Contact Details

Right to Information Officer
Office of the Tasmanian Economic Regulator
GPO Box 770
Hobart TAS 7001

email: office@economicregulator.tas.gov.au

³ Estimated figure as at 1 September 2015.

⁴ This figure is calculated by excluding weekends, 20 days annual leave and 10 days public holidays from the 365 day calendar year.