

## Release of information

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## 1 BACKGROUND

Energy Safe Victoria is established under the [Energy Safe Victoria Act 2005](#) as the technical safety regulator of gas, electricity and pipelines in Victoria.

Members of the public often ask ESV provide information and documents. The FOI Act is a legal mechanism for obtaining access to documents in ESV's possession. On occasions it is appropriate or necessary for ESV to provide information and documents outside of the FOI framework.

## 2 SCOPE

This document explains the circumstances in which ESV may disclose, or be required to disclose, information and documents even if a formal FOI request has not been made.

This document also sets out information on:

- procedures and requirements for making a valid FOI request;
- documents that are exempt from disclosure under FOI;
- FOI access charges;
- FOI review and appeal rights.

## 3 DEFINITIONS

The following table lists key terms and acronyms used in this document and explains their meaning.

Term	Definition
COES	Certificate of Electrical Safety
ESV	Energy Safe Victoria
FOI	freedom of information
FOI Act	<i>Freedom of Information Act 1982 (Vic)</i>
VCAT	Victorian Civil and Administrative Tribunal

## 4 RELEASE OF INFORMATION OUTSIDE OF FOI

### 4.1 Introduction

This section describes the circumstances in which ESV:

- may release routine information;
- must disclose information -

without an FOI request being made.

### 4.2 When and to whom will ESV release information?

ESV will release routine information to an enquirer without requiring an FOI request. ESV considers release of information to be routine in the following circumstances:

- information or documents relating to the person or entity making the request.  
*Example: a person who suffers injury or whose property is damaged in a gas or electrical incident requests a copy of ESV's investigation report for a legal or insurance claim.*
- a document containing only the personal information of the individual requesting that information.  
*Example: licence information requested by the licence-holder.*
- searches of ESV's cathodic protection database relating to the location of cathodic protection systems.

### 4.3 Terms on which ESV will release routine information

All requests for release of routine information must be in writing. ESV will endeavour to respond to such requests within 30 days after receiving the request. Responses to urgent requests will be expedited wherever possible.

ESV will generally provide routine information free of charge unless substantial search time would be required or it is likely that ESV would incur cost in providing access to documents. In these circumstances an FOI request would need to be made.

For privacy reasons, any information that identifies or relates to third party individuals will be removed from documents prior to release, unless the individual(s) concerned have consented to being identified. However, in certain circumstances ESV considers that it is reasonable to disclose the personal information of a third party without obtaining their explicit consent. These circumstances include making available copies of Certificates of Electrical Safety to certain persons on request. Click [HERE](#) for more information on how to request a copy of a COES. Alternatively, please copy and paste the following link into your web browser:

<http://www.esv.vic.gov.au/licensing-coes/certificates-of-electrical-safety/coes-for-consumers/>

ESV complies with the Information Privacy Principles in the Victorian *Privacy and Data Protection Act 2014* when disclosing personal information.

### 4.4 Requirement to disclose information - statutory notices and subpoenas

From time to time ESV receives subpoenas and statutory notices from other government agencies compelling the production of specified information or documents.

ESV complies with statutory notices and subpoenas unless the required information is privileged or there are proper grounds for objecting to production. Personal information in documents that are required to be produced under a notice or subpoena is not privileged and must be disclosed.

Notices and subpoenas may be served on ESV as follows:

The Proper Officer  
Energy Safe Victoria  
Level 5, Building 2  
4 Riverside Quay  
SOUTHBANK VIC 3006

ESV waives conduct money in relation to service of subpoenas.

## 5 ACCESSING DOCUMENTS UNDER FOI

### 5.1 Introduction

The FOI Act creates a general, enforceable right of access to government information in documentary form. The FOI Act applies to documents of agencies and official documents of Ministers. ESV is an agency that is subject to the FOI Act.

Any person may seek access to documents in the possession of ESV by making a request in accordance with the legislation.

This section describes:

- procedures for how to make a valid request to ESV for access to documents under FOI;
- documents that are exempt from disclosure under FOI; and
- FOI review and appeal rights.

### 5.2 How to make a valid FOI request to Energy Safe Victoria

A member of the public can make a written request under the FOI Act for access to documents in the possession of ESV. Please click [here](#) for information on how to make a valid request to ESV and advice regarding the current FOI application fee.

Alternatively, copy and paste the following link into your web browser:

<http://www.esv.vic.gov.au/about-esv/contact-us/make-a-freedom-of-information-request-foi/>

After receiving a valid request, ESV is required to make a decision and to notify the applicant of a decision in accordance with the FOI Act.

The applicant is not required to state why the request is being made, although the applicant may choose to do so.

### 5.3 How long does it take to process a request?

The FOI Act requires ESV to take reasonable steps to notify an FOI applicant of a decision regarding their request within 30 days of ESV receiving a valid request. Longer timeframes apply if ESV is required to consult before making a decision or if the applicant agrees.

### 5.4 Who makes FOI decisions at ESV?

FOI requests are processed and decided by ESV officers who have been authorised by the Director of Energy Safety to make decisions under the FOI Act.

### 5.5 How is access to documents given under FOI?

Documents may be accessed under FOI in various forms. An applicant can inspect documents at an ESV office and/or request ESV to provide copies of documents.

If ESV is requested to provide copies of relevant documents and ESV decides to release the documents, copies will be provided under cover of a decision letter. If the documents to be released are voluminous or large, ESV may choose to make the documents available electronically on disk or USB drive or via an online data room.

## **5.6 Access charges**

In addition to the application fee, ESV may charge a fee for time spent in searching for documents to which access is requested under FOI. ESV does not generally impose a charge for searching for documents but may do so where the scope of the request is broad and substantial time is required to identify and locate relevant documents.

The amount chargeable for search time is prescribed in the Freedom of Information (Access Charges) Regulations 2014.

Charges may also be made for ESV's reasonable costs of supplying copies of documents (where 'hard' copies are requested), making arrangements for inspecting documents or providing a written transcript of a recording.

ESV will consult with an applicant where it is likely that an access charge will be imposed.

## **5.7 Waiver of charges**

ESV will waive or reduce the application fee and access charges where the applicant holds a current Centrelink Health Care Card or Pensioner Concession Card, or a current Pensioner Concession Card issued by the Department of Veterans Affairs.

A photocopy of the relevant card must be produced.

## **5.8 Exempt documents**

The right to obtain documents under FOI is not absolute. Under the FOI Act, ESV may decide that documents, or parts of documents, are exempt from disclosure under FOI. Part IV of the FOI Act sets out the categories of documents that are exempt from disclosure.

Common grounds for exempting documents or parts of documents include the protection of personal information and sensitive commercial information. If only part of a document is exempt, generally the exempt information will be removed and an appropriately redacted version of the document will be released.

ESV may be required to consult with third parties before making a decision as to whether or not a document is exempt from disclosure. If a decision is made to release a document contrary to the third party's wishes, that person is entitled to apply for review of the decision.

If ESV decides not to release a document or part of a document, the FOI applicant has the right to apply for review.

## **5.9 Review of FOI decisions**

If an FOI applicant is dissatisfied with an ESV decision to refuse access to documents, the applicant may apply to the Victorian Information Commissioner for review of the decision within 28 days after the day on which notice of the decision is given.

## **5.10 Review by VCAT**

A person can apply to VCAT for review of an ESV decision to disclose under FOI –

- (a) a document containing that person's personal information, or
- (b) in the case of information acquired by ESV from a business or a company, a document relating to matters of a business, commercial or financial nature the

disclosure of which would expose the business or company unreasonably to disadvantage, or

(c) information communicated in confidence by the person to ESV.

Any such application to VCAT is required to be made within 60 days from the day on which notice of the ESV decision is given to the person. There is no right to VCAT review if the person or business concerned has consented to disclosure.

### 5.11 What happens if ESV does not make a decision within the required time?

Where the period for notification of a decision on the request has elapsed without notice of a decision having been received, ESV is deemed to have made a decision refusing access to the relevant document/s.

In this case, the FOI applicant has 60 days from the deemed date of refusal to apply to VCAT for review of the decision.

## 6 REFERENCES AND RELATED DOCUMENTS

Title
<i>Freedom of Information Act 1982 (Vic)</i>
Freedom of Information (Access Charges) Regulations 2014
<i>Privacy and Data Protection Act 2014 (Vic)</i>

## 7 CONTACT INFORMATION

### Office of the Victorian Information Commissioner

PO Box 24274  
Melbourne Vic 3001

Tel: 1300 00 6842 (1300 00 OVIC)  
Email: [enquiries@foiccommissioner.vic.gov.au](mailto:enquiries@foiccommissioner.vic.gov.au)

### Victorian Civil and Administrative Tribunal

55 King Street  
Melbourne Vic 3000

GPO Box 5408  
Melbourne Vic 3001

Tel: 1300 01 8228  
Email: [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)  
Web: [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)