



Australian
Competition &
Consumer
Commission

23 Marcus Clarke Street
Canberra ACT 2601

Our ref: #1000973
Contact officer: William Herron
Contact phone: 02 6243 1244

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

11 April 2017

AL

www.accc.gov.au

Via email to: foi+request-3352-30318ad6@righttoknow.org.au

Dear AL

Request for access to documents

The Australian Competition and Consumer Commission (ACCC) has received your email of 7 April 2017 in which you request access to information.

Unfortunately, your request does not comply with s.15 of the *Freedom of Information Act 1982* (Cth) because it seems to be more a request for information rather than a request for documents. Please note that the right of access to documents under the FOI Act is to existing documents, rather than to information.

Please advise if your request is for documents that contain how many reported cases of Binary Option fraud the ACCC received in 2016, and what was the monetary value of these losses.

We can begin to process your request once your request is valid.

We attach a copy of s.15 for your information. We also attach a copy of the Office of the Australian Information Commissioner's FOI Fact Sheet 6. This provides an overview of the FOI process and how to apply.

If you have any questions, or require assistance in validating your request, please contact our FOI team on (02) 6243 1244.

Yours sincerely

Sonya Petreski

FOI Administration Assistant
ACCC Legal Group

Sent by email 11/04/2017

Extract of *Freedom of Information Act 1982* (Cth)

15 Requests for access

Persons may request access

(1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

(2) The request must:

- (a) be in writing; and
- (aa) state that the request is an application for the purposes of this Act; and
- (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
- (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

(2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:

- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
- (b) postage by pre-paid post to an address mentioned in paragraph (a);
- (c) sending by electronic communication to an electronic address specified by the agency or

Minister.

Agency required to assist

(3) Where a person:

- (a) wishes to make a request to an agency; or
- (b) has made to an agency a request that does not comply with this section;

it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section.

Note: An agency or Minister may refuse to deal with a request if satisfied that a practical refusal reason exists, after undertaking the request consultation process (see section 24).

(4) Where a person has directed to an agency a request that should have been directed to another agency or to a Minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.

Timeframes for dealing with request

(5) On receiving a request, the agency or Minister must:

(a) as soon as practicable but in any case not later than 14 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified that the request has been received; and

(b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).

(5A) In making a decision on a request, the agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of section 93A.

Extension of processing period to comply with requirements of section 26A, 26AA, 27 or 27A

(6) Where, in relation to a request, the agency or Minister determines in writing that the requirements of section 26A, 26AA, 27 or 27A make it appropriate to extend the period referred to in paragraph (5)(b):

(a) the period is extended by a further period of 30 days; and

(b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been so extended.

Extension of processing period to consult foreign entity

(7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:

(a) consult one of the following:

(i) a foreign government;

(ii) an authority of a foreign government;

(iii) an international organisation; and

(b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(a)(iii) or paragraph 33(b).

(8) If this subsection applies:

(a) the period referred to in paragraph (5)(b) is extended by a period of 30 days; and

(b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.



Freedom of information—How to apply

September 2014

Reforms to the *Freedom of Information Act 1982* (the FOI Act) have made some important changes to the way information held by the Australian Government is managed and accessed by members of the public. The FOI Act promotes disclosure of government information and expressly recognises that public access to government information is to be provided promptly and at the lowest reasonable cost. This fact sheet tells you how you can request information that has not been published, whether it is information about yourself or information about government policy or operational matters.

What sort of personal information does government hold about me?

Australian Government agencies hold a range of information about individuals. Common types of personal information are taxation records, records relating to benefits paid by Centrelink and the Department of Veterans' Affairs, and migration and passport records.

The *Australian Privacy Principles* (APPs) under the *Privacy Act 1988* regulate how Australian government agencies collect, manage and disclose personal information. Further information about the APPs is available at www.oaic.gov.au.

How do I obtain my personal information?

In many cases agencies will give you access to your personal information if you ask them. For example, the Australian Taxation Office will give you copies of your recent notices of assessment. Centrelink will give you copies of documents such as claim or review forms, letters and notices they have sent to you, and medical certificates and reports. You can also access some information Centrelink holds about you through the internet. Many agencies provide advice on their websites about how you can request your personal information.

You also have the right to ask for access to your personal information under the FOI Act. If you make an FOI request, the agency or minister must comply with

the formal processes under the FOI Act to make their decision. The FOI Act also gives you rights to seek review of their decision if you disagree with it.

What if I think the government's records about me are wrong or misleading?

If you think the personal information that an agency or minister holds is incomplete, incorrect, out of date or misleading, you can ask for it to be amended under the FOI Act. This right applies to personal information that has been or is being used, or is available for use, by the agency or minister for an administrative purpose.

Deletion of personal information an agency holds falls under the Privacy Act, not the FOI Act. Deletion will usually only be possible in limited circumstances due to laws which prevent the destruction of information contained in Commonwealth records. For further information see *FOI fact sheet 5: Freedom of information — Your personal information*.

How do I obtain other unpublished information from government?

If you want other information that has not been published, you could contact the agency or minister's office first and ask how you might obtain it. Depending on the nature of the information, the agency or minister may be able to give you the information you are seeking.



You can also seek the information by making a request under the FOI Act.

Information may also be available via the information publication scheme (see [FOI fact sheet 4: *The information publication scheme for Australian Government agencies*](#)).

How do I make an FOI request?

To make an FOI request you must:

- make the request in writing (many agencies have forms on their websites)
- state that it is an application for the purposes of the FOI Act
- provide information about the document(s) you want, to help the agency or minister identify them
- give details about how notices can be sent to you (this can include an email address)
- send your request to the agency or minister by either posting it or delivering to the address specified in the telephone directory, or sending it to the email or fax address.

You do not need to give any reasons why you want the information.

What does it cost?

There is no application fee for making an FOI request or for processing a request for your personal information. However, there may be charges for processing a request for other types of information. Further information about charges is in the [FOI fact sheet 7: *Freedom of Information – Charges*](#).

What happens after I make an FOI request?

When the agency or minister receives your FOI request, they must notify you within 14 days that they have received it. If your request does not comply with the legal requirements for some reason, they will help you make a valid application.

The agency or minister's office may also consult you if your request is complex and large, and they could not process it without spending an unreasonable amount of time or resources. The consultation process aims to help you refine the scope of your request.

In some cases, such as where the agency does not have documents you are seeking but knows that another agency or minister is likely to have them, your request may be transferred to that other agency or minister. You will be notified if this happens.

How are decisions made?

Decisions on granting or refusing access to documents must be made by a person who is authorised to make such decisions. This is a matter determined by each agency and minister.

A document that is requested must be disclosed unless:

- the document or information it contains originated in an agency that the FOI Act does not cover, such as the Australian Security Intelligence Organisation (ASIO)
- the document is 'exempt' (for example, a Cabinet document)
- the document is 'conditionally exempt' and release at the time is not in the public interest (for example, a document whose release could prejudice an agency examination or test).

For more information about exemptions and conditional exemptions, see [FOI fact sheet 8: *Freedom of Information – Exemptions*](#).

You also do not have a right to obtain access to a document under the FOI Act if a statutory scheme provides a right of access subject to a fee or charge (such as a land title register), or if an agency has an arrangement that allows the public to buy the document.

How long will it take to make a decision?

The general rule is that the agency or minister must take all reasonable steps to notify you of their decision within 30 days of receiving your request.



This time period can be extended for various reasons:

- by up to 30 days if you agree in writing
- by 30 days where the decision maker needs to consult a state or territory government, a foreign government or international organisation, or other people where the document relates to their business affairs or personal privacy (see FOI fact sheet 11: Your rights if information about you or your business is requested)
- by the time taken to revise your request if the agency notifies you that the scope is unreasonably wide
- by any time during which the agency or minister is discussing with you the charges for processing your request, or when you have not paid a charge after you have been notified
- by the time the Information Commissioner allows if the agency or minister has asked for an extension because your request is complex or large.

For more information about extensions of time, see FOI fact sheet 16: Freedom of information – Extensions of time.

What information will I get with the decision?

If an agency or minister decides not to give you access to a document you have asked for or to defer giving you access, they must notify you in writing. This notice must include:

- the name and designation of the person making the decision
- a statement of reasons for the decision and the facts used in making that decision
- the public interest factors that were taken into account if the decision concerned a conditionally exempt document
- information about your rights to have the decision reviewed.

What happens if no decision is made in time?

If a decision is not given to you within the required timeframe, this is called a 'deemed refusal'. You then have the right to ask for a review (discussed in the next section).

The agency or minister can ask the Information Commissioner for a one-off extension of time after the timeframe has passed (for example, if they have nearly finished processing the request). If the Information Commissioner agrees to an extension and you receive the decision within the new timeframe, this does not count as a 'deemed refusal'. You still have the right to have the decision reviewed.

What happens if I disagree with the decision?

If you have a 'deemed refusal' or you disagree with the agency's decision, you can ask the agency to undertake an internal review. This means that a different officer (usually a more senior officer) will reconsider your request and make a fresh decision within 30 days. (Internal review is not available if the principal officer of the agency or the minister made the decision personally.)

You can also ask the Information Commissioner to review the decision without going through the internal review process, or if you disagree with the internal review decision. For more information about reviews, see FOI fact sheet 12: Your review rights.

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: enquiries@oaic.gov.au

write: GPO Box 5218, Sydney NSW 2001

GPO Box 2999, Canberra ACT 2601

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