



**Government  
of South Australia**

Department of the Premier and Cabinet Circular

**PC031 - FREEDOM OF INFORMATION RELEASE  
OF CABINET DOCUMENTS UNDER THE  
TEN YEAR RULE**

**1 October 2009**

Premier and Cabinet Circular

## **PC031 – FREEDOM OF INFORMATION RELEASE OF CABINET DOCUMENTS UNDER THE TEN YEAR RULE**

### **1. Introduction**

This circular sets out the Government’s policy in regard to the release of Cabinet documents under the *Freedom of Information Act 1991* (the FOI Act) after ten years rather than the twenty years currently provided in the Act. This policy is known as “the Ten Year Rule.”

The Objects of the FOI Act are to promote openness and accountability of Ministers and the Government and, amongst other things, facilitate effective participation of members of the public in government decision-making.

The decision by Cabinet that a Ten Year Rule apply to the release of certain Cabinet documents through the Freedom of Information (FOI) process requires Accredited FOI Officers to have regard for this policy when making relevant FOI determinations.

Most governments, based on the Westminster system, have a class exemption for Cabinet documents in their FOI laws. This Cabinet exemption supports the rationale that information prepared for Cabinet should be kept secret to generate full and frank discussion and decision making. This ensures Cabinet decisions are not undermined and protects Cabinet confidentiality and the collective responsibility of Cabinet.

The Cabinet exemption currently includes a time limit provision of 20 years. Section 20 of the FOI Act states “an agency *may* refuse access to a document...if it is an exempt document.” This provides the Accredited FOI Officer the discretion to override a class exemption and provide access to the document where he or she sees fit.

The decision to reduce the Cabinet exemption time limit in South Australia from 20 to 10 years supports a broader Government commitment to improving transparency of government decision-making, which in turn can contribute to better engagement by citizens in policy development.

## **2. Commencement**

This policy came into effect on 1 October 2009.

## **3. Scope**

This policy will apply to all agencies as defined by the FOI Act to the extent that a Premier and Cabinet Circular can apply to those agencies.

## **4. Definitions**

### *Cabinet document*

For the purposes of this policy, a Cabinet document is defined as a:

- Cabinet submission;
- Cabinet note;
- Cabinet Office briefing note to all ministers<sup>1</sup>; or
- Cabinet agenda,

that has been submitted to Cabinet, including the Sub-Committee of Cabinet, whether it has been considered by Cabinet or not.

FOI Officers should note that this definition is more restrictive than the documents included in the exemption in Clause 1 of Schedule 1 of the FOI Act.

## **5. Policy**

### *Ten Year Rule*

This policy provides that a Cabinet document can be considered for release, through the FOI process, if 10 years have passed since the end of the calendar year in which it came into existence.

The Department of the Premier and Cabinet (DPC) is assigned as the agency to deal with all FOI applications under the Ten Year Rule. DPC will process the FOI applications in accordance with the FOI Act, with particular regard for this policy.

### *Other exemption clauses*

When dealing with an FOI application for a Cabinet document under this policy, regard must be given to the provisions of the FOI Act, including other exemption clauses in Schedule 1 of the FOI Act.

Consideration of the other exemption clauses may result in a Cabinet document (or parts thereof) concerning matters such as law

---

<sup>1</sup> These briefing notes were introduced in January 2001 and access to them under this policy will not commence until 1 January 2012

enforcement, public safety, trade secrets, personal information or legal professional privilege, being exempt from disclosure.

All determinations made by the DPC Accredited FOI Officer to grant, restrict or refuse access to a Cabinet document must be made independently and free from any influence.

## **6. The application process**

A person can apply for access to documents held by an agency under section 13 of the FOI Act.

Cabinet Office in DPC holds copies of all Cabinet documents submitted to Cabinet unless they have been transferred to State Records.

An FOI application for access to a Cabinet document, where this policy applies, should be addressed directly to DPC. An application form specific for this purpose is available on the State Records website at [www.archives.sa.gov.au](http://www.archives.sa.gov.au).

A person making an application must include, on the application form, sufficient information to identify the specific Cabinet document. To assist the applicant find that information, lists of all Cabinet submissions relevant to this Ten Year Rule will be made available on [www.sa.gov.au](http://www.sa.gov.au). The public will also be able to view the lists of Cabinet submissions online at one of State Records Research Centres.

Applicants are limited to requesting access to one Cabinet document type per application (eg Cabinet submission, Cabinet note or Cabinet agenda) and must use the Ten Year Rule application form in either the hard copy or electronic format provided for this purpose. An applicant is not limited to how many application forms can be submitted. The purpose for managing applications in this manner is to ensure that all applications are dealt with efficiently.

If more than the 30-day statutory time limit is required to process an FOI application, the DPC Accredited FOI Officer should seek an extension to the time limit from the principal officer, in accordance with section 14A of the FOI.

## **7. Applications made to agencies other than DPC**

Where an FOI application for Cabinet documents under the Ten Year Rule is made directly to an agency other than DPC, the agency should transfer the application to DPC in accordance with section 16(1)(a) of the FOI Act.

All transfers must be dealt with as soon as possible after an application has been received.

## **8. Consultation with third parties**

The consultation provisions in sections 25 to 28 of the FOI Act must be applied where the Cabinet document requested contains information of the type described in these sections (ie documents affecting inter-governmental or local governmental relations; documents affecting personal affairs; documents affecting business affairs; and documents affecting the conduct of research).

Third parties consulted under these sections of the FOI Act must be provided advice on their rights of review and appeal where the DPC Accredited FOI Officer determines that access to the Cabinet document can be granted to the FOI applicant.

## **9. Liaison with other government agencies**

The DPC Accredited FOI Officer should liaise with the agency that prepared the Cabinet document to gain its views on any relevant considerations. Agencies must respond promptly to DPC to ensure access to documents can be determined without unreasonable delays.

If appropriate, a copy of the information determined to be released should be provided to the agency two working days prior to release.

## **10. Fees and charges**

Section 53 of the FOI Act allows an agency to waive, reduce or remit a fee or charge in circumstances other than those provided for in the *Freedom of Information (Fees and Charges) Regulations 2008*, at its discretion.

## **11. Cabinet convention**

There is a convention that access by a current Government to Cabinet documents of a previous government of a different political party is refused and access given only to enable clarification of policy matters or for continuity of administration.

Where access is to be provided to a Cabinet document of a previous government under this policy DPC Accredited FOI Officer should, as a courtesy, advise the Opposition at least two days prior to releasing documents prepared by their administration.

## Further Information

---

Department of the Premier and Cabinet  
FOI Unit  
GPO Box 2343  
ADELAIDE SA 5001  
Phone: (08) 8226 2609  
Email: [DPCFOIUnit@dpc.sa.gov.au](mailto:DPCFOIUnit@dpc.sa.gov.au)  
<http://www.premcab.sa.gov.au/>

State Records of South Australia  
GPO Box 2343  
ADELAIDE SA 5001  
Phone: (08) 8204 8786  
Email: [foi@saugov.sa.gov.au](mailto:foi@saugov.sa.gov.au)  
<https://www.archives.sa.gov.au/>