



Office of the
Environmental Protection Authority



Information Statement 2016

Document type, availability and accessibility

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Foreword

This information statement has been prepared and published pursuant to the requirements of Part 5 of the *Freedom of Information Act 1992* (WA) (the FOI Act). The FOI Act was introduced for the dual purpose of enhancing the public's participation in government, and increasing the accountability of State and local government bodies.

This statement has been prepared as a guide to the public about information held by the Office of the Environmental Protection Authority (OEPA) and the Environmental Protection Authority (EPA). It is recommended this document be read prior to submitting an application under the FOI Act.

Where an agency is related to the OEPA (currently only the EPA), the OEPA will be responsible for processing and responding to all applications under the FOI Act made to both the OEPA and the EPA.¹ The OEPA must also comply with section 94 of the FOI Act in relation both to itself and to its related agencies.

In compliance with section 94 of the FOI Act, this statement provides guidance to the public in relation to the following matters:

- legislation administered by the OEPA and the EPA;
- the divisional structure and decision-making functions of the agencies;
- the availability and accessibility of information held by the agencies; and
- the procedure for amending information if it is out of date, misleading or inaccurate.



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¹'Agency' is defined in clause 1 of the Glossary to the FOI Act as 'a Minister or a public body or office'. Clause 2(4) of the Glossary states that the regulations may declare that a separate agency is not to be regarded as a separate agency but is to be regarded as part of a specified agency. Pursuant to regulation 10 and Schedule 2 of the *Freedom of Information Regulations 1993* (WA), the EPA is to be regarded as part of the OEPA for the purposes of the FOI Act.

About the EPA and the OEPA

The EPA is a statutory body established under section 7 of the *Environmental Protection Act 1986* (the EP Act). Its composition, powers and some of its functions are set out in Part II, Division 1 of the EPA Act.

The functions of the EPA are outlined under section 16 of the EP Act. These are:

- i. to conduct environmental impact assessments;
- ii. to facilitate the implementation of bilateral agreements;
- iii. to consider and initiate the means of protecting the environment and the means of preventing, controlling and abating pollution and environmental harm;
- iv. to encourage and carry out studies, investigations and research into the problems of environmental protection and the prevention, control and abatement of pollution and environmental harm;
- v. to obtain the advice of persons having special knowledge, experience or responsibility in regard to environmental protection and the prevention, control and abatement of pollution and environmental harm;
- vi. to advise the Minister on the making or amendment of regulations when requested by the Minister to do so or on its own initiative;
- vii. to advise the Minister on environmental matters generally and on any matter which he may refer to it for advice, including the environmental protection aspects of any proposal or scheme, and on the evaluation of information relating thereto;
- viii. to prepare, and seek approval for, environmental protection policies;
- ix. to promote environmental awareness within the community and to encourage understanding by the community of the environment;
- x. to receive representations on environmental matters from members of the public;
- xi. to provide advice on environmental matters to members of the public;
- xii. to publish reports on environmental matters generally;
- xiii. to publish for the benefit of planners, builders, engineers or other persons, guidelines to assist them in undertaking their activities in such a manner as to minimize the effect on the environment of those activities or the results thereof;
- xiv. to keep under review the progress made in the attainment of the objects and purpose of the EP Act;
- xv. to coordinate all such activities, whether governmental or otherwise, as are necessary to protect, restore or improve the environment in the State;
- xvi. to establish and develop criteria for the assessment of the extent of environmental change, pollution and environmental harm; and
- xvii. to specify standards and criteria, and the methods of sampling and testing to be used for any purpose;
- xviii. to promote, encourage, coordinate or carry out planning and projects in environmental management; and
- xix. generally, to perform such other functions as are prescribed.

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In addition, the EPA has powers under the following parts of the EP Act:

- Part I, section 6, in relation to providing exemptions from compliance with the provisions of the EP Act;
- Part III in relation to the preparation and publication of Environmental Protection Policies;
- Part IV in relation to conducting Environmental Impact Assessments and providing advice and recommendations to the Minister for Environment in relation to whether or not significant proposals, strategic proposals or schemes should be implemented and, if so, under what conditions and procedures; and
- Part VIII, section 122, in relation to the establishment of administrative procedures for the Act generally or Environmental Impact Assessments specifically.

There are a variety of regulatory tools and advisory mechanisms available to the EPA and the OEPA under the EP Act, including:

1. decisions relating to:
 - a. whether or not a significant proposal, strategic proposal or town planning scheme should be assessed under Part IV of the EP Act and the level of assessment required (sections 39A and 48A);
 - b. the conduct of environmental impact assessments of significant proposals, strategic proposals or town planning schemes (Part IV);
 - c. consenting to minor or preliminary works being undertaken prior to a proposal being assessed (section 41A(3));
 - d. consenting to changes to a proposal being assessed without a revised proposal being referred to the agency (section 43A);
 - e. reporting to the Minister in respect of its assessment of a significant proposal, a strategic proposal or a town planning scheme and making recommendations to the Minister regarding whether or not the proposal or scheme should be implemented and, if so, under what conditions (sections 44 and 48D);
 - f. conducting an inquiry and reporting to the Minister in relation to changes of conditions relating to the implementation of a proposal (section 46);
 - g. determining whether or not a referred proposal is a 'derived proposal' (section 39B);
 - h. reporting to the Minister, if requested, in relation to appeals lodged against decisions made by the EPA (section 106);
2. preparation, publication and review of environmental protection policies under Part III; and
3. advising the Minister on environmental matters generally and on any matter which the Minister may refer to the EPA for advice.

The OEPA is a government agency established under the *Public Sector Management Act 1994* on 27 November 2009 and, by necessity, the General Manager of the OEPA has delegated powers with respect to conducting investigations and instituting proceedings in relation to non-compliances pertaining to matters in Part IV of the EP Act.

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To meet their statutory obligations, both the EPA and the OEPA must also collaborate with a range of entities, including proponents, other Government agencies, industry bodies, environmental non-Government organizations, and members of the community.

Subsidiary legislation also relevant to the OEPA's and the EPA's functions and administration includes the following:

- Environmental Protection Regulations 1987;
- Environmental Protection (Noise) Regulations 1997
- Environmental Protection (Peel Inlet - Harvey Estuary) Policy 1992
- Environmental Protection (Kwinana) (Atmospheric Wastes) Policy 1999
- Environmental Protection (Kwinana) (Atmospheric Wastes) Regulations 1992
- Environmental Protection (Goldfields Residential Areas) (Sulfur Dioxide) Policy 2003
- Environmental Protection (Goldfields Residential Areas) (Sulfur Dioxide) Regulations 2003
- Environmental Protection (Western Swamp Tortoise Habitat) Policy 2011

It should be noted that the other parts of the EP Act and the observance of the subsidiary legislation referred to above are also administered by the Department of Environment Regulation.

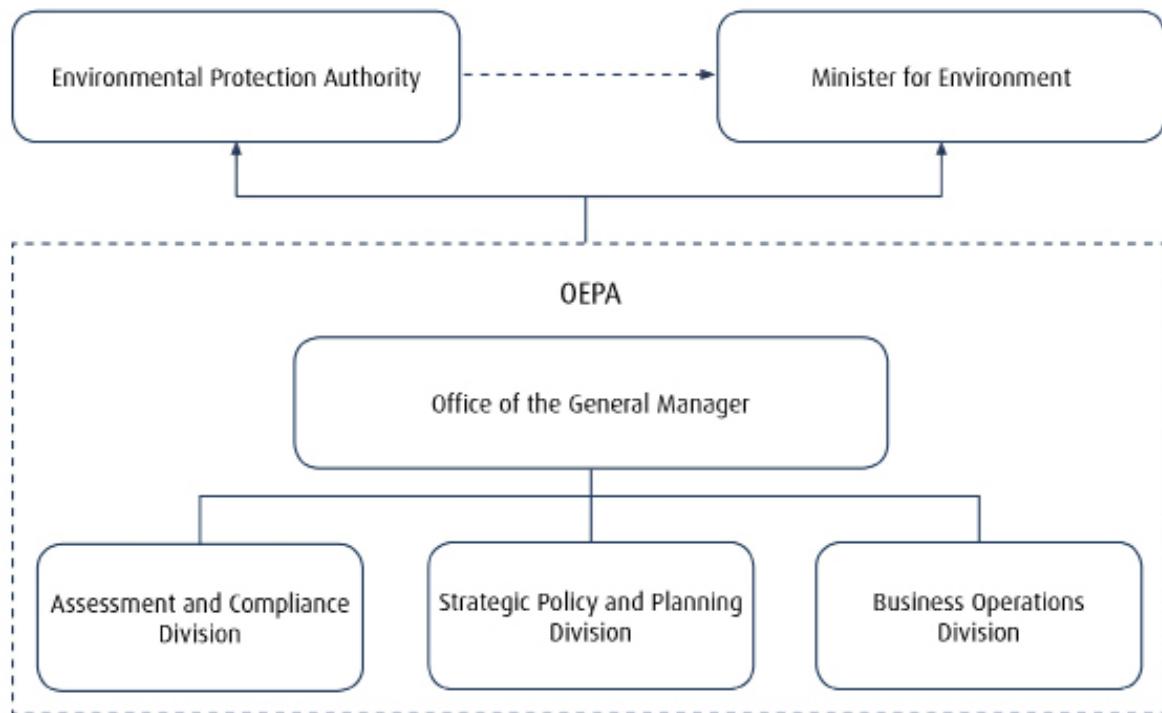
The OEPA and the EPA produce a wide range of published material to help improve knowledge of environmental and conservation issues, and awareness and understanding of, and support for, the agencies' services and policies.

Publications include guidelines, electronic newsletters, reports, and bulletins. Many of these can be accessed via the EPA's website, www.epa.wa.gov.au.

The OEPA's Corporate Plan for 2015-16 aligns with the EPA's key strategies and environmental objectives set out in its Strategic Plan 2013-2016, which can be found on the EPA's website.

Structure and functions of the OEPA

The following is a summary of the functions and responsibilities of the Divisions within the OEPA.



Assessment and Compliance Division

The Assessment and Compliance Division is responsible for:

- administering the environmental impact assessment principles and processes on behalf of the EPA, for significant proposals (i.e. proposals involving major projects, industrial, mining, petroleum and infrastructure developments), strategic proposals (as defined in section 37B of the EP Act), post-assessment changes to proposals and environmental management and monitoring plans;
- monitoring compliance with implementation conditions and implementation agreements and decisions; and
- preparing EPA advice for the Minister for Environment in relation to various environmental matters.

Strategic Policy and Planning Division

The Strategic Policy and Planning Division's role is to provide advice and support to the EPA, the OEPA, the Minister for Environment and other parts of Government.

It does this by:

- providing technical and policy advice in relation to the environmental impact assessment of projects and schemes;

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- providing technical and policy advice on environmental issues in general;
- coordinating the development, analysis, implementation and review of environmental policies and guidelines;
- managing the formulation and review of statutory Environmental Protection Policies;
- contributing to strategic environmental planning;
- developing strategic partnerships with stakeholders, including industry, environmental organisations and other Federal, State and local Government agencies;
- conducting investigations to improve the understanding of the natural environment and inform successful policy approaches;
- identifying emerging environmental pressures and innovative technical or policy solutions;
- administering the environmental impact assessment principles and processes on behalf of the EPA as defined in section 48A of the EP Act (i.e. proposals involving town planning schemes, regional schemes and amendments); and
- facilitating and administering media requests and communication.

Business Operations Division

The Business Operations Division provides administrative, financial, clerical and legal support to the EPA Chairman and the OEPA.

The Business Operations Division provides administrative and clerical support to the OEPA and to the EPA Chairman.

The Division also facilitates and administers:

- the provision and analysis of spatial data;
- financial management;
- legal support;
- the management of correspondence processing for:
 - i. Ministerial requests for information and advice;
 - ii. EPA correspondence;
 - iii. OEPA correspondence;
 - iv. Freedom of Information requests;
- records management; and
- information management systems and business analysis.

The OEPA has a shared service arrangement with the Department of Parks and Wildlife (DPaW) in relation to the corporate administration of Human Resources. The Business Operations Division facilitates and administers this arrangement.

Decision making functions and public participation

Environmental impact assessment

The requirements and procedures for the conduct of environmental impact assessments are provided for in Part IV of the EP Act and the Administrative Procedures made under the EP Act. The EPA is able to assess the environmental impacts of:

- proposals which, by definition, include a project, plan, programme, policy, operation, undertaking, development or change in land use, or amendment of any of these; and
- strategic proposals which, by definition, include future proposals that will be significant proposals or which, if implemented in combination with each other, are likely to have a significant effect on the environment; and
- schemes (including town planning schemes, region planning schemes and redevelopment master plans).

Before a submission is made, it is recommended that referral be made to the “Environmental Impact Assessment, How to make a submission” page of the EPA website – <http://www.epa.wa.gov.au/public-comment/Pages/submission.aspx> – and the information made available on the website of the Office of the Information Commissioner – www.foi.wa.gov.au.

If uncertainties arise, it is recommended to contact the OEPA’s Freedom of Information Coordinator for assistance.

Proposals

Under section 38 of the EP Act, any proposal likely to have a significant effect on the environment may be referred to the EPA. Proposals under assessed schemes or proposals identified in an assessed strategic proposal may also be referred, but whether or not these proposals are assessed will depend on the extent to which the environmental issues raised by the proposal were adequately assessed previously and if there are new or additional issues or changes.

The levels of assessment set by the EPA for dealing with referred proposals are as follows:

- Not Assessed – No Advice Given;
- Not Assessed – Public Advice Given;
- Not Assessed – recommendation that the proposal be dealt with under Part V Division 2 of the EP Act (Clearing of Native Vegetation);
- Assess – Public Environmental Review (PER) or
- Assess – Assessment on Proponent Information (API).

The principles and procedure for the formal assessment of proposals is provided for in the Administrative Procedures prepared by the EPA and published in the Government Gazette.

As these procedures are reviewed from time to time and published in the Government Gazette, it is important that the most recent version is referred to.

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Schemes

Under legislation administered by the Western Australian Planning Commission, town planning schemes and scheme amendments must be referred to the EPA, which is to determine whether or not the scheme or amendment should be assessed.

As there is often no actual development proposed at the scheme development stage, only the zoning of the land and the impacts of potential future land uses that could be permitted by the zoning given existing natural and manmade constraints need to be taken into consideration in setting the level of assessment.

The level of assessment set by the EPA depends on the likely impact of the proposal's implementation on the environment. The EPA makes its decision taking into consideration senior OEPA officers' evaluations of new referrals and advice on likely impacts and recommended levels of assessment.

Upon referral of a scheme, the Authority must determine whether it:

- should not assess the scheme;
- should not assess the scheme but should provide non-binding advice and recommendations;
- must assess the scheme and require an environmental review to be prepared; or
- considers the scheme to be incapable of being made environmentally acceptable.

The environmental review of schemes is a public process.

There is no opportunity for public comment or appeal for the setting of level of assessment on schemes. However, where an environmental review of a scheme is required it is advertised for public comment. The EPA's report and recommendations to the Minister are appealable.

The procedures under the EP Act and administrative procedures provide an opportunity for the public to comment on whether or not the scheme should be assessed and the content of, and any recommendations included in, the EPA's report to the Minister.

Environmental Protection Policies

Part III of the EP Act provides for the preparation, publication and review of environmental protection policies (EPP) by the EPA for the Minister's consideration. The EPA may initiate the development of an EPP if it is considered desirable to do so for the protection of any portion of the environment or for the prevention, control or abatement of pollution or environmental harm.

Once approved by the Minister (and subject to section 42 of the *Interpretation Act 1984* and any specification in the policy) the policy has the force of law as though it had been enacted as part of the EP Act.

An approved policy may identify offences and provide for penalties for the protection of a portion of the environment to which it applies. Alternatively, it may provide environmental policy directives or programs which are regulated or implemented under other parts of the EP Act (e.g. prescribed licence conditions under the Environmental Protection (Goldfields Residential Areas) (Sulphur Dioxide) Regulations 2003).

Public participation

Environmental Impact Assessment

The key stage at which the public has a role in influencing the decision-making process is at the time of referral of a proposal. All proposals referred to the EPA will be advertised on the EPA's website and anyone may comment. The comments should be in relation to whether or not the proposal referred should be assessed and, if assessed, the level of assessment. Anyone may also subscribe to be notified of updates to the EPA's website through RSS feeds.

In addition, there are various appeal rights provided for in the EP Act for the general public, decision-making authorities and proponents. All interested parties are encouraged to familiarise themselves with these appeal provisions and the timeframes within which an appeal is to be lodged (see Part VII of the EP Act).

The Office of the Appeals Convenor administers appeals made under Part VII of the Act, and information about appeals may also be obtained from the website of the Office of the Appeals Convenor – www.appealsconvenor.wa.gov.au.

Further, anyone may make a submission on environmental aspects of a scheme or proposal being assessed by the EPA.

Environmental Protection Policies

If the EPA determines to prepare an EPP, the OEPA will publish in the *Government Gazette* (once only), and in a daily newspaper circulating throughout the State (for three consecutive weeks), a notice containing particulars of the draft EPP and inviting public comment. The EPA will also make reasonable endeavors to consult with public authorities and persons likely to be affected by the draft. The submissions are then considered by the EPA and the EPP may be revised as necessary. This revised EPP is then forwarded to the Minister for consideration.

Environmental Assessment Guidelines

Environment Assessment Guidelines (EAGs) – formerly 'Guidance Statements' – are issued by the EPA to provide advice to proponents and the public generally on the procedures and minimum environmental requirements that the EPA expects to be met during the environmental impact assessment process.

Consultation with stakeholders

As the need arises, the EPA will consult with stakeholders to provide input into new guidelines and revisions of existing publications.

Accessing information that is publicly available

The EPA and OEPA produce a variety of publications and information products to meet different information needs. Many are published on the EPA's website www.epa.wa.gov.au as well as in print. Some are also available on CD.

National Relay Service

For access to information for people who are hearing or speech impaired, please call this free service:

TTY (for hearing-impaired): 1880 555 630

Fax: 1800 555 690.

People who need information in alternative formats or have specific accessibility needs can contact staff for assistance on (08) 6145 8000 or 6145 0825.

Viewing publications

Conscious of the objective to conserve the environment, we encourage people to access publications electronically where appropriate.

Where, under the EP Act, there is a legal requirement for the display of various documents for review or public access, such documents can be made available for viewing at Level 8, The Atrium, 168 St Georges Terrace, Perth.

Reception: (08) 6145 8000

For those who do not have electronic access to web documents, the Freedom of Information Coordinator can print and make available OEPA information from the web. For information totaling more than 20 pages, a charge of 20 cents per sheet will be applied.

Accessing information that is not publicly available

To promote greater accountability and encourage public participation in government, the FOI Act gives individuals the right to seek access to documents held by government agencies, including the EPA and the OEPA. Documents may comprise written material, plans and drawings, photographs, tape recordings, films, videotapes or information stored in electronic form.

Under the FOI Act, a person who wishes to obtain access to one or more documents of an agency may make an application to the agency. The OEPA handles all FOI inquiries and applications relating to matters pertaining to the EPA's and the OEPA's administration of the EP Act.

It is the aim of the OEPA to make information available in a timely manner and at the lowest possible cost.

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It should be noted that the final decision as to whether or not information is exempt from access under the FOI Act on the basis, for example, that it constitutes confidential communications or contains sensitive commercial information, is made by the Information Commissioner in the event that there is a review of the OEPA's decision not to release the information.

How to apply for access to documents that are not publicly available

Applications for information under the FOI Act must²:

- i. be in writing;
- ii. provide enough detail to identify the requested documents;
- iii. give a valid Australian address to which notices under this Act can be sent (it is recommended that a contact telephone number and e-mail address also be provided);
- iv. be accompanied by the prescribed application fee (\$30 unless the application is regarding personal information relating to the applicant, in which case no application fee applies); and
- v. be addressed to:

The FOI Coordinator
Office of the Environmental Protection Authority
Locked Bag 10
EAST PERTH WA 6892

Applications will be acknowledged in writing and the applicant will be notified of the decision within 45 days of receipt, or as negotiated.

Application scope

To ensure that all of the requested documents are provided promptly and with minimal diversion of agency resources away from its other operations, it is essential that the applicant provide a detailed outline of the information sought (and what is excluded from the request).

Some suggestions of useful details to be included in the scope of the application are:

- date range of information sought; and/or
- documents and information not required (e.g. communications with the applicant, third party information); and/or
- the specifics of the project in question.

If an application would require a substantial and unreasonable diversion of the OEPA's resources away from its other operations, the OEPA will take reasonable steps to help the applicant change the application to reduce the amount of work required to deal with it. If, after help has been given, the OEPA still considers that the work involved in dealing with the

² See section 12 of the FOI Act.

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application would divert a substantial and unreasonable portion of its resources away from its other business, the OEPA may refuse to deal with the application³. In this case, the agency must give the applicant written notice of the refusal without delay, indicating the reasons for refusal and the applicant's rights of review⁴.

Fees and charges

In addition to the \$30 application fee, processing charges may apply. If these charges are expected to exceed \$25, the applicant will be provided with an estimate of costs and the opportunity to further narrow the scope of the application.

The applicant is entitled to request a review on the deposit required. Once the charges have been agreed upon, the deposit is required to be paid within 30 days. Failure to provide the deposit within this timeframe will result in the OEPA assuming that the application has been withdrawn.

The prescribed 45-day period in which to deal with applications is put on hold whilst charges are negotiated.

A schedule of fees and charges for applications regarding non-personal information is laid out below:

| | |
|--|-------------|
| Application fee | \$30.00 |
| Charges: | |
| <ul style="list-style-type: none"> • Staff time (per hour or pro-rata) <ul style="list-style-type: none"> - dealing with application (does not include location of documents); - providing supervised access; - photocopying; - transcribing (e.g. from tape, film or computer). | \$30.00 |
| <ul style="list-style-type: none"> • Photocopies (per page) | \$ 0.20 |
| <ul style="list-style-type: none"> • Preparing duplicates (e.g. off a tape, film or computerised information) | actual cost |
| <ul style="list-style-type: none"> • Delivery, packaging and postage | actual cost |
| Reduction in charges for applicants who are impecunious | 25% |
| Advance deposit required in respect of estimated charges | 25% |

FOI applications for personal information about the applicant do not attract fees.

Timeframe

The FOI Act provides 45 days from its receipt for a valid application to be completed. This period may be negotiated in some circumstances such as when a request is urgent or when the OEPA requires additional time to process the application⁵.

³ See sections 20(1) and (2) of the FOI Act.

⁴ See sections 20(3) and (4) of the FOI Act.

⁵ See section 13 of the FOI Act.

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Exemptions and third party consultations

The release of certain information may hinder the proper functioning of government or have a negative effect on individuals' private or business concerns. To prevent this from occurring, Schedule 1 to the FOI Act exempts certain information from disclosure.

If a document in relation to which an FOI application has been made contains information about a third party that may be exempt under the FOI Act, the OEPA has an obligation to:

6. attempt to obtain the views of that third party as to whether the document contains personal or commercial information that would be exempt from disclosure under clauses 3 or 4 of Schedule 1 to the FOI Act⁶, OR
7. release the documents with the exempt information removed⁷.

If, following consultation with the relevant third party, the OEPA decides to release the document in question in a manner that conflicts with the third party's view, the third party will be notified and provided with a 30-day period in which to apply for a review of this decision. Access to the document will be deferred until the decision is final⁸.

If, after an internal review, the third party's views still differ from those of the OEPA, the third party has 30 days in which to apply for an external review of the matter⁹. The OEPA cannot release the document in question until the matter has been resolved.

Some of the more common exemptions to disclosure of information are discussed below.

Personal information (clause 3 of Schedule 1 to the FOI Act)

This exemption protects the essential private interests or 'personal information' of individuals. Matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead). The exemption is limited by the application of the public interest test. Accordingly, information about an individual whose identity is apparent or could be easily ascertained from its disclosure, may be withheld if its disclosure would not, on balance, be in the public interest.

Information is not exempt merely because its disclosure would reveal, in relation to an individual acting in an official capacity as a Minister, or as an officer of an agency, or performing services for an agency under a contract, details relating to the individual, the individual's position or functions or contract, or things done by the individual in the course of performing functions as an officer or under the contract. Further, matter is not exempt if the individual concerned has consented to the disclosure of information to the applicant.

In many cases, it may be possible and appropriate to delete the information that identifies the individual in accordance with section 24 (which provides for the deletion of exempt material) and to release the remaining information.

In cases where the identity of an individual can be ascertained from the information, it may be possible to grant access to the information in an alternate form. For example, a typed version of a handwritten letter could be provided, thereby potentially masking the identity of its author.

⁶ See sections 32 and 33 of the FOI Act.

⁷ See section 24 of the FOI Act.

⁸ See section 34 of the FOI Act.

⁹ See Part 4, Division 3, of the FOI Act.

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Commercial or business information (clause 4 of Schedule 1 to the FOI Act)

This exemption protects the commercial or business information supplied to Government by third parties. It does not protect the business, commercial or financial affairs of an agency, or of the applicant.

There are three categories within this exemption and, in each case, the relevant company or business must be consulted before the information can be released.

Trade Secrets (clause 4(1) of Schedule 1 to the FOI Act):

While the FOI Act provides no formal definition, a trade secret may be determined by what measures are taken by the company or business to guard the secret.

Commercially-valuable information (clause 4(2) of Schedule 1 to the FOI Act):

To claim this exemption, it must be established first, that the information has a commercial value to a person, and second, that its disclosure could reasonably be expected to destroy or diminish that commercial value. The company or business will need to demonstrate to the agency that the expectation of destruction or diminution of the commercial value of the information is real and substantial and not speculative or a mere possibility, risk or chance.

Other commercial or business information (clause 4(3) of Schedule 1 to the FOI Act):

This exemption encompasses matter other than trade secrets or information referred to in clause 4(2) of Schedule 1 to the FOI Act. To claim this exemption, it must be established first, that the information is directly related to the business, professional, commercial or financial affairs of a person and second, that its disclosure could reasonably be expected to adversely affect those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.

The company or business will need to demonstrate to the agency that the expectation of adverse effect(s) is real and substantial and not speculative or a mere possibility. The agency will have to determine whether the expectation that the future supply of the information will be prejudiced is reasonable, based on the assertions of the company or business concerned.

The public interest test applies to matters falling within the provisions of clause 4(3).¹⁰

Deliberative processes (clause 6 of Schedule 1 to the FOI Act)

This exemption is intended to ensure effective public administration by protecting the disclosure of information forming part of the decision-making processes of the Government, a Minister or an agency. Matter is exempt if its disclosure would reveal any opinion, advice or recommendation that has been obtained, prepared, or recorded, or any consultation or deliberation which took place in the course of, or for the purposes of, the deliberative (decision-making) processes of the Government, a Minister, or an agency, and it would, on balance, be contrary to the public interest to release that information.

¹⁰ See clause 4(7) of Schedule 1 to the FOI Act.

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Confidential communications (clause 8 of Schedule 1 to the FOI Act)

This exemption protects information that was provided to the OEPA in confidence and whose disclosure could reasonably be expected to prejudice the future supply of information of this kind. Matter is exempt for the purposes of this exemption if its disclosure would be a breach of confidence for which a legal remedy could be obtained. Matter is not exempt if its disclosure would, on balance, be in the public interest.

This exemption may include the identity of the provider as well as the information provided.

Release of documents to applicants

Once the application for access to information has been considered, the applicant will be provided with a 'Notice of Decision' which will include the following information¹¹:

- the date on which the decision was made;
- the name and designation of the officer who made the decision;
- whether access is to be:
 - given in full;
 - given to an edited version;
 - refused; or
 - deferred;
- the reasons for claiming any exemptions, refusing access or deferring access;
- any charges to be imposed, and the basis on which they were calculated; and
- the rights of review and the procedure to be followed to exercise those rights.

The internal review process

An applicant who is not satisfied with the outcome of his or her access application has the right to apply for an internal review of that decision.¹² A third party who disagrees with the decision-maker on whether or not information should be released to the applicant also has the right to apply for an internal review.

An application for internal review should:

- i. be submitted to the OEPA within 30 days of receipt of the 'Notice of Decision'. The decision becomes final if no application for review is received within that time;
- ii. be in writing;
- iii. give particulars of the decision to be reviewed;
- iv. provide an Australian address to which notices can be sent; and
- v. be addressed to:

**Office of the Environmental Protection Authority
FOI Coordinator
Locked Bag 10
EAST PERTH WA 6892**

¹¹ See sections 13(1)(b) and 30 of the FOI Act.

¹² See Part 2, Division 5, of the FOI Act.

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There is no charge payable for lodging an application for internal review.

An internal review will not be dealt with by the person who made the original decision, or by any officer who is subordinate to the original decision-maker.

The outcome of an internal review will be provided to the applicant within 15 days of receipt of the application (or as negotiated), and may result in a confirmation, variation or reversal of the original decision under review.

The external review process

An applicant who is not satisfied with the outcome of their internal review has the right to apply for an external review of that decision.¹³

An application for external review should:

- i. be submitted to the Office of the Information Commissioner within 60 days of receipt of the 'Notice of Decision' (note that this time period is 30 days if the individual applying for an external review is a third party). The decision becomes final if no application for review is received within that time;
- ii. be in writing;
- iii. have attached to it a copy of the 'Notice of Decision' provided to the applicant, to which the complaint relates;
- iv. provide an Australian address to which notices can be sent; and
- v. be addressed to:

**Office of the Information Commissioner
Albert Facey House
469 Wellington Street
PERTH WA 6000**

There is no charge payable for lodging an application for external review.

Amendment of personal information

The FOI Act provides an applicant with an additional right to apply to amend personal information contained in an agency's document if the information is inaccurate, incomplete, out of date or misleading.¹⁴ Along with the requirements set out below, an application to amend personal information is free of charge and must be accompanied by reasons for, and details of, the amendments to be made. An applicant can request amendments to personal information about himself or herself, or in the case of a deceased person, his or her closest relative may apply to amend the deceased person's personal information.

¹³ See Part 4 of the FOI Act.

¹⁴ See section 45(1), and generally Part 3, of the FOI Act.

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The application for amendment has to -

- a. be in writing;
- b. give enough details to enable the document that contains the information to be identified;
- c. give details of the matter in relation to which the person believes the information is inaccurate, incomplete, out of date or misleading;
- d. give the person's reasons for holding that belief;
- e. give details of the amendment that the person wishes to have made;
- f. give an address in Australia to which notices under the FOI Act can be sent;
- g. give any other information or details required under the regulations; and
- h. be lodged at an office of the agency.

The agency is required to provide the applicant with a written notice of decision within 30 days of receiving the application.

Appendix I: Current list of information held by the OEPA and its accessibility

General

| Documents | FOI required | Publicly available | Where to access publicly available documents |
|---|--------------|--------------------|--|
| Published annual financial statements / annual reports | ✗ | ✓ | EPA website |
| Unpublished / or working drafts of annual financial statements / annual reports | ✓ | ✗ | |
| Industrial agreements | ✗ | ✓ | Department of Commerce |
| Corporate plan | ✗ | ✓ | EPA website |
| Operational manuals | ✗ | ✓ | On request |
| Correspondence exchange between individuals other than the FOI applicant | ✓ | ✗ | |
| Correspondence exchange between individuals including the FOI applicant | ✗ | ✓ | On request |
| Internal memos – general, personnel | ✓ | ✗ | |
| Administrative policies | ✗ | ✓ | EPA website |
| Personnel information involving an individual other than the FOI applicant | ✓ | ✗ | |
| Personnel information involving the FOI applicant | ✗ | ✓ | On request from HR (DPaW) |
| General ministerial correspondence and briefing notes | ✓ | ✗ | |
| Final Parliamentary Question response given by the Minister and recorded in Hansard | ✗ | ✓ | Hansard |
| Internal reviews of environmental management strategies/ policies | ✗ | ✓ | On request |
| Draft internal reviews of environmental management strategies/ policies | ✓ | ✗ | |
| Policy documents | ✗ | ✓ | EPA website / On request |
| Draft policy documents and discussion on draft policy documents | ✓ | ✗ | |
| Commissioned reports on matters where assessment is complete | ✗ | ✓ | On request |
| Unpublished commissioned reports | ✓ | ✗ | |
| Fact sheets | ✗ | ✓ | EPA website |

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| Documents | FOI required | Publicly available | Where to access publicly available documents |
|---|--------------|--------------------|--|
| Published EPA newsletters - prior to 2014 | ✗ | ✓ | EPA website |
| EPA News updates | ✗ | ✓ | EPA website Twitter @EPA_WA |
| Published OEPA submissions to other Government agencies and authorities | ✗ | ✓ | On request |
| Unpublished OEPA submissions to other Government agencies and authorities | ✓ | ✗ | |
| Land use planning statutory referrals | ✓ | ✗ | |
| Internal branch resource planning documents | ✓ | ✗ | |
| Spatial information (maps) | ✓ | ✗ | Some commonly requested spatial packages are available on the EPA website. |

Monitoring and implementation of proposals

| Documents | FOI required | Publicly available | Where to access publicly available documents |
|---|--------------|--------------------|--|
| Management plans required by implementation conditions (including Compliance Assessment Plans) that are required by a condition of a Ministerial Statement to be publicly-available | ✗ | ✓ | On request from proponent or OEPA Compliance Manager |
| Management plans required by implementation conditions (including Compliance Assessment Plans) that are not required by a condition of a Ministerial Statement to be publicly-available | ✓ | ✗ | |
| Proposal monitoring and other data and periodic reports required by implementation conditions (including compliance reports and performance review reports) that are required by a Ministerial Statement to be publicly-available | ✗ | ✓ | On request from proponent or OEPA Compliance Manager |
| Proposal monitoring and other data and periodic reports required by implementation conditions (including compliance reports and performance review reports) that are not required by a Ministerial Statement to be publicly-available | ✓ | ✗ | |
| Proponent application to modify ministerial statement under s45C | ✓ | ✗ | |

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| Documents | FOI required | Publicly available | Where to access publicly available documents |
|--|--------------|--------------------|--|
| Ministerial request to the EPA to report on a proposed variation of the conditions of a ministerial statement (s46(1)) | ✗ | ✓ | |
| EPA report on a proposed variation of the conditions of a ministerial statement (s46(6)) | ✗ | ✓ | Published by the Minister or the Minister's delegate |
| Complaints | ✓ | ✗ | |
| Prosecution briefs and investigation reports | ✓ | ✗ | |
| Audit reports and verification inspection reports e.g. proposal premises, site visits | ✓ | ✗ | |
| Monitoring and other data and periodic reports, provided under direction | ✓ | ✗ | |
| Compliance reports to the Minister | ✓ | ✗ | |
| Non-compliance correspondence | ✓ | ✗ | |
| Miscellaneous correspondence in relation to monitoring and implementation of proposals | ✓ | ✗ | |
| Correspondence to/ from Minister's office | ✓ | ✗ | |

Environmental Impact Assessment

| Documents | FOI required | Publicly available | Where to access publicly available documents |
|--|--------------|--------------------|---|
| Proponent referral documents which are not specified as confidential | ✗ | ✓ | EPA website |
| Proponent referral documents which are specified as confidential | ✓ | ✗ | |
| Third party referral documents with third party information removed | ✗ | ✓ | EPA website |
| Assessment officer advice on decision to assess/ not assess (s39A) and level of assessment (s40(3)). | ✓ | ✗ | |
| EPA level of assessment decision sheet | ✗ | ✓ | EPA website (3 working days after the decision) |
| Relevant correspondence in relation to EPA's level of assessment | ✓ | ✗ | |

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| Documents | FOI required | Publicly available | Where to access publicly available documents |
|---|--------------|--------------------|--|
| OEPA assessment officers' briefing notes to the EPA | ✓ | ✗ | |
| EPA appeal advice with respect to appeals (i.e. all reports to the Minister under s106 of the EP Act) (once determined by the Minister) | ✗ | ✓ | On request |
| Informal review with advice (note this is not part of the EIA process) | ✗ | ✓ | On request |
| Proposal assessment timelines | ✗ | ✓ | On request |
| Environmental impact assessment scoping document | ✗ | ✓ | EPA website |
| Draft environmental impact assessment scoping document | ✓ | ✗ | |
| Instructions to proponent | ✗ | ✓ | EPA website / On request |
| Draft instructions to proponent | ✗ | ✓ | On request |
| Summary of submissions and proponent's response after EPA Report is published (with personal and confidential information removed) | ✗ | ✓ | EPA website |
| EPA Report and recommendations once released by the Minister | ✗ | ✓ | EPA website |
| Public submissions – after publication of EPA Report | ✓ | ✗ | |
| Government submissions – after publication of EPA Report | ✗ | ✓ | On request |
| Final implementation agreement or decision | ✗ | ✓ | EPA website |
| EIA formal review documents | ✗ | ✓ | On request |
| Correspondence between the proponent, proponent's environmental consultants and the EPA/OEPA in relation to its environmental review and for the EPA's assessment | ✓ | ✗ | |
| Environmental review information received by the EPA, and not published by the proponent | ✓ | ✗ | |
| Correspondence to/ from the Minister | ✓ | ✗ | |

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Strategic Policy and Planning

| Documents | FOI required | Publicly available | Where to access publicly available documents |
|--|--------------|--------------------|--|
| <i>Strategy Documents</i> | | | |
| Draft not yet released for public comment | ✓ | ✗ | |
| Draft released for public comment | ✗ | ✓ | EPA website |
| Public submissions on draft | ✓ | ✗ | |
| Published | ✗ | ✓ | EPA website |
| <i>Environmental Protection Policy</i> | | | |
| Draft not yet released for public comment or submitted to the Minister | ✓ | ✗ | |
| Draft released for public comment | ✗ | ✓ | EPA website |
| Public submissions on draft | ✓ | ✗ | |
| Summary of submissions | ✗ | ✓ | EPA website |
| Draft submitted to the Minister | ✗ | ✓ | EPA website |
| Published | ✗ | ✓ | EPA website |
| <i>State Environmental Policy</i> | | | |
| Draft not yet released for public comment or submitted to the Minister | ✓ | ✗ | |
| Draft released for public comment | ✗ | ✓ | EPA website |
| Public submissions on draft | ✓ | ✗ | |
| Key stakeholder consultation on draft | ✓ | ✗ | |
| Draft submitted to the Minister | ✗ | ✓ | EPA website |
| EPA's advice report to the Minister in respect of the draft | ✗ | ✓ | On request |
| Published | ✗ | ✓ | EPA website |
| <i>Internal policy and correspondence</i> | | | |
| Draft not yet released for public comment | ✓ | ✗ | |
| Draft released for public comment | ✗ | ✓ | On request |
| Public submissions on draft | ✓ | ✗ | |
| Published | ✗ | ✓ | On request |

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| Documents | FOI required | Publicly available | Where to access publicly available documents |
|---|--------------|--------------------|--|
| <i>Environmental Assessment Guidelines (formerly referred to as Guidance Statements)</i> | | | |
| Draft not yet released for public comment | ✓ | ✗ | |
| Draft released for public comment | ✗ | ✓ | EPA website |
| Public submissions on draft | ✓ | ✗ | |
| Published | ✗ | ✓ | EPA website |
| <i>Environmental Protection Bulletins</i> | | | |
| Draft | ✓ | ✗ | |
| Published | ✗ | ✓ | EPA website |
| <i>EPA Environmental Assessment Policies</i> | | | |
| Draft not yet released for public comment | ✓ | ✗ | |
| Draft released for public comment | ✗ | ✓ | EPA website |
| Public submissions on draft | ✓ | ✗ | |
| Published | ✗ | ✓ | EPA website |
| Published technical papers, reports, some technical databases | ✗ | ✓ | EPA website |
| Raw data that has not been interpreted, analysed or published | ✓ | ✗ | |
| Correspondence to/ from the Minister | ✓ | ✗ | |

Appendix II: Current list of documents on EPA files and their accessibility

(Note that these can duplicate some of the documents held on OEPA files)

| Documents | FOI required | Publicly available | Where to access publicly available documents |
|---|--|---|--|
| Minutes of EPA meetings (see Environmental Protection Regulations 1987 reg 2B for inspection of minutes) | Available in accordance with Environmental Protection Regulations 1987 regulation 2B when requested. Also available under FOI. | | |
| Published minutes of EPA meetings |  |  | On request |
| Published EPA Reports (formerly referred to as EPA Bulletins) |  |  | EPA website |
| Policy Position Statements |  |  | EPA website |
| Guidance Statements |  |  | EPA website |
| EPA Assessment Guidelines |  |  | EPA website |
| Environmental Protection Bulletins |  |  | EPA website |
| Environmental Impact Assessment Administrative Procedures |  |  | EPA website |
| Ministerial briefing notes |  |  | |
| Briefing notes to EPA |  |  | |
| Environmental Protection Policies |  |  | EPA website/ State Law Publisher |
| State Environmental Policies |  |  | EPA website |
| Communications between EPA members |  |  | |
| Internal manuals: - Code of Conduct - EPA Members Procedures Manual - EPA Members Meeting Procedures Guide |  |  | On request |

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Appendix III: Form for lodging an application for access to information under the FOI Act

APPLICATION FOR ACCESS TO DOCUMENTS

(Under the *Freedom of Information Act 1992*, s.12)

DETAILS OF APPLICANT

| | |
|---|-----|
| Applicant <i>(Insert full name in capitals)</i> | |
| Name of organisation or individual <i>(If application is on behalf of an organisation or individual)</i> | |
| Address (in Australia) <i>(For receipt of notices under the FOI Act)</i> | |
| Postcode | |
| Telephone | Fax |
| Email | |
| References | |

INSTRUCTIONS:

(See also information on pages 13-19 of the Information Statement)

Clearly describe the documents to which you seek access (you may add more information to this form) so that your request can be dealt with promptly. If your application concerns a large number of documents, please clarify the particular document/s that you seek. If unsure of the documents you require please clarify with officers of the division that best relates.

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DETAILS OF FOI APPLICATION

I am applying for access to document(s) concerning:

| | |
|---|--|
| <p>Subject matter to which your application relates</p> <p><i>(e.g. name of the proposal or scheme, assessment number or report number)</i></p> | |
| <p>Details of specific document/s requested</p> <p><i>(e.g. type of document, name of sender/recipient of document)</i></p> | |
| <p>Date/s or range of dates of document/s requested</p> | |
| <p>Other information to facilitate your application</p> <p><i>(e.g. such as documents that you already have and do not wish to receive)</i></p> | |
| <p>Please delete any "personal information" about third parties from the requested documents</p> <p><i>(e.g. names, home addresses, telephone numbers, email addresses, signatures, in accordance with section 24 of the FOI Act.)</i></p> | <p>YES – I would like personal information of third parties deleted</p> <p>OR</p> <p>NO – I require personal information of third parties</p> <p><i>Strike out whichever is not applicable</i></p> |
| <p>Please delete any "prescribed details" relating to current and former agency officers from the requested documents</p> | <p>YES – prescribed details should be deleted</p> <p>OR</p> <p>NO – I require prescribed details</p> <p><i>Strike out whichever is not applicable</i></p> |
| <p><i>Please note that deleting personal information or prescribed details will result in the OEPA not having to consult with third parties or officers, which may allow for applications to be dealt with faster and may incur lower additional charges.</i></p> | |

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FEES AND CHARGES

The Office only accepts payment by cheque or credit card.

Payment by cheque:

Please attach a cheque (made out to the Office of the Environmental Protection Authority) to the application form for the amount of \$30.00 to cover the application fee.

Payment by credit card: Please fill out the form below

MASTERCARD []

VISA []

CARD NUMBER ____ / ____ / ____ / ____

CARD HOLDER'S NAME _____

ADDRESS _____

CITY _____ POSTCODE _____

COUNTRY _____

EXPIRY DATE __ / __ TOTAL AMOUNT _____

I authorise the Office of the Environmental Protection Authority to debit my credit card with the amount shown above. I certify that I am over 18 years of age.

SIGNATURE _____

I understand that before I have access to documents I **may** have to pay processing charges and that, in this case, I will be supplied with a letter relating to the statement of charges that would be incurred, prior to proceeding with the request.

APPLICANT'S SIGNATURE

Date/...../.....

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NOTES FOR APPLICANTS

- In some instances the OEPA may request proof of your identity.
- Your application will be dealt with as soon as practicable (statutory maximum time limit within 45 days) after it is received. Where necessary a reduction or extension may be negotiated.
- If you are seeking access to a document(s) on behalf of another person, then the OEPA may require written authorisation from the person you represent.

Further information can be obtained from the OEPA's FOI Coordinator (Ph +61 8 6145 0825).

The *Freedom of Information Act 1992* may be purchased from the State Law Publisher (Phone +61 8 9321 7688) or by viewing the electronic copy on the Information Commissioner's website: www.foi.wa.gov.au

Applications should be lodged together with the application fee via the following address:

Office of the Environmental Protection Authority
The FOI Coordinator
Locked Bag 10
East Perth WA 6892

Fees and charges

- Applications seeking personal information or amendment of personal information are free of any fee or charge.
- **The application fee is \$30** for all other applications. If necessary, the OEPA may impose a charge for processing the application. If charges apply, the OEPA will send you a statement of payable charges. Currently, where a processing charge applies, the current breakdown of fees is as follows:
 - \$30.00 /hr of staff time processing charge (if number of pages is greater than 50)
 - \$30.00 /hr of staff time photocopying time (if number of pages is greater than 50)
 - \$ 0.20 /photocopy (if number of pages is greater than 50).

Office of the Environmental Protection Authority
The Atrium, 168 St Georges Terrace, Perth WA 6000
Locked Bag 10, East Perth WA 6892
Tel: +61 8 6145 0800 Fax: +61 8 6145 0895

www.epa.wa.gov.au

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