



## **FREEDOM OF INFORMATION (FOI) ACT 1989 INFORMATION SHEET**

### ***What are my rights under the ACT Freedom of Information Act?***

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

- See documents (including those about your personal affairs) held by ACT Ministers, their Departments and some statutory authorities. In this pamphlet these bodies are called agencies.
- Ask for information concerning you to be changed if it is incomplete, out of date, incorrect or misleading.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 notate a personal record.

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

- way they are organised
- functions they administer
- 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 (or parts thereof) 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 officer in the department you think might deal with your request or make an appointment to discuss your request.

### ***What other documents can I see?***

- The Act gives you a right to see:
  - documents, no matter how old, relating to your personal affairs; and
  - documents created after 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, maps, plans, photographs, tape recordings, films or videotapes.

### ***Prior to lodging an FOI request.***

Before making a request for access to documents you should first approach the Department concerned. Many documents, particularly if they relate to your personal affairs, may be given to you direct without the need to request them under the FOI Act.

Sometimes the documents you are seeking may be available to you upon payment of a fee. If that is the case you cannot obtain the documents through the Freedom of Information Act.

### ***How do I make an FOI request?***

- Identify the document(s) you want. Each Department has FOI officers who can assist you in making your request.
- You can write a letter or fill in the form which is available from the relevant Department requesting the documents (please remember to mention that you wish to apply for access under the FOI Act).
- Give as much information as you can about the document you want (for example, give a file number, the date the documents were created, or describe in detail the subject matter in which you are interested).
- Supply a contact telephone number.
- Post your request to the following address:

**The Chief Executive  
Territory and Municipal Services  
GPO Box 158  
CANBERRA ACT 2601**

**Attention: Freedom of Information Officer**

or deliver it to:

**The FOI Coordinator  
Office of the Chief Executive  
Level 5, Macarthur House  
12 Wattle Street Lyneham  
CANBERRA ACT 2601**

### ***What must the Department 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.
- Within 30 days tell you the decision on giving you access.

### ***How much will it cost me?***

#### **Application Fees**

- There is no longer an application fee for FOI requests.

#### **Processing charges**

- Processing charges may apply for large requests, in order to avoid any charges please consult with the FOI Officer to be sure that you are requesting only the documents you really need.

## **Remissions**

- Remission of processing charges can be sought on the grounds of personal affairs, financial hardship or public interest.

## **Deposits**

- Where an estimated charge exceeds \$100 a 25% deposit may be required. Where a deposit has been sought or a charge notified no further action need be taken, nor access given, until payment is received. Once paid, a deposit is not refunded if you choose not to pursue the matter to finality.

## ***How will the documents be given to me?***

- The Department can let you see the documents, or give you a copy. In some cases another form may be more appropriate (eg. listening to a tape recording). If copies are not sent to you, the Department will let you know how, when and where you can see them. This may be at the office in Civic or an ACT Government Service district office nearest to where you live.
- Should you have a preference, say so when making your FOI application. Generally you will be given access in the form requested.
- 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 the information to a doctor of your choice rather than to you directly
  - this can only 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 your doctor rather than you directly, but what your doctor tells you or shows you is a matter for his/her judgment.

## ***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). Exemptions are generally used to protect essential public interests, confidential matters or the private or business affairs of others.
- In most cases where an FOI request would lead to an unreasonable disclosure of someone else's personal affairs, it will be refused.
- If a request would unreasonably divert an agency's resources from its normal functions access may be refused.
- Where you want to see documents containing information about your own personal affairs, the Department may ask to see some proof of your identity.
- If an agency decides not to give you access to the document you asked for, it must give you written reasons for the decision and advise you of your rights of appeal.

## ***Deletions***

- It is important to understand that the Act provides for the granting of access to documents which contain deletions. If, for instance, documents contain any identifying information in relation to a person other than the applicant, this material may be deleted from the documentation.

## ***Can I have documents concerning me corrected?***

- Yes, providing you are an Australian citizen or are permanently resident in Australia and access was provided to those documents under the FOI Act.
- 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 correction to be made by altering the record, 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 concerning me?***

- Once you have obtained access to those documents under the FOI Act:
  - 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 relevant Department. Give your address for correspondence.

## ***What must the Department do when it gets my request for amendment of personal records?***

- The Department must deal with your request as soon as practicable and tell you within 30 days what the relevant agency has decided.
- If the agency decides not to make the changes you asked for (or decides to make different ones), the Department must ensure that you are advised of the reasons and notify you of your rights of appeal.

## ***What FOI decisions can I appeal against?***

- Decisions preventing you from seeing what you want when you want, in the form you want, or at all.
- Decisions imposing a charge to see what you want (but not decisions refusing remission of application fees).
- Decisions refusing to change or notate 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 your doctor and not directly to you.

### ***What kinds of appeal do I have?***

- If you are dissatisfied with the information supplied you can:
  - require the agency to reconsider its decision (this is known as "internal review")
  - if you are still not satisfied after the agency has conducted an internal review, you can then seek an independent review of the decision by the ACT Civil and Administrative Tribunal ("ACAT review")
  - complain to the 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 informing 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 28 days of being told of the decision, but you can ask for extra time.
- Simply write to the Department at the above address and ask for an internal review.
- The fee may be remitted in some cases, eg. where the matter concerns your personal affairs.
- 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, in a position senior to the person who made the first decision, will then make a fresh decision.
- You will be given the new decision within 14 days and written reasons if access or amendment is refused.
- You can then appeal to the ACAT or complain to the Ombudsman if still dissatisfied with the decision given.

### ***ACAT review***

- The ACAT is an independent body responsible for reviewing administrative decisions by agencies. It decides whether the decision made on your FOI request was correct.
- The ACAT has the capacity to change the agency's decision in almost all cases.
- In special cases where a conclusive certificate has been issued, the ACAT 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 ACAT 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 ACAT 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 ACAT review within 60 days of being told the decision and enclose the relevant application fee. Further information about the ACAT, including the current application fee, can be obtained from:

**The President  
 ACT Civil and Administrative Tribunal  
 GPO Box 9955  
 CANBERRA ACT 2601  
 Phone: 243 4611**

- You **cannot** appeal to the ACAT if:
  - an internal review was possible but you did not ask for it
  - you have complained to the Ombudsman but have not yet received his report.
- If you think the ACAT has made a mistake of law in its decision you can appeal to the ACT Supreme Court.

### ***Ombudsman review***

- The ACT Ombudsman has the 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 ensure they were made in a fair and proper way. The Ombudsman can't substitute a decision, but can recommend that the original decision be changed.
- Before complaining to the Ombudsman, first try to resolve your problem by discussing it with the Department.
- Explain your point of view clearly and ask for the action or decision concerned to be reconsidered. The Ombudsman usually prefers applicants to seek an internal review before complaining about a decision.
- If you complain to the Ombudsman, you can't appeal to the ACAT until you have received the Ombudsman's report on your complaint. Please write to:

**ACT Ombudsman  
 GPO Box 442  
 CANBERRA ACT 2601  
 Phone: 276 0111**

### ***What about delays?***

- The Department must tell you an agency's decision within:
  - 30 days in the case of a request to see a document
  - 30 days in the case of a request to amend your personal records
  - 14 days in the case of a request for an internal review.
- If the Department does not respond within the time limit you can appeal to the ACAT. In some circumstances an extension of time can be claimed by the Office, so it is advisable to check with it before lodging an appeal.

### ***What will it cost me to appeal?***

- No fees are payable for Ombudsman review.
- You will have to pay for your legal representation (unless you represent yourself), witnesses expenses and other costs connected with your ACAT or Supreme Court case, unless you request and receive legal aid.

### ***Legal Aid***

- The ACT Legal Aid Office can give you legal or financial assistance with your ACAT or Supreme Court cases if you meet certain guidelines.
- If you want to discuss your case or other information about ACT Government, legal or financial assistance for your case, please contact the Legal Aid Office on 6243 3411.

### ***Further Information***

- For further information, please contact the Department's Freedom of Information Officer on Ph: (02) 6207 5672 or Facsimile: (02) 6207 6229.