

DEPARTMENT OF HUMAN SERVICES, VICTORIA

Administrative Release Guidelines, July 2003

Introduction

Documents may be sought for "administrative release", that is, outside the FOI Act or privacy legislation. Most documents suitable for administrative release are those containing information about the person requesting the document. These Guidelines focus on the sorts of documents held by DHS which are likely to be sought by people. Decisions about administrative release should be authorised by the relevant manager. Explanation of the Guidelines is found in a separate document "Administrative Release - Explanation of Guidelines", which may be consulted if required. Other associated documents are "Administrative Release - Example Documents", and the "Release of Documents" form for people requesting information to sign as shown in the Guidelines.

How to work through these questions

These Guidelines take the form of questions which are designed to be taken step by step: start at the beginning and work through until you have decided whether or not to release a document - then the rest of the questions need not be answered. Do not answer the questions in any different order. If you have any concerns do not administratively release any document.

Do not release

If the Guidelines tell you not to administratively release a document you should refer the request to the FOI Unit, Legal Unit, or other areas as specified. It may be that the document can be released by those units.

Identification

The person asking for documents must be a natural person (not a company or business) and identify themselves to DHS. Preferably photo ID is required. If the DHS staff member knows the person requesting, then ID is not necessary. Where a person is representing another person, ID is required of both people.

Consent and representation

Consent and representation issues are dealt with in the questions. In many cases a person can represent another without complication. In some cases the representative may have different interests and they may not be able to obtain documents.

Information and documents

Only documents held by DHS are considered for informal release. In deciding whether to release a document you will need to review the information contained in the document. Documents may be electronic or hardcopy. It is important to

note that documents are different and distinct if they are different versions, or if handwritten notes or amendments have been added.

Information includes names and details of people such as clients, third parties or DHS staff; descriptions of events; facts and opinions; health information; and speculation. If a document may not be released in full, refer the request to the FOI Unit rather than blanking-out information or partially releasing the document.

Release

The form of release may include showing a document or copying a document. In some cases a summary of the document might be appropriate. A confidentiality undertaking is required unless the document is released under questions 1 or 3.

NOTE

These Guidelines will help you to decide whether a document can be released administratively. Each document must be looked at in the circumstances of the request - always refer to your supervisor if unsure. If the Guidelines indicate that release may occur, you may still decide that administrative release is inappropriate. The request may then be referred to the FOI Unit.

WHERE DISCLOSURE MAY TYPICALLY OCCUR

1.0 PUBLIC DOCUMENTS

1.1 Is the document already generally available to the public?

YES - May release document unless it is available for a fee elsewhere (eg land titles, birth certificates)

NO - Go to question 2.1

WHERE PERSON IS NOT ASKING DIRECTLY - SCREENING QUESTIONS

2.0 CONSENT & REPRESENTATION

2.1 **Is the person asking on behalf of, as representative for, or with the consent of somebody else?**

YES - Go to question 2.2

NO, person is asking on their own behalf - Go to question 3

2.2 **Is the person asking with the signed consent of another person?**

YES - Check signature and identification of person whose consent has been obtained, as well as for person requesting documents. Go to question 2.3

NO - Go to question 2.4

2.3 **Is consent lawful, proper, current, and accepted by DHS policy?**

(There is assumed to be no consent where:

- the person is not *informed*,

- the consent has not been given *freely*,
- the person does not have *capacity* (eg intellectual disability; person under 18 unless capacity shown; medical or psychiatric condition or injury), or documents are held in the child protection area, where children cannot consent to any person, including their parents, obtaining documents from DHS)

YES - Go to question 3 (person with consent is a "representative") NO - Go to question 2.4

2.4 Is the person asking able to represent another person or obtain documents about them without their consent? For example is there:

- a Guardianship Order,
- an Administration Order,
- DHS responsibility under law for the welfare of the other person,
- the authority of the Chief Psychiatrist (in the case of mental health issues), or a request by State Trustees, an executor, or next of kin in relation to a deceased person¹.

¹ Next of kin relationship is set out in the "Administrative Release - Explanation of Guidelines" document. Evidence of death and relationship or status of person requesting is required.

3.3.1

3.2

YES - Check signature and identification of person with authority, as well as for person requesting documents where applicable. Go to question 3 (person able to represent or obtain documents is a "representative")

NO - Do not release document, refer request to FOI Unit.

WHERE DISCLOSURE MAY TYPICALLY OCCUR NON-PUBLIC DOCUMENTS - TYPICAL RELEASE

Did the person asking² originally give the document to DHS³?

YES - May release document (unless any q5.4 or q5.7 concerns, go to 3.2) (If you release a document to a representative have them *sign the attached Release of Information form.*)

NO - Go to 3.2

Was the document previously given to the person now asking for it⁴?

YES - May release document (UNLESS any q5.4 or 5.7 concerns, in which case

go to q3.3 and, UNLESS the document is a child protection notification (in which case, go to q4). If you release a document to a representative, they must *sign the attached Release of Information form.*)

NO - Go to question 3.3

² Person asking in questions 3-5 means asking directly or through a representative recognised under question 2, unless there is a reason why the representative should not see the document.

³ Consider unaltered documents only. Alterations should be considered separately.

⁴ If the document was previously given to the person asking, this is only relevant if it was given to them lawfully and not by mistake.

3.3 Does the document record an event or plan in which the person asking has participated or has a valid⁵ interest and where it is expected that the person would have access to the document⁶?

(eg Disability General Service Plan, minutes of meetings, notes of interviews, telephone calls, many HR records)

YES - May release document (UNLESS any q5.4, 5.6, 5.7 concerns and, UNLESS the document is a child protection notification, in which case go to q4). If you release a document to a person under q3.3, they must *sign the attached Release of Information form*.

NO - Go to question 3.4

3.4

Is the request by or on behalf of a person who wants a document about them to be released to a registered general practitioner, psychologist, or psychiatrist, in circumstances where release to the person themselves would involve a risk to someone's health or well-being?

YES - Release document only to registered general practitioner or psychologist or psychiatrist with *signing of the attached Release of Information form*.

NO - Go to question 3.5

3.5

Is release required by the Public Advocate?⁷

YES - Release document.

NO - Go to question 4

⁵ A person has a valid interest where the person would be acting in the best interests of a DHS client, the person the documents are about, or the participants in the plan or event. In a child protection matter any person about

whom allegations have been made should not be given documents under this question.

⁶ Consider unaltered documents only. Alterations should be considered separately.

⁷ See section 15 *Guardianship and Administration Act 1986*.

FACTORS PREVENTING DISCLOSURE

4. Does any law prevent access (mainly secrecy provisions)? In particular, does the document refer to:

- (i) Adoption
- (ii) Child protection notification
- (iii) Criminal allegations or matters
- (iv) Infectious diseases as listed in the *Health (Infectious Diseases)*

Regulations eg AIDS or hepatitis

- (v) Residential Tenancy matters
- (vi) Building inspections
- (vii) Food inspections or investigations
- (viii) Community visitor activities, information collected about intellectually disabled persons
- (ix) Accident Compensation or WorkCover matters
- (x) Whistleblower disclosures (improper conduct in a public authority)
- (xi) Panel, Tribunal, Board or court proceedings, witness protection
- (xii) Any other known secrecy provision⁸

YES - to any of the above - Do not release the document, or release it only in accordance with the relevant Act. If the document refers to an adoption refer the request to the Adoption Information Service. If in doubt, refer request to FOI Unit.

NO - Go to question 5

⁸ For further secrecy provisions, see DHS Information Privacy list of "Legislative

Provisions that impact on the Department, its Service Providers and its Clients". Note: privacy laws are dealt with in other questions in these Guidelines.

5. 5.1

5.2 5.3 5.4 5.5

5.6

5.7 5.8

Are there any concerns about releasing the document? That is:

Does the document contain information about people or businesses *other* than the person asking for the document or their business (and other than employees named in the course of their work)? (if document can be released under q1 or q3 this question does not apply.)

Was the document arguably given to DHS in confidence? (eg stamped with the word "confidential", or it is otherwise clear in the circumstances that the author does not expect it to be released. **Complaints**, criticisms or "dob-ins" are examples of the latter.)

Is the document "confidential" to DHS? (eg internal working documents, cabinet documents, sensitive file notes, documents from other government departments or agencies, draft documents, sensitive or high level policy documents.)

Would releasing the document involve a risk to the health or well-being of any person, including DHS staff? (eg child protection concerns, or where a psychiatric condition is involved which may be aggravated by the release.)

Does the document relate to legal advice for DHS or communications with lawyers, a legal dispute, current or likely litigation, or legal negotiations?
Is the document defamatory?

Is there a conflict of interest between a representative (see q2) and the person they represent?

Are there any other concerns about release?

YES to any of the above - Do not release document - refer request to FOI Unit
NO to all of the above - Assuming no other grounds exist for refusing release, may release document *on signing of the attached Release of Information form.*