



ACT
Government

Chief Minister and Cabinet

FREEDOM OF INFORMATION (FOI) 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 Directorates and some statutory authorities;
- ask for information concerning you to be changed if it is incomplete, out of date, incorrect or misleading; and
- appeal against a decision not to grant access to a document or amend or notate a personal record.

The FOI Act also requires Directorates 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; and
- rules and practices which are used in making decisions which affect you.

You can look at and, if appropriate, buy copies of manuals (or parts thereof) and guidelines which Directorates use in making decisions which affect you.

For more information on how you can see these documents talk to the Directorate's FOI Coordinator who will deal with your request or make an appointment to discuss your request.

The FOI Coordinator
Chief Minister and Cabinet Directorate
Phone: +61 2 620 50238

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

Each ACT Government Directorate is responsible for responding to FOI requests that relate to their functions or roles. Before making a request for access to documents you should first approach the Directorate you think may hold the documents relevant to your request. Each Directorate has an FOI officer who can assist you in making your request.

Many documents, particularly if they relate to your personal affairs, may be given directly to you 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 FOI Act.

How do I make an FOI request?

Identify the document(s) you want.

You can write a letter or fill in the form which is available on the Directorate's website 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 the date the documents were created, or describe in detail the subject matter in which you are interested).

Please supply a contact telephone number.

Post your request to the following address:

The FOI Coordinator
Chief Minister and Cabinet Directorate
GPO Box 158
CANBERRA ACT 2601

or fax to:

The FOI Coordinator
Chief Minister and Cabinet Directorate
+61 2 620 75886

or deliver to:

The FOI Coordinator
Level 2, Canberra Nara Centre
1 Constitution Ave
CANBERRA ACT

What must the Directorate do when it gets my request?

The Directorate must:

- 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); and
- within 30 days tell you the decision on giving you access. Where documents contain information about a third party's personal or business affairs, the Directorate has to consult with the third party. In these cases the Directorate may extend by another 30 days the time in which it is required to provide you with its decision on those documents being consulted upon.

How much will it cost me?

Application Fee

There is no application fee for FOI requests to the ACTPS.

Processing charges

Processing charges may apply for requests. In order to minimise any charges, please consult with the FOI Coordinator to be sure that you are requesting only the documents you really need.

There are no charges for the first 10 hours spent on locating documents. After 10 hours, the charge for locating documents is \$23.00 per hour.

The charge for decision-making and consultation time is \$30.75 per hour.

There are charges in relation to the provision of access (eg. 30c per photocopy after the first 200 pages; \$19.20 per hour supervised inspection; dispatch; and rates for services such as tape transcription or computer output).

Remissions

If you are advised that charges will be imposed, you are able to seek the remission of processing charges 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 you have 30 days to respond. No further action will be taken, nor access given, until payment is received or a remission granted. If you don't respond before the date stated in the letter, the Directorate will conclude you do not wish to proceed and will consider the FOI request withdrawn. 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 Directorate can let you see the documents, or give you a copy. In some cases another method may be more appropriate (eg. listening to a tape recording). If copies are not sent to you, the Directorate will let you know how, when and where you can see them. Access will be provided once any charges, if applicable, are paid in full.

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

Special procedures may apply if you want to see information that concerns your physical or mental health. The Minister or the Director-General of the Directorate may decide to give the information to a doctor of your choice rather than to you directly. However this can be done only where the Minister or Director-General thinks that giving it to you directly might prejudice your physical or mental health or well-being. This decision is appealable.

Can anyone else see the documents that are given to me?

As part of the ACT Government's commitment to Open Government, CMCD will make all written documents released to you under the Act available for online access by the public. The information will be made available in PDF formats on the Open Government website, at http://www.cmd.act.gov.au/open_government

The Online FOI Publication Policy at http://www.cmd.act.gov.au/open_government/report/freedom_of_information_online prevents publication of information that relates personally and specifically to you, or to your business.

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 the Directorate's resources from its normal functions access may be refused.

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

If the Directorate 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 that 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; and
- 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; and
- what changes you want made.

Post or deliver your request to the Directorate. Please give your address for correspondence.

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

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

If the Directorate decides not to make the changes you asked for (or decides to make different ones), the Directorate must ensure that you are advised of the reasons and notify you of your rights of appeal.

What FOI decisions can I appeal against?

You are able to appeal against decisions:

- preventing you from seeing what you want when you want, in the form you want, or at all;
- imposing a charge to see what you want;
- refusing to change or notate documents about you which you think are incomplete, incorrect, out of date or misleading;
- letting others see documents which you say would unreasonably disclose:
 - your personal information;
 - your lawful business or professional affairs; and
 - lawful business, commercial or financial affairs of your firm;
- to give you access to documents about your physical or mental health through your doctor and not directly to you.

What kinds of appeals do I have?

If you are dissatisfied with the information supplied, you can require the Directorate to reconsider its decision (this is known as "internal review").

If you are still not satisfied after the Directorate has conducted an internal review, you can then seek an independent review of the decision by the ACT Civil and Administrative Tribunal ("ACAT review").

You can complain to the Ombudsman about the Directorate's decision or action ("Ombudsman review").

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

Internal review

You can ask the Directorate to reconsider its decision, as long as it was not made by the Minister or the Directorate's Director-General.

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 Directorate at the above address and ask for an internal review.

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 equal to or above 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.

ACT Civil and Administrative Tribunal (ACAT) review

The ACAT is an independent body responsible for reviewing administrative decisions by Directorates. It decides whether the decision made on your FOI request was correct.

The ACAT has the capacity to change the Directorate's decision.

You can appeal to the ACAT if:

- your request was originally decided by a Minister or Directorate's Director-General;
- you are unhappy with an internal review decision; or
- there has been a 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:

ACT Civil and Administrative Tribunal
ACT Health Building
Level 4, 1 Moore Street
Canberra City ACT

GPO Box 370
CANBERRA ACT 2601

Phone: +61 2 620 71740
Fax: +61 2 620 54855
Email: tribunal@act.gov.au
Website: <http://www.acat.act.gov.au/>

You cannot appeal to the ACAT if:

- an internal review was possible but you did not ask for it; or
- 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 a Directorate's 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 Directorate.

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. The contact details for the ACT Ombudsman are:

ACT Ombudsman

GPO Box 442

CANBERRA ACT 2601

Email: ombudsman@ombudsman.gov.au

Website: <http://ombudsman.act.gov.au/>

Fax: +61 2 6276 0123

Complaints: 1300 362 072

What about delays?

The Directorate must tell you its 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; and
- 14 days in the case of a request for an internal review.

If the Directorate does not respond within the time limit you can appeal to the ACAT. However, some requests involve a large number of documents which take a long time to assess. In these circumstances the Directorate may contact you to explain the complexity of the request and ask for an extension of time.

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), witness 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. The Legal Aid Office can be contacted on +61 2 6243 3411.

For any further information, please contact:

The FOI Coordinator, Chief Minister and Cabinet Directorate, phone: +61 2 620 50238.