



NATIONAL LIBRARY OF AUSTRALIA

The Freedom of Information Act

Accountability & Reform Branch

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The Freedom of Information Act

PURPOSE

The aim of this Circular is to raise awareness of Library staff to the operation of the Freedom of Information (FOI) Act. It brings to staff's attention instructions from the Attorney-General's Department, which though aimed at members of the public, are useful in understanding the application of the Act.

BACKGROUND

The FOI Act came into effect on 1 December 1982. It extends the right of every person to access information in the possession of the Government of the Commonwealth. The Library is subject to the Act and its principles match our views on the broadest free flow of information.

Access to information is undertaken in two ways. The Act:

- requires Commonwealth agencies to publish information about their operations and powers affecting members of the public as well as their manuals and other documents used in making decisions and recommendations affecting the public (the Library provides this information annually to Australian Archives); and
- requires agencies to provide access to documents in their possession unless the document is within an exception or exemption specified in the legislation.

Access to all documents in the possession of the Government is not possible as confidentiality must be maintained where it is necessary for the protection of essential public interests and the private and business affairs of persons and organisations.

DEFINITION OF "DOCUMENT"

The Act defines a "document" as any of, or any part of, the following things:

- (i) any paper or other material on which there is writing;
- (ii) a map, plan, drawing or photograph;
- (iii) any paper or material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
- (v) any article on which information has been stored or recorded, either mechanically or electronically;
- (vi) any other record of information.

Copies, reproductions or duplicates are also covered by this definition. The documents to which the Act refers are any in the possession of the Library, whether created by us or

another agency. Excluded from consideration is library material maintained for reference purposes or Cabinet notebooks.

APPLICATION OF THE ACT

Over page is a copy of a pamphlet prepared by Attorney-General's Department concerning the operation of the FOI Act and the charges associated with making a request. It utilises "Plain English" principles and is self-explanatory.

In the Library, the FOI Contact Officer is the person filling the position of Assistant Director, Office and Legal Support. Procedures for handling requests are regulated by the legislation. All formal FOI requests by the public should be directed in the first instance to this position.

Freedom of Information ACT

What are my rights under the Freedom of Information Act

Briefly, the FOI Act gives you the legal right to:

see documents (including those containing personal information about yourself) held by Commonwealth Ministers, their Departments and some statutory authorities. In this pamphlet these bodies are called agencies;

see documents held by a non-government agency if the agency is accredited by the Employment Services Regulatory Authority for the purpose of assisting persons to find employment (this is limited to services and functions performed by the agency in accordance with its accredited purpose);

ask for information concerning you to be changed, if it is incomplete, out of date, incorrect or misleading;

appeal against a decision not to grant access to a document or amend or annotate a personal record.

The FOI Act also requires agencies to make available detailed information about the:

- way they are organised;
- functions they have;
- kinds of decisions they make;
- arrangements they have for public involvement in their work;
- documents they hold and how you can see them;
- rules and practices which are used in making decisions which affect you.

You can look at and, if you wish, buy copies of manuals and guidelines which agencies use in making decisions which affect you.

For more information on how you can see these documents talk to the FOI Contact Officer in the relevant agency.

Employees and former employees of agencies

If you are an employee or former employee of an agency which has established procedures to allow employees or former employees access to their own personnel records and you wish to see your own personnel records you must first use those procedures.

If you are dissatisfied with the result of using those procedures or you are not notified within 30 days of the outcome of the request for your records you may then make a request under the FOI Act.

What other documents may I see?

The Act gives you a right to see:

- documents, no matter how old, containing personal information about yourself;
- documents, no older than 1 December 1977, relating to anything else (they can be older if you need them to understand another document you already have).

Documents include files, reports, computer printouts, tapes or disks, maps plans, photographs, microfiche, tape recordings, films or videotapes.

Documents held by State and Australian Capital Territory agencies

The States and the Australian Capital Territory have their own FOI legislation. Requests for documents held by State or Australian Capital Territory agencies should be directed to the appropriate State or Australian Capital Territory authority.

Police services in the Australian Capital Territory are provided by the Australian Federal Police. Inquiries concerning documents held by the police in the Australian Capital Territory should be directed to the Australian Federal Police.

How do I make an FOI request?

Identify the document you want and which agency has it. (Government agencies have special FOI officers who can assist you in making your request.)

Write the request. (Some agencies have special forms for this—a sample form is attached to this pamphlet but you do not have to use it. You can also just write a letter.)

Give an address in Australia at which notices under the FOI Act may be sent to you.

Give as much information as you can about the document you want (for example, give a file number, a reference to a newspaper report about it or describe the subject matter in which you are interested).

Enclose the \$30.00 application fee (in certain instances the fee is not required or can be remitted—see below).

Post or deliver your request to the agency. You find its address by using the current telephone directory.

What must an agency do when it gets my request?

Tell you within 14 days that it has received the request.

Deal with it as soon as possible.

Talk to you about any difficulties in dealing with it.

As soon as possible give you an estimate of the charges if any are applicable (see below).

Within 30 days tell you the decision on giving you access. (Where an agency has to consult a third party, the agency may extend the time in which it is required to tell you its decision by another 30 days. Consultation is usually necessary where the document contains information about the third party.)

How much will it cost me?

Application fees

There is an application fee of \$30 for FOI requests.

There is a separate application fee of \$40 for internal review of a decision.

Processing charges

The charge for locating documents is \$15 per hour.

The charge for agencies' decision—making and consultation time is \$20 per hour.

There are charges in relation to the provision of access (e.g. 10c per photocopy, \$6.25 per half hour supervised inspection and special rates for special services such as tape transcription or computer output).

Requests for personal information may incur a maximum charge of 2 hours for locating documents and a further 2 hours for decision making time. However, full rates for the provision of access apply.

Exemption and remission

Fees or charges are generally not payable in respect of requests for access to personal income maintenance documents (e.g. pensions, unemployment benefits, student allowances).

Remission of fees can be sought having regard to, amongst other factors, financial hardship or public interest.

Agencies cannot impose a charge without first consulting you about the amount of the charge, your ability to pay the charge in full or at a reduced rate or whether there is a public interest in you being given access to the documents.

Deposits

Where an estimated charge exceeds \$25 a deposit may be required. Where a deposit has been sought or a charge imposed no further action need be taken by the agency until payment is received.

How will the documents be given to me?

The agency can let you see the documents, or give you a copy. In some cases another form may be more appropriate (e.g listening to a tape recording).

If copies are not sent to you, the agency will let you know how, when and where you can see them. This may be at the agency's office, the Australian Archives Information Access Office nearest to where you live, or another Commonwealth agency's office nearest to where you live.

Should you have a preference, say so when making your FOI request. Generally you will be given access in that form.

Special procedures may apply if you want to see information which concerns your physical or mental health:

- the Minister or head of the agency concerned may decide to give it to an appropriate health care worker, social worker or marriage guidance counsellor (here called a "qualified person") of your choice rather than to you directly;
- this can be done where the Minister or head of the agency thinks that giving it to you directly might prejudice your physical or mental health or well-being;
- you can appeal against the decision to give it to a qualified person rather than to you directly, but what that person tells you or shows you is a matter for his or her judgement.

Can I see all official documents?

No. The Act sets out certain types of documents which you may not be able to see (called exempt documents). These types of documents are those which the Parliament believes should normally be kept confidential to protect essential public interests or the private or business affairs of others.

If an agency decides not to give access to the document you asked for, it must identify the documents withheld, give you written reasons for the decision and advise you of your rights of appeal.

In most cases an FOI request will be refused where it would lead to an unreasonable disclosure of someone else's personal information.

Where you want to see documents containing your own personal information, the agency may ask to see some proof of your identity.

Can I have document about me corrected?

Yes, providing you have had lawful access to the documents and they have been or are being used by the agency concerned for an administrative purpose.

If after seeing your documents you believe the information they contain to be incomplete, incorrect, out of date or misleading, you have a legal right to ask that it be corrected, if one of these grounds is established.

You can ask for corrections to be made by amending the record or adding an appropriate annotation, or both.

Companies, incorporated associations and the like are not entitled to have records about their affairs corrected under the Act.

How do I ask for correction of documents about me?

Simply write and ask. No application fee applies.

Identify what information is incomplete, incorrect, out of date or misleading.

Explain with as much detail as possible:

—what the facts are and what evidence there is to support them;

—what changes you want made.

Post or deliver your request to the agency which gave you access to your file or documents. Give your address for correspondence.

What must the agency do when it gets my request for amendment of personal records?

The agency must deal with your request as soon as practicable and tell you within 30 days what it has decided.

If it decides not to make the changes you asked for (or decides to make different ones), it must tell you why and advise you of your rights of appeal.

What FOI decisions can I appeal against?

Decisions not letting you see what you want when you want, in the form you want, or at all.

Decisions relating to remission of an application fee.

Decisions imposing a charge to see what you want.

Decisions in respect of the amount of the charge imposed upon you.

Decisions refusing to change or annotate documents about you which you think are incomplete, incorrect, out of date or misleading.

Decisions letting others see documents which you say would unreasonably disclose:

- your personal information;
- your lawful business or professional affairs)
- lawful business, commercial or financial affairs of your firm.

Decisions to give you access to documents about your physical or mental health through a qualified person and not directly to you.

What kinds of appeal do I have?

You can:

- require the agency to reconsider its decision ("internal review");
- seek an independent review of the decision by the Administrative Appeals Tribunal ("AAT review");
- complain to the Commonwealth Ombudsman about the agency's decision or action ('Ombudsman review').

You also have a legal right to appeal if the agency does not tell you what decisions have been made on your request or delays telling you.

Internal Review

You can ask the agency to reconsider its decision as long as it was not made by the Minister or agency head concerned.

Generally, you must apply for internal review within 30 days of being told of the decision, but you can ask for extra time.

Simply write to the agency, enclosing the \$40 application fee, and ask for internal review—some agencies have a special form, but you can just write if you prefer. It will help if you say why you think the decision should be changed or what aspects of the decision are of concern to you.

Someone other than the person who made the first decision will then make a fresh decision.

You will be given the new decision within 30 days and written reasons if access or amendment is refused.

You can then appeal to the AAT or complain to the Ombudsman if still dissatisfied with the decision given.

AAT review

The AAT is an independent body responsible for reviewing administrative decisions by agencies. It decides whether the decision made on your FOI request was right.

In almost all cases, the AAT can change the agency's decision.

In special cases where a conclusive certificate has been issued, the AAT can only determine whether reasonable grounds exist for certain claims made in the certificate. It is then up to the Minister to decide whether access should be given.

You can appeal to the AAT if:

- your request was originally decided by a Minister or agency head;
- you are unhappy with an internal review decision;
- there has been agency delay (see "What about delays?" below).

The AAT will tell you when and where your case will be heard, who will be there, what will happen, what you should bring with you, what happens at the end of the hearing and other things you should know.

Generally, you must apply for AAT review within 60 days of being told the decision and enclose a \$368 application fee. (If your application is against another person being given access to documents containing information about you, you must apply within 30 days.)

You cannot appeal to the AAT if:

- internal review was possible, but you did not ask for it (unless you are appealing against another person being given access to documents containing information about you);
- you have complained to the Ombudsman, but have not yet received the Ombudsman's report.

If you think the AAT has made a mistake of law in its decision you can appeal to the Federal Court.

Ombudsman review

The Commonwealth Ombudsman has power to investigate agency actions under the FOI Act, including decisions, delays, and refusal or failure to act.

The Ombudsman can review FOI decisions to make sure they were made in a fair and proper way. The Ombudsman can't change the decision, but can recommend that this be done.

Before complaining to the Ombudsman, first try to solve your problem with the agency. Get in touch with the FOI Contact Officer in the agency. Explain your point of view clearly and ask for the action or decision concerned to be reconsidered. The Ombudsman usually won't investigate until internal review has occurred.

If you complain to the Ombudsman, you can't appeal to the AAT until you have received the Ombudsman's report on your complaint.

Judicial review

As well as hearing appeals from the AAT, the Federal Court can review the original decision concerning an FOI request but it usually won't do so if you could appeal to the AAT first.

In this process, called judicial review, the Court decides whether the decision or action taken by the agency was lawful. If it decides it was not, the agency usually makes a new decision taking account of any directions by the Court.

However, the Court can't change the decision as the AAT can. Because the procedures may be complex and could be very expensive, you should not take an appeal to the Court or seek judicial review without first getting legal advice.

What about delays?

Agencies must tell you their decision within:

- 30 days, in the case of a request to see a document;
- 30 days, in the case of a request to amend personal records about you;
- 30 days, in the case of a request for internal review;
- 30 days, where you have lodged a contention that a charge should be reduced, or not imposed, or that an application fee should be remitted.

If they do not, you can appeal to the AAT. In some circumstances an extension of time can be claimed by the agency, so it is advisable to check with it before lodging an appeal.

The FOI Contact Officer should advise you of likely delays which may occur in processing your request.

What will it cost me to appeal

No fees are payable for Ombudsman review.

You will have to pay for your own legal representation (unless you represent yourself), witnesses expenses, and other costs connected with your AAT or Federal Court case unless:

- you are given legal aid; or
- your case is successful and the Commonwealth pays them by order of the Federal Court or recommendation of the AAT.

If your AAT case is unsuccessful, you won't have to pay the agency's costs (but you may have to if your Federal Court case is unsuccessful).

Further Information

For detailed information on FOI matters in Government agencies **SPEAK FIRST TO THE AGENCY'S FOI CONTACT OFFICER** In most cases, you will be able to get in touch through the agency's office nearest to where you live. You can find the address and telephone number in the telephone directory.

If you still have queries after approaching a Government agency or do not receive adequate assistance from a non—government agency, you can also write to

Attorney—General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

For further information about complaining to the Commonwealth Ombudsman or seeking AAT review, get in touch with the Ombudsman's representative or AAT Registry in your nearest capital city. The addresses and telephone numbers are in the telephone directory.

Sample application form

**APPLICATION FOR DOCUMENTS UNDER THE COMMONWEALTH
FREEDOM OF INFORMATION ACT 1982**

Send to the address of the central or regional office of the agency or Minister in the current telephone directory.

You do not have to use this form. A letter containing the same information will do.

Name of agency or Minister

.....

Name of applicant

.....

Your address in Australia to which notices under the Act should be sent

.....

Telephone number of

applicant.....(W).....(H)

Fax number of applicant

(The Freedom of Information Act 1982 does not require an applicant to supply a telephone or fax number but doing so will make it easier for an agency to consult you about your application.)

I am applying for the following document/s. (Give as much information as you can about the document/s, for example the file number or date of the document/s if you have them or describe as accurately as you can what the contents of the document/s may be.)

.....

.....

.....

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.....(If the space is insufficient attach a separate sheet.)

I enclose the \$30 application fee/ I am applying for remission of the application fee on the following grounds

.....

Signature of applicant..... Date