



Your rights if information about you or your business is requested

July 2014

Every person has a right under the *Freedom of Information Act 1982* (FOI Act) to ask for access to documents held by Australian Government agencies and the official documents of ministers. If someone asks for documents that include information about you or your business, you have certain rights because you have an interest in the outcome of the request. Your personal privacy and the impact on your business are important considerations in deciding whether to release the documents.

What information can be requested?

Any person can request access under the FOI Act to documents held by government, including documents received from the public and the business community. All Australian Government agencies (except a small number of agencies such as security and intelligence agencies) and ministers (including parliamentary secretaries) are subject to the FOI Act. Access will generally be given unless a document falls within a category of documents that are exempt or conditionally exempt under the Act. A person's reasons for seeking access are not relevant to the decision about whether to release a document.

Documents include papers, files, reports, maps, plans, photographs, sound recordings and films.

When will information about me or my business be released?

Some information that government collects will not be disclosed under the FOI Act because legislation provides that it is secret. This includes certain information collected under taxation, child support, gene technology and patents legislation.

A document is exempt from disclosure if its release would disclose trade secrets or commercially valuable information whose value would be diminished by its release. An agency or minister may ask you for your views on whether the exemption should apply to information in a document that relates to your business (see the next section).

There are also some types of documents which are 'conditionally exempt' under the FOI Act. Deciding whether to release a conditionally exempt document involves two stages. First, a document will be 'conditionally exempt' from release if it:

- contains information about your business and release
 - would (or could) unreasonably affect you or your business adversely, or
 - could prejudice the future supply of information to the Commonwealth
- affects your personal privacy and release would involve the unreasonable disclosure of personal information about you.

If the document satisfies the 'conditional exemption' test, the decision maker must then consider whether it would be contrary to the public interest to give access to it. The decision maker will consider factors for and against giving access.

For example, releasing information may be likely to harm a business's commercial advantage in the marketplace. This would be a factor against release, to be weighed against factors that favour release. For example, there may be a strong public interest in knowing more about government regulation of your business and other businesses.

For more information about conditional exemptions, see **FOI Fact sheet 8 — *Freedom of Information: Exemptions***.

Will I be asked for my opinion about release?

Yes, if the decision maker considers that you or your business might reasonably wish to make a submission that a document is:

- exempt because of trade secrets or commercially valuable information, or
- conditionally exempt because of your personal privacy or business interests.

The decision maker must not decide to release a document before you have had a reasonable opportunity to make a submission.

When will the decision maker consider that I might want to make a submission?

A decision maker may form this view based on any relevant information, including whether:

- the information about you or your business is public or well known
- you and your business are known to be associated with the subject matter of the information
- it is reasonably practical to invite you to make a submission.

Will I be told who asked for access?

You may speak to the agency about this. However, the normal practice of agencies is not to disclose the name of an individual applicant on privacy grounds unless that person consents. If the decision is later reviewed by the Information Commissioner or the Administrative Appeals Tribunal, it will be for the Commissioner or the Tribunal to decide whether the parties' identities are disclosed.

What should I do if I am asked for my views?

If you object to the information being released, you can make a submission to the decision maker explaining why. You will need to do this within the time specified by the decision maker.

How will my submission be taken into account?

The decision maker will consider your submission before making a decision on whether or not to grant access. You have a right to express your view, but ultimately the decision will be made by the agency or minister. It is open to the decision maker to decide to release a document that is exempt or conditionally exempt.

You will be notified if the decision maker has decided to release the document.

What if I disagree with a decision to release a document?

You can ask for the decision to be reviewed. The person who is seeking the document will not be given access until your opportunities for review have run out and any application for review has been decided. Generally you have 30 days to seek review after you are notified of the decision.

How do I seek review of a decision?

There are two ways you can ask for review of a decision to release documents that concern you: internal review by the agency, or external review by the Information Commissioner. You should consider seeking internal review first to give the agency an opportunity to reconsider its decision. If the head of the agency or a minister has made the decision, there is no internal review – you can only ask for review by the Information Commissioner.

For more information about the review process, see **FOI Fact sheet 12 — Freedom of information: Your review rights**.

If the decision was not to release the document, can the person who asked for access seek review?

Yes. If the decision maker consulted you before deciding to refuse access, you will be notified if the applicant seeks internal review and the agency decides to give access. At that point you will have the opportunity to seek IC review before the document is released. If the FOI applicant seeks IC review of the decision to refuse access, you will be notified and have a right to be part of the review proceedings.

Can I make a complaint about how an agency handled the process?

Yes. You can complain to the Information Commissioner about an agency's actions under the FOI Act. This is a different process from seeking review of an agency decision that you disagree with. You cannot complain to the Information Commissioner about a minister's actions.

Your complaint needs to be in writing and identify the agency you are complaining about, and should give the reasons for your complaint.

You can lodge your complaint:

online: www.oaic.gov.au

by post: GPO Box 5218, Sydney NSW 2001

email: enquiries@oaic.gov.au

fax: +61 2 9284 9666

in person: Level 3, 175 Pitt Street, Sydney NSW 2000.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: xxxxxxxx@xxxx.xxx.xx

write: GPO Box 5218, Sydney NSW 2001

Or visit our website at www.oaic.gov.au